

ORIGINAL  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

SHEARON HARRIS NUCLEAR  
POWER PLANT

DOCKET NO:

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the matter of:	:	
	:	
CAROLINA POWER AND LIGHT COMPANY	:	
and NORTH CAROLINA EASTERN MUNICIPAL	:	Docket Nos. 50-400-OL
POWER AGENCY	:	50-401-OL
	:	
Shearon Harris Nuclear Power Plant,	:	
Units 1 and 2	:	
	:	

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Raleigh Civic Center,  
500 Fayetteville Street Mall,  
Raleigh, North Carolina,

Friday, 14 September 1984.

The hearing in the above-entitled matter was reconvened, pursuant to adjournment, at 9:00 a.m.

BEFORE:

JAMES L. KELLEY, Esq., Chairman,  
Atomic Safety and Licensing Board.

DR. JAMES H. CARPENTER, Member.

DR. GLENN O. BRIGHT, Member.

APPEARANCES:

(As heretofore noted.)

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P R O C E E D I N G S

JUDGE KELLEY: On the record.

MRS. FLYNN: Mr. Chairman, as the Board had requested yesterday, Applicants have Mr. Sherwood Smith at the witness stand, and he is available to be sworn in.

JUDGE KELLEY: Good morning, Mr. Smith.

Would you raise your right hand, please?

Whereupon,

SHERWOOD A. SMITH, JR.

was called as a witness and, having been first duly sworn, was examined and testified as follows:

JUDGE KELLEY: I would just like to take a minute to state that you are appearing here this morning, as I'm sure you know, under a few very simple groundrules. We have allotted approximately an hour for your appearance. The questioning by the Joint Intervenors is to be limited to certain topics that were listed by the Joint Intervenors in arguing the subpoena question the other day.

It is expected that the allotted time will be substantially devoted to questions and answers. If, as sometimes happens, a big chunk of that time is taken up by lawyer argument, we would extend the time correspondingly. It is not a stopwatch type thing, but just a rough indication of how we want to proceed.

I guess with that we can go ahead.

1 MRS. FLYNN: Before we begin cross-examination,  
2 I would just like to ask Mr. Smith a few questions.

3 DIRECT EXAMINATION

4 BY MRS. FLYNN:

5 Q Mr. Smith, will you please state your full name  
6 and business address?

7 A Yes. My name is Sherwood A. Smith, Jr., and my  
8 business address is Post Office Box 1551, Raleigh,  
9 North Carolina 27602. That location is 411 Fayetteville  
10 Street Mall, Raleigh, North Carolina.

11 Q Mr. Smith, what is your present position?

12 A At present I am chairman and president of Carolina  
13 Power and Light Company, and my duties are those of chief  
14 executive officer of the company.

15 Q What other positions have you held with the  
16 company?

17 A I joined the company in 1965 as associate general  
18 counsel. In 1971 I became senior vice president and general  
19 counsel of the company. In 1974 I became executive vice  
20 president of the company. In 1976 I became the president  
21 of the company, and was the chief administrative officer.  
22 In 1979 I became the acting chief executive officer due to  
23 the illness of our current chief executive officer. And in  
24 1980 I was elected chairman of the company.

25 Q Would you briefly summarize your educational and

1 professional experience?

2 A Yes. I have an A. B. undergraduate degree from  
3 the University of North Carolina. I have a J. D. degree  
4 with honors from the University of North Carolina.

5 I engaged in the private practice of law for five  
6 years prior to joining the company in 1965.

7 I have attended various management programs,  
8 industry type of conferences and seminars and programs since  
9 then, and had various responsibilities with the company over  
10 about the last nineteen and a half years.

11 Q Thank you.

12 MRS. FLYNN: Mr. Chairman, Applicants have no  
13 further questions at this time.

14 JUDGE KELLEY: Thank you.

15 Mr. Runkle.

16 CROSS-EXAMINATION

17 BY MR. RUNKLE:

18 Q Good morning, Mr. Smith.

19 A Good morning.

20 Q This may be an historic event, where you testify  
21 for the Joint Intervenors in a case.

22 A Well, it is a tremendously important proceeding  
23 and I am very pleased to be here to respond to any questions  
24 from yourself, sir, or the panel, or anyone else.

25 MRS. FLYNN: May I just interrupt for a moment?

1 He is not testifying for the Joint Intervenors.  
2 Applicants have voluntarily produced Mr. Smith.

3 JUDGE KELLEY: Well, it is kind of a little bit  
4 of both, it seems to me. There was a request for a  
5 subpoena. The Board ruled in favor of the request, whereupon  
6 the Applicants said that Mr. Smith would appear voluntarily,  
7 so that's the background of it. I don't know beyond that  
8 whether it is of any particular consequence.

9 Go ahead.

10 MR. RUNKLE: I meant that as a pleasantry rather  
11 than a legal position.

12 JUDGE KELLEY: All right, for the record.

13 BY MR. RUNKLE:

14 Q Sir, in your position as chairman of the board  
15 of Carolina Power and Light, your duties would be to chair  
16 the board meetings and also the annual shareholders meeting,  
17 is it not?

18 A Yes, my duties would include those two responsi-  
19 bilities.

20 Q Are there other responsibilities that you hold  
21 as chairman of the board?

22 A Yes. As chairman of the board I am the chief  
23 executive officer of our company. Under the by-laws, the  
24 chairman is the chief executive officer of the organization.  
25 The two duties that you mentioned are included in my

1 responsibilities.

2 Q As chairman of the board, isn't your primary  
3 responsibility to ensure a fair rate of return for the  
4 shareholders in the company?

5 A No. That certainly is an important responsibility  
6 but that is not my primary responsibility as the chief  
7 executive officer of the company.

8 As the chief executive officer of the company I  
9 am responsible as a public utility executive for the safe,  
10 efficient, reliable operations of our company and its  
11 facilities. I am responsible for the seeking of a  
12 reasonable rate of return for investors. I am responsible  
13 to the employees for the conditions under which they work  
14 in our employ.

15 Q Are you familiar with the Cresap, McCormick and  
16 Paget audit that was presented to the North Carolina  
17 Utilities Commission some time in 1982?

18 A Yes, I am.

19 Q And the first of those recommendations to CP&L --  
20 and let me just summarize that recommendation for you -- was  
21 that the company should consider adding one or more outside  
22 directors to its board who are experienced in or knowledgeable  
23 about the nuclear utility operations.

24 Are you familiar with that recommendation?

25 A Yes, I'm very familiar with that. In fact, that

1 recommendation I believe was initiated at a conference  
2 between myself and representatives at Cresap, McCormick and  
3 Paget prior to their report being completed, when I described  
4 the functions of the board, the type of individuals we had  
5 on the board, and told them that as time went by, one of  
6 the things that I felt should be considered in the future  
7 would be whether or not there were individuals available  
8 who had experience in nuclear construction and operation.

9 So I made that initial suggestion. It appears  
10 in the recommendations. I am very, very familiar with it.

11 Q How many directors are on the CP&L board of  
12 directors?

13 A We have fourteen directors, ten outside directors,  
14 four inside, company officer directors. Because of a death  
15 earlier this year, in May, we now have nine outside  
16 directors. One of our outside directors passed away, and  
17 four inside directors.

18 Q Do any of the outside directors have any  
19 experience in nuclear operations, nuclear utilities?

20 A No, at the present time they do not. And I think  
21 this would be somewhat traditional or normal, you might  
22 say, throughout the industry. There are only two or three  
23 companies that I can think of offhand that have outside  
24 directors who do have experience in the design, construction  
25 or operation of nuclear plants.



1 I think one of the reasons for that is that there  
2 is only a very small group of people who would fill those  
3 qualifications who were not otherwise engaged either as an  
4 officer or director of another electric utility or perhaps  
5 as a member of the senior staff of the NRC, or perhaps as  
6 an employee, either of a vendor of nuclear steam supply  
7 systems or one of the major architects of the engineering  
8 firms.

9 And of course if you look at industry generally  
10 in this country, whether you look at the computer industry  
11 or the chemical industry, normally you would not find persons  
12 with experience in the field from outside the company on the  
13 board of directors.

14 In some cases I think that reflects a competitive  
15 aspect of those industries where it would not be normal  
16 certainly for anyone from a competitor to be on the board.  
17 In our electric utility industry, however, where the  
18 competition, because of regulation, is minimal, I would think  
19 that over time, because of the complexity of nuclear  
20 operations, the importance of nuclear operations, that you  
21 would see individuals serving on the boards of electric  
22 utility companies as outside directors who do have experience  
23 in the nuclear field.

24 Q Currently on CP&L's board of directors, the nine  
25 or ten outside directors, would the major qualification of

1 those people to sit on the CP&L board, would that be  
2 financial experience?

3 A No, not necessarily. We do have people with  
4 financial experience. We also have people with manufacturing  
5 experience, with insurance experience, with retail  
6 experience. We have people on our board I might say who have  
7 been on our board for a number of years. They have been on  
8 the board through the development of our nuclear program so  
9 that they are individuals, for the most part, who do have  
10 a familiarity with our nuclear program, its operations and  
11 the construction.

12 If I might add, Mr. Runkle, one of the things that  
13 seems to me to be valuable to our board is to have input  
14 from various people who are experienced in fields that are  
15 important to the organization, in this case nuclear. And it  
16 has been our policy to have people from outside with  
17 experience in the nuclear field meet regularly with our board  
18 of directors to discuss not only our nuclear program but the  
19 nuclear situation nationally.

20 We have had outside consultants speak with our  
21 board of directors. We currently have a gentleman who  
22 formerly was chief executive officer of a large northeastern  
23 utility who serves as chairman of the Institute of Nuclear  
24 Power Operation who serves as a consultant to the company  
25 and the board of directors.

1           He meets with the board at its regular board  
2 meetings. He meets with the board at committee meetings.  
3 He visits our premises and our sites, and his participation  
4 in that way I think has been very useful and very helpful  
5 with respect to our board.

6           Q       You also have responsibility as president of CP&L.  
7 Can you briefly describe some of those duties, and how they  
8 may be additional to those of the chief executive officer  
9 and chairman of the board?

10          A       Yes, I'll be glad to.

11                In December of 1976, I was elected president of  
12 the company and its chief administrative officer, and that  
13 meant that I had responsibility for all of the legal,  
14 corporate communications, finance, accounting, computer,  
15 personnel, purchasing, and other types of activities separate  
16 from the design, construction and operation of power plants  
17 under my area.

18                There was another gentleman, a Mr. Jones, who  
19 was executive vice president who serves as our chief  
20 operating officer, and he had those functions reporting to  
21 him.

22                The reason for my election as president in the  
23 grouping at that particular time was that it was part of a  
24 process of our board and our then-chief executive in grouping  
25 responsibilities under me in preparation for his expected

1 retirement in a few years, so that I, in addition to others,  
2 might be a candidate to be considered as the successor chief  
3 executive officer.

4 In 1980 when I was elected chairman of the board  
5 and was serving then as chief executive officer, the functions  
6 of chief administrative officer became merged into those of  
7 the chief executive officer, so that my duties now as  
8 president, as carried forward from the past, would be the  
9 ones that I enumerated.

10 They would be responsibilities for all of those  
11 functions that would not be involved in either design,  
12 construction or operation of the plants. That is the type of  
13 situation that exists with other utilities.

14 The largest nuclear electric utility in the  
15 country, for example, Commonwealth Edison, would be structured  
16 pretty much along the same lines now, where you would have  
17 the functions of the president merged into chief executive  
18 officer, and the same individual holding the titles of  
19 chairman and president. And there would be other companies.

20 Q So it was in 1980 when you received the  
21 responsibility, among your other duties previously to then,  
22 for design, construction and operation of the nuclear plants?

23 A Well, in 1980 I became chairman of the company  
24 and then became chief executive officer on a permanent  
25 basis. At a time in 1979 when Mr. Harris, who was chairman

1 of our company, was out because of illness, I acted as chief  
2 executive officer.

3 The officer with primary responsibility for the  
4 design and construction and operation of our plants after my  
5 election as chairman continued to be a Mr. J. A. Jones, who  
6 was vice chairman of our board and who served as our chief  
7 operating officer, so those functions were under Mr. Jones,  
8 but Mr. Jones then reported to me.

9 Q Who are those people who report directly to you  
10 at this time?

11 A There are four individuals in our company who  
12 report directly to me: Mr. Edwin E. Utley, who is here today,  
13 who has participated in these proceedings, Mr. E. G. Lilly,  
14 Jr., who serves as our executive vice president and chief  
15 financial officer, Mr. William E. Graham, Jr., who serves  
16 as our executive vice president with responsibilities for  
17 legal, corporate communications, customer services, other  
18 responsibilities similar to that, and a Mr. W. W. Morgan,  
19 who is a senior vice president whose responsibilities include  
20 our computer operations and our information management  
21 department, our employee relations department, our general  
22 administrative services department.

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1 Q So between these four men who are reporting to you,  
2 through them everything that happens in the whole company is  
3 reported to you?

4 A Yes, you might say that. The functions under me  
5 are allocated to those four individuals whom I have just  
6 named.

7 Q And Mr. Utley would be responsible for all areas  
8 of power production, would he not?

9 A Yes, in general, that's correct, he would.

10 Q And there would be coal, other fossil, the hydro  
11 plants as well as the nuclear operation?

12 A Yes, that's correct. The nuclear part of his  
13 responsibilities today would be the dominant responsibilities  
14 that he has. But he has responsibilities for those other  
15 areas, which you enumerated.

16 Q Do you evaluate Mr. Utley's performance based on  
17 the performance of the production plants, the different  
18 generating plants, coal, nuclear.

19 A Yes, among other things the performance of those  
20 plants -- and I might add the safe operation of those plants  
21 in compliance with the requirements of the nuclear regulatory  
22 commission, are items that are considered in the evaluation of  
23 Mr. Utley's performance.

24 Q As a manager and experience in different areas as  
25

1 a manager, which do you put more weight on as an evaluation?  
2 Production from the generating plants or their safe performance?

3 A Well, I think you have to start with their safe  
4 performance. We would not operate a facility if it were  
5 not possible to operate it in a safe manner. So I think you  
6 have to start with that. Safety comes first and then he's  
7 evaluated in terms of the safe and efficient operation of  
8 all of our facilities. But safety to our employees and to  
9 the public has to come first.

10 Q Would it be fair to say that at this time the  
11 largest financial commitment CP&L has has been to their  
12 nuclear program?

13 A Oh yes, that's correct, yes.

14 Q As far as finances go, does that far outweigh  
15 other areas of financial considerations?

16 A Well, our largest investment is in our nuclear  
17 program. In terms of day to day operations, such as a  
18 day to day, our generation would be produced by our fossil  
19 system. And so the fossil system today would be carrying  
20 the entire company. But in terms of the amount of dollars  
21 that are invested, the complexity of the operation, require-  
22 ments of regulation, the extra importance with regard to  
23 public safety, I would say that the nuclear responsibilities  
24 that Mr. Utley has are his dominant responsibilities.

25 Q Are you familiar with the incidents, the history

1 that led to the \$600,000 civil penalty levied on CP&L by the  
2 Nuclear Regulatory Commission?

3 A Yes, I am. That situation arose in the summer of  
4 1982. And I am familiar with that.

5 Q And what was your position at that time, in the  
6 summer of '82?

7 A In the summer of 1982, I was the chief executive  
8 officer of the company.

9 Q And did you have responsibility at that time for  
10 nuclear design construction and operation?

11 A No. That was still under Mr. Jones, but Mr. Jones  
12 reported to me. I served as chief executive officer of the  
13 company. Mr. Jones retired effective October 1, 1982, at  
14 which time Mr. Utley assumed those responsibilities. And  
15 since October 1, 1982, Mr. Utley has reported directly to me.

16 Q But it would be fair to say since Mr. Jones  
17 reported to you that you had responsibility for the nuclear  
18 design construction operation?

19 A Well, with respect to being the chief executive  
20 officer of the company and having to that extent the  
21 authority over all of the company's operations including the  
22 ones that you listed, yes.

23 Q I wasn't picking them out as something that you  
24 would have direct responsibility --you were responsible  
25 for the whole company at that time, were you not?



1           A     Yes, that's correct.

2           Q     Do you spend in the normal case -- in the normal  
3 instance of your working week, time on overseeing the  
4 operations of the nuclear plants?

5           A     Yes, in the broad sense of the word, oversee, I do.  
6 And there is no activity in our company on which I spend  
7 any more time than our nuclear operations.

8           Q     Say in a typical work week's time, how much time  
9 do you spend in the nuclear operations?

10          A     It could vary from week to week. If I'm out on  
11 the system visiting our nuclear plants, working perhaps  
12 with Mr. Utley and others in the office, it might be well  
13 over 50 percent of my time. In other weeks it might be  
14 much, much less than that. Looking at it on a calendar  
15 year basis, if I may on average, I would say that at least  
16 20 percent of my time is involved in the nuclear part of  
17 our business.

18          Q     And that would be in the operation modification at  
19 the Brunswick plant that's going on now?

20          A     Well, those would be some of the things that  
21 would be included. Of course, it would include our  
22 activities at our Robinson site, at our Harris site. It  
23 would include working with industry groups. Perhaps  
24 appearing before the NRC. I happen to chair an ETRI  
25 study group. It would include a number of things in

1 addition to those that you mentioned, but it would include  
2 the Brunswick plant and its operations, yes.

3 Q So your concern is for not only CP&Ls nuclear  
4 power plants but would it be fair to say that your concern  
5 would be for nuclear power in the United States?

6 A Yes, because our operations cannot be separated  
7 from the operations of nuclear power in the United States.  
8 There are many, many generic questions and matters that  
9 pertain to the operation of all nuclear plants in this country  
10 as well as just our own.

11 Q Is your concern about the, let's say, the status  
12 of nuclear power in this country. Is that a concern about  
13 the safety of the nuclear power plants or the financial  
14 aspects of nuclear power?

15 A Well, I'm very much concerned -- and I think my  
16 primary responsibility and of those individuals under me --  
17 is for the safe operation of the facilities. You have  
18 to start with safety and you have to start with adherence  
19 to the various rules and regulations that are promulgated.

20 In terms of the financial aspect of the nuclear  
21 industry today, as one sees the various utilities around  
22 the country including our own who have been required to  
23 cancel plants, as one looks at the entire licensing construction  
24 process which is complex, it extends over many years in this  
25 country. And one sees that nuclear units are not being ordered.

1 The nuclear option is not being utilized for generation in  
2 the future.

3           You do have a concern about the financial aspects  
4 of nuclear operation. One needs only to read the papers  
5 to have a concern. And the cost of our nuclear program is  
6 our biggest single financial commitment. So you can't  
7 separate either finance or safety or some of the other  
8 aspects of nuclear operation from the other.

9           But my concern, both as an individual executive,  
10 as a member of industry groups, is for the safe operation  
11 of these plants. And I think that has to be fundamental in  
12 terms of public confidence in the whole process, public  
13 support reflected in governmental and political decisions  
14 that are made. I think that's all premised on the knowledge  
15 by the public. And it's acceptance of the fact that  
16 nuclear plants can be built and operated safely. We've been  
17 very much involved in the Institute of Nuclear Power  
18 Operations which has been set up by our industry to set  
19 new standards and benchmarks of excellence. And seek  
20 improvements in the safe operations of the plants.

21           I think it's an organization that's been  
22 tremendously effective. And unless you start with the  
23 assumption that nuclear plants can be built and operated  
24 safely, then you really don't have anything else -- in my  
25 opinion -- with which to be concerned. And I think they can

1 be built and operated safely. I think that our over 800  
2 years of experience in this country has demonstrated that.  
3 I think our own company's experience has demonstrated that.  
4 In spite of the fact -- and I want to be the first to  
5 acknowledge this -- that we have had problems from time to  
6 time in our operations and that we sought to address those  
7 problems, and correct them. And we'll continue to do that.

8 Q When you evaluate the performance of Mr. Utley  
9 and those underneath him -- let's focus in on the construction  
10 of the Harris nuclear power plant.

11 In your -- as a manager, you would evaluate the  
12 performance of those CP&L staff that are construction the  
13 Harris plant, would you not?

14 A Well, I would evaluate Mr. Utley's performance.  
15 The individuals under the-- at the plant under his supervision  
16 would be evaluated by him. And he'd review those  
17 evaluations with me.

18 Q In reviewing that with Mr. Utley and also  
19 reviewing Mr. Utley's performance, would you evaluate the  
20 construction of the plant in terms of dollars spent?

21 A That certainly is one of the items that you  
22 evaluate. What is your budget for the plant. Where are you  
23 with respect to the budget. You also evaluate the  
24 construction performance in terms of whether or not you  
25 were meeting requirements of your construction license.

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1 Whether or not you were developing, in advance of completion  
2 of construction, a strong and strong and capable experienced  
3 operating staff. You would evaluate the job from the  
4 standpoint of NRC inspections and any comments that had  
5 come from the NRC with respect to the construction of the  
6 plant.

7 Q Would you also look on the ability to obtain the  
8 scheduled completion date of the plant?

9 A Yes, you would look at that but you would -- that  
10 would not be the dominant characteristic of your evaluation.  
11 Because I think it's well-known to those here there are  
12 many things that can impact schedules. And there many  
13 things beyond the control of the individuals at the site  
14 or the licensee that can impact scheduling.

15 You desire to complete the plant, meeting all of  
16 the requirements for construction, particularly those  
17 with respect to safety, as quickly and as inexpensively  
18 as possible. But today to build a nuclear plant, it takes  
19 many years. It's very complex. And you don't evaluate  
20 the performance of any individuals or the company just from  
21 the standpoint of whether or not they had been able to  
22 meet a certain schedule.

23 Q Can you pinpoint in your own mind the concern that  
24 you, in evaluating the Harris plant construction program,  
25 would be the dominant concern?

1           A.       There would be several things that you would  
2 look at and there would be several, you might say,  
3 dominant concerns.

4                   First of all you would look at the construction  
5 license that you received, and then you would look at  
6 your compliance with the terms and conditions of that  
7 license. You would look at what the NRC says about your  
8 construction.

9                   With respect to the Harris site, the number  
10 of violations or infractions that the NRC has commented  
11 on or picked up through their inspection has been very,  
12 very small.

13                   I don't know -- And I'm just saying this as a  
14 generalization, of course, subject to record check  
15 of any particular project -- but I don't know of many  
16 projects around the country which have undergone as  
17 intense an inspection as the Harris project in terms  
18 of the number of inspection hours spent and had as  
19 few infractions picked up or commented on by the NRC,  
20 and that is a tremendously important part of my  
21 evaluation of Mr. Utley and those under him working  
22 on the project.

23                   In terms of the overall management of the  
24 project, that is, how do we manage it from the  
25 standpoint of dealing with the constructor, dealing

1 with the architect-engineer, dealing with the many  
2 subcontractors there on the project; do we have in  
3 place an operational staff that has been built up well  
4 in advance; are we turning over systems to operations  
5 in advance of expected fuel loading so that the  
6 operators can become very familiar.

7 I go out to the plant frequently, from time  
8 to time I might go out on a weekend -- we have recently  
9 started staffing the control room 24 hours a day. It  
10 is of interest to me to go in and just talk with  
11 whoever is in the control room now and see what  
12 they're doing.

13 I get an impression of what type of job  
14 that is, what type of people we have on the job, what  
15 type of commitment I think those people have to  
16 completing the plant certainly as inexpensively as it  
17 might be completed but more than that are we building  
18 a project that is going to meet all the requirements  
19 of licensing, is it going to perform up to the  
20 expectations that I have for it, that I think the public  
21 or other regulators have for that project.

22 I want that project to be a jewel in terms  
23 of the nuclear industry. I want it to come in and be  
24 one that is found to have been well built, well  
25 operated, that continues to get good SALP reports.

1                   And if we meet those requirements and adhere  
2 to all the safety rules and regulations, then efficient  
3 operation and the economies that you desire to achieve  
4 from the plant will flow from that.

5                   We have always put a high importance on  
6 safety in our company in all of our operations. We  
7 have won many awards. And a safe company is a company  
8 where you have not only good morale but you have  
9 efficient operations, and that's certainly true in  
10 this one.

11                  Q       Does Mr. Utley bring to your attention quality  
12 concerns brought up through the QA program headed by  
13 Mr. Banks?

14                  A       Yes. From time to time we will discuss our  
15 entire quality assurance program at the Harris site.

16                       We have instituted, for example, what we  
17 call a quality check program where we have solicited  
18 questions, comments and suggestions from individual  
19 workers at the site on an anonymous basis that are fed  
20 back through the project, that are independently  
21 evaluated.

22                       He and I would discuss the system that we  
23 have in place out there and how is it operating. We  
24 would not review -- and I don't think your question  
25 intended this -- but we would not review individual



WRB/wbl 1 quality assurance reports unless there is something of real  
2 significance.

3 Q If it was a major quality concern it would be brought  
4 to your attention?

5 A Yes; usually something that was programmatic  
6 or something that was of particular major significance.

7 Q What was your involvement in establishing the  
8 quality check program?

9 A My involvement was discussing this with Mr. Utley  
10 over a period of time before we put the program into effect.  
11 The discussions acknowledged the fact that around the country  
12 in many other licensing projects from time to time there  
13 would appear individuals who had worked on a project perhaps  
14 some time in the past and had left the project, maybe they  
15 had a question or concern or complaint that hadn't been  
16 adequately addressed at the time they were on the job, and  
17 many years later this complaint would surface at a time when  
18 it was very difficult to deal with it effectively. And what  
19 he and I discussed were the ways in which we might develop  
20 a system of bringing out questions and concerns that people  
21 might have on the job that for some reason might not come up  
22 otherwise through the normal channels of supervision.

23 He made the recommendation that we do this, I  
24 supported it, and we discussed the situation before, and I  
25 think it's a very desirable program for us to have at the

WRB/wb2

1 site.

2 Q As the individual with overall responsibility  
3 for CP&L have you been satisfied with the overall performance  
4 of the Brunswick reactors?

5 A Well, I think I'd have to answer your question  
6 by addressing the word "satisfied" perhaps in several different  
7 ways.

8 At the time that we had the difficulties that  
9 surfaced in 1982 I certainly was not satisfied; in fact, I  
10 was most dissatisfied with the difficulties that had occurred,  
11 and some of these had been building up over a period of time.

12 I also understood, I think, the situation and how  
13 some of these occurrences had developed, what needed to be  
14 done in order to remedy the situation. In terms of what has  
15 transpired since the implementation of our Brunswick Improve-  
16 ment Plan in the fall of 1982, as evidenced perhaps by the  
17 reduced numbers of LERs, other evidences of safe and efficient  
18 operation of the plant in terms of the SALP report that we've  
19 recently received on the plant, in terms of an inspection of  
20 the plant last fall by Mr. Denton of the NRC, in terms of  
21 inspection of the plant this June by Mr. DeYoung who is the  
22 chief of inspection and enforcement, and public statements  
23 that they both made, I am very pleased and satisfied with the  
24 performance of the plant today and the progress that we've  
25 made.

WRB/wb3

1 I don't think in the nuclear field one should ever  
2 be completely satisfied at any time in the sense that you  
3 accept the status quo or you might become complacent. I think  
4 it's our responsibility to continue to seek to improve our  
5 nuclear operation, particularly at the Brunswick plant, at  
6 the Harris plant, which is the subject of this proceeding,  
7 and at our Robinson plant.

8 Q Would you say that the capacity of the Brunswick  
9 plant is lower than you would like to see it?

10 A Well, the capacity factor of the plant has been  
11 lower than desired, although the capacity factor recently of  
12 Brunswick Unit 1, which was returned to service last year  
13 after major modifications, and is being operated in compliance  
14 with our Brunswick Improvement Program, has been very high.  
15 That capacity factor to date has been probably about 80  
16 percent this year. So I'm very satisfied with that. And I  
17 think that illustrates the point I sought to make earlier,  
18 that if you have a plant that is safely operated, operated in  
19 compliance with all the rules and regulations and requirements  
20 of your tech specs, that you can have a plant that operates  
21 efficiently and does have a high capacity factor.

22 That's not to say that from time to time you don't  
23 have tension between economic operation of the plant and the  
24 safety of the plant. And I think it's important that the  
25 licensee always resolve those questions in favor of safety

WRB/wb4 1 where it's reasonable and to be expected that he would do so.

2 But I don't think at all that high capacity  
3 factors and excellent safe operations are mutually exclusive  
4 or incompatible; I think they're very compatible.

5 Q In discussing the capacity factor of Brunswick-1  
6 so far in the last several months as being fairly high, that  
7 does not include a refueling outage or anything like that,  
8 does it?

9 A No. We will take the Brunswick Unit No. 1 out  
10 for refueling next year. It has not been out for refueling  
11 this year.

12 Q And the scheduled outage next year will be on the  
13 order of forty-six weeks?

14 A It depends upon whether or not we then replace  
15 the recirculating stainless steel piping at that time.

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1           Q     Sir, has there ever been any discipline or other  
2 adverse job actions for any of the people underneath you  
3 for the lower performance of the nuclear power plants?

4           A     By any of the people underneath me, I assume you  
5 mean all the way down into the plant?

6           Q     Yes, sir.

7           A     And yes, we have had people who have been  
8 disciplined at the plant site. We have had people who have  
9 been reassigned in management. Usually what you would do  
10 if you had deficiencies in performance in any of your  
11 operations, you would review -- you try to ascertain the  
12 root causes and you would look at the experience and  
13 qualifications of the individual's involved.

14           A     You would look at your organizational structure  
15 to see whether or not it was properly aligned so that  
16 people who had the responsibility also had the resources  
17 to get the job done.

18           A     In some cases you might have additional training  
19 that would be brought to bear on the situation in order to  
20 improve operations. In other places you might have someone  
21 reassigned from one responsibility to another. Usually  
22 reassignment would be the more normal type of change that  
23 you would make in someone's assignments. Because you would  
24 not have anyone working in the nuclear operation to begin  
25 with unless they had certain educational qualifications.

1 Certain levels of experience that indicated that they were  
2 qualified to do that work.

3           If for any reason, the work was not performed  
4 up to the high standard that you set, any if additional  
5 training didn't seem to be the proper remedy, then usually  
6 the remedy would be to reassign that individual to try to  
7 match them up in a job where their experience and  
8 abilities more closely resemble the demands where they  
9 could perform effectively.

10           Q    In looking at the root cause of a problem, have  
11 you been able to form an opinion as to the root cause  
12 of those incidents that led up to the \$600,000 civil  
13 penalty down at Brunswick?

14           A    Yes, I have. And there were several reasons for that,  
15 in my opinion.

16           Q    And what are those reasons?

17           A    I think you, first, have to go back to the  
18 early 70's when the two Brunswick units were built. And at  
19 that time there were only one or two large BWRs that had  
20 been completed and placed in service. The two at Brunswick  
21 might be described as two of the first generation of BWRs  
22 that were being built. We went through a period of going  
23 from standard -- well, going from custom individual unit  
24 specifications into standard tech specs. So this was, first  
25 of all, the development on a large scale of a new technology.

1           We weren't the first, but we were one of the first.  
2 We went from individual tech specs to standard tech specs.  
3 Many, many more requirements.

4           Because the plant was staffed with individuals who,  
5 as many of the plants were in our industry, coming in for  
6 the first time, you had a lower level of experience than you  
7 now have at the site.

8           I think the traditional way of organizing the  
9 company to operate nuclear plants, and this had proved to  
10 be successful for us in our Robinson operation, was to  
11 have line functional responsibilities of engineering,  
12 construction and operation. It's coming up near the head of  
13 a company, you might say in separate channels. Not to have  
14 a matrix organization on the site.

15           I should also say that we certainly, during the  
16 course of those years, the completion and the early operation  
17 of the Brunswick plant, made many decisions in management  
18 which, in hindsight, we would have made differently. And  
19 our total corporate management has to assume responsibility,  
20 properly, for some of the things that should have been done  
21 differently.

22           But it was a very complex operation and I think it  
23 was probably acknowledged during the licensing hearings of  
24 our Harris project now before the panel, in 1979 as I recall,  
25 that there were improvements that needed to be made at

1 Brunswick. That we recognized that. That we were in the  
2 process of making changes down there designed to improve  
3 operations.

4 In March of 1979, of course, the Three Mile Island  
5 accident occurred. And following that there were many more  
6 changes that needed to be made in the operation of all  
7 nuclear plants. And I think that in retrospect, I wish that  
8 I had known, well, my responsibilities didn't involve the  
9 operation of the Brunswick plant. But let me just say that  
10 the executive officer of the company--had the executive  
11 officer of the company known in 1975, '77, '78, what was  
12 going to develop to the industry, that certainly there had  
13 been certain things that we would have done differently

14 But the root causes, I think, were the newness  
15 of the technology, generally. Certainly, the newness of  
16 it to our system. We were gaining experience there. The  
17 contract that built the plant, Brown and Root was building  
18 its first nuclear unit. The AE had built several others  
19 but this was one of the early ones.

20 Our level of experience had been with the single  
21 PWR at Robinson. The new requirements that came from  
22 standard tech specs and which flowed later from Three Mile  
23 Island all were very important. Of, if you would, the root  
24 causes that led to those problems.

25 And by identifying problems other than those under



End #4

WRB fls

1 the control of the company, I don't mean to diminish the  
2 responsibility that we had to do things differently if we  
3 were able to go back and do them over again.

4 Q Is CP&L committed to nuclear power to supply a  
5 substantial portion of their generation?

6 A Yes. As you're probably aware, we have three  
7 nuclear units in operation and the fourth one, the Harris unit,  
8 under construction.

9 Q And you will remain so committed to nuclear power  
10 in the future?

11 A Well, yes, we expect to complete the Harris plant  
12 in 1986. We have no nuclear units under order. We have  
13 a committment to operate those plants and we also would  
14 begin to look at other plants for service in the 90's in the  
15 next few years. Whether or not it would be possible to  
16 consider ordering another nuclear plant, I think remains  
17 to be seen.

18 It's my personal hope from the standpoint of the  
19 consumers of the country and an adequate electric supply,  
20 that we would continue to be able to consider nuclear power  
21 as an option in this area along with coal. But I think  
22 we'll have to wait and see how events, largely in  
23 Washington, unfold with respect to that.

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1 MR. RUNKLE: Your Honor, we have no other questions.

2 JUDGE KELLEY: Fine.

3 Does the Staff have any questions of Mr. Smith?

4 MR. BARTH: The Staff has no questions of

5 Mr. Smith, your Honor.

6 MRS. FLYNN: We don't have anything further, your

7 Honor.

8 JUDGE KELLEY: Okay.

9 Mr. Smith, thank you very much. We appreciate  
10 your appearance this morning. You are excused.

11 THE WITNESS: Thank you, sir, for the opportunity  
12 to be here.

13 (Witness excused.)

14 JUDGE KELLEY: Why don't we take a stretch and get  
15 a cup of coffee?

16 (Recess)

17 JUDGE KELLEY: On the record.

18 Do we have anything further on the management  
19 contention? The cases are all in. There is no rebuttal, as  
20 we understand it.

21 There is the question of proposed findings and  
22 whether the parties want to defer all that until after the  
23 10/10 hearing or whether that clock should start to run now.  
24 I don't believe we discussed that particular point up to this  
25 time.

1 Can we have reactions on that?

2 Mr. Baxter or Mrs. Flynn?

3 MRS. FLYNN: I believe that there had been some  
4 discussion earlier. I don't think there has been a formal  
5 decision about it, that proposed findings would be prepared --  
6 that the clock would start to run after the close of the  
7 October hearing. That is our recollection.

8 Applicants would not object to having the clock  
9 start now, however, on proposed findings on this issue.

10 JUDGE KELLEY: I think we are really putting the  
11 subject on the table. We are not pushing any particular  
12 point of view.

13 Mr. Barth.

14 MR. BARTH: Your Honor, I have to write these  
15 findings and I am only two inches into Mr. Eddleman's exhibits  
16 for the October hearing. There is no way I can write these  
17 findings until after the October hearing, your Honor.

18 JUDGE KELLEY: Mr. Runkle?

19 MR. RUNKLE: We would be glad to start after the  
20 October hearings. In fact, in some of the safety issues  
21 such as the electrical environmental qualification, the pipe  
22 hangers and the concrete, some of those issues were sort of  
23 pushed over into look at the management in those, so we think  
24 it is the whole package of man-to-man safety.

25 JUDGE KELLEY: Well, I don't hear anybody

1 particularly desirous of starting on findings in this area  
2 until after the next hearing. Is that correct?

3 It occurs to me that when we get through with the  
4 next hearing, in the interest of the Board being able to  
5 proceed in an orderly way and get some work done, we might  
6 talk about making the management stuff due on one day and  
7 the rest on some other date so that we can get started, but  
8 that we can talk about at a later time. I just mention it  
9 here now as a thought.

10 Are there other-- Well, what about closing the  
11 record on management at this point? Are there any motions  
12 in that regard?

13 MRS. FLYNN: Applicants owe the Board some  
14 information.

15 The Board had asked for information concerning the  
16 numbers of civil penalties that CP&L had incurred since it  
17 began operation and those which had LERs associated with  
18 them.

19 JUDGE KELLEY: Yes.

20 MRS. FLYNN: And we have analyzed the civil  
21 penalties and the LERs, and we have determined that there were  
22 three civil penalties in CP&L's history that had LERs  
23 associated with them.

24 JUDGE KELLEY: Are you suggesting that we just take  
25 your statement as a statement of Counsel, or are you going

1 to have a piece of paper or--

2 MRS. FLYNN: I was not planning on having a piece  
3 of paper. I can file one later if the Board prefers.

4 JUDGE KELLEY: I don't know that it's necessary.

5 Would other Counsel be content with a statement of  
6 Counsel on this question?

7 MR. BARTH: The Staff is, your Honor.

8 MR. RUNKLE: We have no problem with that.

9 JUDGE KELLEY: Okay. Thank you.

10 Anything else that pertains to the completeness  
11 of the record at this point?

12 Mr. Runkle.

13 MR. RUNKLE: We had on other point. We had filed  
14 a Freedom of Information Act request to the Nuclear  
15 Regulatory Commission Staff to provide us with the basis of  
16 the SALP IV. When the SALP IV was issued on August 22nd, --  
17 we received it on August 29th -- it was fairly close to the  
18 beginning of the hearing. We had requested as soon as it was  
19 issued.... The FOIA request was filed as soon as the Staff  
20 gave us the notice that they would be planning on using the  
21 SALP IV. They have given us an extremely untimely response,  
22 and as we understand it, the delay appears in Region II.

23 We have two FOIA requests in there and-- Is it  
24 being released today? And we understand that it is being  
25 released today, which provides the basis for SALP IV.

1           This goes to the credibility of Mr. Bemis as a  
2 witness when he stated that all this material had been  
3 destroyed, and it also goes to the basis of the SALP IV.

4           I bring it to your attention now really to question  
5 you as to what should we do with this? It seems to be  
6 pertinent to this hearing and it is something totally beyond  
7 our control.

8           JUDGE KELLEY: Have you got a proposition for what  
9 you think we should do?

10          MR. RUNKLE: Can the record be held open for  
11 another two weeks, until we receive this request and provide  
12 a brief summary of the information, including the FOIA  
13 request? We understand it contains around 50 or 60 documents,  
14 but I don't have it before me, you know, what those documents  
15 are.

16          They should have responded to our request within  
17 ten working days.

18          JUDGE KELLEY: When did you file the request?

19          MR. RUNKLE: The first one was filed August 3rd,  
20 and the follow-up one was also in the first week of August,  
21 August 6th or August 7th.

22          JUDGE KELLEY: And you say neither response has  
23 been -- neither request has been responded to so far?

24          MR. RUNKLE: Right, neither one has been responded  
25 to. The last word I had is that it should be released today.

1 JUDGE KELLEY: When you say "basis of SALP IV,"  
2 were you sort of asking for the files underlying it?

3 MR. RUNKLE: Yes.

4 JUDGE KELLEY: And you really mean SALP IV  
5 vis-a-vis CP&L?

6 MR. RUNKLE: Right. And it was those documents,  
7 the drafts, the recommendations, memos, minutes of meetings,  
8 and that kind of thing.

9 JUDGE KELLEY: I understand.

10 Let's hear from the other parties.

11 Mr. Barth.

12 MR. BARTH: Your Honor, the Freedom of Information  
13 request which I have seen required background documents for  
14 all SALPs. It was not directed to SALP IV, as we recall it.

15 Second of all, I see no problem with your Honor  
16 closing the record today as we are completed with these  
17 hearings and we have heard all the information from everybody.

18 If the response to the Freedom of Information  
19 Act discloses new information not previously available  
20 which would clearly affect your decision, the Commission  
21 standards under Wolf Creek provide an opportunity for the  
22 intervenors to move the Board to reopen and make a prima  
23 facie case that they would have another and different result  
24 had that information been included.

25 So should the Freedom of Information request give

1    them information which would substantially alter their  
2    rights, the procedure established by the Commission provides  
3    for the preservation of those rights. At the same time, it  
4    provides for closing this record. They would not be  
5    foreclosed from asserting those rights if you close the  
6    record today, your Honor, and I do recommend that you close  
7    it today.

8            JUDGE KELLEY: One option, obviously, is to go  
9    ahead and close with the recognition of the fact that you  
10   can move to reopen.

11           The Wolf Creek standard that you referred to, in  
12   the past I think there were various cases, Appeal Board  
13   cases on what it takes to reopen. But my recollection of them  
14   is that they typically address the question of reopening  
15   for further hearings which it seems to me might logically be  
16   a higher standard than simply reopening to put another exhibit  
17   in, or exhibits.

18           Would you agree or disagree with that proposition?

19           MR. BARTH: I think you have correctly  
20   characterized the law, your Honor.

21           JUDGE KELLEY: Mrs. Flynn?

22           MRS. FLYNN: Well, I would agree with everything  
23   that Mr. Barth has said, and also add that until any late  
24   obtained information has been obtained and until it has been  
25   evaluated, there is no way for this Board to know in advance



1 the relevance, admissibility, or materiality of it.

2 The Applicants I think would be seriously  
3 prejudiced by a ruling which would leave this record open and  
4 allow the introduction of that evidence. I think the proper  
5 standards are for the Intervenors to move to reopen the  
6 record and if a hearing is necessary, that may be the case.  
7 But that I believe is the proper procedure.

8 JUDGE KELLEY: I did not mean to suggest any  
9 opinion on my part that I thought a hearing was necessary.  
10 I was simply contrasting what I thought the legal standard  
11 might be for reopening to put in an exhibit as opposed to  
12 reopening for a hearing. I just want to make that clear.

13 Mr. Runkle,--

14 MRS. FLYNN: May I add one thing?

15 I don't recollect any questions to Mr. Bemis about  
16 the basis of the SALP process other than-- You know, every  
17 question he got about anything I think he answered perfectly  
18 fully. I don't remember any questions on this subject.

19 MR. RUNKLE: It was in his direct testimony  
20 outside his prefiled in questions that Mr. Barth asked him  
21 about how was the SALP IV report prepared and was that  
22 information available.

23 MRS. FLYNN: But I don't recall Counsel for  
24 Intervenors asking any such questions of Mr. Bemis.

25 JUDGE KELLEY: Well, okay. I suppose it is

1 significant but not crucial. It is certainly clear that  
2 SALP IV is an important document in the case.

3 MRS. FLYNN: Yes.

4 JUDGE KELLEY: Well, the competing options seem  
5 to be to hold open now for receipt of the reply to your  
6 request, or to simply go ahead and close with the expectation  
7 that you could move to reopen. It doesn't seem to me that  
8 there is an advantage to doing the latter, simply because  
9 we would be just letting in -- sort of giving carte blanche  
10 to whatever the responder sends whereas if we wait and see  
11 what gets sent, he may pare down these -- who knows how  
12 many documents -- to some reasonable stack.

13 Then the other parties, if they have any  
14 objection -- I wouldn't be surprised if they didn't have any  
15 objection, at least to a lot of this material -- can make  
16 whatever objection they want to make.

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1 MR. BARTH: Your Honor, before you make up your  
2 mind, I've given you a legal argument so far. I would like,  
3 in this time to go on further. Although it is not necessary  
4 to the substance of the request. Mr. Bemis was on the  
5 stand. Mr. Bemis testimony was how he obtained inputs  
6 from various people who inputted into the SALP IV.

7 At that time questions could have been asked  
8 regarding those inputs and they were not. Whether they  
9 exist or not, I don't know. I don't know what records are  
10 kept in the Atlanta office.

11 But the opportunity was presented fully to explore,  
12 with Mr. Bemis, the background of all documents which went  
13 into make up the SALP report. That was not done. This is  
14 not a timely request. Those kinds of questions and the  
15 kinds of information are not dependent upon the fulfillment  
16 of any FOIA request to the agency.

17 What I'm saying is, the information --

18 JUDGE KELLEY: I understand what you're saying,  
19 I think. But my personal opinion is that SALP IV document  
20 is a very important document in this hearing. I cannot  
21 offhand think of a more important single document than that  
22 one. Why wouldn't it be appropriate that this board have  
23 some underlying material giving us a clearer picture of how  
24 that SALP board got to where it got to.

25 MR. BARTH: You have no foundation laid that the

1 material which might exist -- I don't know if it does -- would  
2 make things any clearer. Insofar as --

3 JUDGE KELLEY: We don't have a foundation because  
4 nobody knows what it is. They ask for --

5 MR. BARTH: Mr. Bemis could have been asked, sir.  
6 And was not.

7 JUDGE KELLEY: Well, okay. I understand that.

8 MRS. FLYNN: May Applicants add one other thing.  
9 This is entirely beyond Applicant's control also. With  
10 the NRC's process for responding to Freedom of Information  
11 request is entirely beyond Applicant's control. I don't  
12 believe that any information should be put into the record,  
13 admitted in advance prior to the parties and the board  
14 having had an opportunity to see what this information is,  
15 to analyze it, and to register with the board any objections  
16 that they might have.

17 There is an orderly process for the Intervenors  
18 to make this information available and to reopen the record  
19 and I think that is the appropriate course that is not  
20 prejudicial to any party.

21 JUDGE KELLEY: Okay. I think we've heard enough  
22 on this problem.

23 Let's go ahead to some other matters and then  
24 before we leave at least, we'll give you a ruling on it.

25 Are there other points then that pertain to Joint

1 Intervenor's Contention No. 1 that we ought to speak to?

2 MR. RUNKLE: We have none, sir.

3 JUDGE KELLEY: Staff?

4 STAFF: None from the staff, your Honor.

5 MRS. FLYNN: None.

6 JUDGE KELLEY: Okay.

7 We have a ruling on a matter that was raised and  
8 argued yesterday. And it has to do with our rulings on  
9 the subpoena requests for Mr. Eddleman's Contentions No. 41  
10 and 65. And it speaks specifically to that part of our  
11 rulings which said that those employees -- those former  
12 employees of CP&L, who Mr. Eddleman might contact, and  
13 if they were willing to come in voluntarily that that  
14 category of people would be permitted to come in and  
15 testify subject to the usual range of objections so any  
16 one witness. Including the fact that the testimony was  
17 cumulative.

18 The Applicants objected to that and, as I understand  
19 the objection, it's lodged to both 41 and 65, although it  
20 just came in yesterday on 65. Am I correct Mr. Baxter?

21 MR. BAXTER: It came in yesterday on 41.

22 JUDGE KELLEY: As to 41. I've got it backwards.

23 But that's the concept anyway.

24 Their point was that these are voluntary witnesses.

25 Their designation is too late now. AND Mr. Eddleman should

1 not be permitted to come at this stage with voluntary witnesses.

2 We are going to adhere to our ruling in this regard  
3 with one modification. We point out that such a person like  
4 Mr. Mountcastle, just to pick a name, Mr. Eddleman would,  
5 as we have already ordered, be obliged to provide by October 1  
6 a list of subject areas on which he desired to question as  
7 well as specific references to any specific documents that  
8 he wanted to ask questions about.

9 AND that was by way of giving the Applicants notice  
10 of what was coming up so that they could prepare and in  
11 a sense, a substitute for getting direct testimony which  
12 serves, obviously, the same purpose except it serves it  
13 more fully.

14 We would add to that on further reflection and  
15 consideration of the objection, one additional thing. It  
16 seems to us that if a person in this category is willing to  
17 come in on a voluntary basis and testify, then they ought  
18 to also be willing to submit to a voluntary, at least a  
19 voluntary, either a voluntary interview or deposition in  
20 advance of the appearance.

21 If the Applicants want to do that so that they  
22 have a fuller picture as to what the witness will say.

23 I'm going to go ahead and finish this and when  
24 we'll backtrack to this question of whether it should be just  
25 a voluntary informal interview or whether it ought to be a

1 deposition.

2           With that modification, it didn't seem to us that  
3 we ought to adhere to the ruling that we had made. It's  
4 true that the way things have developed they are voluntary  
5 witnesses, in a sense. But to look at them only as  
6 voluntary witnesses and therefore subject to advance filing  
7 requirements and August 9th requirements and all the rest,  
8 takes it somewhat out of context. After all, they were  
9 employees of CP&L. Mr. Eddleman had some basis for thinking  
10 that they would be hostile witnesses, or not available  
11 on a voluntary basis. He might not have been as zealous  
12 as he might have been in checking into that and finding  
13 out they didn't work for CP&L any more. But we understand  
14 how that could arise.

15           The Board has some responsibility here for not  
16 being as clear as we should have been in spelling out some  
17 of these deadlines and obligations. These are Mr. Eddleman's  
18 contentions and not the Joint Intervenors. Mr. Eddleman is  
19 not a lawyer. He's had some experience in these matters but  
20 not a great deal and we think on the whole he's -- for  
21 a non-lawyer -- doing quite well with lawyer-type  
22 procedures and concepts and problems. We take some account of  
23 that.

24           We also think that these 65-41 witnesses that fell  
25 in the various categories, we dealt with in a certain way.

1 Some got subpoenaed, some didn't. Some can come voluntarily.

2 But the whole thing is, in a sense, sort of a  
3 package deal. And we sought to strike some reasonable  
4 balance. And we think that pulling out this single piece  
5 from the package and looking at it under the rules without  
6 reference to the other pieces, is not a balanced reasonable  
7 way to evaluate it.

8 So those are the reasons, basically, for ruling  
9 as we are. Now, one thing we're not quite clear about, and  
10 I'd like to ask Mr. Baxter and Mr. Eddleman, our thought is  
11 that under the circumstances if the Applicants feel that  
12 that October 1 list of areas and references to documents  
13 is not enough and they really want to get some more information  
14 about what the witness would say, that there be some way for  
15 them to do that.

16 And since the person will be coming voluntarily  
17 we don't see any reason why he could not volunteer for that,  
18 too. Would it be better to do this just with an informal  
19 interview which Mr. Eddleman would not necessarily have to  
20 attend. Or would you prefer, Mr. Baxter, to work in a  
21 formal deposition?

22 MR. BAXTER: The informal interview process would  
23 be completely satisfactory to us.

24 MR. EDDLEMAN: That would be okay to me too, Judge.  
25 I guess I would like to be able to be present at an informal



1 interview, but I will not be serving as Counsel to any of  
2 these people. If they appear voluntarily, they're  
3 appearing voluntarily.

4 The only question I have about it is on another  
5 matter. That is of the last known address. I don't  
6 have those at hand. And if I'm going to contact these people  
7 and get some information out by October 1, assuming any  
8 of them are willing to appear, since some of these  
9 addresses are fairly old, I think I need to get the  
10 addresses fairly fast.

11 JUDGE KELLEY: Well, we meant that they -- I'm not  
12 clear -- we've said so many things in the past week or two.  
13 But we did intend that the last known address be provided.  
14 Can that be done?

15 MR. BAXTER: I'm working on it as quickly as I  
16 can, Mr. Chairman. I'm here every day and it's somewhat  
17 difficult.

18 JUDGE KELLEY: I understand. You'll have it  
19 shortly, is what I hear.

20 I think it would be reasonable and if you want  
21 to sit in that you could do so. After all, if it were a  
22 deposition you would be there. So I think the understanding  
23 would be that if the Applicants are going to talk to one  
24 of these people after you talk to them and they have  
25 indicated they are willing to come in, that they let you know

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1 or not as you chose.

2 MR. EDDLEMAN: Okay. That's true, Judge. But in  
3 a defensive case we can't know until we see what the offensive  
4 people do.

5 JUDGE KELLEY: I guess what I'm saying is we  
6 can't cross that bridge until it comes up. I mean, I'm  
7 trying to give you some guidance. That's it. And I think  
8 you can anticipate what arguments you might run into at  
9 a later date and they'll just have to be heard.

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1 MR. BAXTER: I'm working on it as quickly as I  
2 can, Mr. Chairman, but I'm here every day, and as soon as I  
3 can get to it--

4 JUDGE KELLEY: Okay; we'll have it shortly, then.  
5 I would think it would be reasonable if you're  
6 available and want to sit in, that you could do so. After all,  
7 if it's a deposition you can sit there.

8 I think the understanding would be that if the  
9 applicants are going to talk to one of these people after  
10 you have talked to them and they have indicated that they're  
11 willing to come in, that they'd let you know and you can  
12 come.

13 MR. BAXTER: Your Honor, the Staff has an  
14 interest in this, too. If you'd give me 60 seconds, I  
15 would like to consult with my co-counsel for a moment.

16 (Counsel conferring.)

17 MR. BARTH: Your Honor, I find myself in a  
18 difficult position. I would like to suggest some kind of  
19 a compromise. I have no objection to the procedure  
20 suggested or acquiesced to by Mr. Baxter.

21 From the Staff's point of view, I think  
22 this should be followed by a written statement by these  
23 people that are going to appear as to what they will  
24 testify to so that we have something in writing to  
25 look at in advance that we can send to our Atlanta

1 people; we can't take all of our Atlanta people into a  
2 conference like this to listen to it and I think we  
3 have some kind of obligation to our own witnesses to  
4 provide them with any information these people may  
5 provide so that they can prepare for it as well as his  
6 counsel.

7                   So I think Mr. Baxter's suggestion is all  
8 right from our point of view if that would be followed  
9 with a detailed written -- handwritten, I don't care how  
10 it's done -- presentation by these people as to what they  
11 will testify to so we can distribute it to our own experts,  
12 sir.

13                   JUDGE KELLEY: Well I thought our contemplation  
14 was that this would be in lieu of what amounts to written  
15 testimony.

16                   Would the Staff -- I mean it's the Staff  
17 that wants -- let's call it the informal interview. We  
18 spoke of notice to Mr. Eddleman.

19                   On notice to the Staff, does the Staff want  
20 to attend the interview or be able to?

21                   MR. BARTH: Yes, your Honor, we do.

22                   JUDGE KELLEY: Well then why do you need a  
23 written statement beyond that?

24                   MR. BARTH: Because I cannot take down four  
25 people from Atlanta and three lawyers from Washington,

1 plus the various project managers and the two site people  
2 into an interview like that --

3 JUDGE KELLEY: Nobody contemplated any such  
4 thing. I thought it was going to be four people at the  
5 maximum: somebody from CP&L, somebody from your Staff,  
6 maybe Mr. Eddleman and the witness, period. And he is  
7 going to be informally asked what he knows, what he's  
8 going to testify about.

9 MR. BARTH: But insofar as this is in lieu  
10 of written testimony -- what we would do with written  
11 testimony, we send it to everybody under the sun to  
12 take a look at it so that we can be prepared rather than  
13 come in and make frivolous arguments.

14 And what you're doing -- which we understand  
15 -- is putting a burden upon Staff counsel to write down  
16 accurately what these people say --

17 JUDGE KELLEY: Precisely.

18 MR. BARTH: -- to send to everybody.

19 And I would prefer to read what they say  
20 rather than what I say. But we understand the situation.

21 MR. BAXTER: This is getting awfully  
22 complicated talking about a contingency here that may not  
23 actually arise.

24 I would like to propose that if Mr. Eddleman  
25 succeeds in getting any one of these people to appear,

1 that he then contact Mr. Barth and I and we come back to  
2 this issue at that point if it's really necessary to do so.

3 JUDGE KELLEY: Do you necessarily have to --  
4 I mean how many interviews is these men going to sit through  
5 but do you all have to gather at the same time?

6 I think this should be left informal. The  
7 idea of making the men write written testimony I think  
8 is unreasonable under these circumstances.

9 That seems reasonable to me.

10 If you have somebody who is willing to come  
11 in voluntarily that you want to call, why don't you  
12 notify Mr. Baxter and Mr. Barth and work out an informal  
13 interview arrangement satisfactory to all concerned and  
14 if you need any help from the Board, call is up.

15 MR. BAXTER: It is clear we're talking only  
16 about the individuals identified by the Board.

17 JUDGE KELLEY: Yes. They are on the list  
18 for whom subpoenas were requested.

19 MR. EDDLEMAN: Judge, all this seems okay  
20 with me. I'll be glad to work with the Applicants and  
21 the Staff just to, you know, work out any problems they  
22 have.

23 It just occurs to me that depending on when  
24 I actually get ahold of these people, I may also have a  
25 problem with the October 1st for any of them that do.

1 I realize it's a contingency but I would just  
2 say that that's another thing, I would like to be able to  
3 work out with them informally if it arises.

4 JUDGE KELLEY: If you can work out a mutually  
5 acceptable different date, the Board will accede to that.

6 MR. EDDLEMAN: Thank you.

7 JUDGE KELLEY: We have a document in front of  
8 us that Mr. Baxter distributed called "Order of Testimony  
9 Presentation, October 10 Hearing."

10 We all -- perhaps everyone has read it but  
11 me, but can we just take a minute or two to look this  
12 over and then we can see if everyone agrees to this.

13 (The Board conferring.)

14 JUDGE CARPENTER: Mr. Baxter, as we look at  
15 this, the first item that is on the list is Joint IV.  
16 There are no witnesses listed.

17 Can you....

18 MR. BAXTER: Yes. Dr. Carpenter, this order  
19 of events is the product of discussions among Mr. Eddleman  
20 and Mrs. Moore for the Staff and myself. The testimony  
21 on Joint Contention 4 is due on September 21. It has  
22 not been filed yet so we have not entered in the names  
23 simply because they are not all known to us -- as to  
24 whether the Joint Intervenors have a witness or exactly  
25 who the witnesses are for the Applicant and the Staff.

1                   But it is first on the agenda because  
2 the expected Staff witnesses have conflicts that we  
3 have attempted to accomodate by putting it number one.

4                   JUDGE CARPENTER: I'm a little confused as  
5 to September the 14th if the testimony is due the 21st.  
6 I didn't quite follow you're saying that the identity  
7 of the witnesses isn't known yet.

8                   MR. BAXTER: I can tell you who mine is if  
9 you would like to know. We simply haven't filed the  
10 testimony and I guess in a very strict sense right up  
11 until the day it's filed we are still free to change,  
12 should we find some need to do so.

13                   JUDGE CARPENTER: I would like to ask Staff:  
14 Some time in the past -- and I apologize for not being  
15 able to give a definite reference -- Mr. Eddleman  
16 inquired as to whether Staff was going to offer the  
17 author of a NUREG which was referred to extensive in the  
18 summary disposition papers, and I forget the gentleman's  
19 name, he is a professor at the University of Michigan.

20                   I would like to ask what the Staff's views  
21 are today about that.

22                   MRS. MOORE: The gentleman's name is Dr. Plato  
23 and we do not intend to offer him as a witness.

24                   JUDGE CARPENTER: Does Staff feel that the  
25 NUREG that Dr. Plato was the author of will be a document



1 that will be substantially involved in the proceeding?

2 MRS. MOORE: I believe one of the questions  
3 that the Board asked was in reference to where in that  
4 document it discussed the testing of the CP&L proposed  
5 dosimetry system, and to that extent the Staff will  
6 address that question and that document will play a  
7 part in that discussion, yes.

8 As to whether it is a major document, I'm  
9 not quite sure whether I would say it is, but it will  
10 play a part in the discussion.

11 (The Board conferring.)

12 JUDGE CARPENTER: I guess the Board would  
13 express a little bit of concern about having a document  
14 without the author available for cross-examination,  
15 but I think we will wait and see what the testimony  
16 looks like, how substantive that issue becomes.

17 MRS. MOORE: Your Honor, I would just like  
18 to say that at this time anyway -- and this is a week  
19 before testimony is due -- things can change. But the  
20 Staff did not intend to offer the document.

21 However we do have a witness by the name  
22 -- we are proposing a witness by the name of Mr. Jan  
23 Crucemano, who is extensively familiar I believe with  
24 that document. He isn't the author of it.

25 But again I don't want to represent his

1 detailed knowledge because I haven't gotten a chance to  
2 speak very, very closely with him. But he is a known  
3 person in the field.

4 JUDGE CARPENTER: The thing that concerns  
5 me is the document has a substantial amount of data  
6 presentation and then a substantial amount of data  
7 interpretation and then expresses some opinions for the  
8 reason that the data had the particular character that  
9 it had.

10 So we get into the author's interpretation  
11 of the data and then his professional opinions concerning  
12 the results of the voluntary testing program. We might  
13 get into an area of opinion that only he could respond  
14 to.

15 I think we will wait and see what the  
16 testimony looks like and have a little better feel for  
17 that, since it is only a week away.

18 MR. EDDLEMAN: Just for everybody's  
19 information, we did say that we wanted the author of the  
20 document to appear. We wouldn't rule out some kind of  
21 compromise about it, but at this point our intent would  
22 be that unless the testimony clearly shows that we don't  
23 need the author to subpoena him if the Staff doesn't  
24 produce him voluntarily.

25 JUDGE KELLEY: That brings us back to square

1 one.

2 MR. EDDLEMAN: I'm sorry. I thought in light  
3 of the discussion about, you know, when did you do this  
4 and shouldn't you have asked earlier that I should remind  
5 everybody that that was our intent.

6 JUDGE KELLEY: Well let's move to that  
7 point that I wanted to be sure we all had straight, and  
8 that is the filing dates and the filing obligations with  
9 respect to really three things: prepared testimony,  
10 exhibits that one proposes to introduce into evidence at the  
11 hearing -- as distinguished from something you might use  
12 in cross without introducing -- and then the names of  
13 any subpoenaed witnesses that you intend to call.

14 Now as to the category one, prefiled  
15 testimony, am I right that that's all filed already with  
16 the exception of the TLD testimony?

17 MR. BAXTER: As far as I know.

18 MR. EDDLEMAN: That's correct.

19 JUDGE KELLEY: Okay.

20 As to exhibits, are all exhibits that are  
21 proposed for introduction exchanged?

22 MR. BAXTER: Again with the exception of  
23 the TLD's, yes.

24 JUDGE KELLEY: Okay.

25 MR. BAXTER: Is that correct, Mr. Eddleman?

1 MR. EDDLEMAN: Well I was just thinking, you  
2 know, there's nothing that I have in my possession now  
3 that I would intend to get in the record that hasn't been  
4 noticed, filed and so on.

5 But I might get ahold of something and say  
6 hey this is new information, I don't want to rule that  
7 out. But everything that I've got that I wanted to put  
8 in the record has been filed or served under one of  
9 these agreements about giving people a list in lieu of  
10 a big stack of documents.

11 JUDGE KELLEY: Well I would think that as to  
12 that if you've got such a document you could offer it  
13 and, I would say this, as soon as you do get any such  
14 document, as soon as you reasonably can tell the other  
15 parties and say here this is a document -- not just tell  
16 them, serve them -- and say here is a document that I've  
17 just gotten and I want to introduce it and I intend to  
18 introduce it at the hearing. And then they may come back  
19 and say well you should have gotten it six months ago or  
20 whatever and therefore they are going to oppose it or  
21 they may say okay or they may do something else.

22 But in any event serve it -- as soon as  
23 you've got it, serve it, so that they've got notice at  
24 least that that's your intent.

25 MR. EDDLEMAN: Fine.

1 JUDGE KELLEY: Okay.

2 Then on the question of subpoenaed witnesses  
3 or people that one wishes to subpoena -- and that was  
4 what you just adverted that got us off on this topic  
5 and you indicated -- Let me ask you, Mr. Eddleman:

6 As of right now have you made any subpoena  
7 requests so far as to the next -- upcoming hearing?

8 I haven't gotten it, I don't think -- what  
9 am I saying? 61 and 45 you've made, we've been all  
10 through that.

11 MR. EDDLEMAN: 65 and 41, correct.

12 JUDGE KELLEY: All right.

13 So those requests are in, those have been  
14 ruled on and we all know what the results are so far  
15 as those contentions are concerned.

16 Is it your intention to subpoena anybody  
17 else with respect to the other contentions or any  
18 additional people on 61 and -- 65 and 41?

19 MR. EDDLEMAN: Not on my individual  
20 contentions at this time. I mean, obviously if  
21 somebody walks in the door tomorrow and says Hey I know  
22 about so-and-so, you know, then I --

23 JUDGE KELLEY: That would be treated the same  
24 way as a document, it seems to me.

25 MR. EDDLEMAN: Right.

1 JUDGE KELLEY: Again you would then promptly  
2 notify the other parties and they may or they may not --  
3 they may stipulate or they may oppose, and we'll just  
4 have to rule on it.

5 MR. EDDLEMAN: But on Joint 4, we haven't  
6 filed any requests yet but, like I say, we did want to  
7 notify you of the Joint Intervenors intent that unless  
8 the Staff comes up with something that really does  
9 obviate the need for the author of that document, we  
10 want the author of that document.

11 JUDGE KELLEY: Let me make this suggestion:  
12 Now those documents on TLD, 4, are due on  
13 the 21st, right?

14 MR. EDDLEMAN: Yes, sir.

15 JUDGE KELLEY: My suggestion to you is that  
16 you file on the 21st whoever you want to subpoena just  
17 independently of the Staff. You know who you want to  
18 have there, just file a request. And then if the Staff  
19 comes in and says they're going to call somebody, you  
20 know, you can drop it. But at least file the names of  
21 the people that you want there that you consider  
22 important to your case.

23 Even if you think the Staff may call that  
24 person, name them anyway and then we'll go on from  
25 there.

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1 MR. EDDLEMAN: I think I understand what you  
2 said and we'll certainly try to do it.

3 There is a possibility that I don't want  
4 to rule out -- in other words, if the Staff pulls  
5 something out of their hat that is a real surprise to  
6 us, then we might find somebody who could rebut that who  
7 we might have to subpoena.

8 You can't say just we know everything in  
9 advance because the responses to discovery that everybody  
10 says we'll promptly update you but in practice very few  
11 updates come in, and we don't know a lot of the things  
12 that may be in their testimony until we see the testimony.

13 JUDGE KELLEY: Well generally speaking the  
14 rule is that you file testimony and exhibits and names  
15 of subpoenaed witnesses on the due date, here the 21st of  
16 September.

17 I guess all the advice I can give is to say  
18 file that and beyond that, if there are other pieces of  
19 paper or other people, you can make such motions as you  
20 wish.

21 But you ought to know your own case by the  
22 21st and the people that ought to be called in for you  
23 to make it.

24 MR. EDDLEMAN: That's true, Judge, but on a  
25 defensive case we can't know until we see what the offense

1 puts out.

2 JUDGE KELLEY: I'm just trying to say that  
3 we can't cross that bridge until it comes. I'm trying  
4 to give you some guidance, that's it, and I think you can  
5 anticipate what arguments you might run into at a later  
6 date and they'll just have to be heard.

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7 MR. EDDLEMAN: Fine.  
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1                   On the October 10th hearing a couple of logistical  
2 points--

3                   MRS. MOORE: Your Honor, could I interrupt for  
4 a moment? I just want to make a statement.

5                   I don't know if everyone is aware of it or not,  
6 but Dr. Plato is not an NRC Staff employee. He doesn't  
7 work for us.

8                   JUDGE KELLEY: Okay.

9                   The October 10th hearing is going to take place  
10 in Apex, North Carolina, in a Ramada Inn, I believe. Right.  
11 And the Board has not been there. We've got a little  
12 information about it but it really is a little. We know  
13 the ACRS used it for a hearing at some point not long ago.  
14 And the short simple fact of the matter is that it was  
15 available and nothing else was, including this place. So  
16 we did find that with the assistance of the Applicants,  
17 which we very much appreciate, and we got it for two or  
18 three weeks, I think.

19                   I'm going to come to the next point about how  
20 long is this all going to take. But that's where we intend  
21 to convene on the 10th of October at-- What is the 10th  
22 of October?

23                   MR. EDDLEMAN: It's Wednesday.

24                   MR. BAXTER: Monday is a federal holiday that  
25 week.

1 JUDGE KELLEY: Okay. That makes sense, on a  
2 Wednesday morning.

3 (The Board conferring.)

4 JUDGE KELLEY: The Board's thought is to start  
5 at nine o'clock. We will probably come down Tuesday. Is  
6 that all right?

7 MR. BAXTER: Yes.

8 JUDGE KELLEY: Does anyone have any precise  
9 information as to just where this Ramada Inn in Apex is  
10 located?

11 MR. RUNKLE: It is just off the highway on 64.

12 MR. BAXTER: As you're driving toward the plant  
13 on U. S. 1 South it is to your left.

14 MR. EDDLEMAN: U. S. 1 and 55 cross, and it is on  
15 the southwest corner.

16 JUDGE KELLEY: The intersection of U. S. 1 and  
17 U. S. 55, or North Carolina 55?

18 MR. EDDLEMAN: North Carolina 55.

19 JUDGE KELLEY: North Carolina 55 and U. S. 1,  
20 the southwest corner.

21 Is it in Apex or on the edge?

22 MR. BAXTER: It is right on the highway. You can  
23 see it from the highway.

24 JUDGE KELLEY: It's the apex of Apex.

25 So that's the place and the time.

1 MR. RUNKLE: We would propose trying to set some  
2 time certain for the limited appearance hearing.

3 JUDGE KELLEY: Let's talk about that. All right?

4 MR. RUNKLE: We propose Monday, October 15th,  
5 which would allow the Monday hearing perhaps to start a  
6 little later. We could start at 10:00, 10:30, and allow  
7 people to come down Monday morning and do a whole day of it.

8 JUDGE KELLEY: When you say Monday, October 15th,  
9 all day?

10 MR. RUNKLE: I was suggesting after the formal  
11 hearings to have in the evening--

12 JUDGE KELLEY: You're suggesting an evening  
13 session on Monday, the 15th?

14 MR. RUNKLE: Yes.

15 MR. BAXTER: That's fine with the Applicants,  
16 except I don't see any relationship to the starting time of  
17 the evidentiary hearing on Monday morning.

18 MR. EDDLEMAN: If you're going to go late at  
19 night you may want to start a little later in the morning.

20 MR. BAXTER: No, we'll be happy to start first  
21 thing in the morning, and have limited appearances in the  
22 evening.

23 JUDGE KELLEY: I might just further complicate  
24 matters. The Board might want to start a little late Monday  
25 anyway so we can come down here on Monday.

1 Well, let's not worry that much about the starting  
2 time now. We will have from the 10th to the 15th to discuss  
3 that, or the 14th. But Monday, the 15th, that has been  
4 suggested. There seems to be some concurrence.

5 Any discurrence?

6 (No response.)

7 I would like to ask for suggestions on the  
8 disseminating the word about this.

9 Now I know it is our sort of standard practice,  
10 we'll write a press release, and it will give the time and  
11 the place, and a word or two about the groundrules, five  
12 minutes to make a statement, that kind of a thing, which we  
13 then, in the normal course of events, would get disseminated  
14 through the NRC's Office of Public Affairs, and they have  
15 contacts down here with the -- at least with the papers and  
16 I guess with the TV people, too.

17 But I think what happens is that they just sort  
18 of offer this press release and whoever wants it picks it  
19 up. And somebody will pick it up, but i don't know that  
20 it is necessarily going to be picked up all that widely or  
21 pushed that much. And it is kind of a problem to disseminate  
22 word.

23 Now the Intervenor organizations and individuals  
24 can pass the word, and I expect they would, to their members  
25 and other people they know, people who might be interested.

1 Other than that, are there any-- I know a lot of  
2 times not very many people show up, and there is a feeling  
3 that nobody knew about it, and you can point out 15 or 20  
4 newspaper notices, and still somehow nobody knows about it.

5 Are there any suggestions about what we might do  
6 in that regard?

7 MR. EDDLEMAN: If you send your press release to  
8 the radio stations and TV stations, that gives you a better  
9 probability, at least in my experience, in giving the public  
10 notice of something like this. And also the AP and the UP,  
11 if they get the notice on their wires, then it is more likely  
12 that individual newspapers will pick it up.

13 JUDGE KELLEY: I guess I simply don't know exactly  
14 how our Public Affairs people work.

15 What I was wondering about-- They do what they  
16 do, and I suspect if I said I suggest you do it this way,  
17 they would say "That's very interesting but I know how to  
18 do this."

19 Do you have any thoughts yourself about what you  
20 could do or anybody else could do to get the word out?

21 MR. EDDLEMAN: I would do the same thing I just  
22 said, basically. I don't know if I have time to do that  
23 much of it, but at least somebody will do it.

24 JUDGE KELLEY: OKay.

25 Anything else?

1 Staff?

2 MRS. MOORE: Your Honor, I would just like to  
3 mention-- Are you talking now about suggestions as to how  
4 to get out the word to limited appearances?

5 JUDGE KELLEY: Yes.

6 MRS. MOORE: I don't have any.

7 JUDGE KELLEY: Do we have any estimate-- What  
8 estimate do we have on how long this would take? Let's  
9 see, we've got one, two, three, four, five, six contentions?

10 MR. BAXTER: But a lot of witnesses.

11 JUDGE KELLEY: A lot of witnesses. Would it make  
12 sense to go down this sheet and maybe make a guess,  
13 contention by contention, and add it up? That's one way to  
14 do it I suppose.

15 For example, I am not entirely sure exactly how  
16 long we've rented Apex.

17 MRS. FLYNN: UNTil the 26th.

18 JUDGE KELLEY: That's right. It is two and a half  
19 weeks.

20 Well, how long would people estimate Joint 4 would  
21 take?

22 We don't know how many witnesses yet, so that is  
23 kind of tough.

24 MR. EDDLEMAN: I don't know, I'm just guessing.

25 A day or two possibly, and that is really a guess.

1 JUDGE KELLEY: Two days?

2 MRS. MOORE: Your Honor, I would say the Staff  
3 has a problem in that if we don't finish Joint 4 from  
4 Wednesday through Friday of that first week, I have witness  
5 availability problems for the rest of the month. One or  
6 another of my witnesses disappears.

7 JUDGE KELLEY: But that would be three days.

8 MRS. MOORE: Yes.

9 JUDGE KELLEY: All right.

10 MRS. MOORE: I am just alerting the parties to  
11 that problem.

12 JUDGE KELLEY: I appreciate that.

13 What is your estimate, Mr. Baxter?

14 MR. BAXTER: Your Honor, I don't have any estimates  
15 on how long the cross-examination is going to go.

16 JUDGE KELLEY: Why don't we say three?

17 MR. BAXTER: I would hope not that long myself.

18 JUDGE KELLEY: Well, let's say that anyway.

19 Steam generator tube?

20 MR. EDDLEMAN: I would guess a day.

21 JUDGE KELLEY: One guess is a day. Okay.

22 Fire protection?

23 MR. EDDLEMAN: I would make the same guess on that.  
24 It might be a little over a day.

25 JUDGE KELLEY: You're saying for the whole case,

1 or for your--

2 MR. EDDLEMAN: I'm trying to make allowances. In  
3 other words when I say a day, it doesn't mean that the  
4 whole day will be all cross. There are usually other things  
5 that come up.

6 JUDGE KELLEY: That's fine.

7 MR. EDDLEMAN: I stress to you that these are  
8 guesses.

9 JUDGE KELLEY: I understand. That's all we can do.  
10 What about Eddleman 9?

11 MR. EDDLEMAN: Somebody suggested I should say  
12 15 minutes, but I don't think that's appropriate with this  
13 big list of witnesses here.

14 That's even hard to guess on. It looks to me like  
15 it is three or four days.

16 JUDGE KELLEY: Three or four.

17 Concrete?

18 MR. EDDLEMAN: That looks like another three days  
19 anyhow, maybe four.

20 JUDGE KELLEY: Pipe hangers?

21 MR. EDDLEMAN: I guess another three, maybe four.

22 J GE KELLEY: Now let's see. If I say three,  
23 six, ten, that's 15 days. We've got Apex for two and a half  
24 weeks, which is --

25 MR. EDDLEMAN: -- 13.



1 JUDGE KELLEY: -- 13. Well, okay.

2 I don't know if we can usefully massage this any  
3 more, really.

4 MR. BAXTER: I have a matter to discuss at this  
5 point about Eddleman Contention 41 which has some bearing on  
6 the length, but basically I simply want to alert the Board  
7 in advance of what I consider to be a substantial problem  
8 in managing the hearing on that issue. I don't know whether  
9 we can decide anything, but at least you can be giving it  
10 some thought before we get there.

11 We have prefiled testimony which you've characterized  
12 as programmatic. We haven't attempted to analyze individual  
13 welds as I don't think we could, and there are not individual  
14 welds placed in contest, in contrast to the concrete  
15 contention where we've got 13 identified pour packages and  
16 we all know what we're shooting at.

17 Mr. Eddleman timely identified on August 9 the  
18 exhibits he potentially intends to offer into evidence on  
19 this contention. He has no witness. And these are all weld  
20 documents he has obtained from the Applicants through  
21 discovery. But the volume of it is nothing less than  
22 overwhelming. There are hundreds and hundreds of pages.  
23 I'm not sure whether it's a thousand or not, but it is a lot  
24 of weld documentation.

25 I think we would not have a reliable record to

1 simply put those documents, whose authenticity we don't  
2 dispute but which may be historical in some case and  
3 superceded by other documents, into the record without  
4 witness discussion, leaving it to the parties' lawyers and  
5 in one case layman to argue in proposed findings what the  
6 meaning is of all these construction and quality documents  
7 in terms of their reading the forms, what the information  
8 means, what the safety significance is.

9           AND yet to discuss these with all the witnesses  
10 obviously would take an interminable amount of time.

11           I have not discussed this with Mr. Eddleman. I  
12 do not know what his plan is for that large pile of  
13 documents, but I think we would not have a reliable record  
14 simply to put them in. And yet I can't quite conceive of  
15 how witnesses are going to be allowed to indulgently  
16 comment and construe for the Board that volume of material.

17 End AGB 8  
18 AGB 9

1 JUDGE KELLEY: Mr. Eddleman?

2 MR. EDDLEMAN: There is a list of all the documents  
3 which was filed with them.

4 JUDGE KELLEY: Can I just ask you to refresh my  
5 recollection. In the case of the board do we just get the  
6 list or do we get the documents too?

7 MR. EDDLEMAN: I sent you the documents, Judge.  
8 I can't tell you whether you got them or not.

9 JUDGE KELLEY: I may well have. But so much paper  
10 came in along about this time that --

11 MR. EDDLEMAN: I sent one copy. I believe I sent  
12 a list for each board member. Because there were a few  
13 other things I put in there that were that were filed.  
14 I figured I'd save postage by putting it all in this one  
15 huge envelope. And it was mailed to the Board on, I think  
16 it was August 11th, because --

17 JUDGE KELLEY: I think I probably got it. I might  
18 have said send the board one set instead of three sets.

19 MR. EDDLEMAN: That's what I did, Judge. That's  
20 what I recall you said.

21 Well, let me see, Mr. Baxter and I have had a  
22 discussion about other documents that would be used in cross.  
23 And the substance of that was that it would make things go  
24 a lot smoother if I got those extra copies into their  
25 hands a day or two before. And I'm going to do that the best

1 I can.

2 As to these, I also can't give you just a general  
3 description of how they're going to be used. That says, well,  
4 you know, they are all going to be asked about it in detail  
5 or they are all not.

6 It's not possible at this time. I need to do some  
7 more work on them myself to be reasonably sure of what  
8 I'm going to do with each of them. Some of them I do  
9 propose to go into some detail questioning about. Others,  
10 where some of the subpoenaed witnesses, whether they appear  
11 voluntarily or -- I mean whether the Applicants put them on  
12 voluntarily or not, are people who signed those documents  
13 or people who reviewed the documents, I do intend to ask  
14 them a good bit about them. But most of those documents  
15 are relatively shorter. They're not the big procedure  
16 documents.

17 I recognize, even as a layperson, what complex mess  
18 you could get into arguing about these documents, and I don't  
19 really have a solution for it. Perhaps Mr. Baxter and I  
20 could undertake some informal discussion of this between now  
21 and the start of this next hearing to see where we could get.  
22 And I'd certainly be willing to involve the staff in that.

23 I don't want to cause any problems but I don't  
24 have a ready solution.

25 JUDGE KELLEY: The kind of thing, I'm sort of

1 reluctant to say much because the stack isn't here. We can't  
2 look at examples and so on. But the kind of thing that  
3 sort of jumps to mind is, I assume that you're going to be  
4 attempting to prove various fairly specific points.

5 And you might -- if you can illustrate the point  
6 you're proving with one nonconformist report, for example, is  
7 that the kind of thing that's in the set?

8 MR. EDDLEMAN: I'm trying to remember. But let's  
9 just say that any particular document. In fact, if I could  
10 illustrate a general thing, there's one problem with that is  
11 I already sort of did that. In other words, where I thought  
12 I could illustrate a point with one or two documents, and  
13 I had 50, and I pulled one or two and put them in the stack  
14 it grew big because there are so many -- really, this was --  
15 it may be on the order of 700 to 1,000 pages, but it was  
16 selected out of in excess of 10,000 pages of documents  
17 that I got.

18 JUDGE KELLEY: So you've already gone through some  
19 winnowing, is what you're saying?

20 MR. EDDLEMAN: Yes, sir. I might be able to  
21 winnow it some more. I'm sure we're not going to rule that  
22 out.

23 JUDGE KELLEY: I think we'd encourage it. I know  
24 on the Catawba case when Mr. Guild was in, that was a pretty  
25 big document case but it didn't ever really get out of hand.

1 There was a lot of paper, but, it was sort of manageable  
2 and was 45 days of hearings.

3 And I think it was because particular documents  
4 were talked about by witnesses and in it went. But not stacks.  
5 I remember one stack about like that, that were put in --  
6 you may have the possibility here of putting stuff in for  
7 limited purpose.

8 You may want to say, well, here's a stack of a  
9 dozen documents that illustrate my point because they deal  
10 with such and such a subject.

11 But they're not put in for the truth of the rest  
12 of the things they say. But only to illustrate some very  
13 narrow point. And that might work. I just throw that out  
14 as a possibility. I think the idea of your talking further  
15 with Mr. Baxter with a view toward narrowing down the  
16 number in this is something that you should pursue.

17 MR. BAXTER: I want to make clear Mr. Eddleman has  
18 estimated three or four days for this contention and that  
19 sounds not unreasonable to me and I have no problems  
20 obviously with him questioning the witnesses about the  
21 documents. My concern is after we have questioned the  
22 witnesses about 50 pages, the offer of 750 more and the  
23 evidentiary time it's going to take for us to address them.

24 Because we can't afford to just have them sit  
25 there in the record subject to everybody's proposed findings,

1 after the hearing's over.

2 But I certainly welcome further discussion with  
3 Mr. Eddleman and Mr. Barth on the subject.

4 JUDGE KELLEY: Well, please do that.

5 Let me just -- anything else, Mr. Baxter?

6 MR. BAXTER: Yes. We have decided to from our  
7 standpoint voluntarily produce the witnesses on 65 and 41 that  
8 the board has decided to grant the subpoenas with respect to.

9 In no way, of course, do we agree that their  
10 testimony is necessary or that the basis for their appearance  
11 has been established. But from our standpoint to expedite  
12 things, we'll voluntarily produce them.

13 I have to make one qualification which I don't  
14 think is significant. I haven't talked to these people  
15 personally. I'm just saying as far as we're concerned,  
16 they'll be here. I don't anticipate any problem.

17 JUDGE KELLEY: Well, that does make things  
18 simpler. We appreciate that.

19 Anything else?

20 MR. BAXTER: No, sir.

21 JUDGE KELLEY: Mr. Barth?

22 MR. BARTH: We have nothing further, your Honor.

23 JUDGE KELLEY: Mr. Eddleman?

24 MR. EDDLEMAN: I just want as a non-lawyer to  
25 try to get something clear in my mind. What difference does

1 it make whether they voluntarily produce these people?

2 Are they going to put them on on direct and let  
3 me cross them or are they going to be my witnesses or  
4 how is this going to work?

5 JUDGE KELLEY: Here's my understanding. We  
6 can have a discussion -- this isn't a ruling, it's just  
7 an understanding:

8 You ask for subpoenas with respect to particular  
9 people: Jones, Brown, Smith and in case the Applicants  
10 whose employees they are resist the subpoena and the  
11 ruling goes in your favor, as I understand it the Applicants'  
12 decision then to simply produce them voluntarily obviates  
13 the issuance of a subpoena but that is essentially it.

14 And as far as whose witness is concerned, I think  
15 it's your witness. You wanted to call that person. The  
16 witness would be coming in as a direct case witness for  
17 you, but I think the assumption would be that you could  
18 ask leading questions and question them as adverse  
19 witnesses essentially.

20 MR. EDDLEMAN: That's what I wanted to get  
21 some understanding of.

22 JUDGE KELLEY: That's my own reaction. It's  
23 not a ruling.

24 Mr. Baxter, Mrs. Flynn, if they want to --

25 MR. BAXTER: In terms of how the evidence will



1 be presented at the hearing itself, I do not contemplate  
2 right now that we will be filing any direct testimony by  
3 these witnesses but simply putting them on for cross-  
4 examination.

5 But I haven't seen the October 1 identification  
6 by Mr. Eddleman of what subjects he intends to cover and  
7 what documents he intends to examine on.

8 JUDGE KELLEY: Okay.

9 MR. EDDLEMAN: Excuse us a minute.

10 (Counsel conferring.)

11 MR. BARTH: Your Honor, so that there would be  
12 no mistake or misunderstanding, we intend to have  
13 Mr. Maxwell appear with Mr. Bemis, Mr. Halstrom and  
14 Mr. Blake in presentation of our direct case on  
15 Eddleman 41 which, as you suggest your Honor, we'll  
16 allow him to cross-examine.

17 JUDGE KELLEY: Right.

18 MR. BARTH: And on the schedule you will  
19 notes him as a subpoenaed witness. As you recall  
20 I stipulated on the record that the Staff will voluntarily  
21 produce Mr. Maxwell without a subpoena and save  
22 Mr. Eddleman money.

23 JUDGE KELLEY: All right.

24 MR. EDDLEMAN: I think I understand what the  
25 Staff is doing, they are presenting Mr. Maxwell as if

1 he were just an addition to their case, part of their  
2 case.

3 Now as I understand it, what the Applicants are  
4 saying is that these folks are not part of Applicants  
5 case they're part of my case but they are just voluntarily  
6 producing them in lieu of having subpoenas issued, is  
7 that correct?

8 MR. BAXTER: I don't know what you're getting  
9 at, Mr. Eddleman. Why don't you just be explicit?

10 JUDGE KELLEY: Yes, what's the point? What's  
11 the practical point you're trying to make?

12 To call somebody one party's witness or another  
13 party's witness in and of itself is meaningless; what's  
14 the concern?

15 MR. BAXTER: They're certainly not Mr. Eddleman's  
16 witnesses in that they are still appearing as hostile  
17 adversary witnesses called by him.

18 MR. RUNKLE: The question arose this morning --

19 JUDGE KELLEY: I'm not sure I agree with that,  
20 Mr. Baxter.

21 MR. RUNKLE: The question arose from Mr. Smith's  
22 testimony this morning, was he testifying as part of  
23 CP&L's direct case to meet their burden of proof in  
24 the contention or was he part of our case?

25 JUDGE KELLEY: I repeat this point: Why do you

1 care?

2 I think I know, but you tell me. What difference  
3 does it make? What are we after here?

4 MR. RUNKLE: Well it makes a different burden  
5 of proof.

6 MR. BARTH: Your Honor, could I just make one  
7 comment from Staff?

8 I see absolutely no difference in who they  
9 appear for. We have an evidentiary record and I don't  
10 -- like you, I don't care what they call these people  
11 as witnesses --

12 JUDGE KELLEY: The only difference I can see  
13 in this at all is whether the witness is treated as a  
14 hostile witness which means you can ask cross-examination  
15 type leading questions. And it's my understanding that  
16 when an Intervenor calls an employee of a utility  
17 company in a case like this the presumption is that the  
18 employee is hostile in the sense of asking questions  
19 so that you can ask leading questions, just like  
20 cross-examination. That's my understanding.

21 And beyond that I don't think it makes any  
22 difference.

23 MR. EDDLEMAN: Judge, it doesn't make any  
24 difference to me from my knowledge of it, I was just  
25 trying to make sure there wasn't some legal point in here

agb/agb5

1 that I didn't understand.

2 JUDGE KELLEY: I don't think so.

3 In terms of burden of proof, I have never  
4 understood -- true enough if one party brings in a witness  
5 and puts them on, they did that, once that witness starts  
6 to talk the proof belongs to everybody. You can cite  
7 that for your case as well as they can cite it for theirs.  
8 You don't have sort of possessory rights over what comes  
9 out of a witness' mouth. Whatever is in the record that  
10 favors your side helps you meet your burden of proof.

11 Okay. Anything else we need to speak to?

12 MR. RUNKLE: I was to call the other Intervenors  
13 about the February hearings.

14 JUDGE KELLEY: Yes.

15 MR. RUNKLE: It originally had been scheduled  
16 for February 4th, it was moved back to February 11th,  
17 this place is available on February 4th.

18 Mr. Eddleman stated he would like to have  
19 his contentions addressed near the beginning of the  
20 hearing.

21 None of the Intervenors have any problem with  
22 changing the date from the 11th back to the 4th and if  
23 it needs to be split into different sections. Nobody  
24 has any problem we can certainly schedule those and we  
25 urge you -- everybody felt that this place was as

1 convenient and suitable as any other.

2 JUDGE KELLEY: The immediate reason is the fact  
3 that this place is available in that particular time frame,  
4 from the 4th to the 21st, I think it is, and not at a later  
5 time. So we have a tentative hold on it and we intend  
6 to follow through and put an NRC contract on it and have  
7 it for that time then.

8 And obviously we can discuss further details  
9 of that at the close of the next hearing.

10 Anything else?

11 MR. BAXTER: One just administrative thing:

12 I have given the Court Reporter a copy of this  
13 two page order of presentation and just so the record is  
14 clear about what we have been discussing, could we have  
15 it incorporated?

16 JUDGE KELLEY: Yes.

17 (The document follows.)

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ORDER OF TESTIMONY PRESENTATION  
OCTOBER 10 HEARING

Joint IV (Testimony due 9/21/84)  
(TLDs)

1. Applicants:
2. Joint Intervenors:
3. NRC Staff:

Joint VII (4)  
(Steam Generator Tube Rupture Analysis)

4. Applicants: Hitchler
5. NRC Staff: Marsh and Conrad

Eddleman 116  
(Fire Protection)

6. Applicants: Serbanescu and Waters
7. NRC Staff: Eberly and Ferguson

Eddleman 9  
(Electrical Equipment Environmental Qualification)

8. Applicants: Prunty and Yandow (9 and 9B)
9. Applicants: Prunty, Yandow and Miller (9A)
10. Applicants: Miller and Dakin (9C)
11. Applicants: Bucci and Pagan (9D)
12. Applicants: Bucci, Pagan and McLean (9E)
13. Applicants: Bucci, Pagan and Yandow (9F)
14. Applicants: Prunty, Bucci, Pagan and Hate (9G)
15. NRC Staff: Masciantonio

Eddleman 65  
(Containment Concrete)

16. Applicants: Kanakaris, Parsons and Garner
17. Subpoenaed witnesses: Breedlove  
Strickland  
French  
Woltz  
Sealey
18. Mr. Eddleman: Stokes
19. NRC Staff: Harris, Lenahan and Bemis

Eddleman 41  
(Pipe Hanger Welding)

20. Applicants: Nevill, Fuller, Timberlake and Hate
21. Subpoenaed witnesses: Tingen  
Pere  
French  
Douglas
22. NRC Staff: Bemis, Hallstrom and Blake
23. Subpoenaed witness: Maxwell

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MRS. FLYNN: Is the Board going to rule on the issue of closing the record?

JUDGE KELLEY: Yes.

Let's take a stretch for a few minutes, okay.

(Recess.)



#10 WRBwbl

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JUDGE KELLEY: Back on the record.

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There's a remaining issue that we can now rule on concerning the Freedom of Information Act requests made by the intervenors for documents underlying the SALP IV report which have not yet arrived--the NRC response has not yet been made--and the relationship of those documents to closing the record now or later.

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Our decision is that we're going to close the record now, and we do now order it closed.

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We're going to ask the Staff to look into the status of those requests and see if they can't expedite the responses. We would expect then-- And we might add, as we indicated earlier, some of these documents might well be valuable to the record. So we will have a vehicle for getting them in if that's where they belong.

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But, in that regard, it would be up to the intervenors to file a motion with the Board to re-open the record for the limited purpose of admitting the documents that they think should be admitted. And under the normal motion rules, then, the other parties would have an opportunity to respond to the motion to re-open and to oppose, if they wish, the motion. And the oppositions ought to be, of course, with respect to individual documents and why they ought not to be included in the record. And then the Board will rule in due course on which, if any, of the documents ought to be

WRB/wb2

1 admitted.

2 We want to make one other point that was adverted  
3 to earlier, though, just for the sake of clarity.

4 On this kind of a motion the movants would not  
5 have the burden of showing that the admission of these docu-  
6 ments would probably change the result, a formulation often  
7 heard in motions to re-open the record for further hearing  
8 or further proceedings of some kind. This is a more limit-  
9 ed motion simply to introduce some evidence into the record;  
10 and, indeed, you wouldn't have any particular burden.

11 The admission of these documents or their exclusion  
12 would simply depend on the criteria normally applicable to  
13 proffered evidence, whether it's relevant, whether it's  
14 probative, whether there is some other basis for excluding it,  
15 in the sameway that we have ruled on other exhibits that were  
16 offered during the course of the hearing.

17 We have taken this approach for the basic reason  
18 that the option of holding the record open for whatever the  
19 NRC may send in response to the FOIA requests is a sort of  
20 open-ended carte blanche kind of thing that might produce  
21 who-knows-what from Region II's files, and we want a more  
22 refined system for screening those documents; which we think  
23 we've set up.

24 We don't have anything else at this point to  
25 raise.

WRB/wb3

1 MR. RUNKLE: We'd like to notify the Staff that  
2 there were two FOIA requests: one was done on our behalf by  
3 the group up in D.C., NIRS, and I think it was consolidated  
4 with the earlier Eddleman FOIA request.

5 JUDGE KELLEY: That's an acronym?

6 MR. RUNKLE: Nuclear Information Resource Service.  
7 I think they were consolidated.

8 JUDGE KELLEY: But they're both seeking documenta-  
9 tion underlying SALP IV for Shearon Harris?

10 MR. RUNKLE: Yes.

11 JUDGE KELLEY: Okay.

12 Anything else from anybody?

13 (No response.)

14 JUDGE KELLEY: Okay; thank you very much. We'll  
15 be seeing you before too long. Good-bye.

16 MRS. FLYNN: Thank you.

17 (Whereupon, at 11:31 a.m., the hearing in the  
18 above-entitled matter was recessed, to reconvene  
19 on October 10th, 1984, in Apex, North Carolina.)  
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