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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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)
POWER AGENCY)

Docket Nos. 50-400 OL
50-401 OL

(Shearon Harris Nuclear Power Plant,)
Units 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE

NRC STAFF RESPONSE IN OPPOSITION TO MOTION TO
REOPEN THE RECORD ON JOINT INTERVENORS' CONTENTION I

I. INTRODUCTION

At a press conference held in Raleigh, NC on Monday, October 22, 1984 Mr. Chan Van Vo Davis and his attorney, Mr. Robert Guild, released to the public an Affidavit of Mr. Davis dated October 6, 1984. That Affidavit alleged several deficiencies in the construction of the Harris facility. On October 23, 1984, at the resumption of the evidentiary hearings in this operating license proceeding, Mr. Wells Eddleman on behalf of himself, and Mr. John Runkle on behalf of CCNC, proffered contentions using the Chan Van Vo Davis Affidavit as their basis. The Licensing Board directed that any responses to the proffered contention based upon the Chan Van Vo Davis Affidavit be distributed to the Board and parties at the commencement of the evidentiary session beginning on Tuesday, November 13, 1984. The Applicants and Staff served their responses to the proffered contentions upon all parties and the Licensing Board at the reconvened hearing on November 13, 1984. On that day Mr. Runkle on behalf of the Joint Intervenors served upon the Board and

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parties a Motion to Reopen the Record on Joint Contention I (Tr. 6644) (Motion) to have the Chan Van Vo Davis Affidavit accepted as evidence in the proceeding, to take testimony from Mr. Chan Van Vo Davis, and to accept as evidence two NRC letters dated September 14, 1984 and October 19, 1984 relating to release of background papers which led to Systematic Assessment of Licensee Performance (SALP) reports prepared since 1979 relating to Carolina Power & Light Company.

Wells Eddleman, as a Staff scientist for the North Carolina Public Interest Research Group, on August 3, 1984 requested under the Freedom of Information Act, all documents relating to CP&L SALP's since 1979. On September 14, 1984, NRC responded by letter to Mr. Eddleman releasing 52 documents. By letter dated October 19, 1984, the NRC further responded to Mr. Eddleman releasing three additional documents and withholding 84 documents all of which related to the February 1, 1983 through April 30, 1984 SALP. Mr. Runkle moves the Board to reopen the hearings on Management Qualification to admit into evidence the NRC letters dated September 14, and October 19, 1984 relating to SALP background documents "to contradict the assertions by NRC Counsel, Charles A. Barth, that these background documents were regularly destroyed and the assertion by NRC witness, Paul Bemis, that the material is not available." Motion at 6.

The NRC Staff and Applicants briefly addressed Mr. Runkle's motion at the hearing on November 15, 1984 (Tr. 7279 and following.) The Staff's written response follows.

II. DISCUSSION

A. The Legal Standards Covering Reopening The Record

As discussed below, the Joint Intervenors' Motion fails to meet the well-established standards for reopening a record. In Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978), the Appeal Board made it clear that the proponent of a motion to reopen the record bears a heavy burden. The movant must demonstrate that: (1) the motion is timely, (2) the motion is directed to a significant safety or environmental issue,^{1/} and (3) a different result would have been reached initially had the material submitted in support of the motion been considered.^{2/} The standards set forth in Wolf Creek, supra, were reiterated in Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979), where as in the case at hand, the motion to reopen was filed after the record was closed, but prior to issuance of a decision by the Licensing Board.^{3/} In Black Fox, cited supra, 10 NRC at 804, the Appeal Board

^{1/} See, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 846, 887 (1980); Georgia Power Co. (Alvin W. Vogtle Nuclear Power Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

^{2/} See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). In this connection, the Appeal Board has recently observed that the proponent of a motion to reopen must establish the existence of newly discovered evidence having a material bearing on the proper result in the case. Duke Power Co. (McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 465 (1982).

^{3/} See also Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (1981).

stated "A Board need not reopen the record, however, if the issues sought to be presented are not of 'major significance.'" Thus, the motion to reopen must be timely and not based on information that reasonably could have been raised prior to the close of the record, it must involve a significant matter, and it must be such that the outcome of the case is likely to be affected by the alleged new information.

B. The Underlying Substance of the Motion

1) The Chan Van Vo Davis Affidavit.

The substance of the Chan Van Vo Davis Affidavit has been addressed at length in the "NRC Staff Response In Opposition to Contentions Proffered by Wells Eddleman and CCNC Based Upon An October 6, 1984 Affidavit of Chan Van Vo Davis" (hereinafter Staff Contention Response) dated November 13, 1984. That Staff Contention Response is adopted herewith and incorporated in our present response by this reference. The Applicants also responded to the substance of the Chan Van Vo Davis Affidavit on November 13, 1984.

The Joint Intervenors' Motion is not timely.

Wolf Creek and Black Fox require that the motion to reopen must be timely. The Appeal Board explained timely as meaning "Whether the issues sought to be presented could have been raised at an earlier stage..." Vermont Yankee, supra, 6 AEC at 523. As we stated in Staff Contention Response, the Chan Van Vo Davis Affidavit does not raise new material. The issues which Mr. Runkle wants to litigate are a part of the management qualification contention on QA, inspector independence, material

traceability and harassment. QA at the site was extensively discussed during the hearing on Management qualification. ^{4/} NRC inspection reports have discussed material traceability and independence of the Applicants' inspectors at the site ^{5/} for years. For example, independence of the Applicants' inspectors has been a subject of Inspection Report 50-400, 401, 402, 403/77-3 dated November 2, 1977, a matter hardly now new in 1984. ^{6/}

Employee harassment was raised in the first Prehearing Conference, May 14, 1982, Tr. 301, and was the subject of CCNC proffered Contention No. 16.

Thus it is quite clear that the alleged management issues (QA, inspector independence, material documentation, and harassment) for which Joirt Intervenors want the record reopened could all have been raised

^{4/} This was a recurring topic during the weeks of September 5, 1983-September 14, 1984. See for example Tr. 3064. See also, Applicants' Testimony of Mr. Banks following Tr. 2451 and the cross examination thereon.

^{5/} See I&E Inspection Report 50-400, 401, 402, 403/81-19 dated October 2, 1981 (in which CP&L was cited for material substitutions in pipe hangers without documentation); I&E Inspection Report 50-400, 401/83-22 dated August 3, 1983 (in which CP&L was cited for installation of incorrect material in a pipe hanger); I&E Inspection Report 50-400, 401/83-25 dated October 19, 1983 (in which CP&L was cited for failure to provide documentation for material substitution). See also, Inspection Report 50-400/84-25 dated August 22, 1984, and I&E Inspection Report 50-400/84-35 dated October 22, 1984 (which reported on the inspection of CP&L's pipe hanger installation program, closed out previously noted deficiencies, reviewed the efficacy of revised procedures and found no violations or deviations).

^{6/} See also, Inspection Reports 50-400, 401/79-15 and 50-402, 403/79-14 dated September 5, 1979; 50-400, 401/83-25, dated October 19, 1983; 50-400/84-22 dated August 14, 1983. See also the related discussion at the hearing on Transcript page 5754.

years earlier. Further some were addressed at the recent management hearings.

The Motion is not directed to a significant safety or environmental issue.

Certainly the issues of inspections by Applicants, documentation of the materials used to construct pipe hangers, and possible harassment of workers are important subjects in the construction of a nuclear power plant. However, as set forth below and in the "NRC Staff Response In Opposition To Contentions Proffered By Wells Eddleman And CCNC Based Upon An October 6, 1984 Affidavit Of Chan Van Vo Davis," dated November 13, 1984, the text of the Chan Van Vo Davis Affidavit shows that the issues sought to be presented are not of major significance in these areas. Inspector independence, QA and material documentation have previously been addressed in this hearing and in I&E Inspection Reports.

Mr. Chan Van Vo Davis alleged that he was harassed and intimidated (Affidavit page 1). The Department of Labor investigated Mr. Chan Van Vo Davis' charges and found them lacking in support.^{7/} His Affidavit contains nothing else more substantive than his own unsupported allegation of possible harassment.

Inspector independence has been a known topic of discussion since before this Application for an operating license was filed, see footnote 6. Mr. Chan Van Vo Davis only alludes briefly en passant in

^{7/} See Exhibit E attached to Applicants' Response To Late-Filed Contentions of Wells Eddleman and Conservation Counsel of North Carolina Board on the Affidavit of Mr. Chan Van Vo Davis. Exhibit E is the Department of Labor's initial decision.

paragraph 25 of his Affidavit to lack of inspector independence. He provides no details and no specifics. He expresses only a general concern with no basis in fact provided to support his concern. He identifies only one pipe hanger as a problem (Affidavit page 11). Mr. Chan Van Vo Davis familiarity with this pipe hanger arose in July and August 1982. Two years later the NRC reviewed this matter in Inspection Report No. 50/400/84-22, dated August 14, 1984 and there stated:

Potential for Inadequate QC Inspection. The inspector verified that the Construction Inspection (CI) group has been positioned directly under the Project General Manager as of October 10, 1983, thereby eliminating the CI group from reporting to engineering. This change allows more freedom for independent QC inspections.

Mr. Chan Van Vo Davis takes no cognizance of the change at the site which occurred in October 1983 which provided further independence to the Construction Inspection group. Neither the Chan Van Vo Davis Affidavit or the Joint Intervenors' Motion to reopen provide any basis whatsoever to hypothesize that there is a serious problem with independence of the inspectors today at the Harris site. In this matter, no significant issue is raised by the Joint Intervenors or by Mr. Chan Van Vo Davis.

QA at the site as a problem is raised by Mr. Chan Van Vo Davis only within the context of material traceability for some of the material used in one pipe hanger (Affidavit page 11). Beyond this no specifics or details are alleged and no factual basis is set forth. He does state: "I doubt that the QA vault contains even a fraction of the deficiencies in safety systems which have been identified" (Affidavit

page 15). Here, however, we have only Mr. Chan Van Vo Davis' speculation, with no facts, no details and no specifics. In this regard Joint Intervenors' have totally failed to meet their heavy burden of showing that the record should be reopened to litigate an existing significant safety issue in the area of QA at the Harris site.

Would a different result have been reached if the Chan Van Vo Davis Affidavit were in evidence in this proceeding?

If the Chan Van Vo Davis Affidavit were admitted into evidence, for the reasons set forth above and as set forth in the Staff's and Applicants' response to the late filed contentions based upon the Chan Van Vo Davis Affidavit, it would not materially change the thrust of the evidence. The Staff concludes that the Joint Intervenors have not made out a case for reopening the record on Management Qualifications inasmuch as they have failed to identify existing issues of major safety significance and have failed to set forth any persuasive factual basis to support their allegations.

- 2) Region II Background Documents for Systematic Assessment of Licensee Performance, Carolina Power & Light, February 1, 1983 through April 30, 1984.

The Wolf Creek standard must also be applied to this portion (the FOIA letters) of Joint Intervenors' Motion. This portion of Joint Intervenors' Motion is untimely.

On October 25, 1984, Tr. 5719-20 the Licensing Board gave Mr. Runkle until November 5, 1984 to file any motions he may have to put SALP back-

ground material into the record. ^{8/} The Motion was filed on November 13, 1984. Therefore, Mr. Runkle has not met the Board's Order or his own commitment and his motion in this regard is untimely and should be denied.

Is the Motion directed to a significant safety or environmental issue?

Mr. Runkle's motion in regard to the FOIA letters is not directed to any safety or environmental issue at all.

Would a different result have been reached on the management issue?

The inclusion or exclusion from the evidentiary record of the September 14 and October 19, 1984 letters regarding background SALP documents would in no way affect any evidence in this proceeding. That is self evident from reading the letters themselves. Mr. Runkle's stated purpose is quoted above -- to contradict Staff personnel. That is not a proper legal reason to re-open the record under Wolf Creek. Mr. Runkle's representation of Staff position on page 5 lines 16-19 and page 6 lines 8-11 of his Motion is not correct. Nor does Mr. Runkle provide citations to the record to support his argument. At the hearing on November 15, 1984 Mr. Runkle, on Transcript page 7299, in response to Board inquiry stated that, in part, the telephone conference call of August 31, 1984 was where the Staff position on SALP background document was documented. The August 31, 1984 telephone conference call was transcribed (Tr.

^{8/} The transcript pages are attached as Exhibit 1.

2346-2375). The SALPs and their background documents were not mentioned in any way during that telephone call. ^{9/}

III. CONCLUSION

The Intervenors have not met their burden imposed by Wolf Creek cited supra and its progeny to show that they have moved timely to reopen the record upon issues which are now of major safety or environmental significance. They have failed totally to make out a prima facie case that if the record were reopened, their proposed evidence would compel a different result from that mandated by the evidence already in the record. The motion of Joint Intervenors to reopen the record upon Joint Contention I, management qualification, should be denied.

Respectfully submitted,

Charles A. Barth
Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27 day of November, 1984

^{9/} Transcript Pages 2346-2375, August 31, 1984; 3945-3946, September 14, 1984; 3653-3655, September 13, 1984 and 7299, November 15, 1984 are attached as Exhibit 2.

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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 : Docket Nos.
 and NORTH CAROLINA EASTERN : 50-400-OL
 MUNICIPAL POWER AGENCY : 50-401-OL
 :
 (Shearon Harris Nuclear Power :
 Plant, Units 1 and 2) :
 -----X

Ramada Inn
Interstate 55
ECU Room
Apex, North Carolina

Thursday, October 25, 1984

The above-entitled matter reconvened, pursuant to
notice, at 9:03 a.m.

BEFORE:

JAMES L. KELLEY, ESQ., Chairman
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

DR. JAMES H. CARPENTER, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

DR. GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

Ex 1

Because it is too hard to remember what everybody says.

Now your first proposition, and let's even put the three to one side for a moment, you are moving that any motions to introduce any of those documents released back in September be filed 10 days from today?

MRS. FLYNN: That is correct.

JUDGE KELLEY: Okay. Staff, what do you think of that?

MR. JONES: The staff would concur with the observations that the utility has made. It has been a long time since those documents have been provided and the standards for reopening the record are clear, and we are reaching the point where good cause for not bringing it up earlier is going to pass.

JUDGE KELLEY: And when you say that the standards for reopening the record are clear, I take you are referring to the standards that this Board stated in this case and not the ones you will find in the NRC reports, right?

MR. JONES: For those previous documents, yes.

JUDGE KELLEY: Right. Okay. We tried to be pretty explicit about that point.

Let's go back to Mr. Runkle and Mr. Eddleman.

Now after these documents were released in September, the motion is to -- well, you heard it, 10 days. Do you want to respond to that?

Ex 1

MR. RUNKLE: Ten days is reasonable.

JUDGE KELLEY: Okay.

MR. RUNKLE: 10 days, it is a Sunday. Say 11 days and that will be Monday.

JUDGE KELLEY: Sure. What is that date in November?

MR. EDDLEMAN: It might be the 12th which is a holiday.

JUDGE KELLEY: It's a federal holiday. How about the 13th, 12 days?

MR. RUNKLE: The 13th, that is when we will come back in session again. We can serve parties on the 13th.

JUDGE KELLEY: All right. So the motion, we are granting the motion as modified from 10 to 12 days whereby those ---

Yes, Mr. Baxter.

MR. BAXTER: It just occurred to us that 10 days from today cannot be November 12. This is still October.

(Laughter.)

JUDGE KELLEY: Anything is possible.

(Laughter.)

MR. BAXTER: Ten days from today is Sunday, November 4th. So the next work day would be Monday, November 5.

JUDGE KELLEY: Monday, November 5?

MR. RUNKLE: Sure, that is reasonable, and we would be looking at Appendix A, the three ones that were just

Ex 1

1 released.

2 JUDGE KELLEY: I had better tie this up and make
3 sure. The motion is granted and the deadline is November
4 5th, a Monday as to the documents released in September
5 under cover letter dated what?

6 MR. EDDLEMAN: September 14 I believe.

7 JUDGE KELLEY: September 14. Okay. I think that
8 takes care of that.

9 MR. JONES: Excuse me. This is on the three
10 documents in Appendix ---

11 JUDGE KELLEY: I was just trying to tie this up
12 in a nice, neat package, and I am trying to accurately describe
13 what is covered by this motion that we just granted, and I
14 believe it is those released September 14th.

15 MRS. FLYNN: That is correct.

16 JUDGE KELLEY: Now as to the three that were
17 released on October 19th, that is Appendix A of the letter
18 of October 19th. What about them?

19 MRS. FLYNN: There are three documents. It would
20 seem to me that those could be equally responded to within
21 this same time frame, unless there is some difficulty that
22 I am not aware of.

23 JUDGE KELLEY: Were copies provided or are these
24 just being put in the PDR?

25 MR. RUNKLE: We have not received copies of them

Ex 1

MR. JONES: Mr. Chairman, just an observation. The first document is already in this record. It is the most recent SALP and was added to Mr. Bemiss' testimony at the management hearing.

The third document, all but the 7-page cover letter, is another copy of that same SALP report. So we are talking about 26 pages total that haven't already been provided in this record.

MRS. FLYNN: Excuse me. That letter was also put into the record.

MR. JONES: So we are talking about 19 pages.

JUDGE KELLEY: It is Item 2 that we are talking about?

MRS. FLYNN: Right.

MR. RUNKLE: I would be glad to throw that document in with the other ones that were in that September 14th letter.

JUDGE KELLEY: By the way, when you say you would be glad to throw it in, I assume that you are going to make a discriminating review of all this paper and only suggest the inclusion in the record of the germane ---

MR. RUNKLE: Yes. Yes, sir.

JUDGE KELLEY: Okay. So that then gets us to ---

MR. RUNKLE: By November 5th we will submit, if any, those documents that have been released in the September

Ex 1

1 14th and also in this Appendix A of this October 19th letter.

2 JUDGE KELLEY: Okay. Good.

3 MRS. FLYNN: Excuse me. For clarification, I believe
4 what we are talking about is submitting a motion to reopen
5 the record.

6 MR. RUNKLE: Yes.

7 JUDGE KELLEY: Right. I am sure all parties will
8 reconsult the transcript of the last day where we talked
about this for 10 or 15 pages.

10 That leaves then Appendix B to the letter of October
11 19th; is that right? These are the documents that were denied.

12 MRS. FLYNN: It is applicants' position that whatever
13 the intervenors choose to do in connection with the denial is
14 extraneous to this proceeding. And I just want it clear that
15 their exercising of their rights of appeal should in no way
16 interfere with the schedule for submission of proposed findings
17 and conclusions in this proceeding.

18 They have the remedy or the right to seek to reopen
19 the record at any time in the case.

20 JUDGE KELLEY: Well, first, we don't have a schedule
21 for findings yet.

22 MRS. FLYNN: That is right. But it was understood
23 that the only reason that the proposed findings on the manage-
24 ment issue were delayed at all from the normal times
25 established in the regulations was as a courtesy to the parties

EX 1

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATMOIC SAFETY AND LICENSING BOARD

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 :

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

Thursday, 13 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.)

Ex 2

1 you should make to your testimony?

2 A Yes. The systematic assessment of licensing
3 performance for the Carolina Power and Light Company for
4 the period February 1, 1983 through April 30, 1984, should
5 be included as a part of my direct testimony. As it
6 represents the Staff's latest assessment of CP&L
7 management.

8 The SALP report was not issued when I had
9 prepared my direct testimony.

10 Q Mr. Bemis, I show you the document. Is this
11 a true and correct copy of the February 1983 through
12 February 30, 1984 SALP report to which you just referred?

13 A Yes, it is.

14 Q ~~Mr. Bemis, can you describe very briefly, what~~
15 ~~the SALP is, what the process is?~~

16 A A description of the SALP program is set forth
17 in the first three pages of the report. SALP is a post-
18 TMI program. I think the NRC attempts to get a better
19 overview of the licensee's performance. This last report
20 rates ten functional areas of a licensee's activities
21 in the operational stages of the plant. And nine
22 functional areas in the construction phases of the plant.

23 A rating of a one may permit reduced -- may permit
24 reduced NRC attention. A rating of two normally determines
25 that NRC attention will remain in the same levels.

E 2

1 And a rating of three has both NRC and licensee
2 attention needing to be increased.

3 Q Mr. Bemis, let me interrupt you. Why isn't
4 there a category four?

5 A That's fairly self-evident. If a licensee is
6 operating in such a way as to endanger the health and
7 safety of the public, the NRC issues either a show-cause
8 or a shutdown order, depending on the severity of the
9 issue.

10 Licensee operating in any of the three previous
11 SALP categories that I've listed, is determined to be
12 operating the plant safely.

13 To go on, I continued to develop -- I coordinated
14 the development of the last two SALP reports for CP&L. I
15 seek out the views of inspectors in the functional areas
16 listed in the SALP and their supervisors as well as the
17 licensing project managers and NRR.

18 They initially prepare write-ups and initially
19 suggest category ratings. I will coordinate and have input
20 into the functional area write-ups. And I principally wrote
21 the overall utility and individual facility evaluations.

22 A two-day SALP meeting was held to discuss the
23 draft of the three facilities being involved. The SALP
24 board members that attend these are identified on page of
25 the report.

EX 2

1 Notice that the SALP meeting that's to be held is
2 posted on Regional Office bulletin boards. And NRC
3 personnel who want to attend these meetings and make his
4 or her views known, is invited to do so. At the end of the
5 meeting, the Board members vote by secret ballot. The
6 report is finalized and all notes and drafts are then
7 normally destroyed.

8 Q Mr. Bemis, I would like to direct your attention
9 to the functional areas at B-4 in the SALP reports, both
10 for construction and for operation. I would like to ask
11 you are each of these functional areas of equal weight
12 at any one point in time and is a single area of equal
13 weight from the time of application of the construction
14 permit to decommissioning of the facility?

15 A Mr. Barth, the functional areas are at no point
16 in time of equal weight. And the weight of each area
17 varies from application for the construction permit to
18 decommissioning the facilities. The areas rated during the
19 construction and operational phases are generally different.

20 Q In the present stage of the Shearon Harris facility
21 construction, sir, would soils and foundations, for example,
22 have an equal weight to that area for rating purposes two
23 or three years ago?

24 A They would have -- these areas are very important.
25 But in this state that particular area you mentioned would

Ex 2

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 :

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.)

Ex 2

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

Ex 2

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

EX 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 In the Matter of: :
 :
 CAROLINA POWER & LIGHT COMPANY :
 and NORTH CAROLINA EASTERN : DOCKET NOS. 50-400-OL
 MUNICIPAL POWER AGENCY : 50-401-OL
 :
 (Shearon Harris Nuclear Power :
 Plant, Units 1 and 2) :
 :
 ----- X

U. S. Bankruptcy Courtroom
300 Fayetteville Street Mall
Raleigh, North Carolina

Thursday, November 15, 1984 -

The above-entitled matter resumed, pursuant to
recess, at 9:05 a.m.

BEFORE:

JAMES L. KELLEY, ESQ., Chairman
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

JAMES H. CARPENTER, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

EX2

1-Sue? consider an Affidavit from Mr. VanVo or from some other
2 qualified person to be filed by a week from Monday. That's
3 about ten days from now, whenever that date turns out to be.
4 Monday after Thanksgiving.

5 MR. RUNKLE: Yes, sir.

6 JUDGE KELLEY: Okay. Thank you.

7 MR. RUNKLE: I had one other point on the FOIA
8 material.

9 JUDGE KELLEY: Right. Go ahead.

10 MR. RUNKLE: I don't have a transcript cite, but
11 I had in my notes on August 31st, on the August 31 conference
12 call in which Mr. Barth asserted that to his knowledge they
13 destroyed all the SALP material. And I don't have the exact
14 wording, but my notes were underscored on that, that they had
15 destroyed all that material.

16 JUDGE KELLEY: Well, we've got the date. I would
17 like to have a look at the citation in the transcript. But
18 this is a telephone call, you say you don't have the copy?

19 MR. RUNKLE: No, I do not have the transcript.
20 When I went to fill out --

21 JUDGE KELLEY: Does anybody have that transcript
22 here by chance?

23 I just thought maybe Mr. Runkle could take a look
24 and maybe point it out, or just drop it, one way or the other.

25 MR. RUNKLE: I really don't feel that it's all that

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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:
CAROLINA POWER AND LIGHT COMPANY :
AND NORTH CAROLINA EASTERN :
MUNICIPAL POWER AGENCY :
: Docket No. 50-400 OL
(Shearon Harris Nuclear Power : 50-401 OL
Plant, Units 1 and 2) :
:
:
:
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August 31, 1984
4350 East West Highway
Bethesda, Maryland

Hearing in the above entitled matter convened at
2:30 p.m.

BEFORE:

JAMES L. KELLEY, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

GLENN O. BRIGHT
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

JAMES H. CARPENTER
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ex 2

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APPEARANCES:

On behalf of the Applicants:

SAMANTHA FLYNN
THOMAS BAXTER

On behalf of the NRC Regulatory Staff:

JANICE MOORE
CHARLES BARTH

On behalf of the Intervenor Conservation Counsel of
North Carolina:

JOHN RUNKLE

Ex 2

P R O C E E D I N G S

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2 JUDGE KELLEY: The immediate reason for this
3 telephone call is a request made to me yesterday by
4 Miss Moore that the Board hear the parties' different
5 positions on a question that was raised earlier, namely
6 what limits, if any, should there be on the number of
7 counsel or intervenors if they're not counsel in
8 questioning particular witnesses or particular panels,
9 and we have left that to you to try to work out on a
10 negotiated basis.

11 And Miss Moore indicated to me that the
12 negotiation of the question had not borne fruit and that
13 there were differences of opinion on it. So the call was
14 suggested and we thought it was a good idea to go ahead
15 and hear you on that now rather than wait 'til next week.

16 Let's see, Miss Moore, do you, can you state
17 where things stand and what the issues are as you see them,
18 and the others can chime in at the appropriate time?

19 MISS MOORE. Yes, sir. At our conference call
20 of August 10th we had, I had raised the question of how
21 many, how many intervenors should be permitted to cross
22 examine any given witness or panel of witnesses in a
23 given contention, or whether intervenors should be
24 limited to one intervenor per contention.

25 The Board asked me at that time to try to

1 see if we could negotiate some sort of a solution to this
2 question. And in attempting to do that, I spoke with
3 Mr. Payne, Mr. Runkle and Miss Flynn and we, the positions
4 of the three parties are fairly far apart and were not
5 able to come to an agreement.

6 JUDGE KELLEY: Let me just interject a question.
7 I think I know the answer, but when you say, you phrased
8 it as how many representatives of the intervenor should
9 be able to cross examine.

10 Wouldn't the same rule apply to any party?

11 MISS MOORE: Yes, sir, it would. I m sorry, I
12 should have stated that. Whatever procedural rule governs
13 the intervenors would, of course, govern the other party.

14 JUDGE KELLEY: Okay.

15 MISS MOORE: I'd like to say that Mr. Barth
16 has arrived here as well, and he will be, in fact, stating
17 the Staff position.

18 JUDGE KELLEY: Okay. Good afternoone, Mr. Barth.

19 MR. BARTH: Good afternoon, Mr. Kelley.

20 JUDGE KELLEY: We just had the preliminary,
-21 not preliminary, we just had the issue before us stated
22 by Miss Moore which I think, I hope you heard.

23 MR. BARTH: Yes, sir.

24 JUDGE KELLEY: Okay. Well, do you want to go
25 ahead and state the Staff's view on it?

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1 MR. BARTH: The Staff's view, Your Honor, is
2 the same as we discussed at the last prehearing conference.
3 We feel that there should be one person interrogating
4 whoever is on the stand for contention. This is a normal
5 practice in law.

6 Since the last prehearing conference, Mrs. Moore
7 has done some research on this matter, and she finds that
8 in Consolidated Edison, Indian Point, 15 NRC 895 at 912
9 the... Let me read the Chairman's order.

10 "The intervenor may use two cross examiners per
11 witness or group of witnesses. The cross examination must
12 not be duplicative." I think it's... Since it's a
13 reported case, I think it's proper to bring it to every-
14 body's attention.

15 JUDGE KELLEY: Thank you.

16 MR. BARTH: It certainly does not comport with
17 our view. Our view is supported by the great and learned
18 Chairman Smith in Three Mile Island, Your Honor, at which
19 we had the same situation.

20 And there Chairman Smith required that the
21 intervenors be represented by one person when they cross
22 examined either the applicant or the Staff. And of the
23 two views, of course, the Staff is more sympathetic with
24 Mr. Smith's view.

25 I think that if you had a complicated technical

1 issue in which several different technical disciplines were
2 involved, you might well justify using technicians in
3 various areas.

4 The issue coming up in Wednesday, pardon me, I
5 hope I get there, is a rather unitary issue, whether or
6 not the applicants are technically competent to operate
7 the plant.

8 I think this does not present multi-facet
9 disciplines which would provide some modicum of justifi-
10 cation for multiple persons doing the cross examination.
11 Let me check with Mrs. Moore. Mrs. Moore, does that fairly
12 well state our position?

13 MISS MOORE: Yes.

14 MR. BARTH: I have nothing further to add,
15 Your Honor, in this regard.

16 JUDGE KELLEY: Let me just ask you, Mr. Barth,
17 I suppose looking at the spectrum of possible positions,
18 and I know we'll hear others in a minute, but you're
19 advocating one counsel per contention, which, as I under-
20 stand you, would mean that one person would have to do
21 the cross examining for the entire management contention.
22 Is that correct?

23 MR. BARTH: Yes, Your Honor.

24 JUDGE KELLEY: Now, isn't it an alternative
25 possibility to have one counsel per panel, given the fact

1 that looking at the applicant's case at least, they're
2 going to have several different panels?

3 MR. BARTH: That is an alternative, Your Honor,
4 and I've discussed this with Mrs. Moore. She pointed
5 that in spite of the Board's order in Indian Point, this
6 is how it pretty much worked out, that they took them
7 panel-by-panel rather than technically, as the Board's
8 order was, per witness.

9 And your suggestion basically was what was
10 followed in Indian Point, as I understand the case, sir.

11 JUDGE KELLEY: Well, does the Staff... What
12 does the Staff's objection, if you have one, to following
13 a rule here that there be one counsel per panel?

14 MR. BARTH: I feel one contention, and certainly
15 in judicial practice you have one lawyer do the direct
16 case and the cross examination. This is or horrendously
17 complicated case.

18 This is not a horrendously complicated situation.
19 This is a management contention. It's unitary, it does
20 not have many facets. It seems that we can comport to
21 the type of practice which is used in the District Courts
22 and the State Courts, which is one person per issue.

23 JUDGE KELLEY: Well, the thrust of my question
24 is really practical. My question is if you and Mrs. Moore
25 are sitting down there next week and the following week

1 litigating this contention, what difference is it going to
2 make whether you have Mr. Runkle on one panel and
3 Mr. Eddelman on another one and Mr. Payne on a third one,
4 as opposed to having Mr. Runkle do all three? What's
5 the practical difference to you?

6 MR. BARTH: The practical difference is that
7 the hearing will last longer if they bring in fresh
8 questioners. That's a nonlegal, just simply a pragmatic
9 answer, Your Honor.

10 JUDGE KELLEY: We should prefer an exhausted
11 questioner so that he'll ask fewer questions as time goes
12 on?

13 MR. BARTH: I haven't seen or been able to
14 exhaust many of them, bearing in mind limerick, but people
15 wear down. They tend to become more precise and accurate
16 and get this over with.

17 JUDGE KELLEY: Okay, all right. Why don't we
18 hear from the applicants next?

19 MS. FLYNN: This is Samantha Flynn. The
20 applicant's position is that the principle that obviously
21 should be applied here is the principle that was articulated
22 in the Commission's Statement of Policy on Conduct of
23 Licensing Proceedings in 1981 where it was stated that
24 the Board should use their inherent powers to conduct
25 efficient and an expedited hearing, while at the same time

1 preserving the, and ensuring the fairness of the proceeding
2 and ensuring that an adequate record be developed.

3 And applicants believe that the suggestion that
4 the Board has just made, which is that there be one
5 questioner per panel, would be a very fair way of balancing
6 all the competing interests involved.

7 We should make clear that it is our intention
8 to present the testimony of the witnesses in three panels,
9 and let me explain how those would be conducted. The
10 first panel would be the, what we call the Panel on the
11 Corporate Organization and Philosophy of Management.

12 And that consists of four of our senior
13 executives. The second panel will be comprised of the
14 project manager and general plant manager of the
15 Brunswick and Robinson Plants.

16 And the third panel will be comprised of the
17 project manager and general manager of the Harris Plant
18 and the senior vice president and the Manager of Training
19 for the Harris Plant in charge of Training. They're the
20 three panels.

21 JUDGE KELLEY: All right.

22 MS. FLYNN: But we believe, and in summary we
23 believe that that approach would be a fair approach to
24 all concerned.

25 JUDGE KELLEY: Okay. Let me... I'm just

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1 anticipating Mr. Runkle may want to advocate a different
2 point, but if that's so, let's hear from Mr. Runkle and
3 we can come back to you, Mrs. Flynn, and to the Staff if
4 they want to speak.

5 In other words, we hear everybody on each
6 variation. But let me go to Mr. Runkle now and see what
7 his preference is?

8 MR. RUNKLE: Well, what Mrs. Flynn just said
9 about the three panels, it was our understanding that
10 there would be four. The different testimony was grouped
11 differently than what she just presented.

12 And that raises a problem I hadn't even
13 considered. In conducting the Harris manager with the
14 QA and Training, it seems to me an awful broad panel,
15 regardless of how many attorneys are on there.

16 MS. FLYNN: I didn't say QA.

17 MR. RUNKLE: Okay.

18 MS. FLYNN: I just said Harris and Training on
19 a single panel.

20 MR. RUNKLE: All right. And what panel is your
21 QA going to be on?

22 MS. FLYNN: That is on the corporate panel,
23 the manager of the Quality Assurance for CP&L, Harold Banks.

24 MR. RUNKLE: Okay, and that's on the Utley Panel?

25 MS. FLYNN: That's right.

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1 MR. RUNKLE: Okay. All right, I got a little
2 confused there. So our position is that one, one inter-
3 venor or one counsel per contention would be just an
4 unbelievable burden on us.

5 If we're going, you know, two weeks of hearing
6 and more than likely intervenor cross examination will be
7 80% of that, that seems to be putting an undue burden on
8 the one individual and it will lead to exhaustion, whether
9 that will be clear issues or not is something else.

10 Our position is that... And I think it worked
11 effectively in the environmental hearings, was to have as
12 many intervenors cross examine each witness as they come
13 up. And I think it's up to the panel to decide whether
14 that, the questions are being repeated or it's somehow or
15 another leading to an inefficient hearing.

16 I think our position is totally diametrical
17 to that of the Staff. That's all I have to say.

18 JUDGE KELLEY: Let me ask you, Mr. Runkle, with
19 regard to the panel approach as one possibility, I guess
20 our assumption would be that a given panel would be put
21 forward basically to address fairly similar topics, if
22 not identical topics, and that you'd be going to a
23 different topic or set of topics with a different panel.

24 So I can understand an argument whereby you
25 would want perhaps more than one counsel to cross examine

1 if you had people on a panel that really were on some
2 pretty dissimilar points. But if that's not the case, it
3 seems somewhat more reasonable to, to restrict it to the
4 one lawyer and figure that he can, he or she can cover
5 that particular point.

6 MR. RUNKLE: Well, our strategy in this is what
7 we'll be using in the hearing in the next couple weeks.
8 We are not going to be asking the panel that many questions
9 as a panel, regardless of how applicants wish to put them
10 on.

11 It's our belief that the management is made up
12 of individuals, and each individual is part of that
13 management. We gave a lot of questions specifically to
14 Mr. Utley that we will not seek responses from the other
15 members of that panel. And we may ask each of the members
16 of the panel the exact identical questions.

17 JUDGE KELLEY: Well, I think one thing that we
18 probably ought to get to as our first order of business
19 when we get to the first panel next week, and that will
20 be some groundrules for how counsel does address the
21 panel.

22 And I don't mean to do it now. I just mean to
23 illustrate what I have in mind. I know I've had this
24 experience in cases that it's fine to say put a panel in
25 and then what happens next.

1 And I've seen groundrules whereby, for example,
2 a counsel can address a question in the first instance to
3 a particular member of the panel. They can't all three
4 answer at once, that's clear enough, but then once he's
5 said whatever he's got to say, if some other member of
6 the panel has something to add then he or she will do so.
7 That's just by way of illustration.

8 MR. BAXTER: This is Tom Baxter. It's my memory
9 that that is, in fact, the direction you gave to the
10 participants of the environmental hearing. We did have
11 panels there and I specifically recall you advising the
12 witnesses that after the lead witness who had been named
13 in the question had answered, then they could volunteer.

14 JUDGE KELLEY: I frankly -- thank you,
15 Mr. Baxter -- don't remember that precise thing. I do
16 know that that's a procedure that, that I have worked
17 with in the most recent hearing that I had, namely the
18 Catawba one.

19 But I don't mean to foreclose those questions
20 this afternoon, but just point out that they will crop
21 up and that they'll have to be dealt with.

22 MS. FLYNN: This is Samantha Flynn. Could I
23 just add that without superseding the Board discretion
24 at all that we had thought that that was a very difficult
25 way of doing things.

1 But, indeed, if an intervenor wanted to direct
2 a question to a single member of the panel, he's entirely
3 within bounds to do so. And there would be nothing about
4 the panel of (inaudible) that would foreclose that ability.

5 JUDGE KELLEY: Okay. Again, I say okay. I
6 happen to agree with what you just said, but I wasn't
7 really ready to launch into a discussion of groundrules
8 right now, but rather to try to resolve this question of
9 one lawyer or more than one, either per case or per panel
10 or per witness.

11 MR. RUNKLE: This is John Runkle.

12 JUDGE KELLEY: Right.

13 MR. RUNKLE: My practical problem with having
14 one attorney per panel is maybe a matter of time. The
15 different intervenor counsels do have other commitments.
16 I know that I may have to argue an appeal one of the days
17 during that time and I'd hate to have to start, you
18 know, cross examine the panel and then may have to miss,
19 you know, a couple hours and there while there are other
20 three attorneys, you know, sitting there ready to cross
21 examine.

22 It's that kind of just timing and scheduling
23 for us that seems to be one problem that's going to
24 arise about having just one, you know, one attorney per
25 panel or even one attorney per witness.

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1 JUDGE KELLEY: Well, let me just make an
2 observation. I think in the example you cite of having
3 an appeal in court somewhere that came up at this par-
4 ticular time, that kind of thing may be a basis for a
5 good cause showing, that we make some exception to the
6 rule or otherwise following.

7 At the same time, I would want to make clear
8 that we've had this hearing scheduled, you know, for a
9 good long time and we expect to go down there and work
10 working hours and expect all parties to be there at that
11 time.

12 If someone is a participant in this case and
13 if they have to take annual leave from another job, then
14 so be it. They'll have to take annual leave.

15 MR. RUNKLE: All right.

16 JUDGE KELLEY: We can't, we can't structure
17 this hearing on a sort of part-time participation basis
18 is what I'm saying.

19 MR. RUNKLE: Then I would go along, given a
20 showing of good cause, to change it, to go along with
-21 one attorney per panel. I think we should be able to
22 go along with that, especially the applicant's witnesses
23 and the panels that they have just presented. I think
24 that should be workable.

25 JUDGE KELLEY: Okay. Are there other...

1 We'd like to decide this this afternoon so people will
2 know what the groundrule is. Are there other comments
3 in... I think what we contemplate is just turning off
4 our sound a little bit here and conferring and then coming
5 back and telling you, giving you a ruling. Are there
6 other comments that people want to make at this point?
7 Mr. Barth?

8 MR. BARTH: I have just one brief one, Your
9 Honor.

10 JUDGE KELLEY: All right.

11 MR. BARTH: Your Honor, for the Staff we would
12 accept Mr. Runkle's view, one examiner per panel as a
13 reasonable compromise in rather a difficult situation.

14 JUDGE KELLEY: Would that be then subject to
15 a good cause showing? I assume it would be. That'd
16 be kind of there whether you wrote it or not. In a given,
17 at a given time during the hearing if you find out the
18 next day that somebody has to go to the hospital or what-
19 ever, someone else can step in in the breach.

20 MR. BARTH: Yes, Your Honor, that would be...
21 Of course, in my view, at your discretion during the
22 circumstances, but you're certainly correct.

23 JUDGE KELLEY: Okay. Miss Flynn, any further
24 thought?

25 MS. FLYNN: Only that in the event that there

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1 has to be a substitution that the intervenors are
2 responsible for ensuring that there is no duplicative...
3 People can't just go bouncing in and out and there can't
4 be any duplicative questioning as the result of one not
5 having been there and not having heard the testimony that
6 has been given.

7 JUDGE KELLEY: I think that's a fair observation,
8 yes. Could we... If there's nothing further, maybe we'll
9 just take a minute here and you can... We'll come back
10 on in a minute or two. Thank you.

11 (Off the record.)

12 JUDGE KELLEY: Hello?

13 MS. FLYNN: Yes.

14 JUDGE KELLEY: We didn't push the right button
15 back on this end, I'm sorry. But in any event, after
16 finding the correct button, we deliberated some on this
17 and it did seem to us unfair to all of you.

18 There was pretty much a consensus emerging
19 anyway. The rule that we propose to follow then with
20 regard to counsel or representatives questioning par-
21 ticular panels is that there would be one counsel or
22 one representative per panel, subject to a good cause
23 showing, which would allow the use of a substitute cross
24 examiner during the time that the counsel who otherwise
25 has that panel is unavailable, adding to that also the

1 caveat that the substitute counsel or representative would
2 be obligated to familiarize himself or herself with the
3 record thus far in the case so that we could minimize the
4 possibility of repetitive questioning.

5 So that's the approach that seems to me you
6 really had already pretty much agreed on that we've now
7 formalized. Does that, does that cover the point? Any
8 further comment on that?

9 MR. RUNKLE: This is John Runkle. I would like
10 to find out more about the subpoenaed witnesses and how
11 those will be deployed off of the panel.

12 JUDGE KELLEY: About the what? I'm sorry.

13 MR. RUNKLE: The subpoenaed witnesses.

14 JUDGE KELLEY: I haven't come to that yet.

15 MR. RUNKLE: Okay. That's... I would...

16 JUDGE KELLEY: We were going to come to that
17 as the next point.

18 MR. RUNKLE: Oh, okay. All right.

19 JUDGE KELLEY: All right. Any other comment?
20 Are we all clear on the rule that we've just adopted for
21 number of counsel per panel? Okay, thank you. Now, last
22 week we heard argument from essentially the same group
23 of lawyers on the question of subpoena request from
24 Mr. Runkle for four people from the CP&L and four people
25 from the NRC Staff.

1 And we have considered that request and, well,
2 we've effectively decided not to decide at this point and
3 we'll tell you why. We're going to defer... Let me speak
4 first to the CP&L witnesses.

5 We've decided for a ruling on these four sub-
6 poena requests. We are concerned about the possibility
7 that there'll be repetitive questioning, the testimony
8 will become cumulative.

9 The difficulty is that at this stage of the
10 game we have the, the statements of counsel about what
11 they expect to come, but we really aren't in a good
12 position to judge whether or not somebody is necessary
13 or desirable or not necessary.

14 We also heard and understand that all of these
15 people would be available on fairly short notice should
16 it be necessary for them to testify and, therefore, it
17 just seems to us to be unnecessary to resolve the issue
18 at this point.

19 In the case of these people that have been
20 subpoenaed by the applicants, we would assume then that
21 at or around the close of the applicant's case if the
22 record as it's then developed shows gaps and if the
23 intervenors can demonstrate that other people could fill
24 the gap, then we may well grant the subpoena.

25 Conversely, if it seems to us that the grounds

1 have been pretty well gone over and there isn't anything
2 to add from calling one of the subpoenaed witnesses, we
3 would presumably deny the subpoena request.

4 As to the Staff, again, there were four people
5 involved except it was subtracted by the Staff's willing-
6 ness to call Mr. Maxwell, so that left three people under
7 request for subpoena, and we are going to first, as to
8 Mr. Cantrell, from what we know about the history of the
9 case there's some indication that he may be a useful
10 witness but we don't think that we're ready to make a
11 judgement on him.

12 So we think deferral is the appropriate course.
13 We think it's very clear that that's the appropriate thing
14 as to Mr. O'Reilly. He's a high level executive, the
15 head of the region, and we think that the NRC rule
16 requiring exceptional circumstances is made to fit just
17 exactly such a person and, therefore, we think it's pre-
18 mature and that it may well not be appropriate to call him.

19 But we're willing to abide the event, again, see
20 how the case unfolds, see how the Staff's case unfolds,
21 and it may be that there'll be a case that's makeable
22 for calling Mr. O'Reilly later on.

23 The other person was Mr. R. C. Lewis. The
24 purpose of calling Mr. Lewis was to elicit some infor-
25 mation about the so-called SALP report -- that's S-A-L-P,

1 caps, no periods. We were told that Mr. Lewis was more
2 in the nature of a parliamentarian than a substantive
3 contributor to the SALP report and that I believe it was
4 indicated that Mr. Bemis, who will be the Staff witness,
5 might be in a better position to answer questions on that
6 point.

7 So we are going to defer on the Staff request
8 also, including Mr. Lewis, with the indication that we
9 may well deny it as to Lewis because of the seeming
10 unlikelihood of his ability to contribute on SALP, but
11 we don't want to shut that door and we don't see any
12 reason why we should.

13 So the net effect of this is that we're going
14 to defer all these rulings for a subpoena request until
15 a later date. We would just add that having marched all
16 the way up this particular hill, it's always uncomfortable
17 to have to march all the way back down, but we have at
18 least heard you on what your positions are at this point.

19 And there was a possibility of not knowing
20 what your objections would be, that we could get some of
21 these things resolved, such as somebody living in the
22 San Diego and not knowing very much about it, but we
23 didn't hear any of that.

24 It's really repetition, cumulative evidence
25 or lack of knowledge, neither of which we're in a very

1 good position to judge right now. So that is our position
2 on the subpoenas as of this afternoon. We have one more
3 point we wanted to raise and it has to do with...

4 MR. RUNKLE: Excuse me, Judge Kelley.

5 JUDGE KELLEY: Yes?

6 MR. RUNKLE: This is John Runkle. May we comment
7 on your decision on the subpoenas?

8 JUDGE KELLEY: I'm not sure to what effect.
9 Can you give me an indication of what you want to, want
10 to get into?

11 MR. RUNKLE: Yeah. On the applicant's witnesses
12 I think you've rule on the, or you have deferred ruling
13 on the merits of what they're saying, on the evidentiary
14 value.

15 According to the regulations, we just have to
16 show general relevance.

17 JUDGE KELLEY: Well, I don't think that's what
18 we've, what we've done, Mr. Runkle. I have no intention
19 to rule on what evidence these witnesses might give, one
20 way or the other.

21 What we're saying is this afternoon we've heard
22 a defense to the subpoenas that the calling of these
23 people would be cumulative and redundant and unnecessary
24 for that reason.

25 And our answer is that may be right. On the

1 other hand, maybe it isn't right. So we're going to hold
2 off our ruling until later. The argument that you have
3 made for calling these people will still stand as an
4 argument later on and then you'll have an opportunity
5 to add whatever you want to add when we re-raise the
6 issue.

7 MR. RUNKLE: All right.

8 JUDGE KELLEY: Okay?

9 MR. RUNKLE: Yes, sir.

10 JUDGE KELLEY: I had a conversation with
11 Mrs. Flynn earlier today on the question of a place for
12 a hearing for the October 10 and thereafter Safety
13 hearing.

14 And Mrs. Flynn indicated the availability of
15 a, a motel. Ramada Inn was it, Mrs. Flynn?

16 MS. FLYNN: Yes.

17 JUDGE KELLEY: In Apex, and certainly it
18 sounded like a, you know, a feasible place. The one
19 question in our mind... I might add that she could
20 elaborate on this.

-21 Apparently it's very hard to find places in
22 the Raleigh area right around that time. A lot of con-
23 ventions and what not. The one place we're a little
24 unclear about was the bankruptcy court which I think we
25 all felt was a good place for a hearing.

1 I did call them back today and they had been
2 unable to give us any, any comfort last month with respect
3 to the upcoming hearing because of some uncertainty growing
4 out of the new bankruptcy statute.

5 They didn't know what they were going to be
6 doing, so we looked elsewhere and Mrs. Flynn found us
7 the Convention Room. But today they seem to be in a
8 somewhat more settled situation and they said that --
9 this is the judge's clerk -- said that they might well
10 be able to help us out in, in October, maybe even for
11 some substantial portions of October.

12 And it just seemed to us, having to focus on it
13 this afternoon, that if we've got a pretty good chance
14 for the bankruptcy court for much of that October hearing,
15 we'd rather take it than go to, than decide to go to
16 Apex now.

17 Now, as I understand it, Mrs. Flynn, we'll be
18 taking a bit of a chance. If we find out in the middle
19 of next week that we can't have the bankruptcy court,
20 it may be that Apex is gone, too. Isn't that right?

21 MS. FLYNN: Right.

22 JUDGE KELLEY: Yeah.

23 MS. FLYNN: But obviously, the bankruptcy court
24 is preferable, I'm sure, to everybody. As I... We had
25 two people on telephones for half a day searching for a

1 place in Raleigh and they had no luck because it's
2 apparently a big month for conventions.

3 JUDGE KELLEY: Well, I appreciate all that work
4 and I know it's tedious and takes a lot of time.

5 MS. FLYNN: My only point is that it was hard
6 and the only reason we tried Apex is because we didn't
7 have any luck in Raleigh.

8 JUDGE KELLEY: Sure. And it's a fairly solid
9 indication that we may be in some trouble if we don't
10 get the bankruptcy court very soon. But I think that
11 we'd like to... Our feeling about it is that, all things
12 considered, we'd rather hold off in the hope that we'll
13 get a bankruptcy court for a fair chunk of the time.

14 And I think we'll know that for sure, we may
15 know it later today. The judge's clerk was going to call
16 me back, but I haven't heard from her. But in any case,
17 we can find out certainly when we come down next week.

18 We ought to know by Wednesday if it's available,
19 and if it is, fine, and if it's not, we can just hope
20 that Apex is still there or something else can be found.

21 UNIDENTIFIED SPEAKER: How about Durham or
22 Chapel Hill?

23 JUDGE KELLEY: Let me ask you, Mrs. Flynn,
24 did you do any inquiring Durham or Chapel Hill area?

25 MS. FLYNN: No, we haven't.

1 JUDGE KELLEY: Yeah. Well, I guess those might
2 be options, too, that we could keep in mind. But anybody
3 think we're making a mistake by holding out for the
4 bankruptcy court, at least for the next few days?

5 MS. FLYNN: No, sir.

6 JUDGE KELLEY: Okay. Well, I guess we'll do
7 that. I just have one other question I wanted to ask
8 really to the Staff. We had some discussion in the
9 last... The telephone conference before last, I guess
10 it was, about the diesel generator, the subject of diesel
11 generators in this case and the way it was developing in
12 other places.

13 And I just received today, Mr. Barth and
14 Miss Moore, a Board notification number 84-152, dated
15 August 29th, 1984, and the subject is "Safety Evaluation
16 Report on Trans-America Delavile, Inc., Owner's Group
17 Program Plan" and some other subjects.

18 And they usually show service on lots and lots
19 of Boards, among other places. This shows... I got this
20 because of Catawba. There's no reference here to Shearon
-21 Harris, although... I really don't know why there wasn't.

22 Now, maybe some separate piece of paper went
23 out to the Shearon Harris service list. Do you know
24 whether this particular Board Notification got distri-
25 buted in the Shearon Harris case?

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MISS MOORE: Your Honor, I sent a letter personally to all the Board and parties in the Shearon Harris with regard to this particular document. I'm hoping that everybody got it.

It makes me a little nervous if you're saying you didn't see it in Shearon Harris. I sent a letter signed I believe it was by me last week.

JUDGE KELLEY: (inaudible)

MISS MOORE: That sent this particular Safety Evaluation Report out to all the parties.

JUDGE KELLEY: Thanks a lot. I appreciate that and maybe I'm the only one that doesn't know about it. So anyway, I raised the point because I didn't see it or, frankly, don't remember it, but I've got it now and now you've given me the answer. Thank you very much.

MISS MOORE: I will check on why the Shearon Harris Board is not mentioned on the Board Notifications. They should be by now.

JUDGE KELLEY: Okay. Let me... Anything else, you guys? I guess, I guess the Board doesn't have anything else. Do the parties, Staff have anything else to raise?

MR. RUNKLE: Nothing from us, Your Honor.

JUDGE KELLEY: Okay. Applicants?

MS. FLYNN: No.

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EX 2

1 MR. BAXTER: One thing. This is Tom Baxter.
2 I assume that the Board, or I am assuming the Board is
3 still interested in hearing argument on the subpoenas
4 with respect to what (inaudible)?

5 JUDGE KELLEY: Yes. And I told Mr. Eddleman
6 last Friday that we'd bring that subject up probably on
7 day one, next Wednesday. I think he plans to be there.
8 But in view of the lesser urgency on those, we were just
9 going to put that over until then. Okay?

10 MR. BAXTER: Yeah.

11 JUDGE KELLEY: Anything else, Mr. Runkle?

12 MR. RUNKLE: Yes, one other point. It's dis-
13 covery on the emergency planning. I did not get to be
14 able to interview one of the state government workers
15 until yesterday afternoon and there was a midnight
16 deadline on that and I will not have that discovery
17 request done until today.

18 I've been trying to get in touch with the
19 Shaw Pittman attorney that's responsible for that area.
20 I'd like a one-day extension on that, if that's okay.

21 MR. BAXTER: I didn't understand. It was to
22 interview a worker?

23 MR. RUNKLE: Yes, one of the... It's a, it's
24 the head of the Radiation Protection Section, was out of
25 town and sick for about a week and a half.

1 MR. BAXTER: I'm just confused as to what an
2 interview is. Is that a deposition or it's a document
3 production inspection?

4 MR. RUNKLE: Well, he would be the... He would
5 affirm or attest that, you know, that they're all the
6 answers that are true.

7 JUDGE KELLEY: These are answers that you're
8 preparing, Mr. Runkle?

9 MR. RUNKLE: Yes, sir.

10 JUDGE KELLEY: I see. To interrogatories from
11 the applicants?

12 MR. RUNKLE: Yeah.

13 JUDGE KELLEY: Yeah.

14 MR. RUNKLE: But I'll be one day late on it.

15 MR. BAXTER: Because you have a state official
16 attesting to your answers?

17 MR. RUNKLE: Sure.

18 MR. BAXTER: Okay.

19 JUDGE KELLEY: Okay? Did I hear an okay,
20 Mr. Baxter?

21 MR. BAXTER: Yes.

22 JUDGE KELLEY: Okay, fine. Well, if there's
23 nothing else then, we'll look forward to seeing all of
24 you next Wednesday morning at 9 in the Convention Center.
25 Thank you very much.

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EX 2

MS. FLYNN: Thank you.

(Whereupon, the conference ended at 3:15 p.m.)

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EX 2

CERTIFICATE OF PROCEEDINGS

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This is to certify that the attached proceedings before the
NRC

In the matter of: Carolina Power and Light Company
and North Carolina Eastern Municipal
Power Agency, Shearon Harris Nuclear
Power Plant, Units 1 and 2

Date of Proceeding: August 31, 1984

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Tom Berry
Official Reporter - Typed

Tom Berry 1/2/83
Official Reporter - Signature

Law Desaran
Transcriber

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EX 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CAROLINA POWER AND LIGHT COMPANY AND
NORTH CAROLINA EASTERN MUNICIPAL
POWER AGENCY

(Shearon Harris Nuclear Power Plant,
Units 1 and 2)

Docket Nos. 50-400-OL
50-401-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO MOTION TO REOPEN THE RECORD ON JOINT INTERVENORS' CONTENTION I" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of November, 1984:

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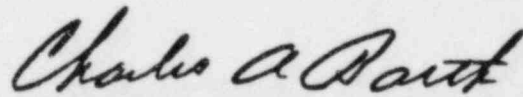
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