

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

Before Administrative Judges

James L. Kelley, Chairman
Dr. James H. Carpenter
Glenn O. Bright

DOCKETED
NRC

'84 DEC 10 12:05

OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.

SENT DEC 10 1984

In the Matter of

CAROLINA POWER & LIGHT COMPANY
and
NORTH CAROLINA EASTERN MUNICIPAL
POWER AGENCY

(Shearon Harris Nuclear Power
Plant)

Docket Nos. 50-400-OL

(ASLBP No. 82-472-03 OL)

December 7, 1984

MEMORANDUM AND ORDER
(Transmitting Rulings on Certain
Motions and Contentions)

Attached is a revised and corrected copy of the transcript of the telephone conference of December 5, 1984. The revisions and corrections have been interlined on the typed transcript and should be obvious. The Board is providing free copies of this transcript to all parties because it is comprised mainly of Board rulings.

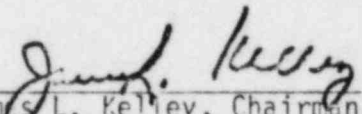
The Board and parties discussed the Applicants' settlement of Mr.

- Chan Van Vo's claim and its possible relationship to Mr. Eddleman's
- proposed Contention 41-G. Tr. 7386-92. In accordance with that discussion, the Applicants are directed to serve a copy of that settlement agreement (and any explanatory comments they may wish to

make) on the Board and on Mr. Eddleman (but not the other parties) on an in camera basis by December 17, 1984. Mr. Eddleman is not to disclose any terms of the agreement to any other person, subject to further Board order. No later than ten days following his receipt of the agreement, Mr. Eddleman may submit to the Board and the Applicants (but not to the other parties) any comments he may have on the significance of the agreement to his proposed Contention 41-G.

The Board has approved the parties' joint stipulation codifying certain admitted contentions. A copy of the approval Order is attached.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Attachments as noted
Also, CCNC ltr dtd 12/5/84

Bethesda, Maryland

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

4 -----X
5 In the Matter of: :
6 CAROLINA POWER & LIGHT COMPANY : Docket Nos. 50-400-OL
7 and NORTH CAROLINA EASTERN : 50-401-OL
8 MUNICIPAL POWER AGENCY :
9 (Shearon Harris Nuclear Power :
Plant, Units 1 and 2) :
-----X

10 Nuclear Regulatory Commission
11 4350 East-West Highway
East West Towers
Bethesda, Maryland

12 Wednesday, December 5, 1984

13 The telephone conference in the above-entitled matter was
14 convened at 10:50 a.m.

15 BEFORE:

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

17 GLENN O. BRIGHT, Members
Atomic Safety and Licensing Board

and James H
Carpenter

18 APPEARANCES:

19 On behalf of the Applicants:

20 SAMANTHA F. FLYNN, ESQ.
Carolina Power & Light Company
21 P. O. Box 1551
Raleigh, North Carolina

22 THOMAS A. BAXTER, ESQ.
JOHN H. O'NEILL, JR., ESQ.
23 Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
24 Washington, D. C. 20036

1 APPEARANCES (Continued):

2 On behalf of the Nuclear Regulatory
3 Commission Staff:

4 BRADLEY W. JONES, ESQ.
U. S. Nuclear Regulatory Commission
Region II
5 101 Marietta Street
Atlanta, Georgia 30303

6 CHARLES A. BARTH, ESQ.
7 Office of Executive Legal Director
U. S. Nuclear Regulatory Commission
8 Washington, D. C. 20555

9 On behalf of Intervenor, Conservation
10 Council of North Carolina:

11 JOHN D. RUNKLE, ESQ.
307 Granville Road
Chapel Hill, North Carolina 27514

12 WELLS EDDLEMAN, Pro Se
13 718-A Iredell Street
Durham, North Carolina 27705

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P R O C E E D I N G S

CHAIRMAN KELLEY: We have three pending matters that we want to speak to this morning. We have in mind the motion to reopen on contention 1. Secondly, ~~a~~ based on ^{or} we'll be growing out of, in one way or another, the Jan Vo ^{the late} affidavit, ~~of mixed~~ ^{Mr} contentions from Eddleman and from ^{Mr} Runkle for CCNC; and finally, we have a motion from the Applicants that Mr. Eddleman be required to further specify his ^T EDI diesel contention^s. We can also discuss other matters the parties want to raise, but those are the main things that we want to speak to this morning.

We are prepared to rule on most aspects of the matters I just referred to. There are a few aspects relating really to the contentions where we had some questions that were not -- we want to get some further information before we ^{make rulings.} ~~did that.~~

I might just add that in the past, since the transcript of this telephone conference will include decision^s by the Board, we will review the transcript, will do any editing that's necessary to correct or perhaps add or subtract or modify what we said in the transcript, but the transcript, with such amending as turns out to be necessary, we'll then Xerox and serve on the parties.

We want to turn first to the motion to reopen joint contention 1. This was a motion that was filed by

1 Mr. Runkle on the 13th of November. We subsequently
2 received responses from the Staff on the 28th, from the
3 Applicants on the 30th, both the Staff and the Applicants
4 opposed.

5 Motion has essentially two main aspects. First it
6 seeks to reopen contention 1 in order to receive Mr. Van
7 Vo's affidavit and also ⁱⁿ expectation that we'd subsequently
8 hear Mr. Van Vo's testimony, and then the second part has
9 to do with the Board admission of some material produced
10 by the Staff in response to FOIA requests.

11 Turning to the first part, the Van Vo affidavit ~~of~~ and
12 proposed testimony -- sounds like some sort of major
13 construction project is going on in this telephone call.
14 Can everybody still hear me?

15 (Discussion off the record.)

16 CHAIRMAN KELLEY: We are denying this aspect of
17 the motion to reopen, call it the Van Vo aspect. In the
18 first place, I agree with the opposition pleadings, it's
19 not timely. Mrs. Flynn, at pages 8 ^{to} and 10 of her
20 pleadings, lays out the facts indicating that this matter
21 could have been raised back at the hearing itself. It's
22 clear that Joint Intervenors had knowledge at that time of
23 the substance of Mr. Van Vo's allegations. The fact ^{that} they
24 didn't have his affidavit in hand, it seems to me, is not
25 crucial.

1 There was a suggestion that it was not advanced earlier
2 because there was a question whether Mr. Van Vo would be
3 available as a witness. [This is inconsistent with
4 Mr. Eddleman's statements he would be available as a
5 witness made at transcript 5317.] * Furthermore, Mr. Van Vo
6 was going to the Department of Labor as essentially a
7 whistleblower, and we find it hard to understand that a
8 whistleblower would not be available to blow a whistle in
9 an NRC proceeding. Something of a contradiction in terms.
10 We see no reason why this was not raised back in September
11 or prior to hearing, and we see it as late now.

12 Beyond that, we ~~would suggest that~~^{deny this} part of the motion
13 for the reason that the matters Mr. Van Vo alleges in his
14 contention are, we think, marginal at best as far as the
15 management issue is concerned. We won't say it's
16 inconceivable, but it's certainly unlikely that those
17 matters, if true, would affect the outcome on that
18 particular issue.

19 What the affidavit does show is that Mr. Van Vo had
20 access to the top levels of management, namely Mr. McDuffy
21 and Mr. Utley. ^{That,} ~~and~~ if anything, favors the Applicants'
22 position. Exactly what got said between Mr. Utley and
23 Mr. McDuffy and Mr. Van Vo is in and of itself, we also
24 think, not very significant.

25 Also not clear to us is that Mr. Utley's testimony was

* The sentence in brackets was later acknowledged
by the Board to be incorrect. T. 7301

1 contradicted by what Mr. Van Vo says in his affidavit. We
2 were told by counsel that at the time Mr. Van Vo saw
3 Mr. Utley, Mr. Van Vo presented him with his term paper
4 from his course in management, ~~with~~ the idea of Mr. Van Vo,
5 in his position, telling Mr. Utley how to run his company,
6 ~~If~~ it shows anything, ~~it~~ shows lack of judgment by Mr. Van
7 Vo, certainly not lack of management by Mr. Utley.

8 Beyond that, Mr. Van Vo alleges various particular
9 ~~QA~~ ^{There was} matters. ~~had~~ some discussion at the hearing about
10 the significance of QA construction at the Shearon Harris
11 operating license proceeding, and a management contention
12 that essentially alleges a lack of management capability
13 to operate the facility; and we said in that connection
14 that we regarded ~~that~~ particular instance of ^{construction} QA problems
15 at Shearon Harris ^{as} of secondary importance.

16 Once again here, Mr. Van Vo's allegations do not in our
17 view go to the heart ^{of the} ~~that~~ management's contentions -- ~~The~~
18 management's contentions, as we all know, focuses on
19 basically the track record of the ^{operating} ~~other~~ facilities not the
20 construction of Shearon Harris, ^{it} so seems to us, by way of
21 summary again, that the Van Vo affidavit has only marginal
22 significance, even if true, with respect to that contention.
23 We are not reopening for that purpose.

24 The second part of the motion on contention 1 asks that
25 certain covering letters and indices by which the Staff

1 transmitted some papers to Mr. Eddleman in September and
2 October, be admitted for a limited purpose; namely, to show
3 that the papers listed in those indices exist. I think
4 the short answer is this motion is late. We had a due
5 date of November 5 for matters produced or released ~~from~~ in
6 September and October. That includes the cover letter and
7 the index, and we were given no persuasive reason why this
8 shouldn't have been filed by what we regard as the
9 deadline. That's the short answer.

10 The somewhat longer answer, perhaps, is that the
11 document is not disputed as far as we can tell by anybody.
12 Mr. Runkle in his pleadings says: "~~Move at this time to~~
13 ~~admit attachment 2 and 3 into the record for the limited~~
14 ~~purpose of showing this material exists and was not~~
15 ~~introduced.~~"

16 "We'd move at this time to admit attachments 2 and 3
17 into the record for the limited purpose of showing this
18 material does exist and was not destroyed as Counsel for
19 NRC Staff Charles Barth and NRC Staff witness Paul Bemis
20 led the Board to believe."

21 What is missing at the end of that sentence is any
22 transcript citation, particularly when ^{we're} ~~they're~~ being asked
23 to do something and something happened in the case ^{to be} ~~to be~~
24 pointed to ^{as} the reason ⁻⁻ we're entitled to a transcript
25 citation.

1 There's no showing here that Mr. Barth and Mr. Bemis
2 said anything of the sort, and they in effect deny it.

3 I might just add that transcripts have been made
4 available throughout this case. Mr. Eddleman has been
5 borrowing them on a regular basis, and we just don't see
6 any reason why transcript citation couldn't have been
7 provided, so we're denying the motion to admit 2 and 3 to ^{Attachments}
8 the Joint Intervenor's motion.

9 The other thing I would like to mention in this
10 connection is that there is a pending appeal, as you all
11 know, from the Staff denial of several other papers
12 underlying the review, ^{SALP} to Mr. Dirks^c, the Executive Director
13 of Operations, and that was the subject of some discussion
14 at the hearing, and Intervenor's initially wished to have
15 as I recall, the deadline for findings put over until that
16 appeal has been resolved, and the Board did not take that
17 approach. We ~~did~~ set the date that we set, ^{but} we did say
18 that we would write a letter to the Executive Director of
19 Operations and ask him to expedite the appeal. The
20 ~~appeals Board~~ -- ^{if anything is} hopefully, ~~it's~~ going to be released -- ^{it}
21 will be released before the findings are due.

22 Let me just report, in that regard, ~~that~~ what I have
23 done on behalf of the Board; I telephoned Mr. Rehm, Thomas
24 Rehm, Assistant ^{to the} Executive Director of Operations. Mr.
25 Rehm is responsible, among other things, for seeing that

1 matters ~~get~~ progressed in an expeditious fashion in that
2 particular office, and I told him that we would appreciate
3 it if this particular appeal could be resolved as soon as
4 possible because it was desired on the part of the parties
5 to refer to the documents, if any were going to be released,
6 and he was receptive to my ~~question~~ ^{request}.

7 He called me back and indicated there was some
8 difficulty with rounding up the papers and I didn't get
9 into the details of that with him. The main message I
10 want to send is that the Board did contact Mr. Rehm in
11 this regard. He did tell me that he was going to do his
12 best to get the matter resolved as soon as possible, and
13 hopefully in the next week or two. I hope that proves to
14 be the case. I don't think that writing a letter on top
15 of that is really going to serve any useful purpose.
16 ~~Therefore,~~ ^{don't intend to} ~~After some requests, we won't~~ do that, but we wanted to
17 report what we had done along that line.

18 Now, the Board has discussed how this all works out.
19 From our standpoint, ^{it} seems to us that the time for filing
20 findings on contention 1 and others ^{contentions} should stay where it
21 is and not be altered ^(because of the FOIA appeal) ~~on this basis~~. If there is action
22 on the appeal very soon, and ^{there is} ~~that's~~ time enough to
23 incorporate whatever papers are released into the record,
24 that's fine. If not, and some papers are released
25 following the deadline for filing findings, then we would

1 still receive or be open to receiving a motion, a prompt
2 motion, from the Intervenor, moving that these documents
3 be in the record, and at the same time proposing any
4 findings that you want to make with reference to those
5 papers, but that is where we think it best to leave the
6 matter at this time.

7 MR. EDDLEMAN: Judge, may I just comment on one
8 thing? I believe you referred earlier to one of my
9 statements about Mr. Van Vo's availability. I believe
10 that was after the 22nd of October when his affidavit was
11 released that I spoke to his counsel and he said he would
12 be available.

13 CHAIRMAN KELLEY: I believe that's not correct,
14 and I'll look it up.

15 MR. EDDLEMAN: I may be wrong.

16 CHAIRMAN KELLEY: 5317. Just a minute.

17 MS. FLYNN: 5316 and 17. There's some
18 discussion --

19 CHAIRMAN KELLEY: Oh, about Van Vo and you say
20 at the top of 5317, October 24 -- I'm sorry, what date did
21 you say it was?

22 MR. EDDLEMAN: I said after the 22nd, Judge.

23 MS. FLYNN: I don't think that's the point. The
24 point was that Mr. Eddleman's statement that he would be
25 available preceded by some time Mr. Runkle also stating

1 that he didn't know until the case was settled whether or
2 not Mr. Van Vo would be available, and the case of that
3 issue wasn't settled until after the October 25th, so
4 that's not really the crucial point.

5 MR. EDDLEMAN: I just wanted to make sure when
6 it was that I was quoted. If it was the 24th, I believe
7 that's correct, Judge.

8 CHAIRMAN KELLEY: Yes, it was. After the close
9 of the management hearing, which you're point is well
10 taken. Doesn't change the result as far as we're
11 concerned, but your point is well taken.

12 MR. EDDLEMAN: Thank you.

13 CHAIRMAN KELLEY: Right. We would like to turn
14 next to the pending contentions that arose out of Mr. Van
15 Vo's affidavits, ~~and the most useful I discussed as we~~
16 ~~raise them~~ in the following order. First we'd like to
17 talk about Mr. Eddleman's contentions 41-D, 41-E and 41-F.
18 We believe that these three contentions are unduly broad,
19 that they lack specificity and they are rejectable on that
20 ground, and we do reject them on that ground.

21 As to -- those are 41-D, E and F. I would simply note
22 that 41, we just got through trying, is a pipe hanger
23 contention, and 41-D is lacking in specificity, goes to
24 any safety-related equipment, not specified. 41-E in some
25 respects appears to be a restatement of what we understood

1 41 to be about. ^{it} talks about pipe hangers, ^{till} insulation, ^{inspection} inspection
2 which is exactly what we spent several days talking about.
3 We see that as, one, lacking in specificity, and two,
4 pretty much of a retread of old 41. 41-F simply alleges ^{that} that
5 QA concerns are not documented properly, ~~in most of the~~
6 cites ⁷ most of the Van Vo affidavit, and says the
7 violations mean that ^{we} safety and quality of Harris
8 ~~conditions~~ ^{cannot} be established. If that isn't the broadest
9 contention I've ever read, it's awfully close. ^{It has} ~~seems to~~
10 have no specificity at all, and it is rejected.

11 41-H I'll mention next. ^{This is} Essentially what we might
12 characterize as a "structural" QA complaint, ⁱⁿ that ~~it~~ ^{it} says goes
13 to the way the ^{QA} function is organized. We don't really see
14 why, based on the documentation of the QA ^{program} that's been on
15 file for some years, this contention couldn't have been
16 raised earlier. The Applicants make the point at pages 34
17 through 36 of their pleading, and what they're basically
18 ~~saying~~ ^{has been documented and} making there is that this ~~is~~ a concern of IAE over some
19 long period of time. ~~IAE reports that related to~~ just a
20 moment.

21 The Applicants' basic point is at 35, ^{It} says the concern
22 was raised ^{by I and E} much earlier than the Van Vo affidavit, ~~but~~ we
23 think there's a lack of good cause with respect to 41-H,
24 ~~so much so~~ that it's rejectable on that ground, and it is
25 rejected.

1 Those four Eddleman contentions, 41-D, E, F, and H,
2 were rejected for the reasons given. That leaves two
3 Eddleman contentions, and then Mr. Runkle also, two
4 contentions for CCNC that we want to address and ask some
5 questions about. 41-C, Eddleman 41-C, and Mr. Runkle's WB --
6 could you tell us what that stands for?

7 MR. RUNKLE: I wasn't sure what number I was on,
8 so that was for whistleblower.

9 CHAIRMAN KELLEY: WB-1 ^{and 41-C} ~~those~~ allege
10 falsification of documents on material traceability. That
11 would appear to be sufficiently specific allegation. The
12 Applicants argue there were ^{and} IVE reports on materials
13 traceability that have been available for some time, ^{which} goes
14 to good cause.

15 Let me ask, Mr. Baxter and Mr. O'Neill, whichever one
16 is appropriate, these ^{and} IVE reports that you refer to
17 ~~starting with~~ ^{collecting} material traceability, did they speak to the
18 allegations of falsification of those records?

19 MR. O'NEILL: Judge, not so much falsification
20 with respect to out and out, with malice aforethought
21 falsification of records. It's not clear to me that the
22 Van Vo affidavit, which is the basis for that contention,
23 goes to that proposition either.

24 CHAIRMAN KELLEY: That's a separate point, I
25 understand that, but the contentions use the word

1 "falsification"; 41-C does, and I believe WB-1 does too.

2 So are those voluminous INE Reports, Mr. O'Neill?

3 MR. O'NEILL: They are among the reports that I
4 handed out at the hearing.

5 CHAIRMAN KELLEY: The ones you're referring to
6 we should have?

7 MR. O'NEILL: Yes.

8 CHAIRMAN KELLEY: Okay, that's helpful.
9 Mr. Eddleman, you have any comment on the Applicants'
10 argument that you lack good cause because 41-C is
11 something you could have raised before on the basis of INE
12 Reports?

13 MR. EDDLEMAN: I think Mr. Van Vo's information
14 about the way in which this nonexistent order was
15 repeatedly used is something that might have been
16 difficult to raise earlier. I think the sort of pattern
17 of problem that he alleges from his inside perspective was
18 not a public record until he made his affidavit available.

19 CHAIRMAN KELLEY: Well, what part of his
20 affidavit do you point to for falsification? I read the
21 paragraphs you cite and frankly had trouble finding it.
22 1716, 3, has^{ve} absolutely nothing to do with falsification.

23 MR. EDDLEMAN: I don't have the thing in front
24 of me. My recollection is when he talks about the use of
25 the nonexistent purchase order number that he mentions,

1 that ~~the~~ first they traced it and found that the purchase
2 order in fact had been voided out and then they found that
3 that same purchase order had been referred to for
4 materials for other hangers.

5 CHAIRMAN KELLEY: Doesn't come out and say
6 "falsified"; does he?

7 MR. EDDLEMAN: On it's face -- if you put down a
8 purchase order that doesn't exist as a basis for materials
9 and say that that's been checked and you know that's where
10 those materials came from, then that's falsification
11 because the document does not exist and he says that.

12 CHAIRMAN KELLEY: Anything else that you point
13 to, Mr. Eddleman, other than the Van Vo affidavit as the
14 reason for raising this matter at this time?

15 MR. EDDLEMAN: No, sir.

16 CHAIRMAN KELLEY: Okay, turning to Mr. --
17 Mr. Runkle, we were talking about those 41-C and your WB-1;
18 they seem to be essentially similar. Is there anything
19 you want to add on the point we have been discussing?

20 MR. RUNKLE: My reading of the Van Vo affidavit
21 is the use of purchase orders that have been -- were not
22 existent or had already been voided. That's what the word
23 "falsification," that was what he was referring to.

24 CHAIRMAN KELLEY: Okay.

25 MR. RUNKLE: I have nothing more than that to

1 add.

2 CHAIRMAN KELLEY: What we're really focusing on
3 here is good cause and I think we've heard something from
4 all interested parties. Staff have anything to add on
5 that?

6 MR. O'NEILL: No, your Honor, we abide by our
7 comment which remained on page 7 of your response. We do
8 not find anything alleging falsification by Van Vo.

9 CHAIRMAN KELLEY: Okay, turn to 41-G contention,
10 "the pattern of harassment, intimidation, failure to
11 respond," ^{and} so forth. I understand that Applicants settled ~~the~~
12 for Van Vo's Department of Labor complaint with Mr. Van Vo;
13 is that correct?

14 MS. FLYNN: Yes.

15 CHAIRMAN KELLEY: That was a complaint that
16 proceeds under a rather narrow, ^{statute and} ~~patchy~~ set of rules
17 designed to protect whistleblowers, as we understand it,
18 and indeed, when ^{the DOL} ~~Lydia Wells~~ initially responded in a
19 negative way to Mr. Van Vo by ~~her~~ saying they could not
20 substantiate his claim, what they could not substantiate
21 was any nexus between his activities and participating in
22 a NRC proceeding or informing the NRC; so I for one was a
23 little surprised that you settled such a claim. ~~May be~~
24 ~~that~~ ^{we} don't know what the terms of settlement were, ^{if it were}
25 simply ^{based on} ~~settlements~~ ^a ~~that what is~~ the cost of ^a ~~hearings~~, that

1 would be one thing, but we don't know anything about it,
2 and frankly ^{the settlement} raises the question in my mind as to what are
3 the merits of this complaint that's been settled.

4 Could you give the Board some information about the
5 terms of settlement?

6 MS. FLYNN: Yes, I can. During the last day of
7 the safety hearing, I addressed to some extent this matter
8 and I mentioned there that for purely practical
9 considerations that the Company had settled it but that
10 Mr. Van Vo was entirely free as was the Company and should
11 participate fully in the NRC's investigation of the
12 allegations raised in Mr. Van Vo's affidavit, so that is
13 ongoing on its own track and hasn't been at all interfered
14 with.

15 The agreement that was reached between Mr. Van Vo and
16 CP&L on the Department of Labor and from EEOC claim that
17 he had is available to the Board if it would help the
18 Board to fully understand, if the Board's belief is that
19 it's necessary to have a proper understanding of this. I
20 think that given what you said that you've indicated that,
21 and we'd be happy to make a copy of the agreement
- 22 available to the Board, so that you could see precisely
23 what the terms are.

24 CHAIRMAN KELLEY: We'd like to have a copy.

25 MS. FLYNN: Fine.

1 CHAIRMAN KELLEY: I assume there was a money
2 settlement in connection with that?

3 MS. FLYNN: That's correct.

4 CHAIRMAN KELLEY: Does the agreement ^{re} cite the
5 amount?

6 MS. FLYNN: Yes.

7 CHAIRMAN KELLEY: If you'd provide us with a
8 copy, we'd appreciate that.

9 MS. FLYNN: All right.

10 MR. O'NEILL: Judge, I can only make one comment.
11 We have handled a number of those claims in this office.
12 They tend to be rather expensive to litigate. No matter
13 what the merits.

14 CHAIRMAN KELLEY: Whatever you have by way of
15 explanation, you're free to ~~de-se.~~ offer.

16 MS. FLYNN: Thank you.

17 MR. BARTH: Mr. Kelley, are you requesting that
18 the settlement agreement be served on all the parties and
19 the Board and the whole service list?

20 CHAIRMAN KELLEY: Is there any objection to ^{not} ~~just~~
21 serving the service list?

22 MS. FLYNN: It would be preferable; there's a
23 nondisclosure term in it and it says that except as
24 required by this Board or some other government agency,
25 and so for that reason, at least at present, I think that

1 to honor the terms of that agreement it should be limited
2 to the Board at this moment.

3 MR. BARTH: That's why I raised the question.
4 We do have the ex parte rule in effect, and I think we
5 might get around that if everybody agrees to that. I'm
6 agreeable that the Board only be served with a copy at
7 this time so if it becomes a problem later we can face it
8 later.

9 MS. FLYNN: I wanted to add I believe that that
10 would serve Mr. Van Vo's interests as well.

11 CHAIRMAN KELLEY: Let's go around. If it's okay
12 with the parties, I assume it's okay with the Board, but
13 Mr. Eddleman, is that all right with you?

14 MR. EDDLEMAN: I have the following problem with
15 that. I don't want to compromise any of Mr. Van Vo's
16 rights or interests or legitimate interests of the power
17 company. The problem I have is the power company's
18 attorneys know what's in this agreement. If they want to
19 make arguments, they can, and I'm not in a position to
20 examine or refute or respond to them in any realistic way
21 because I don't have access to the documents. I would
22 agree to receive the document under a -- you know, a
23 protective order or something like that, but I want to be
24 able to make arguments back on it if the Applicants are
25 going to make arguments on it.

1 MS. FLYNN: Applicants wouldn't be making any
2 arguments on it. The Board said we could offer an
3 explanation of the Company's motivation in settling. That
4 has nothing to do with --

5 MR. BARTH: But Mr. O'Neill just said these
6 things tend to be expensive to litigate. How much does
7 that come to and how much was the settlement? Those
8 things are crucial to that argument.

9 CHAIRMAN KELLEY: We understand Mr. Eddleman's
10 point. For the moment, Mr. Eddleman is on record as
11 wanting the document or objecting to it. Let's just check
12 the others. I don't see any reason why Dr. Wilson needs
13 it, for example. What about Mr. Runkle?

14 MR. EDDLEMAN: There was one paragraph in the
15 settlement agreement that was for public dissemination,
16 and I have seen that paragraph: There was one paragraph
17 in the settlement agreement that's in quotes that was
18 allowed by both parties to be used for public
19 dissemination. I have seen that paragraph, obviously, and
20 it does not include the settlement agreement. I would be
21 willing also to get it under some kind of protective order,
22 not for public disclosure.

23 CHAIRMAN KELLEY: In view of the fact that we're
24 talking about Mr. Eddleman's intimidation contention and
25 not ~~wanting~~ yours, I don't know why you need to know about

any contention of

1 it.

2 MR. RUNKLE: That was what we were discussing,
3 both contentions.

4 CHAIRMAN KELLEY: We're on 41-G and Mr. Runkle
5 does not have a corresponding or similar contention, so
6 that's all we're talking about.

7 MR. EDDLEMAN: Only reason we're interested in
8 this settlement is with the intimidation allegation.

9 MR. JONES: If you're going to serve us with
10 this, I don't need a copy of the settlement.

11 CHAIRMAN KELLEY: Why do you need it, Mr. Runkle?

12 MR. RUNKLE: If you're going to be -- I would be
13 willing --

14 CHAIRMAN KELLEY: We're certainly not going to
15 do that. We've established that. What we're trying to
16 do -- the proposition to us is: Give it to the Board and
17 nobody else. I'm trying to find out who in addition to
18 the Board really wants this and needs it. That's all, and
19 my question to you is: why do you need it? You don't
20 have a contention along those lines.

21 MR. RUNKLE: I really don't know why I would
22 need it. I haven't seen it yet.

23 CHAIRMAN KELLEY: Okay, seems to the Board the
24 Board has an interest and a need to see the document, and
25 we'd like to see it. We're willing to take it under the

1 understanding that we would simply see it ourselves and
2 keep it confidential to ourselves, at least pending
3 further discussion with the parties.

4 Mr. Eddleman, his contention is that it's relevant to
5 ~~this particular point~~ ^{his Contention 41-G}; he's willing to take it under, ~~I~~
6 ~~believe an understanding that~~ ^A under protective order.
7 ~~in essence~~. Anybody else? Staff says they don't
8 need it. How about Mr. Eddleman taking it under a
9 protective order, Ms. Flynn?

10 MS. FLYNN: If the Board believes that it would
11 be useful to him that certainly seems fair.

12 VOICE: I would suggest that we can live by the
13 terms of the agreement if you direct it to you and to
14 Mr. Eddleman under protective order.

15 MR. O'NEILL: I don't see any problem with it.

16 CHAIRMAN KELLEY: The approach we'll take is
17 that we'll issue a separate order apart from this
18 transcript. It will probably be in the transmittal with
19 the transcript that says we're directing you to turn over
20 a copy to the Board and to Mr. Eddleman under protective
21 order and we'll have a protective order to cover that.
22 Okay?

23 MS. FLYNN: Yes, thank you.

24 MR. O'NEILL: Thank you, Judge.

25 CHAIRMAN KELLEY: Mr. Jones, the Staff I believe

1 was investigating Mr. Van Vo's concerns.

2 MR. JONES: That's correct.

3 CHAIRMAN KELLEY: Where does that stand?

4 MR. JONES: I think we've committed that we'd
5 have the report out before Christmas, and I think we're
6 still on that schedule. I know of no delay.

7 CHAIRMAN KELLEY: Thank you. Mr. Eddleman, with
8 regard to your contention 41-G, the harassment contention,
9 if you will, ~~I have spoken to this and probably in~~
10 ~~earlier, but~~ if that contention were admitted, could you
11 give us an indication of as to what you think you could
12 contribute to a sound record on the matter, and I raise
13 the question because it's the kind of contention that
14 would require a fair amount of time and effort on your
15 part. Are you teaching next semester?

16 MR. EDDLEMAN: My teaching schedule for the
17 current semester -- we're on a trimester system, consists
18 of one class meeting two times a week. I blocked out the
19 time for the emergency planning hearing, which was
20 postponed, and so I don't have any significant
21 responsibilities there.

22 CHAIRMAN KELLEY: What's the timeframe there,
23 roughly, you're talking about?

24 MR. EDDLEMAN: This would be from now through
25 the end of February, early March, and then the third

1 trimester my schedule is not set at all. Right now I'm
2 not formally committed to doing anything there, so if it
3 were necessary, I could free up all that time.

4 Let me think. Anyway, what I'm saying is I would have
5 substantial amounts of time available to work on this
6 myself, and I would also see, if this contention were
7 admitted, the ^{assistance}~~substance~~ of people like the government
8 accountability project and so on to pursue discovery and
9 to try to bring out concerns that people had about this.

10 CHAIRMAN KELLEY: My main question you answered, ^{which}
11 was that you would have some time consistent with your
12 schedule if this were admitted?

13 MR. EDDLEMAN: Yes.

14 PRESIDING JUDGE: Let's turn to WB-2,
15 Mr. Runkle's second contention. This goes to the steam
16 generator feed water pump, sometimes called coldspringing
17 the pipe. When we -- we have received in that regard
18 Applicants' opposition ^{and} Staff's opposition ^{during} ~~with regard to~~
19 the hearing. We then later did get an affidavit from
20 Mr. Runkle enclosing the supplemental affidavit from
21 Mr. Van Vo on this subject, and then yesterday I believe
22 we got further affidavits from Applicants ^{attached} ~~in answer~~ to
23 Ms. Flynn's pleadings which gave further information about
24 the significance of this particular pipe and pump. And
25 the Board's reaction to the information we got ^{at the hearing} ~~in the~~

1 ~~sense opposition or rather in~~ the Applicants' ^{initial} opposition
2 and the Staff's opposition ^{-- that it was} was not very helpful ~~in this~~
3 ~~regard~~ because it was essentially ^{conclusory} ~~foreclosure~~, simply asserted
4 that the pipe and pump ^{in question} were not safety systems.

5 ~~Why isn't it a safety system? Doesn't say why it was~~
6 ~~called a safety system or what it does. They said, don't~~
7 ~~worry, it's not a safety system. That didn't help us very~~
8 ~~much.~~

9 We got back then from Mr. Van Vo an affidavit saying --
10 they call it a safety system, it must be a safety system, --
11 and given what he has ^d to shoot at, you can't expect him to
12 say a great deal more.

13 We then got ^{a pleading} ~~to these affidavits~~ from Ms. Flynn, and it
14 included the affidavit of Richard E. Lumsden. And Richard
15 E. Lumsden explained what the pipe does, what the pump
16 does, and why they call it what they call it in a fairly
17 helpful way.

18 Our tentative inclination at this point, based on
19 Mr. Lumsden's affidavit, ^{is to} ~~was it~~ concludes that the safety
20 significance of this particular system is so slight that
21 it doesn't warrant Board scrutiny, and we'd exclude it on
22 that basis. However, we didn't get, until we heard from
23 Mr. Lumsden ~~again~~, ^a ~~the~~ satisfactory explanation of the
24 whole thing. And the question is whether Mr. Runkle, Mr.
25 Van Vo, whether they have anything to say ^{or} whether they

1 wish to ~~interject or~~ question what Mr. Lumsden says, ~~in~~
2 ~~light of what we now have before us.~~

3 Mr. Runkle, ^{do} you want to pursue this question further
4 with another affidavit? Do you think you have a basis for
5 contradicting Mr. Lumsden?

6 MR. RUNKLE: I have not received a copy of
7 Mr. Lumsden's affidavit. I'm not sure what's in it. I
8 would like an opportunity to review it and also have Mr.
9 Van Vo, who I would leave the decisions to, ~~and~~ chance to
10 view the affidavit.

11 CHAIRMAN KELLEY: Presumably you'll get a copy.
12 I don't know why you don't have one yet. Presumably
13 you'll get a copy of the document.

14 MS. FLYNN: I think it was served on Friday.

15 CHAIRMAN KELLEY: You don't have the papers?

16 MR. RUNKLE: I have not been in this morning.
17 It could have come in this morning.

18 CHAIRMAN KELLEY: In any case, you'll find an
19 affidavit from Richard E. Lumsden explaining that this
20 isn't a safety system and why.

21 MR. RUNKLE: All right.

22 CHAIRMAN KELLEY: How much time -- if you would
23 like an opportunity to review this and have Mr. Van Vo
24 look at it, ^{To} see whether you want to respond to it, how
25 much time do you think you would need?

1 MR. RUNKLE: My biggest problem this week and a
2 half is I have two hearings down on the coast, one this
3 Thursday and Friday and one next Wednesday and Thursday.
4 That's about as far as we got.

5 CHAIRMAN KELLEY: Can you pick up slowly there,
6 Mr. Runkle?

7 MR. RUNKLE: I'll try, judge.

8 CHAIRMAN KELLEY: Occurs to me that what you
9 would need to do, ^{is} get a copy of the affidavit to Mr. Van
10 Vo, ^{and let him} ~~see~~ read it, ^{to} see whether he's got anything to say in
11 response.

12 MR. RUNKLE: Exactly.

13 CHAIRMAN KELLEY: That's just a phone call,
14 isn't it; or an envelope?

15 MR. RUNKLE: Yes.

16 CHAIRMAN KELLEY: If you could get that to him
17 in the mail this week, he should know next week whether
18 he's got anything more to say. What about -- just a
19 minute.

20 Your findings on the safety contentions are due the
21 21st; is that correct?

22 MR. EDDLEMAN: No, that's Applicants'.

23 CHAIRMAN KELLEY: Okay, never mind. Then --
24 well, even so, Mr. Runkle, if you want to file an
25 additional affidavit from Mr. Van Vo, ^{concerning} ~~protecting~~ the

1 safety status of this system, especially the Lumsden
2 affidavit, have it in the mail by the 21st.

3 MR. RUNKLE: Yes.

4 CHAIRMAN KELLEY: That brings us then to the
5 motion by Mr. O'Neill on behalf of the Applicants
6 regarding the EDI diesel contention. I don't recall -- as
7 Mr. O'Neill recites, we received a group of contentions
8 from Mr. Eddleman about a year ago, and notably numbers 178
9 and 179. We said that they weren't untimely as far as we
10 were concerned but otherwise we were going to defer a
11 ruling essentially because that was a complex unfolding
12 situation. It seemed to us more sensible on the whole to
13 wait until the situation were considerably clearer than it
14 was at the time, and it was also our feeling, as we said
15 then and later, that the contentions 178 and 179 focused
16 really on very generic issues, having to do with the
17 manufacture of those machines and not addressing directly
18 the merits or demerits of the particular diesels that were
19 going to be used at Shearon Harris.

20 The background is pretty well recited by Mr. Beeman,
21 his discussion at the transcript 6843 through 46, the
22 recitation of background is helpful. Beginning on 6847
23 and through 6848, Mr. O'Neill makes a motion and in that
24 context I'll just read that again. I'm now quoting
25 Mr. O'Neill from at this point 6847, picking up in the

1 middle of the page, line 12.

2 ^{By} Reviewing the phase 1 documents that Mr. Eddleman has
3 and the SER, ^{with} this commitment ^{to} meets all the requirements in
4 the SER, Mr. Eddleman is now in a position to know
5 essentially all of the details of Applicants' programs to
6 insure the reliability of the ^TEDI diesels.

7 Furthermore, Applicants continue to extend the offer
8 that we previously made Mr. Eddleman to discuss the
9 results of inspections to date and the details of the
10 program and attempt to satisfy him that the program is
11 adequate. We previously extended this offer to him and
12 due to his schedule we've not actually yet had such a
13 meeting but we'd be happy to do that.

14 "In ^{light} ~~spite~~ of this information, Applicants propose the
15 following in the form of a motion as to how this Board
16 should deal with the contentions.

17 ^{we} ~~I~~ believe that sufficient information is now available ⁱⁿ
18 ^{under} ~~for~~ the Board and ^{for} Mr. Eddleman to make some determination
19 as to where we should go with the previously filed rather
20 generalized generic contentions.

21 "We would move that Mr. Eddleman have 30 days from the
22 date of conclusion of this hearing within which to draw, ^{withdrawing} ~~ground~~
23 ^{or revoke} ~~h~~ contentions 178 and 179 and at that time also make the
24 required showing pursuant to 10 CFR section 2.714A.

25 "In ^{light} ~~spite~~ of the information now available in the

1 owners group program plan and the SER that demonstrates
2 that there's a way of insuring reliability of the ^TEDI
3 Diesel^s, even with the admitted problems with the QA at the
4 manufacturing facility, we believe that Mr. Eddleman now
5 has the burden to place ^{and} a contention ^{that finds fault} in that program, ^{and} not
6 just to generally say there ^{has been} was some problems with QA of
7 the diesel generator^s at the manufacturing site."

8 That's the close of what I'm quoting, but that's the
9 essence of the Applicants' motion. We have received a
10 ^{supporting} ~~supported~~ document from the Staff urging us to grant this
11 motion with a somewhat different deadline for filing but
12 essentially taking the same position.

13 We received a pleading from Mr. Eddleman who ^{supported the} ~~proposes~~
14 motions, and the thrust of his opposition is that he still
15 doesn't have enough information about the results;
16 particularly ~~in other~~ data peculiar to Shearon Harris. He
17 is also dissatisfied with the ^{FOIA} responses he ^{has} ~~gets~~ received
18 (or not received) from the staff on the general subject.

19 The Board agrees with the Applicants' motion and we're
20 going to grant it for the reasons we ^{will} give and also subject
21 to a couple of ^{conditions} ~~positions~~ that we ^{will} state. It does seem to
22 us that there's now adequate information ^{available} to frame a
23 specific contention ^{about the Harris Diesels} ~~that he may wish to frame~~.
24 ^{Some of this} ~~Information that~~ ^{has} been pointed to by Mr. O'Neill, already
25 ~~is indeed available~~ Mr. O'Neill in ^{a July} ~~fact~~ the 31st laid

1 out the ^{for} basic program ^{Harris} qualifying the ^{the owners' group} diesels.
2 We then ^{received} ~~have~~ from the staff an SER on ~~that~~ program. We
3 ~~have~~ received the other day, and all parties will get it,
4 In addition, some information about very similar diesels
5 that are further along in qualifying than are the diesels
6 ^a with Shearon Harris, and I'm referring to Grand Gulf, ^{Catawba} and
7 Comanche Peak. Those ^{plants} also involve the DSRV-16 diesel
8 engines.

9 The Applicants included in their packet of the other
10 day attachment 5. The thing that stands out from the
11 Applicants' attachment 5 is that the diesel engines for
12 Shearon Harris are going to be required to carry a smaller
13 load than the diesels that are going to be used at those
14 other three facilities, as far as we know, otherwise,
15 those machines are virtually identical, so there's an
16 element of conservatism and safety built into the Shearon
17 Harris diesel. Beyond that, ~~so far we've referred to~~
18 ~~quite a bit of specific information about the diesels.~~
19 ~~They are going to be used at Shearon Harris.~~

20 We might just note that there has now been quite
21 extensive litigation of the ^TEDI diesel^s at Shoreham. Let
22 me flag the fact that those engines are designed
23 differently and a lot ^{of that record} may be irrelevant, but a lot may be
24 relevant. That's on ^{the} public record for anyone that wants
25 to read it, so we're living now in a world that's very

to the extent that they now fail to address the essentials of the applicants' proposals. Therefore they are

1 different than the world we were in about a year ago, as
2 far as these machines are concerned.

3 We think ~~it is time~~ ^{if} that there's going to be an
4 on-the-record hearing, scrutiny of the ~~CFD~~ ^{TDI} as to Shearon
5 Harris, ^{that it should focus} on these diesels, and not on events that have long
6 since been ^{events} taken over by other matters.

7 The allegations ^{of contamination} 179 and 178, as they now stand, are
8 essentially irrelevant in our view. What we want to hear
9 about is what's wrong ^{if anything} with the Shearon Harris diesels.
10 With that in mind, we're going to direct that Mr. Eddleman
11 review ^{the presently available} these materials ~~as to the five remaining in the Harris~~
12 ~~contentions in lieu of~~ 178 and 179, under these
13 circumstances ^{contaminated} that have been overtaken by these events ~~are~~
14 rejected. But we're leaving the door open for more
15 particularized contentions.

16 As to time, ~~seems to be~~ originally ~~was~~ proposed by
17 the Applicants, 30 days from the close of hearing and since
18 that's almost here, we think February 1st is sufficient
19 time for the deadline for ^{revised} the revising of any diesel
20 contentions. That takes into account enough time for
21 Mr. Eddleman to do any more reading he may need to do on
22 this subject area and it also will accommodate an
23 opportunity for Mr. Eddleman to sit down with the experts
24 from Shearon Harris or TDI, if they're available, and
25 discuss concerns he may have. And indeed, we're going to

diesels, with a view toward filing more particularized contentions.

1 make it a prerequisite that, given the willingness and
2 availability of the Applicants' people, such a sit-down
3 session take place prior to filing of contentions with the
4 Board by the deadline date of February 1, 1985.

5 We are aware of the fact, obviously, that additional
6 information on these engines will become available after
7 the deadline. ~~The~~ date we're setting. under the
8 Applicants' program runs well into 1985 before all the
9 tests are run and all inspection inspection data is
10 available. It's possible that information surfacing at
11 ~~that~~ ^{prime} later date will afford the basis for some other
12 contentions. We'll cross that bridge when we come to it
13 as we do in any ^{situation} where new information may surface. But
14 based on what's available now, we think the time for
15 particularization is here.

16 We would add in this regard one thing, and this is as
17 important. we did not have from Mr. Eddleman a very
18 detailed showing of his ability to contribute to the
19 record on this issue. We raised the same point a few
20 minutes ago on the subject of ^{his} harassment and intimidation
21 contention, but our operating assumption there is you
22 don't have to be a technical expert to look into
23 intimidation and harassment; if you have the time and will
24 to do so, you can do it.

25 We do not apply that assumption to the integrity of

1 diesel generators. That is a subject we think requires
2 expert assistance. There's case law in the NRC applied
3 most recently in Catawba that I know of to the effect that
4 ~~we've got~~^{we} a subject that requires expert assistance, very
5 simply you^{'ve} got to have an expert if it's a ~~lay~~^{te} contention,
6 as these would be. Therefore, when you file any revised
7 contentions, Mr. Eddleman, if and when you do, it will be
8 incumbent upon you to make a pretty clear showing that
9 you've got somebody who is indeed an expert on the subject
10 and that he will be, he or she will be actively involved
11 in helping you present your case.

12 ~~I would say at a minimum~~ the mere statement that you
13 might get that somebody from Shoreham is not enough. What
14 we need is a statement that says, I've got Joe Smith, an
15 expert, who's going to help me on this contention, resume
16 attached. I talked to Mr. Smith. He's agreed to do such
17 and such and such for me, and he will be available to
18 testify at the hearing. That's what we want to hear. And
19 if we don't hear, if we don't see a clear commitment of
20 expert resources to pursue this contention, then the
21 contention will be rejected because we don't feel anything
22 useful will come out of it, so do bear that in mind and

23 give us a more specific layout than we have ^{in support of}
(contentions 178 and 179).

24 MR. O'NEILL: Judge Kelley, I would like to
25 inform the Board and the parties that we will be filing

1 the phase 2 report earlier than I anticipated in my
2 statement at the hearing, which will advance this progress
3 in this particular drill. The phase 2 report should be
4 filed before the end of December. It will be over four
5 volumes in its length, and I would like at this time -- of
6 course we'll deliver a copy to Mr. Eddleman, to the Board
7 and to the Staff as desired.

8 I would like to ask for a waiver of the requirement
9 that we file with all parties this particular document
10 given it's voluminous length and that the only person who
11 has indicated an interest in the diesel issue was
12 Mr. Eddleman.

13 CHAIRMAN KELLEY: The Board is inclined to grant
14 that request. We know of no one other than Mr. Eddleman
15 who's pursuing the matter. I would think in terms of
16 copies to -- if you send the Board one copy and one to
17 Mr. Eddleman and one to the Staff, unless they want 20,
18 and -- but that's enough I think.

19 MR. O'NEILL: Does Mr. Jones want one in Atlanta?

20 MR. JONES: No, I do not need it.

21 CHAIRMAN KELLEY: Thank you.

22 Now, one other small matter to mention and then we can
23 go back to see if people want to raise questions about
24 what we've done or raise other matters. We can do that
25 too. The small matter is simply this: We had submitted

1 to us, a few weeks ago, a stipulation and proposed order
2 on emergency planning contentions and apparently we left
3 out some language that was needed in our last couple of
4 orders on that subject, and you haven't seen any action on
5 that, but that does not connote that we're having problems
6 with it. It happens that the law clerk that worked on
7 that has been out the last two weeks, and we wanted him to
8 take a look at that before we approved it.

9 We assume you're proceeding on the assumption we'll
10 approve it, but that's where it stands. Ms. Ridgway, I
11 believe, filed that motion. Mr. Baxter might pass that on
12 down there.

13 MR. BAXTER: This is on the codification of the
14 contentions?

15 CHAIRMAN KELLEY: Exactly. You can assume, I
16 think, that that will be granted. It's just that we
17 wanted to check it out with our law clerk, Mr. Crockett,
18 and he hasn't been around.

19 That takes us through our agenda. I guess we've had a
20 few discussions as we've gone along. Let me just go
21 around the table.

22 Ms. Flynn, anything from you?

23 MS. FLYNN: No.

24 CHAIRMAN KELLEY: Mr. Baxter or Mr. O'Neill?

25 MR. BAXTER: No, we have nothing.

1 CHAIRMAN KELLEY: Mr. Barth?

2 MR. BARTH: Yes, your Honor. In regard to the
3 WB-2, the pump, we have not responded to the November 25
4 affidavit. I would like your consent to respond to that.
5 It will be as our response, but the one I have in my hand
6 is a bit more amplified, more detailed, and I would like
7 to put into the record. I'll commit to do that by
8 tomorrow if I have your permission.

9 CHAIRMAN KELLEY: That's fine, and Mr. Runkle
10 will have that. We don't want Mr. Van Vo to have to keep
11 writing affidavits all winter, so he will have that and
12 whatever else he wants to say he can do that after the
13 deadline we talked about.

14 Mr. Jones?

15 MR. JONES: Nothing here.

16 CHAIRMAN KELLEY: Mr. Eddleman?

17 MR. EDDLEMAN: Judge, I would like to ask a
18 question. I believe that if you asked for reconsideration
19 of orders on contentions you normally have to do that
20 within 10 days. I would like to get 10 days from the time
21 that I received the corrected transcript or marked up
22 transcript of the rulings if that's agreeable. I'm not
- 23 saying I will definitely do it, but I would like to have
24 the deadline extended if I need to.

25 CHAIRMAN KELLEY: Any objection?

1 VOICE: Not from Applicants.

2 CHAIRMAN KELLEY: Okay, that's okay. Mr. Runkle?

3 MR. RUNKLE: No, sir.

4 CHAIRMAN KELLEY: Ladies and gentlemen, merry
5 Christmas. We'll send this along shortly.

6 VOICE: If Mr. O'Neill could give me a call
7 about the diesels tomorrow, I would appreciate it. I'm
8 going to be tied up almost continuously.

9 MR. O'NEILL: I'll call you next week.

10 CHAIRMAN KELLEY: Thank you.

11 (Whereupon, at 12:05 p.m., the telephone
12 conference was concluded.)

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