

# ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

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

(Shearon Harris Nuclear  
Power Plant)

Docket No. 50-400-OL

TELEPHONE CONFERENCE CALL

Location: Bethesda, Maryland  
Date: Monday, August 5, 1985

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

5 -----X

6 In the matter of: :  
7 CAROLINA POWER & LIGHT COMPANY :  
8 and NORTH CAROLINA COMPANY : Docket No. 50-400-OL  
9 MUNICIPAL POWER AGENCY :  
10 (Shearon Harris Nuclear Power Plant):

11 -----X

12 4350 East West Highway  
13 Bethesda, Maryland  
14 Monday, 5 August 1985

15 Conference call in the above-entitled matter  
16 convened, pursuant to notice, at 3:00 p.m.

17 BEFORE:

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

20  
21 GLENN O. BRIGHT, Member  
22 Atomic Safety and Licensing Board

23  
24 JAMES H. CARPENTER, Member  
25 Atomic Safety and Licensing Board

## 1 APPEARANCES:

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## 1 PROCEEDINGS

2 JUDGE KELLEY: Let us go on the record.

3 THE OPERATOR: Mr. Baxter?

4 MR. BAXTER: Yes.

5 THE OPERATOR: Mr. Barth?

6 MR. BARTH: Here.

7 THE OPERATOR: Mr. Hollar?

8 MR. HOLLAR: Yes.

9 THE OPERATOR: Steve Bryant?

10 MR. BRYANT: Here.

11 THE OPERATOR: Mr. Runkel?

12 MR. RUNKEL: Yes.

13 THE OPERATOR: Go ahead, please.

14 MR. BARTH: Mr. Kelley?

15 JUDGE KELLEY: Could each of you identify yourself  
16 at the beginning when you speak.17 MR. BARTH: I'm Charles Barth. With me is  
18 Mrs. Moore and Mr. Stuart Treby. Mr. Treby is Assistant Chief  
19 Hearing Counsel and principally for this call he will set  
20 forth what the Staff's position is.

21 JUDGE KELLEY: Okay.

22 And we have Mr. Bryant with us, is that correct?

23 MR. BRYANT: Yes, sir.

24 JUDGE KELLEY: And Mr. Runkel is with us?

25 MR. RUNKEL: Yes, sir.

1 I have also on the line, Wells Eddleman.

2 JUDGE KELLEY: You have got him. Mr. Eddleman, are  
3 you there

4 MR. EDDLEMAN: Yes, sir, Judge, can you hear me?

5 JUDGE KELLEY: Yes, barely

6 MR. EDDLEMAN: I will shout if I have to say  
7 anything.

8 JUDGE KELLEY: Are you on a separate line, or -

9 MR. EDDLEMAN: No. I am on Mr. Runkel's line on  
10 another phone.

11 JUDGE KELLEY: All right.

12 So, I guess that covers the people that we did  
13 attempt to reach, I think.

14 Judges Bright and Carpenter are here with me also,  
15 and we are on the record, ladies and gentlemen. I think  
16 everybody knows everybody else with the exception -- the  
17 Board, at least hasn't met Mr. Bryant face to face yet, but  
18 some of you may.

19 We are on this call this afternoon for the purpose  
20 of having basically some procedural discussion about the  
21 Petition for Intervention filed last week by Mr. Bryant on  
22 behalf of the Attorney General of North Carolina.

23 Did everybody receive that? Anybody who did not?

24 (No response)

25 Okay. Mr. Bryant, let me just ask you first, is the

1 State's interest at least at this point, limited to the WB-3,  
2 the drug use contention?

3 MR. BRYANT: Yes, sir, that's correct, Judge Kelley.

4 JUDGE KELLEY: Okay. I understand. Your Petition  
5 is phrased in general terms, but in the circumstances I rather  
6 assumed that was the case. And we will consider it in that  
7 light.

8 Let me ask the other parties, viewing the States  
9 Petition as a Petition which really was interested in the WB-3  
10 drug use contention, does any party have any objection to that  
11 Petition?

12 Applicants first?

13 MR. BAXTER: Judge Kelley, no, as we read this  
14 section that the State has petitioned under, a state is given  
15 the opportunity to participate and advise the NRC without  
16 taking a position on the issues, and that is what it appears  
17 they have done here.

18 I would note though some concern about the timing of  
19 the Petition. But we assume that the Attorney General is  
20 willing to take the proceeding schedule as he finds it on  
21 entering the case, and that there won't be any delay in the  
22 proceeding as a result of their participation.

23 With those comments, we have no objection.

24 JUDGE KELLEY: Let me just step back a pace, then,  
25 Mr. Bryant.

1           Mr. Bryant, I think Mr. Baxter is correct in stating  
2 as a general proposition when a party seeks entry at a late  
3 stage, that they take the case as they find it. That is to  
4 say, for example, we wouldn't contemplate, absent some cause  
5 showing, getting back into discovery at this stage of the  
6 game.

7           Is that understanding satisfactory to you?

8           MR. BRYANT: Yes, sir, Judge Kelley.

9           JUDGE KELLEY: Okay. thank you.

10          So the Applicants, on the basis of that  
11 understanding, have no objection.

12          How about the Staff?

13          MR. TREBY: The Staff has no objection to  
14 participation of the State of North Carolina as an interested  
15 state in this proceeding.

16          JUDGE KELLEY: Thank you.

17          Mr. Runkel?

18          MR. RUNKEL: We understand how the Attorney General  
19 and the State of North Carolina is coming in.

20          I do think we may need to talk a little bit about  
21 where the state of discovery is. If it is closed, or should  
22 it -- does it need to be reopened on the basis of the  
23 affidavit.

24          JUDGE KELLEY: I don't mean to foreclose a  
25 discussion of this.



1 MR. HOLLAR: I can barely hear Mr. Runkel.

2 JUDGE KELLEY: Can you try that again, Mr. Runkel?

3 MR. RUNKEL: Sure.

4 I understand how the AG's Office and the State of  
5 North Carolina has become involved in this proceeding.

6 I would like to discuss as part of this conference  
7 call, perhaps the need to reopen discovery.

8 JUDGE KELLEY: We can get to that and discuss it.  
9 Parties can be heard. The only point that we wanted to make  
10 right now was the very fact a party like an interested state  
11 comes in at this point, doesn't have any automatic effect of  
12 opening up new discovery.

13 If you think that there is some basis for further  
14 discovery, we can hear you on that point.

15 MR. RUNKEL: Yes, sir.

16 JUDGE KELLEY: Okay.

17 Mr. Eddleman, any comment on this

18 MR. EDDLEMAN: No, Judge. As I understand it, an  
19 interested state can come in with or without contentions. So  
20 it appears that the Attorney General has moved into this  
21 proceeding as an interested state, and can participate, I  
22 suppose, in whatever the Attorney General deems appropriate.

23 JUDGE KELLEY: Okay. You, at least, have no  
24 objection

25 MR. EDDLEMAN: That's correct.

1 JUDGE KELLEY: Fine. So nobody objects, subject to  
2 the comments that were made in the course of the discussion.  
3 So, we can consider that the State's Petition to come in under  
4 2.715 is granted.

5 MR. TREBY: Judge Kelley, I guess I do have a  
6 question, though. While I have no objection to them being a  
7 participant, we would like to know the scope of their  
8 participation. That is, do they intend to participate in the  
9 sense of putting on witnesses, or do they intend to just  
10 observe the proceedings, or cross examine?

11 What is the scope of the participation they are  
12 seeking?

13 JUDGE KELLEY: It may be useful to get into that.  
14 Can we put that to one side for the moment until we get a  
15 little more procedural underbrush cleared to one side. But,  
16 your point is well taken, Mr. Treby. We would just like to  
17 wait a little bit on it.

18 Let me ask you, Mr. Treby. It is the Staff's  
19 custom, as we understand it, when information comes to their  
20 attention with some safety implications in this hearing  
21 process, that they will then refer that information to I&E for  
22 whatever review they deem appropriate.

23 Have you, or Mr. Barth, or Ms. Moore referred  
24 Mr. Burch's Affidavit to I&E, or do you propose to do so?

25 MR. TREBY: Yes. My understanding is that the

1 affidavit has been provided to both the appropriate people  
2 down at the regional office involved, that is Region II, and  
3 that the I&E Headquarters office has also been made aware of  
4 the affidavit.

5 JUDGE KELLEY: Okay. Thank you.

6 Now we have accompanying the Petition for  
7 Intervention, a document from Mr. Bryant entitled "Response by  
8 the Attorney General of North Carolina to Applicants' Motion  
9 for Summary Disposition." And perhaps this raises the first  
10 part of the rather broader question you were referring to,  
11 Mr. Treby, in the sense that the Attorney General has now come  
12 into the case, we have granted the Petition to Intervene, and  
13 we have a document entitled "Response to Motion." And  
14 associated with that response is what I will call the Burch  
15 Affidavit.

16 Let me ask the parties in turn, whether any of them  
17 object to our allowing this response and treating it as a  
18 response to the pending Motion for Summary Disposition on  
19 Whistleblower 3.

20 Mr. Baxter?

21 MR. BAXTER: No, we do not object to your  
22 considering it. I would like to raise later our desire to  
23 respond to the affidavit.

24 JUDGE KELLEY: Right. I thought you might want to  
25 when we get to that. But, just as the next procedural step

1 then, I understand you are not objecting to its being  
2 considered.

3 Mr. Treby, for the Staff, any objection to our  
4 considering this response as a response?

5 MR. TREBY: No. The Staff has no objection.

6 JUDGE KELLEY: Okay.

7 Mr. Runkel and Mr. Eddleman, any objection?

8 MR. RUNKEL: No, sir.

9 JUDGE KELLEY: Okay. Thank you.

10 Now, turning to the affidavit from Mr. S. L. Burch  
11 -- and I am by no means trying to give a comprehensive  
12 description of this document, I assume we have all read it.  
13 But, for purposes of just the context in which we are looking  
14 at it, it does seem fair to say that Mr. Burch alleges that  
15 the CP&L security people were uncooperative in the undercover  
16 investigation that led to the arrest.

17 And the affidavit from Mr. King filed in support of  
18 the motion referring to the same undercover operation, cites  
19 it as an example of cooperation with local law enforcement  
20 officials.

21 And then various specifics are given by Mr. Burch.  
22 But, it seems to us that the two affidavits, the Burch  
23 Affidavit and the King Affidavit are at least inconsistent, in  
24 conflict if you will, in various respects. Mr. Burch does,  
25 towards the end, state his own view that there were, he

1 thought, indications that drug use might be widespread at the  
2 Shearon Harris site.

3 So, there are conflicts in the Motion and the King  
4 Affidavit on the one hand, and the Burch Affidavit on the  
5 other.

6 Let us then ask, Mr. Baxter, you indicated earlier  
7 you may want an opportunity to respond to the Burch  
8 Affidavit. Let me ask you, were you aware of Mr. Burch's  
9 position about the undercover operation when your Motion was  
10 filed?

11 MR. BAXTER: First, I need to correct you, it is  
12 Ms. Burch.

13 JUDGE KELLEY: Oh, I'm sorry. What is --  
14 S. L. Burch, do you know what S. L. stands for?

15 MR. BRYANT: Judge Kelley, her first name is  
16 Shirley. I do not know what the middle initial stands for  
17 there.

18 JUDGE KELLEY: Okay. Forgive me for my incorrect  
19 assumption.

20 MR. BAXTER: To answer your question, Judge Kelley,  
21 no, I was not aware of Ms. Burch's position, nor of the  
22 impending filing of this document. It was news to us when we  
23 received it in the mail.

24 JUDGE KELLEY: Well, looking at this procedurally --  
25 and let me just make a couple of comments, and then perhaps

1 the other parties could, in their own turn, comment on our  
2 reactions to this. But, we received the filing, like you, a  
3 few days ago. And, prior to our receiving this filing, we  
4 were, as you know, on a track whereby we had gotten the Motion  
5 for Summary Disposition. The Staff's response to it was due,  
6 I believe, August 6th. Is that right, Mr. Treby?

7 MR. TREBY: That is correct.

8 JUDGE KELLEY: I think that is right.

9 And then Mr. Runkel's response was supposed to  
10 follow on the 16th.

11 And we read the Petition for Intervention, and it  
12 did seem to us if the Applicants wanted to file some response  
13 to the Petition, maybe the orderly way would be for that to  
14 happen next before we get further pleadings from other  
15 parties.

16 But, one of the reasons we called today was, it  
17 seemed we might very well want to alter the schedule for  
18 filings and go at it somewhat differently in light of the  
19 Attorney General's papers.

20 So, Mr. Baxter, let me just ask you first from the  
21 Applicants' standpoint, have you got a preferred course of  
22 action to propose?

23 MR. BAXTER: Procedurally it was going to be my  
24 proposal to file a responsive affidavit and some legal  
25 argument this week on a schedule which I am proposing would

1 not cause any delay in Mr. Runkel's filing. We could get the  
2 response in his hands by Friday or Saturday of this week,  
3 giving him at least seven days to consider it.

4 I don't know that the Staff needs to see our  
5 response prior to filing its position tomorrow or not. If it  
6 would help I would be prepared -- (Inaudible) -- on this  
7 conference call.

8 But that was going to be my proposal. It is that  
9 the Staff file tomorrow, that we file an affidavit this week,  
10 and Mr. Runkel file his response on the schedule previously  
11 set so that the rest of the schedule and the hearing date, if  
12 one is needed, would not be impacted.

13 JUDGE KELLEY: Well, that is straightforward. Let's  
14 hear the other parties.

15 Mr. Treby, do you believe the Staff can file its  
16 response prior to hearing whatever the Applicants wish to say  
17 about the Attorney General's file?

18 MR. TREBY: I don't believe so, Judge Kelley.

19 The State's Affidavit was a surprise to us in the  
20 sense that we were not aware of that information before the  
21 time that we received it on, I believe it was like the end of  
22 last week. We view it as new information on this matter from  
23 certainly a reputable source, the State of North Carolina.  
24 And, to be very honest, we have not yet factored all of it  
25 into our consideration of the Motion for Summary Disposition.



1           Because, to continue my candor --

2           JUDGE KELLEY: Please do.

3           MR. TREBY: -- before we received it, our  
4           inclination had been to support the Motion for Summary  
5           Disposition. I think we would like to consider this in light  
6           of this new information that we are getting.

7           JUDGE KELLEY: I understand. Okay.

8           MR. TREBY: We would be interested in hearing  
9           whatever the Applicants had to say in response as part of our  
10          consideration.

11          JUDGE KELLEY: Mr. Runkel?

12          MR. RUNKEL: Yes, sir.

13          If we would have responded on August 16th with an  
14          affidavit from Ms. Burch saying the identical things that is  
15          in the Attorney General's -- along with the Attorney General's  
16          Petition, the Applicants would not have had the opportunity  
17          to submit a response to affidavit and counter argument.

18          Procedurally, I don't see how the Applicants can  
19          request -- be allowed the permission to give a counter  
20          affidavit on this matter. I think it is outside the process.  
21          We could have done the same thing that the Attorney General's  
22          Office did.

23          MR. BAXTER: Judge Kelley, I would somewhat question  
24          that that is possible. But nevertheless, we are faced with an  
25          unusual situation which is that a new party has entered,



1 following the filing of our motion.

2 Had the Attorney General's Office been a party  
3 earlier and participated in this contention, they might have  
4 well been the subject of discovery by Applicant. But we could  
5 not have been expected to be able to anticipate that this  
6 Petition would be filed after our Motion was filed with the  
7 parties.

8 So, I don't think Mr. Runkel's point has any merit  
9 at all, and I question whether he could have obtained and  
10 filed the affidavit on his own. If so, he would at least have  
11 been required to be subject to discoveries on it at some  
12 point.

13 JUDGE KELLEY: The Board is certainly interested in  
14 getting a full layout of the facts. It may be that when the  
15 facts, according to various affiants, get laid out here, that  
16 summary disposition will not be available, because people  
17 just don't agree with each other. But, we don't know that  
18 yet.

19 Mr. Baxter, at the time he filed indicated he didn't  
20 know that this was coming.

21 I think, Mr. Runkel, the argument that the Board  
22 ought to then stick with an incomplete picture of the world  
23 is not very appealing. We certainly have discretion to allow  
24 a supplemental filing. We are concerned because the  
25 statements in the Burch Affidavit are certainly serious

1 statements. And to proceed without any answer from the  
2 Applicant doesn't seem to us to be the right way to go.

3 I think the question is -- if your argument is, you  
4 know, the Applicants are stuck with what they filed, we are  
5 going to reject that.

6 I guess the issue to you is, if we get a further  
7 filing from the Applicants focusing on the Attorney General's  
8 filing, when is it reasonable to expect to hear from you.

9 MR. RUNKEL: No, sir. My raising the issue was not  
10 that you should make a decision.

11 I think at this point, it is clear that this  
12 contention needs to be litigated. And any counter affidavits  
13 probably would do best to be aired in a hearing. I certainly  
14 think that for this issue to be satisfactorily resolved, we  
15 can be passing affidavits back and forth for quite some time.

16 JUDGE KELLEY: Well, we are talking about one  
17 further filing, I believe, Mr. Runkel.

18 MR. RUNKEL: Yes, sir.

19 JUDGE KELLEY: And, Mr. Baxter, are you prepared to  
20 file whatever you want to file by the end of the week, did you  
21 say?

22 MR. BAXTER: That's correct.

23 JUDGE KELLEY: What day do you propose?

24 MR. BAXTER: Friday, the 9th.

25 JUDGE KELLEY: You propose you can file by Friday.

1 All right. The way it had stood, and the way it  
2 stands right now, Mr. Runkel, you were to file on the 16th.

3 If you get some additional filing from Mr. Baxter  
4 this coming Friday, what date do you propose for a response?

5 MR. RUNKEL: Sir, at this time I would like to  
6 discuss about reopening discovery. With Ms. Burch's  
7 Affidavit, there is an awful -- I would say three or four  
8 areas where there are discrepancies between what Ms. Burch is  
9 saying just on pure factual matters, as to what I received in  
10 response to my discovery request to CP&L.

11 I would suggest that at this point we have another  
12 round of discovery and get the Attorney General's Office as  
13 part of that.

14 JUDGE KELLEY: Well, it is going to have to be a bit  
15 more -- we will have to flesh out your proposal a little bit  
16 more than that, I think, Mr. Runkel.

17 Do you want to make a motion that we reopen  
18 discovery?

19 MR. RUNKEL: yes, sir.

20 JUDGE KELLEY: Okay. If that were granted now, when  
21 would it be closed?

22 What kind of discovery are you talking about? I  
23 can't grant this motion in the abstract to start discovering  
24 again. We have got to have some specifics. Assuming we are  
25 going to grant any further discovery at all, we have to know

1 what it is. So, we need a rather specific proposal.

2 MR. RUNKEL: I would prefer to make a specific  
3 proposal on paper, if that is possible. And I would serve it  
4 sometime this week on the parties.

5 JUDGE KELLEY: Mr. Baxter, what do you say to that?

6 MR. BAXTER: Well, Mr. Chairman, we are trying to  
7 expeditiously resolve any procedural changes that have to be  
8 made as a result of this unexpected State Petition. I assume  
9 that is why the Board has called us all together here.

10 If Mr. Runkel can't articulate today any basis for  
11 his motion, I think that, on its face, displays why it should  
12 not be considered seriously.

13 There has been no showing by Mr. Runkel, or a  
14 statement that he has made any attempt, since this contention  
15 was filed, to obtain any information from the State Bureau of  
16 Investigation. And the fact that he has sat in his office and  
17 now received this in the mail and is now interested, I don't  
18 think is grounds for reopening discovery which was closed on  
19 May 1st.

20 JUDGE KELLEY: Staff, do you have any comments on  
21 Mr. Runkel's proposal that he file a motion to reopen  
22 discovery later this week?

23 MR. TREBY: Well, I think that the efficient  
24 management of the proceeding dictates that we ought to  
25 maintain the current schedule unless there is good cause shown

1 for not doing so.

2 I'm not sure that Mr. Runkel has shown us good cause  
3 why he can't set forth his discovery schedule now as opposed  
4 to waiting sometime later this week. And then if all the  
5 parties have to file responses, it seems to me that we would  
6 use up the time between now and September 9th when testimony  
7 is due.

8 For those reasons I would propose that Mr. Runkel  
9 ought to set forth whatever discovery schedule he wishes at  
10 this time, and for us to take it up at this time.

11 One factor that I guess I am interested in with  
12 regard to any discovery schedule, again goes back to what  
13 role, if any the State of North Carolina envisions playing at  
14 any hearing. To the extent that North Carolina was proposing  
15 to put on any witnesses and actively participate, I guess I  
16 would like to know that because it is conceivable that under  
17 those circumstances the parties might want to have some  
18 discovery just so that they could be more fully informed as to  
19 that participant's views and positions at the time that they  
20 filed their testimony.

21 JUDGE KELLEY: I sense this is all getting a little  
22 unruly. But, maybe that is the nature of the beast we are  
23 dealing with this afternoon.

24 We had a Motion for Discovery, and now there is a  
25 suggestion also that we have a written motion later in the

1 week. And now we are back to the issue of what Mr. Bryant  
2 proposes for his participation. And it is all sort of up in  
3 the air.

4 Let me go back though, to Mr. Runkel. Mr. Runkel,  
5 when you ask for discovery, are you asking for what,  
6 specifically, in the way of discovery?

7 Are you asking for interrogatories; are you asking  
8 for depositions; are you asking for documents? What do you  
9 have in mind?

10 MR. RUNKEL: Well, sir, I had submitted a series of  
11 interrogatories and got responses. And several of those  
12 responses are in direct contradiction to this new Burch  
13 Affidavit. I would like to clarify up some of those problems,  
14 because it may be easier to clarify up under interrogatories  
15 and perhaps a deposition or two, than using the time at  
16 hearing to clear up those problems. And it certainly would  
17 help me in any Response to Motion for Summary Disposition.

18 JUDGE KELLEY: Well, Mr. Baxter has said that he  
19 will make a filing at the end of the week that responds to the  
20 Burch Affidavit, and I should think that that would, in large  
21 measure, answer your questions as far as what the Applicant's  
22 position is.

23 Now, on the question of Ms. Burch, have you talked  
24 to Ms. Burch?

25 MR. RUNKEL: No, I have not.

1           JUDGE KELLEY: After all, the real new information  
2 here is the affidavit from Ms. Burch. If Ms. Burch is  
3 available to talk to you at various times outside the  
4 discovery context, but just available to answer questions, do  
5 you need discovery to do that? I would think not.

6           MR. BAXTER: Judge Kelley, Mr. Runkel has twice said  
7 that he perceives conflicts between our interrogatory  
8 response and the Burch Affidavit. But, I have yet to hear a  
9 specific concrete example of what such a conflict might be.  
10 And, I participated in preparing those responses and I have  
11 read the Burch Affidavit, and I fail to be able to guess at  
12 what he is speaking of.

13           JUDGE KELLEY: Well, Mr. Runkel, Mr. Baxter -- you  
14 heard his comment. My question to you was, if Ms. Burch is  
15 cooperative in talking to you -- and I have no reason to think  
16 she wouldn't be -- why do you need discovery to deal with her?

17           MR. RUNKEL: Well, I don't really need discovery to  
18 deal with her, sir.

19           In responding to Mr. Baxter's comment, let me give a  
20 specific. In Applicants' answer to our interrogatory, they  
21 listed, without using names, which is all right with the way  
22 the question was worded, 12 workers at the Shearon Harris  
23 Plant that were fired because of abusing drugs while on the  
24 construction site. That is page 9 and 10 -- actually pages 8  
25 through 10 of their answers of May 20th, 1985.



1           Ms. Burch's testimony says that there were 51  
2 workers whose names were given to CP&L, and as far as  
3 Ms. Burch knew, or the report that she had, they were all  
4 fired.

5           And I think that kind of discrepancy, just the  
6 numeric of how many people, and what kind of jobs that they  
7 did, I think that is a discrepancy that I certainly at the  
8 hearing will raise the issue. But, I think that we need to  
9 look a lot closer at that.

10           MR. BAXTER: Mr. Chairman, there is no discrepancy  
11 at all. If Mr. Runkel would read his own interrogatory and  
12 the Motions we just filed, it explains the situation  
13 perfectly.

14           His question was a narrow one as to how many  
15 employees had been identified as having used drugs on the  
16 site. And that is discussed in our Motion itself as having  
17 been 13 people that were actually caught consuming the drugs.  
18 We then go on to identify that there is a larger number who  
19 record positive results on a drug screen and there has been a  
20 total of 173 employees terminated since the project began, for  
21 involvement in drug activity. Suspected involvement in drug  
22 activity.

23           So, there is no discrepancy with the Burch Affidavit  
24 having identified other people who were fired. And our Motion  
25 -- in fact, our Motion said it is 173 people, because that



1 includes a lot of people that were terminated prior to this  
2 undercover operation which Ms. Burch is not aware.

3 JUDGE KELLEY: The Board really is in no position  
4 this afternoon to -- it certainly can't rule on these alleged  
5 discrepancies. The documents you are quoting from, some of  
6 them aren't in front of us. For the record, I suppose we have  
7 gotten both sides giving an example or refuting an example,  
8 but that is about as far as we can get.

9 I think we would like to shift gears for a moment.  
10 What we intend to do, ladies and gentlemen, is talk this  
11 through a little bit more and then the Board will have to  
12 retire and see how we want to proceed, and then we will come  
13 back on the phone after the break.

14 Let me ask Mr. Bryant; Mr. Bryant, assuming that  
15 this issue, this contention about drug use could go to a  
16 hearing sometime -- well, it is set now for late September --  
17 what do you envision in the way of your participation, and do  
18 you envision calling Ms. Burch or other witnesses?

19 MR. BRYANT: Judge Kelley, assuming that there was a  
20 hearing -- I still realize the Motion has not been ruled on,  
21 and we still have the responses -- we haven't made a final  
22 determination and for right now I don't think we could until  
23 we know if there is a hearing.

24 But for today, I think we would be obligated to  
25 present the testimony of Ms. Burch, the SBI supervisor. And I

1 guess depending on your hearsay rules, we might be obligated  
2 to present Deputy Hinsley.

3 JUDGE KELLEY: Why do you say -- oh, I think I  
4 understand what you mean. Hinsley is referred to in the Burch  
5 Affidavit, and so if there was some hearsay problem you might  
6 produce Hinsley also? Is that what you are saying?

7 MR. BRYANT: Yes, sir. That's right, Judge Kelley.

8 JUDGE KELLEY: Okay. So you would envision  
9 presenting perhaps those two witnesses in a hearing?

10 MR. BRYANT: Yes, sir, based on what I know right  
11 now.

12 JUDGE KELLEY: I don't mean to bind you to it. I'm  
13 just trying to get an idea.

14 MR. BRYANT: Yes, sir.

15 JUDGE KELLEY: The other parties, Mr. Treby was  
16 saying he would like to get as clear an idea as he can about  
17 what you have in mind, and that is what I was really after.

18 Mr. Treby, with that description of what Mr Bryant  
19 has in mind, does that help you in deciding whether you want  
20 to ask for discovery or not? Or in any other respect?

21 MR. TREBY: Well, it gives me something to think  
22 about. I guess I'm not prepared at this moment to indicate  
23 whether the Staff wishes to take any party's deposition. We  
24 might make that determination after we consider the affidavits  
25 and filing a little bit more carefully, and perhaps also after

1 we see what kind of response the Applicants intend to make by  
2 this Friday.

3 JUDGE KELLEY: Okay.

4 Now, with those factors in mind, Mr. Treby, I don't  
5 think you said before, what would you suggest as a different  
6 filing date for your response to the Motion?

7 MR. TREBY: I think we would like to have four  
8 working days in which to respond to the Applicants filing.

9 JUDGE KELLEY: Did you say four?

10 MR. TREBY: Four.

11 So that if they made their filing on the 9th, we  
12 would be prepared to have in your hands, a response by the  
13 15th.

14 JUDGE KELLEY: 15th.

15 MR. TREBY: That's a Thursday.

16 JUDGE KELLEY: Can you get that into Mr. Runkel's  
17 hands on the same day?

18 MR. TREBY: I don't know how we would.

19 JUDGE KELLEY: Next day?

20 MR. TREBY: Certainly by the next day.

21 JUDGE KELLEY: We'll say the 16th.

22 MR. TREBY: Because, we could certainly serve them  
23 by Express Mail on the 15th.

24 JUDGE KELLEY: All right.

25 Mr. Runkel, we are now on a -- I think we are going

1 to change the present schedule, but the present schedule says  
2 6th and 16th for filing dates for the Staff and yourself  
3 respectively, which means a ten-day gap. Now, if the Staff  
4 got their filing to you on the 16th, can you file by the 26th?

5 MR. RUNKEL: Yes, sir, no problem.

6 JUDGE KELLEY: Hold on just a minute, please.

7 (Discussion off the record)

8 JUDGE KELLEY: Ladies and gentlemen, I am back on.

9 Why don't you give us five minutes. Don't hang up  
10 because you will lose the connection. You can just leave your  
11 phones for about five minutes, and we will pick up then and  
12 see if we cannot deal with some of those base points.

13 Okay

14 MR. EDDLEMAN: Before you go off, there is a couple  
15 of questions that occur to me. I don't know where they might  
16 fit in.

17 For example, I don't know how the hearsay rule might  
18 apply to confidential informants. You may want to be looking  
19 into that.

20 I'm still not really clear on Mr. Baxter's earlier  
21 statement about the affidavit, whether they are saying the  
22 Applicants did not know any of the facts in the affidavit, or  
23 have ideas that some of those statements in the affidavit --  
24 they knew some of the statements in the affidavit or not.

25 JUDGE KELLEY: All I asked Mr. Baxter was whether

1 he was aware of this position or not. He indicated he  
2 wasn't. I'm not prepared to go beyond that this afternoon.

3 Whether other people knew what and when, all those  
4 kinds of questions, might come out at some later date. But  
5 this afternoon, I don't think that is before us.

6 So, let's take the five minutes, and we will pick  
7 back up at about 18 minutes of. Thank you.

8 (Recess)

9 JUDGE KELLEY: Ladies and gentlemen, are you there?

10 (Chorus of responses)

11 JUDGE KELLEY: We are running a little late, but we  
12 are back.

13 We have arrived at a couple of procedural bottom  
14 lines, and we will tell you what they are. And then, if that  
15 leaves questions in your minds, as it might, we can hear from  
16 you individually.

17 First, Mr. Bryant, with regard to the possible  
18 witnesses of Ms. Burch and Mr. Hinsley -- Ms. Burch first, who  
19 I understand is a State employee, is that right?

20 MR. BRYANT: Yes, sir, she is employed by our State  
21 Bureau of Investigation.

22 JUDGE KELLEY: Is she generally available in the  
23 next few weeks to answer questions about her affidavit,  
24 whether it is in a discovery context, or whether it is an  
25 informal discussion with one or more or all of the parties at

1 once? Can such a thing be worked out, as far as you know?

2 MR. BRYANT: Yes, sir, Judge Kelley, as far as I  
3 know. We just might need a little advance notice, because she  
4 does travel throughout the district. She is available, you  
5 know, depending on the time, certain days of the week.

6 JUDGE KELLEY: I realize Mr. Hinsley works for the  
7 County. Is that correct?

8 MR. BRYANT: Yes, sir. He is employed by the Wake  
9 County Sheriff's Department.

10 JUDGE KELLEY: So, I don't know if you can speak  
11 about him quite as definitively. We know he is not a  
12 confidential informant, we know where he is. One might  
13 assume that he could be talked to also.

14 The Board for this afternoon -- we don't have any  
15 formal discovery motion before us. Mr. Runkel has expressed  
16 an interest in filing such a motion. Mr. Treby indicated he  
17 might think that he needs further discovery. But in any case,  
18 we are not going to grant any further discovery this  
19 afternoon.

20 Under all the circumstances we have some doubt  
21 whether much or any further discovery is going to turn out to  
22 be necessary, but we are not going to prejudge that question.

23 It seems to us that the sensible way to proceed is  
24 for all parties to first await Mr. Baxter's further filing  
25 which will be made at the end of this week. We think that all

1 counsel should work out among themselves what I will call  
2 access to Ms. Burch and Mr. Hinsley. It may well be you could  
3 all sit down together or separately. We don't know. But, it  
4 seems to us that that kind of thing is negotiable.

5 So, we are suggesting to you that insofar as you  
6 feel you want to talk to either or those people, or other  
7 people, that you attempt to work that out first on an informal  
8 basis.

9 So, we are not granting discovery this afternoon,  
10 and we don't want to entertain discovery requests, at least  
11 until after the Applicants have filed their responsive  
12 pleading at the end of this week.

13 Now, following that process, if the Staff or  
14 Mr. Runkel or Mr. Eddleman, if they feel that they still need  
15 further discovery, we are going to ask you to first of all,  
16 call me up. And if I am not in at the time, as I may not be  
17 for a while, call either Judge Bright or Judge Carpenter and  
18 just alert us to that. And we will then work out some  
19 procedure for considering the request.

20 Apart from that, we are going to set new days as  
21 discussed, for filing Responses to the Motion for Summary  
22 Disposition.

23 The Staff's response will be due on the 15th, with  
24 the understanding that you will, by Quick Mail or some  
25 expedited means, get your response down to Mr. Runkel on the



1 16th.

2 And then Mr. Runkel's response will be due on the  
3 26th, with the understanding that he can get his papers to  
4 CP&L, at least, on the 26th. Then make a Quick Mail type of  
5 arrangement to the Staff as well.

6 That is where we come out for this afternoon.

7 Let me ask you individually whether you understand  
8 that, whether it is unclear, whether you want to make further  
9 comments.

10 Mr. Baxter?

11 MR. BAXTER: No, I have no comment or questions.

12 JUDGE KELLEY: Okay. Mr. Treby?

13 MR. TREBY: That is clear, Judge Kelley, I have no  
14 further questions on that. However, before you end this  
15 conference, Ms. Moore wishes to raise another matter.

16 JUDGE KELLEY: Okay. Mr. Bryant?

17 MR. BRYANT: Yes, sir.

18 JUDGE KELLEY: Does it sound satisfactory to you

19 MR. BRYANT: Yes, sir.

20 JUDGE KELLEY: You may well be hearing from the  
21 parties, I suppose, about arrangements to talk with Ms. Burch  
22 and Mr. Hinsley, and I leave that to him.

23 Mr. Runkel?

24 MR. RUNKEL: Yes, sir, I think that will work out  
25 very good for the next couple of weeks.



1 JUDGE KELLEY: Okay.

2 MR. RUNKEL: I would request something additionally,  
3 though.

4 Can you send me the couple of pages in the  
5 transcript after the break? It takes quite some time for it  
6 to show up in our PDR.

7 JUDGE KELLEY: I'll send you the whole transcript.

8 MR. RUNKEL: That will be excellent.

9 Thank you very much.

10 JUDGE KELLEY: Mr. Eddleman

11 MR. EDDLEMAN: Nothing further, Judge.

12 JUDGE KELLEY: I think then that will cover that  
13 part of it.

14 We had a couple of other things to mention  
15 ourselves, which I will just do quickly. Then I understand  
16 Ms. Moore has another point.

17 As a point of information on two separate subjects,  
18 we have a pending FOI request. Mr. Baxter, you have a  
19 pleading, and Mr. Guild does also. I think you know what I am  
20 referring to.

21 And I just want to mention, as I mentioned to  
22 Ms. Moore earlier today, we issued today a request for Staff's  
23 views on certain questions. You will be getting that pleading  
24 in the mail. But, I just wanted to tell you that it was  
25 forthcoming.

1           On the question of a decision on the safety matters,  
2 we are getting along on that, and we expect to issue a partial  
3 initial decision sometime this month -- I can't say just  
4 when, but sometime this month. And it likely will not cover,  
5 all of the safety issues. But it will cover the bulk of those  
6 issues.

7           Then, whatever we don't get done in that particular  
8 partial initial, will come along presumably with the emergency  
9 planning decision later on.

10           Ms. Moore?

11           MS. MOORE: Yes, Judge Kelley. I was trying to  
12 determine whether the Board has any availability problems in  
13 the week beginning October 1st.

14           I anticipate having to file a request for an  
15 extension of time to file testimony and for postponement of  
16 the hearing on the siren issue. I have talked with  
17 Applicants' counsel, I was unable to reach Mr. Eddleman. And,  
18 if he could let me know where he could be reached this  
19 afternoon, I would be glad to talk with him some more about  
20 it.

21           I think we will have to file a motion, and I was  
22 going to request some kind of a postponement until the week of  
23 August 1st. I wanted to check as to whether the Board will  
24 be available in that timeframe.

25           JUDGE KELLEY: Just a minute.

1 MS. MOORE: I'm sorry, October 1st.

2 JUDGE KELLEY: Just a minute.

3 (Discussion off the record.)

4 JUDGE KELLEY: Judge Carpenter notes a problem on  
5 the 10th and the 11th.

6 Judge Bright and myself, as far as we know now,  
7 don't have a problem.

8 That is not to suggest that we are prejudging  
9 whether it ought to be moved from the present date. But, just  
10 to answer your specific question, I think it would not be a  
11 matter of Board availability, subject to those two days that  
12 Judge Carpenter has.

13 MS. MOORE: Thank you. I will file the appropriate  
14 formal motion when I have spoken with all the parties.

15 JUDGE KELLEY: Okay.

16 Anything else from anybody

17 MR. EDDLEMAN: Ms. Moore, you can call me at  
18 Mr. Runkel's, because that is where I am right now.

19 JUDGE KELLEY: The usual orders for transcripts are  
20 in, I take it.

21 Anything else along that line?

22 (No response.)

23 Thank you very much. We will proceed as outlined.

24 (Whereupon, at 4:00 p.m., the telephone conference  
25 was concluded.)

1 CERTIFICATE OF OFFICIAL REPORTER

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of Carolina Power & Light Company and North Carolina Company Municipal Power Agency (Shearon Harris Nuclear Power Plant)

Name of Proceeding: Telephone Conference Call

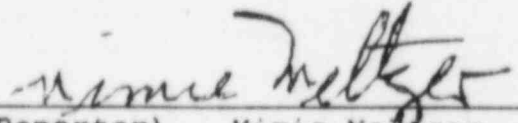
Docket No.: 50-400-OL

Place: Bethesda, Maryland

Date: Monday, August 5, 1985

were held as herein appears and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(Signature)

  
(Typed Name of Reporter) Mimie Melzer

Ann Riley & Associates, Ltd.