

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
ASLBP No. 82-472-03-OL

TELEPHONE CONFERENCE

Location: Bethesda, Maryland
Date: Monday, August 26, 1985

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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 :
7 and NORTH CAROLINA COMPANY : Docket No. 50-400-OL
8 MUNICIPAL POWER AGENCY : ASLBP No. 82-472-03-OL

9 :
10 (Shearon Harris Nuclear Power :
11 Plant) :
12 ----- -X

13 Room 453
14 4350 East-West Highway
15 Bethesda, Maryland
16 Monday, August 26, 1985

17 TELEPHONE CONFERENCE

18 The telephone conference in the above-entitled
19 matter convened, pursuant to notice, at 2:30 o'clock, p.m.

20 BEFORE

21 JAMES L. KELLEY, ESQUIRE, Chairman

22 GLENN O. BRIGHT, Member

23 JAMES H. CARPENTER, Member

24 Atomic Safety and Licensing Board

25 Nuclear Regulatory Commission

1 APPEARANCES:

2

3 On Behalf of the Applicants:

4

5 THOMAS A. BAXTER, ESQUIRE

6 Shaw, Pittman, Potts. & Trowbridge

7 1800 M Street, Northwest

8 Washington, D.C. 20036

9 -and-

10 DALE E. HOLLAR, ESQUIRE

11 Associate General Counsel

12 Carolina Power & Light Company

13 Post Office Box 1551

14 Raleigh, North Carolina 27602

15

16 On Behalf of the NRC Staff:

17

18 STUART TREBY, ESQUIRE

19 CHARLES A.O BARTH, ESQUIRE

20 JANICE E. MOORE, ATTORNEY-AT-LAW

21 Office of the Executive Legal Director

22 U.S. Nuclear Regulatory Commission

23 Washington, D.C. 20555

24 -and-

25

1 APPEARANCES (continued):

2

3 BRADLEY JONES, ESQUIRE

4 U.S. Nuclear Regulatory Commission

5 Region II

6 Atlanta, Georgia

7

8 On Behalf of the State of North Carolina:

9

10 STEVEN F. BRYANT, ESQUIRE

11 Assistant Attorney General

12 State of North Carolina

13 Post Office Box 629

14 Raleigh, North Carolina 27602

15

16 On Behalf of the Intervenors:

17

18 JOHN D. RUNKEL, ESQUIRE

19 Conservation Council of North Carolina

20 307 Granville Road

21 Chapel Hill, North Carolina 27514

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PROCEEDINGS

2 (2 : 30 p.m.)

3 JUDGE KELLEY: This is Judge Kelley here.

4 Mr. Baxter?

5 MR. BAXTER: Yes.

6 JUDGE KELLEY: Let me read the roll here.

7 Judges Bright and Carpenter are here with me.

8 Mr. Baxter is with us.

9 Ms. Moore?

10 MS. MOORE: Yes.

11 JUDGE KELLEY: Mr. Barth?

12 MR. BARTH: Here, Your Honor.

13 JUDGE KELLEY: Mr. Hollar?

14 MR. HOLLAR: I'm here, Your Honor, with Mr. Baxter
15 and Mr. O'Neil.

16 JUDGE KELLEY: Fine, Mr. Bryant?

17 MR. BRYANT: Here, Your Honor.

18 JUDGE KELLEY: Mr. Runkel?

19 MR. RUNKEL: Yes, sir.

JUDGE KELLEY: We were informed -- we did reach

21 Mr. Eddleman, but he indicated that he couldn't be available,

22 and he would pass whatever information he had on to

23 Mr. Bunkel. So I guess we can go ahead.

24 MR. BARTH: Your Honor, this is Charles Barth.

25 JUDGE KELLEY: Yes.

1 MR. BARTH: In addition to Mrs. Moore and myself, we
2 have with us again Mr. Stuart Treby, who is Assistant Chief
3 Hearing Counsel, who will basically speak for the Staff, Your
4 Honor.

5 MR. JONES: This is Brad Jones. I'm also on.

6 JUDGE KELLEY: Okay. The question came up last week
7 -- I was out of the office myself -- I don't believe the Board
8 or the parties ever did have a phone conference on the matter,
9 but last Thursday, I guess it was, the Staff got in touch with
10 Judge Bright and indicated some desire to file their response
11 on the summary disposition motion.

12 I spoke on the telephone with Judge Bright, and
13 others spoke to others, I guess, and the upshot was that we
14 said the Staff can have until tomorrow, which is the 27th, and
15 that we would then advance Mr. Runkel's due date from the 3rd,
16 Tuesday, until Friday, the 6th. And we thought it might also
17 be prudent, since we were doing a little adjusting of dates,
18 to just set a conference for today to make sure everybody
19 understood just where we are.

20 I should just add that in granting the two, three,
21 or four day extensions I just talked about, we did not
22 contemplate that we would make any adjustments in the due
23 dates for testimony or in the date for commencement of
24 hearing, so those dates remain the same.

25 Let me add, too, we do have a court reporter here.

1 I don't know that strictly speaking we have to have this on
2 the record, but we do have a reporter, so we will be on the
3 record.

4 Earlier today, then, Ms. Moore called me to indicate
5 that the Staff would not be seeking time beyond tomorrow and
6 also the expected nature of their filing. We thought, though,
7 it would be best to go ahead and have this call anyway. So
8 here we are.

9 Maybe I could just turn to Mr. Treby, then. Is my
10 understanding correct, Mr. Treby; you will file a document
11 tomorrow anyway, if not a response on the motion; is that
12 correct?

13 MR. TREBY: That is correct, Judge Kelley. The
14 Staff is ready to file a document tomorrow in the form of a
15 letter, a letter informing the Board and the parties that the
16 Staff is not going to be filing any response to the
17 Applicant's motion for summary disposition.

18 I think it will also indicate that the reason the
19 Staff is not filing any response is that after having
20 carefully considered all of the information available to it --
21 and I might add that this consideration was done not only by
22 the attorneys and the Staff that have appeared in the hearings
23 to date, but that this was a matter that was considered by the
24 highest levels of the Staff's management -- that we concluded
25 that we did not have enough information for the Staff in order

1 to take a position, and that we think that additional
2 information is going to be necessary for the Staff to have on
3 this matter, and the Staff does intend to be communicating to
4 the Applicant the nature of that information, by means of
5 communication from the Regional Administrator, Region II.

6 JUDGE KELLEY: Okay. And what you have done now is
7 just sketched the substance of what you expect to file
8 tomorrow; is that correct?

9 MR. TREBY: That's correct.

10 JUDGE KELLEY: But I don't understand you. You're
11 not asking for an extension for more time to file a response.
12 You are simply saying what you just said?

13 MR. TREBY: That's correct.

14 JUDGE KELLEY: Okay. So we would expect, then, to
15 stay on the track that we're on -- namely, that Mr. Runkel,
16 for CCNC, would be filing -- we said the 3rd, but we moved it
17 to the 6th, Mr. Runkel -- in view of the fact that you're not
18 going to be addressing additional affidavits, for example,
19 from the Staff, would you be able to file closer to the 3rd
20 than the 6th?

21 MR. RUNKEL: I have moved things around to be able
22 to file on the 6th.

23 JUDGE KELLEY: I guess I'm not saying it's crucial.
24 After all, it used to be Tuesday and now it's Friday.
25 Could you do this? If you filed on the 6th, could

1 you file Quick-Mail, so that it's in everybody's hands by
2 Monday morning?

3 MR. RUNKEL: Yes, sir. That's no problem at all.

4 JUDGE KELLEY: Okay. Well, so those are the changes
5 that are being made. Perhaps I could just give the parties a
6 chance to comment.

7 Mr. Baxter, any comment on these developments?

8 MR. BAXTER: Yes. I would ask whether the Staff
9 contemplated requests for information from the Applicants, in
10 their view, has no affect on the testimony and the hearing
11 schedule? I hope it does not, but I think that should be
12 brought forward now.

13 MR. TREBY: I don't know the answer to that
14 question, in the sense that I understand that some of the
15 information the Staff is going to request might be in the
16 nature of asking for some reinspection by the Applicant. I
17 don't know what kind of time schedule those things can be done
18 on and what impact that might have.

19 I think as we get more information, I would not want
20 to rule out the possibility of the Staff having to come back
21 and making an appropriate motion. At this time, I'm not
22 prepared to make any.

23 MR. BAXTER: I can only comment further, Judge
24 Kelley, it's very difficult from our standpoint to be planning
25 for a hearing which we have encouraged the Board to hold as

1 soon as possible with so much uncertainty in terms of what the
2 Staff is doing. We do have witnesses who want to know whether
3 they should be there on the 30th of September, and we are
4 making quite an effort to try and get ready on that timeframe.

5 It's a little surprising to me to have this kind of
6 development at the last minute.

7 JUDGE KELLEY: Well, I think we understand your
8 point, Mr. Baxter. It looks like there simply are some
9 conflicting views as to priorities here to some extent.

10 The Staff, if I hear Mr. Treby, is saying that they
11 may feel that more time is needed later on.

12 We did say -- and I'll just mention again -- there's
13 a little footnote on our order of August 9. The footnote
14 pertains to the prefiling date and the hearing date, and it
15 says, quote, "These dates are tentative and may be affected by
16 the complexity of the issues." And I think it's kind of
17 self-evident what we meant there.

18 We don't know the full dimensions of the matter at
19 this point, and it may, as the issues sharpen, it may be that
20 the dates are not realistic, and that we would listen to a
21 motion that urged that they are not realistic and that they
22 ought to be changed. But right now, we're not changing them;
23 we're leaving them where they are.

24 We would like to go ahead on the timeframe that
25 we've already established, and it's a consideration in that

1 regard. Mr. Runkel has plans for October; those were
2 established long ago. And we need him for a hearing, if we're
3 going to have a hearing. And if we don't go ahead on the 30th
4 of September or right about then, then we really can't go
5 ahead until the end of November sometime.

6 And the issue is such that you can't really tell
7 from this perspective where it would lead. If the Contention
8 is correct and drug use is widespread, then where is that
9 going to take us?

10 We don't know at this point, so the sooner we can
11 find out, find out with a reasonably full record, the better
12 off we are all going to be.

13 Those are just sort of obvious comments on the way
14 things look at this point.

15 I would say to the Staff that, to the extent that
16 the Staff feels they need more information, they need more
17 inspections, whatever else they may need, that they should
18 move on it as expeditiously as they can, because if the Staff
19 seeks a change in the time for testimony or hearing, they, of
20 course, will have the burden of good cause, and their
21 diligence in getting their work done will be a factor.

22 So Mr. Baxter had that comment.

23 Mr. Treby, anything else?

24 MR. TREBY: No, Judge Kelley.

25 JUDGE KELLEY: Okay. Mr. Runkel, anything else?

1 MR. RUNKEL: I would just like to state that I think
2 that we are jamming this thing up a little bit. I haven't
3 been able to assess what the Staff position is or what kind of
4 tack they're going to be taking on this thing.

5 My question to the Staff is, will they be expecting
6 to put on any witnesses, or what kind of participation can we
7 expect from them at the hearing?

8 JUDGE KELLEY: Mr. Treby, do you want to comment?

9 MR. TREBY: I think it's a little early for the
10 Staff to comment on that. I'm not -- I can't state at this
11 time what our participation would consist of. As I indicated,
12 we are going to be seeking some additional information from
13 the Applicants.

14 I can tell you that the Staff views the seriousness
15 of the issue or allegation of drug use as something they are
16 wrestling with mightily, and indeed, we will have to decide
17 what our course of action is going to be very shortly,
18 obviously, but we're not prepared to say what it is at this
19 point.

20 JUDGE KELLEY: Mr. Treby, under all the
21 circumstances, do you think that the Board's adhering to its
22 present dates for the time being is prudent, or do you think
23 in the real world, it's not really realistic and we ought to
24 leave it open?

25 MR. TREBY: My personal opinion is that probably it

1 is not realistic, but I have not been formally advised by my
2 client, which is the Technical Staff, that they can't make
3 these dates.

4 If you want my best opinion or judgment, I think
5 that they probably are very optimistic.

6 MR. JONES: This is Brad Jones. If I can just
7 interject one thing, since any requests for information that
8 should occur will come from the Region, as will any further
9 inspection, at this time I have every expectation that we
10 could meet the schedule as it is now set, from my discussions.

11 I have been on vacation and just returned today, but
12 my understanding is that any information, additional
13 information we would want or inspections could be conducted in
14 a timeframe that would allow for proceeding with the hearing
15 as it is now scheduled.

16 JUDGE KELLEY: Thank you, Mr. Jones.

17 Hold on just a moment, gentlemen. I'm going to mute
18 the box.

19 Just a minute. Judge Carpenter has a question.

20 JUDGE CARPENTER: Mr. Treby, this is Judge
21 Carpenter.

22 Can you tell the Board what your schedule is for
23 finalizing this request for additional information? When will
24 that be firm?

25 MR. TREBY: I am hopeful that the Regional

1 Administrator will be able to get his request out certainly
2 before the end of this week.

3 JUDGE CARPENTER: Thank you.

4 JUDGE KELLEY: That would be served, Mr. Treby?

5 MR. TREBY: We would provide a copy of that to the
6 Board and parties.

7 JUDGE KELLEY: Thank you. Let us take a short
8 break, just a couple of minutes. I will mute the squawk box
9 here.

10 [Discussion off the record.]

11 JUDGE KELLEY: Hello, this is Judge Kelley back on.
12 Can you hear me, Mr. Baxter?

13 MR. BAXTER: Yes.

14 JUDGE KELLEY: Mr. Runkel?

15 MR. RUNKEL: Yes, sir.

16 JUDGE KELLEY: Okay. I guess I'm audible again.

17 We have talked over what has been said so far, and
18 it seems to us that the most sensible approach would be to
19 leave in place the present dates for filing testimony, which
20 is the 23rd, and for commencing a hearing, which is the 30th,
21 in the recognition, however, that there are some unknown
22 aspects that could impact those dates and some party, perhaps
23 the Board itself, may want to revisit those dates as things
24 get a little clearer. But right now, we think it is not
25 unrealistic to leave the dates as they are.

1 Beyond that, we want to set a specific date and time
2 for a next telephone conference, so that we can discuss these
3 matters again in the light of a Board ruling on the pending
4 motion for summary disposition. And the date that we're going
5 to set is the 13th, Friday the 13th, as a matter of fact, for
6 the next telephone conference, in the morning at 10 o'clock,
7 and we can then -- the Board will then give you the substance
8 of a ruling on the pending motion for summary disposition. I
9 say "substance;" we're going to be giving an oral ruling on
10 the record.

11 We may have occasion to give further reasons at a
12 later date, as we have done in the past, but we think it's in
13 everybody's interest that we go ahead and decide the basic
14 question at that time, so that we know where we are.

15 In the light of that ruling, we have given a little
16 preliminary thought to some points that we would like you to
17 be thinking about a bit and at least be prepared to discuss.
18 These things won't come up if we grant the motion, but if we
19 deny the motion or deny it in part, they may be pertinent and
20 may have some practical ramifications of some significance.

21 It occurs to us, for example, it may make sense, if
22 we have to have hearings on -- I'll put it this way -- on the
23 Burch affidavit, the particulars of that affidavit, and the
24 respects in which it conflicts with the Applicant's filing or
25 can be read to conflict with it, would it make sense to go

1 ahead and hear that, perhaps before, if the Staff isn't
2 through with whatever it's looking at at the time. That's one
3 possibility.

4 Secondly -- and these are just illustrations and not
5 anything that obviously we have decided on, but again
6 something you can think about -- would it make sense for a
7 hearing to focus initially, at least, on the question of
8 whether there is or is not, in fact, or has been what's been
9 called "widespread" -- that's the word the Contention uses --
10 "widespread drug abuse at Shearon Harris and the kinds of
11 drugs involved, but not the ultimate safety question of the
12 effect of such usage on hardware?

13 It seems to us that if we had a hearing and we
14 decided that there was not widespread abuse and that drug use
15 had been held to a minimum, consistent with the realities of
16 modern life, then that might be the end of the matter. And
17 you only get to the hardware effect question if you find that
18 drugs weren't properly controlled.

19 So it seems to us that there may be a sort of
20 threshold question approach here that we could take and
21 marshal our resources most effectively.

22 And there may be other questions we could consider
23 also at this next telephone conference, but we wanted to give
24 you a little bit of advance notice of the direction our
25 thinking might take in the event that the motion is not

1 granted.

2 Let me ask my colleagues: Anything else?

3 JUDGE BRIGHT: [Nodding negatively.]

4 JUDGE CARPENTER: [Nodding negatively.]

5 JUDGE KELLEY: Let me go round the Board again.

6 Mr. Baxter, any comments or questions?

7 MR. BAXTER: I have no comments or questions.

8 JUDGE KELLEY: Thank you.

9 Mr. Treby?

10 MR. TREBY: Yes, Judge Kelley. I have no questions
11 or comments either.

12 JUDGE KELLEY: Mr. Bryant?

13 MR. BRYANT: No, sir, Judge Kelley.

14 JUDGE KELLEY: Mr. Runkel?

15 MR. RUNKEL: No, sir.

16 JUDGE KELLEY: Okay. So we will look for a Staff
17 filing tomorrow. Mr. Runkel will Quick-Mail us his filing by
18 the 6th, and then we'll be back on the phone with all of you
19 on Friday morning, the 13th.

20 Thank you very much.

21 [Whereupon, at 11:15 o'clock, a.m., the telephone
22 conference was concluded.]

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CERTIFICATE OF OFFICIAL REPORTER

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4

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

10 Name of Proceeding: Telephone Conference

11

12 Docket No.: 50-400-OL/ASLBP No. 82-472-03-OL

13 Place: Bethesda, Maryland

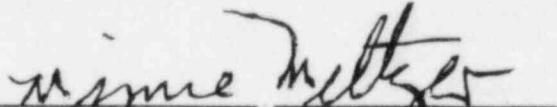
14 Date: Monday, August 26, 1985

15

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

19

(Signature)



(Typed Name of Reporter) Mimie Meltzer

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23 Ann Riley & Associates, Ltd.

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