

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-400-OL  
50-401-OL

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

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

LOCATION: WASHINGTON, D. C.

PAGES: 7409 - 7447

DATE: MONDAY, DECEMBER 17, 1984

TR-01/011

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

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In the Matter of:      :
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CAROLINA POWER & LIGHT COMPANY and :
NORTH CAROLINA EASTERN MUNICIPAL :
POWER AGENCY           : Docket Nos. 50-400-OL
:                               50-401-OL
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(Shearon Harris Nuclear Power :
Plant, Units 1 and 2)         :
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Ace-Federal Reporters, Inc.  
444 North Capitol Street, N.E.  
Suite 402  
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Monday, December 17, 1984

The telephone conference in the above-entitled matter  
convened at 1:30 p.m.

BEFORE:

JAMES L. KELLEY, Chairman  
Atomic Safety and Licensing Board

JAMES H. CARPENTER, Member  
Atomic Safety and Licensing Board

GLENN O. BRIGHT, Member  
Atomic Safety and Licensing Board

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Commission Staff:

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P R O C E E D I N G S

2 JUDGE KELLEY: Good afternoon. We have three or  
3 four matters that we want to take up. The first couple are  
4 two different affidavits that Staff offered at the hearing,  
5 I believe one of them might have been shortly thereafter; in  
6 any case, Mrs. Moore reminded us last week that we hadn't  
7 made a square ruling on two affidavits, one from  
8 Messrs. Eberly and Kubicki concerning fire doors as they  
9 relate to Contention 116 and the second one was an  
10 affidavit, I believe, from Mr. Mascentonio and others. Was  
11 there more than one person there, Mrs. Moore?

12 MRS. MOORE: Yes, your Honor, there were two  
13 other individuals on the affidavit.

14 JUDGE KELLEY: Okay.

15 Just for identification purposes that ought to be  
16 sufficient. Anyway it is an affidavit about the ITT Barton  
17 transmitters and just briefly, as to the second one, the  
18 second one first, at transcript 5770 and 71 Mrs. Moore had  
19 offered that affidavit and to paraphrase Mr. Eddleman -- and  
20 if that doesn't square with your recollection, Mr. Eddleman  
21 -- you were willing to waive cross on that but you were not  
22 stipulating any agreement necessarily with what it might  
23 say.

24 MR. EDDLEMAN: That's correct.

25 JUDGE KELLEY: Okay.

1                   And as I understand it I don't believe the  
2 Applicants had any objection to the admission of that  
3 affidavit, did they, Mr. O'Neill?

4                   MR. O'NEILL: That is correct, we did not object  
5 to that affidavit being admitted into evidence.

6                   JUDGE KELLEY: Okay.

7                   So I think we can just rule on that and say that  
8 the Mascentonio et al. affidavit on Contention 9, the ITT  
9 Barton transmitters, is admitted on the understanding, of  
10 course, that Mr. Eddleman is not stipulating an agreement  
11 with it, he is just in effect waiving his right to cross on  
12 it.

13                   Moving then to the one I mentioned first, the  
14 affidavit about Contention 116 from Eberly and Kubicki, that  
15 was discussed in the transcript at pages 6908 through 6913  
16 and Mr. Eddleman objected to the unqualified admission of  
17 the affidavit as it then stood, he had a number of questions  
18 that he wanted answered about it -- maybe I can just get the  
19 flavor across and also be accurate by quoting, let me quote  
20 a few lines from 6909 and 6910 as follows:

21                   This is Mr. Eddleman speaking and he says:

22                   "I have been supplied with a copy of  
23 the affidavit and I would object to its being  
24 admitted unless the yield point of the steel  
25 used in these fire doors and the temperature at

1 which that yield point would normally be  
2 reached and a definition, for example, in Btu's  
3 per square feet or a definition stating that  
4 the ASTM E-119 curve (n combustible loading  
5 determined significant fire exposure to cause  
6 the door to yield and I also think that the  
7 affidavit should state the assumptions, for  
8 example, whether the assumption about the fire  
9 brigade arriving to deal with the problem is  
10 part of the analysis or what other assumptions  
11 there are; whether the door itself would  
12 actually stand up to a fire in adjacent areas  
13 or area for three hours that the ratings  
14 require."

15 And I don't think my inflection throughout there  
16 was accurate and if I distorted meaning I apologize but I  
17 want to get across the thrust of questions at least that  
18 Mr. Eddleman raised at that time.

19 And then in response to this concern the Board  
20 suggested something which is essentially what we're going to  
21 do today and I'll just read, to provide the context, from  
22 6912 starting at line 12, and this is myself speaking:

23 "Suppose we were on a telephone  
24 conference in the near future and one of the two  
25 people here -- one is gone, I understand -- but

1 the other one gets on the phone and he has read  
2 over the transcript and he knows what you're  
3 interested in and he provides that information;  
4 then you ask him a few questions and that is  
5 transcript material that is in, would that  
6 satisfy you? Do you think that would satisfy  
7 your concerns?"

8 "Mr. Eddleman: Sure, as long as I  
9 get a copy of the phone transcript a few days  
10 at least in advance of when the proposed  
11 findings were due."

12 So what we had in mind this afternoon was to  
13 simply follow through on that procedure that we sketched  
14 briefly there.

15 Let me mention that Mr. Eddleman I expect we would have  
16 a transcript of this tomorrow and I'll send you one  
17 quick-mail, that's about the best I can do, but you should  
18 at least have it by towards the end of the week.

19 MR. EDDLEMAN: That's fine, Judge.

20 JUDGE KELLEY: Okay.

21 And as we see it we're on the record now, we have  
22 a Court Reporter, we're going to get some answers to some of  
23 Mr. Eddleman's questions. I hope, just in the interest of  
24 complicity, that we can keep the questions fairly brief and  
25 that we can keep objections out or brief so it just goes



1 simpler all the way around, but we're in a hearing format as  
2 a practical matter and Mr. Eddleman will be cross-examining  
3 -- the name of the witness is, Mrs. Moore?

4 MRS. MOORE: Mr. Dennis Kubicki, your Honor.

5 JUDGE KELLEY: Mr. Dennis Kubicki.

6 Have you been in the case as a witness before,  
7 Mr. Kubicki?

8 MR. KUBICKI: No, I have not.

9 JUDGE KELLEY: I think I better swear you then.  
10 Could you raise your right hand, please?

11 MR. KUBICKI: I have it raised.

12 Whereupon,

13 DENNIS KUBICKI

14 was called as a witness and, having first been duly sworn,  
15 was examined and testified as follows.

16 JUDGE KELLEY: Mr. Eddleman, can you just give me  
17 an idea how long you think this might take?

18 MR. EDDLEMAN: Not too awful long, Judge, all of  
19 my questions fit on one sheet of paper.

20 JUDGE KELLEY: Single-spaced?

21 MR. EDDLEMAN: Yes, sir, but it is not a normal  
22 full-sized sheet.

23 JUDGE KELLEY: Go ahead. We'll see how it goes,  
24 go ahead.

25 MRS. MOORE: Your Honor, before we start, I think

1 it is necessary for us to make one correction to the  
2 affidavit.

3 JUDGE KELLEY: Okay.

4 MRS. MOORE: That correct is in paragraph four of  
5 the affidavit -- well perhaps I had better let Mr. Kubicki  
6 make the pertinent correction. I think that would be the  
7 better way to handle this.

8 THE WITNESS: As Mrs. Moore mentioned, it is in  
9 paragraph four, the sentence refers to the number of doors  
10 which are interior and exterior. The sentence reads:

11 "Presently, of these, 7 areas  
12 involve interior doors and 13 areas involve  
13 openings to the outside of the plant."

14 It should read:

15 "...of these, 8 areas involve  
16 interior doors and 12 areas involve openings  
17 to the outside of the plant."

18 JUDGE KELLEY: Okay. Thank you.

19 MRS. MOORE: There are no further questions, your  
20 Honor.

21 JUDGE KELLEY: Fine.

22 MR. EDDLEMAN: This is Wells Eddleman.

23 CROSS-EXAMINATION

24 BY MR. EDDLEMAN:

25 Q Mr. Kubicki, is there a list of those doors in

1 the affidavit?

2 A No, sir, there is not.

3 Q Okay.

4 Are they listed in your analysis that I believe

5 was transmitted to the parties?

6 A No, sir, they are not.

7 Q Do you know if there was a list of those doors in

8 the Applicants' October 10th, 1984 submission which I

9 believe deals with the fire doors that had been tested?

10 A Yes, sir, they were.

11 Q Okay.

12 You don't happen to have a copy of that there

13 with you, do you?

14 A I do.

15 Q Can you tell me where those doors are listed,

16 what table or page?

17 A Yes, I can if you will bear with me for just one

18 moment.

19 Q Certainly.

20 (Pause.)

21 A It's on page one of five and enclosure one and it

22 is also on page two, three, four and five of five in that

23 same enclosure.

24 Q Okay.

25 A Now I might add, however, that this represents a

1 comprehensive list of fire doors. The four that are not  
2 fire-rated are highlighted in -- well they're highlighted in  
3 the November 8, 1984 submittal.

4 Q All right.

5 MR. EDDLEMAN: Now let me ask, do the Applicants  
6 or the Staff have any objection to admitting that November  
7 8th, '84 submittal into the record?

8 MR. O'NEILL: Judge Kelley, this is Mr. O'Neill.

9 JUDGE KELLEY: Right.

10 MR. O'NEILL: We certainly have no objection to  
11 having the November 8, 1984 letter from Mr. S.R. Zimmerman  
12 to Mr. Denton which encloses an attachment regarding SER  
13 Open Item 8 including tables that identify each of these  
14 doors as an exhibit. Once again it has never been  
15 completely clear to us the relevance to this contention but  
16 it is our piece of paper, we stand by it.

17 JUDGE KELLEY: Okay.

18 Is that something that has already been served on  
19 the parties?

20 MR. O'NEILL: Yes, sir, it was served to the  
21 service list as all licensing documents regarding this  
22 docket.

23 JUDGE KELLEY: The Zimmerman letters normally get  
24 circulated, as I recall.

25 Okay. So you have no objection.

1 How about Staff?

2 MRS. MOORE: The Staff has no objections, your  
3 Honor.

4 I need to ask a question though: I believe there  
5 were some drawings attached to that letter and I was  
6 wondering, we're not admitting those, are we?

7 MR. EDDLEMAN: I believe my copy had a set of  
8 reduced size -- you know, not big blueprints but a set of  
9 reduced size drawings attached and I would want to ask that  
10 those, you know, normal sheet of paper or double sheet of  
11 paper sized drawings be admitted in the record.

12 JUDGE KELLEY: What kind of sheer bulk are we  
13 talking about? Are we talking about 10 pages or what,  
14 including the drawings?

15 MR. EDDLEMAN: I think it's about 20, subject to  
16 check.

17 JUDGE KELLEY: An estimate is all we really need.

18 MRS. MOORE: Staff has no objection, your Honor.

19 JUDGE KELLEY: Okay. Granted.

20 MR. EDDLEMAN: Okay. Let's call that Eddleman  
21 61, I think that's the next number I've got if I remember my  
22 transcript correctly.

23 JUDGE KELLEY: Okay. Eddleman 61.

24 The date is the November 8th submission,  
25 correct ?

1 MR. EDDLEMAN: Yes, sir.

2 Now I don't know exactly what my obligation is,  
3 am I supposed to give the Reporter a copy?

4 JUDGE KELLEY: Yes, eventually you should. All  
5 of the parties have been served, you don't have to serve  
6 again.

7 MRS. MOORE: Your Honor, I believe the  
8 requirement is three copies to the Court Reporter.

9 MR. EDDLEMAN: Well what I'm wondering is if it  
10 would be easier for the Staff to just give them the copy up  
11 there.

12 JUDGE KELLEY: Well that's between you and the  
13 Staff.

14 MR. EDDLEMAN: Okay. Well we'll try to talk  
15 about this informally.

16 JUDGE KELLEY: Then the Reporter should get the  
17 normal three copies. If you can arrange something with the  
18 Staff, we don't care.

19 MR. EDDLEMAN: Okay. Fine. Thank you.

20 (Whereupon, 11/8/84 Zimmerman  
21 letter to Denton was marked  
22 as Eddleman Exhibit 61  
23 for identification.)

24 BY MR. EDDLEMAN:

25 Q Mr. Kubicki.

1 A Yes, sir.

2 Q The dimensions of those doors that are steel  
3 doors that are treated in your affidavit, are they set forth  
4 in the attachments to this November 8, 1984 submittal?

5 A Not completely, no.

6 Q Okay.

7 What dimensions are missing?

8 A Well there are certain dimensions for certain  
9 doors that are missing.

10 Q Okay.

11 But in fact the thickness and the height and  
12 width of the door is typically in that, is it not?

13 A That's correct.

14 Q Okay.

15 And if I wanted to figure out how many cubic feet  
16 of steel are in those things I could simply multiply height  
17 by width by thickness and get it, could I not?

18 A Yes, sir.

19 Q Okay.

20 What is the yield point of the steel -- Well let  
21 me ask you this first:

22 Are all of these doors made out of the same kind  
23 of steel, to your knowledge?

24 A No, they're not.

25 Q Okay. What kinds of steel are used in them?

1           A       All right. Maybe I misinterpreted your  
2 question. The doors are not configured similarly.

3           Q       Okay.

4                    What I'm asking is what kind of steel alloys, is  
5 it all mild steel or some of it certain alloys?

6           A       I really can't answer that question, I'm sorry.

7           Q       Okay.

8           A       As far as I know they are all the same type of  
9 steel, however.

10          Q       Did you investigate the type of steel in the  
11 doors as to its properties, particularly yield point with  
12 rising temperature?

13          A       No, as far as the Staff procedures in terms of  
14 evaluating steel as it relates to fire protection in a  
15 nuclear power plant, we consistently use 1100 degrees  
16 Fahrenheit as the yield point.

17          Q       Okay.

18                    So you assume that any steel fire door will have  
19 a yield point around 1100 degrees Fahrenheit, is that right?

20          A       As well as steel structural members that are not  
21 protected by fireproofing, yes.

22          Q       Okay.

23                    These doors are not protected by other  
24 fireproofing, are they?

25          A       That's correct, they're not.



1 Q Okay.

2 Now do you use the E-119 ASTM time-temperature  
3 curve for figuring what temperature those doors will be  
4 heated to in a fire?

5 A We did not know.

6 Q What determination -- or how did you assess what  
7 temperature the door would reach in a fire for these fire  
8 doors?

9 A Well first of all you have to understand that we  
10 didn't determine the precise temperature that the doors  
11 would reach when subjected to the type of fire that we  
12 postulate will occur in these individual areas.

13 What we did, however, do was to consider the  
14 configuration of the door itself, the location of the door  
15 in relationship to the ceiling, the location of the door in  
16 relationship to outside areas, the type and quantity and  
17 configuration of combustible materials and the presence of  
18 fire protection mitigation features.

19 Q Okay.

20 Well let me ask you: the Btu per square foot of  
21 the fire area near those fire doors are in the PSAR, are  
22 they not?

23 A Yes.

24 Q Okay. So I could get that information there.

25 And in your analysis of fires generally in

1 nuclear power plants, that is, a fire that you assume, you  
2 do use the ASTM E-119 time-temperature curve, do you not?

3 A We use the ASTM E-119 time-temperature curve to  
4 qualify certain fire rated assemblies, such as fire rated  
5 doors, floor-ceiling assemblies, walls, et cetera.

6 Q Okay.

7 When you say floor ceiling, is that s-e-a-l,  
8 seal, or is it ceiling as in c-e-i-l-i-n-g?

9 A It is ceiling but however we also utilize the  
10 ASTM E-119 curve to assess the adequacy of penetration  
11 seals, s-e-a-l.

12 Q Okay.

13 Now did you, in your analysis, check on the  
14 coefficient of thermal expansion of any of the steels used  
15 in these doors or their frames, these steel fire doors?

16 A No, sir, we did not.

17 Q Okay.

18 Did you check on the heat capacities of the  
19 various steels used?

20 A No, sir, we did not.

21 Q In fact, you could find the heat capacities and  
22 co-efficients of thermal expansion for standard steel alloys  
23 in reference texts, could you not?

24 A Yes, you could if you wanted to use them, yes.

25 Q Okay.

1 Are these doors typically framed into concrete  
2 walls?

3 A Masonry walls, yes.

4 Q Okay. Either block or concrete?

5 A Yes.

6 Q Okay.

7 Did you happen to check on the R-value, the  
8 thermal resistance of the walls themselves?

9 A No, sir, we did not.

10 Q Would you accept that the R-value of masonry is  
11 typically .2 per inch of thickness?

12 A I trust your statement on that fact, I would have  
13 to check that myself to independently verify it.

14 Q Okay. We could look that up in tables of  
15 R-values of various materials, could we not?

16 A Yes, we could.

17 Q Okay.

18 In your analysis, do you assume that the fire  
19 brigade will arrive within 30 minutes to deal with a fire  
20 that might affect one of these doors?

21 A Our standard position of the Staff is that a half  
22 an hour is the time from the advent of a fire through its  
23 ultimate extinguishment, yes.

24 Q Okay.

25 At what point do you assume that the fire brigade

1 will begin to take action against a fire affecting one of  
2 these doors in your analysis as covered in your affidavit?

3 A Well I can't answer that question because the  
4 location of these doors vary throughout the plant and  
5 consequently the response time by the fire brigade varies  
6 from door-to-door. However at no point would we assume that  
7 the fire brigade would necessarily be delayed beyond a half  
8 an hour.

9 Q Okay.

10 Did you make any specific analysis of the fire  
11 brigade response time to get to any of these doors, fire  
12 doors?

13 A No, sir, we did not.

14 Q Okay.

15 Did you make any analysis of the fire detection  
16 instrumentation near these doors as to whether it would  
17 detect a fire affecting the doors and give timely warning to  
18 the plant personnel including the fire brigade?

19 A The answer to that question is generally yes. I  
20 think you should be a little bit more specific as to what  
21 you mean by an analysis.

22 Q Well did you specifically, for any of these  
23 doors, look where the various fire detectors in the fire  
24 areas on the sides of the doors that are in the plant were  
25 and see what their detection capability would be for a fire

1 near the door, specifically?

2 A Well I think to answer your question what I  
3 should tell you is that we did look at fire detectors as  
4 well as the availability of fire suppression, both automatic  
5 and manual, and as part of our analysis we concluded that,  
6 yes, the presence of detectors on the interior of the plant  
7 near the doors would give us reasonable assurance that a  
8 fire would be detected in its initial stages before rapid  
9 buildup and flame generation and therefore would enable the  
10 fire brigade to arrive at a point in time where the fire  
11 would be relatively -- I'll call it -- benign or low in  
12 intensity prior to the door being significantly impacted by  
13 that fire.

14 Q Okay.

15 And what assumptions or data regarding the  
16 reliability of the fire detectors and the redundancy of fire  
17 detectors did you use in making analysis toward that  
18 conclusion?

19 A Just past history primarily, not only from the  
20 standpoint of nuclear plant experience but also past history  
21 associated with detector use in any type of occupancy.

22 Q Okay.

23 That's all the questions I have. Thank you very  
24 much.

25 JUDGE KELLEY: Okay. Thank you, Mr. Eddleman.

1 I'm thinking about protocol here.

2 Mr. O'Neill, any questions?

3 MR. O'NEILL: No, sir.

4 JUDGE KELLEY: Okay.

5 Colleagues?

6 (No response.)

7 I have one question that grows out of the  
8 exchange between Mr. Eddleman and Mr. Kubicki early on, it  
9 had to do with how much steel was in these doors.

10 EXAMINATION BY THE BOARD

11 BY JUDGE KELLEY:

12 Q And I think Mr. Eddleman indicated based on what  
13 he heard that he could just take the dimensions of the doors  
14 and multiply them and get the number of cubic feet of steel  
15 in a door -- that would suggest to me that these doors are  
16 made out of solid steel, is that true?

17 A Yes.

18 Q They are made out of solid -- just a plate of  
19 steel. It isn't just that there's no air in the middle?

20 A That's correct.

21 Q Aren't they -- they must be awfully heavy.

22 A They are.

23 Q Okay. Thank you. That's interesting.

24 JUDGE KELLEY: Any questions?

25 Mrs. Moore?

1 MRS. MOORE: No, your Honor, I have no questions.

2 JUDGE KELLEY: Okay. Mr. Kubicki?

3 THE WITNESS: Yes, sir.

4 JUDGE KELLEY: I appreciate your joining us today

5 and --

6 MR. EDDLEMAN: Judge, excuse me --

7 JUDGE KELLEY: Whoops.

8 MR. EDDLEMAN: Can I ask him a question based on

9 that one that you asked?

10 JUDGE KELLEY: Of course. Go ahead.

11 RE-CROSS-EXAMINATION

12 BY MR. EDDLEMAN:

13 Q Mr. Kubicki, with these doors being solid steel,  
14 if they expand will they tend to warp?

15 A Yes, they would tend to warp. The tendency -- or  
16 the design of the door helps to preclude the effect of  
17 significant warping by the use of the multiple steel locking  
18 pins.

19 Q Okay.

20 These locking pins are located in the doors  
21 themselves, is that right?

22 A Yes, they are associated with the doors and they  
23 are engaged in such a way that the doors are secured tightly  
24 into the frame.

25 Q Okay.

1                    Is that on all edges of the frame or just where  
2                    the doors meet?

3                    A                It's where the door meets the frame.

4                    Q                All around the edges?

5                    A                To my knowledge, yes.

6                    Q                Okay. Thank you very much.

7                    JUDGE KELLEY: Any questions -- Let me put it  
8                    this way: any questions from anybody else?

9                    (No response.)

10                   Okay. I think then that, Mr. Kubicki, let me  
11                   just say, as I was saying before, we appreciate your joining  
12                   us today, we often say at the end of a witness' appearance  
13                   that he is free to go but in this case I guess you've  
14                   already gone. But anyway thanks very much and you're  
15                   excused.

16                   (Witness excused.)

17                   JUDGE KELLEY: So we have a motion to admit the  
18                   Kubicki-Eberly affidavit, now that we have afforded this  
19                   opportunity for cross-examination and is there any objection  
20                   to our admitting the affidavit at this point?

21                   Mr. Eddleman?

22                   MR. EDDLEMAN: Judge, I have no objection. I  
23                   would just make the same note as we did on the other  
24                   affidavit, I am not necessarily stipulating to what it  
25                   says --



1 JUDGE KELLEY: I understand.

2 MR. EDDLEMAN: -- but I have no objection to its  
3 admission into evidence.

4 JUDGE KELLEY: Right. Okay.

5 Then that affidavit is admitted on that  
6 understand.

7 MR. O'NEILL: Judge Kelley, shall we give it a  
8 Staff exhibit number?

9 JUDGE KELLEY: We should give it some number, I  
10 guess, yes.

11 MRS. MOORE: That would be Staff Exhibit 8, your  
12 Honor.

13 JUDGE KELLEY: 8, okay.

14 Did we give one to the preceding one, or had that  
15 already been done?

16 MRS. MOORE: I have proposed it as Staff Exhibit  
17 7.

18 JUDGE KELLEY: So they'll be 7 and 8.

19 MRS. MOORE: I will provide the requisite number  
20 of copies to the Court Reporter.

21 JUDGE KELLEY: Thank you.

22 (Whereupon, the Mascentonio et  
23 al. affidavit was marked as  
24 Staff Exhibit 7 for  
25 identification.)

1 (Whereupon, the Kubicki-Eberly  
2 affidavit was marked as  
3 Staff Exhibit 8 for  
4 identification.)

5 JUDGE KELLEY: There are a couple of other  
6 matters that have come up since we originally scheduled the  
7 telephone conference.

8 Let me ask first whether all of the parties  
9 received our Memorandum and Order of December 7th  
10 transmitting the transcript of the last telephone conference  
11 and some other things.

12 Everybody receive that?

13 MR. O'NEILL: Applicants received it.

14 MRS. MOORE: Yes.

15 MR. EDDLEMAN: Judge, I received it I think  
16 Saturday. I will -- if you recall, I requested permission  
17 to ask reconsideration. It will be a very short motion for  
18 reconsideration, probably about a page, a page and a half,  
19 I anticipate filing either late this week or early next,  
20 within the ten days specified.

21 JUDGE KELLEY: Okay.

22 Just yesterday we received a letter from  
23 Mrs. Flynn and addressed to the three Judges and the subject  
24 was Mr. VanVough and the circumstances of the settlement and  
25 Mr. Eddleman, I guess, talking with the local radio stations

1 AGBagb

1 about the subject.

2 Let me ask Mr. Eddleman:

3 Have you received a copy of the letter?

4 MR. EDDLEMAN: Yes, I have.

5 JUDGE KELLEY: Okay.

6 Would you like to comment on it?

7 MR. EDDLEMAN: Just a little bit. As I recall  
8 the conversation was taped and I tried<sup>p</sup> to get ahold of the  
9 reporter but I was not successful. I believe that there are  
10 some, you know, some things that aren't quite what I  
11 remember what I said: for example, I believe it says in  
12 there at one point that I said that CP&L's files would have  
13 revealed certain things, certain problems substantiating  
14 what Mr. VanVough said. I believe I said something to the  
15 effect that it would have or could have if Mr. VanVough was  
16 correct and so on.

17 Also I guess my basic comment was that my  
18 understanding was that the existence of a settlement, cash  
19 settlement with Mr. VanVough was on the record per the  
20 previous conference call and since it was on the record I  
21 was as free to use that as any member of the public would  
22 be. I thought that I better do my speculating before I had  
23 a copy of the affidavit in my hand -- I mean not of the  
24 affidavit, of the agreement in my hand because if I did any  
25 speculating once I had it the inference that I was doing so

1 ACBagb

1 on the basis of information from it would be, you know, a  
2 reasonable thing and I couldn't avoid that so I figured if I  
3 was going to talk to the press I had better talk to them  
4 before I got the thing.

5 JUDGE KELLEY: Well did you consider, under all  
6 of the circumstances, not talking to the press on this  
7 subject at all?

8 MR. EDDLEMAN: I can't say I gave it much  
9 thought, Judge.

10 JUDGE KELLEY: Well I guess our Board talked  
11 about it a little bit and we wanted to hear, you know, what  
12 you had to say. We feel, based on what we knew and what we  
13 hear from you now, that it was not -- there wasn't any legal  
14 bar, that's true, to your talking to the press at that time,  
15 we don't think that it was a prudent thing to do. You can  
16 make a choice between trying the VanVough issues in the  
17 media or before the Board, but for now you're choosing the  
18 Board and we've got a contention before us and the Board, at  
19 least initially, keeping this agreement confidential, it  
20 just says it's confidential between the parties. Of course,  
21 you know that.

22 So we feel that to speculate about amounts of  
23 money in terms of the agreement was, while not legally  
24 barred, was not a good idea.

25 MR. EDDLEMAN: Well sir, I can appreciate that.

1 I will say that Mr. O'Neill said, you know, when we were  
2 discussing it in the previous conference call, at least as I  
3 recall, that it cost a good bit to litigate and that was  
4 something to take into account, that was one of the bases of  
5 my speculation. I'm not trying to presume on some, you  
6 know, matters of legal practice, I guess, that I probably  
7 don't understand fully. I guess my feeling is that we try  
8 these things as a public proceeding except where things are  
9 to be held in confidence; that things that were on the  
10 record I can say and things that I guess I can say but I  
11 obviously can't use anything that's under a protective order  
12 and I haven't and I won't.

13 JUDGE KELLEY: Okay. Well I guess our perception  
14 of this particular matter and yours are somewhat different.  
15 You have stated your slate on it and we have stated ours;  
16 again we think it is a matter really more of judgment -- it  
17 is a matter of judgment, not a matter of legal requirement.

18 We will be in a different situation though, I  
19 think, quite shortly. We did, as you know, in our order  
20 tell the Applicants to turn over the settlement agreement  
21 and we included in our order at page two this language:

22 "Mr. Eddleman is not to disclose any  
23 terms of the agreement to any other person subject  
24 to further Board order."

25 And I gather that's agreeable with you,

1 AGBagb

1 Mr. Eddleman?

2 MR. EDDLEMAN: Perfectly, Judge.

3 JUDGE KELLEY: Okay. Well I think on that  
4 understanding that's all we wanted to say about it.5 MRS. FLYNN: Excuse me, this is Mrs. Flynn, may I  
6 just make one request? I think that it is important that  
7 Mr. Eddleman understand that not only -- or that the order  
8 be that not only can he not discuss the terms of the  
9 agreement but that he not discuss the agreement at all,  
10 because this --

11 JUDGE KELLEY: That's what we meant.

12 MRS. FLYNN: Okay.

13 JUDGE KELLEY: When we said don't discuss the  
14 terms, we mean the agreement and the terms.

15 MRS. FLYNN: Okay.

16 JUDGE KELLEY: Okay.

17 MRS. FLYNN: Thank you.

18 MR. EDDLEMAN: Judge, now let me understand  
19 this. Do you mean -- not to disclose the agreement, I am  
20 perfectly agreeable with that.

21 JUDGE KELLEY: Right.

22 MR. EDDLEMAN: But you're saying I can't discuss  
23 it. My understanding is that, you know, what's on the  
24 record here is that there was an agreement made.

25 JUDGE KELLEY: Right.

1 MR. EDDLEMAN: That there is a single paragraph  
2 agreed between the power company and Mr. VanVough as to what  
3 may be disclosed about the agreement and the other thing  
4 that's on the record is that there was a cash settlement,  
5 amount unspecified.

6 JUDGE KELLEY: That's right.

7 MR. EDDLEMAN: Okay.

8 Now in other words if somebody calls me up and  
9 asks me -- I'm not talking about me taking the initiative,  
10 if somebody calls me up and asks me says Well what do you  
11 know about this agreement I'll say I can't tell you anything  
12 but those three things because I got a copy under a  
13 protective order and I can't discuss what it says or doesn't  
14 say. That's what I would do.

15 Now is that consistent with what you're talking  
16 about?

17 JUDGE KELLEY: You're just saying that the fact  
18 that there is an agreement, that's public knowledge, right?

19 MR. EDDLEMAN: Right.

20 JUDGE KELLEY: The agreement exists, and that's  
21 no secret.

22 Secondly, a statement was made on the record that  
23 there was a payment made, a money payment. That, too, is on  
24 the public record.

25 What is not on is what the amount would be,

1 AGBagb 1 right?

2 MR. EDDLEMAN: Yes, sir.

3 JUDGE KELLEY: But you know you can't speculate  
4 up, down or in any direction because you will in fact know.

5 MR. EDDLEMAN: Right. So that's what I'm saying,  
6 if somebody asks me how much was it I'll say I can't confirm  
7 or deny any figure because I got the thing under a  
8 protective order.

9 JUDGE KELLEY: Okay. What was your third point?

10 MR. EDDLEMAN: The third point was the single  
11 paragraph that was agreed between the Applicants and  
12 Mr. VanVough as I understand it is a thing that could be  
13 publicly stated about the agreement.

14 JUDGE KELLEY: It already has been, hasn't it?

15 MR. EDDLEMAN: That's right.

16 What I'm saying is -- What I'm trying to clarify,  
17 Judge, and it may be just my ignorance of legal matters:  
18 Are you ordering me not to discuss the agreement at all or  
19 only not to reveal what's in it?

20 JUDGE KELLEY: Well I think the three things that  
21 you just said as you said them is fair enough, that's all  
22 public. What we say here in our order -- and that's the  
23 operative language I'm quoting now:

24 "Mr. Eddleman is not to disclose any  
25 terms of the agreement to any other person



1 AGBagb

1 subject to further Board order."

2 MR. EDDLEMAN: Right and that's certainly  
3 agreeable to me.

4 JUDGE KELLEY: Okay. And I think that's clear  
5 enough. In light of this discussion, do you think it's  
6 clear enough?

7 MR. EDDLEMAN: I think that's perfectly clear,  
8 Judge. In other words -- well let me try to say it back:  
9 that I shouldn't say anything to anybody whether it's  
10 speculation or statement that discloses or describes or  
11 tells any of the terms of the agreement at all.

12 JUDGE KELLEY: Right.

13 MR. EDDLEMAN: Okay.

14 What I'm trying to understand is now as to those  
15 things that are on the public record I can talk about them  
16 all I want, it's just as to what they say, but I couldn't  
17 speculate as to say the amount of the settlement or the  
18 other terms or anything like that because I got the thing  
19 under a protective order and I know the answers so I'm not  
20 allowed to say anything about that, right?

21 JUDGE KELLEY: I think that's a fair statement.

22 MRS. FLYNN: But Applicants --

23 JUDGE KELLEY: I really think, you know, a simple  
24 thing is getting awfully elaborate here --

25 MR. EDDLEMAN: I understand that, Judge, but what

1 AGBagb

1 I'm trying to see -- you see, before you said that, you  
2 know --

3 JUDGE KELLEY: Mr. Eddleman, let me finish,  
4 please.

5 MR. EDDLEMAN: I beg your pardon, Judge, I  
6 thought you had.

7 JUDGE KELLEY: I'm not through.

8 I mean the agreement you are under is by its  
9 terms and this Board order of the 7th of December, it's one  
10 sentence long and it contains about 17 words. It says don't  
11 disclose the terms of the agreement period. Right. We've  
12 been over the fact that you can say to anybody you want  
13 there was an agreement to settle, there was a payment of  
14 some kind and there's a paragraph here that's public and  
15 whatever the paragraph said. Now isn't that enough for us  
16 to say this afternoon to have this straight? It is for me.

17 MR. EDDLEMAN: It is for me, too, Judge.

18 JUDGE KELLEY: Okay. Then what else is open?

19 Mrs. Flynn, that give you a problem?

20 MRS. FLYNN: I only -- Mr. Eddleman's concern is  
21 giving me a concern. I think that if -- once he has the  
22 agreement he should not -- equally he should not be able to  
23 speculate to the media or to other people about motivations  
24 and things because it sounds as though -- I mean he's going  
25 to have the document, I think once he has it he has an

1 AGBagb

1 obligation to truly remain silent with the exception of the  
2 three matters of fact that you have already articulated.  
3 But speculation about motivation and things like that seem  
4 to me to be really going to the spirit of the protective  
5 arrangement, if not the precise letter. And since  
6 Mr. Eddleman seems so concerned about the precise letter of  
7 the Board's ruling, I am a little concerned about his view  
8 of the spirit of it.

9 JUDGE KELLEY: Mr. Eddleman.

10 MR. EDDLEMAN: Yes.

11 JUDGE KELLEY: What about the approach of your  
12 being free to speak about the three points that we have now  
13 stated several times and I think it's quite clear on the  
14 record and otherwise not discussing this matter period?

15 MR. EDDLEMAN: Judge, that was why I was trying  
16 to clarify what the exact scope of the order was. It looked  
17 straightforward to me in the December 7th ruling. I don't  
18 have any great interest in engaging in further speculation  
19 on this, I think that just as a matter of judgment, let's  
20 say, like I said before that if I did any speculation about  
21 it with the order in hand the inference that I was basing  
22 that speculation on knowledge that I'm not allowed to  
23 discuss or disclose would be reasonable and therefore I  
24 shouldn't do it.

25 I've got a little problem, I guess, First

1 Amendment-wise about being barred from saying anything but  
2 those three things about it but I guess without knowing  
3 terms exactly I wouldn't be able to explain any further.

4 JUDGE KELLEY: Well I might just say again we  
5 don't know how long the protective order is going to  
6 obtain. It may well be that next month or the month after  
7 that, for whatever reason, the protective order is no longer  
8 in place. We simply don't know what's going to happen yet.  
9 This is something that preserves the status quo for the  
10 time being, that's the idea, and I don't think that the  
11 First Amendment is going to be unduly infringed by a  
12 short-term understanding that you are limited to those three  
13 matters.

14 MR. EDDLEMAN: Well what you're saying is until  
15 the Board modifies its order that I'm not to say anything  
16 about this agreement except the three matters that are on  
17 the record, is that correct?

18 JUDGE KELLEY: Let me consult with my colleagues,  
19 okay? Excuse us a moment.

20 (Pause.)

21 The three Judges are back now, ladies and  
22 gentlemen, just wait a minute, we'll be back to you.

23 (Pause.)

24 This is Judge Kelley back on. Mr. Eddleman, are  
25 you with us?

2 AGBagb 1

MR. EDDLEMAN: Yes.

2

JUDGE KELLEY: Mrs. Flynn?

3

MRS. FLYNN: Yes.

4

JUDGE KELLEY: Mr. O'Neill?

5

MRS. FLYNN: Yes.

6

JUDGE KELLEY: Mrs. Moore?

7

MRS. MOORE: Yes.

8

JUDGE KELLEY: Okay.

9

We have discussed this point somewhat further and I'm going to tell you in a general way what we have decided to do and then probably tomorrow we will mail you the exact text of what we're going to do.

13

The basic idea though is that save for those three areas that we have discussed several times in the last few minutes, namely the existence of the settlement, the fact that a payment was made and the fact that there is a piece of public information about it, neither Mr. Eddleman nor the Applicants shall make any public statements about this settlement pending further order of the Board. That's the general thrust of it. I think you can understand it.

21

Do you want to comment on it, Mr. Eddleman?

22

MR. EDDLEMAN: Judge, that's okay with me.

23

Am I allowed to tell people if they ask me to comment that I am under order not to?

25

JUDGE KELLEY: Yes.

1 AGEagb

1 MR. EDDLEMAN: Okay. That's fine.

2

JUDGE KELLEY: Okay.

3

Mrs. Flynn?

4

MRS. FLYNN: Yes, that's agreeable to us.

5

JUDGE KELLEY: All right.

6

Well we'll just have to work out a couple

7

sentences and we'll mail it out tomorrow. We may phone it

8

to you also.

9

Now our direction was that you supply the actual

10

agreement and any explanation you wanted to make by today.

11

Has that been done or is it being done?

12

MRS. FLYNN: It will be done today, yes.

13

JUDGE KELLEY: All right.

14

Well you can do it with the understanding that

15

that's what the order will be.

16

MRS. FLYNN: Thank you.

17

JUDGE KELLEY: All right.

18

The only other thing that we had this afternoon

19

-- and we don't have to deal with it but we thought we might

20

be able to -- the Applicants filed a motion to receive

21

additional evidence dated December 11 and it behooves the

22

Board to receive into evidence Applicant's Exhibit 27 and 28

23

having to do with pipe hangers.

24

Do you know the motion I'm talking about,

25

Mr. Eddleman?

1 ACBagb

1 MR. EDDLEMAN: Yes, I've seen it, and Mr. Baxter  
2 and I had a brief conversation about it this morning. I  
3 haven't really had time to dig into it. I don't have a  
4 response ready at this time.

5 JUDGE KELLEY: Okay.

6 MR. EDDLEMAN: I would just respond in writing.

7 JUDGE KELLEY: If you had looked it over and it  
8 looked okay we would just be done with it but if you haven't  
9 had a chance to study it then okay you'll just have to  
10 respond in writing.

11 MR. EDDLEMAN: It will be a brief response.

12 JUDGE KELLEY: Okay fine.

13 Anything else anybody wants to raise?

14 Mrs. Moore?

15 MRS. MOORE: Staff has nothing.

16 JUDGE KELLEY: Mr. O'Neill?

17 MRS. FLYNN: No, sir.

18 JUDGE KELLEY: Mr. Eddleman?

19 MR. EDDLEMAN: No, sir.

20 JUDGE KELLEY: I guess that's it then. We're  
21 through here.

22 Well thank you very much, ladies and gentlemen,  
23 Merry Christmas.

24 MRS. MOORE: Sir, I'd like to thank everybody  
25 also, thank the Board and the parties for accomodating us

1 AGBagb

1 in this so we don't have to go down to Raleigh.

2

JUDGE KELLEY: Did you have to say it quite that

3

way?

4

(Laughter.)

5

MRS. MOORE: -- at this time of year is what I

6

meant.

7

MR. EDDLEMAN: As the people of Raleigh and the

8

State of North Carolina, we take no offense.

9

JUDGE KELLEY: Okay. Very good. Goodbye.

10

(Whereupon, at 2:35 p.m., the telephone

11

conference in the above-entitled matter was concluded.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: CAROLINA POWER & LIGHT COMPANY and  
NORTH CAROLINA EASTERN MUNICIPAL  
POWER AGENCY

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

DOCKET NO.: 50-400-OL  
50-401-OL

PLACE: WASHINGTON, D. C.

DATE: MONDAY, DECEMBER 17, 1984

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

(sig) Anne G. Bloom

(TYPED)

ANNE G. BLOOM

Official Reporter

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