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JULY 6, 1977

**Regulatory**

**File Cy**

RE: NUCLEAR REGULATORY COMMISSION  
DOCKET 50-400, 403  
CAROLINA POWER AND LIGHT  
(HARRIS)  
RALEIGH NORTH CAROLINA



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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

CAROLINA POWER & LIGHT COMPANY

(Shearon Harris Nuclear Power  
Plant, Units 1, 2, 3 and 4)



Docket Nos. 50-400  
50-401  
50-402  
50-403

Place - Raleigh, North Carolina

Date - Thursday, 16 June 1977

Pages

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NUCLEAR REGULATORY COMMISSION

In the Matter of:

CAROLINA POWER &amp; LIGHT COMPANY

(Shearon Harris Nuclear Power  
Plant, Units 1, 2, 3 and 4)Docket Nos. 50-400  
50-401  
50-402  
50-403New Federal Building  
Room 225  
310 New Bern Avenue  
Raleigh, North Carolina

Thursday, 16 June 1977

The prehearing conference in the above-entitled matter  
was convened, pursuant to notice, at 9:00 a.m.

## BEFORE:

IVAN SMITH, Chairman  
Atomic Safety and Licensing Board

MR. GLENN O. BRIGHT, Member

DR. J. V. LEEDS, JR., Member

## APPEARANCES:

THOMAS BAXTER, Esq. and GEORGE F. TROWBRIDGE, Esq.  
Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W.,  
Washington, D. C.; and  
RICHARD E. JONES, Associate General Counsel, Carolina  
Power & Light Company, P.O. Box 1551, Raleigh, North  
Carolina; on behalf of the Applicant.JAMES CUTCHIN, Esq. and RICHARD C. BROWNE, Esq., Office  
of the Executive Legal Director, Nuclear Regulatory  
Commission, Washington, D. C. 20555; on behalf of the  
Regulatory Staff.

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## APPEARANCES: (continued)

JESSE C. BRAKE, Assistant Attorney General for the  
State of North Carolina, P.O. Box 629, Raleigh,  
North Carolina; on behalf of the State of North Carolina.

THOMAS ERWIN, Esq., Water Tower Court, 115 West Morgan  
Street, Raleigh, North Carolina 27602; on behalf of  
the Intervenor.

## P R O C E E D I N G S

1  
2 CHAIRMAN SMITH: It is 9:00 o'clock, and all  
3 parties are here, I believe.

4 This is the prehearing conference that was  
5 noticed in the Federal Register on June 9th, in the Carolina  
6 Power and Light Company Shearon Harris Plant proceeding.

7 There are several new faces present including  
8 mine since the last session of the proceeding.

9 My name is Ivan Smith. I succeeded Tom Riley  
10 as the chairman. To my right is Dr. J. Leeds of Houston,  
11 Texas, Rice University, who will be serving as the  
12 environmental member of the board. To my left is Mr. Glenn  
13 Bright of the Nuclear Regulatory Commission's Panel for  
14 Atomic Safety and Licensing Boards. He is a nuclear  
15 engineer-physicist, and he will be serving as the engineering  
16 member of the board.

17 Mr. Baxter, I note your presence. I wonder if  
18 you would begin for the Applicant, identifying those who  
19 are present on behalf of the Applicant.

20 MR. BAXTER: Mr. Chairman, to my left is George F.  
21 Trowbridge of the firm of Shaw, Pittman, Potts & Trowbridge,  
22 represent Applicant Carolina Power & Light Company today.

23 I am Thomas Baxter of that firm.

24 To Mr. Trowbridge's left is Mr. Richard E. Jones,  
25 associate general counsel of Carolina Power & Light.

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1 MR. CUTCHIN: I am James Cutchin, attorney with  
2 the Office of Executive Legal Director. To my right is  
3 Richard C. Browne, assistant chief hearing counsel. Our  
4 address is U.S. Nuclear Regulatory Commission, Washington,  
5 D.C. 20555.

6 CHAIRMAN SMITH: Mr. Brake?

7 MR. BRAKE: I am Jesse C. Brake, assistant attorney  
8 general for the State of North Carolina.

9 MR. ERWIN: Thomas Erwin, appearing for the  
10 Intervenor.

11 CHAIRMAN SMITH: Is there anyone else present  
12 who wishes to note his appearance?

13 Before we begin with the agenda that has been set  
14 forth in the notice, does any party have any other special  
15 matters to raise before proceeding?

16 (Discussion off the record.)

17 CHAIRMAN SMITH: Let's begin with a somewhat  
18 different order than we have in the agenda. I think before  
19 we can get very far into the setting of the prehearing  
20 schedule, there should be determination by the board upon the  
21 advice of the parties whether there should be an additional  
22 opportunity for intervention, or opportunity to expand  
23 existing intervention petitions because of the lapse of time  
24 and whatever changing conditions there might be.

25 Unless there is a reason to the contrary, we will

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1 always follow the procedure of working from the left to the  
2 right here.

3 Would the Applicant address that consideration,  
4 please?

5 MR. TROWBRIDGE: Mr. Chairman, let me take them  
6 separately, the question of new interventions versus the  
7 question of new contentions by existing Intervenor.

8 On the matter of whether an additional intervention  
9 should be provided, it is our view that there is no need for  
10 further notice and opportunity to intervene in the proceeding.

11 Obviously, the notice was originally published  
12 as required by the act and the regulations. Since then I  
13 think there has been substantial publicity about the plant  
14 and about the resumption of its schedule, the opportunity  
15 exists under the Commission's regulations for late petitioners  
16 to intervene and the ground rules are spelled out there.

17 I am not saying there might not be a case where  
18 good cause and other factors are shown which would warrant  
19 a late petition to intervene, but I think any such petitioner  
20 should be required to show good cause and other reasons, and  
21 I think a notice now would simply reopen, without any other  
22 ground rules, the proceeding to new intervention which would  
23 short-cut the requirements set out in the regulation for late  
24 petitions and good cause showing.

25 I would say, particularly in this case, while there





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1 has been a lapse of time, I would suggest that the lapse of  
2 time has primarily affected the more volatile questions of  
3 need for power or financial qualifications, things that  
4 are likely to change in a period of a year or two, and in  
5 this area at least those issues are already well represented  
6 by existing Intervenor, so that while -- so that we would  
7 have the board follow what we conceive to be the provision  
8 of the regulations now for entertaining the late petitions.

9 CHAIRMAN SMITH: Mr. Cutchin?

10 MR. CUTCHIN: Mr. Chairman, the position of the  
11 staff is essentially the same. That is, there is no provision  
12 in the regulations for renoticing a delayed, if you will,  
13 hearing.

14 There is ample opportunity for any individual  
15 who may not have been present in the area at the time of  
16 the original notice to come in under the provisions of 2714  
17 and shows good cause, address the four factors, and the board  
18 should weigh that information accordingly.

19 CHAIRMAN SMITH: Do you suggest the board does  
20 not have the authority to invite new intervention?

21 MR. CUTCHIN: I do not, sir. I think the board  
22 has great discretion, but I am unable to cite any provisions  
23 in the regulations for such.

24 DR. LEEDS: Does that apply also to interested  
25 states?

1 MR. CUTCHIN: I am not sure I understand.

2 DR. LEEDS: To interested states?

3 MR. CUTCHIN: The Commission has also been very  
4 liberal in allowing states to come in at any time they  
5 expressed an interest, and I think the state of North  
6 Carolina came in relatively late, last August sometime, and  
7 there was no objection at all.

8 CHAIRMAN SMITH: Mr. Brake, I am sure you know  
9 as a participant and as an interested state you can  
10 participate as much or as little as you wish.

11 I want to give you whatever opportunity that you  
12 wish to have, so do you want to be taken up in order as  
13 if you were a party, or do you want to sit back and intercede  
14 when you think it is appropriate?

15 MR. BRAKE: Today?

16 CHAIRMAN SMITH: Today or anytime. Well, today.  
17 Shall I call upon you in each instance?

18 MR. BRAKE: Today it would really suit me to  
19 sit back. At the hearing I may want to be active.

20 CHAIRMAN SMITH: Then it will be your responsibility  
21 to bring to our attention when you wish to participate.  
22 Otherwise, we will proceed --

23 MR. BRAKE: What is the procedure? Raise my hand?

24 (Laughter.)

25 CHAIRMAN SMITH: You will be on the service list

1 and you can anything when you want to.

2 MR. ERWIN: We are aware of the regulations and  
3 we are asking for anything to be changed, but it has been  
4 a long time since the notice of hearing, and much of the  
5 hearing has to take place, and we haven't seen the company  
6 coming in and showing good cause why they have put off  
7 construction of the plant.

8 I am not sure it is particularly fair in this  
9 set of circumstances to require someone who alleges a new  
10 contention to have to meet the tests set out in the regulation.

11 As I say, we met in the prehearing conference set  
12 of hearings four years ago -- I think it was in July -- and  
13 three years ago in July as well, in Washington, and it is  
14 exceedingly a long time in the life of a case.

15 I would think that there are many, many people  
16 in this state, and in this county and this city who are  
17 of the opinion that the construction of the plant is a  
18 fait accompli, and are completely unaware of the true status  
19 of this proceeding.

20 CHAIRMAN SMITH: So you would then provide  
21 additional opportunity --

22 MR. ERWIN: I must say I don't think it would  
23 be in any way unfair to the Staff or the Applicant. We are  
24 not making a strong play for this, but I think it would  
25 be the fair thing at this point.

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1 DR. LEEDS: Let me ask the staff a question.

2 Do you think it would be inappropriate to notice  
3 the particular rule that provides for intervention with good  
4 cause, 2.724?

5 MR. CUTCHIN: No, sir. In fact, I don't think it  
6 would be appropriate if the Staff or the Board chose to have  
7 a press release or something of this nature to the effect --  
8 of course, there has been a notice of the resumption of the  
9 hearing but there won't be the usual details about it, and  
10 I think again there is discretion as to whether to include  
11 that.

12 I think if one did, they should point out the  
13 fact this would be an untimely attempt under the rules and  
14 that there would be additional threshold tests for someone  
15 to be allowed to come in.

16 DR. LEEDS: Mr. Trowbridge, what is your view on  
17 that?

18 MR. TROWBRIDGE: We would not object to a notice of  
19 the opportunity to present late petitions and a recitation  
20 of the ground rules for that.

21 We would ask if it is going to be done that it be  
22 done very quickly.

23 DR. LEEDS: Do you think it would be a good idea?

24 MR. TROWBRIDGE: No. I personally question the  
25 necessity for it.



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1 CHAIRMAN SMITH: But if it has to be done, it  
2 should be done immediately.

3 MR. TROWBRIDGE: Yes.

4 CHAIRMAN SMITH: Do you have any additional  
5 thoughts on the setting of a prehearing and hearing schedule,  
6 with particular reference to the need for discovery?

7 MR. TROWBRIDGE: Yes. I can do that or I can  
8 complete what I understood to be the other half of your  
9 question about new contentions by existing intervenors.

10 CHAIRMAN SMITH: All right.

11 I wasn't aware that you had reserved that aspect.

12 MR. TROWBRIDGE: I meant to divide it into two  
13 parts.

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1 CHAIRMAN SMITH: Maybe we can short-circuit that.  
2 Do you have any wish to amend your intervention petition?

3 MR. ERWIN: Not at this time. We would probably  
4 be interested in changing some of the wording of our existing  
5 contentions simply because of the lapse of time, changing  
6 circumstances of much -- much of our contentions have  
7 contained statements that allege the occurrence of certain  
8 events and there have been many more recently, events which  
9 we think confirm the soundness of the contentions. We would  
10 probably just want to clean up the language.

11 MR. TROWBRIDGE: We would welcome an updating of  
12 the contentions, the need for power contentions and some of  
13 the other contentions refer to 1974 and we would welcome an  
14 updating of all of those.

15 We would like to see a timetable for the updating.  
16 If the updating didn't occur, and we will get to the discovery  
17 question next, if you like, we would want to ask the  
18 intervenor by way of discovery what documents and events are  
19 you relying on currently for your contentions?

20 CHAIRMAN SMITH: Mr. Cutchin?

21 MR. CUTCHIN: The Staff would agree that indeed it  
22 would be helpful if indeed the intervenor plans to change  
23 slightly the issues which he wishes to litigate, it would be  
24 helpful and we could perhaps avoid some delay in the hearing.

25 CHAIRMAN SMITH: What type of time schedule do you

1 think would be appropriate for you to update your contentions?

2 MR. ERWIN: I would like to ask what the Applicant  
3 and Staff would like for us to do? I mean we will try to be  
4 as reasonable as possible, but we would like some -- some  
5 period of time to review them.

6 CHAIRMAN SMITH: Two weeks?

7 MR. ERWIN: I think two weeks to a month would be  
8 our preference, obviously. The contentions relate to fairly  
9 important points. And we will probably advocate some new  
10 discovery. The last discovery was in 1974 on these  
11 contentions.

12 Again, our discovery schedule would necessarily,  
13 if there is any intention to go to hearing in the early  
14 fall would necessarily have to be somewhat abbreviated, but  
15 by the same token, I think we need to go into some of these  
16 matters again.

17 DR. LEEDS: Did you take the depositions, you know,  
18 in July of '74 or something like that?

19 MR. ERWIN: Yes. One of the deponents is no longer  
20 with CP&L.

21 DR. LEEDS: Which one is that?

22 MR. ERWIN: Mr. McPherson. Mr. Morgan, of course,  
23 is still with CP&L.

24 CHAIRMAN SMITH: How would July 8th be?

25 MR. ERWIN: I think that would be fine.

1           CHAIRMAN SMITH: We can resolve some of these today.  
2   You can have the maximum amount of time. Our prehearing  
3   conference order will have July 8th as the date by which you  
4   may amend your contentions. Then in the absence of any  
5   request, the time for answering will be as otherwise provided  
6   by the rules.

7           Now, with that resolved, what would be your view  
8   about the following schedule?

9           MR. TROWBRIDGE: Well, taking next the period of  
10   discovery, we would agree that a period for supplemental  
11   discovery on the existing contentions is appropriate. We  
12   would suggest that, let's say the discovery requests ought to  
13   be made not later than 30 days from July 8th.

14           We would hope in this that as has been true in the  
15   past, many of Mr. Erwin's requests could simply be made to us  
16   and on an informal basis and we could provide the information  
17   on an informal basis. However, the 30 days is there for  
18   Mr. Erwin to make his request if he doesn't get satisfaction.

19           I would like to put the suggestion forward that  
20   discovery be limited to document requests and interrogatories.  
21   That is a preference simply for not getting involved,  
22   unnecessarily in depositions. We have not made this suggestion  
23   before to Mr. Erwin and I don't know whether he is ready to  
24   react to it, but to recapitulate, I would like to see a 30-day  
25   discovery which would apply to us as well as to Mr. Erwin. 30

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1 days for making discovery requests from July 8th and  
2 preferably, limited to document requests and interrogatories.

3 CHAIRMAN SMITH: The schedule does not anticipate  
4 answers to the amended contentions, nor the Board's ruling  
5 on the amended contentions.

6 MR. TROWBRIDGE: It does not. I would hope -- to  
7 answer your question, what happens if we don't reach  
8 agreement, I would be hopeful that we could sit down with  
9 Mr. Erwin when he is prepared to revise his contentions, and  
10 reach a stipulation that would avoid rulings by the time  
11 periods for the Board. I think it is quite likely that such  
12 a stipulation will be forthcoming.

13 The basic contentions aren't going to change. We  
14 don't need the power. We are not financially qualified,  
15 conservation as an alternative. The bases for these are more  
16 or less up to Mr. Erwin to select.

17 I don't think we will have much trouble about  
18 amended contentions if what we are amending is the bases for  
19 those contentions.

20 CHAIRMAN SMITH: Mr. Cutchin?

21 MR. CUTCHIN: You, sir, may believe -- I think he  
22 may come in with additional contentions other than the ones  
23 that have been presently allowed. Of course, if that is the  
24 case and we could not reach a stipulation, I think, again,  
25 Mr. Erwin would have to make certain showings as to why at

1 this date he is raising new contentions and would have to show  
2 that he didn't have objective notice of the information that  
3 was available to him earlier.

4 CHAIRMAN SMITH: This anticipates new contentions  
5 or amendments are, because of changed conditions since your  
6 initial opportunity -- we are already sort of ruling on what  
7 good cause would be on this by giving you an opportunity  
8 for amendments because of changed conditions.

9 Was that your understanding, Mr. Erwin?

10 MR. ERWIN: Yes, Mr. Chairman.

11 DR. LEEDS: I guess I am getting kind of confused  
12 here because I thought we were talking about contentions, then  
13 I hear bases for contentions. I thought I heard there were  
14 going to be no new contentions, just changes in bases.

15 How can you object to the contentions, then?

16 MR. CUTCHIN: That is what I am having difficulty  
17 with. We are talking about revising the contentions as they --  
18 need for power, financial matters and conservation, and if  
19 we can establish what we are now going to litigate, if indeed  
20 there are new issues which are brought up, of course, then  
21 we would have the problem of timeliness, good cause, why they  
22 should be allowed at this litigation. Otherwise maybe we  
23 are talking about a problem that doesn't exist.

24 DR. LEEDS: Those are statutory contentions anyway.

25 CHAIRMAN SMITH: My thinking was an amended

1 contention could create the same litigation problems as a new  
2 contention. Our discovery schedule and our prehearing schedule  
3 would have to anticipate that. That is why I am trying to  
4 pin down the basis.

5 We have already suggested, or we have already  
6 advised Mr. Erwin at this point if he has amendments to make  
7 on his present contentions based upon changing conditions,  
8 that we would anticipate to be good cause now, for him to file,  
9 and we have provided the period. Of course, if he goes beyond  
10 that, then it is another matter. He always has the right to  
11 file an amendment of new contentions.

12 MR. TROWBRIDGE: I would suggest discovery be for  
13 a period of 30 days after the filing of the amended contentions  
14 if there is a stipulation among the parties to them. If not,  
15 then after the Board ruling on the amended contentions and  
16 responses to them in the formal time sequences, with motions  
17 and responses to motions.

18 CHAIRMAN SMITH: Would this be satisfactory to both  
19 the Staff and Applicant?

20 One week after the intervenors file amended  
21 contentions, the parties consult to determine whether there is  
22 a possibility to stipulate the adequacy of the amendments to  
23 the contentions and if not, file their answers.

24 MR. TROWBRIDGE: That is fine, Mr. Chairman. But  
25 I now say we would be glad to look at Mr. Erwin's contentions

1 before they are filed.

2 CHAIRMAN SMITH: That is fine. That is up to the  
3 parties individually. I want to make certain milestones.

4 MR. TROWBRIDGE: And maybe save some paperwork.

5 CHAIRMAN SMITH: The invitation would be for you to  
6 consult in advance, but in the event that fails I want to set  
7 certain dates by which time such things must be done. I would  
8 suggest 7 days after the filing by you of amended contentions  
9 which must be done by you no later than July 8th, the  
10 Applicant and Staff either agree with you as to the adequacy  
11 of the contentions or file answers and that would be due then  
12 no later than the 15th or 7 days after you should elect to  
13 file.

14 MR. ERWIN: Thank you. I am very pleased with  
15 Mr. Trowbridge's courtesy extended to me. It hasn't always  
16 been so. I think the Chairman's ruling at this point is very  
17 helpful, because we have certainly had plenty of trouble with  
18 amended contentions in the past.

19 CHAIRMAN SMITH: I don't think what has happened in  
20 the past will have any particular relevance any more. I think  
21 it sort of consumes unnecessary time to comment along that  
22 line.

23 MR. BRAKE: Mr. Chairman, I do want to participate  
24 at this point. I would like to have that amended to allow the  
25 State to attend the proposed conference, let us have an

1 opportunity to attend.

2 CHAIRMAN SMITH: Certainly. If there is a  
3 possibility of the parties, in an informal conference, to  
4 agree upon stipulations, the State will be invited to attend.

5 MR. BRAKE: Mr. Chairman, as far as Mr. Trowbridge  
6 is concerned, would I be correct in saying we would have the  
7 discovery right within the same time that the intervenors  
8 have it?

9 CHAIRMAN SMITH: Yes. You do have problems as a  
10 participating state, however. You are not required to take  
11 a position, but if you do intend to take a position in the  
12 proceeding, you, yourself, must be open to discovery and you  
13 must state what your position is timely so that the other  
14 parties can meet whatever motion that you have.

15 Do you have any plans to take a position in any  
16 aspect of the proceeding?

17 MR. BRAKE: That was, frankly, one of my reasons  
18 for wanting to attend the conference. What would be a timely  
19 time to state the position?

20 CHAIRMAN SMITH: Well, I would think you should  
21 fall within that July 3th period. I think that would be an  
22 appropriate time for the State to make any positions it has  
23 known.

24 MR. BRAKE: Okay.

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1 CHAIRMAN SMITH: Are there any problems about  
2 that last comment?

3 MR. CUTCHIN: None for the Staff.

4 CHAIRMAN SMITH: Mr. Trowbridge?

5 MR. TROWBRIDGE: No.

6 CHAIRMAN SMITH: Let's make it that way then. The  
7 State of North Carolina should file any position papers by  
8 July 8th.

9 As to the status of the correspondence on the subject  
10 of the hearing schedule, has the Applicant urging hearings to be  
11 set in September, evidentiary hearings, and the Staff, are  
12 you still unspecific about that?

13 Some time in early fall, as I recall your position?

14 MR. CUTCHIN: I could add perhaps a little to that,  
15 sir, at this time.

16 The Staff would have no objection to setting a  
17 tentative hearing to begin around September 15 with  
18 anticipation of completing it, hopefully, around the early part  
19 of October.

20 That would have to be subject, of course, to the  
21 Staff's being able to complete its review of information,  
22 some of which has not yet come in from the Applicant on a couple  
23 of contentions.

24 DR. LEEDS: I thought the ACRS meeting was going to  
25 be in October or something like that?

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1                   MR. CUTCHIN: The ACRS meeting is now scheduled for the  
2 August meeting, in anticipation of the Staff's publishing  
3 a supplement number 2 by early July, then the Staff, of course,  
4 would publish an additional supplement addressing any  
5 ACRS concerns.

6                   That is on the safety side.

7                   On the environmental side, they are in the process  
8 of updating their FES review in preparation for submitting  
9 written testimony on the subject of financial qualifications  
10 and a number of other areas.

11                  I meant to say on the subject of need for power.

12                  CHAIRMAN SMITH: Intervenors?

13                  It has been proposed that September --

14                  MR. ERWIN: We will met with any schedule the  
15 Board sets, but it seems to me there are so many contingencies  
16 here that it might be wiser to hold off until we have some  
17 clear idea of where the Staff will be -- the Staff and the  
18 Applicant will be coming from.

19                  If I understand Mr. Cutchin, the Applicant hasn't  
20 even updated his need-for-power information at this point.

21                  Of course, that puts somewhat of a-- It puts us  
22 at somewhat of a burden in discovery, because we don't even  
23 know what their position is at this time.

24                  We are supposed to take a position by July 8, and  
25 we don't really know what the CP&L position is, apparently.



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1 MR.. CUTCHIN: Mr. Chairman, I would like to correct  
2 that position. I didn't mean to leave the impression that the  
3 Applicant had not provided any information on these subjects.

4 The Applicant has, indeed, provided much information,  
5 but in the process of its review the Staff may find that it  
6 needs a few additional pieces of information, as always can  
7 and obviously does occur, and the bulk of the information I  
8 do believe, indeed, has been submitted.

9 I could not quote the amendment number for the need-  
10 for-power information, but it has been in for some weeks now.

11 MR. ERWIN: That was my understanding, Mr. Chairman.

12 I am sorry, I misunderstood Mr. Cutchin, so I  
13 withdraw what I just said.

14 CHAIRMAN SMITH: So you have no particular problem with  
15 a September 15 hearing schedule, as you see it now?

16 MR. ERWIN: We will be able to attend, obviously.  
17 There is no question of our being able to participate. I  
18 think it is premature, but that is just a comment.

19 DR.LEEDS: Sometime after September 15, is what we  
20 are really saying; is that right?

21 MR. CUTCHIN: That would be the earliest that the  
22 Staff could meet, and it may, indeed, turn out the late  
23 September, early October schedule, we were talking about  
24 earlier, will be the one we will be able to meet. We would  
25 have no objection to setting of a tentative date for the Board's

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1 schedule.

2 MR. TROWBRIDGE: I would urge the Board set aside  
3 for everybody's planning schedule, but the particular board  
4 members be set aside a space of a couple of weeks, at least,  
5 on or about the 15th of September, recognizing that what  
6 we now visualize as the completion for the Staff review,  
7 not only on the contentions, but the updating of the safety  
8 evaluation, there could be slippage and yet I think it is  
9 highly likely on the contentions which are discrete, involve  
10 different witnesses, that we proceed to hearing and we ought  
11 to schedule the time to do so by definition, if we are  
12 behind on some other element of the review process, we are  
13 behind in our hoped for licensing schedule. And we would like  
14 to not get as much behind as possible.

15 I realize the Board may have difficulty setting its  
16 time aside, but when it is thought about, setting a date and  
17 going through to the end, it's been my experience the Board  
18 can't do that.

19 It is usually necessary to take pieces --

20 CHAIRMAN SMITH: I think our immediate concern,  
21 although that is a good point, and we do need notice, but  
22 our immediate concern is to arrange a prehearing schedule,  
23 which would accommodate the recommendations you have made to  
24 try to shoot for September 15th.

25 That provides for about 60 days, which you suggest

bw5

1 about 30 days for discovery, which would mean the second 30-day  
2 period of that interval would have to be used for the filing  
3 of testimony and all other trial preparation.

4 Now, do you think that that is enough? Enough time?

5 Of course, you would have to anticipate, perhaps,  
6 motions for orders compelling discovery. I don't know what  
7 the background is, whether you have been able to work out  
8 discovery problems or not.

9 But I just want to bring to your attention, within  
10 the 60 days, there is work to be done, and I want you to bear  
11 in mind that that should be taken into account when you propose  
12 a hearing date.

13 But, apparently, there are no problems anticipated.

14 DR. LEEDS: There might well be some questions  
15 from the Board, too, because it has been a long time since  
16 we looked at this record.

17 CHAIRMAN SMITH: We will defer a specific hearing  
18 date for now, but we will anticipate in our post-prehearing  
19 orders that the period for discovery will begin -- I suppose  
20 we could set now a date for discovery requests.

21 It just brings to mind you have not responded to  
22 his request that discovery be limited to interrogatories and  
23 requests for documents.

24 And, apparently, eliminating depositions from  
25 discovery.

bw6

1 . You haven't responded to that, I don't believe,  
2 Mr. Erwin.

3 MR. ERWIN: No, Mr. Chairman. I don't see the  
4 appropriateness of that particular request.

5 CHAIRMAN SMITH: You are not willing to do that.

6 MR. ERWIN: I mean if the Chair rules, I suppose,  
7 I think it may be within your discretion to rule that way,  
8 but I don't see the point of that.

9 CHAIRMAN SMITH: Of course, this is your opportunity  
10 to express yourself.

11 MR. ERWIN: I am just objecting to it.

12 I am not going to argue the point at great length.  
13 I think it is obvious why I would object to it, because it  
14 would limit our discovery and we in the past have conducted  
15 depositions and they are, of course -- and paid for the  
16 transcripts and they are utterly worthless at this point.

17 MR. TROWBRIDGE: I withdraw the request if I made  
18 it for a ruling by the Board on this. I think it could be  
19 largely done for interrogatories and the request for documents.

20 The regulations afford an opportunity for depositions  
21 and, if Mr. Erwin feels he needs to proceed that way, so be it.

22 MR. ERWIN: If I may comment briefly, we went through  
23 this, again I hate to bring up the past, but the past sort of  
24 covers this whole proceeding. We went to this all during the  
25 summer of 1974, and it costs my client, who is a public

bw7

1 organization, non-profit organization, a considerable amount  
2 of money to go through the process, and we compiled a great  
3 deal of information on the need for power, and so forth and so  
4 on, all absolutely worthless at this point, except as a  
5 historical artifact.

6 That is the only thing that bothers me about any of  
7 this. We have the feeling from the Applicant that we must  
8 proceed immediately and at this pace, and somehow the sky will  
9 faill if we don't.

10 We have heard that so many times before, that  
11 we feel some reluctance to be put into an extremely tight  
12 schedule.

13 We had to operate under that in March and April in  
14 1974, a schedule that I don't think has been matched in AEC  
15 history.

16 We had a series of hearings and filings that took  
17 place; I think we had two rulings from the Commission and  
18 two rulings from the board and one ruling from the Appeals  
19 Board within a period of a month and a half, in this absolutely  
20 killing schedule. Then, within two months, the Applicant, of  
21 his own volition, deferred its construction plans for two  
22 full years.

23 This is the kind of thing we just don't want to  
24 see repeated.

25 CHAIRMAN SMITH: Now is your opportunity to be specific



bw8

1 in what you want from the Board.

2 MR. ERWIN: If we are specific about it, we will  
3 be tied in the present by the Applicant as contributing  
4 to the delay in the plant, we we will be made as the bugbears,  
5 to -- to the ratepayers of North Carolina.

6 We will be made out as the evil ones trying to  
7 increase costs.

8 I am sorry. We have already been captioned in that  
9 role before. I will say we have always complied with every  
10 schedule the Board has ever set for us, and we will comply  
11 with every schedule that the Board sets now.

12 We will not appeal procedurally from any schedule  
13 that is set.

14 We intend to proceed, and I will not object to  
15 any ruling that you make, but I would simply make these comments  
16 for your own, you know, as background information.

17 DR. LEEDS: Can I get some questions on this?

18 Let me refresh my memory correctly.

19 Mr. Trowbridge, as I remember correctly,  
20 something like last year sometime, April of '76,  
21 or thereabouts, you made a request to the NRC Staff to review,  
22 to start all over, whatever you do in this instance, to renew  
23 their review, I guess, is the correct word.

24 MR. TROWBRIDGE: This was May.

25 DR. LEEDS: May of '76?



bw9

1 MR. TROWBRIDGE: Yes.

2 DR. LEEDS: That is a year and a month ago.

3 Did the Staff start then?

4 MR. CUTCHIN: Yes, sir.

5 The Staff began to update its look-see at some  
6 of these issues, and it has resulted in many areas, in an  
7 almost complete re-review of some of these things.

8 DR. LEEDS: Okay.

9 So then we have talked about restarting this.  
10 Now we are here talking about getting a hearing set in two  
11 months after a year and a month of preparation; is that  
12 right?

13 MR. CUTCHIN: That is what the calendar time would  
14 indicate, yes sir.

15 DR. LEEDS: Is there any indication of -- the last --  
16 at one of the last sessions, there was a December 28th date  
17 by which the pumpkin carr -- the carriage changed back into  
18 a pumpkin, because of ECCS changes.

19 Are there any more carriages that will change into  
20 pumpkins, datewise?

21 MR. CUTCHIN: None that immediately come to mind  
22 on regulations.

23 MR. TROWBRIDGE: Not of that kind. Obviously, there  
24 is a point when we need to start construction so as to get  
25 the plant build on schedule, but in terms of special legal

bw10

1 wrinkles, such as the ECCS cutoff date, that is not -- we  
2 don;t have any of those that I know of.

3 DR. LEEDS: Is there a procurement problem that  
4 exists with respect to equipment that you have to get?

5 Isn't some of this equipment on-site now?

6 MR. JONES: Mr. Chairman and members of the Board,  
7 there is a pressing need to obtain a construction permit, in  
8 order to begin construction. We had hoped to have the  
9 construction permit by the first of this year, '77.

10 We have lost now, if we anticipate receiving  
11 a construction permit by the first of next year, a year of  
12 construction time.

13 The unit is scheduled to come on-line in 1984 .  
14 We are pushing up the minimal construction time now, and if  
15 we don't get the construction permit quickly we will be  
16 faced with the possibility of not meeting the in-service  
17 date.

18 Now, this goes to one of the ultimate issues in the  
19 contentions, about whether or not we need the power, but the  
20 North Carolina Utilities Commission has, in fact, in an  
21 order suggested that this unit should come on-line in 1983.  
22 That is a date we simply can't meet, but we are extremely  
23 hopeful of being able to meet the 1984 date.

24 All of the projections of the company, this will  
25 be a part of the evidence in the proceeding, and the evidence

bwl1

1 of the North Carolina Utilities Commission would indicate that  
2 we, in fact, have desperate need for this capacity in the  
3 early 1980's, so we are faced with a deadline that is very  
4 real and very practical:

5 DR. LEEDS: What happened, between May and now?

E3

6 That is a year and a month.  
7  
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1 MR. JONES: We have been responding to questions.  
2 and providing information and documents to the Nuclear  
3 Regulatory Commission Staff and they have been reviewing the  
4 application. It has taken this long just to get to this  
5 point. We are at the tail end now of that review.

6 DR. LEEDS: I presume from the transcript of the  
7 last hearing that all the engineering should have been done  
8 a long time ago on this plant because that was one of the  
9 statements Mr. Trowbridge made, we want to keep going  
10 with the engineering details, have all the plans done and  
11 everything.

12 That has all been done?

13 MR. JONES: Engineering has been going on  
14 throughout the period of delay at a certain level.

15 MR. LEEDS: Is it complete?

16 MR. JONES: It is not complete. It is progressed.  
17 Of course a lot of things have been reengineered as a  
18 result of the review. We have been continually faced with  
19 everything to recommit to newer or later designs, and some  
20 reprocurement so the project has been very active. That is  
21 about all I can say.

22 MR. LEEDS: What about the issues of need for  
23 power which, — let's see, need for power —

24 MR. JONES: Need for power, financial qualifications  
25 and conservation are the three remaining issues.



#4nash2

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1 MR. LEEDS: I don't want to quote myself on binding  
2 the Board in this instance, need for power, I believe that  
3 was the major item left in the environmental review, need  
4 for power, so that could have been completed and an LWA  
5 applied for. Why not?

6 MR. JONES: It always appeared the construction  
7 permit could come back as quickly as the LWA. Essentially  
8 what we are saying at this point is we are ready to proceed  
9 with the hearing, only the need for power and conservation  
10 issues.

11 The issues can move forward just as they could in  
12 an LWA application right now. We are prepared to move forward  
13 and I think there is no reason why the Staff and the  
14 Intervenor can't move forward. This is why we suggest setting  
15 a time so we can get issues out of the way.

16 If there are no more contentions relating to  
17 safety matters, and if the Staff schedule slips slightly  
18 it becomes a matter of dealing with uncontested issues in  
19 any subsequent section of a hearing, but right now it would  
20 look like, if we scheduled a hearing for the middle of  
21 September we probably could finish the whole thing, but  
22 we can at least finish the contested issues.

23 MR. LEEDS: Before you can seal it, the Staff is  
24 alleging you have to have at least an LWA.

25 Is that right?



#4nash3

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1 MR. JONES: The Staff has agreed with the  
2 construction of the Seal Mat.

3 MR. LEEDS: When was that? \_

4 MR. JONES: The job was done early this week. .  
5 Actually we have done about everything you can do under an  
6 LWA-1. An LWA-2 really would require the essentially same  
7 safety review we are completing for the construction permit.

8 MR. LEEDS: Not the financial qualifications part?

9 MR. JONES: No.

10 CHAIRMAN SMITH: We have dangling here Mr. Erwin's  
11 comment that you don't like the schedule but you will comply  
12 with what the Board says.

13 Discovery is largely a matter for the parties.  
14 We are interested in it only when there is difficulty and  
15 there is trouble we have to resolve. We make no assumptions  
16 at this stage of the proceeding. We don't assume there is  
17 or is not a need for power but there is a need to proceed  
18 with a hearing timely. The Board is not able to carry a  
19 burden for you to provide a comfortable period. If you  
20 have problems, you bring them to our attention. If you  
21 don't want to be criticized then maybe you shouldn't be  
22 in this business, but as far as the Board is concerned you  
23 make your points known and we will listen to them.

24 If you don't make them known, we will assume you  
25 have no objections, but the burden is upon you to make your

#4nash4

3810 1 position known.

2 MR. ERWIN: I believe I have, Mr. Chairman.

3 CHAIRMAN SMITH: Your position as I understand it  
4 now, you will go to hearing September 10th if we set it there,  
5 but you don't like it.

6 MR. ERWIN: Yes, sir, Mr. Chairman.

7 CHAIRMAN SMITH: Are you proposing another schedule?

8 MR. ERWIN: I would say that in response to what  
9 Mr. Jones said he seems to say the need for power issue is  
10 a sort of static one set in concrete by the utilities  
11 commission and it can be, as he puts it, disposed of and that  
12 is it.

13 I would just comment that our experience, or at  
14 least our observations on the experience of the last three or  
15 four years has been, that is the most volatile issue of  
16 all. We get predictions every year and they have been  
17 consistently overpredictions. I have got the latest  
18 submission, Amendment No. 56 of the company, showing  
19 about an average 3 percent increase in summer peak.

20 Now, I would certainly think that a rational  
21 schedule would take into account this year's summer peak,  
22 because I don't know how many more years we can go on with the  
23 company saying something is going to happen and it doesn't  
24 happen. I think one of the very best tests we can subject  
25 predictions of peak load and need for power to is reality

#4nash5

3810 1     itself. What actually happens? Do these predictions hold  
2     up in reality? It is our contention that they don't, so  
3     clearly we would prefer that the summer peak of 1977  
4     certainly be reached before the time — be somewhat, to be  
5     somewhat analyzed before we go to hearing on this issue  
6     because it is the best test I know of of their most recent  
7     projections of demand.

8             I consider the need for power and financial  
9     qualifications ought not to be put ahead of everything else  
10    but probably quite possibly ought to be at the very back end.  
11    They are the things that really determine whether the plant  
12    goes or not, or ought to be anyway, whatever they are.

13            CHAIRMAN SMITH: How soon would summer peak data be  
14    available?

15            MR. JONES: Mr. Chairman, I think the summer  
16    peak will have occurred before we reach a hearing in  
17    September. It can be factored into the testimony. One summer  
18    peak does not form the full basis for our long-term load  
19    forecast, and, of course, the problem that we face is the  
20    fact that Mr. Erwin would just as soon not have this hearing  
21    for two or three years, on the assumption he is right in  
22    his contentions.

23            If we are right, on the other hand, we need to get  
24    on with it.

25            MR. LEEDS: We talked about the summer peak in

#4nash6

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1 July of '74, had this very same discussion about whether or  
2 not we should wait and catch the summer peak.

3 I think there was a statement then, that maybe it  
4 occurs in September. I don't know when it occurs. But  
5 we have at least two years of data on summer peaks, more than  
6 we have had before.

7 MR. JONES: It can occur in September, Mr. Leeds.  
8 The process of forecasting loads, however, takes into  
9 account much more than a single summer peak. The fact  
10 of the matter is, that the load forecasts that we are  
11 currently utilizing for planning purposes has been subjected  
12 to an adjudicatory hearing. The North Carolina Utilities  
13 Commission Staff has done an independent load forecast, that  
14 has also been subjected to an adjudicatory proceeding.

15 Mr. Erwin represented the same client in that  
16 proceeding, the Attorney General was present in that proceeding  
17 and the NRC presented testimony also in that proceeding.  
18 We are not cutting new ground. We have been over this issue  
19 once and a finding has been made in support of the  
20 construction schedule we are now pursuing.

21 MR. LEEDS: Late January or early February of this  
22 year.

23 CHAIRMAN SMITH: Would the record of that proceeding  
24 be useful in this proceeding?

25 MR. JONES: Yes, sir.



#4nash7

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1 CHAIRMAN SMITH: How do you feel, Mr. Erwin?

2 MR. ERWIN: We have no objection to that.

3 As a matter of fact, we have been over this matter a good  
4 deal more than just once or twice. I think the parties have  
5 — most of the parties have been over it three or four times  
6 in various settings.

7 Our contentions are unchanged and we think  
8 experience has confirmed this.

9 CHAIRMAN SMITH: Mr. Cutchin?

10 MR. CUTCHIN: Much of that information and,  
11 I believe, the transcript, parts of the transcript, of that  
12 proceeding have been submitted to the Staff in its  
13 assessment of the need for power.

14 MR. LEEDS: Do you plan to make an independent  
15 calculation rather than just assessing what they have done?

16 MR. CUTCHIN: Yes, sir. The Staff will make its  
17 own independent need for power assessment.

18 MR. LEEDS: That wasn't my question.

19 MR. CUTCHIN: Independent calculation, other  
20 than just giving full credit to that analysis. The Staff  
21 will make its independent analysis.

22 CHAIRMAN SMITH: So, the problem remains we have  
23 to somehow divide 60 days into the various segments of  
24 discovery. My feeling is, it is quite compressed, but you  
25 think it is possible for the parties to now agree perhaps at

#4nash8

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1 an intermission as to what the discovery procedures, steps  
2 should be, shooting for September 15th or October 1st hearing  
3 date. This does not mean the Board has decided to set  
4 hearings on that date, but it would be impossible to do that  
5 if we don't provide for discovery, leading toward that  
6 hearing data.

7 Do you think it might be possible, gentlemen, for  
8 you to agree upon a discovery schedule?

9 MR. TROWBRIDGE: Can I ask for further  
10 clarification? I had understood before that the Board was  
11 not going to rule from that table now when the hearing  
12 will occur, but has the Board decided it will indeed set  
13 a hearing date, and to proceed with whatever is ready,  
14 hopefully, everything at that time?

15 CHAIRMAN SMITH: After this conference the Board  
16 will confer among ourselves to see what our schedules are  
17 and see how close we can come to the date that the parties  
18 seem to agree upon, but now I think, or I think it is  
19 our responsibility to hear from the parties as to how they  
20 would like to have the prehearing schedule set.

21 Now, perhaps it may be that we would decide that  
22 we cannot have hearings September 15th on October 1st, and in  
23 that event we could stretch out the prehearing procedures  
24 to give you as much time as possible.

25 MR. LEEDS: Let me ask a side question that

#4nash9

3810 1 might give me some information to help me make a decision,  
2 correct me if I use the wrong term, the North Carolina  
3 Regulatory Commission —

4 MR. JONES: Utilities Commission.

5 MR. LEEDS: North Carolina Utilities Commission —  
6 was discovery available in those proceedings?

7 MR. JONES: It is available under the North  
8 Carolina Utility Commission regulations. None of the  
9 parties availabed themselves of the opportunity, although  
10 the Commission Staff has access to unlimited data from the  
11 company, and this is in their file, and a great deal of  
12 information is available to the public, from the Utilities  
13 Commission.

14 MR. LEEDS: Is the State of North Carolina's  
15 Attorney General the attorney for the Public Utilities  
16 Commission?

17 MR. BRAKE: No, sir. They have their own attorney  
18 and have the power to intervene if they so wish.

19 CHAIRMAN SMITH: The Board members are all able to  
20 go to hearing in the early fall. We don't have specific  
21 dates in mind, but early fall. So, we think it would be  
22 appropriate for the parties to confer among themselves  
23 and agree, if possible, as to a discovery schedule leading to,  
24 say, September 15th or October 1st, as the beginning of the  
25 hearings.



#4nash10

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1 Would that be possible, gentlemen? Would you like  
2 to do it at the end of this conference and report to us or do  
3 you want to take time now?

4 MR. TROWBRIDGE: Let's take a recess now.

5 CHAIRMAN SMITH: Let's take a 10-minute recess.

6 We will be back at 5 after 10.

7 (Recess..)

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P#5debi1

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CHAIRMAN SMITH: Gentlemen, let's proceed.

You are not talking among each other so apparently you have arrived at some decision.

MR. TROWBRIDGE: Apparently we have.

Let me take part of the schedule problem as I see it. We could sit here and set out a schedule for discovery and assume that at every step of the way motions to compel have to be filed or objections or that there are delays; we have great confidence that we will in fact conduct the discovery without having to bother the board, without having to get rulings and without delays in the process.

We can't exclude this from the possibility but we would have the board set a schedule which assumes the parties will in fact conduct discovery, leaving open the possibility that the parties will be making and say we didn't make it.

In other words, I would suggest a discovery schedule, and I think again the end of the discovery request period be August 8th. That is a month from to July 9th.

Let me say, let me add here that, as far as the Applicant is concerned, additional discovery can begin tomorrow. There is information Mr. Erwin could ask at any time in the process. We are not precluding it, and we will respond promptly to discovery requests when we get them.

We will in any event respond to discovery requests

FP#5debi2

3810 1 not later than two weeks after August 8th. That would be  
2 August 22nd. That is intended to be a deadline on our  
3 responses, and assumes we could get a discovery request on  
4 August 7th and we will respond to it.

5 Then we would ask the Board to set a hearing date  
6 to contemplate the filing of testimony 10 days ahead  
7 of the hearing.

8 MR. ERWIN: Mr. Chairman, my understanding is  
9 substantially the same, except for one slight difference,  
10 that is the proviso that you added earlier, if the Applicant  
11 should contest the amended contentions and a ruling should be  
12 required that the month be told from the time of the ruling,  
13 because if we have to go through a period of a week after  
14 July the 8th I think we ought to be allowed the full period  
15 thereafter. That is the only difference that I would mention.

16 CHAIRMAN SMITH: It sure seems you have some  
17 leverage there. Your contentions will probably receive a  
18 very favorable view from the Applicant.

19 MR. ERWIN: That hasn't always been the case, but  
20 we hope it will be now.

21 CHAIRMAN SMITH: There is always the problem of the  
22 Board accepting contentions too. I think that is a reasonable  
23 way to put it.

24 MR. TROWBRIDGE: Let me hear that again.

25 MR. ERWIN: My understanding of what you propose,

FP#5debi3

3810 1 Mr. Trowbridge and what the Chairman had added to it before  
2 the recess was that we would be required to file our  
3 amended contentions by July 8th, that if they were stipulated  
4 to, and the Board accepted them, that the time for discovery  
5 request would begin at that time, that if they were not, and  
6 it required a ruling by the Board within that week period,  
7 that he said the time for discovery would commence at the  
8 end of that week period.

9 DR. LEEDS: I have missed a week here or we cut a  
10 week out. I thought there was a week after July the 8th for  
11 the Applicant and Staff and the State of North Carolina to  
12 look at those contentions and decide whether or not they were  
13 going to respond or agree to them or whatever, then there would  
14 be 30 days.

15 If I go to August the 8th I count only two weeks  
16 for discovery requests. Have you all changed the two weeks?

17 MR. TROWBRIDGE: I think Mr. Erwin has just  
18 suggested that August 8th ought to be — in the event of a  
19 controversy over the amended contentions ought to be 30 days  
20 from the resolution of that controversy.

21 DR. LEEDS: The problem is he won't know after a  
22 week from July 8th.

23 MR. TROWBRIDGE: If he will knock on our door and  
24 give us a call he will know before that.

25 DR. LEEDS: If he files them before July 8th he

FP#5deb14

3810 1 will know before that.

2 MR. TROWBRIDGE: If we talk about it before that. I  
3 may get a big surprise here but we are all talking about  
4 three very basic contentions. The rest of it, Mr. Erwin did  
5 a good job as compared to most contentions petitions to  
6 intervene in explaining the basis for the contentions.

7 They are not something antiquated. The contentions  
8 are fixed and it is really up to Mr. Erwin to put almost  
9 anything he wants as the basis for them.

10 CHAIRMAN SMITH: This is stipulated contentions  
11 acceptable to the Board. If the contentions are not  
12 stipulated the time for answering the contentions will remain  
13 the same and the Board will set its own discovery schedule,  
14 taking that into account.

15 This way that would be the nature of the schedule.  
16 It would take into account the need for this but this  
17 anticipates the filing by July 8th of contentions stipulated  
18 to be adequate. The Board will view them promptly and  
19 interpose our views into the schedule promptly if we have to.

20 MR. TROWBRIDGE: Very good.

21 CHAIRMAN SMITH: I notice everyone nodded in  
22 agreement to that proposal.

23 MR. TROWBRIDGE: It is still our hope and request  
24 that the Board order, following this prehearing conference,  
25 the Board will in fact set aside a period for a hearing is, not



FP#5debi5

3810 1 casting in concrete if we run into insuperable problems in  
2 the discovery period but nevertheless the present expectation  
3 of the Board and parties.

4 DR. LEEDS: Let me ask about that hearing date  
5 because I think I am now a little confused. By August 22nd  
6 we are going to get discovery requests answered?

7 MR. TROWBRIDGE: Right..

8 DR. LEEDS: If we talk about, I guess September 15th  
9 we are talking about two weeks. That includes preparation,  
10 includes examination of that data, analysis of that data, I  
11 presume development of additional information, from  
12 independent sources, and filing of written testimony five  
13 days prior. That gives you two weeks to do all of that  
14 analysis in contemplation --

15 MR. TROWBRIDGE: Excuse me. If you look at it  
16 as nothing is going to happen until August 22nd, then we are  
17 going to pile a box of papers on Mr. Erwin's desk on  
18 August 22nd. I don't think that is a likely scenario.

19 I think it is one, if it occurred, it could be  
20 brought to the attention of the Board in a conference call  
21 and a question raised as to the hearing schedule.

22 A much more realistic scenario is we would have  
23 provided the material desired by Mr. Erwin long before that  
24 time but you have to put a cutoff date.

25 CHAIRMAN SMITH: It is unlikely we would start a

FP#5debi6

3810 1 hearing before September 15th in any event. It would more  
2 likely be the 19th or 20th. I think you can sense a feeling  
3 by the Board that your schedule is somewhat unrealistic but  
4 I don't think it is so unrealistic that we can't be shooting  
5 for it anyway.

6 We will consider all of these factors.

7 Now, as to the hearing itself we already have is,  
8 as I can see, quite a few volumes of transcript, most of that  
9 related to the exemption. That is of no value in the  
10 hearing on the construction permit itself; is that correct,  
11 gentlemen?

12 Would any part of that be of any value to the  
13 record from here on in?

14 MR. CUTCHIN: I do not believe so. I believe that  
15 is a closed issue.

16 MR. ERWIN: Mr. Chairman, I would think it is of  
17 very great value for impeachment purposes but that is the  
18 only value I can see myself.

19 CHAIRMAN SMITH: Right. Then we had three days of  
20 hearings in October of '75. One of the items on our  
21 prehearing agenda is whether any of those issues that were  
22 heard at that time have to be reheard.

23 MR. TROWBRIDGE: Mr. Chairman, we have looked perhaps  
24 somewhat quickly at the transcript of those three days of  
25 hearings. From our standpoint we don't see why there would be



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3810 1 a need for anybody to sit down and develop additional  
2 testimony on those items.

3 On the other hand, it could be that some pieces  
4 of information or some references could be updated. We would  
5 think it quite proper for any of the parties to bring the  
6 testimony up to date, and obviously to cross-examine —  
7 in other words, we are not saying the record is closed forever  
8 and a day on those three days of hearings on those issues.

9 The most we can see that is likely to come out  
10 of this is possibly some updating of the testimony at that  
11 time.

12 CHAIRMAN SMITH: Mr. Cutchin?

13 MR. CUTCHIN: I think the Staff would suggest we  
14 be guided in general by the rules for reopening the hearing.  
15 That is, if there is some, not just merely for a change in  
16 the details but if is some significance either environmental  
17 or safety issue that a party believes should be updated or  
18 readdressed that they make the necessary motions and the  
19 Board make a decision at that time as to whether to reopen  
20 the record on those issues.

21 Otherwise, one could be surprised when he walks  
22 into the hearing and party A wishes to update and party B  
23 has not really reconsidered that issue. You may have to  
24 rehash the whole thing again and that may involve some  
25 needless delay.

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DR. LEEDS: Your SES is coming out in August?

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MR. CUTCHIN: The SER, the first new supplement

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will be by early July, in addition of an August ACRS. We

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will publish a supplement only to address matters that the

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ACRS raised that were not already addressed.

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DR. LEEDS: Will it be out before July the 8th?

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MR. CUTCHIN: Most probably, yes, because the ACRS

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likes 10 days. Sometime they are generous and give you a

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couple more days, but it will probably be out before 10

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days.

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CHAIRMAN SMITH: Mr. Erwin?

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MR. ERWIN: I second what Mr. Cutchin said.

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310#06jul

1 CHAIRMAN SMITH: The fourth item in the agenda was  
2 changes in the proposed scope of the hearing in relation to  
3 the Applicant's financial qualifications, need for electrical  
4 power, including energy alternatives and the seismic  
5 implications of geological fault.

6 We adequately discussed the first two phases of  
7 that item, but just for the Board's informal information,  
8 where do we stand with respect to the fault? What has  
9 happened? How does that impact upon our hearing?

10 MR. TROWBRIDGE: Let me see if I can reconstruct a  
11 little timetable. The fault became a problem shortly before  
12 that three day session we had in October of 1974, and there  
13 was some discussion of it at that time.

14 At that time Mr. Erwin was interested in the fault,  
15 and the Intervenor indicated that they would hope that they  
16 would not -- that the fault would resolve itself, that they  
17 would not have to file contentions, but reserved the right to  
18 do so.

19 Subsequently, I had discussions with Mr. Erwin.  
20 I reported in a letter to him, I think the date was  
21 February 13, '75, in which the understanding we reached was,  
22 if Mr. Erwin wanted to file any contentions in the area  
23 having to do with the fault, he would do so within three weeks  
24 of the time that we filed our final report on the fault with  
25 the Staff.

310#06 ju2

1           On the strength of that, I would indicate I would  
2 not request to the Board any request for a deadline for the  
3 filing of anything on that. The contention was filed with  
4 the Staff on March 7, '75, and it's my understanding between  
5 the Applicant and the Staff the seismic — the fault issue  
6 has been completely been put to rest as an inactive fault.  
7 And I take it that the Intervenor, having not filed any  
8 contentions, have resolved in their own minds, to their own  
9 satisfaction, the fault is inactive, or at least that they  
10 don't want to get further into the subject.

11           CHAIRMAN SMITH: Mr. Cutchin?

12           MR. CUTCHIN: The Staff would supplement what Mr.  
13 Trowbridge has said slightly. That will be one of the issues  
14 addressed in Supplement Number 3. The Staff has indeed  
15 concluded its analysis of the fault situation, and has indeed  
16 concluded that the fault is not capable as defined in the  
17 regulations in 10 CFR Part 100.

18           CHAIRMAN SMITH: Mr. Erwin?

19           MR. ERWIN: Mr. Chairman, we would certainly agree  
20 with what has been said. I would add we did have the active  
21 advice and support of a couple of geologists of note in this  
22 area who followed this matter and participated in some  
23 meetings in Washington, and while they object to the  
24 regulations, they have to abide by the Staff's conclusion  
25 that it's not capable under the regulations, so we will, if

310#06ju3

1 Mr. Trowbridge needs any further assurance, there will be no  
2 contentions from the intervenors regarding the fault.

3 DR. LEEDS: The next item is the item on the  
4 request of the Applicant for, I guess, to use — to get an  
5 exemption from some of the requirements of 10 CFR 50.55 with  
6 respect to items they have already procured.

7 What is the status of that? The letter from  
8 Mr. McDuffie, if I remember correctly.

9 MR. TROWBRIDGE: Let me start with taking exception  
10 to the use of the word "exemption."

11 DR. LEEDS: You define it. Mr. McDuffie sent a  
12 letter in and said he wanted to use some components --

13 MR. TROWBRIDGE: Under the provisions that the  
14 regulations would contemplate that such authorizations may be  
15 requested and granted. As far as the — Let me say this. I  
16 assume, and Mr. Cutchin can correct me if I am wrong, that  
17 this subject will be dealt with in the supplement to the SER.

18 MR. CUTCHIN: That's right.

19 MR. TROWBRIDGE: I would suggest to the Board, when  
20 it does see the write-up, that this is put in perspective, and  
21 we don't have divisions of obsolete plant that may have been  
22 suggested by the differences between what we have done in the  
23 way of code on our own and in the requirements of — some of  
24 the later addenda are not that significant. That the Board  
25 can judge for itself. It seems to me, as far as this hearing,

310#06 ju4

1 the first step is that the Staff acts on the authorization  
2 request. If that is a matter of particular interest to the  
3 Board, like any other phase of the safety review of that plant,  
4 it's something the Board can inquire about in as much detail  
5 as it wishes. If it is a matter which the Intervenor want  
6 to make a contest — a contested issue out of, then it would  
7 be up to the Intervenor, I think, to file a motion to add  
8 contentions in this area.

9 Let me add, you have Mr. McDuffie's letter. You  
10 will be getting a supplemental letter which explains more  
11 fully the areas in which we meet the — some areas where we  
12 volunteer, anticipate the code requirements and a closer  
13 definition of the areas where we don't — I think you will  
14 get through our letters as well as the Staff's SER supplement,  
15 more information in this area.

16 MR. CUTCHIN: The Staff will indeed, as I  
17 indicated, address this particular issue along with many  
18 others in the supplement to the Safety Evaluation Report.  
19 The Staff would have to say at the present it sees no reason  
20 for this particular issue to rise to a higher status than any  
21 other. There is indeed provision in the regulations for  
22 so-called hardship cases, as in this instance, a plant does  
23 not get through the review process quickly enough to not get  
24 caught with some components that don't literally meet the  
25 requirements of the newer ASME codes.

310#06 ju5

1           They must indeed be able to demonstrate in these  
2 cases that those components provide an acceptable level of  
3 safety and quality, and the Staff will look at the  
4 differences in the older and newer addition to the code,  
5 additions to the code they will make a judgment as to whether  
6 the components do meet an acceptable level of safety and  
7 quality and will give their reasons for that conclusion.

8           I think, to put it further in perspective, just  
9 because these components do meet an older code cannot on its  
10 face mean they are unacceptable, because there are indeed many  
11 plants that are currently operating that are designed and  
12 built to those very same codes.

13           DR. LEEDS: I don't think this should come as a  
14 surprise to anybody, for example, in the transcript on page  
15 93 at that prehearing conference in Bethesda, Maryland, we  
16 discussed the very problem we are talking about here, of  
17 delaying this plant that length of time and having an older  
18 plant or a plant designed in earlier times and coming on-line  
19 later. I think at that time we were contemplating only about  
20 1-1/2 years delay.

21           If I remember correctly, that was July of '74.  
22 This is July of '77, which is three full years, so I think  
23 that, you know, my personal view, they said I was an  
24 environmental member before, but I'm concerned with safety,  
25 too. I have had some experience in the past designing safety.

310#06 ju6

1 systems for reactors, and I am concerned about that. There  
2 is a problem of ECCS qualifications, it seems to me, which  
3 was not addressed at that time. That was the pumpkin date  
4 of December 28. There is the problem that has come up lately  
5 with respect to fire protection. There is a problem of this  
6 plant having dual control rooms. I don't remember, and have  
7 not reviewed the PSAR to see where they are, but there may  
8 well be some problem there.

9 I presume the Staff is going to address fire  
10 protection.

11 MR. CUTCHIN: That is a matter that has been  
12 discussed. There has been information asked for from the  
13 Applicant, and it indeed will be addressed.

14 DR. LEEDS: And cable insulation, what kind of  
15 fire protection qualifications for that stuff.

16 MR. CUTCHIN: I couldn't address the details.

17 DR. LEEDS: I know, but there is a whole list of  
18 them.

19 MR. CUTCHIN: There is indeed quite a list.

20 DR. LEEDS: I think the Staff needs to go back and  
21 look at it and come back and tell us from there forward what  
22 changes have been made in the rules and regulations, and  
23 which ones this plant is complying with and which ones are  
24 not being complied with, and why it is okay for them not to.

25 I can leave it up to you to go through the whole



310#06 ju7

1 list.

2 MR. TROWBRIDGE: It seems to me this is what the  
3 supplemental SER is about. When you get it, you will also get  
4 the answer to what has happened for a whole year.

5 DR. LEEDS: I understand that, sir, but what I'm  
6 really putting them on notice for, if they are going to tell  
7 me, "We looked at it, and it's okay," I want to see it in  
8 detail. I was trying to be polite about it. But since you  
9 brought it up, I want them to be specific about it. I want  
10 it in line, either by supplement or testimony. I don't care  
11 how they do it.

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1 CHAIRMAN SMITH: The Applicant's motion for this  
2 prehearing conference centered around a request, as I have  
3 stated, a request of the Board to give the Intervenor an  
4 opportunity to modify or comment on possible modification of  
5 his contentions, of their contentions.

6 We didn't put that on the agenda because it is  
7 included in the general nature of the matters to be considered  
8 in a prehearing conference, but we will take it up now.

9 Would you proceed on that, Mr. Trowbridge?

10 MR. TROWBRIDGE: I am at a loss --

11 CHAIRMAN SMITH: All right. Your motion for  
12 prehearing conference, dated May 26th, 1977, stated in the  
13 second paragraph, the principal purpose of the prehearing  
14 conference would be, one, to ascertain current interest in  
15 pursuing the outstanding contention relating the need for  
16 power, Applicant's plan for equal financial qualification  
17 and to consider financial matters and other procedures relating  
18 to the hearing.

19 Then you talk in more detail, you have already  
20 discussed the contentions, and we have already discussed the  
21 contentions and I guess we can assume from the comments from  
22 the Intervenor that he did not intend to retreat from any of  
23 them.

24 MR. TROWBRIDGE: I think that is implicit. We  
25 understand all three contentions are still alive.

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1 CHAIRMAN SMITH: In fact, he may amend them.

2 MR. TROWBRIDGE: We understand the amending will  
3 take the form of updating the bases for the contentions.

4 CHAIRMAN SMITH: But, nevertheless, I wanted to  
5 give you an opportunity to specifically discuss this, because  
6 it was in your motion.

7 MR. TROWBRIDGE: No. If the Intervenor wish to  
8 stay with their three contentions, we are not suggesting  
9 that they should do otherwise.

10 CHAIRMAN SMITH: Mr. Erwin.

11 MR. ERWIN: That is fine. Thank you.

12 DR. LEEDS: Since the ACRS is going to meet, I would  
13 like the Staff to inquire of the ACRS which items on their  
14 list of generic items for light water reactors must be complied  
15 with prior to the issuance of the construction permit or  
16 resolved with the Staff, and whatever schedule is obtained  
17 and proposed resolution and which items on that list must be  
18 resolved during construction, but prior to operation.

19 As you know, Herb Shalman has come out since we have  
20 even discussed this so I would presume the Board would look  
21 carefully at the letter and see if it complies with the Herb  
22 Shalman decision.

23 Also, in looking over the record we, -- at the July  
24 conference, I don't remember exactly, I can find the reference,  
25 but we were concerned about the storage of equipment on-site.

P7vma3

1 and the quality assurance that was going to go on during the  
2 time of storage.

3 At that time, it was concerned with a couple of  
4 years' period and now we are talking about several years. I  
5 presume the Staff has been observing as they said they would  
6 how the equipment has been stored and whether or not any  
7 deterioration has occurred, or anything like that.

8 I would like a report on that. That is all in  
9 line with the other part, too. I have some other areas of  
10 interest that perhaps would be better if I phrased them as  
11 questions in written form and submitted them to you in the  
12 near future, which I presume we could do. Right?

13 I just wanted to bring those up, because I thought  
14 there is something you could do, you might want to get started  
15 on soon, specially with respect to ACRS.

16 CHAIRMAN SMITH: As I recall, soon after the  
17 conclusion of the October 1974 session of the hearing, the  
18 Board submitted other questions which will be answered  
19 presumably during the hearing.

20 MR. TROWBRIDGE: We had a note to inquire whether  
21 these were still questions the Board wanted answered and we  
22 already have our answer.

23 The next question is, do you have any more?

24 DR. LEEDS: They are coming. I will try to get  
25 mine to the Chairman as soon as I can and we can get them to

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1 you as soon as possible.

2 MR. TROWBRIDGE: Will it have a recapitulation  
3 or shall we go by the transcript?

4 DR. LEEDS: If it is clear, fine, and if it is  
5 not, I will look at it and see. But I think my concerns  
6 about the ACRS letter are very clear. There is no problem  
7 with that.

8 MR. CUTCHIN: I understand, yes.

9 MR. TROWBRIDGE: We will even reread the Hartsville  
10 decision.

11 DR. LEEDS: Yes. I tried to write it clearly there.  
12 I guess while they are conferring, one of the things that has  
13 come up, if you poured that seal over the foundation, what  
14 kind of quality assurance program went on during that? If it  
15 was poured under a LWA-2, and Appendix B would apply.

16 MR. CUTCHIN: I am not sure that it is a decided  
17 question as to whether it could be poured under an LWA-1 or  
18 LWA-2. There was such consideration by the Staff in its  
19 concurrence with the interpretation of the exemption to have  
20 authorized that particular seal mat. Of course, it is very  
21 thin cover, and the Staff already having satisfied itself  
22 regarding the fault, some of which may have been covered by  
23 this, all of these things were considered by the Staff.

24 It is not clear that it would have required Appendix  
25 B attention during its pouring.

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1 DR. LEEDS: My question is, did it have Appendix B  
2 attention?

3 MR. CUTCHIN: I do not know. Maybe the Applicant  
4 could answer that, but I would doubt it. The Staff did not  
5 require it.

6 DR. LEEDS: Is it going to be removed or is it  
7 permanent?

8 MR. CUTCHIN: My understanding is that it is  
9 permanent, but that it could be easily removed if it were  
10 required.

11 MR. TROWBRIDGE: If Mr. Howe could describe a  
12 little bit what this cover is.

13 MR. HOWE: A seal mat or bud mat as it is commonly  
14 referred to is a protective coating to protect against further  
15 weathering. We had excavated down to a point. Our commitment  
16 in the SAR was a commitment on rock — we left a barrier of  
17 rock which we knew would weather, that will be scraped away,  
18 cleaned, and a thin layer of several inches of concrete will  
19 be poured over that. Only as a preservative. It has no  
20 structural or seismic implications and was merely intended to  
21 protect against further weathering of the rock.

22 DR. LEEDS: I don't know whether you were a witness  
23 before or not, but the Staff may want to look at that. I  
24 presume it will take some stress and I presume if it is going  
25 to be loaded at all by the structure, one would want to make

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1 sure it didn't crumble, or whatever, or deteriorate in some  
2 manner. I don't want to get into an argument about whether  
3 Appendix B applies or not. I want to find out what was done.

4 CHAIRMAN SMITH: Okay. That concludes the matters  
5 that the Board wished to consider during this prehearing  
6 conference.

7 Each of the parties will have an opportunity to  
8 add anything. Mr. Trowbridge?

9 MR. TROWBRIDGE: I am looking over my notes, Mr.  
10 Chairman. I believe we covered everything.

11 MR. CUTCHIN: Mr. Chairman, I have nothing to add  
12 except Mr. Browne would like to supplement the discussion of  
13 the Utilities Commission hearing because he represented the  
14 Staff there. He might be able to shed a little more light  
15 on what actually transpired there.

16 CHAIRMAN SMITH: I would be pleased to hear from  
17 you.

18 MR. BROWNE: Thank you, Mr. Chairman. I wanted to  
19 make a point clear because of Dr. Leeds' question about the  
20 Utilities Commission's hearing, to the extent they went into  
21 the need for power question. I want to make it clear I did  
22 appear as counsel for the Staff. Mr. Stello, Director of the  
23 Operating Reactors for NRC appeared as the witness for the  
24 NRC Staff. We appeared pursuant to an invitation from the  
25 Commission and our role in those hearings was limited to a



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1 discussion by Mr. Stello of licensing procedures at NRC, how  
2 NRC deals with safety and environmental questions in our  
3 licensing, and was intended for background information for  
4 the Commission.

5 We didn't appear in any adjudicatory sense and  
6 didn't put any evidence or testimony or, in fact, of any  
7 discussion whatever in our testimony about need for power  
8 questions as we might understand them.

9 It was primarily background information for the  
10 Commission, so they could have a better understanding of  
11 about how NRC operates and licenses plants.

12 DR. LEEDS: I am glad you said that, sir, because  
13 I sure had the impression that you made a presentation on  
14 need for power.

15 MR. BROWNE: I wanted to be sure it was clear.

16 CHAIRMAN SMITH: Mr. Cutchin, do you have any  
17 feeling for how long this hearing will take? I realize the  
18 danger of making such a prediction.

19 MR. CUTCHIN: It is very difficult. You are asking  
20 me to speculate on something. I would think a matter of --  
21 the other parties could perhaps give a similar feeling --  
22 I think one to two weeks at the max, if we stick with the  
23 three matters that remain. Of course, it depends upon how  
24 deeply the Board wishes to go into many of these areas. I  
25 can't hazard a guess on that.

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1 CHAIRMAN SMITH: Mr. Brake, do you have?

2 MR. BRAKE: Nothing.

3 CHAIRMAN SMITH: Mr. Erwin?

4 MR. ERWIN: I have nothing.

5 CHAIRMAN SMITH: Mr. Trowbridge?

6 MR. TROWBRIDGE: When the Board, if and when the  
7 Board establishes a date for the hearing, will it also set a  
8 date for the filing of testimony, so many days?

9 CHAIRMAN SMITH: Yes. The only definite dates we  
10 have now are the dates beginning August 9th, 1977.

11 CHAIRMAN SMITH: Thank you. Hearing is adjourned.

12 (Whereupon, at 10:51 a.m., the hearing was  
13 adjourned.)

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