

ORIGINAL
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

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

Location: Bethesda, Maryland

Date: Wednesday, May 29, 1985

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In the Matter of :
CAROLINA POWER & LIGHT COMPANY and :
NORTH CAROLINA EASTERN MUNICIPAL POWER : Docket No. 50-400-OL
AGENCY :
Shearon Harris Nuclear Power Plant, :
Units 1 and 2 :

TELEPHONE CONFERENCE CALL

4350 East-West Highway
Fourth Floor
Bethesda, Maryland
Wednesday, May 29, 1985

The telephone conference call in the above-entitled
matter was convened at 10:10 a.m., pursuant to notice.

APPEARANCES:

Board Members:
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GLENN O. BRIGHT
JAMES. H. CARPENTER

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P R O C E E D I N G S

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JUDGE KELLEY: Let's start by checking the roll.
Who is here for the Applicants, Mr. O'Neill?

MR. O'NEILL: Yes, sir. And Tom Baxter.
I will get Ms. Ridgeway when we get to planning.

JUDGE KELLEY: Okay.
Staff?

MS. MOORE: Janice Moore, Charles Barth and Brad
Jones.

JUDGE KELLEY: Thank you.

Mr. Eddleman, are you here?

MR. EDDLEMAN: Yes.

JUDGE KELLEY: And Mr. Guild?

MR. GUILD: Yes, sir.

JUDGE KELLEY: Anyone else that I haven't called?

MR. HOLLAR: Mr. Hollar and Mr. McDaniel are here.

JUDGE KELLEY: Right. Thank you.

MR. RUNKLE: Mr. Runkle.

JUDGE KELLEY: Mr. Runkle, good morning.

Anybody else?

(No response.)

Well, as we said in our last conference, our purpose
today was to focus on the OI report. Let me confirm first
whether everybody received at least the report itself, the
ten-page document.

1 Has everybody got that? Anybody who doesn't have
2 it?

3 MR. GUILD: Yes, sir, I have not received the report
4 and learned of its existence only yesterday. I got the two
5 volumes of exhibits, but learned that there was a report, I
6 gather to you, Judge Kelley, only yesterday, and have not
7 received that.

8 JUDGE KELLEY: My understanding, Mr. Eddleman, you
9 were going to be updating Mr. Guild on what was involved.

10 MR. EDDLEMAN: I think I left a message for him out
11 in the Midwest that the report of two volumes were coming to
12 him. And then I talked to him yesterday, and discovered that
13 he hadn't gotten the report.

14 MR. GUILD: I got the two volumes, Judge Kelley, I
15 just didn't get any report to you. I just learned that it
16 existed yesterday.

17 JUDGE KELLEY: That's probably because you are not
18 on the Service List.

19 We have this situation where it is unclear to me,
20 Mr. Guild. You are counsel as to discovery, as to this
21 contention. Is that a fair statement?

22 MR. GUILD: That's the status of it as of this
23 point, yes, sir.

24 JUDGE KELLEY: But you have never been put on the
25 Service List to my knowledge, or for that matter, requested to

1 be put on there.

2 Between Mr. Guild and Mr. Eddleman, are you prepared
3 to address this matter this morning?

4 MR. GUILD: In a limited degree, Judge. We sort of
5 anticipated that was going to be the subject of this call. I
6 familiarized myself with the two volumes of the exhibits which
7 I now understand support that report. But, as to the details
8 of their conclusions, I have only been informed of them and
9 haven't received the document. I, obviously, haven't had an
10 opportunity to study it.

11 I am prepared to address the general subject. To
12 the extent it is a question of what it said or concludes, my
13 information is limited.

14 JUDGE KELLEY: That's unfortunate, because the
15 purpose of this call is to address the significance of the OI
16 report to 416, and whether 416 ought to be expanded beyond
17 its limited scope in the light of OI.

18 I think the Board is ready to talk about that.

19 Mr. Eddleman, you have read the report, correct?

20 MR. EDDLEMAN: Yes, Judge.

21 JUDGE KELLEY: Okay. Well, we want to go ahead, we
22 want to hear from all parties, and we want to make a
23 decision. We are not here for a preliminary discussion. We
24 are here for a definitive discussion as to whether any
25 expansion in 416 should take place as a result of the OI

1 report.

2 MR. GUILD: Well, sir, to the extent that
3 Mr. Eddleman has asked me to assist him on this matter, I
4 really don't think it is due to any fault of Mr. Eddleman or
5 myself that we are somewhat handicapped in addressing the
6 merits of this issue.

7 I would just inform you, Judge, that my
8 understanding of the normal DI practice was that they issued
9 no report. They simply compiled a series of reports of
10 investigative interviews, et cetera. That certainly was the
11 approach that they followed, just for example in investigating
12 the welder inspector concerns at Catawba. There was no formal
13 report. It simply was the bound evidence. And I got that,
14 and I exercised what diligence I could in reviewing that in
15 the time that I had them in my possession.

16 But, I did not understand there was a report to the
17 Board and learned of that only yesterday.

18 I think to the extent that Mr. Eddleman has asked
19 for assistance from counsel in addressing the merits of these
20 issues, and I would like to provide him with that assistance,
21 we are somewhat handicapped. I think it is unfortunate, but I
22 don't think we are to blame for that, sir.

23 JUDGE KELLEY: I might note, Mr. Guild, that you
24 absented yourself from last week's phonecall, because you were
25 busy in Chicago. But I said at that time -- had you been on

1 the phone last week, you would have known that there was going
2 to be a report.

3 At the conclusion I described what we had and
4 I described the report, and just exactly what it was. And I
5 went on -- excuse me a moment, I am looking for the relevant
6 part.

7 (Pause)

8 I want to direct your attention to pages 75, 96 and
9 97. We have had a discussion of what we got in the way of
10 report and who is going to get copies and what we are going to
11 do next week, and then I say at the bottom, beginning at line
12 22, "Now, I would just point out, Mr. Eddleman, that Mr. Guild
13 felt he didn't need to be in on this phone call, and we will
14 be talking from now on about emergency planning matters, but I
15 think what has been said here is pretty straightforward. I
16 assume you can pass that on to him so that he will be
17 prepared.

18 "We already told him there will be a phone call next
19 week. We will have to change the time. We told him Tuesday
20 the 30th. We will have to call him back and tell him the
21 29th. But in terms of what we are going to do, I will rely on
22 you to convey that to him."

23 Mr. Eddleman, you did not speak to Mr. Guild at all
24 until yesterday, is that correct?

25 MR. EDDLEMAN: No, sir, that's not correct. What

1 I'm saying is I think I may have left the information about
2 what was coming to him by mail in a message, and it may have
3 been a mistake on my part. My best recollection is that I
4 understood he was going to get the two volumes and the report
5 by quick mail where he was in the Midwest.

6 We talked otherwise, but I didn't mention it because
7 I thought that it was coming to him.

8 JUDGE KELLEY: Have you and Mr. Guild had any
9 discussion prior to this telephone conference as to what you
10 have got to say this morning on the significance of the OI
11 report?

12 MR. EDDLEMAN: Yes, sir.

13 MR. GUILD: Judge, we talked about it and I had the
14 report to you read to me over the telephone late last night.
15 I am just simply telling you that I don't think it is as any
16 result of lack of diligence on Mr. Eddleman's part or mine.
17 It's an unfortunate series of circumstances that led to the
18 problem that I don't have the report in front of me and
19 haven't had a chance to study it. But I did have the two
20 volumes of exhibits. I understood, I think fairly, that those
21 were what IO did and that there was no report.

22 I learned otherwise only yesterday. I have done
23 everything I could to correct that omission.

24 JUDGE KELLEY: If you learned only yesterday that
25 there was a separate, ten-page report about this matter from

1 Mr. Eddleman, I think Mr. Eddleman has not exercised due
2 diligence.

3 MR. GUILD: I beg to differ with you, Judge. I
4 think the circumstances that I set out reflects he fairly
5 assumed that those two volumes were it and that there was no
6 ten-page report.

7 JUDGE KELLEY: Well, we have got ten people on the
8 phone ready to do business on this main item, and what I am
9 hearing from Mr. Guild and Mr. Eddleman is that they somehow
10 aren't ready. We don't think it is justified. We are going
11 to go ahead anyway. We will consider at the conclusion of the
12 discussions of the respective parties what further
13 opportunity, if any, Mr. Guild and Mr. Eddleman are entitled
14 to with regard to the subject of whether the DI report
15 justifies any expansion in 41G. We will go to the Applicants
16 first.

17 MR. GUILD: Judge, let me point out one other thing
18 before you go forward. I also understand that Mr. O'Neill or
19 the Company has submitted a pleading to you with respect to
20 the two matters that were in dispute about an inspector review
21 panel and an allegation of harassment and documents reflecting
22 that, and I haven't received that pleading either, learned
23 that it exists but have not seen it or reviewed it.

24 JUDGE KELLEY: I was going to get to that.
25 Mr. O'Neill, was that served on Mr. Guild?

1 MR. O'NEILL: Judge Kelley, I would think that it
2 would have been. If it wasn't served on him, it certainly was
3 served on Mr. Eddleman. Again, Mr. Guild hasn't put an
4 appearance in. He is not on the service list. I have been
5 trying to send documents to him when it involves discovery,
6 but again, since he hasn't elected to appear in this case, it
7 is possible he didn't get a copy of that letter. Certainly
8 Mr. Eddleman did.

9 MR. GUILD: Mr. O'Neill said he was going to send it
10 to me. I assumed, frankly, that there was no such pleading
11 since I hadn't received it.

12 JUDGE KELLEY: I view that, Mr. Guild, as a separate
13 issue which we will discuss. I will just tell you this much,
14 and I will elaborate on it. You asked for those documents in
15 discovery in connection with your depositions, correct?

16 MR. GUILD: Yes, sir.

17 JUDGE KELLEY: Under 41G, correct? And I in the
18 last phone call tentatively denied the request based on what I
19 had heard, but I said I wanted to see the documents
20 themselves. There are two issues. One is what the Board is
21 going to do in the way of either reaffirming its prior denial
22 or by way of reversing itself and saying they ought to be
23 turned over. That's one issue.

24 A separate issue is whether the documents ought to
25 be kept in camera or be made public or be made public in part

1 and kept in camera in part. That is a separate issue.

2 As to issue No. 1, on which we have already heard
3 argument, having been over the documents, the Board having
4 seen them, we have concluded that those two documents have
5 nothing to do with 41G and that they were properly denied.
6 I will expand on that a little more later.

7 But the merits of the discovery question, the result
8 is that they are not reachable on 41G.

9 Now we would like to proceed to a discussion of --
10 Mr. Guild, do you want to be on the service list of this case?

11 MR. GUILD: Yes, sir. The Staff have got me on as
12 counsel for 41G. I have received their pleadings.

13 MS. MOORE: Your Honor, that is a service list
14 generated in ELD. For Mr. Guild to be put on the service list
15 down in the Secretary's office, I think he has to file
16 something in writing so that they know. Otherwise, they have
17 no way of knowing he is appearing.

18 MR. GUILD: That is fine, Judge. I simply had this
19 discussion with counsel that I don't want to be inundated with
20 all the various papers in the Harris proceeding. My interest
21 is in 41G. Staff has figured that out. I appreciate them
22 serving me those papers, but I admit they might fall through
23 the cracks otherwise.

24 JUDGE KELLEY: I would suggest that you take the
25 matter up with the Secretary's office, the keepers of the

1 official service list. If they are willing to put you on on
2 a limited basis, that's fine with us.

3 MR. GUILD: All right.

4 JUDGE KELLEY: But I think there shouldn't be any
5 further slips of this kind, and one way to avoid it is to fix
6 the service list.

7 MR. GUILD: Okay.

8 JUDGE KELLEY: Now, as to the significance of the
9 OI report and the main subject of this call, we would like the
10 parties to take no more than ten minutes each -- by parties, I
11 mean the Applicant, the Staff, and then Mr. Eddleman and
12 Mr. Guild together -- on this question of whether the report
13 justifies an expansion.

14 We may have some further discussion beyond that, but
15 initially we are going to allot ten minutes apiece.

16 Mr. O'Neill, do you want to begin?

17 MR. O'NEILL: Judge Kelley, I would like to begin by
18 saying the two volumes which are the principal results of the
19 investigation, which are summarized in just a few pages,
20 actually, of summary in the report itself make this issue
21 pretty open and shut. Mr. Van Vo admits that he did not see a
22 problem with the safety-related system, and he admits that he
23 did not mean to say someone had deliberately sought to falsify
24 documents in his deposition.

25 He defined "falsify" as not being able to determine

1 where documentation is, and in effect has recanted that there
2 were really safety problems that he had identified. It is
3 interesting to note that in his own typewritten corrections to
4 the OI interview, he corrects his answer as to why he was
5 being harassed. He does this on page 15 of 19 of his 19 pages
6 of corrections.

7 The first one, he does reiterate that he thought he
8 was being harassed for raising the deficiency of the feedwater
9 pump, but the other three reasons have to do with sort of
10 interpersonal relationships between various people, nothing to
11 do with safety, and indeed, in the elaborate discussion of the
12 feedwater pump, he really has not raised that as a safety
13 issue so much as he pointed out what he thought was a
14 deficiency, and others would not follow up on that because the
15 deficiency had already been taken care of.

16 So I believe that Mr. Van Vo's own words demonstrate
17 that he himself did not believe he was harassed or raising
18 safety concerns, but rather he felt he was being discriminated
19 against for educational reasons or for his race or whatever.
20 That is not something that is the purview of the Nuclear
21 Regulatory Commission.

22 Applicant has investigated this in great detail, and
23 its conclusions are well documented. OI is now investigating
24 it in some detail, and its conclusions are well documented.
25 Indeed, I would think the intervenors would withdraw the

1 contention at this point.

2 I would like to reserve any time I have left to
3 respond to any arguments that the intervenors make, but I
4 certainly can't see where the OI report can be argued to
5 justify an expansion of the contention, and I look forward to
6 whatever creative arguments Mr. Guild or Mr. Eddleman would
7 like to come up with.

8 JUDGE KELLEY: Okay. Who is going to speak for the
9 Staff?

10 MS. MOORE: Janice Moore.

11 Your Honor, Staff does not believe that the OI
12 report leads to a conclusion that Contention 416 should be
13 expanded in any way. The report contains interviews with
14 various personnel and is supported by extensive exhibits which
15 indicate a lack of harassment of Mr. Van Vo, and given that
16 fact, there would be no reason to expand the contention to
17 discuss the general subject of harassment.

18 JUDGE KELLEY: Is that it?

19 MS. MOORE: That's it, Your Honor.

20 JUDGE KELLEY: Thank you.

21 Mr. Eddleman, or Mr. Guild first.

22 MR. GUILD: Yes. This is Guild, Judge.

23 Let me start off by saying, while we are
24 disappointed with the obvious flaws in what the Office of
25 Investigation has chosen to look at and what they have failed

1 to look at, and what their apparent conclusions are based on
2 the failure to look at the evidence that is likely to be
3 probative of harassment and intimidation, we do believe that
4 the results of investigation presented by the Office of
5 Investigation provide additional evidence to support our
6 thesis that Chan Van Vo was harassed and that an atmosphere of
7 harassment and intimidation exists at the Harris plant.

8 We think, as a fundamental matter, that the Board's
9 approach to the harassment issue as reflected in its January
10 14, 1985 Order, page 4, makes the question before the house as
11 follows. If the Van Vo allegations prove to be unfounded as
12 the Board said, and if no other evidence of harassment
13 surfaces, then presumably the issue of harassment will be
14 closed.

15 We think that at this juncture, the validity of the
16 Van Vo concerns has yet to be determined, and additional
17 evidence of harassment and intimidation has, in fact, surfaced
18 that we think compels two results. One is, either on the
19 basis of that additional evidence, that the traditional
20 litigation approach be followed, and that is that the
21 Intervenor may be provided an opportunity through its own
22 efforts through discovery to develop cases that follow the
23 lead that now has surfaced for other harassments and
24 intimidations.

25 JUDGE KELLEY: Mr. Guild, discovery, as you well

1 know, in NRC cases doesn't work that way. Discovery goes
2 under admitted contentions. The only contention in this case
3 is 416. You may think it's too narrow, but that's the only
4 contention in the case. We don't have an open-ended mandate
5 to sift through everything at Shearon Harris looking for
6 something that might look like harassment.

7 MR. GUILD: We understand that is the Board's view,
8 and while we think there certainly was a basis for a general
9 claim of harassment and intimidation, one that is consistent
10 with the Appeal Board's view of what a significant flaw in the
11 QA system under the subject of harassment and intimidation
12 would look like, we understand your ruling to the contrary.
13 But we also read your Order of January 14th as saying that
14 when additional evidence of harassment does surface -- and
15 this case there is additional evidence of harassment -- that
16 at the very least we should not be limited artificially to
17 pretending that that additional evidence doesn't exist. We
18 should go out to pursue that.

19 One approach I suggest --

20 JUDGE KELLEY: Just a moment. Let me follow your
21 argument back to my original point. Pursuit in the form of
22 discovery depends upon contentions, right?

23 MR. GUILD: Yes, sir.

24 JUDGE KELLEY: Those are our rules. When you say
25 other evidence has surfaced, you have reference to the two

1 letters that came in in response to our notice? Is that what
2 you are referring to?

3 MR. GUILD: In part, sir. I can elaborate beyond
4 that, but let's put those two on the table first.

5 JUDGE KELLEY: Those two are on the table. They are
6 on the table. They are on OI's table at the moment. They are
7 going to finish an investigation, presumably, at some point.
8 We don't know when. Then we will consider what they suggest
9 we ought to do, if anything.

10 MR. GUILD: Yes, sir. That's my second point. Let
11 me just complete the whole picture in summary and then return
12 to this point.

13 I think the traditional approach ought to be
14 followed, and that is that the parties ought to develop the
15 record and not OI. The parties in this case ought to have as
16 additional evidence harassment reflected in an expanded scope
17 of a contention or additional admission of an expanded scope
18 of the contention. But it would be our task and our
19 prerogative to develop this evidence failing that, and that
20 seems inconsistent with the Board's approach to this issue.

21 JUDGE KELLEY: It is inconsistent. It is directly
22 inconsistent. We decided we would look at Van Vo first; if
23 there was nothing to Van Vo, we would drop it. That has been
24 the law of this case since last January. Let's not reargue
25 that this morning.

1 MR. GUILD: Van Vo first and then additional
2 evidence of harassment if it surfaced, and it has. At the
3 very least, Judge, what I would say -- and this is the second
4 point -- if expansion of discovery is not consistent with the
5 Board's approach to this issue, we disagree respectfully. At
6 the very least, there is an OI investigation pending on the
7 two additional harassment claims that have formally surfaced
8 to the Licensing Board. I was informed by the OI investigator
9 who is working on this that he projects a June 30th completion
10 date for those two other pending matters, and he thought that
11 was communicated to the Board, although I'm not aware
12 independently whether that is the case or not.

13 But at the very least, Judge, we would submit that
14 the two other pieces of evidence of harassment which have
15 indeed surfaced under 41G ought to be pursued by OI before we
16 reach a determination on trying the issue of harassment at
17 Harris. That is our best summary of our position, either
18 discovery, which you deny, or the additional harassment
19 evidence, or we allow OI to do what it is going to do and have
20 before us the results of their investigation, more or less as
21 a substitute for discovery.

22 Now turning to what they have done so far, and that
23 is their investigation of the Chan Van Vo concerns. First as
24 a fundamental matter, the decision by the NRC Staff, whether
25 it be ISE, which looked at these matters and issued inspection

1 reports, or DI, another arm of the NRC Staff which looked in
2 some fashion at this issue and distributed the evidence or
3 summaries of the evidence that it obtained and apparently this
4 report it has made to the Board, neither of those Staff
5 conclusions or investigations of the Van Vo matter are
6 dispositive of this issue for purposes of litigation.

7 The NRC is an adversary party in this case, and
8 adversary to this Intervenor. So fundamentally, as a matter
9 of law, it seems to me that the Board can attach no particular
10 significance to what the NRC Staff has concluded on a
11 contested issue. The issue has to be resolved on the record.

12 JUDGE KELLEY: Maybe I'm not with you. When you say
13 the NRC Staff, do you mean DI?

14 MR. GUILD: Yes, I mean DI and/or I&E, any portion
15 of the Staff. DI is the NRC Staff and they are an adversary
16 party in the litigation. The fact that the NRC Staff, DI or
17 whatever other office of the Staff reaches a position on a
18 contested matter doesn't dispose of that contested matter for
19 purposes of resolving a claim.

20 JUDGE KELLEY: We can take that as given. Okay, I
21 agree with you. The fact the DI report comes in -- let's say
22 you read it as saying there is nothing to the Van Vo
23 allegations, there is no harassment involved where Van Vo is
24 concerned. Suppose they conclude that. That doesn't throw the
25 contention out. If the proponent of the contention,

1 Mr. Eddleman, wants to pursue 41G, then presumably he can do
2 that, and you don't have to convince us of that. We agree.

3 MR. GUILD: All right. Now then, the question, I
4 guess, before the house is you want to hear what status the DI
5 report does have, and since I think it is conceded that the
6 DI conclusion, like the I&E conclusion, doesn't dispose of a
7 claim, then what status should it be given?

8 I think the question I understood the Chair put
9 before the house is what significance does it have on the
10 issue of whether or not the Van Vo contention, the 41G as
11 framed by the Licensing Board, should be expanded. My view is
12 it has no significance whatsoever for that issue. That issue
13 is strictly a legal issue and, as framed by the January
14 Licensing Board decision, is determined by whether or not
15 other evidence of harassment surfaces.

16 I submit that that issue has been resolved in
17 the affirmative and other evidence of harassment has indeed
18 surfaced.

19 JUDGE KELLEY: Let me make sure I follow your
20 argument. Are you saying -- let's suppose the DI report is
21 read to exonerate the Company and undercut Van Vo's
22 allegations. Then you say it has no significance, the
23 contention is still there. I understand that.

24 Supposing the DI report came in, though, with a very
25 different tack, and it said: I talked to Van Vo and all these

1 people, and he really was discriminated against, retaliated
2 against for raising safety concerns, and I also found ten
3 other people who said the same thing. Would that be a basis
4 for expanding the 41G?

5 MR. GUILD: It would be a factual basis, Judge, but
6 it would be factual basis no different qualitatively than the
7 factual basis for expansion that already exists. That is,
8 there would be some the factual evidence of harassment that
9 would presumably meet the Commission's standards for being the
10 basis for a contention. I submit that that evidence already
11 exists.

12 I mean mechanically the approach can be the Board
13 says, okay, we have got those two other harassment claims out
14 there, we will treat them, and we will treat them as part of
15 an expansion of 41G as it presently exists. Or mechanically
16 it seems to me that the intervenor, then, is faced with the
17 prospect to otherwise simply say now we have two other bases
18 for new harassment contentions, consider these before the
19 house.

20 One way or the other, Judge, it seems to me the
21 approach the Board has taken has to include consideration of
22 the additional harassment evidence that surfaced.

23 JUDGE KELLEY: Mr. Guild, though, we have already
24 discussed that, I think. I understand what you are saying.
25 There is going to be another OI report somewhere down the line

1 on those other two letters. When that comes in, we will take
2 a look at it, but let's put that to one side. We are looking
3 at something narrow this morning.

4 We are asking you whether we should expand the 41G
5 contention based on this OI report that is now in front of
6 you. That is what we want to hear. Yes or no, should we or
7 should we not?

8 I'm just trying to get out that question.

9 Mr. Guild, do you have any comment?

10 MR. GUILD: Yes, sir.

11 I think the answer to the question is it should be
12 expanded, and to the extent we are looking at the OI report as
13 a basis for that expansion, I think the answer still remains
14 yes.

15 Let me focus first on the fact that I think there
16 are obvious facial inadequacies on what the OI report looked
17 at. If you want to reach the conclusion based solely on the
18 OI report on whether or not Chan Van Vo's concern about
19 harassment and intimidation are substantiated, I don't think
20 it is a reliable basis for reaching a conclusion one way or
21 another on that question.

22 But apart from that, there is other serious evidence
23 contained in what they have done that we think buttresses the
24 concern that people who he points out as being the source of
25 harassment and intimidation, particularly Alex Fuller, did his

1 business in such a fashion that one should be concerned about
2 the existence of harassment, of intimidation, of pressure on
3 workers in the hanger area not to voice concerns about
4 quality and safety.

5 In that regard, it seems to me what the OI has done
6 is good for us, supports our concerns and ought to support
7 this Board's concern for looking further on the question of
8 harassment and intimidation.

9 Let me point out on the first point the flaws in
10 the face of the OI report. The investigator spoke to no one
11 that Chan Van Vo identified as being potential witnesses to
12 corroborate the factual basis for his concerns. I don't know
13 how they picked the people that they picked, but the names
14 that I see identified with those who are identified in the
15 attachments are almost -- they get a person who was identified
16 as hostile to him and his claims, as far as he knew. The
17 person's name has never been identified in any of the
18 investigative interviews or the deposition conducted by the
19 Company. So where OI got those names from, I don't know, but
20 they certainly did not speak to the persons that he identified
21 as potentially corroborative witnesses.

22 JUDGE KELLEY: Where are these potentially
23 corroborating witnesses identified by Mr. Van Vo?

24 MR. GUILD: I can't give you page and line
25 reference.

1 MR. EDDLEMAN: I can.

2 JUDGE KELLEY: All right, where?

3 MR. EDDLEMAN: On Exhibit 2 of OI's notebook on page
4 32, and also on page 6 of 19, which is renumbered page 7, of
5 Exhibit 3, Van Vo mentions an inspector named Ward who he
6 asserts was removed for having found too many problems.

7 JUDGE KELLEY: Okay.

8 MR. EDDLEMAN: He also -- let's see. On, I believe
9 it is, pages 67 and 68 of Exhibit 2, he mentions a person
10 named Roy Settle, S-e-t-t-l-e. I was just trying to
11 double-check that list of people interviewed. Of course,
12 there are some who were anonymous, but I don't see Settle on
13 the list. And this is a person that he, Van Vo, alleges that
14 Willett told Settle concerning the pump problem, "I don't
15 want to hear that problem no more. If something happens, I
16 will get you first." That is Van Vo's statement of what
17 Willett said.

18 He mentions Thomas French as talking about CP&L
19 having a poor management and lacking expertise, pages 15 and
20 16, renumbered 16 and 17 on Exhibit 3. He also mentions
21 through this -- I don't have a page cite on that exactly -- Ed
22 McLaine as a person that he worked with, and he knew about
23 some of these problems and he was told about some of the
24 problems.

25 He also mentions on pages 103 and 104 of Exhibit 2

1 an inspector named Vincent, V-i-n-c-e-n-t, who he says was
2 fired. As I say, I don't know because the three or four of the
3 interviews, one was deleted in its entirety and a number of
4 the others have the names deleted. But I think there are more
5 of these people right here than there are deletions. So I
6 would be real surprised if they could have gotten all of them.

7 Also it appears that most of the interviews took
8 place on site, and anybody who had been fired, it would be
9 very unlikely that they would be interviewed on site.

10 JUDGE KELLEY: Okay, Mr. Guild. I think my pending
11 question to you, and I want to move ahead -- I think our time
12 has about run. I have interrupted a lot, but you have been on
13 20, 25 minutes. My question is this. I was asking you, what
14 would you point to in the OI investigative material as
15 supporting expansion, supporting the Van Vo allegations?

16 You made some comments about Mr. Fuller. Could you
17 give us specific -- I don't know what you are referring to.

18 MR. GUILD: I think there are inadequacies
19 otherwise. Mr. Eddlemen has pointed out witnesses who weren't
20 spoken to. There are several others, other inadequacies on
21 the face of the report, but in terms of what the report has to
22 say that we think supports the notion of asking the Board to
23 be motivated further on harassment, six of the 13 witnesses, I
24 understand from the account that was related in the cover
25 letter to you, speak critically of Mr. Alex Fuller, the man

1 who was in charge of the hanger program during material points
2 in time.

3 Three of the witnesses requested confidentiality,
4 and I submit that the OI only grants confidentiality when a
5 claim is made by a witness out of fear of retribution or
6 reprisal, and where the information will not be given to OI
7 other than with a grant of confidentiality. That grant of
8 confidentiality is not offered. It has to be made on request
9 of the witness. I submit that three witnesses requested
10 confidentiality, and the presumption had to be it is out of
11 fear of reprisal.

12 One witness, rather a stalwart character, Exhibit
13 20, a Mr. Jerry Lee, says he feels retribution from CP&L and
14 Mr. Fuller, by name if what he has told the NRC gets back to
15 CP&L or Fuller, and he mentions specifically in passing that
16 experienced nuclear workers that he is aware of had to handle
17 safety matters in spite of -- and the language is his -- in
18 spite of Mr. Fuller.

19 He relates in essence that Fuller -- he and others
20 relate in essence that Mr. Fuller was, as alleged by Mr. Van
21 Vo, inexperienced in nuclear safety matters, a hardliner and
22 one who was not receptive to contributions or suggestions from
23 his subordinates.

24 We submit that that evidence corroborates in
25 significant detail the evidence that so far has come solely

1 from Chan Van Vo since he is our only source of information
2 with respect to how the hanger program worked and what
3 Mr. Fuller's performance was like.

4 Now, the fact that QI concludes that there was no
5 knowledge of harassment and intimidation among the folks who
6 were interviewed is not troubling except that it suggests a
7 lack of investigative effectiveness, in my view, since the
8 claim of harassment and intimidation is founded on what
9 Mr. Fuller did by way of putting Chan Van Vo on probation and
10 then terminating him, and that action certainly must have been
11 common knowledge to those who worked with Chan Van Vo. But
12 the retaliatory character of that action is based on
13 Mr. Fuller's motive, and that is not a question that is
14 subject to corroboration by an individual.

15 So the fact that these people say I have no
16 knowledge of any facts of harassment and intimidation of Chan
17 Van Vo lends little to reaching the conclusion of whether or
18 not the retaliatory motive existed.

19 Let me conclude by saying that, most significantly,
20 there is no treatment whatsoever in the QI investigation that
21 we can tell of Chan Van Vo presenting concerns and proposals
22 for restructuring the organization of the hanger program to
23 the senior officials of the company, to Mr. Utley and
24 Mr. McDuffy. His contacts with Utley and McDuffy loom very
25 large, in our view, in motivating the retaliatory action by

1 Fuller and Willett towards Chan Van Vo.

2 It should be apparent on the face of it and is borne
3 out by witness' responses to deposition questions that we
4 posed that no line worker had ever come to visit these
5 individuals. They were taken aback by it. They communicated
6 the fact that he wanted to speak to them directly back to the
7 site. That communication got to Fuller and Willet. They well
8 knew that Chan Van Vo was meeting --

9 JUDGE KELLEY: I understand your point, Mr. Guild.
10 Let me just ask you this question. I think you said it
11 before, but so we are clear, you are not arguing at this point
12 in light of this report that the Contention 416 be expanded;
13 correct?

14 MR. GUILD: Yes, sir, I am. I am arguing that the
15 basis of what it discloses from the investigatory interviews
16 of persons regarding Alex Fuller and regarding the
17 responsiveness of Fuller to suggestions and concerns by people
18 who worked under him, that corroborates in substantial part
19 Chan Van Vo's claims; that this should certainly be the basis
20 for expansion of the harassment and intimidation contention to
21 look at least at the existence of harassment and intimidation
22 within the area of work supervised by Alex Fuller.

23 JUDGE KELLEY: Well, if you are urging, then, as I
24 take it you are, an expansion of the contention, what would
25 you have it say exactly? Do you have any language ready to

1 offer?

2 MR. GUILD: I don't, except I can paraphrase. The
3 scope is certainly supported in the face of the OI
4 investigative results, that is, to review harassment and
5 intimidation against workers who raise safety or quality
6 concerns in the hanger department. That appears to be the
7 scope of the investigative interviews that OI conducted.

8 They characterize these people as 13 co-workers.
9 They all appear to be hanger engineers. We don't know what
10 exists outside of hanger engineers, but that is who he has
11 talked to, and we think the results of those interviews, six
12 of the 13 are significantly critical testimony or statements
13 against supervision in the hanger department. It bears on
14 harassment and intimidation.

15 MR. EDDLEMAN: Judge?

16 JUDGE KELLEY: Mr. Eddleman, you want a few minutes?

17 MR. EDDLEMAN: I will be as brief as I can. I just
18 wanted to add to that, if you want language for expanding the
19 contention, I would think that the possible harassment and
20 firing of this person, Pete Ward, and Vincent, and also the
21 possible intimidation of Roy Settle over the pump issue are
22 things that should be looked into.

23 I frankly was surprised after reading through, at
24 first when you have the interview with Van Vo, where he lays
25 all that stuff out and there is follow-up, when I got all the

1 way through to the end, I said: wait a second, where is the
2 follow-up on these issues?

3 So I think it provides a basis for raising these
4 issues. They come from Van Vo's recollection, and OI
5 apparently didn't follow through on that, one way or another,
6 and there are certainly issues of harassment and --

7 JUDGE KELLEY: It is my understanding -- by the way,
8 Mr. Eddleman, this issue has cropped up repeatedly. I thought
9 this was an issue that has come up at various points. My
10 understanding was the OI guy was going to go out and determine
11 whether Van Vo had been retaliated against for raising safety
12 concerns, and that that was really what he was looking for.
13 Why do you profess surprise that he didn't follow up on
14 something else?

15 MR. EDDLEMAN: Maybe that is what he was looking
16 for, but I thought the NRC was supposed to, if a claim that
17 someone had been harassed or fired for raising safety-related
18 concerns was made, that somebody in NRC was supposed to follow
19 up on it. Maybe it's not OI. What I'm saying is they seem to
20 have uncovered this information.

21 MR. GUILD: Two points, Judge. It is evidence that
22 corroborates Van Vo's view that harassment was a motivating
23 force behind his dismissal, and second, as I think the
24 Chairman observed, in the course of their investigation if
25 they uncover other evidence of harassment, that itself will be

1 the basis for considering expanding the contention. If others
2 say, I was harassed, too. And here is evidence discovered in
3 the course of this investigation that leads logically to
4 inquiring into harassment of other individuals for both these
5 purposes.

6 JUDGE KELLEY: All right.

7 MR. GUILD: Judge --

8 JUDGE KELLEY: Make it short, Mr. Guild. Your time
9 is long since up.

10 MR. GUILD: If I can, let me just put the subject on
11 the table, and that is a response to Mr. O'Neill's
12 characterization of Chan Van Vo as having recanted his
13 concerns. If I can just speak to that one point.

14 JUDGE KELLEY: Go ahead.

15 MR. GUILD: I would like the record to be clear on
16 that. First, in the course of the Company's deposition, one
17 should understand the context. Reading the context, reading
18 the deposition should make clear that there was a very
19 significant language problem during the entire course of the
20 questioning. Oftentimes, it is apparent that the witness
21 simply doesn't understand the question. Sometimes he says so,
22 and sometimes his answer makes clear that he doesn't
23 understand. So one should not read an isolated answer out of
24 context.

25 Second, at the end of an incredibly long, difficult

1 day, late in the evening, Chan Van Vo simply wanted to go
2 home, and I submit to you that at the end of the deposition,
3 under Mr. O'Neill's zealous and effective examination, Chan
4 said, well, I will leave it to you. If you have resolved
5 these technical questions to your satisfaction, fine; I simply
6 raise them as concerns -- and words to that effect.

7 That really is the point here, Judge. DI said he
8 had no bona fide safety concerns. He had what were to him
9 good faith, sincere concerns about the quality and safety of
10 the Shearon Harris nuclear power plant. He did what he
11 thought he should do to voice those concerns, and in his
12 judgment, he was retaliated against, mistreated, and
13 ultimately fired for having pressed those matters.

14 We think the DI investigation does nothing to
15 dispose of that question and corroborates in substantial part
16 concerns by his co-workers that Mr. Fuller, among others,
17 managed his people in just such a way as to cause one to have
18 a fear of reprisal for having voiced those kinds of questions.

19 JUDGE KELLEY: All right.

20 Mr. O'Neill, any response?

21 MR. O'NEILL: Just briefly.

22 Judge Kelley, I think the majority of what Mr. Guild
23 said really doesn't go to the issue I understand is before us,
24 and I don't feel compelled to respond to what is outside of
25 the scope of this argument, that is, whether or not there is

1 anything in the OI report that argues for expansion of the
2 41G.

3 I think that Mr. Eddleman and Mr. Guild have
4 searched hard through two volumes to try to find something
5 that might support the allegation. While a number of the
6 interviewees may have said something critical about their
7 supervisor as to his management style or whatever, none of
8 them said that he had ever harassed anyone, and indeed, they
9 made on the whole rather positive statements about his
10 management style and his fairness and the way he treated
11 people. He was described generally, according to OI on page
12 8, as professional, unemotional, unbiased and hardworking.

13 It was rather clear from all of these interviews
14 with the co-workers of Mr. Van Vo that there was no
15 substantiation that there was any harassment, and indeed,
16 Mr. Guild has really admitted there was no safety concerns
17 that Mr. Van Vo really had. Those were ones that he may have
18 perceived were safety concerns. And that really goes to one
19 of the reasons he was eventually terminated, that he did have
20 some problems with putting things in perspective and
21 identifying what were real concerns.

22 Therefore, I think if you look at the information
23 OI put together, that there was no basis for any further
24 indictment of Mr. Fuller individually.

25 With respect to other names that Mr. Van Vo may have

1 mentioned in his interview, Mr. Ward or Mr. Settle or
2 Mr. French or Mr. Vincent, again there is no evidence here
3 that there was any harassment or intimidation of any of these
4 individuals because they raised safety concerns.

5 It isn't really very clear. As Mr. Guild mentions,
6 Mr. Van Vo does have a language problem, and the question has
7 to be extremely clear in order to be sure that you are getting
8 a responsive answer. Some of the investigator's questions, I
9 think he got a lot of non-responsive answers, and some of the
10 discussion about Mr. Ward or Mr. Vincent went off on
11 tangents. It isn't clear what point he was making. And the
12 corrections he made to his transcript, 19 pages, don't have
13 very much, quite frankly.

14 I do point out the one that seems to make it clear
15 -- and again, I think it is perhaps the most significant set
16 of evidence in this whole document with respect to harassment,
17 that if you look at his own typewritten, carefully thought-out
18 version of why he was being harassed, he raised things about
19 that he thought Mr. Willett had told him he had been a captain
20 in the Navy, and then he found out he wasn't a captain in the
21 Navy and therefore since he knew that, and perhaps Mr. Willett
22 had lost face, that's why he was being harassed.

23 That does not go to harassment for raising safety
24 concerns; it goes to this particular individual who
25 intervenors are touting as their witness here, and I think it

1 makes a very clear case which we can decide here that there
2 was no harassment. Certainly there is nothing here that would
3 go to the expansion of this case.

4 Just briefly, the two other issues OI is
5 investigating, one, Judge Kelley has stated on the record he
6 didn't see anything in the Pegeuse letter that went to
7 harassment.

8 The other one, we don't know anything about, but
9 Mr. Guild sure does, since that is his client. And if he had
10 another contention that he wanted to put forward based on
11 some other individual's claims, he could have done that months
12 ago, and he didn't.

13 If OI comes back from an investigation of an
14 anonymous letter and finds harassment, that that might serve
15 as the basis of some contention. But certainly it doesn't say
16 anything about an expansion of 41G.

17 The only evidence that the Intervenors have managed
18 to put forth are Mr. Van Vo's claims. A thorough
19 investigation by the Applicant and by the Staff on a number of
20 different aspects of that claim show them to be without any
21 foundation.

22 We should go forward with a hearing on this issue as
23 soon as possible. Because, to let it linger like this is
24 simply the tactics of Mr. Guild to try to find someone else
25 and to expand this issue, and as the Board suggested, try to

1 get discovery, further discovery of the Harris plant to seek
2 out something else where there is nothing.

3 JUDGE KELLEY: Anything else from the Staff?
4 Mrs. Moore?

5 MS. MOORE: Staff has nothing to add to its prior
6 statements. We stand by those.

7 JUDGE KELLEY: The Board is going to mute out our
8 end for a few minutes. Please don't go away.

9 Well, you can take five minutes, if you wish. It is
10 11 o'clock just about sharp right now, according to my clock.
11 Could you pick your phone up again at 11:05.

12 Thank you.

13 (Recess.)

14 JUDGE KELLEY: Hello, this is Judge Kelley back on.
15 Can you hear me okay?

16 (Chorus of affirmatives)

17 JUDGE KELLEY: Okay, thank you.

18 We have considered the comments of all parties on
19 the question of whether the DI report on the Van Vo
20 allegations now that is in hand, warrants our expanding the
21 present Contention 410. And we conclude that it does not
22 justify any such expansion.

23 It seems to us that while you can go through the
24 report and find some statements perhaps out of context that
25 may look the other way or indicate a look in the other

1 direction, under any balanced reading of this report it
2 exonerates the company and does not support Mr. Van Vo's
3 allegations in any material way.

4 And that is really what we had in mind. Overall,
5 what is the message from OI? And the message is, there is
6 nothing to these allegations. Therefore, that report doesn't
7 indicate a broader look.

8 Now the report itself, of course, as we have said
9 before, isn't dispositive of the contention. It isn't even
10 evidence in the case. We haven't had a hearing. It simply
11 represented a way in which we might have expanded it had the
12 report come to a very different conclusion, one incriminating
13 the company and supporting Mr. Van Vo.

14 Now, in due course we will be getting reports from
15 OI on those other two letters we have referred to, but it
16 seems to us that under the circumstances, as we said before we
17 would try the Van Vo allegations if it came to that stage in
18 the process. And the idea that we should sit back now and
19 wait for OI to come in with the other two reports while other
20 reports possibly are generating somewhere, doesn't seem to us
21 to be an efficient approach. After all, the Van Vo
22 allegations have started this whole area of inquiry, and we
23 have been saying for months we will find out whether the Van
24 Vo contentions, whether the Van Vo allegations are well
25 founded, or whether they are not well founded.

1 So, we see it as the Board now being in a position
2 to go to hearing on the Van Vo contention as presently
3 drafted. And we understood the Applicants before to say that
4 they would prefer going straight to hearing rather than the
5 summary disposition approach.

6 Is that still the case Mr. O'Neill?

7 MR. O'NEILL: We think that is the most efficient
8 way to dispose of it in the quickest possible manner. I think
9 the contention lends itself to summary disposition, quite
10 frankly, but we do have a hearing scheduled for June and it is
11 really not much different as far as putting on the case by
12 affidavits and testimony, and we think that we would prefer
13 doing that.

14 JUDGE KELLEY: Your proposition, as I recall it, was
15 to go to hearing on this contention the week of the 24th,
16 possibly first, rather than second. That is, starting on
17 Monday and getting that heard before the emergency planning,
18 if that was a convenience to the intervenors or others.

19 I think you indicated some flexibility in that
20 regard?

21 MR. O'NEILL: We certainly are willing to go any
22 time during that period that you have reserved for hearing.

23 My suggestion to go first only was in deference to
24 Mr. Eddleman's concern that he have Mr. Guild available to
25 assist him if that becomes important to him. And Mr. Guild

1 suggested that he had a vacation the first part of July that
2 he didn't want to miss.

3 So we said under those circumstances we would be
4 willing to go first with the Van Vo contention, so that
5 Mr. Guild can go on his vacation if Mr. Eddleman desires to
6 use him.

7 But, if that is not a consideration, then we have no
8 real preference for the order. Maybe Mr. Baxter would like to
9 put on Emergency Planning first. But I am not sure.

10 MR. BAXTER: This is Tom Baxter. I mentioned during
11 the last conference that I understand some witnesses will not
12 be available after the 4th of July. So, we were contemplating
13 that if the Van Vo contention were heard first, that we would
14 still be able to finish that contention and the two Emergency
15 Planning issues before the 4th.

16 JUDGE KELLEY: I think the Board would share that
17 expectation.

18 Staff, do you agree we are in a posture to go ahead
19 on hearing the Van Vo contention? And, do you agree with the
20 time suggested, or do you have a different one?

21 MS. MOORE: Your Honor, we agree that we could go to
22 hearing on the Van Vo contention and that we could go on the
23 24th. Because as the Staff reads the contention, it is
24 related to the harassment of Mr. Van Vo and the sole evidence
25 that the Staff intends to present in the OI report. There

1 will not be an OI witness present.

2 JUDGE KELLEY: You are assuming that the OI report
3 would not be objected to, and if objected to, would get in
4 anyway?

5 MS. MOORE: Yes, sir, that is what we are assuming.

6 JUDGE KELLEY: I am not tipping a Board ruling. It
7 just seems to me that that is a question any lawyer would ask.

8 MS. MOORE: I understand that, your Honor, and we
9 are prepared to argue when we offer the report that it should
10 be admitted as evidence.

11 JUDGE KELLEY: Okay.

12 Mr. Eddleman?

13 MR. GUILD: This is Bob Guild, Judge.

14 The last point first. I think it is fair to say
15 that a hearsay objection would be lodged against the
16 admissibility of the OI report without a sponsoring witness.
17 Even with a sponsoring witness, you are talking about somebody
18 relating what someone else told them.

19 And I think it really defies belief that the NRC
20 would suggest that they could put in an OI report without even
21 having a sponsoring witness. It is certainly inconsistent
22 with all of the rulings I have seen in terms of the need to
23 sponsor the NRC's investigative or inspection products.

24 So, we would oppose that and just put them on notice
25 that we would expect them to have a witness to sponsor --

1 JUDGE KELLEY: It might be -- we haven't even
2 thought about this -- it might be wise to brief that legal
3 question at least briefly before we even go down there. We
4 can think about that a little more.

5 Okay.

6 MS. MOORE: Judge Kelley, may I interrupt for a
7 moment? What I understand Mr. Guild saying is that his
8 objection to this evidence is that it is hearsay?

9 JUDGE KELLEY: Yes.

10 MS. MOORE: Thank you.

11 JUDGE KELLEY: I guess. That is what I think the
12 objection would be.

13 I think you will have a tough time getting that
14 report in, frankly, Ms. Moore. That is one personal
15 unresearched inclination.

16 What about the timing, Mr. Eddleman?

17 MR. GUILD: Judge, this is Mr. Guild.

18 I appreciate Mr. O'Neill's efforts to accommodate.
19 I hope he appreciates my efforts in the past to have
20 accommodated his family schedule and that sort of thing. I
21 really don't think it is necessary for him to lard the record
22 with personal considerations that bear on scheduling. And I
23 will not do that as it bears on my accommodations of him in
24 the past.

25 But the 24th in the abstract is fine. The problem

1 we have Judge, is that the evidence we would have in support
2 of even trying the contention as it now stands won't be
3 available to us by the 24th; namely there is significant
4 corroborating evidence that we believe will be the product of
5 the NRC OI's ongoing investigation of at least one of the two
6 harassment complaints that the Board has received.

7 JUDGE KELLEY: I'm aware of that one, Mr. Guild, and
8 I don't think it has anything to do with 41G.

9 MR. GUILD: Well, Judge --

10 JUDGE KELLEY: The objection will be sustained --

11 MR. GUILD: I was on the telephone talking with the
12 OI investigator as late as last -- as recently as last night.
13 And I can only tell you sir, without divulging confidences of
14 my client, that I believe it does, and submit to you that to
15 try the Van Vo issue without that evidence which we believe is
16 corroborating in character, will simply be one additional
17 aspect of depriving us of a fair opportunity to prove even the
18 narrow contention as it now exists.

19 I just simply for the record would state to you
20 that we believe that the subject matter of the pending OI
21 investigation of the confidential witness is linked to the Van
22 Vo concerns, contention, and would likely lead to the
23 identification of corroborating evidence.

24 JUDGE KELLEY: I am just flagging it. You don't
25 want to try lawsuits in advance, Mr. Guild, until you see

1 things. But my reaction, having read the letter from the
2 person in question, let me ask you this: I am not aware, for
3 example -- maybe I'm wrong -- did that person worked for Alex
4 Fuller?

5 MR. GUILD: Without divulging identifying
6 information, and I think answering that question would, I can
7 only state that a number of people that Chan Van Vo identifies
8 as involved in acts of harassment, are similarly identified by
9 the confidential witness. And that information is not
10 apparent on the face of the letter to the Board.

11 But, as an officer of the Court, I can tell you that
12 there are common witnesses and there are common concerns that
13 are the subject of the pending OI investigation of harassment
14 claim number 2.

15 JUDGE KELLEY: Of course we had that problem in the
16 Catawba case, where you on behalf of Palmetto Alliance wanted
17 to stop the hearings until OI finished all their
18 investigations. And we rejected that motion. I think we
19 would do the same in this case.

20 MR. GUILD: Yes, sir.

21 I guess I would submit that if OI's investigative
22 work is to have significance on the down side for intervenors,
23 it ought to have significance on the up side, too. And the
24 evidence that they adduce on the harassment issue as it bears
25 on 419 ought to be available when it helps us as well as when

1 it hurts us. And my information is that that evidence is
2 going to be available the 30th of June.

3 JUDGE KELLEY: Let me add one point, Mr. Guild.

4 Now you know we can present the Van Vo case
5 essentially, and it may be that in the context that is there
6 developed you will have something you want to bring in that
7 isn't ready for the reasons you suggest. And we really can't
8 argue that now.

9 But one approach is to just not finish, but go ahead
10 and hear as much as we can and get through as much of 41G as
11 we can. And it is the Board's disposition to do that.

12 MR. GUILD: We would oppose that, Judge. But if the
13 Board's view is to go and approach it in a way that we think
14 is piecemeal and deficient for that reason, we are at your
15 pleasure and would be prepared to do the best we can with that
16 scheduling approach.

17 JUDGE KELLEY: Let me ask you, what about the
18 witness of principal interest to the Board? What about
19 Mr. Van Vo? Is he available then?

20 MR. GUILD: I'm not certain, Judge. I haven't got a
21 commitment from him for that particular time. He is, to the
22 best of my knowledge, willing to assist and testify given the
23 general contingency of his work obligations as he related in
24 his deposition to Mr. O'Neill.

25 I, frankly, have been hopeful that the Board would

1 not commit to trying the Van Vo issue during that week in
2 June, given the pending OI investigation of the other two
3 matters. But now that I know otherwise, I will find out.

4 MR. O'NEILL: Judge Kelley, I think I deliberately,
5 during the last two conference calls, alerted the Parties and
6 the Board to what Applicant's preference would be and what we
7 would argue. And I suggest that Mr. Guild's failure to check
8 with his only witness or start witness as to his availability,
9 is somewhat irresponsible under the circumstances.

10 And clearly he --

11 MR. GUILD: That's not the case, Judge.

12 MR. O'NEILL: -- would try to delay this whole
13 thing. But, I think he does have an obligation to be prepared
14 to respond to what the obvious question was, whether his
15 witness is going to be there.

16 I, quite frankly, would be surprised if Mr. Van Vo
17 comes back, and he made that clear during the deposition.

18 JUDGE KELLEY: Gentlemen, let me interrupt.

19 My recollection is that this very question of
20 Mr. Van Vo's availability came up last week and we asked
21 Mr. Eddleman to check with Mr. Van Vo to see if he could come
22 on the 24th.

23 Did you do that, Mr. Eddleman?

24 MR. EDDLEMAN: No, sir. I don't know how to get in
25 touch with Mr. Van Vo, so I asked Mr. Guild to get in touch

1 with him.

2 MR. GUILD: Judge, I don't recall any such request
3 from Mr. Eddleman, with all respect, Wells.

4 The point is, I have informed him of the general
5 progress of scheduling this contention for trial. I have also
6 informed him of my position, that the Board, I understood, had
7 committed to await the results of the OI investigations on not
8 only his concerns, but on the two other concerns that it
9 received.

10 JUDGE KELLEY: That, Mr. Guild, we never said.

11 MR. GUILD: Sir, I recall you denying a motion by
12 CP&L that explicitly sought to separate out the Chan Van Vo OI
13 work from the other two and said they should be considered
14 together because the question of a pattern of harassment was
15 what was significant.

16 And that is what I recall, to paraphrase the
17 Chairman's response to denying a motion by CP&L, in the last
18 conference call that I was a part of. And I communicated that
19 result to Mr. Van Vo.

20 What I also tried to communicate a moment ago was
21 that he is a volunteer, he has had a hard time getting work
22 because of CP&L's harassment, and the fact that they fired him
23 and he was unemployed for a long period of time. He is in
24 Texas. And he has said consistently to me, and he said to
25 Applicant's counsel after a day of very hard questioning, that

1 he would be available to the extent that he could do so
2 without losing his job.

3 Now I have told him what the scheduling decisions
4 have been so far. I do not have an iron-clad commitment for
5 him to be available on a date certain, and I don't think that
6 it is at all irresponsible not to have extracted such a
7 commitment from him, given the prior rulings of this Board
8 that they were going to await the other OI investigations
9 before they --

10 JUDGE KELLEY: Mr. Guild, you and I just disagree on
11 that. But, let's just march on.

12 What is in my mind not responsible, is that
13 Mr. Eddleman was explicitly charged with determining Mr. Van
14 Vo's availability on the 24th of June. Now it is you and he,
15 and something slipped between the two of you. But the fact
16 remains that I am being told today that no, that hasn't even
17 been done.

18 We are going to leave this discussion, I can assure
19 you, with a short turnaround very definite response to that
20 question. And without Mr. Van Vo -- the Board's attitude is
21 this issue goes to trial with Mr. Van Vo, but not without him,
22 and fairly soon.

23 MR. GUILD: Judge, I hope that you haven't made a
24 decision on that point. Although I am not expressing any
25 question about his availability, it seems to me that it would

1 be premature to make any decision about what evidence is
2 necessary as a threshold matter to go forward on this
3 contention.

4 There is thousands of pages of documents, and
5 there are any number of witnesses who have established -- who
6 can establish the elements of this claim, or establish
7 important elements of this claim regardless of Chan Van Vo's
8 testimony. And I would hope that we would have the
9 opportunity to address that legal question of whether or not
10 -- what significance his testimony has or doesn't have, apart
11 from that other evidence, without simply a ruling, in effect,
12 from the bench on that point in this conference call.

13 JUDGE KELLEY: Well, we are going to establish this
14 now, and we will hear from the other parties briefly. It is
15 not a real big issue, it is a fairly simple issue.

16 We had Mr. Van Vo come forward with a lot of serious
17 charges, they have been investigated to some extent, not to
18 everybody's satisfaction, but a lot of work has been done on
19 this. We have an awful lot of people on this phone this
20 morning trying to resolve this matter.

21 I appreciate Mr. Van Vo lives in Texas, but part of
22 getting involved in this process is that it takes a fair
23 amount of time, and it is inconvenient, and that is just the
24 way things are.

25 This Board has very little disposition to hear this

1 contention at all without Mr. Van Vo live on the stand.

2 Any comment from the Applicants?

3 MR. O'NEILL: Yes, sir, Judge Kelley. We, I guess,
4 are prepared to go forward without Mr. Van Vo, because we
5 have a lengthy deposition transcript where we had the
6 opportunity to cross-examine him in some detail. A
7 deposition, of course, can be evidence, if the witness is not
8 available, and we certainly are prepared to go forward with
9 our case and to refer to Mr. Van Vo's statements on the record
10 under oath if he is unavailable.

11 And we believe, quite frankly, in light of the
12 Staff's problems in obtaining a witness, we think that it
13 probably would be preferable to have upon the record for any
14 appellate review, Mr. Van Vo's case, and we think we have that
15 in the form of his deposition.

16 JUDGE KELLEY: Then why don't we just do the whole
17 thing on paper? You ship in the deposition. The Staff will
18 file its report, and the intervenors can write up some
19 affidavits or something, and we will do it that way.

20 Why should we go down there to Raleigh to listen to
21 somebody read a transcript? What's the point of that?

22 MR. O'NEILL: I'm not saying we have to listen to
23 anyone read a transcript. We can have it accepted into the
24 record as if read.

25 JUDGE KELLEY: Okay.

1 MR. O'NEILL: Then we can have our witnesses put on
2 their case, and they can be cross-examined, because the
3 intervenors have an opportunity to make their case by
4 cross-examination.

5 I think the evidence is overwhelming on how it's
6 going to come out, and we will have a record that will be not
7 subject to any argument on appeal as to whether or not we
8 should have gone forward without Mr. Van Vo.

9 I think that would be a safer position to take for
10 appellate review.

11 JUDGE KELLEY: Staff, do you have any view on the
12 necessity or not of Mr. Van Vo as a witness?

13 MS. MOORE: The question would be, if Mr. Van Vo, as
14 I understand it, is their only evidence, and it seems to me
15 important that he be there. Whether he is necessary or
16 whether the contention would have to be dismissed without him,
17 it would depend upon that other evidence which he alleged, and
18 it's unclear to the Staff at this point whether intervenors
19 have other evidence, or they are attempting to make their case
20 on cross-examination at this point.

21 JUDGE KELLEY: So what's your response? Should we
22 regard Mr. Van Vo as a necessary witness or not?

23 MR. GUILD: Are you asking me, Judge.

24 JUDGE KELLEY: I'm with the Staff at the moment.

25 MS. MOORE: Without any further clarification from

1 Intervenors, I think he is a necessary witness, Your Honor.

2 JUDGE KELLEY: Okay.

3 Mr. Guild, you raised this, and then I got in on
4 it. Any further comment you want to make?

5 MR. GUILD: I would only say that as an abstract
6 point at this point in time, we desire to offer Mr. Van Vo and
7 will make every effort to make him available. We don't think
8 that our case on it is dependent on his testimony as an
9 abstract proposition, because you compelled us to address the
10 point. We think it should be -- if it's reached at all in
11 this case, it should be on the basis of a much more thorough
12 analysis than I am capable of presenting on the spur of the
13 moment in a telephone conference call.

14 But suffice it to say that fundamentally we are
15 entitled to make our claims through cross-examination. There
16 is abundant documentary evidence in this case that we think
17 supports our view that Chan Van Vo was a victim of improper
18 harassment and intimidation, and counsel for all parties have
19 spent a lot of time going through that documentary evidence.

20 In addition, there are any number of witnesses who
21 presently work for the company or who are available in the
22 locale who have personal knowledge of his concerns under the
23 circumstances of his termination, who, we believe, can offer
24 evidence in support of our claims.

25 Some of them are likely to be hostile witnesses in

1 the sense that the testimony would have to be compelled, but
2 we think there is significant additional evidence beyond his
3 testimony.

4 We know we would oppose any preliminary ruling by
5 the Board that views his attendance and testimony as a
6 precondition to being able to go forward in trial of this
7 contention.

8 JUDGE KELLEY: I guess what troubles me is, you are
9 talking about allegations in the harassment and retaliation
10 area. These things are very subjective. Sure, we've got a
11 transcript of the deposition. We've got an affidavit. But it
12 is going to be, one would expect, at least, some just
13 conflicts in testimony, credibility problems. We have a
14 witness in Mr. Van Vo who does have some communications or
15 language difficulties. It's not always clear from a cold
16 piece of paper just exactly what he means. And if he is on
17 the stand and you can clarify these things and get it
18 straight, having to go with a cold record is, to me anyway,
19 rather unattractive.

20 There is an analogy, perhaps -- and I'm not saying
21 it's a precise analogy by any means -- but we do have a rule
22 on late contentions, which has to do with Factor 3, but in any
23 case, I think we all know that the case law says that you may
24 have to have an expert for certain kinds of factors and be
25 able to produce somebody who can really add to the record.

1 The idea of trying Mr. Van Vo's allegations without
2 Mr. Van Vo strikes me as, at best, unrewarding, quite possibly
3 a waste of time.

4 I can understand why the Applicants might want to
5 get all this on the record, but from the Board's standpoint, I
6 sort of wonder whether it's a useful expenditure of our time.

7 You are right, Mr. Guild. It may be moot, because
8 maybe Mr. Van Vo can come.

9 Now is there any reason why you can't -- I know it
10 has to be best efforts, but you can track him down in the next
11 couple of days and advise us by next Monday whether he can
12 come?

13 MR. GUILD: Judge, now that I know that the Board
14 intends to try this case during that week, I will contact him
15 again, and I will put that to him.

16 JUDGE KELLEY: Why don't we do that as the next
17 step? We have heard the 24th week put forward. We have all
18 been on notice about that week for some time, and it is our
19 disposition to go ahead and try it then.

20 Now whether it should be first or second in order
21 between that and emergency planning, I suppose we can work
22 that out finally a little bit later.

23 So we would ask you, Mr. Guild, to contact Mr. Van
24 Vo as soon as possible and certainly no later than next
25 Monday.

1 MR. GUILD: Judge, a date certain would be
2 preferable.

3 JUDGE KELLEY: What do you prefer? The 24th,
4 Monday, or later in the week?

5 MR. GUILD: The 24th, Monday.

6 JUDGE KELLEY: The 24th, Monday. Does everybody
7 agree to that?

8 Apparently so. Okay. Would the Staff?

9 MS. MOORE: Yes, Your Honor.

10 JUDGE KELLEY: All right, 24th, Monday, for 41G.

11 And Mr. Guild will let us know -- just a phone call is all
12 right -- by Monday whether Mr. Van Vo can come.

13 Now we would need some prefiling of testimony and
14 exhibit dates. Do you have a proposal -- perhaps other dates
15 -- Mr. O'Neill? Do you have dates to propose?

16 MR. O'NEILL: I would suggest June 14th.

17 JUDGE KELLEY: Just a minute.

18 MR. O'NEILL: If all parties would agree to that.

19 JUDGE KELLEY: Now you are saying the 14th for
20 testimony. Exhibits also?

21 MR. O'NEILL: Yes, sir.

22 JUDGE KELLEY: What about designation of witnesses
23 beyond -- if you've got people who don't have prefiled?

24 MR. O'NEILL: Certainly.

25 JUDGE KELLEY: When?

1 MR. O'NEILL: I think the same day. I don't really
2 understand the question. Any witnesses we will put on
3 obviously will have prefiled testimony, and I would assume, if
4 Mr. Van Vo were to appear, he would have prefiled testimony,
5 and the Staff, if they have a witness, will have at least some
6 brief testimony along with their professional qualifications.
7 I'm not sure who those witnesses who don't have testimony
8 might be.

9 JUDGE KELLEY: Okay. That's Mr. O'Neill's
10 proposition.

11 Staff, do you have a reaction to that date?

12 MS. MOORE: The Staff has no objection to that
13 date. I would note, however, that if someone is going to
14 request subpoenas of witnesses, it ought to be by that date as
15 well, with a proffer of what they are going to testify to.

16 JUDGE KELLEY: Subpoena requests, as well as a list
17 of witnesses.

18 MS. MOORE: Yes.

19 JUDGE KELLEY: All right.

20 Mr. Guild, what do you think of that date?

21 MR. GUILD: That's fine, Judge, given our objection
22 to going forward during this period, that prefiling date is
23 fine.

24 JUDGE KELLEY: All right.

25 MR. O'NEILL: The subpoena requests, the Staff

1 suggested not being until the 14th, that doesn't seem to leave
2 very much time, particularly with two weekends in between
3 there, for the Board to resolve any arguments with respect to
4 subpoena requests.

5 It would seem to me, if a party plans to subpoena a
6 witness, we ought to know about that pretty quickly, so that
7 we can resolve that on paper, so a conference call isn't
8 necessary after filing, rather than at the last minute before
9 hearing, so the parties won't know whether or not they are
10 going to have to prepare for cross-examination of a surprise
11 witness or not.

12 I think maybe we have plenty of time to do that
13 sooner rather than later.

14 JUDGE KELLEY: What date would you propose?

15 MR. O'NEILL: June 1st.

16 JUDGE KELLEY: Mr. Guild?

17 MR. O'NEILL: Maybe that Monday.

18 JUDGE KELLEY: June 3rd?

19 MR. GUILD: Judge, this is Guild. I held my tongue
20 as opposing the 14th as a prefiling date, although it's ten
21 days in advance of the hearing. That causes us some
22 hardship. We need as much time as we possibly can have.

23 But frankly the idea of Intervenor, who by
24 definition has to rely in part upon documents and testimony
25 from hostile witnesses who come from the company, that we have

1 to have our case prepared earlier than the company does, with
2 its greater resources.

3 I think it's highly unfair, and we submit that the
4 14th is amply in advance of hearing to provide all parties a
5 fair opportunity to get their case together and to review the
6 case prefiled by the other side.

7 We would submit that the 14th should be the date
8 when we not only submit prefiled testimony and exhibits, but
9 subpoena requests. We could quickly dispose of those issues,
10 it seems to me, in a conference call a day or so after the
11 documents are actually received, without any loss of time.

12 I submit the company, with all the people they have
13 working on this case, can easily review those proposed
14 witnesses, the subject of the testimony, and prepare if they
15 are going to be called, without any undue hardship. The
16 hardship would be on the Intervenor to have to file any
17 earlier, sir.

18 MR. O'NEILL: It seems to me the Intervenor can make
19 a decision within the next few days what witnesses they might
20 want to call, and that goes to the NRC Staff witnesses, too.
21 There may be some interesting legal questions if they were to
22 try that, sir.

23 I think we really need to have some advance notice
24 with respect to subpoena requests, so that we have adequate
25 time to brief the issues and argue them without endangering

1 the beginning of the hearing on the 24th.

2 JUDGE KELLEY: Well, the 14th is on a Friday.

3 MS. MOORE: Your Honor, may I interrupt for a
4 moment?

5 I would have to say, if anyone intends to subpoena
6 OI personnel, for example, that has to be done through OGC, as
7 opposed to the Staff attorneys. That might be a
8 consideration, if anyone intends to do that. I just point
9 that out. OGC would be dealing with those requests.

10 I can provide a name at OGC who has been
11 representing -- who represents OI, if anybody needs it.

12 JUDGE KELLEY: Okay. I want to get back in a
13 minute, Ms. Moore, to the question of the OI report.

14 Why don't we compromise. The 14th is a Friday.
15 That is the date for testimony and exhibits and the
16 designation of witnesses, along with some brief description of
17 their area of testimony.

18 Your argument is, we should move the subpoena date
19 back to the 1st, and there are good reasons on both sides.

20 MR. GUILD: Judge, excuse me. I'm sorry to
21 interrupt.

22 It just occurs to me that in addition, that gives
23 the Applicants the opportunity to review our direct case in
24 part before they have to commit to what their direct case is,
25 and that is an additional element of prejudice and unfairness,

1 that we don't have the benefit of knowing who they will
2 designate as their direct case before we select ours. They
3 will have, in part, the ability to do that with us, because we
4 have to rely upon the witnesses.

5 MR O'NEILL: I'll tell Mr. Guild right now who the
6 witnesses are, if that's a concern to him. He has taken quite
7 a few depositions. He's reviewed all the documents. He knows
8 our direct case.

9 JUDGE KELLEY: Gentlemen, we understand the
10 considerations here. We're going to say June 10th as the day
11 for subpoena requests. That's four days before -- well,
12 that's Monday, and the 14th is Friday.

13 Now when we say June 10th --

14 MR. GUILD: Can the company identify at least the
15 witnesses and their subject matter at that same time, so that
16 we'll have the benefit of knowing at least what they will have
17 the benefit of knowing from us?

18 JUDGE KELLEY: That seems reasonable. June 10th,
19 all parties are to identify the witnesses they expect to call
20 and request any subpoenas that they want to request. That's
21 not a mailing date. That's an in-hands date, in the hands of
22 the Board by the 10th, those names.

23 And then on the 14th will be testimony, exhibits.
24 We've already got the designation of witnesses moved back to
25 the 10th.

1 Is that clear to everybody?

2 MR. GUILD: Yes, sir.

3 MR. O'NEILL: And that will be the 14th as an
4 in-hand?

5 JUDGE KELLEY: Yes, make that "in hands" also.

6 MR. EDDLEMAN: Judge, I guess we can get it
7 Quik-Mailed or Federal Expressed or something to guarantee
8 delivery on Monday. That's going to be moving us back to
9 Friday, the 7th.

10 JUDGE KELLEY: Friday, the 7th?

11 MR. EDDLEMAN: In other words, if we send it Express
12 Mail as opposed to Federal Express or something like that,
13 which we might could do -- you normally can't get Express Mail
14 on a Saturday.

15 MR. GUILD: Judge, if we can get the 11th, that will
16 give us -- that will take advantage of overnight delivery on
17 Monday. As Mr. Eddleman points out, I'm not sure we can get
18 weekend pickup. Therefore, our effective deadline would be
19 Friday.

20 Could we have the 11th, and then we can get it in
21 hand that day?

22 JUDGE KELLEY: Yes. And for that matter, the
23 testimony, we said the 14th, that's a Friday. If you can get
24 it "in hands," you can do it on Monday, the 17th. That's
25 "in hands" the 11th for witnesses and subpoena requests and

1 "in hands" for testimony and exhibits the 17th.

2 Okay. Now are there any other dates or similar
3 procedural matters that we ought to settle at this point?

4 MR. BAXTER: Tom Baxter. I almost hesitate to go
5 back to it, but i'm trying to think of the practicality of the
6 emergency planning contentions.

7 We do have the witnesses all scheduled to be there
8 for that Monday and Tuesday, the 24th and 25th, and give
9 Mr. Guild's semi-hostile reaction to our courtesy about his
10 vacation, which he raised on the transcript of the conference
11 call, not us, I would certainly like to say that we would
12 prefer to have those two contentions firmly done on those two
13 days, because we know how long they're going to take.

14 We've got a lot of uncertainty here about how long
15 it's going to take to try this Van Vo contention, and it would
16 certainly be more inconvenient for FEMA, the Staff, and the
17 Applicants and the State witnesses involved to be on hold,
18 essentially, for whatever period of time it takes to try 410.

19 I would like to find out if it really makes a
20 difference to Mr. Guild or Mr. Eddleman whether we start on
21 the 26th or the 24th, because our preference would the 26th.

22 JUDGE KELLEY: Mr. Guild?

23 MR. GUILD: Yes, it does. The 24th would be
24 preferable to us. Just, for example, we know that Mr. Van Vo
25 is a volunteer. He's going to have to take time off work.

1 He's not paid to be there, as would be the case with a FEMA
2 witness or the NRC Staff and company witnesses. I want him
3 available to work with me over the weekend, if I can get him
4 up here earlier than Monday. I plan to spend that time
5 preparing, and that's the only way I know to save him from
6 losing additional days off work.

7 I am going to seek to get him up here on a date
8 certain, committed to be here Monday the 24th, but it will be
9 much more difficult for us to effectively utilize him if he
10 came up later in the week, and then I didn't have the advance
11 preparation time.

12 JUDGE KELLEY: How long do you think it would take
13 to try this contention, Mr. Guild?

14 MR. GUILD: I just can't give you an intelligent
15 answer right now, Judge.

16 MR. EDDLEMAN: Judge, Wells Eddleman. Just one
17 other matter concerning Mr. Van Vo that has come up in
18 conversations that Mr. Guild and I had about the possibility
19 of trying to get an interpreter.

20 Of course, the interpreter would have to be
21 technically knowledgeable, as well as know the two languages,
22 English and Vietnamese.

23 We're not sure how beneficial that might be. But in
24 view of the language difficulty, it is something I ought to
25 bring up now.

1 JUDGE KELLEY: What do the other parties think about
2 the suggestion to have an interpreter?

3 Never having heard Mr. Van Vo live, it's kind of
4 hard. I don't have much of a reaction. I thought, reading
5 the deposition, there is a problem, and it does come up from
6 time to time. I guess I didn't think again when I began
7 reading cold paper that it was that difficult a problem.

8 But I will defer to others' reactions. You have
9 dealt directly with Mr. Van Vo.

10 Mr. O'Neill, what do you think?

11 MR. O'NEILL: I guess my first reaction is somewhat
12 amusement. If he really needed an interpreter, then it
13 certainly would be clear reason for the company to have
14 terminated his position, other than the other allegations that
15 Mr. Van Vo may have raised.

16 But we see pieces of paper that he has attested to
17 and pieces of paper that he has written, and while the style
18 is certainly awkward and his use of the language is not always
19 clear, you can talk to him. You can ask him questions. You
20 can ask them clearly and slowly, and he can answer them. And
21 I think for a person who has been in this country as long as
22 he has, to get an interpreter certainly wouldn't be
23 justified. And quite frankly, his ability to communicate goes
24 to his ability to progress on his job over a period of years.

25 I think he should be able to respond in English.

1 And we had a full day's deposition where he did do
2 that, so I think it would not be necessary to provide.

3 JUDGE KELLEY: Any thought, Ms. Moore?

4 MS. MOORE: Mr. Barth will speak to this, since I
5 have not dealt with Mr. Van Vo directly.

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

7 I sat through the deposition of Mr. Van Vo, and also
8 asked some questions. He has various degrees from American
9 Schools. He has held a semi responsible job with Carolina
10 Power and Light, in which he had to interact with other
11 people, which is part of the issue.

12 And, it seems to me preposterous to suggest that he
13 is so bad in English that he can't talk to any Licensing Board
14 of the NRC without an interpreter. If that is the case, he
15 has pretty well made the case that he wasn't harassed. I can
16 see no reason for an interpreter.

17 I would agree with Mr. O'Neill that part of the
18 reason to have direct testimony and cross-examination is for
19 the Judge to observe the demeanor and responsibility of the
20 witness. I have great confidence that that would be helpful
21 in this case. I see no reason for an interpreter.

22 MR. GUILD: I think it is quite desirable that you
23 have a chance to see and evaluate Chan through live
24 testimony. Certainly I desire to present him as a witness.
25 We think Mr. O'Neill's observation about being amused at the

1 matter is somewhat disingenuous, given the fact that they
2 hired this man, they had him working designing hangars for
3 five years. It certainly cuts both ways. There is no
4 question there is some language difficulty, but he was
5 adjudged a competent and capable engineer over a long period
6 of time and promoted by CP&L.

7 This is simply a matter, I think, that we had best
8 deal with as a matter of trial strategy. I don't think there
9 is a clear answer to it, but I don't think it is something the
10 Board has to decide right now.

11 JUDGE KELLEY: Among the three of us, just briefly,
12 there doesn't seem to be any sentiment in favor of the
13 idea here, unless there is a real problem of understanding,
14 which we don't expect would take place, so that is our
15 reaction at the moment.

16 MR. EDDLEMAN: Judge, if I may just clarify, I was
17 not saying Mr. Van Vo couldn't make himself understood in
18 English, but I think being cross-examined by professional
19 attorneys is a very different thing from communicating with
20 your own force of words. What I was trying to do is to find
21 some way of to diffuse the confusion that might result in
22 questioning and answering in a language which is not his
23 original language.

24 I don't want to imply in any way that he is not able
25 to understand English. I think he clearly is. But that was

1 the reason for my bringing it up. I understand what the Board
2 is saying.

3 JUDGE KELLEY: Okay. Also, if you use an
4 interpreter throughout, it would take twice as long. You might
5 have somebody around there on a spot basis for some subtle
6 concept that was hard to convey. In any event, I appreciate
7 your raising it, and it doesn't strike the Board as something
8 we will likely have to have.

9 Well, is there anything else that we should
10 establish at this point? Well, we have a pending question on
11 whether to do emergency planning first or second.

12 MR. O'NEILL: On that question Mr. Baxter raised,
13 and then Mr. Guild's response, it appears to me that if
14 Mr. Guild's concern was really the time that Mr. Van Vo would
15 spend, that he would want emergency planning to go first and
16 have Mr. Van Vo's appearance set for July 1st because the
17 Applicants will have a number of witnesses that we are putting
18 on. Normally the applicants go first. Mr. Guild, we learned
19 through deposition, is capable of many, many hours of cross
20 examination, and we suspect that if we started out with
21 Mr. Van Vo on that contention on Monday, Mr. Van Vo might not
22 get on the stand for two or three days.

23 MR. GUILD: Judge, what I envisioned and what I
24 thought the Board was responding to was the request for a date
25 certain for Mr. Van Vo, and recognizing that applicants have

1 the burden of proof and generally go first, the contention was
2 evidently going to be prefiled. There are no surprises. We
3 understood and would hope that the Board would agree to taking
4 Mr. Van Vo on Monday, the 24th as the date certain, and
5 recognizing that would be out of order technically, it is
6 somewhat of an artificial concept of who physically goes
7 first given the prefiling.

8 MR. O'NEILL: I think if he wasn't available on the
9 24th, the 1st would be another option that would be consistent
10 with Mr. Guild's concerns about the amount of time. I don't
11 think we have an objection to having Mr. Eddleman put on his
12 case first. Really, it does go entirely to Mr. Van Vo's
13 allegations that we are simply responding to.

14 JUDGE KELLEY: In terms of the sequence, do you
15 envision, Mr. Guild, that after Mr. Van Vo has been on the
16 stand, he would likely be recalled?

17 MR. GUILD: No, sir, I don't. In part that is
18 because I believe that there is evidence extrinsic to his
19 testimony that supports large parts of our claim.

20 So in short, I think it's a matter of putting him up
21 first Monday the 24th as a date certain, excusing him subject
22 to recall for cause if need be, but then in essence going to
23 the applicant's case and completing it without Mr. Van Vo
24 waiting around.

25 JUDGE KELLEY: Okay. Hold on just a moment. We

1 will check off here and talk about this for a minute.

2 [Recess.]

3 JUDGE KELLEY: Hello. Kelley back on.

4 We would like to balance things this way. Let us
5 begin Monday morning at 10:00 with Mr. Van Vo as the first
6 witness. That would give him a time certain Monday
7 morning. We don't know how long he would be on, but we would
8 expect sometime that day he would be through on cross, and
9 then in the expectation he may not be called again, he could
10 leave if he wanted to. We are bearing in mind the fact that he
11 has got a job in Texas and it is a bit of a hardship, and
12 trying to set it up so as not to inconvenience him too much.

13 The thought would be to put him on the stand, let
14 him finish, and then we could do one of two things. We could
15 keep going on the Van Vo allegations and go right through it.
16 On the other hand, if the parties wanted to pick up the
17 emergency planning right there because of witness availability
18 considerations, we could do that. The Board is willing to do
19 it either way.

20 I think as to point one, though, we will just say we
21 will hear Van Vo first on Monday morning at 10:00, and then we
22 will go with the parties' pleasure when Van Vo is through.

23 Is that okay with you, Mr. Guild?

24 MR. GUILD: Yes, sir, and I think you know our view
25 as to which we would do, and that is to go forward on

1 completing the Van Vo contention.

2 JUDGE KELLEY: Okay. And the Applicants -- we were
3 just thinking if you got all these people notified, they are
4 all cranked up to come down there. If that is a problem, this
5 might be less of a problem. That is to say, going right into
6 emergency planning maybe late Monday may be less of a problem
7 than being less definite about it. But we looked at this now
8 as it is a party convenience, as you will do what you want to
9 do.

10 Mr. Baxter?

11 MR. BAXTER: I guess we would prefer to go back to
12 emergency planning Tuesday morning and finish those issues up.

13 MR. GUILD: I can't hear you, Tom.

14 MR. BAXTER: We would prefer to go back to emergency
15 planning Tuesday morning. I frankly would be surprised if we
16 would get started on Monday.

17 JUDGE KELLEY: It wouldn't do much. So Tuesday
18 morning -- wherever you get to on Monday, you just stop. And
19 by the way, we have an emergency planning limited appearance
20 session Monday night in Apex that was noted in that last order
21 we sent out, but then Tuesday morning we go into emergency
22 planning, do that on presumably Tuesday and Wednesday, and
23 then pick back up with the Van Vo contention on Thursday
24 morning.

25 Is that okay with the Applicants?

1 MR. BAXTER: Yes.

2 JUDGE KELLEY: Staff?

3 MS. MOORE: I have no strong feelings. I think it
4 would make an easier record to follow if we finished one of
5 the contentions, and that is Van Vo.

6 I have a question, and that is: We are talking about
7 putting Mr. Van Vo on. There is no indication -- we don't
8 know yet whether Intervenor is going to have other witnesses.
9 Are we saying that we would come back, then, on Thursday and
10 finish the Intervenor's case, then pick up with the
11 Applicants and Staff? It makes it a little confusing.

12 JUDGE KELLEY: It doesn't have to be. Your question
13 is legitimate. We don't know how long Mr. Van Vo will take.
14 We are guessing that he will take the better part of
15 Monday. You don't get him on the stand and get under way until
16 10:45, and so it seems to me it takes that day. We should be
17 able to finish with him, though. That again is a guess, and
18 you are going to know on the 11th of June what other witnesses
19 Mr. Guild is going to have under the deadlines we just set.

20 MR. BAXTER: Mr. Chairman, Tom Baxter.

21 I think I am going to change my mind. I think I
22 agree with Ms. Moore that it would make for a better record if
23 we just go ahead and finish, and we will hopefully, after the
24 subpoena requests come in and testimony is filed, be able to
25 maybe talk to Mr. Guild and Mr. Eddleman and get an estimate

1 of the length of time and be able to schedule our emergency
2 planning witnesses around it.

3 JUDGE KELLEY: You are saying go ahead and do 41G.

4 MR. BAXTER: Yes, assuming, as we said in the
5 beginning, all this can be done before July.

6 MR. GUILD: I didn't hear you.

7 MR. BAXTER: Assuming all this can be done before
8 the 4th of July.

9 JUDGE KELLEY: The Board assumes that can be done.
10 Okay. I guess that's unanimous. We will start first with
11 41G and Mr. Van Vo and go on through 41G, and then we will go
12 to emergency planning. Okay?

13 MR. GUILD: To be clear, what I envision is taking
14 only Chan Van Vo out of turn and then going to Applicant's
15 case, as would be customary, and to the rest of the parties in
16 turn.

17 JUDGE KELLEY: That's what I understood you to be
18 saying. Okay?

19 MR. GUILD: Yes.

20 JUDGE KELLEY: Anything else we should cover now?
21 Groundrules, procedural rules?

22 MR. EDDLEMAN: Judge, the same requirements for
23 bringing in cross exhibits that aren't pre-filed? Do they
24 apply to Van Vo as we said for emergency planning earlier?

25 JUDGE KELLEY: Good question. I think the answer

1 ought to be yes. Any party think otherwise?

2 MR. GUILD: Judge, I do, to the extent that I know
3 what Wells is speaking of. It seems to me, as I understand
4 the approach that was followed in the last trial we went
5 through in the Catawba proceeding, the obligation of a party
6 on cross is to have sufficient copies of proposed
7 cross-examination exhibits, or aids, for that matter, to serve
8 on the other parties, if it is going to be offered in
9 evidence, enough copies to meet the reporter's requirements.
10 But to maintain some degree of spontaneity and the
11 effectiveness of cross-examination, I submit it would be
12 unfair to require long advanced prefiling of cross-examination
13 exhibits that require one to be able to make decisions in the
14 course of cross-examination.

15 The Board can require cross-examination plan, if it
16 desires, for the Board's use alone, but I would submit that it
17 would be unfair and disadvantageous to a party that has to
18 rely on cross to have to disclose all documentary aids and
19 exhibits it might use in advance of hearing.

20 MR. BAXTER: Mr. Chairman, Tom Baxter.

21 It is my recollection a week ago today in the
22 telephone conference, at which Mr. Guild was not in
23 attendance, we already decided this question, that it would be
24 applied at the emergency planning hearings as it was at last
25 fall's hearings, but to this issue as well. I don't see why

1 there ought to be a distinction. I think any benefit to
2 spontaneity is far outweighed by the delays we have
3 experienced in previous instances in this case. And the rule
4 that was established last week was the night before. Not a
5 long filing in advance, but the night before.

6 JUDGE KELLEY: Anything else from the Staff on this
7 point?

8 MS. MOORE: Staff agrees with Applicant. That was
9 our recollection, too. This rule was established for whatever
10 hearings took place in June. It was the night-before rule.

11 JUDGE KELLEY: I believe that is correct. In any
12 case, we will just rule now again that the night-before rule
13 will be in effect for cross-examination materials. We already
14 said the exhibits are due on the 17th in hand delivery, and
15 that is a balance as this Board sees it, Mr. Guild.

16 I recognize the rule at Catawba is different, but
17 we think this is the better approach.

18 MR. EDDLEMAN: Does that mean anything, in essence,
19 sworn in the record has to be prefiled in hands on the 17th?

20 JUDGE KELLEY: That's correct.

21 MR. GUILD: I thought the night before was what you
22 said, Judge.

23 JUDGE KELLEY: I will say it once more. I am sorry.
24 Mr. Eddleman, you were here last week. I thought we got this
25 straight. Exhibits that you are going to put in the record

1 have to be filed with the testimony. Material you are going
2 to use as the basis for cross-examination which you are not
3 going to put in the record as an exhibit but just use as a
4 basis for questions has to be made available, copies of it, to
5 the opposing parties the night before. Two different
6 deadlines, two different types of documents. Okay.

7 Anything else to be raised?

8 MR. GUILD: Judge, two matters I may attempt to
9 return to otherwise, but I missed a little part of the ruling
10 when you came back on the record. There were two matters you
11 identified beforehand that you were going to take up. One was
12 a clarification -- they were both clarifications of your
13 ruling on the discovery question.

14 JUDGE KELLEY: Right. Okay. I will get to that.

15 There is one other point that I want to raise once
16 more with Ms. Moore.

17 Ms. Moore, if I understand you, you contemplate
18 offering the OI report in evidence and not producing a witness
19 to sponsor it, is that correct?

20 MS. MOORE: That's correct, Your Honor.

21 JUDGE KELLEY: It is my personal view that you can't
22 do that, that that's illegal. That's just a personal view,
23 it's not a Board ruling. But I think we have enough doubts
24 about it, so would you submit a memorandum to the Board by
25 -- let's see, this should get resolved by the Board one way or

1 the other far enough in advance so we know who the witnesses
2 are going to be. Can you have a memorandum in our hands by
3 next Wednesday?

4 MS. MOORE: Next Wednesday, Your Honor?

5 JUDGE KELLEY: Yes.

6 MS. MOORE: Yes, we can do that.

7 JUDGE KELLEY: Now, maybe the way to approach this
8 is if the other parties want to file memos at that time, fine,
9 or you may want to file a reply. Mr. Guild, I expect you
10 might very well want to reply to the Staff position. Let's set
11 a date for that, too. Can you quick-mail that document,
12 Ms. Moore?

13 MS. MOORE: Yes, Your Honor.

14 May I seek a clarification for a moment? I would
15 like to specifically understand the issue you want us to
16 address.

17 JUDGE KELLEY: I am assuming the following
18 scenario. The issue at the hearing is whether Mr. Van Vo was
19 harassed and retaliated against -- let's just say harassed --
20 on account of his seeking to raise safety concerns, and was
21 terminated for the same reasons. I am really paraphrasing
22 41G. And then that the Staff would come in and say the Staff
23 case is this report, which we offer as Staff Exhibit 1.
24 Then the Board would say: Do you offer that to prove the truth
25 of the matters asserted therein, the old hearsay formulation?

1 I assume you would say yes, whereupon Mr. Guild would object,
2 as he indicated earlier, and the Board would have to rule.
3 And that is the issue.

4 Can you get in that report not for proof of the fact
5 that it exists -- nobody cares about that. Nobody disputes
6 that. It's not like an ACRS letter. What this is is a
7 substantive document which purports to prove that 41G, the
8 allegations in it, are not well founded, and that is the
9 issue.

10 Do you understand it?

11 MS. MOORE: Yes, Your Honor. Thank you.

12 JUDGE KELLEY: Okay. So Ms. Moore will do a memo,
13 and it doesn't have to be exhaustive sort of thing, but I
14 might mention there is a ruling that has some bearing on this,
15 I think, in the Catawba case, where that Board disallowed a
16 Staff report for lack of a sponsoring witness. We are also
17 interested in the implications of the Appeal Board's ruling in
18 the San Onofre case where the Appeal Board reversed the
19 Licensing Board because it let in an FSAR as substantive
20 evidence, and that discussion is pertinent.

21 There may be other cases, but those are two that we
22 happen to know about. The other parties would get that memo
23 Thursday or Friday of next week, presumably under a quick-mail
24 arrangement, and we ought to have that in hand -- how about
25 the 12th, Mr. Guild?

1 MR. GUILD: That would be fine, Judge.

2 JUDGE KELLEY: Okay. So that's in hand by the
3 12th. If you can quick-mail it like on Tuesday, that should
4 do it, but that we have the papers in and we can make a ruling
5 up or down on the question by around the 14th or 17th, and if
6 we rule against it, then the Staff can consider whether they
7 want to bring a witness, and if we rule in favor of it, we
8 will at least know that the issue has been settled for this
9 Board for this case.

10 Okay. Shifting gears a little bit, the question we
11 want to speak to briefly is this. We received from
12 Mr. O'Neill his letter of May 20, 1985, and the transcript
13 will reflect prior to that we heard argument on whether two
14 documents -- actually, Mr. Guild's requests for documents were
15 a bit wider. On page 1 of Mr. O'Neill's letter, he cites the
16 documents and the transcript reference from which this
17 description comes, transcript 7559 and 7563, and the Board in
18 response said, well, just send us two things.

19 So Mr. O'Neill did that, and they are as follows:
20 copies of the "Final Report, SHNPP QA/QC Construction
21 Inspector Review Panel," dated August 30, 1984, and four
22 documents consisting of a total of eight pages relating to an
23 investigation of an allegation of "harassment" by a QA/QC
24 inspector.

25 Those are the two documents that we got. We have

1 reviewed them and we indicated earlier in this conference that
2 we were adhering to our earlier tentative ruling that these
3 documents were outside the scope of Contention 41G, and
4 moreover, not calculated to lead to admissible evidence as
5 that formulation is found in the NRC discovery rules.

6 So we are not directing that they be turned over in
7 discovery. The basic point to be made is that they simply
8 don't have any direct link to Mr. Van Vo and his allegations.

9 The eight pages about a particular "harassment"
10 incident was not so far as far as the documents disclosed,
11 harassment in the sense that we were using it. That is to
12 say, discriminating against, or terminating somebody on
13 account of raising safety issues.

14 The bigger document, the report of the task force
15 does contain a lot of discussion of a lot of different
16 concerns of different QA/QC inspectors, we find no link with
17 Mr. Van Vo who is not a QA/QC inspector. And so that is the
18 discovery ruling.

19 Beyond that there was a question whether this
20 material should remain in camera. And Mr. O'Neill requests
21 indeed, that the material be returned to CP&L.

22 In that connection we have got a pending pleading
23 from Mr. O'Neill. And we talked earlier about gaps in the
24 Service List, and the fact that Mr. Guild didn't get served
25 with this document that I just referred to. And it seems to

1 me that that is a separate question, and Mr. Guild should
2 have an opportunity to respond to the May 20th letter.

3 I would just suggest that Mr. O'Neill, that you
4 quick mail a copy of that to Mr. Guild directly. And, if
5 Mr. Guild wants to respond to it, you could include a response
6 along with your response to Ms. Moore's paper on the
7 admissibility of the OI report. But, if you do want to
8 respond to it, then we have to wait, to give you an
9 opportunity to do that.

10 Do you want to do that?

11 MR. GUILD: Yes, sir.

12 JUDGE KELLEY: All right. Well, as to that we will
13 then await your response and then we will rule on this. Time
14 is not of the essence here, but it does govern whether it will
15 be one, in the record, and two, available to Mr. Guild for
16 possible appellate purposes if he wishes to contend that we
17 are mistaken in not turning it over as a discoverable matter.

18 And, we will just have to rule on that after we get
19 your pleading.

20 I would like a moment just to look at my notes.

21 (Pause)

22 On an entirely different subject, the Board received
23 discovery responses, copies of them from Mr. Runkle, and also
24 from the Applicants on the drug contention. And when we
25 talked about this before, I believe we said we would wait to

1 determine any next steps until after the discovery was closed.

2 Do those responses now close discovery, Mr. O'Neill?

3 MR. BAXTER: This is Tom Baxter.

4 Yes they do, as far as we are concerned. We have
5 received along with Mr. Runkle's discover responses in
6 yesterday's mail, the motion by him to stay proceedings on
7 that contention.

8 We will be filing a response in opposition to that
9 stay request as soon as we can get it prepared. And we would
10 inform the Board and Parties of our current intention to file
11 Motions of Summary Disposition on this contention on a
12 schedule such that should it be denied in whole or in part, we
13 would be ready for trial in September, along with the siren
14 contention.

15 JUDGE KELLEY: So we will be getting a pleading from
16 you fairly shortly, and it will be a matter of the other
17 Parties responding to your pleading, correct?

18 MR. BAXTER: No, I am responding to Mr. Runkle's
19 motion.

20 JUDGE KELLEY: All right. You are not asking for
21 separate alternative relief, you are just responding to the
22 motion?

23 MR. BAXTER: Right.

24 JUDGE KELLEY: In any event the issue of what next
25 will be joined by that as I understand what you are

1 describing.

2 MR. BAXTER: That's correct.

3 JUDGE KELLEY: That's right.

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

5 Mr. Runkle and I talked very briefly after our last
6 conversation with the Board and Parties on discovery. They
7 owe discovery, response discovery on the drug contention to
8 Staff. Mr. Runkle had stated that he would be able to file
9 that today, Wednesday, and that is acceptable to the Staff.
10 So, we haven't gotten that yet.

11 We will be filing a response to the May 24th, 1985
12 Motion to Stay. Our general response will be in the nature
13 of, there is no reason to stay. Mr. Runkle, by the 2.714 is
14 required to have a basis and specificity for his case. Since
15 he doesn't have a basis for his case, then he should not have
16 a contention. And there is no reason to stay the proceedings
17 to look for a basis in the future. That is the general
18 nature. We will be more specific in the answer.

19 JUDGE KELLEY: Okay, fine. So, we will get your
20 pleading and then Mr. Runkle, any further comment?

21 Or initial comment?

22 (No response)

23 Is Mr. Runkle there?

24 (No response)

25 Mr. Runkle was here earlier. I didn't hear him sign

1 off.

2 MS. MOORE: I think he might have hung up, your
3 Honor.

4 JUDGE KELLEY: Okay. Thank you.

5 But in any case, we understand. There are pleadings
6 coming in and we will just have to address them.

7 Anything else from the Applicants?

8 MR. O'NEILL: Judge Kelley, just a procedural
9 question.

10 Are the two volumes which are the backup to the OI
11 report in the record? You provided copies to certain of the
12 parties. It wasn't clear to me whether you provided a copy to
13 Docketing and Service so that would be part of the appellate
14 record.

15 JUDGE KELLEY: As far as we are concerned, they are
16 in the record of the case. They are not in the record of any
17 evidentiary case.

18 MR. O'NEILL: Understand.

19 JUDGE KELLEY: But, yes, we -- if we haven't, we
20 will see to it that Docketing has a copy, too. We just cut
21 down on service because there are so many people and so much
22 paper.

23 Anything else?

24 MR. GUILD: Judge, this is Mr. Guild.

25 In that connection, are there any portions of those

1 OI documents that are available to the Board that have been --
2 either were sanitized for the benefit of other distribution?

3 JUDGE KELLEY: No.

4 Available may be the wrong word. We don't have it,
5 and we haven't asked for it. In fact, when they contacted me
6 saying they had this report ready, I asked them if they had
7 any confidential sources in there. And they said, yes, a
8 couple.

9 So, we asked them, well, scrub them on out. We
10 don't want them.

11 We might decide later we want them, but we would
12 rather just give you whatever we have got. And it seemed to
13 us on reading it that that was a wise judgment, at least at
14 this point.

15 MR. GUILD: One other matter I wanted to flag, the
16 somewhat cryptic reference in the exhibit to an Exhibit 4, I
17 believe, that was withheld at the request of the Department of
18 Labor, and I am sort of simply left in the dark to guess what
19 that consists of.

20 I wonder if the Board is aware?

21 JUDGE KELLEY: We don't know. And you know if you
22 or the Board or somebody ought to try to find out, maybe one
23 could. But, we just in fact don't know.

24 MR. GUILD: Well, I just want to flag it as a
25 point. If now I hear that the Staff intends to offer this as

1 an exhibit, and in part because it is a basis for their
2 conclusions on the contention, we would ask that the full
3 basis for those conclusions be made available to the Parties.

4 I have no objection to entering into a protective
5 order to protect the confidences of people whose
6 confidentiality is being protected.

7 And in addition, don't know what the basis is for
8 the Department of Labor asking to withhold a portion of that
9 exhibit, would ask that it be made available to Parties, as
10 well.

11 JUDGE KELLEY: Could you look at that, too,
12 Ms. Moore, and just comment on that when you file?

13 MS. MOORE: Yes, your Honor.

14 JUDGE KELLEY: Thank you.

15 Ms. Moore, anything else?

16 MS. MOORE: No, sir.

17 JUDGE KELLEY: Okay. Thank you very much.

18 MR. EDDLEMAN: Excuse me, Wells Eddleman.

19 We went back and forth on this and you asked whether
20 I would have any comments on 227CC and DD, the contingency.

21 JUDGE KELLEY: Oh, yes, right.

22 MR. EDDLEMAN: I would like to be very brief about
23 this.

24 I withdraw 227DD. I think the argument about timing
25 is probably correct.

1 On 22700, my response briefly, the Applicants
2 concede that it meets the five factors test, and then they
3 apparently attempt to go the merits of it and say you can
4 complicate things too much and so on, to actually give
5 directions. But I think that is a matter that you would have
6 to actually either try or resolve informally between the
7 parties if the contention is admissible.

8 Now the Staff's reading of the five factors would
9 dispute a couple of things. They said that my interest is
10 protected by the planners at FEMA and I don't think that is
11 true. I think that they have been adverse to every interest I
12 have shown in this proceeding.

13 And the sound record argument, they say I don't have
14 expertise in emergency planning.

15 The question is, is the document clear? Does it
16 have the information people need?

17 And on that, if I could cite to you the Applicants'
18 argument on pages 6 and 7 -- it may not be what they call
19 argument -- but pages 6 and 7 of their pleading, they cite a
20 point and it says "two serious omissions from the distributed
21 material." And I think the location of the shelters or a
22 description of how to get to them is a potentially serious
23 omission.

24 It also says that "educational material just be
25 judged in its entirety." This is in citing the Appeal Board

1 in Metropolitan Edison Three Mile Island on page 7.

2 I think that is what I am trying to do. I think I
3 do have the adequate training to examine on the question of
4 whether information is provided, and whether it is clear
5 enough. I am, after all, a teacher.

6 So, I dispute the Staff's reading of the five
7 factors in that degree. Also, I am not sure it would delay
8 the proceedings, since we have got our Emergency Planning
9 Hearings now set up for September. And, as I said before, I
10 think the nuclear plant is going to be delayed again anyway.

11 That is all the response that I think I need to make
12 on that. Thank you.

13 JUDGE KELLEY: Let me make sure I am clear on -- is
14 it 227CC that has to do with including directions?

15 MR. EDDLEMAN: Yes.

16 JUDGE KELLEY: Now my question was this. I wasn't
17 entirely clear from the text of the contention, but from
18 reading the pleadings I came out with the understanding that
19 the thrust of this contention is not toward a person's -- a
20 person lives in the EPZ, let's say, and they are going to
21 leave via some evacuation route. Let's say that they leave --
22 as I understand it, they have got a map from where they are to
23 get out of the EPZ.

24 But they are told, for example, go to Sanford, or go
25 to Farina, or one of those other towns and go to the high

1 school because that is where the relocation point is.

2 As I understand it, where there aren't maps, is once
3 you get to that town outside the EPZ, there aren't directions
4 from the town, whether it is the edge of town or downtown or
5 wherever to the high school.

6 Is that the part that is the focus of concern?

7 MR. EDDLEMAN: It is that and another thing. And
8 that is that in the actual pages of the brochure that were
9 supplied, it simply lists like the name of the school. And it
10 is not even real clear whether it is, for example, in Raleigh
11 or in Perry, if you are going up U.S. 1 to the north and so
12 on.

13 And it is both of those things. It is basically a
14 question of, once you are out of the zone for which directions
15 are supplied, then there is another column that says where the
16 shelters -- it lists the shelters. And it doesn't give any
17 location information for them at all in that place.

18 That is what I am saying they should provide. Or,
19 if the contention were admitted, they could try to put on a
20 case that says this information is not necessary, or would be
21 confusing.

22 They could do that. Or, possibly we could reach a
23 settlement.

24 MS. RIDGEWAY: Mr. Chairman, this is Lisa Ridgeway
25 for the Applicant.

1 The thrust of what you said is correct, and that is
2 that given the instructions that are in the brochure, those
3 instructions take you well out of the EPZ, and to a point
4 where you only need street directions from the route indicated
5 in the brochure to the precise evacuation shelter.

6 And the point of our response is not to go to the
7 merits, but rather to point out that given the record that is
8 available to Mr. Eddleman, which includes the Off-Site
9 Emergency Plan, the State Plan, Mr. Eddleman can not establish
10 a need for those street-by-street instructions because of the
11 fact that as the plan makes it quite clear, there are
12 personnel that are available to give those street-by-street
13 directions.

14 So, our position doesn't go to the merits, it simply
15 says that there is no need for it, that that evidence is
16 already on the record.

17 JUDGE KELLEY: You mean the plan itself calls for
18 people to be, like standing there with a flag waving people
19 down the right trail?

20 Is that the way it would work?

21 MS. RIDGEWAY: That's correct, your Honor.

22 JUDGE KELLEY: And that's in the plan?

23 MS. RIDGEWAY: That's correct.

24 JUDGE KELLEY: Doesn't that take care of it,
25 Mr. Eddleman?

1 MR. EDDLEMAN: Judge, I don't think it does, because
2 it is not clear that they are going to be able to handle the
3 volume of traffic through there that you are going to have.

4 And also, there are other people that may not be
5 coming from within the zone, may not be evacuating, but will
6 need to get to those places to pick up their children and so
7 on.

8 JUDGE KELLEY: Suppose there is some confusion, is
9 that a safety hazard?

10 MR. EDDLEMAN: Judge, I think it might prevent
11 people from following the plan properly. It might cause
12 people to try to get back into the zone to establish that
13 their relatives or friends are out of it, if they can't find
14 the shelter.

15 There is a lot of possible implications. All I
16 am saying, the complete information should tell them how to
17 get to the shelters.

18 JUDGE KELLEY: Okay. Fine, thank you.

19 I don't think we have anything else.

20 MS. MOORE: Your Honor, this is Janice Moore. I
21 believe we have a quick answer to Mr. Guild's question in the
22 cover letter to the report. That was the cover letter to
23 you. If you would permit us, I would like to have Mr. Barth
24 read it into the record to see if that would answer
25 Mr. Guild's question about what was left out of Exhibit 4.

1 JUDGE KELLEY: All right.

2 MR. BARTH: Your Honor, in the May 20, 1985
3 memorandum to you from Ben R. Hayes, Director of the Office of
4 Investigation, the concluding paragraph reads as follows:

5 "In addition to the sanitization to protect pledges
6 of confidentiality, Exhibit 4 has been deleted from the
7 report. This exhibit contains copies of documents belonging
8 to the Department of Labor (DOL). DOL has indicated they
9 would prefer to control release of these documents themselves.
10 They have no objection to the summarization of these documents
11 contained in the enclosed report being released."

12 That's it, your Honor.

13 JUDGE KELLEY: That sheds some light, I guess.

14 MR. GUILD: I guess I can address that in response
15 to Ms. Moore's memo, that I expect at a later point.

16 It just seems clear to me if that is in part the
17 basis for DI's conclusion, I hear no substantial asserted
18 legal grounds for withholding that, except the preference of
19 the Department of Labor. And, that doesn't seem to be very
20 persuasively explained.

21 We would, of course, object to the admission of
22 only a portion of their report as purporting to reflect the
23 basis for their conclusion. Just to get it on the table, I
24 would ask that the Staff supply us with whatever documents
25 have been deleted from that exhibit.

1 JUDGE KELLEY: Okay. Ms. Moore, maybe you could
2 check on that. That might be the simplest thing, to see if
3 Labor just won't let it go. And then beyond that if they
4 don't want to, or you don't think they should, you can say
5 something in your memo.

6 MS. MOORE: Yes, sir.

7 JUDGE KELLEY: Okay.

8 MR. GUILD: One other procedural question.

9 Could I get a copy of the transcript of the Board's
10 rulings in this conference call so I will have it in front of
11 me and be clear about what we are being told to do?

12 JUDGE KELLEY: Yes.

13 The Board will issue -- it may be a couple of days,
14 but we will issue a Confirmatory Order on these various
15 dates -- if we see some gaps, as we probably will, we will try
16 to fill those in -- procedural type orders setting us up for
17 the hearing.

18 Okay?

19 MR. EDDLEMAN: I would like to request a copy of the
20 transcript, too, please?

21 JUDGE KELLEY: Well, I only hand out so many free
22 transcripts. You will get a copy of the Order. I sent you
23 two transcripts, Mr. Eddleman -- I hope you got them -- the
24 last two times.

25 MR. EDDLEMAN: I did, Judge.

1 JUDGE KELLEY: I will send one to Mr. Guild in this
2 instance. But, everybody gets a Confirmatory Order.

3 MR. O'NEILL: Judge Kelley, I take it in your
4 Confirmatory Order, it will reflect communications from
5 Mr. Guild about Mr. Van Vo's availability that you have asked
6 him to relate to you. But, I didn't know that there was any
7 statement on your part about how you would convey that to the
8 rest of the Parties.

9 JUDGE KELLEY: That's a good idea.

10 I will be hearing from you by Monday, right,
11 Mr. Guild?

12 MR. GUILD: Right.

13 JUDGE KELLEY: Okay, I will put it in there.

14 Okay. Thank you very much. If we have to have
15 another one of these in the next couple of weeks, we will do
16 it.

17 Thank you. Goodbye.

18 (Whereupon, at 12:30 p.m., the conference call was
19 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: Carolina Power & Light Company and North Carolina
Eastern Municipal Power Agency

Name of Proceeding: Shearon Harris Telephone Conference Call

Docket No.: 50-400-OL

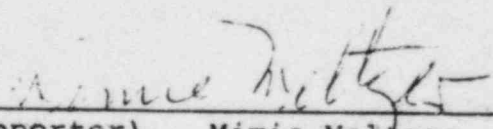
Place: Bethesda, Maryland

Date: Wednesday, May 29, 1985

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

(Signature)

(Typed Name of Reporter)


Mimie Meltzer

Ann Riley & Associates, Ltd.