

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

DOCKET NO: 50-400 OL

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

(Shearon Harris Nuclear Power Plant)

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

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In the Matter of: :  
CAROLINA POWER & LIGHT COMPANY and : Docket No. 50-400 OL  
NORTH CAROLINA EASTERN MUNICIPAL :  
POWER AGENCY :  
(Shearon Harris Nuclear Power Plant) :  
- - - - -X

Ace-Federal Reporters, Inc.  
Suite 402  
444 North Capitol Street  
Washington, D. C.

Wednesday, December 4, 1985

The telephone conference in the above-entitled matter  
convened at 10:30 a.m., pursuant to notice.

BEFORE:

JAMES L. KELLEY, ESQ., Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

JAMES H. CARPENTER, Member  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

GLENN O. BRIGHT, Member  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

## 1 APPEARANCES:

2 On behalf of the Applicant:

3 THOMAS A. BAXTER, ESQ.  
4 LISA RIDGWAY, ESQ.  
Shaw, Pittman, Potts & Trowbridge  
5 1800 M Street, N.W.  
Washington, D. C.6 DALE HOLLAR, ESQ.  
Associate General Counsel  
7 Carolina Power & Light Company  
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8 Raleigh, North Carolina 276029 On behalf of the Federal Emergency Management  
10 Agency:11 JOSEPH FLYNN, ESQ.  
Assistant General Counsel

12 and

13 STEPHEN ROCHLIS, ESQ.  
Regional Counsel for Region IV

14 On behalf of the State of North Carolina:

15 CAROL LONG, ESQ.  
16 North Carolina Attorney  
General's Office17 On behalf of the Nuclear Regulatory  
18 Commission Staff:19 CHARLES A. BARTH, ESQ.  
JANICE E. MOORE, ESQ.  
20 Office of the Executive  
Legal Director  
21 U. S. Nuclear Regulatory  
Commission  
22 Washington, D. C. 20555

P R O C E E D I N G S

JUDGE KELLEY: Good morning. This is Judge Kelley. I'm sitting here with Judge Carpenter and Judge Bright, and we have just called the roll. Maybe we could go through the roll once again, once more. I'll read it off. First, Mr. Eddleman, I talked with him this morning and he couldn't make this time because of a teaching commitment, but I explained to him that the purpose of this was merely to tell the parties certain board determinations, that we are not going to entertain argument and elaborate discussion this morning. So if he missed the call and he got the transcript, it seemed to me and it seemed to him that would be okay. Moreover, I'm going to call him tomorrow morning and tell him the substance of what we said and also mail him the transcript. So, on that understanding he agreed that we could proceed, since it was inconvenient to try to shift it around to another time and we have Janice Moore for the Staff. Is Mr. Barth with us?

MS. MOORE: Yes, he is, your Honor.

JUDGE KELLEY: And Jo Anne Sanford for the North Carolina Attorney General's office; Applicants, Mr. Rochlis, Stephen Rochlis for FEMA, and Mr. Dale Hollar for the Applicant. Is that everybody?

MS. LONG: Carol Long with the North Carolina Attorney General's office is also on.

1 MS. RIDGEWAY: And Ms. Ridgeway is here with  
2 Mr. Baxter.

3 JUDGE KELLEY: Thank you.

4 Our purpose this morning, primarily, is to give  
5 you a ruling, a bottom line ruling as we have characterized  
6 it from time to time, on the pending motions from  
7 Mr. Eddleman and from the State to subpoena Dr. Bassiouni.  
8 We thought that you would all appreciate getting the board's  
9 ruling at an early time, so what we intend to do this  
10 morning is simply tell you what it is and we'll issue a  
11 memorandum in the fairly near future, spelling out our  
12 reasons for the conclusions we are reaching here today. We  
13 are speaking to the following papers:

14 There is a motion from Mr. Eddleman dated  
15 November 12, '85, to subpoena Dr. Bassiouni and others, as  
16 witnesses on Eddleman. There are responses in opposition  
17 to that pleading from the Applicants and from the Staff.  
18 We have from the State of North Carolina a petition to  
19 intervene as an interested state, coupled with a motion  
20 which would also request a subpoena for Dr. Bassiouni.

21 We have, in addition, at the board's request, we  
22 asked the Staff to attempt to procure copies of certain  
23 documents for us, for the parties, from Dr. Bassiouni, and  
24 Ms. Moore attempted to do that and she wrote us a letter,  
25 enclosing a cover letter from Dr. Bassiouni dated November

1 ll, a document entitled -- and this is the same thing that  
2 was read into the record at the hearing -- the document  
3 itself, though, is entitled, "EI review of prefiled  
4 testimony, Eddleman extension, 6733, Shearon Harris nuclear  
5 power plant hearing," that is a seven-page double-spaced  
6 document from Dr. Bassiouni and his colleagues.

7 In addition, we have a study, also known as an  
8 Abschlussbericht, apparently produced at the University of  
9 Bonn sometime in '62, and this is referred to by  
10 Dr. Bassiouni in his review and it apparently has to do  
11 with a study of the effects of sirens on arousing people.  
12 We are unable to serve you on that because our copy is in  
13 German.

14 Mrs. Moore, again very kindly, undertook to get  
15 that study translated and we spoke yesterday and I  
16 understand it has been done and is in the mail, so to speak,  
17 so that the board and parties will have an English version  
18 of this, what I'll call the "German study." That was the  
19 other thing that we received from the Staff at our request,  
20 and that's before us in making these rulings.

21 Mr. Eddleman's motion, turning to that first, of  
22 November 12, asks the board to subpoena Dr. Bassiouni; in  
23 addition his, I'll call it his team of experts, a group of  
24 several people who work with him, and also two present  
25 employees of CP&L, Mr. Black and Mr. Furr. The request is

1 for a subpoena or, in the alternative, that the board call  
2 these people as witnesses. And our ruling is that we are  
3 denying this motion. We find no warrant for calling  
4 Dr. Bassiouni as a witness on any basis, whether as a board  
5 witness, whether as a late witness for Mr. Eddleman, or  
6 whether as a rebuttal witness for Mr. Eddleman.

7 Again, we'll spell this out in the memorandum we  
8 are providing -- we'll be providing you with, fairly soon.  
9 We are simply saying this morning that the ruling is that  
10 the motion is denied.

11 The North Carolina petition to intervene,  
12 although rather belated, since this case is going on for a  
13 good long time, we will grant, particularly in the absence  
14 of any opposition.

15 The North Carolina motion to call Dr. Bassiouni,  
16 which recites some of the same grounds as Mr. Eddleman's,  
17 and some new grounds, is also denied. The denial of the  
18 motion is subject to the following conditions: The  
19 Applicants suggested that they would have no objection to  
20 admitting into evidence, without cross-examination, the  
21 following documents:

22 1, the ATR review that I previously referred to,  
23 as if it were presented under oath.

24 Secondly, Dr. Bassiouni's article in "Power  
25 Engineering," a copy of which was attached to the



1 Applicant's statement.

2 And thirdly, the German study. And the  
3 Applicant's proposition was, I'll simply repeat that, these  
4 documents be entered into evidence that they could be cited  
5 as a basis for findings. However, there would be no  
6 further hearing and no cross-examination on those documents.  
7 It seems to the board that that's a sensible compromise to  
8 be struck under the circumstances.

9 We did not hear any opposition to that course of  
10 action. I'll simply ask the parties whether they have any.  
11 I have already indicated it is our disposition to put them  
12 in but we can hear comments of a negative sort if anybody  
13 wants to make them.

14 Staff? Ms. Moore? Any objection to the  
15 admission of those documents?

16 MS. MOORE: Staff has no objection.

17 MR. ROCHLIS: FEMA has no objection.

18 JUDGE KELLEY: How about the State? Any  
19 objection to the admission of those documents?

20 MS. LONG: This is Karen Long for the State. I  
21 have a question, whether you put in the German study, will  
22 you put it in in German or in the English translation?

23 JUDGE KELLEY: I was going to come to that point.  
24 That's a legitimate question, certainly in that context.  
25 Our contemplation would be to put in the English version



1 but again, we understand it's in the mail. I would like to  
2 add a further comment with regard to the German study. The  
3 board hasn't obviously read it in English and we didn't get  
4 very far reading it in German.

5 It's possible that when we do read it, we may  
6 think it is germane. We may want some further comment on  
7 it. Conceivably we may even want to call a witness to  
8 testify about it, but we feel we can go ahead without  
9 Dr. Bassiouni, because Dr. Bassiouni doesn't have any  
10 particular association with the study -- he didn't conduct  
11 it, didn't write it up -- and we feel that we can go ahead  
12 and make that determination now. We are simply dropping a  
13 caveat that once we have read the German study, if it seems  
14 germane and it raises questions, we may want to come back  
15 and reconsider whether something further ought to be done  
16 with respect to it. We are not indicating that, of course,  
17 that we will do that. Only the possibility that we might.

18 Similarly, I suppose if the parties saw the  
19 German study in English and felt that some further point  
20 ought to be made, they could file papers. But that's the  
21 proposition that we put to you now.

22 Ms. Long, you were saying -- you raised the  
23 question about putting it in in English. Did that satisfy  
24 your point?

25 MS. LONG: It did. And I guess our position is

1 we do not officially object to the admission of the ATR  
2 review or the German study and translation, although we  
3 have strong reservations that any party prejudiced by those  
4 would not have an opportunity to cross-examine. We do  
5 object to the article --

6 JUDGE KELLEY: Excuse me?

7 MS. LONG: We object to the article in "Power  
8 Engineering."

9 JUDGE KELLEY: You object to that. And what is  
10 your basis for objection?

11 MS. LONG: We are not sure it's relevant without  
12 further explanation by Dr. Bassiouni, and he has not  
13 commented on that in any way, or any of the other two  
14 admitted documents.

15 JUDGE KELLEY: Are you familiar with the record  
16 in the case? Ms. Long?

17 MS. LONG: Yes.

18 JUDGE KELLEY: There was considerable testimony  
19 in there about informal alerting, was there not?

20 MS. LONG: I'm sorry, I didn't hear that.

21 JUDGE KELLEY: There was considerable testimony  
22 in that case about informal alerting.

23 MS. LONG: Yes.

24 JUDGE KELLEY: I'm calling it informal alerting.  
25 I'm referring to the phenomena that when you hear the

1 sirens you call Aunt Martha.

2 MS. LONG: I think he called it Aunt Minnie.

3 JUDGE KELLEY: I don't understand your relevance  
4 objection, frankly. I think the Applicants, from their  
5 point of view -- I won't speak for them -- but, well,  
6 Mr. Baxter, do you want to speak to the relevance of the  
7 "Power Engineering" article?

8 MR. BAXTER: Yes, Mr. Chairman. It's our view  
9 that the positions Dr. Bassiouni took in that article about  
10 the validity of informal notification, the extent to which  
11 it ought to be relied upon, directly contradict what he  
12 said in his statement and that is one of the bases for our  
13 offer that we have available to us countervailing evidence.

14 JUDGE KELLEY: So, it's impeachment in that  
15 sense?

16 MR. BAXTER: Yes, sir.

17 JUDGE KELLEY: Okay.

18 MS. LONG: I understand that it's impeachment  
19 and I understand because it raises questions of  
20 contradiction without having Dr. Bassiouni available, the  
21 Court has denied the motion to subpoena him in any form,  
22 that it creates conflict in the record and I think it  
23 underscores the original reason why we made the motion to  
24 have somebody produce Dr. Bassiouni. There are just too  
25 many questions arisen by conflicting evidence.

1 JUDGE KELLEY: What important conflict do you  
2 discern, Ms. Long?

3 MS. LONG: The important conflict appears to be,  
4 as Mr. Baxter stated, Dr. Bassiouni stated one thing in his  
5 statement, which you have said CP&L has agreed to put into  
6 evidence, and apparently has said another thing in "Power  
7 Engineering," just from the surface of those two documents.

8 As we all know, this is a complex area. It's  
9 possible he can reconcile them in some way that would be  
10 satisfactory to the record, but as he is not available to  
11 be directly questioned about this, that reconciliation is  
12 absent.

13 JUDGE KELLEY: Why is that important, Ms. Long?

14 MS. LONG: I don't see how the board can rely on  
15 either of these things if they were going to put them into  
16 evidence.

17 JUDGE KELLEY: Well, if you stipulate the matter  
18 into evidence, Ms. Long, there are all sorts of grades of  
19 evidence here in terms of probative weight.

20 I, frankly, have my doubts about -- speaking for  
21 myself -- about Dr. Bassiouni's, the weight of his evidence  
22 on the issue of formal notification, because frankly, he's  
23 not a sociologist, as far as I know he's only a sound  
24 engineer.

25 But we have one piece that suggests one thing

1 and another thing that suggests another. If it isn't worth  
2 much weight in the first place, why should we call him?

3 MS. LONG: I understand your position but I  
4 renew my objection.

5 JUDGE KELLEY: Fine. We'll take it into  
6 consideration.

7 I think that covers that. Dr. Carpenter has a  
8 question about one aspect of the record. I'll turn it over  
9 to him.

10 DR. CARPENTER: Good morning. The comment I  
11 want to make is primarily addressed to Staff and FEMA. It  
12 will sound like I'm reading because I am.

13 In this proceed -- to repeat, the comments I'm  
14 going to make are addressed primarily to Staff and FEMA and  
15 it will sound as though I'm reading because I am.

16 In this proceeding, Mr. Keith, Applicant's  
17 witness, performed extensive computation and presented the  
18 results in terms of a map of predicted night-time sound  
19 level distribution, Applicant's Exhibit 46.

20 Dr. Lee, FEMA's witness, performed analogous and  
21 similarly extensive computations. However, Dr. Lee did not  
22 present the result of his work in terms of sound level  
23 intensities as a function of position in the Harris EPZ,  
24 but rather Dr. Lee limited his testimony to a table 1 on  
25 distribution of households by siren sound levels.

1           This aspect of Dr. Lee's testimony seems to the  
2 board to be undesirable. The reasons are, 1: In making  
3 findings, the board and the parties cannot compare the  
4 testimony of the two witnesses in a quantitative numerical  
5 sense; 2, in view of NUREG 0654, appendix 33, and a  
6 Commission decision on emergency planning 12 NRC 636, 1980,  
7 it may be hypothesized that the board may find that  
8 different performance criteria are applicable within five  
9 miles of Harris and in the outer five- to 10-mile area.  
10 Tabulations for the whole EPZ will not provide the board or  
11 others any information or data on the probable sound levels  
12 of individual houses within five miles of Harris.

13           The board therefore asks NRC Staff and FEMA to  
14 remedy this situation by filing a copy of the results, in  
15 terms of Dr. Lee's work, in terms of the map.

16           Is what I just said clear? Staff and FEMA?

17           MS. MOORE: Yes, it is.

18           JUDGE KELLEY: Comments?

19           MS. MOORE: I'll defer to Steve Rochlis.

20           MR. ROCHLIS: I think it's reasonable, your  
21 Honor. We'll get with Dr. Lee. I don't know what the time --  
22 I don't know how much time he's going to need. I don't  
23 know what the lead time requirements are going to be but  
24 we'll try to get what you asked for.

25           DR. CARPENTER: An additional thought: In

1 Dr. Lee's testimony he says that he overlaid contour maps  
2 on a map prepared by CP&L which shows the houses;  
3 Applicant's Exhibit 46 shows sound level, function of  
4 position, and also shows the location --

5 MS. MOORE: This is Janice Moore. Might I make  
6 a comment? We would appreciate an opportunity to speak  
7 with FEMA witnesses. I believe there may be a reproduction  
8 problem with that map, in terms of actually physically  
9 getting it reproduced.

10 MR. ROCHLIS: I think we did mention that at one  
11 time.

12 MS. MOORE: If that's the case, is the board  
13 requesting we serve copies of this map on all parties?

14 DR. CARPENTER: Yes.

15 MS. MOORE: We would like an opportunity to talk  
16 to our witnesses and then get back to the board to tell you  
17 whether it is in fact feasible to do it.

18 I believe, and I'm just speaking from  
19 recollection -- perhaps Mr. Rochlis may remember -- that  
20 the map, because of the way it was done by FEMA, is  
21 extremely large.

22 MR. ROCHLIS: That's correct.

23 MS. MOORE: I believe it takes up the floor of a  
24 fairly large room. And that's why I'm hesitating. We  
25 don't hesitate at all to agree to the board's request



1 except that it may not be feasible for us to do it.

2 DR. CARPENTER: Where is this remarkable map  
3 located?

4 MS. MOORE: It's in the offices of IAEL.

5 DR. CARPENTER: And they are?

6 MS. MOORE: International Energy Associates  
7 Limited, FEMA's primary contractor in this matter.

8 DR. CARPENTER: Where are their offices?

9 MR. ROCHLIS: The Watergate Building, Washington.

10 DR. CARPENTER: You just look into this and  
11 maybe you could write us back a quick letter. If you have  
12 problems, let us know what they are. If there's really no  
13 big problem then we'll get a copy. Conceivably I suppose  
14 we could go down and look at it, if the board wanted to.

15 MS. MOORE: I'm sure that could be arranged if  
16 necessary, yes.

17 DR. CARPENTER: You can consider that in the  
18 letter. Can you get back to us in a week, say, and let us  
19 know what the problems are if there are any?

20 MR. ROCHLIS: That seems reasonable. Can we  
21 have a FAX copy of Dr. Carpenter's comments?

22 DR. CARPENTER: I guess. But it will be in the  
23 transcript.

24 MR. ROCHLIS: Okay. I don't know what the  
25 turnaround time of the transcript is, whether we'll get it

1 in 24 hours.

2 DR. CARPENTER: We'll have it tomorrow.

3 MR. ROCHLIS: Okay.

4 MS. MOORE: I'll undertake to get the requisite  
5 pages to Mr. Rochlis.

6 JUDGE KELLEY: We just have one other small  
7 point. Dr. Carpenter referred to a Commission study which  
8 only came to our attention recently. The citation is 12  
9 NRC 636, entitled "In the matter of final rule on emergency  
10 planning," I think it is. My Xerox is kind of dim.

11 Anyway, it's a four-page Commission decision in  
12 December 1980, having to do with a petition by Duke Power  
13 and others to reduce the size of the EPZ for emergency  
14 notification purposes and I won't get into it except to say  
15 that in the course of it, on page 638, there appears to be  
16 a Commission endorsement of the NUREG 654 idea that -- well,  
17 it says, in terms of 100 percent of the population, within  
18 five miles. And then some lesser unspecified percentage  
19 outside five miles, and out to 10. So, without making any  
20 board judgment on it at this point, to the extent it's at  
21 all debatable, it does seem to suggest a Commission  
22 endorsement of more intensive notification efforts in the  
23 first five miles. We mention this only because, to repeat,  
24 we hadn't seen it before. I don't know if the parties have  
25 cited it to us and it seems to us to have some significance.

1 So you might, putting your findings together, if you want  
2 to include some reference to this if you think it's  
3 pertinent, please do so.

4 I believe that's all we have this morning. Let  
5 me just ask the parties, then.

6 Ms. Moore, anything else for the Staff?

7 MS. MOORE: Staff has nothing else, your Honor.

8 JUDGE KELLEY: Mr. Baxter?

9 MR. BAXTER: Yes, Judge Kelley. Our proposed  
10 findings are to be due this Friday and therefore we would  
11 very much appreciate knowing whether those three documents  
12 are in or out of the record. We, of course, would be happy  
13 not to have any of them. Our office was made in the spirit  
14 of accommodation.

15 JUDGE KELLEY: All right. I understand. Hold  
16 on just a moment.

17 This is Judge Kelly again, I'm back on. I  
18 indicated earlier the board had previously concluded,  
19 subject to comment, that the admission of the three  
20 documents under the circumstances we described was a  
21 reasonable thing to do. The only argument we've heard  
22 against it is that there is a conflict in the testimony of  
23 Dr. Bassiouni, on the subject of what we called informal  
24 alerting as between his ATR statement he provided in this  
25 case and his earlier article in Power Engineering, and we

1 feel that Dr. Bassiouni's testimony on that particular  
2 subject, considering his background, is not of primary  
3 importance in the case. The fact that that conflict may  
4 stay in the record would, in our opinion, be insignificant.  
5 So, we are going to order the admission of the three  
6 documents in evidence as previously outlined.

7 We were at Mr. Baxter. Did that take care of  
8 your point?

9 MR. BAXTER: Yes, sir. Thank you.

10 JUDGE KELLEY: Do you need another couple of  
11 days? Do you want the weekend? Hello?

12 MR. BAXTER: Yes. I would have to get back to  
13 you if we do. Right now the schedule is set up with  
14 everyone's agreeing.

15 JUDGE KELLEY: Well, perhaps among the parties --  
16 and I'll mention this to Mr. Eddleman -- with the admission  
17 of this new material the party having to file first has a  
18 new burden, kind of at the 11th hour, so the board is  
19 offering Mr. Baxter a little more time, at least over the  
20 weekend, if he wants it for that purpose. But he'll have  
21 to get back to us. I would like it understood, though,  
22 that we can simply grant that couple or three-day extension  
23 if Mr. Baxter wants it, without any further discussion.

24 Is there any objection to that?

25 MS. LONG: No.

1 JUDGE KELLEY: Okay. Anything else, Mr. Baxter?

2 MR. BAXTER: No, sir.

3 MR. HOLLAR: Judge Kelly, this is Dale Hollar.

4 Just a point of clarification. Does your ruling on  
5 Mr. Eddleman's motion extend to the motion to subpoena  
6 Mr. Black and Mr. Furr?

7 JUDGE KELLEY: Yes. Yes. The motion is denied  
8 in its entirety.

9 MR. HOLLAR: Thank you.

10 JUDGE KELLEY: There are some different reasons  
11 for Black and Furr which we'll state in the memorandum,  
12 which I think in substance are the fact that the Black/Furr  
13 allegations, whatever may underlie them, they are outside  
14 the scope of this extension. So that we think that's a  
15 pretty straightforward basis for that denial but we'll be  
16 spelling that out further in the order we'll issue.

17 Anything else, Mr. Hollar?

18 MR. HOLLAR: No, Mr. Chairman.

19 JUDGE KELLEY: Mr. Rochlis?

20 MR. ROCHLIS: Nothing from me, Mr. Chairman.

21 JUDGE KELLEY: Ms. Sanford?

22 MS. SANFORD: No, sir.

23 JUDGE KELLEY: Okay. That covers everybody then.

24 Okay. I guess that takes care of it. Thanks  
25 for your time this morning. Don't think of it as good-bye,

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1 but rather as auf Wiedersehen. Good-bye.

2 (Whereupon, at 11:05 a.m., the phone conference  
3 was concluded.)

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CERTIFICATE OF OFFICIAL REPORTER

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

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

(Shearon Harris Nuclear Power Plant)

DOCKET NO.: 50-400 OL

PLACE: WASHINGTON, D. C.

DATE: WEDNESDAY, DECEMBER 3, 1985

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

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