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 FACIL: 50-400 Shearon Harris Nuclear Power Plant, Unit 1, Carolina 05000400
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 EDDLEMAN, W. Eddleman, W.
 RECIP. NAME RECIPIENT AFFILIATION
 DENTON, H. R. Office of Nuclear Reactor Regulation, Director (post 851125)

SUBJECT: Responds opposing util 860304 request for exemption for
 emergency preparedness exercise requirements of 10CFR50,
 App E to conduct full participation exercise within 1 yr
 prior to issuance of OL.

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NOTES: Application for permit renewal filed.

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Harold R. Denton
Director
Office of Nuclear Reactor Regulation
USNRC
Washington DC 20555

Dear Harold Denton,

This is in reference to Carolina Power & Light's letter to you of 4 March, 1986, Serial NLS-86-053, requesting an exemption from the emergency preparedness exercise requirements of 10 C.F.R. 50, Appendix E, Section IV.F.1 to conduct a full-participation emergency preparedness exercise within one year prior to issuance of the first Operating License for full power and prior to operation above 5 percent of rated power, for the Shearon Harris Nuclear Power Plant ("Harris" or SHNPP).

First, the delay in operation of Harris is entirely due to CP&L's action in delaying the plant, which evidently stemmed from too-optimistic scheduling and inability to comply with NRC requirements in a timely manner. CP&L cannot claim that anything but their own failures and errors caused the delay.

Second, granting this exemption would violate my, and the general public's, right to a hearing under section 189(a) of the Atomic Energy Act, 42 USC 2239(a), which provides "...in any proceeding under this chapter for the granting, suspending, revoking or amending of any

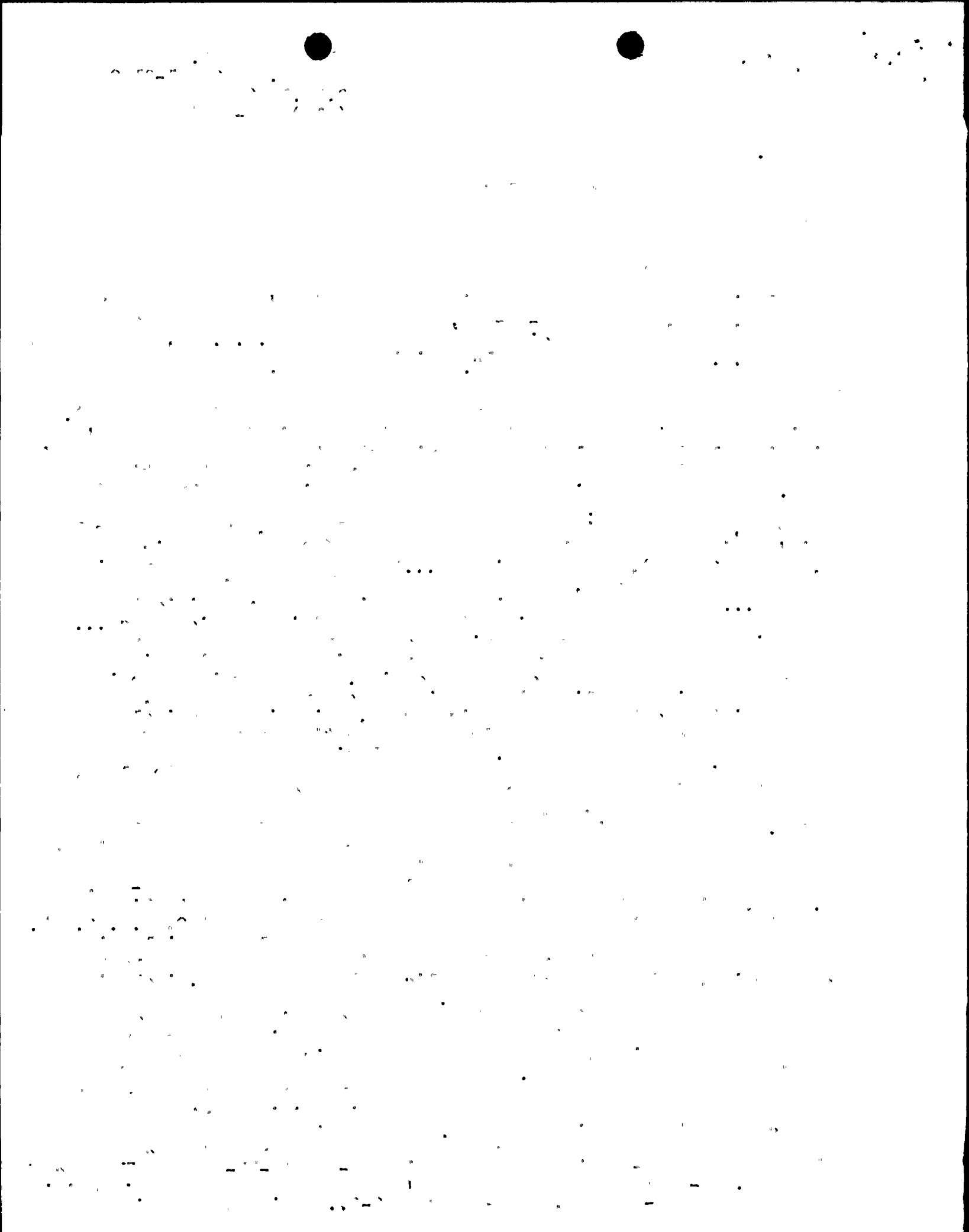
license ... and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees ... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding and shall admit any such person as a party to the proceeding." Since this exemption request is outside the licensing hearing procedures of the NRC, I hereby petition to intervene in this matter, which is effectively an amendment to the operating license application by request to remove a requirement of the NRC. The regulations governing the timing of full participation tests of emergency response plans are in place, and Applicants (CP&L for SHNPP) should not be allowed to change the regulations by this end-run, which is illegal as a way to avoid a hearing. My interest is that I both live and work within 30 miles of SHNPP and spend time in the EPZ while conducting my energy and environmental consulting work as well; these interests are more fully set forth in my petition to intervene in the Harris OL proceeding, Dkt 50-400, Feb. 1982, which is incorporated by reference hereing to establish my meeting the requirements to intervene under 10 CFR part 2, e.g. 2.714.

My interest in the proceeding is to rebut the false or misleading assertions of CP&L with regard to this license amendment by request for exemption, and to protect the public health and safety, including my own and that of others dear to me. I assert further that the NRC has no right to grant this exemption on any economic ground since the Atomic Energy Act under which the NRC operates requires NRC to put health and safety first, and no authorization is in that act for exemptions on grounds of cost.

Moreover, FEMA has not ~~examined~~ formally evaluated the corrections or corrective actions proposed for problems identified during the 1985 emergency planning exercise at SHNPP. FEMA officials have stated they could not evaluate the implementation of proposed corrective actions until the next full-participation exercise (5-87) (2-11-86 conference call in NRC Dkt. 50-400; see Wells Eddleman's Response to Summary Disposition on Contentions EPX-2 and 8, 2-18-86 at pp 2-3). Besides, there is no NRC

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finding that the Plans are adequate, and none can be made without FEMA findings which cannot be made without another full-participation exercise. (But even if NRC's ASLB approves the plan, the arguments in the first sentence of this paragraph, last page, remain valid and I stand on them).

CP&L's claimed "justification" for this exemption is specious or wrong in its aspect also. First, issuance of an operating license (10 CFR 50.57) is premised on compliance with the regulations. So by avoiding compliance with a regulation, that's a substantial amendment to the operating license. Moreover, the request does not meet part (a) of 10 CFR 50.12 -- the requirement that there be no ^{with} hazard. It doesn't say small hazard or minimal hazard, it says ("No") ^{with} hazard. There is a hazard in 2 senses, first that FEMA has not evaluated formally the "fixes" of deficiencies found by FEMA and others (including State of NC evaluators) during the past exercise, and second, there is no assurance the ability to respond is maintained, for nuclear emergencies, beyond one year. The rule so premises, i.e. that the length of time for which it can be assumed that the exercise remains a valid measure of emergency response for nuclear accidents is at most one year. [Exemption request, p.2]

Moreover, CP&L admits it is still working on 3 improvement items "with the goal of having them ready for NRC inspection in June 1986".

The NRC's mandate in the atomic energy act to put safety first means that CP&L cannot claim any hazard is a "due" hazard (as distinct from the "undue hazard" of 10 CFR 50.12(a)).

NRC may not base its decision on activities CP&L and others will propose to undertake (Exemption request p.2) either, because those have not happened and cannot be assumed to be successful. For example, in CP&L's training of teachers, it was reported that CP&L representatives told Wake County teachers they would never have to implement the emergency plan (i.e. that no accident that serious would happen, appears to be the thrust of the reported remarks). Moreover, only the "completed portions" of emergency plan training were found adequate by NRC. If training is not complete, how can the personnel be ready for a nuclear emergency????

Radiological workshops (Exemption request, page 3) are also not evidently complete, so there is still a lack of training.

As noted above, the corrective actions by the State (CP&L buries them in the end of the last paragraph on part b of page 3 of their exemption request) cannot be formally reviewed and evaluated by FEMA for effectiveness until the next full-participation test.


Much of the training in part (c) on page 3 has also not taken place.

The planned exercises of Lee County and CP&L (bottom of page 4) have also not yet taken place, apparently, and it is not clear how many, (or for CP&L drills, if any) offsite emergency response personnel will participate. The drills in parts (h) and (i), p.5, seem non-nuclear.

Hardship or costs: CP&L assumes the public interest is reducing their costs, but the increased cost is due to CP&L's own error in scheduling the original full-participation exercise and being unable to complete their nuclear plant in time. Moreover, the dollar costs mentioned are not that large, and NRC may not put costs above safety even if the costs were much larger (the costs not being large compared to the cost of nuclear delays created by CP&L, for example, which probably run over \$500,000 a day). The relief requested is NOT temporary (criterion (v), p.6) since the requirement only occurs prior to licensing. The exemption is therefore permanent unless CP&L flubs it again and has to have a 3d exercise.

Criterion (vi) p.7 is CP&L's silliest argument, I think. If the second exercise reveals new flaws, that isn't redundant at all, and is litigable under UCS v. NRC. If it reveals the same or similar flaws, it means corrective action failed and this is also litigable, not because it is "duplicative" but because the correction failed. UCS v. NRC requires a hearing on flaws found in the exercise, and CP&L must not avoid this requirement via "exemption" *Walter Edelman 812 Vancouver 25701-3152*

4/03/86


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