

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

12/18/78

In the Matter of

CAROLINA POWER & LIGHT COMPANY

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

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

APPLICANT'S RESPONSE TO AMENDMENT TO  
REQUEST FOR INTERVENTION BY MR. WELLS  
EDDLEMAN AND KUDZU ALLIANCE

1. On November 7, 1978, Mr. Wells Eddleman sent a letter to the Board requesting that the Kudzu Alliance and Mr. Eddleman be admitted as an intervenor in this proceeding. Mr. Eddleman's petition to intervene was opposed by Applicant in "Applicant's Response to Request for Intervention by Mr. Wells Eddleman and Kudzu Alliance," dated November 21, 1978. The NRC Staff also opposed admitting the Kudzu Alliance and Mr. Eddleman to the proceeding by "NRC Staff Response to Petition to Intervene filed by Wells Eddleman and Kudzu Alliance," dated November 24, 1978. Both Applicant and NRC Staff opposed the intervention as late, without any showing of good cause and without addressing any of the four factors required to be considered by § 2.714 of the Commission's Rules of Practice in the case of untimely petitions to intervene.



2. On November 27, 1978, Mr. Eddleman sent a letter to the Board in which he states that "Kudzu Alliance and I are seeking general intervenor status on Dockets 50-400 thru (sic) 50-403; and we further are seeking limited intervention in the hearings scheduled for December at Raleigh, and any further single-issue or specific-issue hearings as they arise." By letter of December 6, 1978, to Mr. Eddleman, the Board treated Mr. Eddleman's letter of November 27, 1978 as an amendment to his November 7, 1978 petition. A copy of both the Board's December 6, 1978 response and the November 27, 1978 letter from Mr. Eddleman were first received by Applicant on December 12, 1978. The Board stated in its December 6, 1978 letter that it would not rule on Mr. Eddleman's petition until the parties have an opportunity to respond to Mr. Eddleman's letter of November 27:

3. Applicant continues to oppose admission of Mr. Eddleman and the Kudzu Alliance as a party to this proceeding. Mr. Eddleman's letter of November 7, 1978, as amended by his letter of November 27, 1978, fails to carry the burden of showing good cause for failure to file on time. While Mr. Eddleman seeks to excuse the tardiness of the Kudzu Alliance in intervening in a timely manner because the "Kudzu Alliance did not exist on 23 June 1977", that fact in itself is not persuasive. We are told that the Kudzu Alliance "is an organization of several hundred persons living within 30 miles



of the [Harris] plant site (including one whose farm was partly taken for the site)." Presumably at least one of the members (the land-owner) and more likely a majority of the members of the Kudzu Alliance were aware of Applicant's plans to construct the Harris facility well before June 23, 1977. Mr. Eddleman presents no good cause for the present members of the Kudzu Alliance, who lived in the vicinity of the plant site as of the notice of hearing, for not having petitioned to intervene in a timely manner. The logic that follows from Mr. Eddleman's argument would be to allow any group of individuals to form an organization in order to avoid the requirement of timeliness in petitioning to intervene in Commission proceedings. Such a result would render a requirement for timeliness to be meaningless. Mr. Eddleman excuses his own tardiness in petitioning to intervene because he was not "a resident of this area" on June 23, 1977. However, Mr. Eddleman cannot turn back the clock due to his change in circumstance. Presumably in deciding to move to Durham, North Carolina, Mr. Eddleman had an opportunity to take into account Applicant's announced plans to build the Harris plant. Moreover, Mr. Eddleman has not addressed on behalf of himself individually, nor on behalf of the Kudzu Alliance which he claims to represent, the four factors required by § 2.714.<sup>1</sup> See e.g. Duke Power Company (Perkins

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<sup>1</sup> Those factors are:

Nuclear Station, Units 1, 2 and 3) ALAB-431, 6 NRC 460, 462 (1977); Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant) CLI-75-4, 1 NRC 273 (1975). Each of these four factors will be discussed in turn below.

4. Mr. Eddleman's letters of November 7, 1978 and November 27, 1978 raise a wide range of interests from cooling towers to rate increases. He has failed to demonstrate that there are not other means whereby his interests will be protected.

5. Mr. Eddleman fails to address to what extent his participation might reasonably be expected to assist in developing a sound record. Neither his letter of November 7, 1978, nor his amendment by letter of November 27, 1978, indicates any particular expertise or information which he or any of the members of the Kudzu Alliance could expect to bring to the proceeding. In fact, he specifically disclaims knowledge of legal formalities and is troubled by the financial burden of mailing copies of his filings to other parties in the proceeding. In

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(continued)

- (1) The availability of other means whereby the petitioner's interest will be protected.
- (2) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (3) The extent to which petitioner's interest will be represented by existing parties.
- (4) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.



considering the second factor, the Board can reasonably look to the expertise of the petitioner and the commitment of funds to be expended in the proceeding. Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 648 (1975); Duke Power Company, supra at 464.

6. Mr. Eddleman and the Kudzu Alliance have not shown why their interests will not be adequately represented, in any event, by the Conservation Council of North Carolina, a party to this proceeding. (According to NRC Staff counsel Charles Barth's letter of November 6, 1978 to Mr. Eddleman, the Kudzu Alliance is a member of the Conservation Council for North Carolina. Applicant believes, however, that this information may not be correct.)

7. It is clearly Mr. Eddleman's intent to broaden the issues in this proceeding. The jurisdiction of the Board is limited to the "management capabilities of CP&L to construct and operate the proposed Shearon Harris facility without undue risk to the health and safety of the public." Commission Order dated September 5, 1978. The majority of the issues raised by Mr. Eddleman have been finally decided and are outside the jurisdiction of this Board. With respect to those questions raised by Mr. Eddleman concerning Applicant's management capabilities, Mr. Eddleman has not even suggested that he might be able to participate meaningfully on the schedule for this





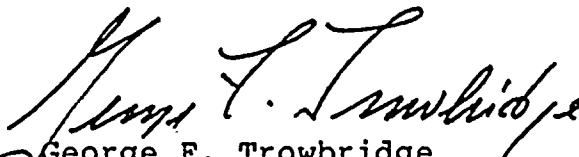
proceeding contemplated by the Board and by the existing parties. Admitting Mr. Eddleman and the Kudzu Alliance would inevitably result in considerable delay.

8. In his November 27, 1978 letter, Mr. Eddleman also seeks "limited intervention" in the hearings. The final paragraph of that letter appears to be a plea that the Kudzu Alliance, as citizens, "be heard before the NRC, its boards and its panels." Applicant would not object to the Kudzu Alliance or Mr. Eddleman participating in the proceeding by making a limited appearance as permitted by § 2.715(a). This may well be all Mr. Eddleman envisioned by seeking "limited intervention". The Board should reasonably limit the time permitted for making an oral statement and should limit the subject matter for such a statement to the single issue of Applicant's management capability. As permitted by § 2.715(a), Mr. Eddleman could also submit a written statement for the record.

9. For the reasons set forth above and in NRC Staff's Response of November 24, 1978, Applicant respectfully requests that the Board deny Mr. Eddleman and the Kudzu Alliance's petition to intervene, as amended. Applicant has no objection to the Board's affording Mr. Eddleman or the Kudzu Alliance the opportunity to make a limited appearance statement subject to the limitations discussed in paragraph 8 above.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

  
George F. Trowbridge  
John H. O'Neill, Jr.

Dated: December 18, 1978



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )

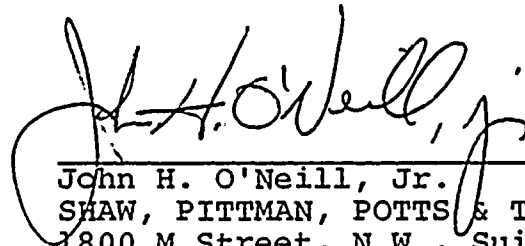
CAROLINA POWER AND LIGHT COMPANY )

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

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

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and the courts of the State of Maryland, hereby enters his appearance as counsel on behalf of Carolina Power and Light Company in proceedings related to the above-captioned matter.



John H. O'Neill, Jr.  
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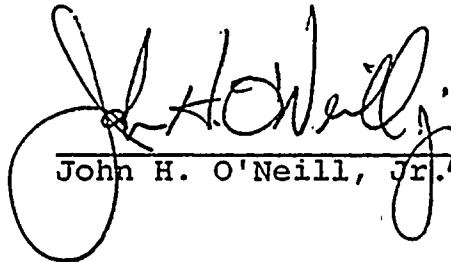
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing  
"APPLICANT'S RESPONSE TO AMENDMENT TO REQUEST FOR INTERVENTION  
BY MR. WELLS EDDLEMAN AND KUDZU ALLIANCE" and "Notice of  
Appearance" of John H. O'Neill, Jr., both dated December 18,  
1978, have been served upon each of the persons listed on  
the attached service list by mail, postage prepaid, this 18th  
day of December, 1978.

  
\_\_\_\_\_  
John H. O'Neill, Jr.

Dated: December 18, 1978





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