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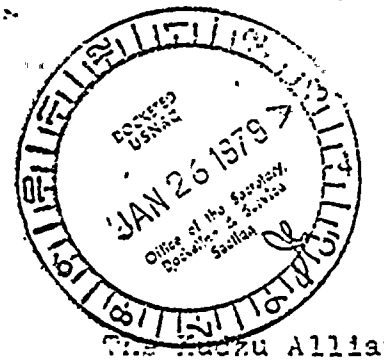

Dockets 50-400
thru 50-403

1/17/79 50-400-403

NOTICE OF APPEAL

The Kudzu Alliance and Wells Eddleman make this notice of appeal under 10 CFR 2.714a. We individually appeal all four of our petitions to intervene which were denied by the ASLB memorandum and order dated 10 January 1979. An appeal brief is attached. We ask that our communications of 16 October , 7, 27 and 29 ~~October~~ November 1978 and 4 January 1979 be considered as evidence supporting our appeal. The ASLB order was served by mail 11 January 1979 and received by Eddleman 13 January 1979. On each of the 4 petitions, we ask that the ASLB's denial be reversed, due to errors of fact, failure to consider certain evidence, failure to comply with legal requirements for consideration of various issues and facts, and other errors, misreadings, etc. as set forth in our appeal brief and/or as found in the record of the Board's decisionmaking and/or our communications with the Board.

Filed on behalf of myself and the Kudzu Alliance by the authority of its general membership meeting,

Wells Eddleman Wells Eddleman

Wells Eddleman
17 January 1979

17 January 1979

Dockets # 50-400
thru 50-403

To the ATOMIC SAFETY AND LICENSING APPEAL BOARD

Appeal brief re 10 January 1979 ASLB order denying petitions to intervene by

Kudzu Alliance and Wells Eddleman

Under 10 CFR 2.714a (a) and (b) Kudzu Alliance and Wells Eddleman individually appeal the ASLB order named above, contending that our petitions to intervene should have been granted in whole and/or in part based on these petitions, the facts, and the balance of the five factors of 10 CFR 2.714 (a) (1) and the factors of 10 CFR 2.714 (d).

Both the Kudzu Alliance and Wells Eddleman made two requests to intervene (27 November 1978 letter, p.2): general intervenor status on the entire "dockets 50-400 through 50-403", i.e. the whole Shearon Harris nuclear plant case; and[1] "intervention in the hearings" (on safe management capability) "scheduled for December in Raleigh.... For details see our letter of 7 November ..." (in that letter, paragraph 2 and c "issues" ns 1 through 12 relate to management capability; see 29 November 1978, bottom of page 1 for our assertion that all such issues are relevant to the remanded hearings. We are not certain if the ASLB has read that assertion. They appear to ignore it without cause.)

Thus there are four petitions, one by Eddleman for general intervention, and one by Kudzu for the same; and one by Kudzu for intervention in the safe management capability hearings, and one by Eddleman for same. (Order of listing is not significant here.) We appeal all four denials individually. So this is four appeals, similar but with some differences noted below.

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[1] Since at the time I wrote that letter the NRC staff had yet to comply with my request of 16 October 1978 to learn the procedures for intervention, I was not then aware of the special usage "limited intervention" has in 10 CFR 2. I meant an intervention in that specific hearing limited to management capability.

We had also filed amendments and clarification (4 January 1979) under 10 CFR 2.714 (a) (3) which we gather the ASLB had not received when it made its decision. Since no special prehearing conference or first prehearing conference had been scheduled or held to our knowledge when the amendments and clarifications were mailed 7 January 1979 (nor scheduled within 15 days thereafter, to our knowledge), we believe its contents should be considered in this appeal, and ask that it be made an appendix to this appeal. For the ASLAB's convenience should it not wish to consider things raised 4 January 1979, all citations from this document will be clearly labeled "4 Jan 79" or the like.

The following section applies to the 2 appeals for general intervention (requests to be made parties to the entire Harris plant case). Unless otherwise noted, material in this appeal will apply to all 4 appeals. Some parts apply to only 2, or only to Kudzu or only to Eddleman. Such will be noted as they are mentioned.

The ASLB takes the position we were requesting a full hearing on all issues. 29 Nov 78 page 2 we "appeal for reopening hearings ..." and we do raise many isses on which hearings could be reopened. But we have made no "demand" to my recollection. The ASLB then cites lateness and their lack of jurisdiction to grant such a full hearing (p.2) and denies our 2 petitions.

What we were requesting then, and are requesting now, with all respect to the ASLB's innocent misinterpretation of our requests, is that both Kudzu Alliance and Wells Eddleman be made parties to the entire Harris plant case, dockets 50-400 through 50-403, and allowed to participate in any future hearings on it, including any we may request. We explicitly state (29 Nov p,3) our intention to present new evidence (grounds for new hearing in 10 CFR 2), and that "We do not presume that ...full hearings will automatically be held on ..." points we bring up. If the ASLB has no authority to admit new evidence or reopen hearings,

we find perplexing their assertion (p.5 of their memo & order) that "the remanded issue is one raised by the Board itself ..."

If the ASLB is able to raise new issues itself, how can it lack jurisdiction to admit new evidence? If indeed the ASLB lacks jurisdiction to admit us as intervenors under 10 CFR 2.714 (d) and (a), and the ASLAB has such jurisdiction, then we request to be admitted as intervenors (both Kudzu and Eddleman) under that jurisdiction. If that jurisdiction is lacking in the ASLAB also, we respectfully request to be told where such jurisdiction is held, or if such jurisdiction does not exist.

We note that except for lateness, none of the 2.714 (a) (1) factors are addressed in this denial for want of jurisdiction. Yet, how can new information not be "late"? If it existed and was brought in before, it would not be new now. Thus we suggest the lateness argument is irrelevant or at worst a minor weight against intervention. The other factors not addressed, we presume are in our favor: new evidence is required in a sound record. One that excludes such evidence can rapidly become unsound, as we believe the original hearing record was and already has become on issues such as need for power and radiation protection and radioactive waste disposal and costs vs. benefits and other issues. The Board states (p.5 of memo & order) there are no other means to represent our interests; it also asserts (p.6) that our participation would not broaden the issues because the Board will not permit us to. (see our arguments 29 Nov. p.7 which the Board does not quarrel with.) Re delay on reopened hearings, we cannot delay what we wish to start. Note our "we'd Like them speeded up" (hearings) note at top of p.7, 29 Nov 78. Re extent to which our interest will be represented by existing parties, none of the existing parties were asking reopening, or proposing to ask for reopening, on further specific issues when we filed our petitions. Only one such petition on one issue has occurred since (CCNC re need for power) and we are not at all sure the ASLB knew of

this petition when they ruled. Re our ability to assist in developing a sound record, see 29 Nov 78 pages 5 and 6. We particularly believe the unsoundness of the record so far, on issues mentioned above, on issues mentioned in our petition (7, 27, 29 Nov) and in our 4 Jan 79 amendments, and other issues, shows the need for extensive probing and cross-examination which is exactly what we have proposed to do, in addition to presenting more witnesses. (29 Nov p.7 top, p.4 top, p.4 (1) and p.5 top where cross-examination is mistyped "corr-examination", and more information below is referred to; 7 Nov p. 1 2d paragraph as well as the detail in the list of issues that follows.) Thus we believe (and the Board does not contradict) that on the question of general intervention, all the 2.714 (a) (1) factors, with the possible exception of lateness in filing, are in our favor.

Moreover, these factors are to be balanced in addition to the factors of 2.714 (d). This wording in 2.714 (a) (1) implies that the (d) factors are the more important, or at least coequal with the five (a) (1) factors, yet the ASLB appears to consider none of the (d) factors. We believe this is a serious error with respect to all 4 petitions to intervene, not just the 2 we are discussing here. Since we put such voluminous information about our interests, rights, and the effects of nonprotection (by ASLB non-action) or insufficient protection on us and our interests into the 29 November letter to supplement 7 Nov p.1 and throughout the list of points, see e.g. point 7, point 8, point 9, point 10, point 11, point 12 etc, we must believe that the ASLB implicitly accepts that we have a very large and very extensive interest in the proceedings. They refer to a "manifested strong interest" on p.8 of their order. Yet they say they lack jurisdiction to let us protect that interest, and they do not weigh it, in their decision to deny us.[3]

See also 29 Nov 78 p.4 + 7 Nov p.1

[3] Since we did not have 10 CFR 2 available in November due to NRC staff's nonresponse, argument on decisions affecting our interests in 4 Jan 79. We think it obvious and stated that the whole case and all

10 CFR 2.714 (d) is explicit in saying the ASLB considering petitions to intervene "shall, in ruling on a petition for leave to intervene, consider the following factors, among other things" yet there is no explicit evidence that the ASLB considered the 3 factors listed in section (d) at all, unless the reference to"manifested strong interest in the subject matter of this proceeding (p.6)" is such. Then it is not balanced with the 2.714 (a) (1) factors. This point is also relevant to all 4 appeals, and is part of each. We believe that we have shown a particularly strong set of interests under 2.714 (d), and that if these factors were balanced in addition to the 2.714 (a) (1) factors even as ruled on by the ASLB, the weight of evidence would favor granting all 4 petitions to intervene, and each of them. Since the ASLB has not given evidence it has weighed these factors "in addition", we ask that our petitions to intervene, all 4, be granted on this ground alone (as well as other factors which will further strengthen our arguments, see below): that in failing to balance the section d factors which are strongly in favor of our petitions, the ASLB erred and struck an improper balance which denies our rights and interests.

(continued note 3 from p.4)
decisions yet made or to be made (including reversals of previous decisions on the basis of new evidence, directly affect us and our interests in one or more of the many ways we have cited 7 and 27 and 29 Nov., as well as 4 Jan 79. The Board certainly does not explicitly differ with these points. It seems to take for granted that all the 2.714 (d) items are in our favor, strongly and manifestly so. Yet is does not weigh these factors, which the 2.714 (a) (1) factors ruled on are "in addition to".

An interesting sidelight on this point is ASLB chair Ivan Smith's 6 Dec 78 letter to Eddleman, which states my letter of October 3 was responded to by Charles Barth of NRC staff on 6 November 1978. I did not receive this letter near that date, but on Nov 18, which implies that Barth's twist interchanged the dates 6 November and 16 November, since I never wrote anything to the NRC on 16 November. By Smith's chronology, there is a more than 30 day delay involved here. Taking the 31 October docketing date of my postcard mailed at least 2 weeks before 31 October, November 16 is the 17th day following. And nowhere in Barth's letter is there any response to request (3) of that postcard, to learn the procedures to intervene. Until about 14 December, when my Congressional Representative, Ike Andrews, got me a copy of 10 CFR 2, I was completely without the informational assistance requested on procedures. Smith acknolwedges this situation. Thus what we have done we did largely without any of the information requested of the NRC.

We further note that the ASLB ignored (as did chair Ivan Smith in his 6 Dec letter) our request of 27 Nov 78 (p.h ter) that full advertising notice of opportunities and procedures for intervention be made again and that further opportunities for intervention be granted. These requests are within the ASLB and its chair's jurisdiction: 10 CFR 2.714 (a) (1) clearly states that petitions are to be filed "not later than the time specified in the notice of hearing, or as provided by ... the presiding officer or the ASLB designated to rule on the petition or request, or as provided in 2.102 (d) (3)" Thus it seems within the power of either Smith or the 3-member ASLB to set another date for intervention. Given the large number of people Kudzu Alliance members

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(continued note 3 from p.4 and 5)
To the extent our arguments are in the wrong language, or the wrong form, NRC staff's unwillingness to respond must share in the blame with my lack of legal knowledge.

Moreover, the lateness of the response, by Smith's or my reckoning, means no problems to NRC staff, but may well have delayed our petitions and contributed to the possibility of delay in the (now scheduled for February 1979) hearings on safe management, to our detriment, by delaying our response. I received no guidance whatever on what to file or when or with whom, though I had requested "to learn the procedures for xxxxxxxx xxxx gaining intervenor status and the NRC rules governing the upcoming hearings." Entirely on my own initiative, I wrote the ASLB on 7 Nov 78; the day after I received (6 Nov) the Docketing and Service Section's post card saying my requests had been referred to the ASLB. I have responded promptly to everything filed in this matter except CP & L's 18 Dec 78 response (itself late), which I had intended to respond to when they filed the amended response they asked leave to file on 7 Jan 1979. In addition, on my own, I supplied 25 pages additional material dated 4 Jan and mailed by me on 7 Jan.

It appears here that other parties can be late as they wish, mix up dates, etc., even delay the hearings from November to February, and that's no harm. But for us, the rules are strictly enforced. We think this is unreasonable and the ASLB should either enforce its rules all the time for all parties, or change the rules.

meet (27 Nov 78) who do not even know that a nuclear plant is being built near their whoms, and who would and do oppose it, it seems well within reason to grant such a request. With operation now scheduled to begin in 1984, NRC staff advise me that operating license hearings would begin about 18 months before, i.e. about fall 1982. This is still nearly 3 years away, and if new intervenors and new points are admitted now, there will be ample time to deal with them without delaying CP & L's construction schedule. However, if the NRC continues to deny or limit the rights of such people to be represented (and they are not now, see below and to try to avoid new evidence and further points that are relevant, the potential for unsound record, denial of rights, errors and delays is greatly increased, because at some point those facts and rights and interests will take effect. The later that point, the more errors and unsound record will have been uselessly developed in the meantime, and the greater delay is possible when the issues and interests finally are represented. Therefore we believe it is in everyone's interest, the NRC's, the public's, ours, the other intervenors' and the applicant CP & L's, to expedite the bringing of all interested parties into the case. ~~Xhix~~ (29 Nov p.5 near bottom) We believe the ASLB should consider the real interests of huge numbers of people with extensive property, financial, life, health, safety, genetic and other (this is NRC ish order; we'd put life, health and safety first) interests in the Harris nuclear plant, who have never heard that intervention is possible for them. We believe that the ASLB should show exactly how and how effectively these citizens' interests are being represented before the ASLB (not very well, in our opinion, nor in much depth) before denying further opportunities to intervene. We ask the ASLAB to direct the ASLB to allow such further intervention and require the publicity requested 27 November, to protect our rights and the rights of millions of others, on the basis of this page and other information both above and especially, below re representation.

The arguments on the previous page, and back to page 4 at the paragraph "Moreover", apply to all 4 appeals, as does what follows. Further arguments on the management capability (last 2 appeals) follow that and will be noted.

Concerning the representation of our (and others') interests by other parties, we have it from the Conservation Council president and their attorney Tom Erwin that they do not and cannot represent our interests. If our interests are not represented, how many others are in the same situation? Moreover, phone conversation with the refreshingly frank Dennis Myers (sp?) of the NC Attorney General's office revealed that their plans for participation in the hearings are "minimal". Myers is sending a letter direct to the ASLAB (copy to Wells Eddleman) on his participation. He also stated that "you probably wouldn't consider that we are representing your interests", and on exploration it was apparent that I did not so consider. The AG plans to call no witnesses and did not indicate any particular issues the AG wishes to explore or investigate. This is not the strength of representation we believe our interests require, with all respect to Dennis Myers and the good work of the NC Attorney General's office including him.

Now the ASLB took no exception to our assertion that it was up to the NRC staff and CP & L to show that our interests "will be protected" by others. Yet, with no showing of fact whatever, the ASLB asserts our interests "will be represented " (not ~~xx~~ "may be represented") by CCNC and the NC Attorney General. This is contrary to fact. Not only is this a reversible error by the ASLB with respect to the petitions for intervention in safe management hearings. It is also an error which, when corrected, provides further strong support for our request that new intervention opportunities be made available and be well publicized. Thus, it is also relevant to our request on the previous page that the ASLB be instructed to provide such opportunities

and that it condition continued construction on the provision by CP & L of the extensive publicity and information on how to intervene, that we have requested 27 November. We point out strongly that in fact many valid interests, ours among them, are now being excluded from the Shearon Harris proceeding and the remanded safe management hearings. This is unjust, and to argue that our rights must end now so that litigation may end "sometime" even though continuing hearings in this case will occur years in the future, probably in 1982 on the present schedule, is ridiculous. The effect of this argument is "only those who regularly read the Federal Register and knew enough, in spite of the government and utility propaganda to the contrary, to recognize the dangerous potential of nuclear power to them, and who knew this instantly when or before the nuclear plant announcement was published, and who persist and resist all efforts to subvert them (see 29 Nov p.6 re CP &L alleged subversion of an interven or. We'd like this investigated by the NRC, if we can't raise the question ourselves now or later.) and who have the resources to do all this and take all that time, only these amazing persons have rights. All others' rights are to be sacrificed to the utility's need to have litigation end. All sales are final and there will be no refunds once the radioactive waste is created. Then you're stuck with it, all you people whose rights have been over-ridden, excluded and/or ignored." That may be a bit strong phrasing, but the effect is clearly there. We think it is compelling to reverse this effect while there is time to argue the issues, while construction has not advanced to the point of economic irreversibility as at North Anna with its infamous lied-about fault. The damage to the public interest and to the NRC's credibility and ability to perform its function (with its credibility diminished) also militate in favor of bringing in unrepresented interests now, or soon, and not much later or never. "Justice delayed is justice denied" indeed, but hearing denied is justice denied without delay. We believe prompt resolution of issues is best served by admitting more intervenors and

publicizing the opportunities to intervene and the procedures with at least the same thoroughness that CP & L devotes to making excuses for its nuclear plant problems, errors, explosions etc (see NRC Staff Appendix 1, testimony of Howard Wilbur etc. It is ironic that I read the whole NRC staff filing myself, CONC's attorney did not and depends on me to point to problem areas in it. Some representation of my and Kudzu's interests by others, isn't it?).

We also note that the ASLB (p.2) appears to consider such things as "Improper design, verification, construction and maintenance of the electrical systems at the Brunswick reactors, and the Robinson reactor", "Setting trip setpoints of instuments outside the safe operating ranges approved by the NRC for those instruments", "Failure to prepare safety analyses and proper plans for maintenance work performed at reactors", "Inadequate verification of pipe cracks ...", "Employment of unqualified and underqualified personnel as workers, supervisors and safety inspectors.. "Fitness, responsibility and reliability (or the lack of all these) on the part of the contractors ..." etc (7 November letter, pages 2,3,4 etc.) as irrelevant to safe management capability hearings. We cannot believe the ASLB intended such a position. Our repeated position has been that all the factors we have raised are relevant to safe management capability because only safe management capability assures that functions will be properly carried out. A car with excellent safety systems, in perfect repair, is readily wrecked by a drunk driver. Similarly the best safety systems and materials and controls in a reactor or any related system cannot of themselves prevent the sort of bungling that could lead to catastrophe. Management is responsible for the employees and their actions. Only safe management capability can prevent the sort of errors, slackness, lack of knowledge etc. that could leave disastrous gaps in whatever paper procedures, automatic systems etc. are available. Yet we are told only "contention 11" (point 11 in our letter) is relevant to

safe management capability. By implication, proper design, safety analysis, operation, maintenance, setting of safety instruments, use of properly trained and able personnel only, etc. would be irrelevant. We believe this must be an incredible oversight on the ASLB's part and ask the ASLB to reverse itself on this point and admit that numerous such factors are relevant to safe management capability and should be considered in the hearings. Failing that, we ask the ASLAB to direct the ASLB to a consideration of these points and others raised in our letters of 7, 27 and 29 November, for their inquiry during the hearings. The ASLB's intention "to actively participate in the development of the record" (and implicitly help represent our interests) (p. 5) is surely empty and ridiculous if the items listed above are considered irrelevant to safe management capability. Imagine: "Sure, their systems are built wrong, their people aren't qualified, their safety systems are set wrong, but their safe management capability is unchallenged." We just can't believe such an attitude on the ASLB's part could exist. If it does, we want it fixed. Indeed, the idea that any ASLB member would actually think these issues are irrelevant to safe management capability (if any indeed do) would be in our view grounds for suspending that person from decisionmaking. We hope this is all a misunderstanding and not the ASLB's real attitude toward safe management.

The following applies to the 2 petitions for intervention in the safe management hearings (as does what's immediately above if~~xxxxxx~~ not, as we hope, a misreading or misstatement by the ASLB or us or both):

On this set of petitions, the Board asserts jurisdiction (p.2) on the basis of our "contention 11" (point 11, Nov. 7). This point is actually about the tendency of legal limitations and bureaucratic procedures to frustrate the search for truth, giving as one example the suppression of Floyd Cantell's views. We point out that similar

questions (about suppression of evidence, making decisions on incomplete and dishonestly presented information) can be raised about the proper limits on citizen intervention, on information admitted in hearing records, on what information the NRC and applicant CP & L are required to make public, on proper construction procedures, etc. etc.

Out of all this the ASLB attempts to wring a raising of "the question of safe management capability." Now this question is raised at other places in our letters, which the ASLB says in a footnote on the same page (p.2) "we reviewed his correspondence ..." For example, on page 1 of the 7 November letter (point 11 is on pages 3 and 4), the second paragraph discusses safe management capability, specifically ax request to have CP & L management and operating personnel called to testify on "exactly how they have assured themselves of their ability to properly finance and safety operate nuclear power plants ... (and) their contention that they can safely finance and operate the Shearon Harris plant as proposed." The NRC staff memorandum on-legal issues asserts that the burden of proof of safe management capability is on the applicant CP & L. This is our xposition also. Here we are asking to cross-examine CP & L's "contention that they can safely finance and operate the Shearon Harris plant" and that isn't raising the issue of safe management? Maybe we didn't use the right legal term, but we can't figure out how someone reading that paragraph would doubt we were bringing up the issue of safe management. We say we can't predict all the issues, so we want to examine CP & L personnel to find out what they're up to.

Again on page 1 of our 29 November letter, at bottom, "We feel to the contrary that every issue we have raised is relevant to CP & L's ability to manage a 4-reactor nuclear power plant in a safe, environmentally sound manner without unacceptable risk to public health and private property" (ends on p.2). Then in addition we raise the question of

whether the NRC's regulatory actions are adequate to protect our interests and those of others. All these points are apparently ignored by the ASLB, as was our assertion of 27 November (p.5) that "we feel we have raised plenty of issues on 7 November" (e.g. the ones cited above in our question about what the ASLB considers relevant to safe management capability.*

We believe the ASLB's ignoring our contention that the issues we raise are all related to safe management, particularly those cited again in the last sentence by reference & directly, without denying our contention, is an error. This error relates directly to their balancing of 2.714 (a) (1) factor (iii), sound record, where they assert "we can see no indication that he has information or ideas which will make a significant contribution to the record. As noted above he seems to be greatly preoccupied with matters that do not even concern the Nuclear Regulatory Commission." (p.5)[4] If this means the NRC is not concerned with plant safety, we're amazed. If it means all the ideas about improper safety equipment, personnel training & qualification, construction, radiation safety etc. we have raised will not "make a significant contribution to the record," we are almost as amazed by that. Either assertion is ridiculous and contrary to the NRC's function and to good record searching. Moreover, we have stressed, 29 Nov p. 5, see also p.4 etc, our willigness and abilities in cross-examination of technical and management ~~xxx~~ information, our investigative experience, our ability to backstop other intervenors, etc. We have also mentioned

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[4] looking above, we find only "The petition raises many safety, environmental and economic issues, some within and some without the jurisdiction of the Nuclear Regulatory Commission." (p.1)

our desire to call witnesses at 7 November 2d paragraph, and on 29 November p.2 and p.5 and possibly elsewhere.) If all of this is "no indication that he has information or ideas" that will help develop a sound record, we can't help wondering if the record will be empty of all serious questioning and of many issues. Moreover, we have mentioned that information is available to us, and we have received information, from persons who fear for their identities to be revealed (they could, e.g. lose their jobs). We have said we can and will present such information. We didn't reveal what it was because we are cautious about throwing it into something we don't know the legal effect of. We might then have trouble protecting our sources. The ASLB may disbelieve our assertion that we have such information, but they evidently did not evaluate it at all. This is very curious because they have not questioned our truthfulness on any other point.

At any rate we believe the above in combination with our original letters pretty well overwhelms the ASLB's unsupported assertion of "no indication" of "information or ideas". Besides, we have mentioned many abilities we have, which can only be exercised through active participation. Maybe the ASLB does doubt our truthfulness, but we want to know where their evidence is if they say we cannot investigate, cannot cross-examine, cannot recognize technical errors, etc. We believe our ability to assist in developing a sound record is established, and the ASLB should have considered this ability a point in our favor. The ASLB is not omniscient within our knowledge, and even they and CP & L may benefit from some assistance in developing a sound record. As we pointed out 29 Nov p.5, the record so far developed by the ASLB and existing parties has been found unsound. This indicates they could have used a little help in the past, and here we offer it in some degree (to the best of our abilities) for the future. We think assistance in developing a sound record (not our ability to do it alone, 29 Nov. p.6 top) is a point in our favor and tips the balance in our favor. But we argue further:

The ASLB admits our contention that there are no other means whereby our interests will be represented (factor ii, 2.714 (a) (1)) (p.5) But then says "other parties will be representing the petitioners' interest in the remanded issue" (also p.5 at bottom) This seemingly contradictory assertion is in reference to factor iv, the "extent to which the petitioner's interest will be represented by existing parties." The ASLB makes no showing of what, if any, extent of representation any of these parties will ~~xx~~ give to our interests. Now we have specifically asserted that CP &L, the NRC, the NPC staff and even CCNC, the party most sympathetic to our views in these proceedings, cannot protect our interests (and that Wells Eddleman has no reason to believe they are.) (29 Nov. page 4, cited again on page 6 item (3) on extent of representation) The ASLB, with no showing of facts as to how or to what extent our interests will be protected, asserts that all of this must be false. We take strong exception and note our 29 November note that the language is "will be represented," not "may be represented". We have conducted our own further inquiry into the facts of how much representation of our interests we will get. Charles Barth, NRC staff attorney, states quite properly in his letter to Eddleman in December that he cannot advise us how to represent our interests. We asserted as much on 29 November, that CCNC or NRC could properly take no more interest in us than a public defender can in one of a multitude of poor clients. That is not sufficient extent of representation for us. We repeatedly ask to be allowed to represent ourselves for this reason and others. Now the ASLB chair, Ivan Smith, says (6 Dec. 78 letter to Eddleman) "The Board may be of very limited help to you at this point because it is our responsibility to remain impartial ..." again we quite agree and have never had a desire that the ASLB conduct itself in a partial manner (see 4 Jan 79 note about this letter and my sloppy wording). However, we think an adversary proceeding is the best way to get at the truth, and we never heard of an impartial adversary making much headway

for anyone's cause, much less ours. Therefore we very much respect the Board's impartiality, and desire its impartiality. What we want is the right to be partial for ourselves, and the extent of our own desires for representation, not the extent of someone else's desires to represent us.

As for CP & L, the extent to which they may represent our interests is doubtless minimal (mostly inadvertent), since they have other interests (including their own credibility, plus billions of dollars) to far outweighk our interests as they affect CP & L. Our dealins with CP & L have been cordial in the Southern manner (though they've said things about us that the Hatfields probably said about the McCoys). However, they have been of very little help and have at times been quite obstructionist, often to the xpoint of sounding incompetent, as when people call up to ask what their peak is on a given day or for a given year and from office to office the runaround goes, saying they don't know and can't find out, when for publication in the Raleigh News & Observer, they have it available the same day (especially if it went up). In sum, we think it's reasonable to expect zero representation of our interests from CP &L, as we see our interests (and who else can determine them for us?).

Now CCNC President David Martin says CCNC isn't and can't adequately represent the Kudzu Alliance (including Wells Eddleman, who asked him). Moreover, Eddleman phoned Dennis Myers of the NC attorney general's office. Myers was refreshingly frank in my opinion and told me the AG's office was a party, he believed, because they had been a party before, when someone else was handling the case. Myers does not plan extensive participation in the safe management hearings and has no plans to call witnesses. He is sending a letter saying this last direct to the ASLAB, he tells me. So we can expect a minimal extent of representation from the NC AG (Myers said we probably wouldn't

think he was representing our interests as we would like. We favor his efforts, but we think we need go much farther, call witnesses, probe in depth, provide additional information etc, to adequately represent our interests). And we can expect very little from CCNC, as David Martin has said. We have also discussed this case briefly with CCNC's attorney and he gives no indication CCNC will raise or use any of our concerns. They may or may not, they are independent of us, and that's fine with us. But we want representation that is real, not minimal, negligible or zero. Thus we think we have shown that the extent to which our interests will be represented by the existing parties in the hearings is very small at most. Thus we think this point is also strongly in our favor in our petitions to intervene. Again, the balance of factors is tipped even further in our favor. All 3 2.714 (d) factors are in our favor, as we have noted above. We cannot think of any action of the ASLB, or any inaction, that does not affect our interests in one or more ways, and we think this is obvious given the extent, amount and depth of our interests and concerns.

The ASLB holds that it will not allow the issues to be broadened, therefore this factor is in our favor, they say (p.6) but not enough to tip the balance in our favor. Based on our reading above, the balance including this help is very strongly in our favor, almost unanimously so.

Then the ASLB says that admitting us now would either delay the case as we prepared our case, or add nothing if we have no case. We have plenty of points to make our case with, and if granted intervenor status may then file contentions. However, we think the ASLB itself, which could have ruled as early as 29 December 1979 by our count, has made this point more against us by its own action (delay), and this delay is not of our doing and should not be held against us. We also note that CP & L requested an extension of time to present its case, which was granted, allowing other parties the same extension. We see no reason to grant

delays to CP & L and refuse them to others, such as us. We have requested that hearings be speeded up, not delayed, so that we can get on with preparing our case (29 Nov p.7 top). We also have noted the delay from November until now February (we still have received no notice of the date of the hearing, though both NRC staff and the Secretary of the Commission are supposed to notify us. We have not caused any of this long delay to our knowledge. We raised that question and the ASLB has not found us the cause of any delay as yet. Moreover, we have pointed out the tradeoff, that we could at maximum add only slightly to the delays already created. The ASLB does not quarrel with that position in its memorandum and order, saying only that our participation would not speed up the hearing (p.6). That much is obvious. Given the large delays for which others are evidently responsible, including NRC staff preparing their filings and CP & L requesting extension of time, we think our tendency to delay is rather modest and not significant. The ASLB assigns no weight to this factor in their judgment, but the language "add nothing to the orderly and timely disposal" indicates that any weight against us is small. If it were large, the would have said "hinder" or "impede" or "prevent" or "threaten" or something like that, "the orderly and timely disposal" of the issues. Thus we feel this point may be against us, but only to a minor extent and an insignificant weight by the ASLB's own language.

Finally there is the matter of being latex in filing. We do not dispute the facts of when we filed (16 October 1978). The NRC staff did not provide us with the information about NRC procedures we requested then, until December 13 or thereabouts (recieved December 19 or 20 as I recall). We presume they forgot. Apparently their and CP & L's lateness is OK -- look at all the late LPPs CP & L has filed. We do still believe we have good cause for filing late -- the publicity and information about intervention given to the public was completely inadequate in 1972 and 1977; moreover our filings are not intended to circumvent deadlines (4 Jan 79

on this last point). The ASLB asserts that "litigation has to end sometime" and we agree. But that does not mean it must end now, particularly since further hearings on the plant for the operating license will most likely be held in late 1982 on the present (ill-advised) construction schedule, nearly 3 years in the future. It is in CP & L's, the NRC's and the public's interest to resolve the issues we want to raise now, and not on appeal or further remand because this hearing too may be an inadequate record due to suppressed evidence, incomplete investigation or any other of the problems we have mentioned in our letters to the ASLB and this brief. This, admitting us to intervene, is timely resolution of the issues.. Stalling us off does not make the issues we raise go away. It prevents their exploration now and leaves them for later resolution. That means further delay. Such delays later on could mean a later end to the whole litigation process -- the "sometime" at which "litigation has to end" and about which the ASLB is so concerned on CP & L 's behalf. We are particularly concerned that large investment in the plant may later impede proper resolution of safety and other financial, environmental, health etc issues because the weight of the dollar will decide the case. Those issues can receive a fairer hearing early on when not so much money is invested in the plant. Again, it is in CP & L's and the public's interest to have the earliest resolution, since should the decision be against the plant, the loss will be less the earlier the decision is made, and should the decision be for the plant, progress is earlier assured and uncertainty reduced. New information such as we wish to present, and investigation such as we wish to conduct, should also be dealtx with by the ASLB etc as appropriate, as early as possible for the same reasons.

We think this is good cause and it is a point we have raised before. Intervention denied is controversy delayed, to everyone's detriment. There remains the Board's version of "Mr. Fiddleman's theory"

(p.4) "The Board does not regard this reason as good cause" (it does not consider our other reasons, e.g. those above) because " ... there could never be finality to this administrative proceeding because the proceeding would always be subject to additional litigation as new ... new residents move into the area or new organizations are formed in the future ..." Now that isn't quite what we said. We asserted that not being a resident was good cause for late filing because how could Wells Eddleman have predicted the future of where he would be, looked in the Federal Register every day, and filed on the basis he might possibly move there some day? The petition of such an intervenor who might be in the area at some time would be ridiculously weak. Thus new residents are faced with catch-22 logic: If you move and try to intervene, you're too late; if you have the incredible prescience to file before you move on the possibility you might be there, you lose because your interest isn't clear enough. (See also Jan 4 79 on nuclear catch-23)

Moreover, how can a nonexistent organization file to intervene before it exists? The catch-22 is even more obvious here. What ASLB would accept a petition from a non-existent organization to intervene? So new organizations lose also. But there is John Speights, Kudzu member now, who tried to intervene in 1971 and was denied. (Footnote in ASLB order/memo p.3) Kudzu Alliance can be seen as a direct outgrowth of the sort of bureaucratic steamroller that denied Speights in 1971. Individuals who prefer to represent themselves (the ASLB lists Speights' attempt to intervene as fact. See his letter, appended to 29 Nov 78 letter to ASLB), cannot. So some individuals, including one denied in this way, form an organization. Now the organization tries to intervene, but it's said to be too late. Catch-24. Petitioners assert that we are not required to be perfect, certainly not any more than CP & L is, and probably much less since we aren't entrusted to

safely manage so much dangerous radioactive waste, such potentially hazardous systems as nuclear power plants etc (and we don't want to!). Now if the NRC can excuse or ignore CP & L's error and let them delay 4 (make it 5?) years in getting their evacuation plan for H.B. Robinson 2 together in proper form and properly set up, or let them keep screwing up their radiation protection, or keep having inadequate QA (see Long & Dance, etc. in the NRC staff filing), and go on their merry way with ringing assurances that they are "acceptable" (NRC staff filing panels), we think we should get similar consideration. Since the NRC utility rating system is set up so "acceptable" is the rating below "below average" for reactors, and there are no failing categories in the ratings, it would be fair of us to ask that we never be allowed to fail either. But we won't. All we ask is that if our lateness is not "below average" but is either considerably worse than that, or in any degree better, it be labeled "acceptable" and this point be found in our favor.

Further, as we've said, an end to controversy sometime does not require and end now. Indeed no such end is in sight. Petitions to reopen on need for power are going to the NRC in this case. Thus we are here in plenty of time to have our questions resolved over the next few years without getting in the way of hearings (e.g. on license) that must be held later anyway. Moreover, there is nothing in 10 CFR 2.714 that asserts that lateness bars intervention, even should no good cause for lateness be found (and we think we have good cause, see above). What is required is a balancing of 5 factors in addition to the 3 of 2.714(d) which the ASLB did not balance. We feel the vast majority of the factors, and the majority of their weight as we believe them and as assigned by the ASLB, are in our favor. Therefore we ask that the ASLB be reversed and Kudzu Alliance and Wells Eddleman admitted as intervenors in the remanded proceeding. We request the earliest possible ruling on our requests, to avoid further delay not of our doing.

We also believe that in no way should any or all of CP & L's interests ~~xxxxxxgx~~ including a prompt litigation, outweigh all of our rights, abilities, interests, abilities to assist in developing a sound record, information, desire for representation, and all the other things we mention in our favor above and in our letters to the ASLB.

This is especially so when the litigation will continue for years with or without us, and has been on an unsound basis at least partly (recognized by NRC remand order) in the past with the participation of all existing parties. We cannot hurt the soundness of the record: ~~xxx~~ we will do all we can to aid it. We believe the public interest and CP & L's interest and other interests really favor our admission now in all 4 of these petitions which the ASLB denied, because the new information and issues raised should be resolved as soon as possible for the good of all parties and all interested persons.

Filed on behalf of myself and the Kudzu Alliance respectively for our petitions for general intervention, and for our other 2 petitions (one each) for intervention in the remanded safe management hearings, in the case of Kudzu's petitions by authority of the Kudzu Alliance general membership meeting,

Wells Eddleman

Wells Eddleman
17 January 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
CAROLINA POWER AND LIGHT COMPANY	)	Docket No.(s) 50-400
	)	50-401
(Shearon Harris Nuclear Power	)	50-402
Plant, Units 1, 2, 3, and 4)	)	50-403
	)	
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
29th day of Jan 1979.

Peggy T. Downing
Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
CAROLINA POWER AND LIGHT COMPANY	)	Docket No.(s) 50-400
	)	50-401
(Shearon-Harris Nuclear Power Plants, Units 1-4)	)	50-402
	)	50-403
	)	

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