

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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August 31, 1983

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Glenn O. Bright
Dr. James H. Carpenter
James L. Kelley, Chairman

In the Matter of

CAROLINA POWER AND LIGHT CO. et al.
(Shearon Harris Nuclear Power Plant,
Units 1 and 2)

Dockets 50-400 OL
50-401 OL

ASLBP No. 82-468-01
OL

5 factors re Eddleman Contentions on Site
EMERGENCY PLAN and Detailed Control Room
Design Review (DCRDR)

Under the Board's 7-15-83 Order (at 3) I now address the 5 factors of 10 CFR 2.714(a)(1) per CLI-83-19. Generic responses are provided for the control room (DCRDR) and site emergency plan (SEP) contentions, since all of them are the same with respect to their dependency on the documents filed (CP&L site Emergency Plan for Harris, and DCRDR information filed 1 June 1983, respectively), being unable to be specified (if made at all) before those 2 documents were available, and being filed with requisite promptness once the respective documents were available. The 5 factors are also similar for each set. They are similar to those filed 7-29 re the DES (see Bd. 8-18-83 at 4-5).

THE FIVE FACTORS

1. Good cause for failure to file on time: For the site emergency plan, such is established in the Board's 9-22-82 Order at 8 (deferring contentions until availability of documents, then giving 30 days to withdraw, amend or make new contentions based on new information in the documents), as modified by the Board's 5-27-83 Order at 24. My site emergency plan (SEP) contentions were filed

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within 30 days of the site plan in my hands, allowing for weekends. The Board 5-27 extended the time for such filings to 6-24-83 so such filing is surely timely before then. (May 2 1983 SEP filing) (5-27 Order, p24)

Those DCRDR contentions filed January 1983 also were filed within 30 days of my having the relevant documents (DCRDR document from CP&L and NUREG-0737, Rev.1) in my hands, under the Board's 9-22-82 Order at 8. See also 2-24-83 conference transcript at 510, lines 10-19. Those filed July 2, 1983, are in conformity with the Board's 5-27-83 Order at 25 (30 days from receipt on June 2 of the document), and just for being sure I got an extension of time to that date OKd by Applicants, Staff, and Judges Bright and Carpenter orally, Judge Kelley being out of the country at that time.

2. Availability of other means whereby my interest will be protected: For the DCRDR there are no other means. Dr. Wilson is not pursuing his former contentions in this area. The Staff has made no response to my contentions, so I infer they agree with Applicants. There is no way to assure that any Staff review "will protect" my interests. If the Staff agrees with Applicants that these contentions shouldn't be admitted, they are not protecting my interests.

For the site emergency plan (SEP), Staff review still not done is the only other means to protect any of the public interest. I cannot be assured that any such review "will protect" my interest. NRC Staff has certainly failed to protect my interests in other ways, and its record of coverups re quality assurance failures (e.g. at Zimmer) and failure to catch serious design flaws (e.g. at Diablo Canyon) and approval of emergency plans even FEMA says are unworkable (e.g. at Indian Point) leaves me much in doubt that they can be depended on here. The rule says "will protect" not may protect.

→ (NOTE re SPDS -- see 7-29 certificate of negotiations: Applicants still have not complied with NUREG-0737 Rev 1 since they don't show how in detail the SPDS will be integrated into the DCRDR. They admit they haven't got the SPDS yet, so they can't show that. Ref Eddleman 132F

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3. The extent to which petitioner's participating may reasonably be expected to assist in developing a sound record.

For both the SEP and DCRDR, if there is no contention, there is no record. Without a record, there cannot be a sound record. "Safe control room design is a vital issue in protecting public health and safety, as the TMI-2 accident shows. Good site emergency planning is necessary to allow the possibility of retaining control of the Harris nuclear plant during an accident. These issues are clearly very important to this proceeding, where the main issue is "should the Harris plant operate?"

In addition, I am familiar with human factors analysis and the design and operation of complex computer systems; I am familiar with planning for complex situations (e.g. an emergency at a power plant). I can conduct technical cross-examination, conduct discovery, and perhaps obtain expert witnesses. My ability in these last areas is established by my filings already in this proceeding. An adversary hearing is important to determining the facts in this case properly. On these issues (DCRDR and SEP), there will be no adversary proceeding if no contentions of mine are admitted, since I'm the only intervenor still pursuing contentions in these areas.

Factor 4. The extent to which petitioner's interest will be represented by existing parties. As noted above re factors 2 and 3, no other parties represent my interests in DCRDR or SEP. Applicants oppose them. Staff opposes them or remains silent.

Factor 5. The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Since the DCRDR contentions are safety matters, and the SEP contentions concern emergency planning, they cannot delay the proceeding if admitted now. Discovery on safety doesn't open until

January 1984, and the emergency planning discovery will not open until after the safety and management capability hearings are over.

As to broadening the issues, no DCRDR issues will since the control room design (per Eddleman 132, etc) has been at issue since the beginning of the proceeding. So has emergency planning, in many contentions, e.g. Eddleman 56 and 57).

In sum, all 5 factors weigh in favor of admitting all these contentions: The Board's Orders and unavailability of documents are good cause for filing late; the matters have been at issue throughout the proceeding and will not delay it; no other parties will represent my interest in these matters and there are no other means whereby my interest in them will be represented; my participation will assure a record and assist in developing a sound record.

ALAB-687 factors: All the DCRDR contentions and SEP contentions are wholly dependent on the DCRDR and NUPEG-0737 Rev. 1, or on the SEP. Contentions 142-144 inclusive depend on NUPEG-0737 Rev 1 and cite it. Thus the first factor is in favor of all contentions.

Without clairvoyance, I could not have advanced these contentions with specificity to the documents (which are their basis: lack of SEP compliance with NUPEG-0737 sections, or failure of a document at such a part to comply with applicable rules of NUPEG-0737 on DCRDR).

Thus the second ALAB-687 factor favors the contentions. See CLI 83-19 at 12-13, for corroboration.

Requisite promptness in tendering the contentions once the documents exist is established above re Factor 1, timeliness. I have complied with the Board's Orders in this respect, and filed within 30 days of having the documents in my hands. (See 9-22-82 at 8). Thus all factors favor admission of the DCRDR and SEP contentions.

NOTES: Eddleman 152 is withdrawn; 155 is not; 5 factors re Eddleman 161 were addressed 5-14-83 and Staff concurs they are adequate.

see other note, bottom of p. 2, re SPDS, please.
I respectfully submit that the above shows CLI-83-19 is fully complied with for my DCRDR, SEP and 161 contentions.

Wells Eddleman