

January 21, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
CAROLINA POWER & LIGHT COMPANY)	Docket Nos. 50-400 OL
AND NORTH CAROLINA EASTERN)	50-401 OL
MUNICIPAL POWER AGENCY)	
)	
(Shearon Harris Nuclear Power)	
Plant, Units 1 and 2))	

APPLICANTS' RESPONSE TO INTERVENOR WILSON'S RESPONSE
TO HUMAN FACTORS DESIGN EVALUATION REPORT FOR
THE SHEARON HARRIS I CONTROL ROOM

Dr. Wilson's proposed contention IV(B) contends that Applicants' Detailed Control Room Design Review (DCRDR) will not correct certain unspecified human engineering discrepancies. Dr. Wilson recognized that proposed contention IV(B) contained insufficient specificity to present a proper contention, but requested that his contention be admitted conditionally pending an opportunity to review Applicants' DCRDR Report.

In its Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference), dated September 22, 1982, at 33, the Board ruled that contention IV(B) is deferred, and that Dr. Wilson would be permitted to file new or amended contentions once the DCRDR Report was issued. The Board ordered that

intervenor must review documents relating to deferred contentions within 30 days of receipt of such a document and serve with the Board and parties a pleading advising as to which previously filed contentions are (1) submitted for ruling as they stand, or (2) withdrawn, or (3) revised on the basis of new information. The Board also ordered that intervenors submit any new contentions based on new information in such documents within the same 30-day time frame. Order at 8.

By letter dated December 7, 1982, a copy of the DCRDR Report was forwarded to Dr. Wilson. By a single page pleading dated January 6, 1983, denominated "Response to Human Factors Design Evaluation Report for the Shearon Harris I Control Room by Intervenor Wilson," Dr. Wilson asserts that the DCRDR Report is insufficient in itself as a source of information for formulating contentions regarding human engineering aspects of control room design. Dr. Wilson states that examination of other documents referenced in the DCRDR will be necessary for him to evaluate the DCRDR. He, therefore, requests that contentions which may be formulated at an unspecified later date, based on specific information that is presently only summarized in the DCRDR, should not be subject to the rule for late filings.

Applicants oppose Dr. Wilson's request and move for dismissal of deferred contention IV(B).

Dr. Wilson now has had available to him for over thirty days a detailed evaluation of human factors engineering relating to the Harris Unit 1 Control Room Design. This

evaluation was based on a review of all available design documentation and a survey of the Harris simulator located at the Harris Energy and Environmental Center. See DCRDR Report at iii. The Report provides an evaluation of human engineering requirements, specifications, the main control board design, the annunciators, the work space, systems operations analysis, and emergency procedures. Results of the evaluation and certain recommendations are set forth in the DCRDR Report.

Dr. Wilson virtually admits that he cannot establish a particularized contention regarding human factors engineering and the Harris Control Room Design. In effect, he is stating that until he has an opportunity to examine additional detailed information regarding the control room design, i.e. until he has completed discovery regarding this contention, he is unable to formulate any contentions.

As the Appeal Board has made abundantly clear in a number of decisions, discovery is not available to intervenors as a means to formulate their contentions or to establish the basis with requisite specificity underlying a generalized statement of concern. In Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. _____ (August 19, 1982), the Appeal Board reaffirmed its prior holding in ALAB-107,^{2/} which rejected claims by petitioners there that specific contentions

^{2/} Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 A.E.C. 188 (1973), aff'd, CLI-73-12, 6 A.E.C. 241 (1973), aff'd sub nom. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974).

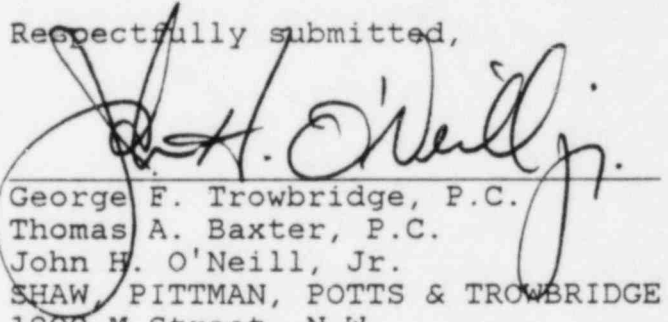
should not be required until they have been permitted to avail themselves of discovery procedures. The Appeal Board reaffirmed that "[N]either Section 189a of the [Atomic Energy] Act nor Section 2.714 of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff." ALAB-687, supra, Slip Op. at 13.

Applicants admit that the Control Room Design has not been finalized. Not all of the procedures have been drafted and not all of the recommendations set forth in the DCRDR Report have been implemented. Nevertheless sufficient information is clearly provided in the DCRDR Report to permit the formulation of contentions. If Dr. Wilson has specific concerns or advice to offer with respect to human factors engineering in the Control Room Design, the time to express such concerns is at the time for filing contentions. Dr. Wilson's role as an intervenor is not to serve as a final reviewer of the Applicants' plans. Rather he is given an opportunity to litigate those issues about which he has a specific concern and regarding which he can establish he has a sound basis with requisite specificity to support that concern.

If, upon reviewing information that becomes available at some time in the future, Dr. Wilson were able to establish a contention that, while untimely, is (1) wholly dependent upon the content of a particular document not previously available; (2) dependent on the public availability of the document so

that it could not have been advanced with any specificity (if at all) prior to that document's availability; and (3) tendered with the requisite degree of promptness once the document is accessible for public examination, his contention cannot be rejected as untimely. ALAB-687, supra, Slip Op. at 16. In the interim, Dr. Wilson has admitted that there is no basis for Contention IV(B). He has failed to comply with the Board's Order of September 22, 1982 and has failed to provide any justification for his inability to reformulate his contention based on the detailed information provided in the DCRDR Report. Contention IV(B) must therefore be dismissed by the Board.

Respectfully submitted,



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