

September 9, 1983 DOCKETED
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
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 "5 FACTORS RE
EDDLEMAN CONTENTIONS ON SITE EMERGENCY PLAN
AND DETAILED CONTROL ROOM DESIGN REVIEW (DCRDR)"

Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency hereby briefly respond to Intervenor Wells Eddleman's pleading of August 31, 1983, denominated: "5 factors re Eddleman Contentions on Site EMERGENCY PLAN and Detailed Control Room Design Review (DCRDR)" ("August 31 Pleading").

In Mr. Eddleman's January 8, 1983 pleading -- "Wells Eddleman's Motion Concerning DCRDR Information" (which proposed certain new contentions on Applicants' Detailed Control Room Design Review (DCRDR)), Mr. Eddleman also proposed three "emergency planning contentions" which he claimed were "based on NUREG-0737, Rev. 1 of 12-17-82." These three proposed contentions relate to meteorological monitoring (Contention 142), emergency response facilities (Contention 143) and emergency and security personnel

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levels (Contention 144). Applicants opposed these three new contentions, inter alia, because they were untimely. See "Applicants' Response to Intervenor Wells Eddleman's Motion Concerning DCRDR Information and Proposed New Contentions," dated January 25, 1983, at 7-10. Subsequently, Mr. Eddleman purported to address the five lateness factors for Contention 143 only. See "Wells Eddleman's Response to 1983 Updated DCRDR Including Revised and New Contentions," dated July 2, 1983, at 8. Applicants noted Mr. Eddleman's failure to address the untimeliness of Contentions 142 and 144 in their pleading of July 29, 1983 and committed to address Mr. Eddleman's arguments regarding timeliness of Contentions 142, 143 and 144 after Mr. Eddleman's August 31, 1983 filing on the five lateness factors. See "Applicants' Response to Proposed Contentions on the Detailed Control Room Design Review (DCRDR) Proffered by Intervenor Wells Eddleman," dated July 29, 1983, at 21.

In arguing good cause for his untimely filing, Mr. Eddleman has done no more than state "Contentions 142-144 inclusive depend on NUREG-0737 Rev. 1 and cite it." August 31 Pleading at 4. With respect to Contention 143, Mr. Eddleman argues it is timely "because failure to comply with the requirements of NUREG-0737 Rev. 1 could not possibly be alleged before the document existed." July 2, 1983 pleading, supra, at 8.

In fact, Contention 142 does not refer to Supplement 1 to NUREG-0737 and, on its face, is not dependent on it.

While Contentions 143 and 144 refer to Supplement 1 to NUREG-0737 -- in asserting Applicants fail to comply with certain requirements -- the issues raised in those contentions are certainly not "wholly dependent upon the content of [that] particular document."^{1/} The staffing levels, which Mr. Eddleman alleges in Contention 144 Applicants fail to meet, were originally promulgated in NUREG-0654 in January 1980. While it is much more difficult to determine precisely what Mr. Eddleman is alleging in Contention 143 (since the requirements he asserts Applicants fail to meet are set forth on 17 pages), in general these requirements were also previously published. In any event, Mr. Eddleman has not even attempted to show that the issues raised in Contentions 142, 143 and 144 are "wholly dependent upon the content of" Supplement 1 to NUREG-0737. Given the considerable information published on emergency response facilities prior to publication of Supplement 1 to NUREG-0737, Mr. Eddleman certainly has not demonstrated diligence in uncovering and applying "all publicly available information to the prompt formulation of contentions."^{2/} Accordingly, he has failed to

^{1/} Duke Power Co., et al., (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 469 (1982), vacated in part CLI-83-19, 17 N.R.C. (June 30, 1983). The above quoted text is the first prong of a three part test which the Commission held "constitutes a reasonable and useful test of the good cause factor as applied to late-filed contentions based solely on information contained in institutionally unavailable licensing-related documents." CLI-83-19, supra, slip op. at 9. While it is not clear that Supplement 1 to NUREG-0737 is a "licensing-related document" as contemplated by the Commission in CLI-83-19, nonetheless applying the ALAB-687 three-part test to Supplement 1 to NUREG-0737 in the context of Contentions 142, 143 and 144 demonstrates the utter failure of Mr. Eddleman to meet the "good cause" test for late-filed contentions.

^{2/} CLI-83-19, supra, at 11.

show good cause for the late-filed contentions and thus had no justification for his untimeliness.

For this reason alone, and for the reasons set forth in Applicants' January 25, 1983 Response, Contentions 142, 143 and 144 must be rejected.

In a cryptic note found on the bottom of page 2 of his August 31 Pleading, Mr. Eddleman states: "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." This apparently is a reply of sorts to Applicants' Response to Contentions 132B and 132F. Applicants' July 29 Response, supra, at 7-8, 17-20. Applicants have committed to install a Safety Parameter Display System ("SPDS") that meets regulatory requirements. Id. at 7-8. Mr. Eddleman has not pointed to any requirement that Applicants show in detail how the SPDS will be integrated into the DCRDR. He has not provided any basis for a concern that Applicants will not meet all regulatory requirements in the installation of the SPDS. Certainly, the NRC Staff will have ample opportunity to ensure that the SPDS system is properly installed in reviewing the SPDS safety analysis which is to be submitted by Applicants in September 1983. Id.

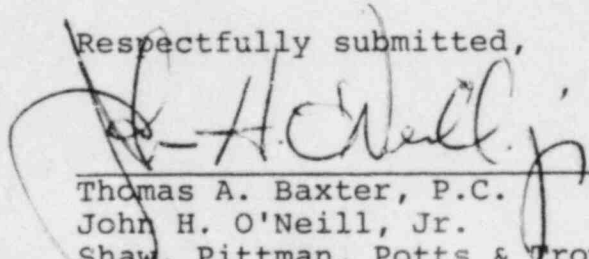
Recently the Atomic Safety and Licensing Board in Duke Power Co., et al., (Catawba Nuclear Station, Units 1 and 2), Memorandum and Order (Ruling on Applicant and Staff Motions for Summary Disposition of Contentions 16 and 19 and on Palmetto Motion for Sanctions)

(September 6, 1983), slip op. at 10, had occasion to address the argument often raised by Mr. Eddleman that a commitment by the Applicants to implement detailed NRC regulatory requirements is not enough. The Board in Catawba ruled:

Although the implementation of the specific requirements is not yet complete, the Applicant has committed to accomplish this implementation before receiving an operating license. Such commitments about future performances are appropriate for many requirements in the operating license context, so long as there is a reasonable assurance that they will be met.

Mr. Eddleman's only argument is that since the SPDS has not yet physically been received on site, Applicants cannot show that it will be properly installed and integrated into the control room design. Mr. Eddleman must show more -- that there is some basis for his naked allegation that Applicants will not meet regulatory requirements. This he has not done with respect to the SPDS contention and, for that matter, with respect to all contentions relating to Applicants' DCRDR.

Respectfully submitted,


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Dated: September 9, 1983

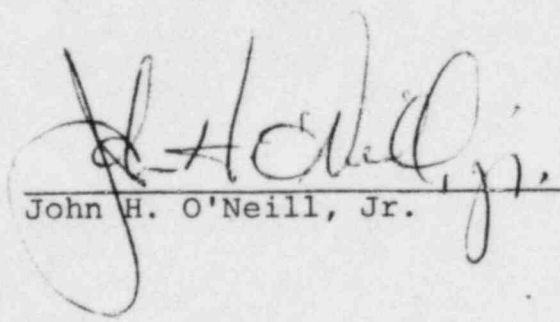
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to
"5 Factors re Eddleman Contentions on Site Emergency Plan and
Detailed Control Room Design Review (DCR)" were served this
9th day of September, 1983 by deposit in the U.S. mail, first
class, postage prepaid, to the parties on the attached Service
List.



John H. O'Neill, Jr.

Dated: September 9, 1983

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