

October 12, 1983

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'83 OCT 14 P3:41

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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' REPLY TO INTERVENOR  
WELLS EDDLEMAN'S MOTION FOR LICENSE  
CONDITION ON SPENT FUEL STORAGE

Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency hereby reply to Intervenor Wells Eddleman's "Motion for License Condition on Spent Fuel Storage at Shearon Harris Plant," dated September 27, 1983. For the reasons set forth in detail below, Mr. Eddleman's Motion must be denied.

I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

On September 1, 1983, Applicants filed their "Motion for Summary Disposition of Intervenor Wells Eddleman's Contention 64(f) (Spent Fuel Shipping Cask Pressure Relief Valve)."<sup>1/</sup> The NRC Staff supported Applicants' Motion in its "Response in Support of Applicants' Motion for Summary Disposition of Wells Eddleman's Contention

1/ Contention 64(f) reads as follows:

There is undue risk to the health and safety of the public since pressure valves on the casks used for spent fuel transport are likely to unseat (e.g. the 4 removed from service by GE in 1981) or the plastic components of such valves could and would melt in a fire less severe than the test basis for spent fuel casks. Open the valve and out comes the coolant -- radioactive contamination -- followed by fuel overheating & melting, Cs-137 boiling.

64(f)," dated September 26, 1983. On September 27, 1983, Mr. Eddleman filed his response to Applicants' Motion for Summary Disposition. Mr. Eddleman failed to allege a material fact as to which there is a genuine issue; instead, he filed the instant Motion for License Condition. Mr. Eddleman states that he is willing to withdraw Eddleman 64(f) "provided the Board will simply hold [Applicants] to their word and impose the following license conditions on storage and possession of spent fuel from other nuclear plants at Harris:

1. No spent fuel shall be shipped to or from Harris in any cask which uses a pressure relief valve containing Rulon components, such as the Target Rock 73-J.
2. No spent fuel shall be shipped to or from Harris except as a "dry, shipment", i.e. one cool enough to travel with no more than 1 ft<sup>3</sup> of water in the spent fuel containing cavity."

## II. ARGUMENT

- A. This Board Lacks Jurisdiction to Adjudicate Contentions Regarding Issues of Health And Safety in Transporting Spent Fuel From Carolina Power & Light Company's Licensed Facilities to the Harris Plant in Shipping Containers Already Licensed by the NRC; Thus the Board Lacks Jurisdiction to Condition the Harris Plant Operating License with Restrictions on Shipping Cask Components or the Mode of Spent Fuel Shipments

Applicants argued in their Motion for Summary Disposition that this Board lacks jurisdiction over issues of health and safety involving spent fuel transportation. Motion for Summary Disposition at 9-11. Applicants renew that argument here.

Mr. Eddleman seeks to restrict Carolina Power & Light Company's ("CP&L") use of its spent fuel shipping cask as a condition to the Applicants' Harris Operating License. Clearly the appropriate license to condition, if there were reason to question the safety of spent fuel shipments in a particular cask, would be the cask license itself. In fact the IF-300 spent fuel shipping cask owned by CP&L does not permit "wet" shipments of spent fuel. However, the Board has no jurisdiction over the IF-300 spent fuel shipping cask license. This Motion must be denied for lack of jurisdiction.

B. The License Conditions Proposed by Mr. Eddleman  
Are Neither Appropriate in the Circumstances of  
this Proceeding Nor Necessary to Protect the  
Public Health and Safety

The Commission's Regulations provide that the Commission will issue a license "in such form and containing such conditions and limitations ... as it deems appropriate and necessary." 10 C.F.R. § 50.50. The license conditions proposed by Mr. Eddleman are neither appropriate nor necessary.

The proposed license conditions would restrict spent fuel shipments "to and from Harris." Contention 64(f) is restricted by Mr. Eddleman to "any casks used to transport spent fuel to Harris." "Wells Eddleman's Response to Applicants' Interrogatories (Third Set - End 1st Round) (Eddleman 64(f) and 67)," dated May 6, 1983, at 2. Thus, the license condition proposed is broader than the scope of the underlying contention. Furthermore, with respect

to shipments of spent fuel from Harris, such shipments are the responsibility of the Department of Energy ("DOE") pursuant to a contract with Applicants for disposal of spent nuclear fuel and/or high level radioactive wastes. Motion for Summary Disposition at 9, note 6. It would be inappropriate to limit the casks or mode of transport which DOE might use in the future for spent fuel shipments.

A proposed license condition would restrict spent fuel shipments to "dry shipments." This condition is unnecessary. The Certificate of Compliance for CP&L's IF-300 cask now only permits dry shipments. Any amendment to a Certificate of Compliance for a spent fuel shipping cask or a license for a new cask must be approved by the NRC after a safety review. CP&L has no present intention of shipping other than "dry" for the foreseeable future, nor is CP&L pursuing an amendment to ship spent fuel wet in its IF-300 cask. An alternative pressure relief system would have to be developed and approved by the NRC before such an amendment could be obtained. Applicants do not reject the possibility that some years in the future new casks of improved design will be developed and licensed. Motion for Summary Disposition at 8, note 4. For the present, however, a license condition is neither necessary nor appropriate. Nor should a license condition be attached that would restrict the use of state-of-the-art advances in technology in the future.

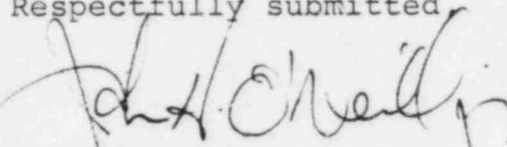
Mr. Eddleman's proposed license condition would prohibit that the use of any "pressure relief valve containing Rulon components, such as the Target Rock 73-J." While CP&L has agreed to remove the Target Rock 73-J pressure relief valve from its IF-300 cask because of the failure of the Target Rock valve to meet certain test specifications, there has been no fact established that "Rulon components" generically are suspect for any reason. Mr. Eddleman had argued that "plastic components" of pressure relief valves would melt. The NRC Staff's expert, Richard H. Odegaarden, stated that Rulon valve seats would not melt at the maximum valve temperature expected in a fire. "Affidavit of Richard H. Odegaarden Regarding Summary Disposition of Wells Eddleman Contention Number 64(f)," at 4. This fact was not controverted by Mr. Eddleman. There is no factual basis for a license condition that would prohibit the use of any Rulon component in a pressure relief valve.

### III. CONCLUSION

Contention 64(f) is moot. The Board lacks jurisdiction over the issues of health and safety involving spent fuel transportation. In any event, Mr. Eddleman's proposed license con-

ditions are overly broad, unsupported, unnecessary, and inappropriate.  
Mr. Eddleman's Motion for License Condition must be denied.

Respectfully submitted,



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Dated: October 12, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of all the documents listed on the attached Document List were served this 12th day of October, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties on the attached Service List.

  
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John H. O'Neill, Jr.

Dated: October 12, 1983

DOCUMENT LIST

1. Letter to the Board from Dean D. Aulick, dated October 12, 1983, with attached Errata Sheet
2. "Applicants' Motion for Summary Disposition of Joint Intervenor's Contention II and Wells Eddleman's Contention 37E (Health Effects)" (corrected copy)
3. "Applicants' Interrogatories and Request for Production of Documents to Joint Intervenor (Fourth Set)"
4. "Applicants' Reply to Intervenor Wells Eddleman's Motion for License Condition on Spent Fuel Storage"



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