

December 29, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of)

CAROLINA POWER & LIGHT COMPANY)
AND NORTH CAROLINA EASTERN)
MUNICIPAL POWER AGENCY)

(Shearon Harris Nuclear Power)
Plant, Units 1 and 2))

Docket Nos. 50-400 OL
50-401 OL

APPLICANTS' REPLY TO BOARD
QUESTIONS OF NOVEMBER 30, 1983
(SPENT FUEL SHIPPING CASK)

By its Memorandum and Order (Ruling on Motions for Summary Disposition of Eddleman Contentions 29/30, 64(f), 75, 80 and 83/84), dated November 30, 1983, the Board granted Applicants' motion for summary disposition of Eddleman Contention 64(f) (Spent Fuel Shipping Cask Pressure Relief Valve). Mr. Eddleman had failed to allege a material fact as to which there is a genuine issue in his response to Applicants' Motion for Summary Disposition; instead, he had filed a "Motion for License Conditions on Spent Fuel Storage at Shearon Harris Plant," dated September 27, 1983. Mr. Eddleman proposed that the Board "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 Target Rock 73-J.

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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.³ of water in the spent fuel containing cavity."

Eddleman's Motion for License Condition at 1-2. In its November 30 Memorandum and Order (at 9) the Board requested that the NRC Staff, Applicants and Mr. Eddleman answer the following questions to assist in its consideration of the proposed license conditions:

If Applicants at a later date seek to amend the cask license to either transport wet shipments and/or use pressure relief valves of the type at issue,

1. Will Mr. Eddleman be entitled to notice and an opportunity for a hearing on the proposed amendment in a cask licensing proceeding?
2. If not, would the NRC Staff and Applicants commit to providing Mr. Eddleman notice and an opportunity for a hearing on this issue in that proceeding?

Regarding the first question, the Commission's regulations do not provide for notice in the Federal Register or an opportunity for a hearing with respect to an amendment to a Certificate of Compliance for Radioactive Materials Packages issued by the NRC, Office of Nuclear Material Safety and Safeguards. See 10 C.F.R. Part 71, Subpart D. A Certificate of Compliance is not a "License" for purposes of 10 C.F.R. Part 2.^{1/}

Applicants are troubled by the implications of the second question. Applicants continue to assert that this Board has no jurisdiction to adjudicate contentions regarding issues of

^{1/} The definition of "License" is "a license or construction permit issued by the Commission." 10 C.F.R. § 2.4(i). Thus, 10 C.F.R. § 50.50 refers to issuance of "licenses and construction permits" for production and utilization facilities, while 10 C.F.R. § 71.39 distinguishes among "a license, certificate of compliance, or other approval" for radioactive materials packages.

health and safety in transporting spent fuel from Carolina Power & Light Company's ("CP&L") licensed facilities to the Harris Plant in shipping containers already approved by the NRC. See "Applicants' Motion for Summary Disposition of Intervenor Wells Eddleman's Contention 64(f) (Spent Fuel Shipping Cask Pressure Relief Valve)," dated September 1, 1983, at 9-11.

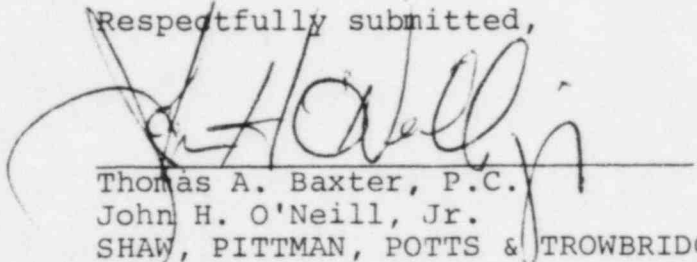
Furthermore, any proposed amendment to the Certificate of Compliance for the IF-300 cask would most likely be requested generically for all four casks presently in use and not just for the cask owned by CP&L. Applicants are certainly not in a position to bind General Electric Company (owner of the other three IF-300 casks) to procedures for amending the Certificate of Compliance.

Even if CP&L requested an amendment to its cask Certificate of Compliance in the future to ship spent fuel in "wet" shipments and/or with a Target Rock 73J pressure relief valve in its IF-300 casks, it would not necessarily involve any shipments to the Harris Plant. The Board has agreed with Applicants that the scope of Contention 64(f) (and presumably the scope of any proposed license condition) concerns only the transport of spent fuel to the Harris Plant. See Board's November 30 Memorandum and Order at 8. Thus even if this Board has jurisdiction over the issue of spent fuel cask shipments of spent fuel to Harris, that jurisdiction would not extend, for example, to an amendment to the Certificate of Compliance for the IF-300 cask to permit wet shipments from CP&L's Robinson Plant to its Brunswick Plant or any shipments other than to Harris.

In any event, Applicants are not in a position to commit to providing Mr. Eddleman an opportunity for a hearing where the Commission's regulations make no such provision. Under the circumstances, neither can Applicants justify volunteering to notify Mr. Eddleman of any possible future application for an amendment to CP&L's Certificate of Compliance for the IF-300 cask.

Applicants note that Mr. Eddleman is not without an opportunity to raise this issue before the Commission should he choose to do so. Mr. Eddleman has available to him the procedures provided by the Commission in 10 C.F.R. § 2.206.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read 'T. Baxter', is written over a horizontal line.

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Dated: December 29, 1983

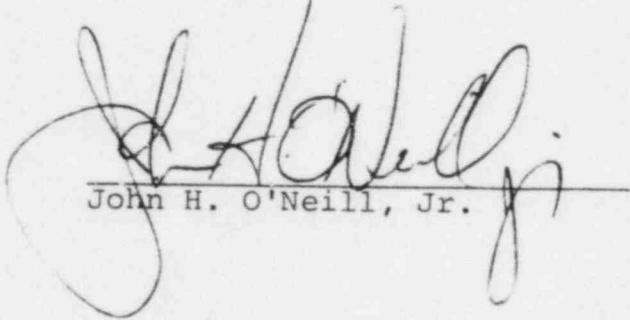
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Reply to Board Questions of November 30, 1983 (Spent Fuel Shipping Cask)" were served this 29th day of December, 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.

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