

DOCKETED April 13, 1984
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
SECRETARY
RECORDING & SERVICE
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In the Matter of)

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

Docket Nos. 50-400 OL
50-401 OL

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

APPLICANTS RESPONSE TO WELLS EDDLEMAN'S
MOTION FOR LICENSE CONDITIONS

On March 23, 1984, Wells Eddleman filed his Response to Summary Disposition on 83/84B and Motion for License Conditions. In that document, Mr. Eddleman stated that he would have no objection to withdrawing Contentions 83/84B "[g]iven that no Cape Fear River water would be used in cooling Harris I, and given that the levels of carcinogenic chemicals from Harris I cooling were held to the levels specified in Applicants' motion for summary disposition"

In conjunction with withdrawing Contention 83/84B Mr. Eddleman seeks to have two conditions imposed on Applicants' operating license as follows:

1. That no water from the Cape Fear River be used in cooling Harris I; no water withdrawn from the Cape Fear shall be added to the Harris cooling lakes at any time.
2. That the levels of carcinogenic chemicals resulting from Harris I operation be held to the levels specified in Applicants' affidavit and motion re summary disposition on Eddleman 83/84B, such levels to be verified periodically (quarterly, e.g.) by both physical testing and biological monitoring.

Applicants oppose both of these proposed license conditions as either unnecessary or contrary to law or both.

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Proposed Condition 1

In the Affidavit of William T. Hogarth in Support of Summary Disposition of Eddleman Contention 83/84B (Hogarth Affidavit), Dr. Hogarth states that Unit 2 of the Shearon Harris Nuclear Power Plant has been cancelled. This means that "the Cape Fear make-up structure also will not be completed since Cape Fear River water is not needed as make-up for one-unit operation of the Shearon Harris Plant." Hogarth Affidavit at 2. Since the Cape Fear make-up structure will not be constructed, it will not be possible for water from the Cape Fear River to enter the Harris reservoir. Accordingly, it is not possible for Cape Fear water to be used in cooling Harris I nor will Cape Fear water be added to the Harris cooling lake.

Thus, Mr. Eddleman's first proposed condition has already been met. The lack of physical structures, or plan to construct such, to accomplish what Mr. Eddleman's seeks to guard against (i.e. introduction of Cape Fear water into the reservoir) means that Mr. Eddleman's condition would impose a limitation which could not be violated in any event. Regardless, before an intake structure could be built, necessary regulatory approvals and permits would be required, which would provide adequate opportunity for public input at the time any actual proposal to introduce Cape Fear water were made.

Proposed Condition 2

In his second proposed condition, Mr. Eddleman seeks to restrict "carcinogens" resulting from SHNPP to levels specified in the Applicants' Motion for Summary Disposition of Contention 83/84B and accompanying affidavits, and to verify by periodic physical testing and biological monitoring. It is important here to note that the carcinogens to which Mr. Eddleman is referring will possibly be formed, but only as a result of the chlorination of SHNPP cooling water. Affidavit of James A. Fava and Hans Plugge in Support of Summary Disposition of Eddleman Contention 83/84B (Fava Affidavit) at 6. Those substances which may be formed will be drastically below

Environmental Protection Agency water quality criteria, and will present no human health risk. Fava Affidavit. In addition, concentrations of haloforms or halogenated phenols at the edge of the NPDES 200-acre mixing zone are predicted to be so minute, Fava Affidavit at 8, that they could not be reliably measured.

The Hogarth Affidavit indicates the very low levels of chlorine predicted in the SHNPP discharges. Discharge limits (which Applicants are well within) are placed on both free available chlorine and total residual chlorine which, in keeping with the purposes of the NPDES permitting process, are set at levels to maintain water quality standards and to protect the public health and welfare. Free available chlorine, the form of chlorine most likely to react with chemical constituents in a water body, is not expected to be discharged at all and concentrations of total residual chlorine will be very small (1.0 ppb in the NPDES 200-acre mixing zone). Hogarth Affidavit at 3. Both free available chlorine and total residual chlorine are also subject to weekly monitoring by the NPDES Permit for the Harris Plant. Final Environmental Statement (FES) at G-4. Thus, monitoring of the substances necessary for formation of the chemicals which Mr. Eddleman is concerned about is already required. To place a further limiting condition on the Harris operating license as Mr. Eddleman proposes would be unnecessary.

It is also doubtful whether as a matter of law such a condition could actually be imposed by the Licensing Board. The Clean Water Act (33 U.S.C § 1251, et seq.) specifically provides at Section 511(c)(2) that

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to

(A) Authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act or the adequacy of any certification under section 401 of this Act;

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit any

effluent limitation other than any such limitation established pursuant to this Act.

33 USC 1371(c)(2).

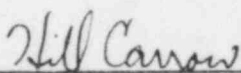
The Licensing Board cites this very language in its Memorandum and Order (Ruling on Wells Eddleman's Contentions on the Staff Draft Environmental Statement), dated August 18, 1983 ("August 18 Order") at pages 11-12, and concludes in its Memorandum and Order (Ruling on Motions for Summary Disposition of Eddleman Contentions 29/30, 64(f), 75, 80, and 83/84), dated November 30, 1983 that "the Federal Water Pollution Control Act (FWPCA) [i.e. the Clean Water Act], which governs the issuance of NPDES permits, mandates that no agency may impose any other effluent limitation as a condition precedent to a license, 33 U.S.C. § 1371(c)(2), and that the NRC provided in a policy statement at 40 Fed. Reg. 60120 how this law is to be applied in nuclear power plant licensing proceedings."¹ Id. at 22. To grant Mr. Eddleman's motion to restrict the chemicals potentially resulting from Harris I operation to certain levels would constitute a further effluent limitation on the Plant. Applicants therefore contend that Mr. Eddleman's second proposed license condition is both contrary to NRC policy and to federal law.

In conclusion, Applicants oppose the imposition of the two license conditions proposed by Mr. Eddleman in his Motion. The first condition would place a limitation on an act which is not physically capable of accomplishment without major construction. That construction has already been cancelled. Such a condition is unnecessary, would

¹This is set forth in the August 18 Order at 12 and provides in pertinent part that the "NRC will not require adoption of an alternative pursuant to NEPA in order to minimize impacts on water quality and biota that are subject to limitations or other requirements promulgated or imposed pursuant to the FWPCA." In this regard, it should also be noted that intake structures are also subject to EPA and State jurisdiction under § 316(b) of the Clean Water Act and any proposal to take water from the Cape Fear would require an amendment to the NPDES permit in addition to U.S. Corps of Engineers review.

serve no useful purpose, and has no justification. The second condition seeks to require restrictions and monitoring where restrictions on discharges and monitoring of those discharges already exist. As such, it is also unnecessary. This condition would further constitute an additional effluent limitation which the NRC is barred by law and by its own policy from imposing.

Therefore, Applicants renew their Motion for Summary Disposition of Eddleman Contention 83/84B without license conditions.



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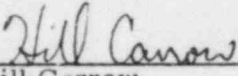
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Wells Eddleman's Motion for License Conditions" were served this 13th day of April, 1984 by deposit in the United States mail, first class, postage prepaid, to the parties on the attached Service List.

This the 13th day of April, 1984.



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