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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF EDDLEMAN 67 (WASTE DISPOSAL)

Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency ("Applicants") hereby move the Atomic Safety and Licensing Board, pursuant to 10 C.F.R. § 2.749, for summary disposition in Applicants' favor of Eddleman 67. For the reasons set forth herein, Applicants respectfully submit that there is no genuine issue as to any fact material to Eddleman 67, and that Applicants are entitled to a decision in their favor on Eddleman 67 as a matter of law. This motion is supported by:

1. "Applicants' Memorandum of Law in Support of Motions for Summary Disposition on Intervenor Eddleman's Contentions 64(f), 75, 80 and 83/84," dated September 1, 1983;

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2. "Applicants' Statement Of Material Facts As To Which There Is No Genuine Issue To Be Heard on Eddleman 67"; and

3. "Affidavit of George H. Warriner" and Attachments A and B affixed thereto.

I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Eddleman Contention 67 was proposed by Mr. Eddleman on May 14, 1982 and admitted by the Board on September 22, 1982. "Supplement to Petition to Intervene by Wells Eddleman, pro se," dated May 14, 1982; "Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference)," Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069, 2102 (1982). Applicants objected to the admission of Eddleman 67. "Applicants' Objections and Requests for Clarification Relating to the Board's Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference)," dated October 15, 1982. On January 11, 1983 the Board overruled Applicants' objection on the grounds that no low-level waste disposal facility existed in North Carolina and, at that time, no regional compact had been formed that would allow Applicants' access to a facility outside of North Carolina for the purpose of disposing of wastes generated at the Harris Plant. "Memorandum and Order (Addressing Motions For Reconsideration and Clarification of the Board's Prehearing Conference Order)," dated January 11, 1983. As admitted by the Board, Eddleman 67 is stated as follows:

There is no assured disposal site to isolate the low-level radioactive wastes produced by normal operation at Harris from the environment and the public until said waste, which includes highly toxic (radiotoxic) and long-lived nuclear wastes such as Sr-90, Cs-137 and Pu-239, has decayed to virtually zero levels of radioactivity and radiotoxicity. The lack of such an assured disposal site, endangers the health and safety of the public under AEA and this condition having changed since the CP stage (and CP FES) due to the refusal of SC, NV and WA states to continue to accept unlimited amounts of low-level radioactive wastes; and by the enactment by Congress of laws allowing states to form compacts for low-level rad-waste disposal and to exclude wastes such as SHNPP low-level radioactive wastes from states not members of such compacts. Sea disposal is not assured because EPA's proposed rule to allow disposal of low-level radioactive wastes in the oceans has not been enacted, and if enacted may be overturned by legal action or act of Congress.

Since the time the contention was admitted, Applicants have propounded discovery requests to Mr. Eddleman and Mr. Eddleman has propounded discovery requests to Applicants and the Staff. "Applicants' Interrogatories and Request For Production of Documents to Intervenor Wells Eddleman (Third Set)," dated April 7, 1983; "Wells Eddleman's General Interrogatories and Interrogatories on Contentions 29, 37B, 64F and 67 to Applicants Carolina Power & Light et al. (Second Set)," dated April 22, 1983; "Wells Eddleman's General Interrogatories and Interrogatories on Contentions 75, 80, 83/84, 64(f) and 67 to Applicants Carolina Power & Light Company, et al. (Third Set)," dated July 2, 1983; "Wells Eddleman's Interrogatories to NRC Staff (First Set)," dated May

6, 1983; "Wells Eddleman's & Joint Intervenors' Interrogatories to NRC Staff (3rd Set)," dated March 26, 1984.

All discovery requests have been answered (except in cases where objections were made and sustained by the Board). "Wells Eddleman's Response to Applicants' Interrogatories (Third Set-End 1st Round) (Eddleman 64F and 67)," dated May 6, 1983; "Applicants' Responses to Wells Eddleman's General Interrogatories and Interrogatories on Contentions 64 and 67 to Applicants Carolina Power & Light Company, et al. (Second Set)," dated May 27, 1983; "Applicants' Answers to Wells Eddleman's General Interrogatories and Interrogatories on Contentions 64(f), 67 and 80 to Applicants Carolina Power & Light Company et al. (Third Set)," dated July 29, 1983; "Applicants' Supplemental Responses to Wells Eddleman's General Interrogatories and Interrogatories on Contention 67 to Applicants Carolina Power & Light Co., et al. (Third Set)," dated November 23, 1983. "NRC Staff Response to Interrogatories Dated May 6, 1983 Prepounded (sic) by Wells Eddleman and Joint Intervenors," dated June 24, 1983; "NRC Staff Response to Interrogatories Dated March 28, 1984 Propounded by Wells Eddleman and Joint Intervenors," dated April 17, 1984.

Therefore there are no outstanding discovery issues and Eddleman 67 is ripe for summary disposition at this time.

II. DISCUSSION

A. Introduction

Generally stated, Eddleman 67 concerns the availability of disposal facilities for solid low-level radioactive wastes. Applicants have stated that they intend to dispose of the low-level wastes generated at the Harris Plant pursuant to the plan implemented by the Southeast Interstate Low-Level Radioactive Waste Management Compact (the "Southeast Compact" or the "Compacc"). At the time Eddleman 67 was proposed, Applicants stated that it was their position that the present availability of the Barnwell County facility in South Carolina coupled with the reasonable expectation that North Carolina would enter into a regional compact, as authorized by Congress, provided adequate assurance that low-level wastes generated at the Harris Plant could be disposed of without jeopardizing the public health and safety. In its order overruling Applicants' objection to Eddleman 67, however, the Board stated that "we believe that some form of alternative planning [to the Southeast Compact] is required, some reasonable assurance that low-level waste can be disposed of off-site or stored on-site." "Memorandum and Order (Addressing Motion For Reconsideration and Clarification of the Board's Prehearing Conference Order)," dated January 11, 1983 at 4. While rejecting Applicants' position on the admissibility of the contention, the Board's order clarified the scope of the

contention as being strictly limited to the issue of the availability of a disposal site for the Harris low-level wastes.

Notwithstanding the fact that the Board had defined clearly the scope of Eddleman 67, Mr. Eddleman sought through the discovery process to expand the scope of the contention to include, inter alia, the operation of Applicants' other nuclear power plants and the general construction and operation of low-level waste disposal sites. For instance, in his first set of interrogatories to Applicants, Mr. Eddleman asked numerous questions about violations at other facilities of regulations concerning disposal of low-level wastes, about Applicants' involvement in the drafting of legislation to establish disposal sites, about the design and safety of landfill disposals in general and even about the mass numbers of radionuclides. "Wells Eddleman's General Interrogatories and Interrogatories on Contentions 29, 37B, 64F and 67 to Applicants Carolina Power & Light et al. (Second Set)," dated April 22, 1983, at Interrogatory Nos. 67-1, 67-2, 67-4. The nature of Mr. Eddleman's responses to Applicants' interrogatories corroborates Applicants' belief that Mr. Eddleman sought to expand the scope of this contention far beyond that envisioned by the Board. "Wells Eddleman's Response to Applicants' Interrogatories (Third Set-End 1st Round) (Eddleman 64f and 67)," dated May 6, 1983. See, e.g., Response to 67-4(b) (site may not meet "Eddleman criteria"); Response to Interrogatory 67-11 (technology at sites may not be used properly). When Applicants

objected to Mr. Eddleman's irrelevant interrogatories, however, those objections were sustained by the Board, providing further confirmation of the limited scope of Eddleman 67. "Memorandum and Order (Ruling on Discovery Disputes)," dated October 6, 1983.

Thus despite any misperceptions Mr. Eddleman may have to the contrary, this contention concerns only one facet of low-level waste disposal -- whether there is reasonable assurance that disposal facilities for low-level wastes generated by the Harris Plant will be available when needed. Applicants can demonstrate that 1) because of the progress in the formation of the Southeast Compact, its submission to Congress for consent and the activities of the Southeast Compact Commission, there is now reasonable assurance that the Harris facility will be able to ship low-level wastes to the Southeast Compact disposal facility and 2) the availability of several alternative methods for disposal or interim storage of low-level radioactive wastes provides further assurance, if any is needed, that the Harris Plant will operate without risk to public health and safety. The details of the progress of the Southeast Compact Commission and the alternatives to the Southeast Compact disposal facility are set forth in the Affidavit of George H. Warriner ("Warriner Affidavit"). Applicants respectfully submit that based on the reasons set forth below there is no genuine issue of fact as to Eddleman 67 and the Board should grant summary disposition in Applicants' favor.

B. The Southeast Compact

The Low-Level Waste Policy Act of 1980, 42 U.S.C.A. § 2021d (Supp. 1984) ("the Act") delegates responsibility for providing for the disposal of low-level radioactive wastes to the individual states in which such waste is generated. 42 U.S.C. §2021d (a)(1)(A). The Act recognizes, however, that low-level radioactive wastes can be managed most safely and efficiently on a regional basis rather than by individual states. Id. at §2021d(a)(1)(B). Therefore, to carry out the policy of the Act, the states are authorized to enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities. Id. at §2021d(a)(2)(A). Congress must consent to the formation of those compacts before they can become effective. Id. at §2021d(a)(2)(B).

Pursuant to this Congressional mandate that the states assume responsibility for low-level radioactive wastes, North Carolina, Alabama, Florida, Mississippi, South Carolina, Tennessee, Virginia and Georgia have formed the Southeast Compact. Warriner Affidavit at ¶ 4. The Southeast Compact was submitted for Congressional consent on August 3, 1983. S. 1749, 98th Cong., 1st Sess. (1983); H.R. 3777, 98th Cong., 1st Sess. (1983).

Active consideration of all regional compacts proposed at that time commenced on August 3, 1983, concurrently with the introduction of the Southeast Compact. Regional hearings on the

proposals have been held by the Senate Judiciary Committee; the Judiciary Committee held its Southeast regional field hearing in Columbia, South Carolina on September 6, 1983. On October 25, 1983 the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs was briefed by the Nuclear Regulatory Commission ("NRC"), Department of Energy ("DOE") and the National Governors' Association on various aspects of the proposed legislation. Ratification of Interstate Compacts for Low-Level Nuclear Waste Management: Hearings on H.R. 1012, H.R. 3002 and H.R. 3777 Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 98th Cong., 1st Sess. (1983) (hereinafter "October 25 Hearing"). A second hearing was held by that subcommittee on February 23, and 24, 1984. Low-Level Nuclear Waste Compacts Legislation: Hearings on H.R. 1012, H.R. 3002, H.R. 3777 and H.R. 4388 Before the Subcomm. on Energy and the Environment, 98th Cong. 2d Sess. (1984) (hereinafter "February 23 Hearing"). The Subcommittee on Energy Conservation and Power received testimony on November 3, 1983. Low-Level Radiactive Waste Regional Compacts: Hearings on H.R. 1012, H.R. 3002 and H.R. 3777 Before the Subcomm. on Energy Conservation and Power of the House Comm. on Energy and Commerce, 98th Cong., 1st Sess. (1983) (hereinafter "November 3 Hearing").

Testimony in favor of expeditious approval of the regional compacts has been given by representatives of the NRC and DOE,

the two agencies that are the most affected by the regional compact scheme. For instance DOE has testified that "[t]he states have largely accepted responsibility for managing the disposal of low-level wastes generated within their borders, and have actively pursued development of regional compacts. The proposed compacts are basically consistent with federal law and offer substantial promise for establishing a workable system that can readily be expanded into an effective national system." October 25 Hearing at 77 (statement of Franklin E. Coffman, Director, Office of Terminal Waste Disposal and Remedial Action, DOE). The NRC testified that "[w]e believe that the basic regulatory framework is in place to permit licensing of shallow land low-level waste disposal sites" Thus the NRC promised: "We stand ready to work with the states on resolving whatever issues they perceive, and to accept applications for licensing of low-level waste shallow land disposal sites." October 25 Hearing at 78 (statement of John G. Davis, Director, Office of Nuclear Material Safety and Safeguards, NRC).

In addition to these steps taken by Congressional committees toward consenting to the various regional compacts, including the Southeast Compact, important initiatives have been undertaken on the regional level to assure that the Southeast Compact provisions can be implemented forthwith upon Congressional approval. The Southeast Compact provides, inter alia, for the creation of the Southeast Interstate Low-Level Radioactive Waste Management

Commission (the "Commission") to develop procedures and criteria to select a host state for a low-level waste disposal site and to authorize the construction and operation of such sites. The Commission was formed by action of the Compact members on July 21, 1983. The Commission has held frequent meetings since that time and has adopted by-laws and appointed various committees and subcommittees, including a Host State Identification Committee and a Technical Advisory Committee. Warriner Affidavit at ¶ 6.

The Compact provides that the currently operating Barnwell, South Carolina facility will operate until December 31, 1992 but that a second site must be chosen within three years of the formation of the Commission. See Compact at Article 4(E)(6). Accordingly, the Technical Advisory Committee is currently developing a Request-For-Proposal ("RFP") to perform a state-by-state survey of Compact members to determine the amount and type of disposal facilities needed by each member state and to identify areas in each state that could be used for each type of facility. The RFP is to be completed by the end of May, 1984. Warriner Affidavit at ¶ 6(d). The Host State Identification Committee currently is developing criteria for host-state selection in order to comply with a Compact requirement that such criteria be adopted within one year after constitution of the Commission (by July 21, 1984). See Compact at Article 4(E)(6). Thus it is clear that substantial progress is being made toward developing plans that can be put into effect in a timely fashion after the Compact is ratified by Congress.

Applicants submit that the progress made toward implementation of the Southeast Compact provides reasonable assurance that a facility selected by the Southeast Compact Commission will be available to receive wastes generated at the Harris Plant. Since the time of the Board's order denying Applicants' motion to reconsider admission of Eddleman 67, the Southeast Compact has been approved by the legislatures and governors of all eight member states and introduced to Congress for consent. Congress has undertaken active consideration of all regional compacts and has held regional meetings to discuss the various compacts. As described above, substantial steps have been taken to implement the Compact's provisions and especially to begin the process of selecting a facility to succeed the presently operating Barnwell facility. Although the Board held, at the time it admitted Eddleman 67, that the possibility of a regional compact did not in itself provide reasonable assurance, clearly the circumstances surrounding the Compact today are quite different and implementation of the Southeast Compact provisions is much more certain at the present time.

C. Applicants' Plans for Disposal of Low Level Wastes

Applicants intend to use the Barnwell facility initially to dispose of the low-level wastes generated at the Harris Plant. As currently licensed, this facility will have storage capacity available until 1992. The facility is and will continue to be

available to Applicants prior to Congressional consent to the Southeast Compact. Furthermore, because the Compact has designated Barnwell as its initial facility and North Carolina is a member of the Compact, the Barnwell facility clearly will be available to Applicants after the regional compacts become effective, although it may thereafter be closed to low-level waste generators from non-member states. See Compact at Article 4(L).

Again, the situation is quite different now than at the time this contention originally was proposed and accepted by the Board. This contention was proposed on May 14, 1982. At that time, North Carolina had not adopted the Compact; its adoption subsequently occurred on July 11, 1983. Thus, prior to July 11, 1983 there was no guarantee that, even if a compact were formed, North Carolina would be a party to the agreement. At this time, however, those uncertainties have been resolved and the status of CP&L's access to the Barnwell facility is no longer indeterminate.

Furthermore, at the time this contention was proposed, it appeared possible that states with existing operating disposal facilities would refuse to accept additional shipments of low-level radioactive wastes from outside the state. In 1980 the State of Washington enacted Initiative Measure No. 383 ("383") prohibiting the transportation and storage within Washington of radioactive waste produced outside the state. The statute was struck down as an unconstitutional violation of the Commerce

Clause of the United States Constitution on June 26, 1981, but an appeal to the Ninth Circuit was pending at the time the contention was proposed by Mr. Eddleman. Since that time, however, the Ninth Circuit has upheld the district court's ruling and a petition for writ of certiorari was denied by the United States Supreme Court on May 2, 1983. Washington State Building & Construction Trades Council v. Spellman, 518 F. Supp. 928 (E.D. Wash. 1981), aff'd, 684 F.2d 627 (9th Cir. 1982), cert. denied, 103 S. Ct. 1891 (1983). In light of the ultimate outcome of that recent decision, it is clear that Mr. Eddleman's claim that the States of Washington, Nevada and South Carolina can deny non-residents' access to their disposal facilities is without merit. In reality, CP&L either will be able to utilize a facility designated by the Southeast Compact when the Compact becomes effective or, in the absence of approved regional compacts, will continue to have access to disposal sites in Washington, Nevada and South Carolina. Each of these scenarios results in an acceptable solution to the issue of disposal of low-level wastes from the Harris Plant.^{1/}

^{1/} Compare Applicants' situation with that of the applicants in Duquesne Light Company (Beaver Valley Power Station, Unit 2), ASLBP No. 83-490-04 (January 27, 1984), where the state (Pennsylvania) was not a member of a regional compact and where no regional facility was currently operating. Nevertheless, the licensing board refused to admit a contention similar to Eddleman 67 because it found that Pennsylvania operators might be eligible to ship wastes to some compact's facility in the absence of specific provisions to the contrary. ASLBP No. 83-490-04, slip op. at 37.

In addition, Applicants have further assurance that a licensed facility will be available for disposal of Harris low-level waste products. North Carolina has taken the initial steps toward proceeding with an independent plan to develop low-level waste disposal facilities within the state of North Carolina. A Governor's Board of Waste Management was created by legislative action in 1981. Warriner Affidavit at ¶ 8. This entity is empowered to develop plans for North Carolina's own waste disposal facility. Thus, even if the problem of low-level radioactive wastes were not resolved at a regional level, a mechanism is in place to enable the State of North Carolina to provide a waste disposal facility for wastes generated within the state.

D. Applicants' Contingency Plans
For Storage of Low-Level Wastes

Applicants have developed contingency plans for the unlikely event that the Barnwell facility becomes unavailable before either the Southeast Compact or a North Carolina Waste Management Board plan is implemented and another disposal site is not immediately available. The Warriner Affidavit discusses in detail the availability of appropriate storage facilities on the Harris site. As set forth in that affidavit, the present dedicated space in the Waste Processing Building would accommodate seven months' output of solid low-level radioactive wastes. Warriner Affidavit at ¶ 11. An additional seven months' storage capacity can be made available simply by moving empty drums to the outside

of the Waste Processing Building to make room for drums of solid wastes to be stored inside the building. Warriner Affidavit at ¶ 12. Finally, due to the fact that the Waste Processing Building was originally designed to accommodate a four-unit plant, significant additional space in the building readily could be designated for storage of low-level wastes. This additional space would increase on-site available storage space to 4.3 years accumulation of wastes. Warriner Affidavit at ¶¶ 13-14. The Waste Processing Building is seismically designed with a complete HVAC system, drains and access to process equipment. Final Safety Analysis Report at § 11.4.1.1. The availability of this storage space provides adequate assurance that low-level radioactive wastes can be handled safely during any period of time when other facilities are not available.^{2/} The Board has indicated that a demonstration that on-site storage is available will satisfy the concerns raised by Mr. Eddleman. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant Units 1 and 2), supra, LBP-82-119A 16 N.R.C. at 2102; "Memorandum and Order (Addressing Motions for Reconsideration and Clarification of the Board's Prehearing Conference Order," dated January 11, 1983 at 4.

In summary Applicants believe that the recent progress toward Congressional consent to the Southeast Compact, the

^{2/} In the event that it appeared that licensed facilities would be unavailable for more than four years, Applicants could construct additional on-site storage during the four year period. Warriner Affidavit at ¶ 15.

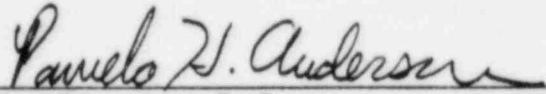
availability of the Barnwell facility in South Carolina, the commitment of the Southeast Compact states to construct a second low-level waste facility in a member state for operation prior to 1992, the demonstration by North Carolina that it is willing to proceed independently, if necessary, and the availability of over four years of readily accessible storage space at the Harris Plant site itself, all provide reasonable assurance that disposal facilities for low-level radioactive wastes generated by the Harris Plant will be available when needed. The facts are uncontroverted. Thus, there is no issue of material fact with respect to Eddleman 67 and the contention is ripe for summary disposition.

III. CONCLUSION

Based upon the foregoing and upon the facts set forth in the Warriner Affidavit and Applicants' Statement of Material Facts,

Applicants respectfully submit that their motion for summary disposition should be granted and that Eddleman 67 should be decided in Applicants' favor.

Respectfully submitted,



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