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In the Matter of

Docket No. 50-400 OL

(Shearon Harris Nuclear Power Plant)

## I. INTRODUCTION

In support of this motion, Applicants rely upon the attached Affidavit of Jesse T. Pugh, III in Support of Applicants' Motion for Summary Disposition of Eddleman Contention 57-C-13, Applicants' Statement Of Material Facts As To Which There Is No Genuine Issue To Be Heard On Eddleman Contention 57-C-13, Applicants' Memorandum of Law In Support Of Motion for Summary Disposition On Emergency Planning

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Contentions, and the pleadings and discovery filed in this proceeding regarding Eddleman Contention 57-C-13.

## II. BACKGROUND

On February 28, 1984, Applicants served a copy of the North Carolina Emergency Response Plan In Support Of The Shearon Harris Nuclear Power Plant (February 1984) (the "ERP" or "Off-Site Emergency Plan") on the parties to this proceeding.<sup>1</sup> In response to the ERP, Intervenor Wells Eddleman proffered a number of proposed contentions including Eddleman Contention 57-C-13. As originally proposed, Eddleman Contention 57-C-13 challenged the ERP on the basis that it set up no criteria for identifying "the highest PF in any structure (e.g. schools, hospitals, prisons, day care centers, offices)" and asserted that areas with the highest protection factor "need to be determined in advance to comply with 10 C.F.R. 50.47(a)(1)'s requirement for assurance of appropriate protective action." In ruling upon the proposed contention, the Licensing Board narrowed the scope of the contention to hospitals and nursing homes, and rejected the remainder. Stated the Board:

We also admit contention 57-C-13, insofar as it calls for the best PFs in each hospital and nursing home to be determined 'in advance,' which we construe to mean 'before the emergency preparedness exercises.' We reject the rest of 57-C-13.

"Further Rulings On Admissibility Of Off-Site Emergency Planning Contentions Submitted By Intervenor Eddleman" (June 14, 1984), at 18.

Although the Board did not state precisely the wording of admitted Eddleman Contention 57-C-13, the parties have agreed that the admitted contention should be worded as follows:

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<sup>1</sup>Revision 1 of the ERP was issued in September 1984. A copy was served on the Board and the parties on October 3, 1984.

The plan, in discussing protective actions, repeatedly refers to the "best Protection Factor" (PF) for sheltering. Yet it nowhere sets up criteria for identifying such protection factors or the highest PF in hospitals and nursing homes. The highest PF areas need to be determined in advance (before the emergency preparedness exercise) to comply with 10 C.F.R. 50.47(a)(1)'s requirement for assurance of appropriate protective action. If seeking the highest PF is appropriate action (as the plan states, Pt 2 pp 29-30, pt 3 pp 26, pt 4 pt 28-29, pt 5 p31) then that action must be assured.

"Joint Stipulation Codifying Certain Admitted Contentions," (October 12, 1984), at 3. The Board has approved the stipulated wording of this contention. See "Order Approving Joint Stipulation Codifying Certain Admitted Contentions" (December 6, 1984). Pursuant to the schedule agreed upon at the prehearing conference, discovery requests on Eddleman Contention 57-C-13 were due on August 9, 1984, and responses were due on August 30, 1984. Applicants filed one set of interrogatories regarding this contention on Mr. Eddleman on August 9, 1984, and Mr. Eddleman responded on September 7, 1984 pursuant to an extension of time from the Board. Mr. Eddleman filed two sets of interrogatories regarding this Contention on Applicants, the first on June 29, 1984 and the second on August 9, 1984. Applicants responded to the first set on July 25, 1984 and to the second set on September 7, 1984. On June 29 and August 9, Mr. Eddleman also filed two sets of interrogatories on the NRC Staff and the Federal Emergency Management Agency (FEMA), to which answers were provided on August 7, 1984 and September 18, 1984, respectively. Thus, discovery on Eddleman Contention 57-C-13 is complete.

### III. APPLICABLE LAW

The well defined standards applicable to motions for summary disposition under 10 C.F.R. § 2.749 are discussed in detail in Applicants' Memorandum Of Law In Support Of Motions For Summary Disposition On Emergency Planning Contentions, filed in this proceeding on October 8, 1984. Applicants rely upon the discussion therein, which is incorporated by reference, and upon the discussion herein regarding the application of those standards to Eddleman Contention 57-C-13.



The portion of the ERP for each of the four affected counties recognizes that "[t]he immobility of hospital and nursing home patients may preclude evacuation of these facilities" and that several protective actions may be advised. Among those actions are "[s]tay[ing] indoors and [relocating] to the best protection factor (PF) in the building, if necessary." ERP Part 2.IV.E.5.c., ERP Part 3.IV.E.5.c., ERP Part 4.IV.E.5.c., and ERP Part 5.IV.E.5.c. Contention 57-C-13, as admitted, maintains that the failure to identify before the emergency planning exercise those areas of each hospital or nursing home which have the best protection factor violates Section 50.47(a)(1) of the Commission's emergency planning rule. That section states:

Except as provided in paragraph (d) of this section [pertaining to issuance of a low power license], no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

10 C.F.R. § 50.47(a)(1).

#### IV. ARGUMENT

##### A. The Areas With the Best Protection Factor For Each Hospital, Nursing Home and Family Care Facility Within the EPZ Are Now Known.

The Licensing Board admitted Eddleman Contention 57-C-13 into this proceeding only insofar as it calls for the best protection factors in each hospital and nursing home within the plume exposure pathway EPZ of the Harris Plant to be determined in advance of the emergency preparedness exercise for the Harris Plant. In order to address the concerns raised by this Contention, Applicants arranged for a survey to be conducted of each hospital, nursing home and family care facility within the EPZ.<sup>2</sup> Family care

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<sup>2</sup>Applicants undertook this survey even though the FEMA staff stated in response to Mr. Eddleman's interrogatories on Eddleman Contention 57-C-13 that "FEMA guidelines do not require that the PF's of hospitals and nursing homes be determined." "FEMA Staff Response to Interrogatories Propounded by Intervenor Wells Eddleman" (August 7, 1984), at 2.

facilities were included because they are similar to nursing homes in that they provide care for senior citizens. The results of this survey are contained in the accompanying Affidavit of Jesse T. Pugh, III, the Director of the Division of Emergency Management of the North Carolina Department of Crime Control and Public Safety. The Division of Emergency Management has accepted the survey results and will utilize them in its planning for a potential accident at the Harris Plant. Pugh Affidavit, ¶ 11.

The survey was conducted by two engineers who are certified by the Federal Emergency Management Agency as fallout shelter analysts. Pugh Affidavit, ¶ 5. Based on information about the nature of radiation exposure, specific criteria for determining the areas with the best PF were established as a basis for the surveys. Pugh Affidavit, ¶¶ 3-4. The owners or administrators of each facility were personally interviewed. In addition, the engineers who conducted the survey inspected the interior and exterior structural features of each facility with particular emphasis on features which determine the facilities' effectiveness in reducing radiological doses. Pugh Affidavit, ¶ 6.

As a result of the survey, the areas of each facility which provide the best protection from a radiation release are now known. Attachment 3 to the Pugh Affidavit identifies specific areas of the facilities that provide the best protection. All nursing homes and hospitals have areas with significantly better protection factors than the remainder of the facility. Pugh Affidavit, ¶ 8. However, some of the family care facilities do not have areas which offer substantially better shelter effectiveness than the remainder of the facility. Id. For those facilities for which a best area is not readily identifiable, Attachment 3 contains guidance on steps that can be taken to minimize the radiation dose. Pugh Affidavit, ¶ 9.

In order to assure that the best protection factor areas are known to those persons who may be required to direct the sheltering of hospital, nursing home and family care facility patients, the owners or administrators of each facility were orally apprised at the time of the survey of what the best PF areas of their facility are. To confirm this advice, a followup letter will be sent to each owner or administrator identifying the best PF areas. This information will also be retained by the Division of Emergency Management for future reference at the time of any accident.<sup>3</sup> Pugh Affidavit, ¶ 12.

B. There Is No Issue of Material Fact, and Applicants Are Entitled to a Decision in Their Favor as a Matter of Law on Eddleman Contention 57-C-13.

Taken as a whole, these actions identify the best PF areas of hospitals, nursing homes and family care facilities within the Harris EPZ for purposes of taking protective action in the event of a radiological accident. The actions comply with the criteria in 10 C.F.R. §50.47(a)(1). The factual issues raised by Eddleman Contention 57-C-13 have been resolved by conducting a survey to identify the best PF area of each facility and by apprising the appropriate persons of what those areas are. Therefore, there is no genuine issue of material fact remaining with respect to Eddleman Contention 57-C-13, and Applicants are entitled to a favorable decision on this Motion as a matter of law.

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<sup>3</sup>Each hospital, nursing home and family care facility will also receive a copy of the public information brochure which contains additional guidance on actions to be taken if sheltering is ordered (e.g., closing doors and windows, and turning off air conditioners). See draft brochure, filed July 9, 1984, at 1. Because information on the best PF areas of hospitals, nursing homes and family care facilities will be retained by DEM for reference, there is no reason to include it in the ERP itself. Inclusion of such details would be inappropriate in view of the stated policy against excessively lengthy emergency plans. NUREG-0654 at 29 (average plan should consist of hundreds of pages, not thousands). Indeed, FEMA has stated that its guidelines do not even require that the PF's be determined, much less be included in the ERP. See footnote 1, supra.

V. CONCLUSION

Based on the foregoing, Applicants respectfully submit that their Motion for Summary Disposition of Edoleman Contention 57-C-13 be granted.

This 12th day of December 1984.

Respectfully submitted,

*Dale E. Hollar*

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