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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)

Docket No. 50-400 OL

(Shearon Harris Nuclear Power Plant))
)

APPLICANTS' MOTION FOR SUMMARY DISPOSITION OF EDDLEMAN 57-C-7

Carolina Power & Light Company, and North Carolina Eastern Municipal Power Agency ("Applicants"), hereby move the Atomic Safety and Licensing Board ("Board"), pursuant to 10 C.F.R. § 2.749, for summary disposition in Applicants' favor of Eddleman Contention 57-C-7. As discussed herein, there is no genuine issue as to any fact material to Eddleman 57-C-7, and Applicants are entitled to a decision in their favor on 57-C-7 as a matter of law. This motion is supported by:

- 1) "Applicants' Statement of Material Facts as to Which There is no Genuine Issue to be Heard on Eddleman 57-C-7";
- 2) "Affidavit of Fred A. Mettler, Jr., M.D. on Eddleman 57-C-7";
- 3) "Affidavit of Dayne H. Brown on Eddleman 57-C-7";
- 4) "Affidavit of Jesse T. Pugh, III on Eddleman 57-C-7," and
- 5) "Applicants' Memorandum of Law in Support of Motions for Summary Disposition of Emergency Planning Contentions," filed October 8, 1984.

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I.

Procedural Background

Eddleman Contention 57-C-7 was admitted as a contention in this proceeding in the Board's order of August 3, 1984. See "Final Set of Rulings on Admissibility of Offsite Emergency Planning Contentions, Ruling on Petition for Waiver of Need for Power Rule, and Notice of Upcoming Telephone Conference Call," dated August 3, 1984 ("8/3/84 Order"). On October 12, 1984, Applicants, Wells Eddleman, and the NRC Staff entered into a "Joint Stipulation Codifying Certain Admitted Contentions," agreeing to the following language for the contention:

Neither the State ERP nor the county ones make clear whether the hospitals listed in Section V.B.3 of the State ERP are prepared to treat severe radiation exposure per se. Plans should include lists of local and regional hospitals with the necessary capabilities to provide medical services for those seriously injured by radiation alone.

"Joint Stipulation Codifying Certain Admitted Contentions," (October 12, 1984) at 4. The Board has approved the stipulated wording of this contention. See "Order Approving Joint Stipulation Codifying Certain Admitted Contentions" (December 6, 1984).

Applicants have served one set of interrogatories and request for production of documents on Wells Eddleman on the subject of Eddleman 57-C-7. See "Applicants' Emergency Planning Interrogatories and Request for Production of Documents to Intervenor Wells Eddleman (Second Set)" (October 5, 1984). "Wells Eddleman's Response to Applicants' 2d Set of E[mergency] Planning Interrogatories" were filed on October 30, 1984.

Wells Eddleman served two sets of interrogatories on the Applicants related to 57-C-7. "Wells Eddleman's Interrogatories to Applicants (Eleventh Set)" were filed on August 31, 1984 and his "Second Round Interrogatories and Request for Production of Documents to CP&L and NC/County Emergency Planners" were filed October 8, 1984. Applicants filed their responses on October 1 and October 22, 1984, respectively. See

"Applicants' Response to Wells Eddleman's General Interrogatories to Applicants (Eleventh Set)" (October 1, 1984) and "Applicants' Response to Wells Eddleman's Second Round Interrogatories and Request for Production of Documents to CP&L and NC/County Emergency Planners on Contentions 57-C-7 and 240" (October 22, 1984).

Mr. Eddleman also served two sets of interrogatories on the NRC Staff. See "Wells Eddleman's Interrogatories to NRC Staff and FEMA (6th Set)", dated 8-31-84) and "Wells Eddleman's General Interrogatories and Interrogatories and Request for Production of Documents to FEMA/NRC Staff," dated October 8, 1984. The Staff/FEMA responded in their "Fema Response to Interrogatories Dated August 31, 1984 Propounded by Wells Eddleman," filed September 28, 1984; and "NRC Staff and FEMA Response to Wells Eddleman's General Interrogatories, Interrogatories and Request for Production of Documents dated October 8, 1984," filed October 25, 1984 ("NRC/FEMA 10/25/84 Discovery Responses"). Discovery on this contention is now complete.

Eddleman 57-C-7 is classified as an Emergency Planning Contention to be addressed in the hearings scheduled to commence June 18, 1985. Written direct testimony on the contention is scheduled to be filed June 3, 1985. Further, the Board has established January 14, 1985 as the last day for filing summary disposition motions on this contention. Thus, the instant motion is timely, and Eddleman 57-C-7 is ripe for summary disposition.

II.

Governing Legal Standards

A. Summary Disposition

"Applicants' Memorandum of Law in Support of Motions For Summary Disposition of Emergency Planning Contentions," filed previously in this proceeding on October 8, 1984, is fully applicable to this motion and is incorporated by reference herein.

B. Substantive Law

The Commission's Emergency Planning Regulations, at 10 C.F.R. § 50.47(b)(12) require that:

Arrangements are made for medical services for contaminated injured individuals.

As noted in footnote 1 to 10 C.F.R. § 50.47, this planning standard is further addressed by NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (November 1980) ("NUREG-0654"). In particular, NUREG-0654 sets forth evaluation criteria for medical services arrangements for contaminated injured individuals. At Part II.L.3., the NUREG requires in part that

Each State shall develop lists indicating the location of public, private and military hospitals and other emergency medical services facilities within the State or contiguous States considered capable of providing medical support for any contaminated injured individual.

The ERP clearly lists the medical facilities which will support the plant and surrounding communities in the event of a radiological emergency. See ERP, Part 1, § V.B.; Parts 2-5, § V.B.; 8/3/84 Order at 20. The contention, however, draws a distinction between facilities on the list which can treat contaminated injured individuals and those that have "capabilities to provide medical services for those seriously injured by radiation alone."

Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528 (1983) ("San Onofre") is the leading case on this issue. There the Commission stated that

... facilities with which prior arrangements are made or which have the capability to treat contaminated injured individuals should be identified. With respect to individuals who may be exposed to dangerous levels of radiation, treatment requires a lesser degree of advance planning and can be arranged for on an as-needed basis during an emergency. Emergency plans should, however, identify those local or regional medical facilities which have the capabilities to provide appropriate medical treatment for radiation exposure.

It was this last sentence that was quoted by the Board in admitting Contention 57-C-7. 8/3/84 Order at 19. The Board went on to say that, "Here the Commission is speaking only of 'individuals who have been subjected to dangerous levels of radiation and who need medical treatment for that reason.'" Id. The Board was concerned that the ERP may indicate that listed hospitals are prepared only for "contaminated injured" patients and does not make clear whether the hospitals are prepared to treat severe radiation exposure per se. Id. at 20.

The Board concludes that while the main thing required to resolve 57-C-7 may be clarification of the hospital lists, those lists may not be complete in that, pursuant to the San Onofre requirement of listing local and regional hospitals with necessary treatment capabilities, the plan should identify hospitals at greater distances which have those capabilities. Id.

III.

Argument

Eddleman Contention 57-C-7 challenges the adequacy of the listing of hospitals at Part 1, Section V.B.3 of the North Carolina Emergency Response Plan (ERP). Specifically it is stated that neither the State nor county ERPs make clear whether those hospitals are capable of treating "severe radiation exposure per se" and that the ERP should list "local and regional hospitals" with such capabilities.

The only relevant regulatory requirement is that arrangements be made for "medical services for contaminated injured individuals," (10 C.F.R. § 50.47(b)(12)) and guidance provided in NUREG-0654 states that the State shall develop lists of hospitals and other emergency medical services "capable of providing medical support for any contaminated injured individual." NUREG-0654 at Part II.L.3. The listing of medical facilities at Part 1, § V.B.3 of the NC ERP satisfies these requirements.

Requirements as to treatment capabilities for severe radiation exposure are not expressed in NRC regulations or FEMA guidance. See NRC/FEMA 10/25/84 Discovery Responses at Answers 57-C-7(4) and 57-C-7(5). However, the San Onofre case has addressed this point and the Nuclear Regulatory Commission has stated that emergency plans should "identify those local or regional medical facilities which have the capabilities to provide appropriate medical treatment for radiation exposure." San Onofre at 528. The Board cited this requirement in admitting Eddleman 57-C-7. 8/3/84 Order at 19.

Accordingly, Applicants have now performed the necessary analysis to reflect the treatment capabilities of those hospitals listed in the plan for severe radiation exposures. Dr. Fred A. Mettler, Jr., is a radiology specialist with the University of New Mexico Hospital and with Albuquerque Veterans Administration Medical Center in Albuquerque, New Mexico. Affidavit of Fred A. Mettler, Jr. M.D. ("Mettler Affidavit") at 1. He has had substantial experience in the field of radiology and currently works with the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR). Mettler Affidavit at 1-2. Dr. Mettler personally contacted each of the hospitals listed in the NC ERP. Id. at 3.

In his analysis of hospital capabilities, Dr. Mettler considered a severe exposure to be one involving more than 100 rem of penetrating whole body radiation. This assumption adds conservatism to Dr. Mettler's evaluation in light of the Appeal Board's acceptance of 150 to 200 rem exposures as the level at which hospitalization is recommended. See Southern California Edison Company et al (San Onofre Nuclear Generating Station, Units 2 and 3) ALAB-680, 16 NRC 127, 138 (1982). Dr. Mettler concluded that all hospitals listed in the ERP have the capabilities to treat severe exposures — whole body or localized — during the first several days, and that Duke University Medical Center, Rex Hospital, and North Carolina Memorial Hospital have the

capabilities and expertise to treat even the most severe radiation exposures — where there has been substantial cellular damage. Mettler Affidavit at 2-3.

The Board also indicated that a broader listing of hospitals with such capabilities may be required to satisfy the San Onofre language asking for "local and regional" hospitals. 8/3/84 Order at 20 (emphasis in original). Duke University Medical Center and North Carolina Memorial Hospital may be considered regional facilities from the standpoint that they provide medical treatment to patients from across North Carolina and the southeastern United States. Affidavit of Jesse T. Pugh, III ("Pugh Affidavit") at 2. Also, the Oak Ridge Radiation Emergency Assistance Center/Training Site (REAC/TS) in Oak Ridge, Tennessee, a U. S. Department of Energy facility, provides specialized radiation treatment and radiation consultation assistance on a 24 hour-a-day basis. Affidavit of Dayne H. Brown ("Brown Affidavit") at 2. In the event of an emergency at the Harris Plant, the state Radiation Protection Section is prepared to call on REAC/TS as necessary to provide expert medical consultation for attending physicians and to provide facilities to which patients may be transported for state-of-the-art care and treatment. Brown Affidavit at 2. Accordingly, the Oak Ridge REAC/TS unit may be considered an additional regional facility for treating cases of severe radiation exposure per se. Id.

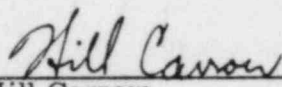
The North Carolina Division of Emergency Management has reviewed this information on hospital capabilities to treat severe radiation exposure and will include that information in the NC ERP. Pugh Affidavit at 2.

Therefore, all requirements contained in regulations, guidance documents, and case law have been more than adequately met. Hospital capabilities have been analyzed and of those hospitals listed in the plan, Duke University Medical Center, Rex Hospital, and North Carolina Memorial Hospital all have the capabilities of treating even the most severe radiation exposures. In addition, the state Radiation Protection Section is

prepared to call on the Oak Ridge REAC/TS unit to provide expert consultation and treatment facilities as necessary. Finally, the NC ERP will be changed to include this information.

Thus, all concerns raised by Mr. Eddleman in his contention and those raised by the Board in their 8/3/84 Order have been addressed. No genuine issue of material fact exists as to Eddleman Contention 57-C-7, and the Applicants are accordingly entitled to a decision in their favor on this motion as a matter of law.

This the 2nd day of January, 1985.



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