

May 22, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CAROLINA POWER AND 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

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NRC STAFF RESPONSE TO WELLS EDDLEMAN'S
PROFFERED CONTENTIONS DATED APRIL 29, 1985
RE: THE PUBLIC INFORMATION BROCHURE

I. INTRODUCTION

On April 29, 1985, Mr. Eddleman proffered Contentions 227-CC, and 227-DD. Contention 227-CC alleges that the public information brochure must provide directions to the evacuation shelters. Contention 227-DD alleges that the title on the chart of evacuation routes is misleading. The NRC Staff response in opposition to the admission of these contentions follows.

II. DISCUSSION

A. NRC Standards Applicable To Proffered Contentions

In order for Intervenor's proffered contentions relating to the Public Information Brochure to be admitted as matters in controversy in this proceeding, they must satisfy two standards. First, each contention must satisfy the Commission's requirement that the basis for the contention be set forth with reasonable specificity. 10 CFR § 2.714(b).

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Second, since they are late filed contentions, under the Commission's decision in Duke Power Company et al (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), balancing of the five factors of 10 CFR § 2.714(a) must favor admission of the contentions.

In order for proposed contentions to be found admissible, they must fall within the scope of the issues set forth in the Notice of Hearing initiating the Proceeding, ^{1/} and comply with the requirements of 10 CFR § 2.714(b) and applicable Commission case law. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973). Under 10 CFR § 2.714(b) a petitioner for intervention in a Commission licensing proceeding must file a supplement to its petition:

... [w]hich must include a list of the contentions which petitioner seeks to have litigated in the matter, and basis for each contention set forth with reasonable specificity.

The purpose of the basis requirements of 10 CFR § 2.714 are (1) to assure that the contention in question raises a matter appropriate for litigation in a particular proceeding, ^{2/} (2) to establish a sufficient

^{1/} Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976). See also, Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-290, n. 6 (1979)

^{2/} A contention must be rejected where:

foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion and, (3) to put the other parties sufficiently on notice " ... so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of basis, it is unnecessary for the petition to detail the evidence which will be offered in support of each contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board should not reach the merits of the contentions.

Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980); Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station),

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra, at 20; Grand Gulf, supra at 426.

As the Appeal Board instructed in Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216-217 (1974), in assessing the acceptability of a contention as a basis for granting intervention:

[T]he intervention board's task is to determine, from a scrutiny of what appears within the four corners of the contention as stated, whether (1) the requisite specificity exists; (2) there has been an adequate delineation of the basis for the contention; and (3) the issue sought to be raised is cognizable in an individual licensing proceeding. (Footnotes omitted)

This applies equally to a contention proffered by an intervenor as well as by a petitioner to intervene. If a contention meets these criteria, the contention provides a foundation for admission "irrespective of whether resort to extrinsic evidence might establish the contention to be insubstantial." ^{3/} The question of the contention's substance is for later resolution - either by way of § 2.749 summary disposition prior to the evidentiary hearing ... or in the initial decision following the conclusion of such a hearing." Farley, supra, 7 AEC at 217. Thus, it is incumbent upon Intervenor Eddleman to set forth contentions on bases therefore which are sufficiently detailed and specific to demonstrate that the issues they purport to raise are admissible.

^{3/} Farley, supra, at 217. In addition, the proposed contention should refer to and address relevant documentation, available in the public domain, which is relevant to the Harris plant and the proffered contention. See, Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-184 (1981).

On June 30, 1983 the Commission reviewing ALAB-687, 16 NRC 460 (1982) issued its decision in Duke Power Company et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). This decision considered the standards to be applied to contentions premised upon information contained in licensing-related documents not required to be prepared early enough so as to enable an intervenor to frame contentions in a timely manner in accord with the provisions of 10 C.F.R. § 2.714(b). In Catawba the Commission determined that it is reasonable to apply the late-filing criteria in 10 CFR § 2.714(a)(1) and the Appeal Board's three-part test for good cause ^{4/} to contentions that are filed late because they depend solely on information contained in institutionally unavailable licensing-related documents. ^{5/} Id. at 1045. Further, the Commission determined that the institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if information was otherwise available early enough to

^{4/} 17 NRC 1045. See also ALAB-687, 16 NRC 460, 469 (1982).

^{5/} The Commission believes that the five factors together are permitted by Section 189a of the Act and are reasonable procedural requirements for determining whether to admit contentions that are filed late because they rely solely on information contained in licensing-related documents that were not required to be prepared or submitted early enough to provide a basis for the timely formulation of contentions. Id. at 1045, 1050.

provide the basis for timely filing of that contention. ^{6/} Id., at 1048. The Public Information Brochure is a licensing-related document and the Commission's decision and analysis applies here.

The factors which must be balanced in judging the admissibility of a late-filed contention are:

- (i) Good cause, if any for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1)

With respect to the good cause factor the Commission adopted the Appeal Board's test to determine whether good cause exists for late filing of a Contention. Catawba, supra, 17 NRC at 1045. Under that test good cause exists if a contention: 1) is wholly dependent upon the content of a particular document; 2) could not therefore be advanced with any degree of specificity (if at all) in advance of the public availability of that document; and 3) is tendered with the requisite degree of promptness once the document comes into existence and is accessible for public

^{6/} The Commission set out in its decision the fundamental principles upon which it bases its conclusion that Intervenor's are required diligently to uncover and apply all publicly available information to the prompt formulation of contentions. Id. at 1048-1050.

examination. Id. at 1043-1044. The Appeal Board has recently discussed the showing necessary to cause the third factor to weigh in favor of the admission of a late petitioner for leave to intervene. Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 3) ALAB-747, 18 NRC, 1167 (1983). In WPPSS the Appeal Board reasserted a standard it had set forth in Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). As the Appeal Board stated:

Almost a year ago, we observed that, because of the importance of the third factor, "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.

WPPSS, supra, 18 NRC at 1177. This standard is instructive in determining whether an intervenor has satisfied the third factor with respect to a late filed contention.

B. The Contentions

1. 227-CC alleges that the Public Information Brochure must contain explicit instructions or directions to the evacuation shelters from the evacuation routes. Mr. Eddleman's contentions are based upon changes to the Brochure which were served upon Mr. Eddleman and the parties on April 16, 1985. We address the criteria of 10 C.F.R. § 2.714(a)(1) seriatim.

(i) Good Cause

- 1) The Contention is dependent upon the brochure amendment served April 16, 1985.

- 2) The Contention is specific.
- 3) The Contention was tendered promptly.
- (ii) Mr. Eddleman's interest in having people reach the evacuation shelters is protected by the North Carolina State and County planners and FEMA all of which must approve the Brochure.
- (iii) It does not seem probable that Mr. Eddleman's participation here could reasonably be expected to assist in developing a sound record. The State of North Carolina has expertise in moving people in an emergency. FEMA has practical experience in directing people and, having approved many brochures, has experience in the adequacy of public information brochures. Their expertise will develop an adequate record. Mr. Eddleman has no training or experience in emergency planning, and has not identified any witnesses and summarized their testimony as recommended by the Appeal Board in WPPSS cited supra.
- (iv) No existing intervenor in this proceeding will represent Mr. Eddleman's interests in having people within the plume exposure pathway EPZ reach evacuation shelters in the event of an emergency.
- (v) Admission of Contention 227-CC would broaden the issues and delay this proceeding, but not significantly.

The good cause factor and factor (iv) weigh in favor of the admission of this contention, factors (ii), (iii) and (v) weigh against its admission. Having considered the above analysis of the five factors and particularly the importance of the third factor, the Staff submits that the balance tips against the admission of Contention 227-CC.

10 C.F.R. § 2.714 also requires basis and specificity of a contention. Certainly here Mr. Eddleman is specific. However, the Contention lacks a basis for admission. The Licensing Board's role is to review the Public Information Brochure to determine whether information has been made available to the public as required by 10 C.F.R. § 50.47(b)(7). The Commission's regulations further indicate

that the information in the Brochure be "basic emergency planning information." 10 C.F.R. Part 50, Appendix E, § IV.D.2. There is no NRC or FEMA regulation requiring that detailed information such as directions to relocation centers ^{7/} and/or to the evacuation shelters from the evacuation routes be set forth in the Public Information Brochure. Mr. Eddleman cites no legal authority or NRC-FEMA guidance which would require such explicit directions. NUREG-0654, FEMA-Rep-1, Rev. 1, "Criteria For Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness In Support of Nuclear Power Plants" at page 49, states only that the public information program shall contain information regarding relocation centers. The Brochure for Harris does so. It has a chart that lists the relocation centers by name. NUREG-0654 does not require the directions sought by Mr. Eddleman's Contention 227-CC.

State and county planners, representatives of the local agencies primarily concerned participated extensively in the drafting of the brochure. The Appeal Board has stated that where a local government determination is neither shown nor appears on its face to be seriously defective the NRC may place heavy reliance upon the local government determination. ^{8/}

^{7/} The Staff assumes that by the term "shelter" Mr. Eddleman is referring to the relocation centers located outside of the EPZ.

^{8/} Carolina Power and Light Company, (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-490, 8 NRC 234, 241 (1978). Cited for the above proposition with approval in Rochester Gas and Electric Corporation, (Sterling Power Project Nuclear Unit No. 1), 8 NRC 383, 389 (1978)

In summary, proffered Contention 227-CC should not be admitted. There is no regulatory basis for admission. Further, admission would have the consequence of making the Licensing Board an editor of the brochure to the extent the Board was required to designate the amount and nature of detail to be contained in the Brochure, a role it has thus far declined. ^{9/} Finally, deference here should be given to the decisions of the state and county planners.

2. Contention 227-DD alleges that the title on the Brochure's chart of evacuation routes and shelters is defective. The five factors for late filed contentions are addressed seriatim below.

- (i) Good Cause
 - 1) The title in question is wholly dependent upon the Brochure;
 - 2) The title was known when the Brochure was given to Mr. Eddleman in July, 1984.
 - 3) The Contention could have been advanced when Mr. Eddleman was served a copy of the Brochure in July, 1984, some 10 months ago. The Staff concludes that there is not now good cause for late filing proffered Contention 227-DD.
- (ii) State and county planners and FEMA experts will protect whatever interest Mr. Eddleman may have in the efficacy of the title on the chart of evacuation routes in the Brochure.
- (iii) Nothing in Mr. Eddleman's filing indicated that he possesses special expertise not possessed by the state and county planners and FEMA experts, which would lead to the conclusion that Mr. Eddleman's participation would make an allegedly defective title to a chart become a good title. Referring to the Appeal Board's WPPSS ALAB-747 cited supra., Mr. Eddleman has not identified his prospective

^{9/} "Rulings On Specification of Eddleman Offsite Emergency Planning Contention 215 and On The Admissibility Of Eddleman Contentions On The Public Information Brochure" at 6 (October 4, 1984).

witnesses nor provided a summary of their testimony on the allegedly defective title to a chart.

- (iv) No other party has raised an issue in the proceeding concerning the title in question here.
- (v) Admission of proffered Contention 227-DD would broaden the issues and delay the proceeding, but not significantly.

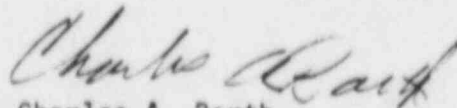
The Staff concludes that there is no showing of good cause for Mr. Eddleman advancing Contention 227-DD at this time and reliance should be placed upon state, county and FEMA experts to make an appropriate title to the chart of evacuation routes in the Public Information Brochure. On balance, the Staff concludes that the five factors weigh against the admission of this Contention.

The proposed contention is merely Mr. Eddleman's criticism of the title of the chart in the Brochure. Mr. Eddleman's concern appears to be nothing more than his desire to edit the Brochure. To indulge his desire would be an inappropriate use of litigation resources. See note 9 supra.

IV. CONCLUSION

For all of the above reasons, the Staff concludes that Mr. Eddleman's proffered Contention 227-CC and 227-DD should not be admitted as issues in controversy in this proceeding.

Respectfully submitted,


Charles A. Barth
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 22nd day of May, 1985

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NUCLEAR REGULATORY COMMISSION

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I hereby certify that copies of "NRC STAFF RESPONSE TO WELLS EDDLEMAN'S PROFFERED CONTENTIONS DATED APRIL 29, 1985 RE: THE PUBLIC INFORMATION BROCHURE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or deposit in the Nuclear Regulatory Commission's internal mail system (*), this 22nd day of May, 1985:

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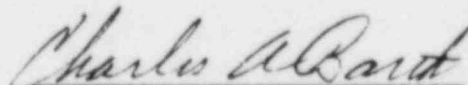
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