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In the Matter of

CAROLINA POWER & LIGHT COMPANY
and NORTH CAROLINA EASTERN
MUNICIPAL POWER AGENCY

Docket No. 50-400 OL

County of Mecklenburg

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1. My name is A. Parks Cobb, Jr. and my business address is Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242. I am Manager, Project Management Division, of the Design Engineering Department at Duke Power Company. The Project Management Division is responsible for (1) engineering project management of all company in-house projects in which the Design Engineering Department has a role, (2) management and technical services activities for outside clients through the MATS (Management and Technical Services Program)

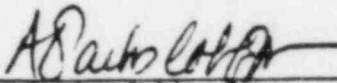
and, (3) departmental support in scheduling, budget and cost control, computer aided drafting, and computer applications and production support. Previously, I was Manager, MATS, which is a section within the Project Management Division of the Design Engineering Department which is responsible for business development and project management activities associated with providing Duke's services to outside clients. I have worked for Duke Power Company for eleven years and, in total, have over twenty years of professional experience in engineering, project management, and research and development. A detailed statement of my professional qualifications and experience are provided in a resume which is included as Attachment 1 hereto.

2. In October of 1983, I was retained by Carolina Power & Light Company ("CP&L") as a consultant to provide outside, third-party review of activities performed by a review panel, headed by Dr. T. S. Elleman, CP&L Vice President, Nuclear Safety, which was assigned to solicit and evaluate potential technical concerns raised by quality inspectors at the Shearon Harris Nuclear Power Plant construction site. This activity consisted of reviewing the collection and disposition of technical concerns, reviewing qualifications of the review panel members themselves and providing a final report of findings to CP&L management. As part of this program, CP&L requested that I review and comment on their newly formed Quality Check Program. In performing this activity, I reviewed in detail CP&L's

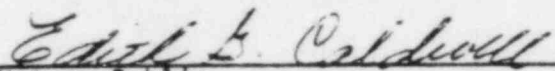
documentation which describes the operation of the Quality Check Program and selected Quality Check interview forms and logs being maintained at the Shearon Harris Nuclear Power Plant Site. I brought to this task my experience at Duke in serving as chairman of a Duke task force assigned to investigate technical concerns of welding inspectors at the Catawba Nuclear Station Construction Site.

3. On October 15, 1984, Mr. H. R. Banks, Manager, CP&L Corporate QA Department requested my assistance in reviewing, investigating and addressing concerns raised in an Affidavit they had received from a former employee, Mr. Chan Van Vo. In performing this activity, I first reviewed the Affidavit and identified items in the Affidavit I considered to be significant issues. I recommended to Mr. Banks that I focus my attention on concerns raised in the Affidavit related to management responsiveness, particularly those raised in paragraphs #12, #13, #15, #23, and #24. I also recommended a course of action on other issues. For the issues I was to focus on, I recommended an approach utilizing personal interviews with management personnel identified by Mr. Chan Van Vo as well as any other CP&L personnel likely to have knowledge relating to the inquiry. Mr Banks concurred with this approach.

I conducted interviews, and the information obtained from those interviews and my findings are documented in a report to CP&L which is provided as Attachment 2 hereto. This report contains my specific findings relative to the assigned paragraphs and additional information regarding other issues raised in the Affidavit which was obtained during these interviews.


A. Parks Cobb, Jr.

Sworn to and subscribed before me
this 4th day of November, 1984.


Notary Public

My Commission Expires: My Commission Expires November 4, 1987

RESUME

ALTON PARKS COBB, JR.

FORMAL
EDUCATION:

University of Alabama - Huntsville: 1966-72 (33 hrs toward M.S. in Engineering Mechanics)
 North Carolina State University: BSME 1964
 Rocky Mount (NC) Senior High School: Diploma 1960

ADDITIONAL
TRAINING:TECHNICAL

Miscellaneous Technical Seminars (structural mechanics, analog computation, vibration analysis) (Boeing)
 Miscellaneous Computer Program Usage Seminars (SUPERPIPE, ASTRA, NASTRAN, STRUDL) (Boeing, Duke)
 Seismic Design of Nuclear Power Plant Facilities (University of Pittsburgh)
 Time Series Analysis for Noise and Vibration (Structural Dynamics Research Corporation and Time Data)

SUPERVISORY/MANAGEMENT

Dynamics of Motivational Management (Success Motivation Institute)
 Supervisory Training (Duke)
 Effective Project Management (Center for Professional Advancement)
 Management Development (Duke)
 Effective Interviewing (The Psychological Corporation)
 Boomerang II - A Management Training Program in EEO (Duke)
 Persuasive Communications Seminar (Technologies)
 Effective Management (Harbridge House)
 Advanced Management Development (Duke)

PROFESSIONAL
INVOLVEMENT:

Registered Professional Engineer - NC 6817, SC 5951
 Member - ASME

WORK
EXPERIENCE:

<u>FROM</u>	<u>TO</u>	<u>TITLE</u>	<u>PROGRAM</u>	<u>COMPANY</u>
10/84	Present	Manager, PMD	Project Management Division Design Engineering Department	Duke Power

In charge of Project Management Division of the Design Engineering Department which is responsible for (1) engineering project management of all company in-house projects in which the Design Engineering Department has a role - principally design in support of new and operating electricity generating facilities of nuclear, fossil, and hydroelectric types, (2) management and technical services activities for outside clients through the MATS program, and, (3) departmental support in scheduling, budget and cost control, computer-aided drafting (CAD), and computer applications and production support related to department usage of corporate mainframe computers and personal computers.

WORK
EXPERIENCE: (continued)

<u>FROM</u>	<u>TO</u>	<u>TITLE</u>	<u>PROGRAM</u>	<u>COMPANY</u>
9/82	10/84	Manager/ Section Head	Management and Technical Services (MATs)	Duke Power

In charge of new section in the Project Management Division of the Design Engineering Department which is responsible for business development and project management associated with providing Duke's services to outside clients.

6/81	9/82	Principal Engineer/ Section Head (6/81)	Nuclear and Conventional Power Plant Design	Duke Power
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In charge of civil engineering section responsible for design support for all operating stations, including nuclear, fossil, hydro, and combustion turbine. Section work included periodic and emergency inspection and maintenance, upgrade, and addition to operating plants. Engineering scope included safety and non-safety related design in the areas of structural steel and concrete structures, pipe and equipment support/restraints, ash basins, and spillway structures. Served as chairman of a task force to investigate technical concerns of welding inspectors at Catawba Nuclear Station construction site. Provided testimony in support of this activity at Atomic Safety and Licensing Board (ASLB) hearings for an operating license for Unit 1.

4/80	6/81	Senior Engineer/ Group Head	Nuclear Power Plant Design	Duke Power
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In charge of McGuire stress analysis and support restraint design group which was responsible for initial piping analysis and pipe, equipment, and ductwork support/restraint design for McGuire Nuclear Station, Units 1 and 2. Group Head duties included management of in-house engineering work performed by approximately eighty (80) Duke personnel and two hundred and forty (240) contract personnel, most of whom were engineers. Personnel were located in Construction Site offices (Group headquarters) and Charlotte area office. Duties also included management of out-of-house consultant-performed piping analysis and restraint design of approximately seventy (70) personnel (EDS Nuclear). Group completed work to support McGuire Unit 1 fuel load in 1/81, including closeout of major USNRC Bulletins 79-02 and 79-14.

12/78	4/80	Senior Engineer/ Group Head (11/79)	Nuclear Power Plant Design	Duke Power
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In charge of group responsible for computerized analysis of all designated piping outside containment for Project 81 Nuclear Stations (Cherokee Units 1, 2, and 3; Perkins Units 1, 2, and 3) encompassing ASME Class 2 and 3 and ANSI B31.1 piping. Duties included organization of group, establishing training programs, recruiting new employee engineers, technicians, and draftsmen, and recruiting temporary (job shop) engineering personnel.

WORK
EXPERIENCE: (continued)

<u>FROM</u>	<u>TO</u>	<u>TITLE</u>	<u>PROGRAM</u>	<u>COMPANY</u>
7/76	5/79	Design Engineer (8/76)	Nuclear Power Plant Design	Duke Power

In charge of group responsible for managing consultant contracts for performance of computerized piping analysis of designated piping inside and outside containment for McGuire and Catawba Nuclear Stations, including Nuclear Steam Supply System (NSSS) contractor analysis of Reactor Coolant Loop piping and consultant contractor analysis of piping. In charge of group responsible for special stress and vibration and analyses for all current projects, including analysis and criteria definition for welded attachments to piping, mechanical equipment anchor bolt analysis, containment piping penetration analysis, analysis and test development program for pipe whip energy absorbers, development and implementation of in-house program for vibration testing of non-rigid valves, and performance of troubleshooting test and analysis for mechanical equipment in operating plants.

9/73	7/76	Assistant Design Engineer	Nuclear Power Plant Design	Duke Power
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In charge of group responsible for resolution of anchor installation problems with mechanical equipment, responsible for seismic design criteria development for mechanical equipment, and responsible for mechanical troubleshooting of vibration problems in operating plants.

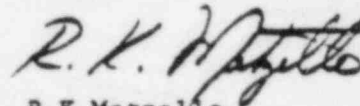
6/64	9/73	Senior Engineer (4/73) Engineer (2/70) Associate Engineer (6/64)	Aerospace & Military	The Boeing Company
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Performed structural dynamic, load, and stress analyses on a variety of contracted and company-sponsored projects. Projects included Saturn V recoverable booster study, Improved HAWK missile, Saturn V Integration, Multiple Artillery Rocket System (MARS), Lunar Roving Vehicle (proposal and development contract), Saturn V - Shuttle Impact Study, and U.S. Army Corps of Engineers Safeguard Program. Other duties included detailed involvement in development and use of large scale computer programs for performing structural analyses using finite element and matrix methods, implementation of computer graphics in digital computer solutions to time history dynamic analysis problems, and development of scale model testing of water impact dynamics of spent rocket boosters.

ANALYSIS OF MAIN STEAM LINES SMS2-144
THROUGH 150.

If you have any questions, please call us.

Very truly yours,



R K Matzelle
Project Manager

PF:amb

cc: L I Loflin
J J Sheppard
L H Martin
J L Willis
R M Parsons
Sheldon D Smith
G L Forehand
N J Chiangi

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Return to P Jones

November 13, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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CAROLINA POWER & LIGHT)	Docket No. 50-400 OL
COMPANY and NORTH CAROLINA)	
EASTERN MUNICIPAL POWER AGENCY))	
)	
(Shearon Harris Nuclear)	
Power Plant))	

APPLICANTS' RESPONSE TO LATE-FILED CONTENTIONS
OF WELLS EDDLEMAN AND CONSERVATION COUNCIL OF
NORTH CAROLINA BASED ON THE AFFIDAVIT OF MR. CHAN VAN VO

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Exhibits

- Exhibit A - Affidavit of Mr. Chan Van Vo, dated 10/6/84
- Exhibit B - Eddleman Proposed Contentions 41C through 41H dated 10/25/84 (typed-version of handwritten original)
- Exhibit C - Conservation Council's Late Filed Contentions Based on the Affidavit of Chan Van Vo -- 10/30/84
- Exhibit D - Complaint of Mr. Chan Van Vo to the Administrator, Wage and Hour Division, Employment Standard Administration, U.S. Department of Labor, dated 8/28/84
- Exhibit E - Letter from James C. Stewart, Area Director, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor to Mr. Chan Van Vo, dated 10/12/84
- Exhibit F - Affidavit of A. Parks Cobb, Jr., dated 11/9/84, with Attachments 1 and 2
- Exhibit G - Government Accountability Project Press Release, dated 10/22/84
- Exhibit H - Shearon Harris Nuclear Power Plant Work Procedure WP-110 (Rev. 9) (with Appendix J attached)
- Exhibit I - "Nuclear Power Plant Construction Management -- Proposed: Proportional of Integral Derivative Controller Construction," prepared by Chan Van Vo (undated)
- Exhibit J - Harris Plant Deficiency and Disposition Report (DDR) 1775, dated 7/25/83
- Exhibit K - Harris Plant Deficiency Notice on Steam Generator Feedwater Pump 1A-NNS, dated 7/30/82

November 13, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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CAROLINA POWER & LIGHT)	Docket No. 50-400 OL
COMPANY and NORTH CAROLINA)	
EASTERN MUNICIPAL POWER AGENCY))	
)	
(Shearon Harris Nuclear)	
Power Plant))	

APPLICANTS' RESPONSE TO LATE-FILED CONTENTIONS
OF WELLS EDDLEMAN AND CONSERVATION COUNCIL OF
NORTH CAROLINA BASED ON THE AFFIDAVIT OF MR. CHAN VAN VO

I. Introduction

During the course of the hearings held on safety contentions in the above captioned proceeding, on October 25, 1984, Mr. Wells Eddleman distributed to the parties present and the Board six proposed new contentions (proposed Eddleman 41C through 41H) based on the allegations contained in an Affidavit of Mr. Chan Van Vo, dated October 6, 1984 (hereinafter the "Van Vo Affidavit", attached hereto as Exhibit A).^{1/} Mr. Eddleman offered the proposed contentions as late-filed contentions and

^{1/} A typed version of the handwritten proposed Eddleman contentions is attached hereto as Exhibit B.

addressed, on the record, the five lateness factors set forth in 10 C.F.R. § 2.714(a). Tr. 5730-45. At the hearing held on October 30, 1984, counsel for the Conservation Council of North Carolina ("CCNC") distributed two late-filed contentions (CCNC WB-1 and WB-2). CCNC adopted the earlier oral statement of Mr. Eddleman as its position on the five lateness factors. (A copy of the CCNC pleading which proffered the two proposed contentions is attached hereto as Exhibit C.) Pursuant to the schedule established by the Board for reply (Tr. 5750), Applicants Carolina Power & Light Company ("CP&L") and North Carolina Eastern Municipal Power Agency hereby respond in opposition to the admission of the late-filed contentions.

Applicants oppose admission of all of the late-filed contentions because:

- (1) Each of the six proposed Eddleman contentions is overly-broad in its scope -- the far-reaching allegations are not supported by the specific concerns raised in the Van Vo Affidavit.
- (2) The reliability of the Van Vo Affidavit has been seriously questioned and cannot serve as the basis of a contention.
- (3) Both Mr. Eddleman and CCNC have failed to demonstrate good cause for raising these new issues at this late date and have failed to demonstrate that application of the five lateness factors weigh in favor of admission of the late contentions.
- (4) Even assuming arguendo that the statements in the Van Vo Affidavit are factually correct, in the case of each proposed contention Mr. Eddleman and CCNC have failed to plead a litigable issue with adequate basis and specificity. Particularly, in this regard, many of the statements in the Van Vo Affidavit allege deficiencies in procedures that were in effect over

one year ago and that have been subsequently revised and any identified defects in work were corrected; to litigate such issues would be to litigate issues only of historical interest.

II. Background on the Van Vo Affidavit

The Board has previously considered the Van Vo Affidavit in this proceeding in some detail (Tr. 5315-63), having accepted the Van Vo Affidavit as a limited appearance statement. Tr. 5316. Furthermore, the Board ruled that the allegations in the Van Vo Affidavit were not relevant to Eddleman Contention 41. Tr. 5571-72. During the hearing, counsel for Applicants provided background with regard to the Van Vo Affidavit. The Affidavit was received by Applicant CP&L, in mid-October in response to an inquiry initiated by CP&L's Corporate Quality Assurance Department ("Corporate QA") under the Harris Plant Quality Check Program to obtain more information from Mr. Van Vo on the quality concerns he raised in a complaint to the Department of Labor. Tr. 5320. The Van Vo Affidavit was publicly released at a press conference called by the Government Accountability Project on October 22, 1984. Tr. 5360.

The allegations set forth in the Van Vo Affidavit first came to light as a result of a complaint dated August 28, 1984, from Mr. Van Vo to the Department of Labor charging CP&L with a violation of the employee protection provisions of the Energy Reorganization Act (a copy of the complaint is attached hereto

as Exhibit D). Mr. Van Vo alleged inter alia that he had "been subject to repeated harassment, intimidation, pressure and other discrimination because of [his] actions in performing [his] assigned duties which included the identification and documentation of design and construction deficiencies." See Exhibit D at 2. On October 12, 1984, the Department of Labor issued its findings and concluded that it could not substantiate Mr. Van Vo's allegations.^{2/}

As indicated by counsel for Applicants during the hearing (Tr. 5322), an additional investigation of the quality concerns raised by Mr. Van Vo was initiated by the CP&L's Corporate QA. Further, an independent consultant, Mr. A. Parks Cobb, Jr., a Senior Manager at Duke Power Company, was retained to perform part of the Quality Assurance investigation. The results of Mr. Cobb's investigation are set forth in a report (the "Cobb Report") dated October 31, 1984 (attached to the Affidavit of A. Parks Cobb, Jr. -- Exhibit F hereto). Mr. Cobb has considerable training and experience to qualify him to perform such an investigation. See Affidavit of A. Parks Cobb, Jr., at ¶¶ 1, 2; Attachment 1. Mr. Cobb's independent investigation was also unable to substantiate the allegations set forth in the Van Vo Affidavit. Indeed, Mr. Cobb's report describes a

^{2/} A copy of the letter setting forth the findings of the Department of Labor is attached hereto as Exhibit E.

number of inaccuracies that are found in the Van Vo Affidavit. Nevertheless, Corporate QA will issue a separate report on the technical concerns raised in the Van Vo Affidavit. In addition, the NRC's Office of Inspection and Enforcement and Office of Investigation are conducting their own independent investigations. Tr. 5333.

III. Standards Governing Late-Filed Contentions

The Commission's Rules of Practice, at 10 C.F.R. § 2.714, require that a petitioner set forth the basis for each contention with reasonable specificity. This standard requires that a contention state a cognizable issue with particularity, Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 A.E.C. 210, 216-17 (1974), and that a petitioner provide a "reason" for its concern. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 548 (1980).

As a general proposition, a Licensing Board should not address the merits of a contention in determining admissibility. Id. However, a contention and its basis may be scrutinized to determine if a litigable issue has been pleaded. Two purposes of the basis with specificity requirement are "to help assure at the pleading stage that the hearing process is not improperly invoked," and "to assure that the proposed issues are proper for adjudication in that particular proceeding."

Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 20-21 (1974). In this regard, a contention must be material to those findings which precede licensing, as set forth in 10 C.F.R. § 50.57. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1654-55 (1982).^{3/} With respect to the specific issues raised by CCNC and Mr. Eddleman regarding QA/QC of certain aspects of construction, we note that error-free construction is not a precondition for an operating license under either the Atomic Energy Act or the Commission's regulations. What is required instead is a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety. 42 U.S.C. §§ 2133(d), 2232(a); 10 C.F.R. § 50.57(a)(3)(i); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 N.R.C. 1340, 1345 (1983); Union Electric Company (Callaway Plant, Unit

^{3/} Not only must the contention be relevant to the Board's ultimate findings, but it must provide a foundation sufficient to warrant further exploration. Philadelphia Electric Company (Peach Bottom Atomic Station, Units 2 & 3), 8 A.E.C. 13, 21 (1974); Duquesne Light Company (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 A.E.C. 243, 246 (1973). See also Seabrook Station, *supra*, LBP-82-106, 16 N.R.C. 1649, 1655 (citing Consumers Power Company (Midland Plant, Units 1 and 2), CLI-74-5, 7 A.E.C. 19, 32 n.27 (1974), *rev'd sub nom.*, Aeschliman v. NRC, 547 F.2d 622 (D.C. Cir. 1976), *rev'd sub nom.*, Vermont Yankee Nuclear Corp. v. NRDC, 435 U.S. 519, 553-54 (1978)), for the proposition that a contention must be sufficient to require reasonable minds to inquire further.

1), ALAB-740, 18 N.R.C. 343, 346 (1983), reconsideration denied, ALAB-750, 18 N.R.C. 1205 (1983), as modified, ALAB-750A, 18 N.R.C. 1218 (1983). Accordingly, a QA/QC contention in an operating license proceeding is not litigable unless it would cast doubt on this finding.

Contentions may also be scrutinized to eliminate those that are based on factual inaccuracies or misrepresentations. This scrutiny is readily distinguishable from the proscription in Allens Creek, ALAB-590, supra. Allens Creek prohibited Licensing Boards from rebutting a source or reference proffered in support of a contention, but it did not prohibit rejecting a contention when such source material is fictitious or misrepresented. See Philadelphia Electric Company (Limerick Generating Station, Units 1 & 2), LBP-82-43A, 15 N.R.C. 1423, 1504-05 (1982), in which the Licensing Board rejected a contention because of factual inaccuracies in the allegations; Duke Power Company (Catawba Nuclear Station, Units 1 & 2), LBP-82-107A, 16 N.R.C. 1791, 1804 (1982), in which a Licensing Board rejected a contention because it seriously mischaracterized the draft environmental statement; Carolina Power & Light Company, et al. (Shearon Harris Nuclear Power Plant, Units 1 & 2), LBP-82-119A, 16 N.R.C. 2069, 2076 (1982), in which this Licensing Board rejected contentions which inaccurately described the applicants' proposals. Here, the sole asserted basis for the late contentions is an affidavit containing the allegations of a single

CP&L employee, whose employment was terminated some nine months ago -- which allegations independent investigations of the Department of Labor and CP&L's Corporate QA found to be unsubstantiated. Under these circumstances, Applicants submit that inquiry into the accuracy of the statements found in the Van Vo Affidavit is permissible because it is akin to determining if a reference cited as basis even exists, and not into whether the contentions have merit.

In addition to the normal pleading requirements, 10 C.F.R. § 2.714 sets out five factors that must be balanced in admitting a late-filed contention, and a contention is untimely if it is filed later than fifteen days prior to the 10 C.F.R. § 2.751a special prehearing conference. 10 C.F.R. § 2.714(b); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1043 n.2 (1983). The five factors 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 proceedings.

10 C.F.R. § 2.714(a)(1)(i)-(v).

In Catawba, supra, CLI-83-19, the Commission enunciated two fundamental principles underlying the five-factors analysis: First, a petitioner has the obligation of uncovering information in publicly available documentary material; and second, there is a substantial public interest in efficient and expeditious administrative proceedings. Id. at 1048 (citing WSTE-TV, Inc. v. FCC, 566 F.2d 333, 337 (D.C. Cir. 1977)). The Commission also adopted a three-part test for determining whether good cause exists. Good cause exists if a contention:

1. is wholly dependent upon the content of a particular document;
2. could not 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 examination.

Id. at 1043-44. Although this test addresses documentary material, it should apply equally to any other source allegedly providing new information.

Unlike the assessment of basis in determining the admissibility of a contention, assessment of the five lateness factors entails a determination of the merits of the claims made. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), CLI-78-12, 7 N.R.C. 939, 948-49 (1978). In St. Lucie, the Commission stated:

In considering untimely petitions licensing boards are required to assess . . . whether the petitioner has "made a substantial showing of good cause for failure to file on time." In doing so, Boards must necessarily consider the merits of claims going to that issue.

Id. The Commission therefore upheld the consideration of affidavits.^{4/}

Similarly, in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 N.R.C. 1132, 1141-42 (1983), a Licensing Board considered affidavits and held an on-the-record conference in assessing the lateness factors. With respect to factor (iii), the Board held: "the extent to which petitioner's participation may reasonably be expected to assist in developing a sound record is only meaningful when the proposed participation is on a significant, triable issue;" and with respect to factor (v), the Board held, "the extent to which petitioner's participation will broaden the issues or delay a proceeding is properly balanced against the significance of the issue."^{5/} Id. at 1143.^{6/}

^{4/} This ruling parallels the customary practice of considering affidavits for and against motions to reopen a record. See, e.g., Diablo Canyon, supra, ALAB-756, 18 N.R.C. 1340, in which the Appeal Board considered affidavits on a motion to reopen the record on quality assurance. Furthermore, because of the importance of QA, the Appeal Board held a hearing on the motion and permitted cross examination of the affiants. Id. at 1343. The hearing revealed that intervenors were misrepresenting an employee's statement about a contractor's QA program. Id. at 1347-48.

^{5/} "If significance and triability of the issue were not inherently part of the overall balancing test for late-filed

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IV. Application Of The Standards

A. THE EDDLEMAN LATE-FILED CONTENTIONS ARE OVERLY BROAD

The six late-filed contentions proposed by Mr. Eddleman are so expansively worded that Applicants can only speculate how Mr. Eddleman purports to relate specific referenced paragraphs in the Van Vo Affidavit to the broad sweeping allegations of the inadequacies of Applicants' Construction QA program. Indeed, Mr. Eddleman admitted as much in response to a question by the Board Chairman during his discussions of the new contentions:

[T]he reason I drafted these contentions relatively broadly was that I don't know how much might be lurking out there. . . . I didn't want to be hung to a contention that just says specifically what Mr. Van Vo says. . . .

(Continued)

contentions, the illogical result would be that the significance of an issue could not weigh the balance in favor of admitting a late-filed contention before the close of the record, but could weigh in favor of admitting the same contention filed even later, after the close of the record." LBP-83-30, 17 N.R.C. at 1143-44.

6/ See also Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2, LBP-82-96, 16 N.R.C. 1408, 1429-35, aff'd, ALAB-707, 16 N.R.C. 1760, 1766 n.5 (1982)). In this case, the Licensing Board resolved an untimely petition by making findings of fact with reference to a transcript of a public hearing. The transcript had been attached to applicants' answer to the petition. The Board criticized the petitioner for failing to offer factual support for its assertions and based its rejection of the petition in part on the "clear evidence" submitted by applicants. Id. at 1432-33.

So that is why I drafted it that way. But, basically, what I am saying is now I think the kind of scoping of the contention depends a good bit on the schedule, it depends I think in part on the response of the Applicants and the Staff.

Say, for example, the Staff says yes we think you ought to hear a specific part of this or one of them, than that would be a different situation.

And, likewise, I can't predict what the Applicants are going to do, but I think that is open. I am just trying to address in a sort of general way.

Tr. 5739-5740. By his own admission, Mr. Eddleman's approach was to attempt to draft the broadest statements that he could possibly attempt to support with the allegations in the Van Vo Affidavit and then see "how much might be lurking out there." Such an approach to drafting contentions is clearly impermissible.

In contrast, the two contentions proposed by CCNC, while objectionable on other grounds, do put Applicants on notice specifically as to the allegations that CCNC would desire to litigate. Compare CCNC WB-1 with Eddleman 41C, 41D and 41E.

In dealing with the eight proposed contentions in this response, we have combined CCNC WB-1 and Eddleman 41C, 41D and 41E as constituting essentially the same allegation with regard to material traceability of pipe hangers. Thereafter, we will treat CCNC WB-2 and Eddleman 41F, 41G and 41H separately. However, as a threshold objection, Applicants submit that all six

of Mr. Eddleman's proposed contentions must be rejected because of the overly-broad statements, lacking clarity and precision, which fail to put Applicants on notice without considerable speculation as to specifically what issues Mr. Eddleman would seek to litigate.^{7/}

B. THE VAN VO AFFIDAVIT HAS BEEN DEMONSTRATED TO BE FACTUALLY INACCURATE AND UNRELIABLE AND CANNOT SERVE AS THE BASIS FOR A CONTENTION

A threshold question that must be addressed is whether the statement of Mr. Van Vo should, without any other substantiation, serve as the basis for late-filed contentions.

The first public statement regarding Mr. Van Vo's alleged safety concerns was disclosed during a press conference orchestrated by the local representative of the Government Accountability Project on the eve of continuation of safety hearings. The tactics of the Government Accountability Project in raising last minute "safety concerns" regarding nuclear projects that are close to completion based on the statements of so-called whistle-blowers is well-known. Indeed, Mr. Van Vo's attorney, Mr. Guild, was present for part of the management capability hearings in September (where QA/QC programs were discussed

^{7/} See Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 N.R.C. 559, 576-77 (1975). ("It should not be necessary to speculate about what a pleading is supposed to mean.")

during the testimony of Applicants' witnesses) and Mr. Guild apparently advised counsel for CCNC concerning certain lines of questioning. Tr. 5358-59. At that time, having previously filed the Department of Labor complaint on behalf of Mr. Van Vo, Mr. Guild certainly was aware of Mr. Van Vo's allegations. What information Mr. Guild then shared with Mr. Eddleman and Mr. Runkle, we do not know. What is clear, however, is that at least Mr. Guild waited until the safety hearings to publicly announce Mr. Van Vo's safety concerns. (Exhibit G is a copy of the press release provided by the Mr. Guild at the October 22, 1984 news conference.) We certainly question the fairness to Applicants of such transparent tactics.

More importantly, it is clear that the "new" information revealed in the Van Vo Affidavit cannot be substantiated and, at a minimum represents a distorted and inaccurate characterization of events that occurred over a year ago. The Department of Labor was not able to substantiate Mr. Van Vo's claims. See Exhibit E. An independent investigation initiated by CP&L's Corporate QA places the Van Vo allegations in an entirely different light. The report of the investigation of Mr. A. Parks Cobb, Jr. makes a number of important findings, including:

1. Mr. Van Vo's allegations of harassment were no more than frequent counseling sessions for poor job performance, which began formally in March 1983. Mr. Van Vo denied poor performance on his part and rather blamed his supervisors -- even in

interviews with senior CP&L management.
Cobb Report at 3-8.

2. Mr. Van Vo's allegations of technical problems with the steam generator feedwater pump and lines and his allegations of material traceability problems with pipe hangers resulted from his relatively minor and isolated exposure to two complex situations about which he drew incorrect conclusions. Cobb Report at 4, 12-15.
3. In any event, Mr. Van Vo displayed his lack of familiarity with Harris Plant systems by characterizing the steam generator feedwater pump and piping as "Safety Category 4, Seismic Category 1," upon which "the integrity of reactor temperature and pressure control is dependent" and therefore "nuclear safety significant." Van Vo Affidavit at ¶ 5. In fact, both the pump and piping are non-safety related. Cobb Report at 14, 16; see discussion of CCNC WB-2 infra.
4. Mr. Van Vo supports his allegations regarding material traceability with an instance where he found a Purchase Order ("PO") had been "voided." Van Vo Affidavit at ¶¶ 18-20. It simply turns out that the documentation was difficult to find and Mr. Van Vo assumed that it had been destroyed. Another engineer was assigned to review the problem identified by Mr. Van Vo and traced the material in question to another specific purchase order. This situation was later investigated by Dr. Elleman's Nuclear Safety Review Panel and found not to be a safety concern. Cobb Report at 17.
5. While Mr. Van Vo ends his monologue regarding material traceability for pipe hangers with a rhetorical question regarding the 300 pipe hangers that had successfully passed inspection prior to changes in procedure to provide for material verification (Van Vo Affidavit at ¶ 13), Revision 9 to WP-110 (referenced by Mr. Van Vo) provided that all of the hangers that had been previously installed and inspected under the

old Phase II program were to be reinspected to ensure the desired level of quality -- including material traceability. Cobb Report at 15; see WP-110 (attached hereto as Exhibit H).

6. While Mr. Van Vo alleges that he previously had brought safety concerns to management attention (Van Vo Affidavit at ¶ 1, 24), rather his interviews with senior management were directed to his proposals for reorganizing the Harris Project with Mr. Van Vo in a more prominent position of responsibility. Cobb Report at 5-10; see also "Nuclear Power Plant Construction Management -- Proposed: Proportional of Integral Derivative Controller Construction" prepared by Chan Van Vo (Exhibit I hereto).

The Cobb Report directly refutes the principal allegations in the Van Vo Affidavit, which is proffered as the sole basis for these late-filed contentions. As we discussed in the preceding section on the applicable law, the Board may rely on affidavits to inquire into the accuracy of the information proffered as the basis for contentions. In so doing, the Board is not weighing the merits of the contentions themselves. Furthermore, while the Department of Labor did not detail its findings, it did conduct its own independent investigation and could not substantiate Mr. Van Vo's allegations. Thus, Applicants submit that the Van Vo Affidavit must be considered unreliable and cannot be used as the basis of a new contention. To accept such unsubstantiated allegations as fact and require Applicants to invest the substantial time and expense of discovery and litigation at this stage of the proceeding would be

an abuse of the administrative process.^{8/}

C. MR. EDDLEMAN AND CCNC HAVE FAILED TO SUSTAIN THEIR
BURDEN IN ADDRESSING THE FIVE LATENESS FACTORS

When an untimely motion to admit new contentions is filed on the eve of closing the record, "petitioner's burden on the Section 2.714(a) factors is a heavy one." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 N.R.C. 508, 511 (1982). Such is the case at hand, since the Harris safety hearings are scheduled for completion this week.

Factor (i): Good Cause For Failure to File on Time

Mr. Eddleman asserts as good cause for the lateness of his contentions the fact that the Van Vo Affidavit was not available to him until October 22, 1984 and did not even exist until October 6, 1984. Yet Mr. Eddleman admitted that he and Mr.

^{8/} Of course, if the NRC's independent investigations were to substantiate Mr. Van Vo's claims, this issue would be cast in a different posture. Applicants are confident that the results of the NRC's inquiries will be the same as the independent investigation performed by Mr. Cobb. At a minimum, it would be premature to give any credance to the allegations in the Van Vo Affidavit -- in light of the information presented here to the contrary and in light of the ongoing NRC investigations -- until such reports by the NRC investigatory arms were completed. Applicants, however, submit that the Board could at this time reject all eight contentions for no other reason than the unreliability of the Van Vo Affidavit -- without reaching the equally compelling arguments infra with respect to the five factors or the lack of basis and specificity.

Runkle knew at least of the substance of Mr. Van Vo's allegations in September and waited until late October to present this new information to the Board. Tr. 5578; 5736. The intervenors have an obligation to do more than wait for the information to fall into their laps.

More importantly, information putting the intervenors on notice of a potential concern regarding material traceability of pipe hangers (CCNC WB-1; Eddleman 41C, 41D and 41E) was publicly available in the form of NRC Inspection and Enforcement ("I&E") inspection reports that were available over a year ago. Similarly the questions of nonconformance reporting (Eddleman 41F) and Construction Inspection independence (Eddleman 41H) were also raised in I&E inspection reports over a year ago.^{9/} Therefore, the issues raised by these six contentions are not "wholly dependent upon" the content of the Van Vo Affidavit and could have been advanced with even a greater degree of specificity over a year ago based on concerns raised in I&E inspection reports.^{10/} Thus for these six contentions, Mr.

^{9/} The specific inspection reports are identified in Section IV.D infra, in discussing the lack of basis and specificity for the individual contentions.

^{10/} As will be discussed infra, the concerns raised in these I&E inspection reports have since been resolved to the satisfaction of I&E. The information in the Van Vo Affidavit is stale and often inaccurate; on the other hand, information that relates to at least the substance of certain of his concerns was publicly available in late 1983.

Eddleman and CCNC have failed to meet two parts of the three-part test for determining good cause as set forth in Catawba, supra, CLI-83-19, at 1043-44.

Factors (ii) and (iv): The Availability of Other Means Whereby Petitioner's Interest Will Be Protected; and the Extent to Which Petitioner's Interest Will Be Represented by Existing Parties

Mr. Eddleman, joined by CCNC, argue that there are no other means by which their interests may be affected:

I certainly can't depend on the Applicants' investigation. I think the Staff is basically adverse to hearing these things, and cannot be counted on to protect my interest, and does say will be protected; it is not may be or likely to be.

So, I think that is pretty straight forward. In other words, if I want to protect my interest on this, I have to go ahead and file contentions.

Tr. 5737. Accepting such an argument would always resolve factors (ii) and (iv) in favor of late contentions. Furthermore, the argument is circular and seeks to avoid the affirmative showing that the intervenors are required to make.

While the Board should not simply assume that the Staff will represent the intervenors' interests, Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 N.R.C. 1167, 1174-75 (1983), this case is different. The NRC is actively investigating the allegations recounted in the Van Vo Affidavit. In light of this activity, it is reasonable to conclude that the Staff will represent the intervenors'

interest in conducting an independent investigation.^{11/}

Factor (iii): The Extent to Which the Petitioner's Participation May Reasonably Be Expected to Assist in Developing a Sound Record

With respect to this factor, Mr. Eddleman offered the following argument:

At the risk of sounding like a broken record, the Board and parties know I think what I almost always say about this, if you don't have a record on a subject, you don't have a sound record. . . .

I have some knowledge of welding and that sort of thing. I am able, I think, to conduct examinations. Since he [Van Vo] would be my witness, it doesn't depend much on my ability to cross, it just depends on my ability to put him on. . . .

Anyway, he has a counsel who knows something about this sort of thing and is experienced in NRC proceedings, and I think would be able to assist him in that regard.

And my participation then would be basically just to get him in here and make him available to bring out his information, and I am willing to do anything I can to assist in that, but I think the main thing is just to get it on the record.

Tr. 5743-44. This statement totally fails to satisfy the intervenors' burden of persuasion. The Appeal Board has stressed the importance of this factor, stating:

^{11/} Factors (ii) and (iv) are given less weight than the other factors. South Carolina Electric & Gas Company (Virgil C. Sumner Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 881, 895 (1981); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 N.R.C. 1760, 1767 (1982).

When 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 No. 3, supra, ALAB-747, 18 N.R.C. at 1177 (citing Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 N.R.C. 1725, 1730 (1982); South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 881, 894 (1981); Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 N.R.C. 759, 764 (1978); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 N.R.C. 387, 399-400 (1983)). In ALAB-747, the petitioner had described its experience in NRC proceedings and identified a witness, but the Appeal Board found such statements "manifestly inadequate." WPPS No. 3, supra, 18 N.R.C. at 1177.

Mr. Eddleman's offer regarding this factor is considerably less than that which the Appeal Board found inadequate in ALAB-747.^{12/} Indeed, Mr. Eddleman has never met Mr. Van Vo. There is certainly no assurance that Mr. Van Vo would be available for a hearing on any contention raised by his Affidavit at some later date, much less any assurance that he would be

^{12/} Mr. Runkle's failure independently to make a showing of CCNC's plans to assist in the development of a sound record, is a default by CCNC in meeting its burden and must weigh heavily against CCNC in balancing the five factors.

available for depositions prior to such a hearing. Mr. Eddleman's offer "to get him in here and make him available to bring out his information" falls considerably short of the effort required to assist in developing a sound record.

Further, Applicants submit that the record that Mr. Eddleman and Mr. Runkle have assisted in developing during the last three weeks of hearings on safety issues speaks for itself and is the best evidence in controverting the intervenors' arguments in support of the third factor. While Mr. Eddleman suggests that developing a sound record on his proposed contentions here "doesn't depend much on my ability to cross, it just depends on my ability to put him [Van Vo] on," Applicants remind the Board of the state of the record with respect to the case presented by Mr. Eddleman's witness, Mr. Stokes. See Tr. 6037 et seq. The record on this issue can best be characterized as one of complete disarray. See Tr. 6049.

Mr. Eddleman has often complained about his work load; but it is certainly one of his choosing. We note that Mr. Eddleman has a significant number of emergency planning contentions already admitted. Experience to date in this proceeding, as the Board itself has acknowledged, strongly suggests that Mr. Eddleman is over extended already and is clearly not in a position to assist in a meaningful way in developing a sound record on additional QA/QC contentions. See Tr. 6280. Thus, the third factor weighs strongly against the intervenors here in admitting any late-filed contentions.

Factor (v): The Extent to Which the Petitioner's
Participation Will Broaden the Issues or Delay the
Proceeding

As he must, Mr. Eddleman concedes that admission of the late-filed contentions will broaden the issues:

I think it does broaden the issues, but I think because the issues are important, and because Mr. Van Vo has direct experience of much of this, and says he believes there is more, to the extent we might get into further digging in it, that that shouldn't be a factor against these but rather should be a factor for them because they are so important.

As to delaying the proceeding otherwise - what I am saying is, I am prepared to go forward with this in a couple of weeks, which is pretty much within the hearing schedule we have now.

If it goes more than that, I think we have some leeway in that nine month slip in the fuel load date that was just announced, I believe, yesterday.

Tr. 5741-42. Not only does Mr. Eddleman admit that it will broaden the issues, he proposed "further digging."

Mr. Eddleman appears to believe that a delay in the proposed fuel load date for the Harris Plant sanctions any delay in the proceeding. The fifth factor refers to a delay of the proceeding, not to delay of the operation of the facility.

Enrico Fermi, supra, ALAB-707, 16 N.R.C. 1760, 1766. In Fermi, the Licensing Board rejected an argument that there was no delay because fuel loading was not scheduled for a year. Admission of new contentions on the eve of closing the record on

on safety issues necessarily will extend the proceeding significantly. Mr. Eddleman's assertions that he is prepared to go forward on his new proposed contentions in a couple of weeks is totally unrealistic. At this late date, the introduction and litigation of new contentions threatens a substantial and unreasonable delay in the proceeding.

Accordingly, all five factors militate against admitting the intervenors' late-filed contentions.

D. THE LATE-FILED CONTENTIONS FAIL TO STATE
LITIGABLE ISSUES WITH THE REQUISITE BASIS
AND SPECIFICITY

Even if the Board were to reject Applicants' position regarding the unreliability of the Van Vo Affidavit and were to weigh the five lateness factors in the intervenors' favor, an analysis of each proposed late contention clearly demonstrates that the intervenors have failed to state a litigable issue with adequate basis and specificity. The intervenors have failed to advance a thesis that would link the isolated incidents described by Mr. Van Vo -- upon which the proposed contentions are solely based -- with the finding that the Harris Plant, as built, can and will be operated without endangering public health and safety. Indeed, Mr. Van Vo describes, in part, his supporting role in determining the quality of pipe hanger installations, noting that deficiencies were found but that procedures were modified to ensure quality construction --

including verification of materials used in the pipe hanger installations. Mr. Van Vo draws a number of unsupportable conclusions; many of his statements, however, confirm that the quality inspection program worked and that errors in construction are detected. The intervenors have utterly failed to address the program that presently exists at the Harris Plant for pipe hanger quality inspections, for nonconformance reporting, for Construction Inspection independence and for ensuring worker concerns will be dealt with.

CCNC WB-1; Eddleman 41C, 41D and 41E (Pipe Hanger Material Traceability)

CCNC WB-1 asserts that the QA program at the Harris Plant is deficient in that "nuclear safety material traceability documentation was falsified and other QA documents relating to safety were falsified or destroyed." See Exhibit C. Eddleman 41C repeats the same allegation. Eddleman 41D is a variation on this same theme, referring to "inadequate or nonexistent documentation of material used in safety related equipment." Eddleman 41E alleges "wholesale discarding of documents." See Exhibit B.

All but five paragraphs (¶¶ 5, 10, 11, 12 & 25) of the Van Vo Affidavit are cited by Mr. Eddleman in support of Eddleman 41C, 41D and 41E. CCNC simply cites to the Van Vo Affidavit for basis. Yet Mr. Eddleman has admitted he really does not know what the statements in the Van Vo Affidavit mean other

than what they appear to say. Tr. 5351-54.^{13/} It appears that the intervenors are principally relying on statements by Mr. Van Vo about "Speed Letters" that were allegedly discarded (which discussed the problem relating to the Steam Generator Feed Water Pump) and the saga of the voided Purchase Order as basis for these four contentions. See Van Vo Affidavit at ¶¶ 9, 18-20, 26.

With respect to use of "Speed Letters" to document QA problems, the only instance cited by Mr. Van Vo relates to the Steam Generator Feed Water Pump and piping which are non-nuclear safety and do not require QA documentation under 10 C.F.R. Part 50, Appendix B. Mr. Cobb could not substantiate any use of "Speed Letters" in lieu of the proper forms to report nonconformances. Cobb Report at 16-17. In any event, new procedures have been established to ensure consistency in non-conformance reporting. See discussion of Eddleman 41F infra.

The only specific instance of alleged "false documentation" of pipe hanger material was the voided Purchase Order -- P.O. #21022. Van Vo Affidavit at ¶ 20. DDR 1775 (Deficiency and Disposition Report) referenced by Mr. Van Vo does refer to

^{13/} Mr. Eddleman even attempts to clarify one statement in the Van Vo Affidavit by reference to a telephone conversation with Van Vo's counsel -- thereby offering hearsay speculation as basis. See note at Eddleman 41E.

a voided P.O. #21022. (DDR 1775 is attached hereto as Exhibit J). As explained in the disposition of the DDR, the material which referenced P.O. #21022 was actually received on another Purchase Order (P.O. #19019). P.O. #21022 was administratively created to account for material stored in the fabrication shop. The material in question was released by the fabrication shop by reference to the "storage" P.O. #21022. The Purchase Order was subsequently voided in error. However, the material was still traceable to the original P.O. #19019. See DDR 1775 (Exhibit J) at Page 2 of 17. As noted in the Cobb Report, another engineer was able to determine this information after Mr. Van Vo had jumped to the conclusion that QA documents were being falsified or destroyed. Cobb Report at 18.

What the Van Vo Affidavit itself demonstrates is that quality problems with material verification of pipe hangers were being identified and properly reported on nonconformance reports. Van Vo Affidavit at ¶ 20. When concerns were identified, a stop work order was issued; work and QA procedures were "substantially changed, including particularly WP-110, and TP-34, which provided for hanger installation and inspection." Id. at ¶ 22. Mr. Van Vo states that CP&L noted "that hanger documentation should be checked to insure 'that the surplus hanger number/purchase order number is legitimate.'" Id. Mr. Van Vo describes a situation which CP&L was at the time taking strong efforts to resolve.

While Mr. Van Vo expresses a concern about the 300 out of 18,000 seismic pipe hangers that had already successfully passed inspection prior to the issuance of the revised procedures, all hangers were reinspected. Cobb Report at 15-16. Thus the Van Vo Affidavit itself does not support the broad sweeping allegations of QA/QC deficiencies found in these four contentions.

Furthermore, I&E Inspection Reports, as early as 1981 reported concerns regarding verification of material in pipe hangers.^{14/} Thus the general issue of pipe hanger material control could have been raised much earlier. More recent I&E Inspection Reports detail the implementation of the revised procedures, which the intervenors have failed to address.^{15/}

Accordingly, these contentions fail to state litigable issues with the requisite basis and specificity and must be rejected.

^{14/} See I&E Inspection Report 50-400, 401, 402, 403/81-19 dated October 2, 1981 (in which CP&L was cited for material substitutions in pipe hangers without documentation); I&E Inspection Report 50-400, 401/83-22 dated August 3, 1983 (in which CP&L was cited for installation of incorrect material in a pipe hanger); I&E Inspection Report 50-400, 401/83-25 dated October 19, 1983 (in which CP&L was cited for failure to provide documentation for material substitution).

^{15/} See I&E Inspection Report 50-400/84-25 dated August 22, 1984, and I&E Inspection Report 50-400/84-35 dated October 22, 1984 (which reported on the inspection of CP&L's pipe hanger installation program, closed-out previously noted deficiencies, reviewed the efficacy of revised procedures and found no violations or deviations).

CCNC WB-2 (Steam Generator Feed Water Pump 1A-NNS)

This Contention alleges the piping line to the discharge nozzle to Steam Generator Feed Water Pump 1A-NNS was improperly installed thus causing improper stresses to the pump. CCNC asserts "[t]he safety significance of this improper installation is that the integrity of the reactor temperature and pressure control is dependent upon the effective function of these pumps, valves, lines, etc." See Exhibit C.

CCNC WB-2 fails to raise a litigable safety issue. Steam Generator Feed Water Pump 1A-NNS and the suction and discharge lines thereto (as the designation "NNS" implies) are non-nuclear safety equipment and non-seismic category equipment, which perform no safety function. Harris FSAR Table 3.2.1-1 (at page 3.2.1-39); Cobb Report at 14, 17; Tr. 5325-27; 5365-66.

Furthermore, even if the allegations in the Van Vo Affidavit regarding the piping line to the Steam Generator Feed Water Pump were correct and even if the pump were safety-related, the contention would not raise a litigable issue absent evidence that the alleged misalignment had not been or was not being investigated and corrected.^{16/} As demonstrated by the Cobb

^{16/} As was discussed in Section III, supra, error free construction is not a precondition for an operating license. A contention regarding construction activities must by its terms call into question a finding of reasonable assurance that the plant, as built, can and will be operated without endangering public health and safety.

Report at 14, Harris Plant quality inspection picked up the misalignment as a nonconformance. In fact, a Deficiency Notice (Exhibit K hereto) was written on the problem with the pump piping on July 30, 1982. Mr. Van Vo claims to have discovered this problem in mid-August 1982. Thus there is clearly no basis for a contention that would assert that the alleged improper installation went undetected or that Plant personnel ignored legitimate safety concerns raised by Mr. Van Vo.

CCNC WB-2 must be rejected for failing to state a litigable contention.

Eddleman 41F (QA Concerns Not Documented Properly)

This contention broadly alleges that "QA concerns [are] not documented properly at Harris" Mr. Eddleman cites to twelve paragraphs from the Van Vo Affidavit for basis. See Exhibit B.

This contention is so broadly worded, Applicants must resort to speculation to determine what the principal concern is alleged to be. For that reason alone, it should be dismissed. See Section IV.A supra.

The first paragraph from the Van Vo Affidavit referenced in Eddleman 41F is ¶ 26 (which is also underlined), where Mr. Van Vo alleges CP&L employs a "confusing and ineffective array of different documenting systems for controlling nonconformances such as DR's, DDR's, NCR's and such commonly used

uncontrolled paperwork as Memos and 'Speed Letters.'"17/
Applicants assume that this statement summarizes the principal concern being raised by Eddleman 41F.

In I&E Inspection Report 50-400/83-25 and 50-401/83-25 dated October 19, 1983, "Inspector Follow-up Item 83-25-14" reads:

Another offshoot of the multiple quality control type organizations at Harris is the number of different forms and methods to document conditions adverse to quality. Although having many forms is in itself not a problem, the potential to lose tracking control of identification and correction increases greatly with increased forms. The use of the DR, DDR, NCR and punchlists for documenting the same type of problems can eventually lead to missing items and inconsistent handling of problems.

In I&E Inspection Report 50-400/84-22, dated August 14, 1984, Inspector Follow-up Item 83-25-14 is "closed":

Multiple Formats for Identification of Similar Problems. The inspector confirmed that CP&L procedure CQA-3, R3, has been issued to require a single NCR form for the Harris project. All disciplines must therefore report nonconformances on the same form.

Thus, it is clear from I&E Inspection Report 50-400/83-25, that this issue could have been raised over a year ago. See Section IV.C supra. Further, the concern identified in Eddleman 41F

17/ Mr. Cobb was unable to substantiate the allegation that speed letters are utilized in place of prescribed quality assurance documentation at the Harris Plant. Cobb Report at 17.

has been resolved. Mr. Eddleman fails to address the present system and procedures at the Harris Plant for reporting nonconformances. The information in the Van Vo Affidavit is stale, based on his experiences of a year ago and longer. For this reason, litigation of this issue would have no present meaning. Contention 41F must be rejected for failing to state a litigable issue.

Eddleman 41G (Employee Harassment)

This contention alleges "a pattern of harassment, intimidation, and failure to respond positively to employees bringing forward QA/QC concerns at the Harris Plant" Mr. Eddleman jumps to the conclusion that "[t]his prevents concerns from being brought forward and dealt with properly" See Exhibit B.

The only specific allegation of alleged harassment or intimidation is Mr. Van Vo's own description of being counseled and being placed on probation. Mr. Van Vo suggests that the reason for such dissatisfaction with his performance was because of his raising safety concerns (as opposed to his inadequate job performance). Accepted at face value, this allegation neither establishes a pattern nor provides a causal link with the safety of the plant as built. Further, Mr. Van Vo was neither a CI nor QA inspector.^{18/} As detailed in the Cobb

^{18/} Mr. Eddleman questioned the subpoenaed CI concrete inspectors regarding any intimidation or harassment. They cate-

(Continued Next Page)

Report, there was good reason for counseling.

Yet, Mr. Van Vo's Affidavit on its face does not support the allegation that employees were discouraged from coming forward with safety concerns or any other concerns, even to senior management. Mr. Van Vo was able to make appointments to see the Plant General Manager, the Senior Vice-President for Construction and the Executive Vice-President.^{19/} His own actions certainly do not reflect intimidation.

Finally, since the time Van Vo was terminated, CP&L has instituted a Quality Check Program further to encourage employees to come forward with safety concerns. This program was discussed in some detail during the management capability proceedings. Tr. 2697-2713; 3004-06. Mr. Eddleman simply ignores this program in his sweeping allegations. Indeed, the Van Vo Affidavit itself is being investigated as part of the Quality Check Program. See Cobb Affidavit.

Thus, even the allegations in the Van Vo Affidavit fail to support or provide any basis for proposed Eddleman 41G. It must be rejected.

(Continued)

gorically denied being aware of such pressure or harassment. Tr. 6247.

^{19/} At the hearings held on management capability, Mr. McDuffie, Senior Vice-President for Construction, discussed his own accessibility to employees. Tr. 3064-69.

Eddleman 41H (Construction Inspection Independence)

This contention asserts that CP&L fails "to give sufficient independence to Construction Inspection (CI) and other QA personnel to perform their duties without pressure or harassment" See Exhibit B. It is supported by a brief paragraph in the Van Vo Affidavit which utterly lacks any specificity. Van Vo Affidavit at ¶ 25.

As early as 1977, I&E identified the need to ensure inspection personnel would have sufficient independence from cost and scheduling responsibilities to avoid compromise of quality. I&E Inspection Report 50-400, 401, 402, 403/77-3, dated November 2, 1977. In 1979 the organization of Harris site inspection personnel was again reviewed in detail by I&E. The inspector noted that CP&L is responsible for managing construction activities performed by the constructor, Daniel Construction Company, and for verifying (auditing, inspecting, and testing) the quality of construction. At that time the CP&L Construction Inspection Unit reported directly to the Senior Resident Engineer and was an autonomous organization, separate from the CP&L construction engineering unit disciplines. The CP&L site QA Unit monitored both Daniel and the CI Unit and reported to the Engineering and Construction QA Manager -- independent of site construction management. The inspector found "sufficient independence from cost and scheduling has been established for the CP&L Construction Inspection organization to

avoid compromise of quality." I&E Inspection Report 50-400, 401/79-15 and 50-402, 403/79-14 dated September 5, 1979.

In 1983 this same organization created concerns for an NRC inspector, who noted that having the responsibility for both engineering and quality control activities reporting to the Senior Resident Engineer "can create a conflict of interest."

I&E Inspection Report 50-400, 401/83-25 dated October 19, 1983 (Inspector Follow-up Item 83-25-12).

In I&E Inspection Report 50-400/84-22 dated August 14, 1984, this Inspector Follow-up Item was closed:

Potential for Inadequate QC Inspection. The inspector verified that the Construction Inspection (CI) group has been positioned directly under the Project General Manager as of October 10, 1983, thereby eliminating the CI group from reporting to engineering. This change allows more freedom for independent QC inspections.

Two points must be made. First, the concern was raised in considerably greater detail and much earlier than the Van Vo Affidavit. See Section IV.B., supra. Second, the NRC's concern was addressed by an organizational change whereby the CI group reported directly to the Project General Manager rather than the Senior Resident Engineer.^{20/} This change was effective some months before Mr. Van Vo was terminated although it

^{20/} Even more recently, Mr. Roland Parsons was named Project General Manager of Completion Assurance with the CI Group continuing to report directly to him. This change moves in the direction of providing even greater independence for the CI Group. See Tr. 5754.

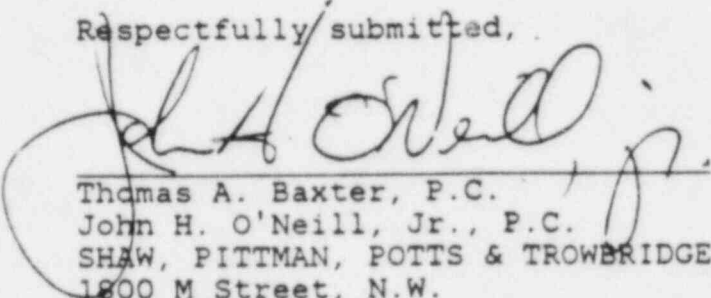
is not noted by Van Vo. In any event, Mr. Eddleman has failed to address the CI organization as it presently exists.

Contention 41H has no basis and must be rejected.

V. Conclusion

For all of the above reasons, proposed contentions CCNC WB-1 and WB-2 and Eddleman 41C through 41H should be rejected.

Respectfully submitted,



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Dated: November 13, 1984

EXHIBIT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
CAROLINA POWER & LIGHT COMPANY)	Docket No. 50-400 OL
and NORTH CAROLINA EASTERN)	
MUNICIPAL POWER AGENCY)	
)	
(Shearon Harris Nuclear Power)	
Plant))	

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

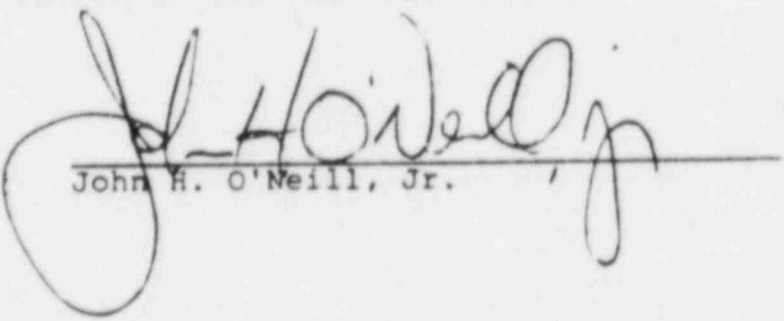
CAROLINA POWER & LIGHT COMPANY
and NORTH CAROLINA EASTERN
MUNICIPAL POWER AGENCY

(Shearon Harris Nuclear Power
Plant)

)
)
) Docket No. 50-400 OL
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Late-Filed Contentions of Wells Eddleman and Conservation Council of North Carolina Based on the Affidavit of Mr. Chan Van Vo" were served this 13th day of November, 1984, by deposit in the U.S. mail, first class, postage prepaid, upon the parties listed on the attached Service List, except for those parties upon whom a copy was personally served at the hearings held in Apex, North Carolina.


John H. O'Neill, Jr.

Dated: November 13, 1984

CP&L RESPONSE TO AFFIDAVIT
OF MR. CHAN VAN VO

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