

August 23, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCHBEFORE 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))	

APPLICANTS' COMMENTS ON THE BOARD'S REQUEST FOR
NRC STAFF VIEWS ON EDDLEMAN FOIA REQUEST

On August 5, 1985, the Board requested the NRC Staff's views on the impairment of the NRC Staff's ability to obtain safety information in the future if Intervenor Wells Eddleman's June 19, 1985 request for certain documents under the Freedom of Information Act ("FOIA") were granted. The Board also invited Applicants to comment on the Board's four questions addressed to the Staff.

Applicants' position on the FOIA request is set forth in detail in "Applicants' Response to Intervenor Wells Eddleman's Petition for Production of Certain Documents by Making Them Part of a Public Record or, in the Alternative, Pursuant to the Freedom of Information Act," dated July 9, 1985 ("Applicants'

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Response"). Attached to Applicants' Response are the affidavits of Dr. Thomas S. Elleman ("Elleman Affidavit") and Harold R. Banks ("Banks Affidavit"). Applicants take this opportunity to draw the Board's attention to statements in the two affidavits which provide, in part, a record basis for answers to the four questions posed to the NRC Staff.^{1/}

1. Are the documents in question here, and those of the type it represents, an important means by which the NRC obtains or might obtain safety information about nuclear facilities?

Yes. The Review Panel Report summarizes the concerns raised by QA/QC and Construction inspectors and the resolution of those concerns. Elleman Affidavit at ¶ 6. Quality Check Reports provide the results of investigations of allegations made in confidence by Applicants' employees. Banks Affidavit at ¶ 3. While the documents in question were not submitted to the NRC Staff for review, they are available (as a result of Applicants' voluntary openness with NRC I&E) for on-site review by the resident inspector and I&E inspectors. Applicants' Response at 15 n.3. The NRC resident inspectors were briefed on

^{1/} Applicants reaffirm their position regarding Mr. Eddleman's FOIA request that (1) pursuant to 10 C.F.R. § 2.790(b)(5), Applicants have an absolute right to the return of documents found by the Commission to be irrelevant or unnecessary to the performance of its function; (2) the documents are not an "agency record" subject to production pursuant to FOIA; (3) a party may not obtain production of documents pursuant to FOIA, where production has been denied pursuant to the Commission's discovery rules; and (4) the documents are exempt from production pursuant to FOIA since they contain confidential commercial information and privileged self-critical analyses. See Applicants' Response at 5-20.

the results of the QA/QC-Construction Inspector Review Panel investigations. The information available in these critical self-appraisals are an important source of safety information about the efficacy of the QA/QC program at the Harris Plant.

2. Is the substance of such documents already required to be compiled and reported to NRC under an existing regulation or under quality assurance plans for particular facilities? Could compilation and disclosure of such information be required under a new regulation?

Neither the Review Panel efforts nor the Quality Check Program are mandated by NRC regulations. See Elleman Affidavit at ¶ 8. There is no requirement for such information to be reported to the NRC. Nor are we aware of any proposal by the Commission to require a licensee or applicant to undertake such a critical self-appraisal and disclose the results to the NRC.

3. Is an enforceable pledge of confidentiality from the licensee to its employees, such that resulting reports are exempt from disclosure under the Freedom of Information Act, an essential element in having licensees generate useful documents of the kind in question?

Confidentiality of the individuals and the information obtained is a sine qua non of an effective program to investigate employee concerns. QA/QC and Construction inspectors interviewed by the Review Panel were assured that the information obtained would be held confidential. Elleman Affidavit at ¶ 3. Information provided to the Quality Check group is strictly maintained confidential. Banks Affidavit at ¶ 5. Disclosure of an individual's name and/or circumstances of his allegations could cause him embarrassment or adversely affect his future employment. Id. Furthermore, candid appraisals of the results

of investigations by the Review Panel and Quality Check group are essential to management for the effectiveness of the program. Id. at ¶ 6. If the reports of such investigations were to be made public, candid and critical analysis might give way to careful editing for possible disclosure. Id. Any such report would be considerably less useful to management and to the NRC. Elleman Affidavit at ¶ 9.

4. Taking into account the answers to the foregoing questions, and any other relevant factors, would an unrestricted grant of the pending Freedom of Information Act request be likely to impair the NRC's ability to obtain safety information in the future? If so, should the request be granted under a protective order?

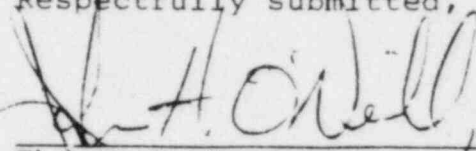
An unrestricted grant of the FOIA request would likely impair the NRC's ability to obtain similar safety information on a voluntary basis from Applicants in the future and, we suspect, from other licensees as well. As noted by Dr. Elleman:

If such reports were subject to public disclosure, given the litigious nature of opponents of public utilities -- especially those with nuclear construction projects -- it would significantly reduce the incentive of utility management to embark on such a critical, self-appraisal. Even if management were to determine that the benefits of such critical, self-appraisals outweigh the risk of disclosure of the information, any report produced as the result of such reviews would likely be considerably less candid in its criticism of existing practices and, therefore, less useful to management.

Elleman Affidavit at ¶ 9. Disclosure of the information to intervenors under a protective order would not in any way mitigate this concern, nor is it clear that disclosure of documents

pursuant to a FOIA request could be constrained by a protective order.

Respectfully submitted,



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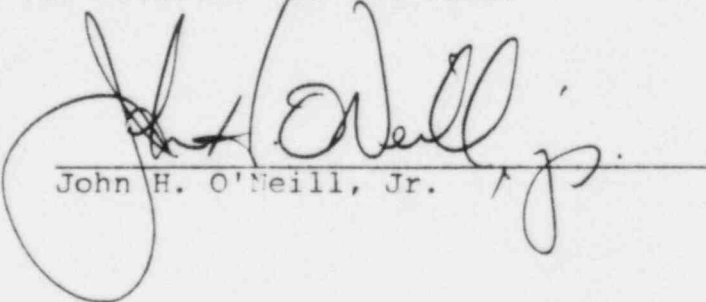
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Applicants' Comments on the Board's Request for NRC Staff
Views on Eddleman FOIA Request" were served by deposit in the
United States mail, first class, postage prepaid, this 23rd day
of August, 1985, to all those on the attached Service List.



John H. O'Neill, Jr.

Dated: August 23, 1985

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