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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

APPLICANTS' RESPONSE TO EDDLEMAN PROPOSED CONTENTIONS  
ON NOTIFICATION OF STATE AND LOCAL  
EMERGENCY MANAGEMENT AGENCIES

I. INTRODUCTION

On August 6, 1985, intervenor Wells Eddleman filed with the Board a pleading entitled "Eddleman Contentions on Notification of State and Local Emergency Management Agencies." Mr. Eddleman proposes the admission of three new contentions, denominated EM-1, EM-2, and EM-3, all of which relate to Carolina Power & Light Company's alleged failure to timely notify state and local emergency management of a spill of water at the Brunswick Steam Electric Plant, as allegedly required by the Nuclear Regulatory Commission. As a basis for these proposed contentions, Mr. Eddleman relies upon a newspaper article from the August 2, 1985 edition of the Raleigh News and Observer. He also discusses the five factors to be considered in weighing the admission of late-filed contentions (See 10 C.F.R. §2.741(a)(1)).

Applicants herein submit their response in opposition to the admission of late-filed Eddleman Contentions EM-1, EM-2, and EM-3. As discussed below, Applicants submit that these proposed contentions lack the requisite basis and specificity for litigable

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contentions. Further, the five factors to be considered in weighing the admissibility of late-filed contentions militate against admission of these proposed contentions, in that Mr. Eddleman cannot reasonably be expected to contribute to a sound record on this issue and the admission of the contentions would substantially broaden the issues and delay the proceeding.

## II. APPLICABLE STANDARDS FOR ADMISSIBILITY OF CONTENTIONS

Applicants have previously discussed at length the general standards governing the admissibility of proposed contentions in an NRC licensing proceeding. See, e.g. "Applicants Response to Supplement to Petition to Intervene by Wells Eddleman" (June 15, 1982), at 2-19. Accordingly, there is no need to restate in full the Commission's requirements; rather, Applicants simply summarize here the general principles to be applied in determining the admissibility of these late-filed proposed emergency planning contentions.

### A. Bases with Reasonable Specificity

The Commission's Rules of Practice, at 10 C.F.R. §2.714(b), require that an intervenor include with proposed contentions "the bases for each contention set forth with reasonable specificity."

There are several purposes which underlie the Commission's standard in section 2.714(b):

A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable requirements or for challenges to the basic structure of the Commission's regulatory process. Another purpose is to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process

is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues.

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

The notice aspect of the "bases with reasonable specificity" requirement is a natural outgrowth of fundamental notions of fairness applied to the party with the burden of proof. The Atomic Safety and Licensing Appeal Board has observed:

The applicant is entitled to a fair chance to defend. It is therefore entitled to be told at the outset, with clarity and precision, what arguments are being advanced and what relief is being asked . . . . So is the Board below. It should not be necessary to speculate about what a pleading is supposed to mean.

Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 N.R.C. 559, 576 (1975) (emphasis supplied; footnote omitted). Moreover, the Licensing Board is entitled to adequate notice of a petitioner's specific contentions to enable it to guard against the obstructionism of its processes. As the Supreme Court has noted, in NRC proceedings,

\* \* \* it is incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contention.\* \* \*

Indeed, administrative proceedings should not be a game or forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that "ought to be" considered \* \* \*.

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553-54 (1978).

Yet, important as the notice aspect of the standard is, the requirement for bases with reasonable specificity goes beyond the "notice pleading" allowed in the federal courts, which has been found to be insufficient for NRC licensing proceedings. See Wolf Creek, supra, ALAB-279, 1 N.R.C. at 575, n.32 (1975). On the other hand, the regulation does not require the intervenor to detail the evidence which will be offered in support of each proposed contention. Peach Bottom, supra, ALAB-216, 8 A.E.C. at 20 (1974); see

also Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 A.E.C. 423, 426 (1973); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 548-49 (1980). In short, the standard falls somewhere in between, and "[t]he degree of specificity with which the basis for a contention must be alleged initially involves the exercise of judgment on a case-by-case basis." Peach Bottom, *supra*, 8 A.E.C. at 20 (1974).

There also are certain practical considerations which should play a particularly important role here in the Board's application of the "bases with reasonable specificity" standard to a particular proposed contention -- beyond the question of whether the proposed contention provides clear and precise notice of the issues on which Applicants may bear the burden of proof. The contention should refer to and address pertinent documentation, available in the public domain, which is relevant to this facility. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 N.R.C. 175, 181-84 (1981). In the instant case, this documentation includes the on-site emergency plan and Plant Emergency Procedures (PEP's) for the Shearon Harris Nuclear Power Plant which have been served upon the parties to this proceeding.<sup>1</sup> In addition, there should be either a reasonably logical and technically credible explanation, or a plausible and referenced authority for the factual assertions in the contentions. The intervenor's personal opinion alone is not adequate for this purpose.

#### B. Standards Governing Late-Filed Contentions

In addition to the normal pleading requirements, 10 C.F.R. §2.714 sets forth 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

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<sup>1</sup>Rev. 0 of the Shearon Harris Nuclear Power Plant Emergency Plan ("the on-site emergency plan") was served on the Board and parties on March 29, 1983. Rev. 3, the latest revision of the onsite emergency plan, and the Harris Plant Emergency Procedures were both served on September 12, 1984.

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. Availability of other means whereby the petitioners' interest will be protected.
- iii. The extent to which the petitioners' participation may reasonably be expected to assist in developing a sound record.
- iv. The extent to which the petitioners' interest will be represented by existing parties.
- v. The extent to which the petitioners' participation will broaden the issues or delay the proceedings.

10 C.F.R. §2.714(a)(1)(i)-(v).

### III. APPLICATION OF THE STANDARDS

#### A. The Proposed Contentions Fail to State a Litigable Issue with the Requisite Basis and Specificity.

Applicants first address the standards required for timely-filed contentions, since the application of those standards to proposed contentions EM-1, EM-2, and EM-3 clearly warrants rejection of the contentions, and thus, obviates the need for careful analysis and balancing of the five factors which govern the consideration of good cause for the untimely filing.

The proposed contentions are based upon three sentences from a newspaper article reporting an incident that occurred at the Brunswick Steam Electric Plant. Although Mr. Eddleman characterizes them as three separate contentions, each is really a variation of the same general theme. Although it is difficult to ascertain Mr. Eddleman's precise point from a reading of the contentions, their general thrust seems to be that CP&L's alleged failure to timely classify the incident as an "unusual event" and consequent alleged failure to promptly notify emergency management officials of the incident at the Brunswick Plant demonstrates an inability to comply with NRC notification



requirements.<sup>2</sup> For several reasons, the contentions lack the necessary basis and specificity.

First, the contentions do not challenge any of the emergency classification and notification procedures in place for the Shearon Harris Nuclear Power Plant or the capabilities of Applicants' personnel to implement them. The Harris on-site emergency plan and Plant Emergency Procedures (PEP's), which have been served on Mr. Eddleman and other parties to this proceeding, contain detailed information on how to classify emergencies, and what actions should be taken and officials notified in various emergency situations. See Shearon Harris Nuclear Power Plant Emergency Plan (Rev. 3, August 1984) ("on-site emergency plan") at sections 4.1 and 4.2; Plant Emergency Procedures PEP-301, section 9.2 entitled "Notification of State and County Officials," and PEP-101 entitled "Initial Emergency Actions." Mr. Eddleman makes no reference to this available information; indeed, there is no evidence that he has even considered it. The proposed contentions do not specify any Harris procedures that are alleged to be inadequate or provide any basis for suggesting that Applicants' personnel will not follow the procedures. Mr. Eddleman does not describe how the Brunswick incident relates to or renders inadequate the established procedures at Harris.

Nor do the contentions suggest any remedial actions that the Board might order with respect to the Harris on-site emergency plan and PEP's. As the Wolf Creek Appeal Board stated, supra, Applicants are entitled to know what relief is being asked by Mr. Eddleman. Given that the contentions do not allege deficiencies in the Harris on-site emergency plan or PEP's or suggest any relief, it is unclear what purpose would be served by litigating the contentions raised.

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<sup>2</sup>Proposed Contention EM-3 is cast in terms of "CP&L's management capability for emergency response." Applicants' management capability is the subject of a separate admitted contention, Joint Contention I. On August 20, 1985, the Board issued a partial initial decision which resolved the issues in Joint Contention I in Applicants' favor.

In addition, there is no basis in fact for the allegation that CP&L violated any provisions of the NRC's emergency planning regulation or the criteria in NUREG-0654 by not classifying the event and notifying state and local emergency planning officials until eleven hours after the initial event which gave rise to the proposed contentions. The newspaper article upon which Mr. Eddleman relies quotes a CP&L spokesman as saying that "No report [to the emergency management coordinator for Brunswick County] was necessary under Nuclear Regulatory Commission guidelines and that the utility declared an unusual event, lowest of four emergency classifications, voluntarily." This is in fact the case.

In order to address this point, it is necessary to briefly summarize actions taken by CP&L in the aftermath of the Brunswick spill. At approximately 10:30 p.m. on July 30, 1985, the "A" core spray pump on Brunswick Unit 1 was inadvertently activated causing approximately 20,000 gallons of water to be pumped from the condensate storage tank to the reactor vessel cavity and fuel pool. Since Unit 1 was in a scheduled refueling outage, with the spent fuel gate open, the core spray flow caused the spent fuel pool to overflow. This overflow ultimately resulted in damage to some electrical circuits and to ventilation ducting. The core spray flow was stopped about four minutes later by deactivating the core spray pump. On-site personnel implemented Plant Emergency Procedure PEP-02.1, entitled "Initial Emergency Actions." The use of this procedure does not by itself imply that an emergency condition exists, but rather the procedure serves as a guideline for evaluation of the plant conditions and comparisons with Emergency Action Levels (EAL's). The on-site supervisor performed a comparison of plant conditions with the EAL's and determined that an emergency condition did not exist in view of the fact that the unit was in the refueling mode. The situation had been stabilized and there was no potential for a radiological release to the public. Accordingly, immediate notification of state and local emergency preparedness officials was not required.

However, while analyzing the situation, plant personnel reviewed plant procedure RCI-06.5, entitled "NRC Reporting Requirements," to ascertain whether the incident should be reported to NRC. This procedure indicated that the event required notification to the NRC within four hours. The basis for this plant procedure is set forth in the NRC's regulations at 10 C.F.R. §50.72, which identify the immediate notification requirements for operating nuclear power reactors. Notification to the NRC was made approximately two hours after the event, well within the four hours required by the NRC. Pursuant to plant procedures, personnel continued to monitor and evaluate plant conditions during the night.

After consideration of the situation the following morning, a discretionary decision was made that it would be appropriate to declare an "unusual event" based upon Plant Emergency Procedure PEP-02.1, §15.1 which states that "plant conditions exist that warrant increased awareness by plant staff. . . ." Although the decision to declare an "unusual event" was not mandated by any regulatory requirements, it was based upon a number of factors including an assessment of the damage resulting from the spill and an assessment of changes in the environmental and radiological conditions inside the reactor building that had occurred since the spill. While none of these factors represented a significant potential for safety system impairment, it was recognized that a potential airborne radiation problem could arise inside the reactor building if the water evaporated prior to cleanup and that other equipment could be damaged. (However, neither of these potentialities actually occurred.)

No NRC requirements specify a time period within which an incident must be classified as an "unusual event," the lowest emergency classification. Because there was no potential for a radiological release to the public, protective actions were not needed, and immediate classification of the event was not necessary to assure public health and safety. Thus, further evaluation of the event prior to declaring it an "unusual event" was entirely proper.



An "unusual event" was declared during the morning of July 31, and the State, Brunswick County, and New Hanover County warning points were notified shortly thereafter. Actions had already been initiated to clean up the spill. Offsite governmental agencies were informed of the status of the cleanup activities and that the "unusual event" status was being maintained as a precautionary measure. Offsite emergency agencies were notified during the morning of August 1, 1985 that the emergency classification had been terminated based upon progress made in damage assessment, cleanup and repairs in the reactor building. From the time of the initial spill and then throughout the "unusual event," there was no potential for radiological release to the public. No safety systems required in the refueling mode were impaired. During the cleanup activities, no personnel received any physical injuries nor were they exposed to airborne radioactivity.

Given these facts, there is no basis for suggesting that notification procedures were disregarded during the Brunswick incident, much less any basis for claiming that these events cast doubt upon Applicants' capability to comply with emergency classification and notification procedures at the Harris Plant. Even conceding arguendo that the Brunswick personnel acted improperly in this one incident, that is not a basis for claiming that different personnel at the Harris Plant would disregard NRC procedures or that Applicants' capability to comply with NRC procedures is generally flawed.<sup>3</sup> The broad allegations in Mr. Eddleman's proposed contentions are simply without factual basis. Accordingly, proposed Contentions EM-1, EM-2, and EM-3 must be rejected.

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<sup>3</sup>During the May 1985 emergency planning exercise for the Harris Plant, the NRC observed the Plant emergency classification system and notification methods and procedures. In its Inspection Report No. 50-400/85-20 dated June 5, 1985, the NRC found no violations or deficiencies in either area.

B. The Five Lateness Factors

1. Good Cause for Failure to File on Time.

Applicants do not contest the fact that Mr. Eddleman did not have previous access to the specific public information about the Brunswick spill described in the newspaper article, and that he promptly filed the proposed contentions after the information became available. However, as discussed supra, Applicants submit that Mr. Eddleman has a further obligation to specify any alleged deficiencies in the Harris on-site emergency plan and PEP's. This information was made available to him previously.

2. Availability of Other Means Whereby Mr. Eddleman's Interests will be Protected.

This factor would weigh in favor of the contention, although it should be given less weight than the others.

3. Extent to Which Mr. Eddleman's Participation May Reasonably be Expected to Assist in Developing a Sound Record.

The proposed contentions depend upon a newspaper article for their basis, and Mr. Eddleman does not even address the established procedures at the Harris Plant for emergency classification and notification of state and local emergency planning officials. This casts doubt upon Mr. Eddleman's familiarity with the issue of Applicants' emergency classification and notification capabilities, and calls into question his ability to contribute to the record on this issue.

Mr. Eddleman does not identify any expert witness upon whom he proposes to rely in connection with this contention, although he makes the vague assertion that he has "no doubt that appropriate witnesses can be located and made available" and that he "propose[s] to do so." Mr. Eddleman further suggests that likely witnesses include the emergency management coordinator of Brunswick County (Mr. Logan), the operations officer of the North Carolina Division of Emergency Management (Mr. Munn), "and/or other State emergency response officials," and unidentified CP&L personnel involved in

the Brunswick incident. He does not explain, however, what contribution these individuals may be able to make regarding Applicants' emergency classification and notification capabilities at the Harris Plant. At the very least, it is unlikely that Mr. Logan, who is the emergency planning official quoted in the newspaper upon which the proposed contentions rely, or personnel at the Brunswick Plant could contribute very much to the issue of Applicants' capabilities at Harris.

Finally, Applicants submit that Mr. Eddleman's performance during the hearings on safety issues in October 1984 and most recently during the emergency planning hearings in June 1985 casts additional doubt upon his ability to contribute to a sound record. See "Memorandum and Order (Ruling on Certain Safety Contentions and Other Matters)" (January 14, 1985) at 3 ("the hearings on Mr. Eddleman's several safety contentions sometimes left us with the feeling that he had spread himself too thin"); "Memorandum and Order (Ruling on Contentions Concerning Diesel Generators, Drug Use and Harassment at the Harris Site)" (March 13, 1985) at 9-10 ("From the Board's perspective, Mr. Eddleman's contributions to this record have been uneven. Having repeatedly bitten off more than any two people could properly chew -- despite this Board's cautions against over-extension -- Mr. Eddleman's resources have been spread too thin much of the time. For example, at various points in the fall safety hearing, it was obvious to the Board that Mr. Eddleman was only preparing his cross-examination one day in advance, or less. We expect all parties to be better prepared than that, and most are.")

4. Extent to Which Mr. Eddleman's Interests will be Represented by Existing Parties.

Like the second factor supra, this factor weighs in favor of the contention but should be given less weight than the others.

5. Extent to Which Mr. Eddleman's Participation will Broaden the Issue or Delay the Proceedings.

Mr. Eddleman concedes that admission of his proposed Contentions EM-1, EM-2, and EM-3 will broaden the issues and has the potential to delay the proceeding. Although Mr. Eddleman does not specify what course he expects the litigation to follow, past experience indicates that he will engage in extensive and protracted discovery. With the exception of Eddleman Contention 57-C-3 for which a hearing is scheduled to commence on November 4, 1985, all other emergency planning contentions have been tried.<sup>4</sup> Proposed Contentions EM-1, EM-2, and EM-3 could not easily be heard on the schedule set for Eddleman Contention 57-C-3, and it is likely that a later hearing would be required on these contentions alone (unless they are resolved by summary disposition). An additional time period would be required for the Board to issue an order on the contentions. Given the expected fuel load date for the Harris Plant (March 1986), there is a very real possibility that litigation of these contentions could result in a delay in plant operation.

#### IV. CONCLUSION

Factors (iii) and (v) of the lateness factors weigh heavily against admission of Mr. Eddleman's proposed contentions, and in view of the lesser weight given to factors (ii) and (iv), warrant rejection of the contentions. In any event, Applicants submit that the Board may dispose of the proposed contentions because Mr. Eddleman has not asserted a cognizable issue with the requisite basis and specificity. Proposed Contentions EM-1, EM-2 and EM-3 should not be admitted.

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<sup>4</sup>The only other contention before the Board that has not gone to hearing is WB-3. Applicants have submitted a motion for summary disposition on WB-3, and a hearing has tentatively been set to commence on September 30, 1985.

Respectfully submitted,

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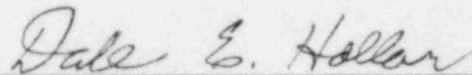
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MUNICIPAL POWER AGENCY )

(Shearon Harris Nuclear Power Plant) )

Docket No. 50-400 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Eddleman's Proposed Contentions on Notification of State and Local Emergency Management Agencies" were served this 23rd day of August, 1985 by deposit in the United States mail, first class, postage prepaid, to the parties on the attached Service List.



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