UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

1-30-86

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

Howard A. Wilber
Dr. Reginald L. Gotchy
Thomas S. Moore, Chair

In the Matter of	)	
	)	
Carolina Power & Light Co. and	)	
North Carolina Eastern Municipal Power Agency	)	Docket 50-400 O.L.
	)	
Shearon Harris Nuclear Plant, Unit 1	)	

Supplemental Brief on Ocean Dumping, by Wells Eddleman

Pursuant to the Appeal Board's Order of 9 January 1986 and extension of time duly granted, intervenor pro se Wells Eddleman responds to the Appeal Board's 3 questions in that Order as follows:

1. Did the Licensing Board err, at 16 NRC 2069,2092 in rejecting Eddleman Contention 12, concerning ocean dumping, in light of the Grand Gulf decision, ALAB-130, 6 AEC 423, 425-6? Yes, since the contention is obviously adequately specific, there is no legal restriction on ocean dumping in effect, and I argued that the pressure to restrict use of low-level radioactive waste landfills was increasing and thus alternatives like ocean dumping would be more likely over the operating lifetime of the Harris units (2 units were then planned, in 1982, down from 4 originally. Only one is left now.)

ALAB-130, dealing with a contention that alternatives for conserving energy and using alternative sources of electricity had not been adequately considered, found that contention adequate with minimal particularization. 6 AEC at 426. Clearly, the particularization required here is met by the assertion that low-level waste disposal

sites for radioactive materials are not as available now, and are likely to be less available in the future, than formerly. As to the specificity, it is certainly clear enough what ocean dumping means (see 33 USC 1402(f) and 1401 (a) and (b)). After the Licensing Board's decision in September 1982, Congress enacted Public Law 97-424, which provides (see Note h to 33 USC 1414) for research on ocean dumping of low-level radioactive wastes, and further provides (Note i, ibid.) the requirement for an environmental impact analysis of the proposed (low-level rad waste dumping) action at the site where applicant desires to dispose of the material, upon human health and welfare and marine life (33 USC 1414, Note i, (1)(B)). This would have been available during discovery on Eddleman contention 12, had it been admitted, and would clear up any possible confusion about what sort of environmental impact analysis is required.

Thus, Eddleman contention 12 had adequate basis and specificity under ALAB-130. The Appeal Board specifically states in response to arguments in that case that the intervenor had not buttressed his allegation or indicated that it(was) feasible,

> But, at the risk of undue repetition, we stress again that, in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein. 6 AEC at 426, emphasis added.

The Licensing Board decision (LBP-119A, 16 NRC 2069, 2092) involved here was precisely passing upon the question of whether an intervention petition should be granted. The Appeal Board in ALAB-130 goes on to say, "Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention." Thus, the Licensing Board clearly erred.

2. Did the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 USC 1401 et seq., any other statute, or any regulation, prohibit ocean dumping of low level radioactive commercial reqctor waste at the time of the Licensing Board's rejection of Eddleman contention 12, or does any statute or regulation now prohibit such dumping?

No, I have not been able to find any statute, regulation, or other rule prohibiting ocean dumping of nuclear power plant low level radioactive waste. The Act cited in the question clearly did not, and evidently does not.

First, under the act, no State may bar ocean dumping that the Act permits. 33 USC 1416(d). A permit may be issued to dump low level commercial nuclear power plant radioactive waste into the ocean. 33 USC 1412(a). Only high level radioactive waste and radiological warfare agents, among radioactive wastes, are barred. See 33 USC 1402(j). 33 USC 1414 Note h barred such dumping, except for research purposes, from 1/06/83 for two years, but that expired 1/06/1985. Although Note i to the same section imposes requirements on any dumping, it clearly does not bar it, and this is explicitly concerning "radioactive material" which includes low-level radioactive waste from nuclear power plants.

33 USC 1402(c) includes low level radioactive waste as a "material" under the Act, and 33 USC 1411(a) allows regulated dumping of materials as defined in 33 USC 1402(c). Thus, ocean dumping (OD) of low-level radioactive waste (LLRW) is not barred by the Marine Protection, Research and Sanctuaries Act of 1972 as amended, nor was it at the time of the Licensing Board's order.

3. Assuming the first question (above) is answered in the affirmative and both parts of the second question are answered in the negative, would our imposition of a condition (prohibiting the ocean dumping of Shearon Harris low-level radioactive waste) on any future Licensing Board authorization for an operating license alleviate the need to reverse and remand this issue for further proceedings?

No. Under Section 189(a) of the Atomic Energy Act, as amended, 42 USC 2239(a), provides that the (Nuclear Regulatory) "Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such p erson as a party to the proceeding ..." (see, e.g., UCS v. NRC, 711 F.2d 370, 379 (1983). Emphasis added in quote).

This is a very strong right, and I have qualified for it under the procedures of the NRC, e.g. 10 CFR 2.714 as interpreted, e.g., in ALAB-130, supra, with respect to Contention 12 on Ocean Dumping.

An operating license condition is not equivalent to this right, since the NRC could undo the condition (i.e. the Commissioners could) through an operating license amendment that, under the NRC's interpretation of its regulations, would not require a hearing. The Applicants could request such an amendment at any time. Others possibly could. A hearing might or might not be granted. This is not equivalent to the right established under the Atomic Energy Act, supra.

Moreover, the legal enforceability of operating license conditions may be questionable, particularly if I have to do the enforcing by taking the NRC or the power company into court.

Respectfully submitted,

Wells Eddleman

Wells Eddleman, pro se