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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Ref: Letter to the Commission, November 19, 1985, from Administrative Judges Kelley, Bright and Carpenter

Dear Mr. Chairman and Commissioners:

In a letter to you of November 19, 1985, the three administrative judges who comprise the Atomic Safety and Licensing Board in this operating license proceeding wrote to you "to bring to your attention evidence of possible generic safety problems involving nighttime emergency notification of residents in the plume emergency planning zones surrounding nuclear power plants." The letter is based exclusively on the evidentiary record compiled in hearings conducted in this proceeding

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on November 4 and 5, 1985. Since no party to the case has yet filed with the Licensing Board proposed findings of fact and conclusions of law on that record -- which by Board order will be filed over the period December 6 to 30, 1985 -- the letter represents an extraordinary departure from the normal NRC adjudicative process, particularly in the extent to which it assesses and passes judgment upon the evidence in this case.

On behalf of Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency, the applicants in this proceeding, we feel compelled by the judges' letter ourselves to step outside of the normal adjudicative process and to respond to you directly. We do so because in our view the judges' letter does not provide a complete picture of the evidence, which we are firmly convinced does not indicate that a safety problem exists. Since this issue may not come before the Commission in the normal review process for many months -- at which time Applicants normally would express their views on the Licensing Board's decision -- it would not be responsible for us to remain silent while the Commission evaluates and potentially considers taking actions on the basis of the judges' letter. In addition, we feel obligated to alert the Commission that, in light of the judges' letter, it should focus attention not on a safety problem which does not exist, but rather upon an apparently erroneous interpretation of the Commission's regulations which, if adopted, would have generic implications for all nuclear power plants and would create conflict between the NRC and the Federal Emergency Management Agency on the requirements for off-site emergency preparedness for nuclear power plants.

The Contention at Shearon Harris

The relevant contention (Eddleman Contention 57-C-3) currently being litigated in this proceeding alleges essentially that the off-site emergency response plans for the Shearon Harris Nuclear Power Plant do not have adequate provisions for notification of EPZ residents at night (between the hours of 1 and 6 a.m.) in the summer, when most people are normally asleep and might have air conditioners on.

The Regulatory Framework[1/]

The Commission's emergency planning regulations require that "means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established." 10 C.F.R. § 50.47(b)(5). In addition, the Commission requires that:

> The design objective of the prompt public notification shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local government officials to make a judgment whether or not to activate the public notification system.

§ IV.D.3, Appendix E to 10 C.F.R. Part 50.

FEMA and the NRC Staff use the criteria in NUREG-0654/-FEMA-REP-1 Rev. 1[2/] and FEMA-43[3/] to determine whether a prompt public notification system meets these requirements. CP&L, like other facility operators, has considered these documents

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1/ For a thorough explanation of the requirements for a prompt public notification system, see also Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 N.R.C. 127, 131-35 (1982), and ALAB-717, 17 N.R.C. 346, 369 (1983).

2/ "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." Appendix 3 specifically addresses siren systems.

3/ "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants."

to embody definitive Federal guidance for the design of siren systems to meet the prompt public notification system requirements. The Background section of NUREG-0654 states in part that the guidance, after being commented upon by interested parties during a formal public comment period, is classified as final guidance, will be used by Federal agencies in their review of the preparedness of NRC facility licensees, and is supportive of the NRC Final Rule on Emergency Planning.

The public alert and notification system is to conform to the following:

(a) Capability for providing . . . an alert signal . . . to the population on an area wide basis throughout the 10 mile EPZ, within 15 minutes.

(b) The initial notification system will assure direct coverage of essentially 100% of the population within 5 miles of the site.

(c) Special arrangements will be made to assure 100% coverage within 45 minutes of the population who may not have received the initial notification within the entire plume exposure EPZ.

NUREG-0654, at 3-3. However, these criteria are qualified:

> The design objective for the system shall be to meet the acceptance criteria of section B of this Appendix [quoted immediately above]. This design objective does not, however, constitute a guarantee that early notification can be provided for everyone with 100% assurance or that the system when tested under actual field conditions will meet the design objective in all cases.

Id. at 3-1.

These documents basically present, as a numerical design acceptance criterion, that the target level for the design of an adequate siren system should be 10 dB above average daytime ambient background levels.[4/] In particular, a siren system

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4/ The judges' letter, in Item No. 1 on page 2, incorrectly refers to 10 dBA when discussing this criterion.

satisfies the criterion if, for the covered geographic areas, either: (1) the expected siren sound level generally exceeds 70 dBC where the population density exceeds 2,000 persons per square mile[5/] and 60 dBC in other inhabited areas, or (2) the expected siren sound level generally exceeds the average measured daytime ambient sound levels by 10 dB.

As explained in NUREG-0654, at 3-9, "[t]he 10 dB differential above daytime ambient is meant to provide a distinguishable signal inside of average residential construction under average conditions." Finally, "the siren system must be enhanced by other alerting methods" only "[w]here the estimated siren sound level does not generally meet the specified level based either on population density or a 10 dB differential between the measured average ambient sound and estimated siren sound level." FEMA-43, at E-8.

The guidance discussed above has been in effect, followed by the industry, and relied upon by NRC and FEMA in approving systems, since 1980. In addition, final FEMA approval of a siren system depends upon a day-time siren test conducted by FEMA, followed by a telephone survey of residents.[6/] According to FEMA testimony, a 70% positive response is considered to be acceptable. Tr. 9940-41, 9953.

Licensing Board Legal Interpretation

In a Memorandum and Order dated February 27, 1985, the Licensing Board denied Applicants' motion for summary disposition, which was based upon a demonstration that the siren system for the Shearon Harris EPZ complies with NUREG-0654 and FEMA-43. The Licensing Board held that those guidelines do not have the force of law, are not binding on the Board, and merely reflect the positions taken by the Staff and FEMA. The Board stated that "the mere fact that the Harris sirens may meet FEMA acceptance criteria does not by itself demonstrate that all legal requirements have been met."

5/ The 70 dBC minimum does not apply in this case because there is no area within the Shearon Harris EPZ with a population density of more than 2,000 persons per square mile.

6/ See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), DD-81-14, 14 N.R.C. 279, 282 (1981).

The Licensing Board provided the following further direction:

> At the evidentiary hearing, the Applicants should address whether the sirens can wake up virtually all the people sleeping in the EPZ between 1 and 6 a.m., particularly those with windows closed and air conditioners running. The Applicant should also address whether the presently-planned means of back-up mobile notification could and should be augmented to meet the "about" 15-minute standard in Appendix E, if necessary.

Applicants disagreed with this ruling in several respects. First, we believe that the history of administering the Commission's regulations through the Staff and FEMA acceptance criteria, and the expertise which that implementation reflects, are entitled to greater deference. Second, the Licensing Board's view that "virtually all" of the EPZ population must be alerted by the siren system in 15 minutes is not a reasonable interpretation of the Commission's regulations. Drafted with what reflects a deliberate desire for flexibility, the Commission requires not a demonstration that virtually all will be alerted, but rather a system with a "design objective" to have "the capability" to "essentially complete" initial notification in "about 15 minutes." (Emphasis supplied.)

Because of the bar to interlocutory review of such rulings,[7/] however, Applicants had no choice, in the hearings which followed the summary disposition ruling, but to proceed with the effort to make the demonstration requested by the Licensing Board. The discussion of the evidence, reflected in the judges' letter, continues this erroneous interpretation of the regulations.

7/ Interlocutory appellate review is not available for a licensing board order granting or denying a motion for summary disposition. See, e.g., Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 N.R.C. 11 (1983); Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 N.R.C. 550 (1981).

The Record

We understand that, in their letter, the judges were not attempting to summarize the entire evidentiary record. While we will not undertake to do so either, some elements of the record -- not discussed in the judges' letter -- are important to any assessment of whether safety problems exist. In addition, there are some errors in the judges' description of the record.

Before turning to the night-time notification issue, some background information is appropriate. There are approximately 7,000 households in the Shearon Harris EPZ. The siren system consists of 69 Federal Signal Thunderbolt Model 1000 rotating sirens rated at 125 dBC (at 100 feet), plus 10 fixed-direction sirens sited around Harris Lake.[8/] While the system has not yet been tested by FEMA, FEMA testified that the system conservatively meets the design acceptance criteria. Indeed, according to the FEMA reviewer, the Shearon Harris siren system is capable of providing, under average conditions, a sound coverage of greater than 80 dBC -- which is 10 times the sound pressure level considered by FEMA and NRC to be adequate -- to almost 60% of the residences in the EPZ. Carter Testimony, ff. Tr. 9690. The State and local emergency response plans will provide for the sirens to be sounded for four three-minute periods during the first 15 minutes.[9/]

FEMA also presented testimony explaining why the summer day-time conditions specified in FEMA-43 are prudent and proper for siren system design conditions. In brief, ambient background noise levels are higher in summer than in other seasons, and are higher during the day-time than at night. Further, meteorological conditions reduce sound propagation for summer daytime conditions. Lee Testimony, ff. Tr. 9690, at 19-22.

Applicants and the NRC Staff/FEMA presented the results of extensive efforts to estimate the alert effectiveness of the

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8/ The ten sirens around the lake are not considered in analyzing the contention here.

9/ Applicants' analysis of the effectiveness of the system considered only 10 minutes of siren activation, instead of the planned 12. This is conservative, because siren system effectiveness increases with the length of time it is operated.

Shearon Harris siren system under night-time conditions. Both modeled the sound propagation from the sirens and utilized a map of actual housing locations to identify sound levels at the outside of homes. The sound loss or attenuation through the structure was then considered, and Applicants employed demographic and air conditioner data to distribute among the housing stock the variety of attenuation situations and background noise levels in the bedroom. The number of persons in a household and their ages were evaluated, and based on studies of arousal capability, the probability of arousal was calculated.

Applicants predicted that 72% of the households would be alerted directly by the siren system. Based upon actual experience in emergencies, a prominent disaster sociologist then evaluated the additional alerting which would occur from informal notification initiated by those already alerted. He conservatively estimated that 88% would be alerted in 15 minutes, and 95% in 30 minutes. The Staff and FEMA, assuming a siren activation pattern of 3 minutes on and 3 minutes off, predicted that 87.8% of the people in the EPZ would be aroused and alerted in 15 minutes.

Not knowing what the Licensing Board meant by "virtually all," Applicants consider this evidence to demonstrate compliance with Commission regulations, even as interpreted by the Licensing Board. Yet, the judges' letter concentrates on the admitted percentage of the population for which the probability of arousal is lower -- reflecting again a view that all must be alerted.

The judges discuss (Item No. 3) the low probability of arousal from sleep for a house with windows closed (central air conditioning) and an outdoor siren sound level of 60 dB -- the day-time minimum set by FEMA. Applicants' projections of sound propagation at night, however, show fewer than 1% of the EPZ houses covered by less than 70 dB, while FEMA estimates that only 3.9% of the houses are in the 60 to 70 dB range. In addition, some 36% of the houses have no air conditioning and presumably have windows open.

In Item No. 4, the judges again discuss a worst case, and indicate the outdoor sound level needed for a 50% probability of arousal of an individual. The record shows, however, that only 18.5% of the households have just one person. Where two are present (29.5% of the households), the probability of

arousing one rises to 75% at the same sound level, and to 87.5% for the households (19.6% of the total) with three persons. In the Shearon Harris EPZ, 32.4% of the households have 4 or more persons.

In their letter (Item No. 6), the judges make the unassailable observation that if the overall arousal percentage for an EPZ is 70% under these conditions, for some households the probability of arousal will be less than 50%. In assessing the significance of this situation, however, the judges discuss the probability of arousal only for households with one or two persons -- ignoring the 52% of EPZ households which have three or more persons.

More unfortunate in this discussion, however, is the judges' selection of the area around Siren 70 in the EPZ to illustrate the number of houses with a low probability of arousal. Applicants' witness testified that his analysis considered only 68 of the 69 relevant sirens because one had not yet been precisely placed by CP&L. Keast Testimony, ff. Tr. 9375, at 8. He further testified that the siren would be added in the southeast corner of the EPZ. Tr. 9422-23, 9575 (Region U on Applicants' Ex. 47). This is the area near Siren 70. In short, the judges have focused on the one area in the EPZ where a siren will be added. (It should also be noted that it was the FEMA review, conducted under the published acceptance criteria, which had already identified the need for this siren.)

Finally, on page 3 of their letter, the judges express the view that the informal notification process known to occur during actual emergencies should not be viewed as a substitute for planned notification because the phenomenon cannot be controlled and its likely effects are difficult to quantify. Applicants, the NRC Staff and FEMA are not advancing a substitute for planned notification. Rather, we are asking the Licensing Board to give credit, in evaluating the alert effectiveness of sirens, for a phenomenon which is known to occur. This agency makes many predictive findings, often on the basis of engineering analysis, for phenomena not strictly controllable (e.g., accidents). That disaster sociologists quantify the effects of informal notification on the basis of actual experience, makes their estimates more, not less reliable. In addition, the informal notification process has been recognized and considered by other NRC boards. See, e.g., Duke Power Company (Catawba Nuclear Station, Units 1 and 2),

LBP-84-37, 20 N.R.C. 933, 973 (1984) (Finding 10); Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-46, 15 N.R.C. 1531, 1534-35 (1982).

Significance of the
Licensing Board's Assessment

The judges' letter, both in its tone and the timing of its preparation, reflects a possible view that the evidence at Shearon Harris revealed something we did not already know -- that not everyone in an EPZ will be alerted by a siren system under all conditions. In fact, the guidance (quoted above) acknowledges this fact. The Commission itself, in promulgating its Final Rule on Emergency Planning, stated as follows on public notification systems: "The commission recognizes that not every individual would necessarily be reached by the actual operation of such a system under all conditions of system use." 45 Fed. Reg. 50705 (1980).

This fact has been recognized on numerous occasions by the NRC's adjudicatory boards. The Appeal Board recently held:

> The FEMA criteria do not require that the sirens reach every person in the plume EPZ -- a practical impossibility. (Similarly, and for the very same reason, there is no NRC requirement along that line.)

Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 N.R.C. 59, 77 (1985) (footnotes omitted). See also Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-82-70, 16 N.R.C. 756, 774 (1982) ("Joint Intervenors are in error in their assertion that 100 percent notification is required"); Catawba, supra, LBP-84-37, 20 N.R.C. 933, 973 (1984) ("There may be situations where the ambient noise inside a building may exceed the siren volume; however, these do not make the siren system inadequate. The requirements of FEMA-43 and NUREG-0654 were not intended as a guarantee that 100% of the population will actually hear the sirens in an emergency but rather were meant to establish a design objective for the siren system . . . . We find Catawba sirens meet this objective and are in compliance with the acceptance criteria."). In San Onofre, supra, LBP-82-46, 15 N.R.C. 1531, 1534 (1982) (Judge Kelley, Chairman), the licensing board quoted the disclaimer in NUREG-0654 that 100%

notification is not guaranteed under the design objective, and further stated:

> It is important to recognize that no warning system can be expected to reach 100 percent of the target population . . . . The best of siren systems presumably will fail to reach some people for a variety of reasons, including, for example, unusually high ambient noise levels in some places, individual hearing defects, being asleep, etc. But we think it reasonable to assume that a carefully engineered siren system will be heard by the great majority of the people in the EPZ and that virtually all those who do not hear the sirens will be warned soon thereafter.

(Emphasis supplied.)

If the Licensing Board in Shearon Harris discounts the NRC Staff and FEMA acceptance criteria as inadequate, and requires a fixed notification system that will awaken "virtually all" EPZ residents in 15 minutes under all conditions, then there will be a generic issue of significance to the NRC's regulatory program. (Given the informal notification process and the additional alerting which occurs after 15 minutes, we reject the notion that a safety problem is involved.) We are not aware that any other nuclear power plant licensee or applicant has been required to undertake an analysis of predicted alerting under a variety of conditions. Rather, the NRC has routinely licensed plants based on demonstrations that their prompt notification systems meet NUREG-0654 and FEMA-43.

Commission Action

In their letter, the judges recommend that the Commission consider testing siren systems around nuclear power plants between the hours of midnight and six a.m. The witnesses at the Shearon Harris hearing testified that such tests would be seriously disruptive and annoying to the residents, and that Office of Management and Budget approval has not been obtained for such a test and survey. Moreover, the judges' recommendation appears to be a test of a requirement which they read into the regulations, and which we believe the Commission did not intend.

Applicants suggest other actions the Commission might take in response to the judges' letter. The Commission has the inherent authority to step into a proceeding before any of its boards to provide guidance on important issues of law and policy. Noting that the members of the Commission are responsible for the actions and policy of this agency, the Commission has done so, in matters pending before licensing boards, where important issues are raised concerning the NRC's relationship to other federal agencies and their work product, and where such action will prevent fragmented and uncoordinated government decision-making, and will promote a more rational approach to the regulatory process. Public Service Commission of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 N.R.C. 503, 516-17 (1977), aff'd, New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978); United States Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, 4 N.R.C. 67, 75-76 (1976). See also Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-27, 16 N.R.C. 883 (1982) (Commission initiative where interpretation of an emergency planning regulation involved significant issues of policy for the Commission).

Just such a situation exists in the Shearon Harris proceeding, where the Licensing Board gives every appearance of adopting a new interpretation of the Commission's regulations which would be in direct conflict with FEMA's longstanding implementation of them. The Commission gives great weight to FEMA's views on the need for and adequacy of specific offsite protective planning measures. Emergency Planning, Final Rule, 45 Fed. Reg. 55402, 55406 (1980). NUREG-0654 was specifically considered in the rulemaking proceeding in which the current emergency planning regulations were developed, and the language of the regulations restates standards set forth in NUREG-0654. Further, with respect to the specific requirement at issue here, the Commission has stated its specific desire to be flexible in meeting the general objective of prompt notification within 15 minutes, and stated that:

> In its implementation of this part of the rule, the NRC intends to be guided by FEMA's judgement as to what times and systems are feasible.

Final Rule on Emergency Planning, CLI-80-40, 12 N.R.C. 636, 638 (1980). See also id. at n.3 (Commission recognition of the 60 dB minimum requirement).

Guidance from the Commission -- that the acceptance criteria of FEMA-43 and Appendix 3 to NUREG-0654 are adequate to implement the relevant language of Appendix E to Part 50, which does not require that "virtually all" of the EPZ population be alerted by the fixed notification system alone in 15 minutes under all conditions -- would avoid potential delays in this proceeding, uncertainty in FEMA's reviews of other plant sites, and doubt about regulatory compliance at operating reactors.

In the alternative, if the Commission wishes to re-examine the language of its regulations and/or the adequacy of the NRC Staff and FEMA implementation of them, it should do so generically by rulemaking. See Fire Protection for Operating Nuclear Power Plants (10 CFR 50.48), CLI-81-11, 13 N.R.C. 778, 801-02 (1981). In the interim, licensing and appeal boards should be instructed to continue to approve prompt public notification systems which meet the published acceptance criteria issued by the NRC and FEMA.

Sincerely,

Thomas A. Baxter

Thomas A. Baxter
Counsel for Applicants
Carolina Power & Light
Company and North Carolina
Eastern Municipal Power
Agency

cc: H. Plaine, General Counsel
S. Chilk, Secretary
Shearon Harris Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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	)	
CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY	)	Docket No. 50-400 OL
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