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February 27, 1979

Chairman Joseph M. Hendrie
Members of the Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Docket Nos. 50-400, 50-401,
50-402 and 50-403

Dear Chairman Hendrie and Members of the Commission:

The motion to remand filed with you by Mr. Thomas S. Erwin, Attorney for Intervenors Conservation Council of North Carolina and Wake Environment, Inc., has recently been brought to the attention of the undersigned. In line with our limited appearance in these Dockets (for the purpose of presenting the 1977 North Carolina Load Forecast and Capacity Plan), we wish to point out what appears to us to be a misreading or misunderstanding by Mr. Erwin of our December 28, 1978 Order and Report.

Briefly, Mr. Erwin's motion requests N.R.C. (1) to remand to the Licensing Board the issue of whether there is a need for the Shearon Harris Nuclear Power Plant, (2) to direct the Board to take further evidence regarding this issue and (3) to make an independent investigation of the issues to be covered in Mid-1979 hearings currently scheduled before the North Carolina Utilities Commission (N.C.U.C.).

It is our strongly held view that the Nuclear Regulatory Commission should be bound by N.C.U.C.'s prior findings on the question of the "need for power" in any licensing proceeding or, at the very least, that N.C.U.C.'s findings should constitute the best evidence of need. There are presently in place in North Carolina completely adequate procedures for determining the question of what level of electric power is sufficient to serve the needs of our people.

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In any event, the issues concerning "need for power" regarding the Shearon Harris plant have already been decided by the Licensing Board. There is nothing in our Order of December 28, 1978 or the Report entitled "Future Electricity Needs for North Carolina: Load Forecast and Capacity Plan - 1978", released simultaneously therewith, which would require further hearings or taking of evidence by the Licensing Board on the issue of need. Such Order and Report do indicate the potential for a slight deviation of the required in-service date of the first unit of Shearon Harris, but the degree and extent, if any, of such deviation has yet to be determined and is in fact one of the subjects of further hearings now scheduled before the N.C.U.C. Our Order and Report also indicate that there is no question as to the need for all four units of this facility before 1992 and this issue should not be reopened for any further determination.

Your attention is called to the following passages of our Report, which were omitted by Mr. Erwin in his motion.

"The generating reserves needed to ensure system reliability for Duke, CP&L, and VEPCO are 20% for both the summer and the winter peaking seasons." p. 11

"The capacity addition plans, adopted herein, will enable CP&L and Duke to meet the Commission's forecast of peak demand for the years 1979-1992 and to have adequate reserves for contingencies. This is an interim plan and is subject to review by the Commission on an annual basis. Because it is impossible to exactly predict the future, the companies must maintain flexibility in their construction schedules in order to economically adjust to changes in peak-load growth as they occur. . . . Because of the long lead times required, site licensing and preparation have already begun for most facilities coming into service during the next 10 to 15 years and relocation of those facilities would not be economical." p. 15

"Although estimates of growth are less reliable for longer planning periods, the longer planning periods also allow more time to effect conservation measures. Because the planning period is tied to the construction time required to build new generating facilities, it is imperative that the planned construction schedule be flexible enough in the later years to be capable of adjustment to meet the requirements of unforeseen changes in load growth. After reviewing recent experience, the Commission concludes that a minimum 20% reserve margin

is reasonable and necessary." pp. 18, 19 (Emphasis added)

" . . . the Commission concludes that, based upon the evidence available at this time, it is not reasonable to expect that both conservation and load management will be practiced substantially enough to produce the effects of the combined load management and conservation scenario." p. 20

"At some point, however, it can be expected that these [conservation and load management] measures will be sufficiently employed so that normal growth of the economy and population in North Carolina will raise the rates of growth again." p. 21

"The Commission is concerned about the paucity of concrete data available in this docket concerning actual methods of achieving the expected levels of conservation and load management. Further quantification of these programs is expected in the 1979 hearings." p. 26

"The Commission is aware that industry has expanded this year at about twice the rate of last year. The Commission wishes to see more detailed projections of industrial usage. The Commission has the responsibility to ensure that the continued economic growth of the State is not impaired by a lack of adequate utility services. For these reasons, the Commission holds open the time to require the utilities to delay their construction schedules pending examination of this matter in detail in the 1979 hearing." pp. 26, 27 (Emphasis added)

"Especially needed is better evidence on the need for generating plants near the end of the planning period (i. e. 1992). The 1979 hearings are being delayed to mid-year in order to give the Public Staff and other parties time to adequately develop reliable forecasting information on these matters." p. 33

"The concerns about nuclear power expressed by some witnesses are legitimate, and the Commission shares these concerns. The evidence, however, is more than sufficient to support a finding that the projected benefits to be derived from the development and operation of nuclear power outweigh any associated risks." p. 82

Your attention is also directed to Tables A., B. and C. which appear in our Report at pages 23 - 25.

From the foregoing, as well as from the entire Order and Report taken as a whole, it is readily apparent that the N.C.U.C. did not make any finding or conclusion that the power generation from the Shearon Harris plants would not be needed. To the extent that Mr. Erwin's motion contends that our Order or Report furnishes any justification for reopening the Licensing Board hearings or record on the need for power issue, such motion is in error.

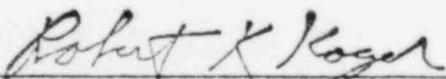
The motion furthermore discusses the Intervenors felt need for an independent review and investigation by the Licensing Board of the issues to be covered by the N.C.U.C. in its mid-1979 hearings. The only such issue cited in the motion was CP&L's failure to provide justification for not delaying its construction program by one year to match anticipated load growth. This is not the same as saying that such evidence does not exist for, as our Report makes clear, Duke Power Company did in fact offer evidence to show that the North Carolina ratepayers would benefit economically by completion of Duke's plant construction as scheduled. CP&L may be able to do likewise. In any event, this issue clearly is associated with the power granted to the N.C.U.C. by the General Assembly of North Carolina to set retail rates for North Carolina Consumers. It is inconceivable that this subject area would be an appropriate one for an independent investigation by the Licensing Board.

We thank you for the opportunity of informing you of our concerns regarding Mr. Erwin's Motion as it relates to our previous limited appearance and our 1978 Load Forecast Order and Report. We are forwarding copies of this letter to Mr. Erwin and CP&L, and other parties of record.

Very truly yours,

North Carolina
Utilities Commission

N.C.U.C. - Public Staff


Robert K. Koger, Chairman


Hugh A. Wells, Executive Director