07/08/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER AND LIGHT COMPANY AND	)	
NORTH CAROLINA EASTERN MUNICIPAL	)	Docket Nos. 50-400 OL
POWER AGENCY	)	50-401 OL
	)	
(Shearon Harris Nuclear Power Plant,	)	
Units 1 and 2)	)	

NRC STAFF RESPONSE TO WELLS EDDLEMAN'S RESPONSE
TO THE STAFF'S DRAFT ENVIRONMENTAL IMPACT STATEMENT

I. BACKGROUND

The Licensing Board's Order of May 27, 1983 (page 25) authorized the filing of contentions based on new information contained in the Staff's Draft Environmental Impact Statement (DEIS). Such contentions premised upon new information not otherwise available in the public realm need not meet the tests of nontimely filings contained in 10 CFR § 2.714(a)(1)(i-v). (Tr. p. 33-37) Intervenors were also permitted to use "new information" in the DEIS to support contentions previously deferred by the Board. The criteria to be applied to the proffered contentions were those set forth in 10 CFR § 2.714(b) for timely filed contentions. (Tr. p. 33-37)

On July 1, 1983 the Commission issued its decision in Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, ___ NRC ___ (1983), which considered the standards to be applied to contentions premised upon information contained in licensing-related documents not required to be prepared early enough so as to enable an intervenor to frame contentions in a timely manner in accord with the provisions of 10 CFR § 2.714(b).

DESIGNATED ORIGINAL

Certified By RS D502

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Because of the generic nature of the issues in Catawba, the Commission invited briefs from the parties and any other person who wished to submit an amicus brief. Catawba, supra, slip op. at 2. Based on its review of these filings, the Commission determined that it is reasonable to apply the late-filing criteria in 10 CFR § 2.714(a)(1) and the Appeal Board's three-part test for good cause to contentions that are filed late because they depend solely on information contained in institutionally unavailable licensing-related documents.[1/] Id., slip op. at 2, 10. Further, the Commission determined that the institutional unavailability of a licensing related document does not establish good cause for filing a contention late if information was available early enough to provide the basis for the timely filing of that contention.[2/] Id., slip op. at 2, 12.

The Staff issued its DEIS in April 1983 and Mr. Eddleman responded on June 20, 1983.[3/] The Applicant's June 27, 1983 filing characterizes Mr. Eddleman's response as "very difficult to understand." The Staff also found it confusing. For this reason, we anticipate that there may

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1/ The Commission believes that the five factors together, are permitted by Section 189a. of the Act and are reasonable procedural requirements for determining whether to admit contentions that are filed late because they rely solely on information contained in licensing-related documents that were not required to be prepared or submitted early enough to provide a basis for the timely formulation of contentions. Id., slip op. at 5, 6.

2/ The Commission set out in its decision the fundamental principles upon which it bases its conclusion that Intervenors are required to diligently uncover and apply all publicly available information to the prompt formulation of contentions. Id., slip op. at 10, 11.

3/ "Wells Eddleman's Response to Staff DEIS," dated June 20, 1983. (Response).

be some differences of opinion among the parties as to the meaning of portions of the filing. Following is the Staff's discussion and analysis of Mr. Eddleman's June 20, 1983 filing, in the order presented in that filing.

II. DISCUSSION

A contention must have a specifically detailed foundation in fact relating to the reactor and site in the proceeding. This is done by alleging specific facts, or specific factual scenarios. This is the "basis" requirement of 10 CFR § 2.714(b). In Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981), the Commission stated:

> At present, all an intervenor need do to support admission of a contention is set forth the basis for the contention with reasonable specificity. Id. at 1114.

In support thereof the Commission cited Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). An acceptable contention must have a "basis" regardless of when it is filed. In Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728 ___ NRC ___ (Slip op., May 18, 1983) the Appeal Board addressed, inter alia, certain contentions rejected by the Licensing Board. The Appeal Board addressed rejected Contention 11 in the context of meeting the requirements for reopening a closed record. There the Appeal Board stated:

> They merely allege, without more, that the applicant's analyses are inadequate. This is patently insufficient to meet their burden. The joint intervenors have not presented any evidence that the applicant's analyses do not comply with the NUREG-0737 requirement. Nor have they come forward with

> a specific critique of the applicant's analyses or an analysis of their own, with an explanation why it must be performed. Stated otherwise, the joint intervenors have improperly attempted [slip op. 56] to shift their burden of coming forward with significant new evidence of what more needs to be done by the simple expedient of pleading that the applicant has not done enough to comply with the regulations. Accordingly, the joint intervenors' clarified contention 11 was properly rejected. [Slip op. 57]

The bare allegation by an intervenor that a staff or applicant analysis is flawed, or that they must do more, or that a regulation is not complied with, does not satisfy the "basis" requirement of the Commission's regulations. Assertion of the ultimate conclusion of defect or error without setting forth a specific detailed factual foundation or a specific factual scenario, or an analysis of their own, makes a proffered contention not admissible. Previously we have referred to these as ipse dixit unsupported allegations. In our filing of June 22, 1982 (pages 2-10) we addressed the criteria for an acceptable contention. That discussion coupled with the above discussion of "basis" represents the legal principles the Staff believes should be applied in considering the proposed contentions.

III. THE CONTENTIONS

Mr. Eddleman seems to request that deferred contention number 88 and rejected number 105 now be admitted. Contention number 88 on page 198 of Mr. Eddleman's May 14, 1982 filing alleges that the Environmental Report (ER) "is deficient in that it considers as benefits the use of the Harris plant lake and surrounding area for recreation, hunting and fishing...." The Staff's DEIS does not consider social use of the Harris site as a "benefit" under NEPA - see Table 6.1 on page 6-2. Thus (a) there is no

"new material" in the DEIS to support contention number 88, and (b) the DEIS itself provides no basis for Eddleman number 88. It should not be admitted.

Rejected contention 105 (page 210 Eddleman 5/14/82 filing) asserts that the LPZ is not properly established using 10 CFR § 100.11 criteria. The DEIS analysis used similar parameters to those contained in the ER. Mr. Eddleman's argument on pages 5 and 6 of his June 20, 1983 filing are remarkably similar to pages 210 and 211 of his May 14, 1982 filing which was rejected. There is no "new material" in the DEIS to which Mr. Eddleman can point. We do point out that the worst accident case in footnote 1 to 10 CFR § 100.11 is an accident which assumes a 1% core meltdown. To understand the 10 CFR Part 100 siting requirements, Mr. Eddleman needs to read and understand Technical Information Document 14844 dated March 23, 1982 which contains the procedures to determine the siting distances. That document is referenced at the end of 10 CFR Part 100 - see 10 CFR page 742, Jan. 1, 1983 Revision. The release rates for fission products and the extent of core damage are provided in Regulatory Guide 1.4--which is not new information. Mr. Eddleman's filing provides no supports for his proposition that greater than design basis accidents need be considered. Contention 105 should not be admitted.

The Staff DEIS contains no "new information" not previously available in the public domain in regard to accepted contention 75 relating to corbicula. These clams are known and have been known for some years to exist in North Carolina. Also, we are limited here to Mr. Eddleman proffering new issues. His contention number 75 on clams has already been admitted. His revision of that contention and discussion on pages 8

and 9 of his June 20, 1983 filing add nothing of substance to the contention but only additional prolixity.

Rejected contention 8(b) asserted that the health effects of Table S-3 were inadequately assessed. (Board Order Sept. 22, 1982 page 38). Table S-3 is the Commission's generic assessment of the environmental effects of the uranium fuel cycle. The Supreme Court in Baltimore Gas and Electric Co. v. Natural Resources Defense Council, No. 82-524, June 6, 1983 (slip op.) upheld the validity of the Commission's generic assessment. Mr. Eddleman's allegation on page 12 of his June 20, 1983 filing that Table S-3 is defective is a challenge to the Commission's regulations not permitted by 10 CFR § 2.758. Rejected contention 8(b) should remain rejected and proffered contention 8(f) should not be admitted. We again point out that no "new information" is presented in the DEIS.

Rejected contention 22 is sought to be revitalized and amended as the DEIS does not consider monetary costs of emergency planning etc. and that "The Staff has made no showing that the benefit of additional capacity even exists in this case." (a) There is no new information in the DEIS not previously available in the public domain in regard to rejected contention 22. (b) The Commission has precluded litigating need for power in operating license proceedings, 10 CFR § 51.53(c) and this is the thrust of rejected contention 22c. The new proposed wording of 22(c) is: "The Staff has failed to demonstrate that the benefits of operating Harris outweigh the costs." Response at 16. Need-for-power is now a given pursuant to 10 CFR § 51.33(c). The costs cited by Mr. Eddleman are

monetary costs and NEPA requires balancing environmental costs with benefit to society. See Cincinnati Gas and Electric Co. et al., (Wm. H. Zimmer Nuclear Station) LBP-80-24, 12 NRC 231 (1980) where the Licensing Board presents a short and reasoned discussion of this matter. The power from the Harris facility will be used. There is no question but that demand has changed since the filing of the application for the construction permit. This has been before the Commission in regard to Harris. CLI-79-5, 9 NRC 607 (1979). When the power will be needed remains an open issue only as to an exact date. See Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 691 (1980). The Appeal Board has twice stated "[i]f the electricity to be produced by a proposed project is genuinely needed ... then the societal benefits achieved by having that electricity are immeasurable." Vermont Yankee Nuclear Power Corporation (Vermont Yankee Power Station), ALAB-179, 7 AEC 159, 173 (1974) and Niagara Mohawk Power Corporation (Nine Mile Point Nuclear Power Station, Unit 2), ALAB-284, 1 NRC 347, 368 (1975). Neither the DEIS or Mr. Eddleman provide new information which would support the new proffered contention 22(c) and it should be rejected. Mr. Eddleman has filed a 10 CFR § 2.758 petition upon need for power and alternatives to Harris on June 30, 1983. Our response to that petition will further address this matter.

Contention 25 alleged that "An alternative of less environmental impact than spent fuel shipments from Robinson and Brunswick to Harris needs to be considered...." (page 90 Eddleman 5/14/82 filing). The Licensing Board deferred ruling upon this contention (Board Order Sept. 22, 1982 page 45). Now Mr. Eddleman proposes a new contention 25B

which states "The DEIS has improperly failed to consider the radiological impacts and NEPA alternatives to, and costs benefit of shipping spent fuel to Harris." (Response at 18). To support his new contention he alleges that shipping spent fuel to Harris from Robinson and Brunswick and then from Harris to an offsite storage facility would result in twice the Table S-4 values. Table S-4 is the Commission's generic assessment of the environmental impacts of transportation of fuel and waste to and from one light-water-cooled nuclear power reactor (10 CFR Part 51). First, the DEIS does not present "new information" not previously available. Second, there is no factual basis presented by Mr. Eddleman to support his allegation that there are lesser adverse environmental effects by doing something other than shipping spent fuel to Harris. Newly proffered contention 25B should be denied.

Contention 34 alleged that the ER and FSAR were deficient in not considering acts of sabotage and terrorism against the facility, including "melting of the spent fuel pool" - which is made of reinforced concrete and steel (May 14, 1982 filing page 102). The Licensing Board deferred this contention along with other security plan contentions (Board Order Sept. 22, 1982 page 87). There is nothing in the DEIS which changes this situation. The Applicants have not yet submitted a security plan which conforms to 10 CFR Part 73. When they do, security plan contentions may be proffered. Deferred contention 34 should remain deferred for the time being.

On page 22 of his June 20, 1983 filing Mr. Eddleman alludes to contention 36 and weaves it with contention 34. This is confused and jumbled rhetoric which we fail fully to comprehend. The Board's ruling

on page 48 of its Sept. 22, 1982 Order should remain undisturbed. Insofar as contention 34 concerns terrorism or sabotage it comes within the ambit of security plan contentions which have been deferred. The DEIS provides no new information over and above that provided in the ER and provides no new security plan information.

Deferred contention 57(d) relates to emergency planning and the cost of such planning (page 153, May 14, 1982 filing). As we noted above, we are concerned with environmental costs. Secondly, the DEIS contains no new information on 57(d) (emergency planning) over and above that contained in the ER. Deferred contention 57(d) should be denied.

Page 24 of Mr. Eddleman's June 20, 1983 filing discusses his deferred contention 61, which addresses the health effects of radon. The DEIS adds nothing to the Perkins radon record which has been in the public domain for years. Deferred contention 61 should be denied.

Deferred contention 64(d) (page 168 of Eddleman's May 14, 1982 filing) alleges that the radiological impact of spent fuel transportation is inadequate. The Staff used the impacts assessed in Table S-4, 10 CFR Part 51. Contention 64(d and e) should be denied as an impermissible attack upon the Commission's regulations.

Eddleman Contention 80 is unclear and difficult to follow. A number of unrelated allegations are put forth, covering a wide range of subject areas, without identification of any specific deficiencies, and without identifying what is "new." Contention 80 (page 10 of his June 20, 1983 filing) alleges "deficiencies in mixing and dispersion models use by Applicants and NRC Staff." No specific deficiencies in mixing and dispersion models are identified in the allegation, and nothing "new" is identified in the DEIS.

No new dose models are identified in the allegation. As the DEIS states (P. 5-51), the range of potential health effects, including cancer mortality and the probable value thereof are from the BEIR-III Report (1980). In any case, although BEIR-I and BEIR-III differ in detail, there is no basis (and none set forth by Mr. Eddleman) for stating unequivocally that, overall, either Report results in significantly higher total risks.

Mr. Eddleman further states

> "At page 5-82, the Staff explicitly confirms the weakness of its models with respect to rainout (precipitation of nuclides from radioactive emissions, stating that "recent developments in the area of atmospheric dispersion modeling used in CRAC (the computer code developed in the RSS" (Reactor Safety Study,** Rasmussen Report) "indicate that an improved meteorological sampling scheme would reduce the uncertainties arising from this source (including the effect of washout by precipitation," uncertainties remain. That is an acknowledgment that the modeling of rainout would improve NRC's models of radioactive material dispersion. Thus, the DEIS simply confirms and extends a bit the basis of Eddleman 80."

(Response at 10)

Among other things, this paragraph uses the Staff statements about CRAC uncertainties (DEIS, p. 5-82) to support Eddleman 80. The allegations in Eddleman 80 are directed to those models that are used for calculations with respect to 10 CFR Part 20. The methodology of the calculations directed toward 10 CFR Part 20 and the methodology used in CRAC are so different that the statements about CRAC uncertainties that Eddleman quotes are irrelevant to the allegations in Eddleman 80.

Contentions 85 and 86 (pages 192 and 193 of May 14, 1982 filing) allege inadequate consideration of fish kills in the cooling lake. These

matters were addressed in pages 5-13 through 5-20 of the Revised Final Environmental Impact Statement, Construction Permit, March 1974 (RFES). Discharge temperatures from the cooling tower blowdown were addressed in the ER. The DEIS in this proceeding adds nothing "new" to information already available in the public domain. Mr. Eddleman does not demonstrate that the DEIS contains "new information" not in the construction permit ER or RFES. Contentions 85 and 86 should be denied.

Contention 95 alleges that the Staff's environmental statement is deficient in not considering the cost of property insurance in the cost-benefit analysis. Again, the environmental costs are to be weighed against the societal benefits. See Zimmer, supra. Mr. Eddleman's June 20, 1983 filing sets forth no law or regulation which supports his allegation. Mr. Eddleman's discussion of insurance cost balanced against insurance loss in a macroeconomic setting as being contrary to the Staff's assessment of the probability of accident is a non sequitur, and adds nothing to support his contention. Deferred contention 95 should be denied.

Eddleman contention 110 (May 14, 1982 filing page 220) alleges that the Staff's environmental statement (not then in existence) is deficient for failing to provide the information requested in contention 108. Rejected contention 108 (May 14, 1982 page 215) alleged that the designers and builders, in the broadest sense of the words, have failed to analyze fully the performance of the reactor control systems during transients and accidents. The Board rejected contention 108, commenting that they "experienced some difficulty in determining just what conten-

tions were set forth" (Board Order dated Sept. 22, 1982 page 67). The Staff's DEIS adds no new information upon the testing of safety related equipment and contention 110 should be rejected. In our filing dated June 22, 1982, we opposed proffered contentions 108 and 110 as being vague and without basis. The situation has not changed. Mr. Eddleman's June 20, 1983 filing in regard to contentions 108 and 110 ramble from fish kills, to sabotage, to testing safety equipment. Basically Mr. Eddleman alleges as a defect in the DEIS that the safety systems are not reliable - without specifying which system, identifying the defect, and providing a basis to substantiate the allegation. The generality of his allegation parallels the generality which the Appeal Board found unacceptable in Diablo Canyon cited and quoted supra. Contentions 108 and 110 are not acceptable under 10 CFR § 2.714 and contention 110 should be rejected.

Deferred contention 126 alleged deficiency in the economic costs of a Class IX accident had not been considered (May 14, 1982 filing page 233). The Licensing Board deferred ruling on this contention until the FES is issued (Board Order dated Sept. 22, 1982 page 70). Mr. Eddleman seeks to have the contention admitted now on the basis that state government facilities 25-30 miles from Harris could become contaminated from fallout. Mr. Eddleman does not show that the DEIS contains new dose computations, or meteorology or accident conditions different from those considered at the construction permit stage or contained in the OL-ER. The Appeal Board and Commission have repeatedly stated that intervenors must check the public record. Here, in part, the DEIS takes into consideration NUREG-CR2591, "Estimating the Potential

Impacts of a Nuclear Reactor Accident," prepared by the Bureau of Economic Analysis, U.S. Department of Commerce. To support his contention, Mr. Eddleman must show (1) that the DEIS has "new information" -- which he has not done -- and (2) that the 10 CFR § 2.714 contention criteria are met --i.e., he must allege a specific site-reactor defect and provide basis -- which he has not done. To support his allegation he must, in part, show that NUREG/CR2591 has defects which substantially affect the quality of human life. Mr. Eddleman fundamentally is asserting defects without examination of the large body of literature available in the public domain.

Mr. Eddleman seems to believe that atmospheric releases (caused by venting of steam) should have been taken into account in our analysis of the liquid pathway following a core melt accident. Mr. Eddleman's assumptions are incorrect, for airborne doses are calculated separately [Section 5.9.4.4(3)] after consideration of all possible means of escape from the containment (including venting). The purpose of the liquid pathway study is to determine the upper (maximum) limit of dose due to waterborne radioactive effluents assuming that all of the leachable source term during the accident goes into the hydrosphere. Reducing the waterborne release to account for venting would reduce the liquid pathway dose. Increasing the atmospheric dose to account for venting would result in counting part of the source term twice. The suggestions in the June 20, 1983 filing are scientifically unsound, and demonstrate a lack of appreciation of what a liquid pathway study does.

Some of Eddleman's concern in the "BASIS" following his contention may be due to the permeability values from the DEIS which were incorrectly

presented in units of ft/day and should have been ft/year (all calculations were performed using the proper units and conclusions are not affected). The units will be corrected in the FES.

Although the DEIS section on which the contention is based does contain some new information which does not appear in RFES-CP or the applicant's ER-OL, Mr. Eddleman has not met the 10 CFR § 2.714 test of demonstrating a defect which would affect the environment and then supporting his allegation with basis in fact. This contention 162 should be denied.

Eddleman Contention 163 alleges defects in not providing specific population projection figures for Apex and Cary and critizes the lack of disclosure of NRC's data base and projection methodology. The Staff will reference the source-data-base for population and will reference the methodology used to project the population to the year 2010 in the FES. Undoubtedly they are in OBERS (the systematic regional economic and demographic projection structure developed under the leadership of the Bureau of Economic Analysis of the U.S. Department of Commerce). OBERS is not "new" but has been in existence for years. We recommend that contention 163 be denied. If the FES contains new significant information when it comes out, Mr. Eddleman will have an opportunity then to proffer a contention.

IV. CONCLUSION

The Staff's DEIS contains no new information not previously available in the public domain upon which new contentions could be proffered or which would provide a basis to admit previously rejected or

deferred contentions. All contentions proffered for admission in Mr. Eddleman's filing of June 20, 1983 should be rejected.

Respectfully submitted,

Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of July, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CAROLINA POWER AND LIGHT COMPANY AND	)	Docket Nos. 50-400 OL
NORTH CAROLINA EASTERN MUNICIPAL	)	50-401 OL
POWER AGENCY	)	
	)	
(Shearon Harris Nuclear Power Plant,	)	
Units 1 and 2)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with § 2.713(b), 10 CFR Part 2, the following information is provided:

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Richard G. Bachmann
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of July, 1983.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CAROLINA POWER AND LIGHT COMPANY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY	)	Docket Nos. 50-400 OL 50-401 OL
	)	
(Shearon Harris Nuclear Power Plant, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO WELLS EDDLEMAN'S RESPONSE TO THE STAFF'S DRAFT ENVIRONMENTAL IMPACT STATEMENT" AND "NOTICE OF APPEARANCE" for Richard G. Bachmann in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 8th day of July, 1983:

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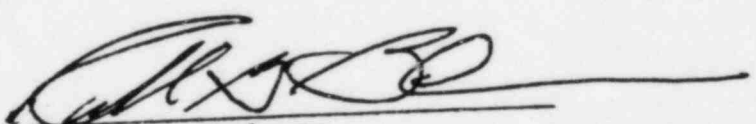

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