

March 12, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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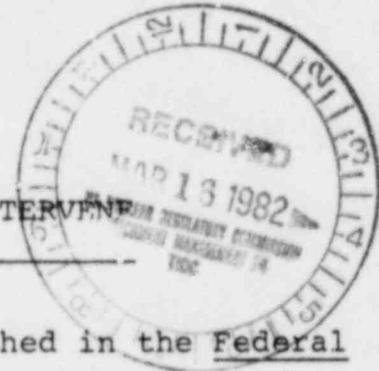
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OF SECURITY
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In the Matter of)	
)	
CAROLINA POWER & LIGHT COMPANY)	Docket Nos. 50-400 OL
AND NORTH CAROLINA MUNICIPAL)	50-401 OL
POWER AGENCY NO. 3)	
)	
(Shearon Harris Nuclear Power)	
Plant, Units 1 and 2))	

APPLICANTS' RESPONSE TO PETITION TO INTERVENE
BY WELLS EDDLEMAN



On January 27, 1982, notice was published in the Federal Register concerning the application of Carolina Power & Light Company and North Carolina Municipal Power Agency No. 3 (Applicants) for licenses to operate the Shearon Harris Nuclear Power Plant, Units 1 and 2. The notice afforded interested persons an opportunity to request a hearing and to petition for leave to intervene.

On February 25, 1982, a petition to intervene was filed by Mr. Wells Eddleman (Petitioner). Petitioner bases his interest on his residence, employment and personal property located in Durham, North Carolina, a distance "well within" 50 miles of the Harris Plant. He asserts among other things that his interest would be affected by routine radioactive emissions from the Plant and by the possibility of a nuclear accident. The specific aspects of the proceeding as to which Petitioner wishes to intervene include the adequacy of emergency response plans. To this extent Petitioner

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has in Applicants' view sufficiently stated an interest in the proceeding to meet the initial requirements for intervention under Section 2.714 of the Commission's Rules of Practice.

At the penultimate paragraph of his petition, Petitioner states his belief that "issuance of any operating license for the Harris nuclear plant to CP&L and Agency would contravene the antitrust laws of the United States and the policies underlying those laws." Such a contention is outside of the scope of the notice of opportunity for a hearing as published in the Federal Register on January 27, 1982. Thus, the antitrust issue is outside of the jurisdiction of this Board. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 171 (1976).

Petitioner has alleged other interests and effects upon those interests, some of which in Applicants' view are not cognizable in an NRC operating license proceeding. Applicants propose, however, to await the formulation of Petitioner's contentions pursuant to Section 2.714(b) and to address at that time the allowability of the contentions, including their relationship to an interest cognizable in the proceeding.

Applicants note that Petitioner represented the KUDZU ALLIANCE (KUDZU) in a petition to intervene at the management capability proceeding at the Construction Permit stage.^{1/} Furthermore,

^{1/} See letter from Wells Eddleman to the Atomic Safety and Licensing Board dated November 7, 1978 (requesting intervention status on behalf of himself and KUDZU).

as Petitioner has indicated at page 6 of his petition, he participated as an adviser to the Conservation Council of North Carolina (CCNC) during the management capability proceeding. Both KUDZU and CCNC have also petitioned to intervene in the instant proceeding. Applicants may at a later date request the consolidation of two or more of these petitioners or the designation of a single individual to represent their interests in the proceeding.

Petitioner relates that the Final Safety Analysis Report (FSAR) and Environmental Report (ER) were not available at the Wake County Public Library until February 5, 1982, contrary to the notice in the Raleigh News & Observer of January 27, 1982. Furthermore, Petitioner states that he has determined that certain documents from the Harris Plant file are missing. He thereby moves that the Board extend the period of time for filing intervention petitions to coincide with thirty days after the date of delivery of the FSAR and ER to the Wake County Library or nine days from the publication of the notice that the period of time for intervention has been extended. Later in his petition, he requests that a copy of the FSAR and ER be delivered to him at his home address, that a complete copy of all proposed technical specifications and any drafts of an operating license be delivered to his home address, and that he be given thirty days from receipt of such documents to file contentions.

Applicants oppose Petitioner's motions. Even if, in fact, the FSAR and ER were not delivered to the Wake County Library in a

timely manner,^{2/} Petitioner (and a number of other parties) were nevertheless able to file petitions to intervene within the requisite period of time and to meet the initial requirements for intervention under Section 2.714 of the Commission's rules, and there is ample opportunity now for the preparation of proposed contentions. Thus, there is no harm to Petitioner. Petitioner has no standing to represent the interest of anyone else.

Tennessee Valley Authority (Watts Bar Nuclear Plant Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977).

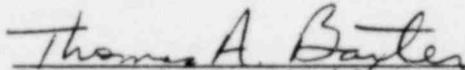
Furthermore, Petitioner has no right to have these documents delivered to his home. The FSAR (including proposed technical specifications) and the ER are available for Petitioner to inspect at the Wake County Library as Petitioner has himself related to us. While Petitioner has such materials available to him to assist in formulating contentions, they should not be necessary. Contentions in an NRC proceeding are similar to pleadings in civil cases and are to be formulated prior to an opportunity for discovery of Applicants' documents. Wisconsin Electric Power Company, et al. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928 (1974); BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974). As such the Commission's rules do not permit discovery until after the issues in controversy are established. See 10 C.F.R. § 2.740(b)(1) and Part 2, App. A, § IV(a). The intervenor's role

^{2/} We note that the Commission's regulations only require that such documents be available for inspection and copying at the Public Documents Room in Washington, D.C. 10 C.F.R. §§ 2.790 and 9.7; Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 184 (1974). As a matter of convenience they have been made available at the other location as well.

is not to duplicate the review function of the NRC Staff but rather to present its case regarding those matters which may affect its interests. Thus, the Commission's rules do not contemplate, at this stage of a proceeding, providing copies of the FSAR or ER to a petitioner for leave to intervene. Petitioner's requests should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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Dated: March 12, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Petition to Intervene by Wells Eddleman," dated March 12, 1982, were served upon the following persons by deposit in the United States mail, postage prepaid this 12th day of March 12, 1982.

James L. Kelley, Esq., Chairman
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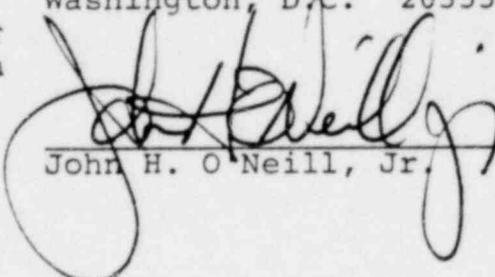
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John H. O'Neill, Jr.