June 21, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO AMENDMENTS TO CONTENTIONS AND ADDITIONAL CONTENTIONS OF WELLS EDDLEMAN

I. INTRODUCTION

By "Amendments to Contentions and Additional Contentions . . . ", dated June 5, 1982 (hereinafter the "Amended Petition"), petitioner Wells Eddleman proposes five new contentions (136-140) and amendments to Contentions 3, 29, 30, 78, 112 and 134 previously proposed in Mr. Eddleman's "Supplement to Petition to Intervene", dated May 14, 1982. On June 15, 1982, Applicants responded to Mr. Eddleman's first set of proposed contentions in "Applicants' Response to

Supplement to Petition to Intervene by Wells Eddleman" (hereinafter "Applicants' Response to Eddleman").[1] Pursuant to 10 C.F.R. § 2.714(c), Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency herein present their response to the Amended Petition.

II. RESPONSE TO CONTENTIONS

A. Requirements for Contentions and Timeliness of the Amended Petition

See Applicants' Response to Eddleman at 2-16 for a general discussion of the legal requirements which proposed contentions must meet in order to be admitted for adjudication in this proceeding.

The Board's Order of April 2, 1982, established May 14, 1982, as the date by which petitioners were to serve amendments to their petitions for leave to intervene setting forth the proposed contentions which they wished to litigate in this proceeding. In accord with this Board order, Mr. Eddleman filed his initial "Supplement to Petition to Intervene," setting forth in excess of 135 contentions. Mr. Eddleman now seeks to file additional and amended contentions based, inter alia, upon information purportedly not available to him prior

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1 In Applicants' Response to Eddleman, Applicants objected to the admission for litigation of each of the proposed contentions Mr. Eddleman now seeks to amend.

to May 14, 1982. See Amended Petition at 11-12. It is Applicants' position that, in view of the Board's April 2, 1982 Order, Mr. Eddleman's Amended Petition is not timely filed. However, recognizing that the Amended Petition was filed well in advance of the special prehearing conference now scheduled for July 13, 1982, Applicants will not object to the admission of Mr. Eddleman's newly filed and amended contentions solely on the basis of timeliness, and therefore will not urge the Board to balance the factors in 10 C.F.R. § 2.714(a)(1) for the acceptance of nontimely filings.[2]

B. Amended Contentions

Mr. Eddleman's first so-called amendment to proposed Contention 3 is offerred at this juncture because, Mr. Eddleman states, he did not find the basis for the contention -- NUREG-0834 -- on or before May 14, 1982, the date his initial

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2 Similarly, Applicants did not invoke timeliness objections to the CHANGE/ELP amended petition of May 24, 1982. Applicants do not concede, however, that Mr. Eddleman has demonstrated good cause for this untimely amendment to his intervention petition. In many instances, he does not even identify the new information which inspired a new contention or an amendment. In other cases, Mr. Eddleman's new or amended contentions are based on allegedly new information contained in a request for information from the Staff, dated May 21, 1982. This Staff letter is only one of undoubtedly many future requests for information from the Staff, needed for their review of Applicants' FSAR. Applicants contend that such requests by themselves do not constitute "good cause" (in the form of new information) sufficient automatically to accept new contentions.

contentions were filed. Amended Petition at 3. Mr. Eddleman is either mistaken here, or based his proposed Contention 127 on a document he had not seen. For proposed Contention 127, to which Applicants objected, challenges CP&L's ability to adhere to operating and administrative procedures on the basis of NUREG-0834.

Applicants object to the first proferred amendment to proposed Contention 3 for the reasons set forth in our response to proposed Contention 127. See Applicants' Response to Eddleman, at 184-185. As Applicants previously indicated, the intent of the SALP program is to improve performance of the nuclear industry by focusing on areas in licensees' performance which could be improved, consistent the Staff's emphasis on imperfections in licensees' performance rather than on areas of good licensee performance. See NUREG-0834 (August 1981), at i-ii. Moreover, neither Mr. Eddleman's earlier contention on this issue, Contention 127, nor the first proposed amendment to Contention 3 state any reason why the "average" rating given to Applicants' performance at the Harris and the Robinson facilities does not belie his suggestion that NUREG-0834 provides a basis for a management capability contention in this proceeding. Yet an "average" facility is defined in NUREG-0834, inter alia, as a facility where, if problem areas exist, they "are such that they detract little from the licensee's ability to meet nuclear safety requirements." Id. at 2. Furthermore,

NUREG-0834 makes clear that if issues requiring licensee corrective actions were identified, the NRC acted promptly to ensure such action was taken. Id. at 4. However, the purpose of the SALP program is not to identify significant safety deficiencies. Id. In summary, the first proposed amendment to Contention 3 (Amended Petition at 3-7) raises entirely new management issues from the issues raised in Contention 3; nonetheless, it is based on a document which formed the basis for proposed Contention 127, to which Applicants objected due to its lack of a sufficient basis. For the same reason, Applicants object to the first proposed amendment to Contention 3.

Mr. Eddleman has also proposed a second amendment to Contention 3 which references Question 430.108 (regarding set point drift) in the Staff's May 21, 1982 request for information. Amended Petition at 11. Applicants have viewed proposed Contention 3 and the first amendment thereto as relating to the issue of Applicants' management capability. However, this second amendment cannot be viewed as raising the issue of management capability, despite Mr. Eddleman's passing reference to setpoint drift problems and measures to prevent equipment flooding at Brunswick -- since Mr. Eddleman has failed to show any nexus between instrumentation and equipment qualification measures used at Brunswick and that at the Harris Plant. Consequently, the amended contention lacks basis with reasonable specificity and should be rejected.

Mr. Eddleman has proposed an amendment to his proposed Contentions 29 and 30, in which he addresses the release of radioiodines following a postulated fuel handling accident. Amended Petition at 10. Mr. Eddleman does not identify the source of information which led to the proposed amendment. Further, this is not an appropriate amendment to Contentions 29 and 30, which do not address a postulated fuel handling accident, or Applicants' analysis of one. Mr. Eddleman here raises a new issue, but does not address the information in the FSAR (§15.7.4), explain why the analysis provided is deficient in some way, or support his assertion that further consideration is required. Consequently, the proposed new contention lacks basis with reasonable specificity and should not be admitted.

Mr. Eddleman's amendment to his previously proposed Contentions 78 and 134 sets forth several very generalized concerns regarding the ability of the power supply systems for the Harris Plant to assure safe operation in the event of a loss of control power or loss of offsite power.[3] Amended Petition at 8-10.

The basis for Mr. Eddleman's amendment is alleged new information contained in a letter dated May 21, 1982, to

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3 Applicants object to Mr. Eddleman's postulated sabotage scenario resulting in a loss of power as challenging the provisions of 10 C.F.R. § 50.13.

Applicants from Mr. Frank J. Miraglia of the Staff. Mr. Miraglia's letter contains a number of questions posed by the Staff as part of its on-going review of Applicants' FSAR -- including those questions cited by Mr. Eddleman, which cover a whole host of issues regarding the Harris Plant power supply systems.[4] These Staff questions, for the most part, merely request additional information or documentation beyond that presented in the FSAR. As such, reference to these questions alone cannot be viewed as providing sufficient basis for a contention. Applicants contend that, as presently worded, the proposed amendment to Contentions 78 and 134 fails to put the parties on notice of the issue(s) Mr. Eddleman seeks to litigate.

Mr. Eddleman has proposed an amendment to Contention 112 which alleges that Applicants' analysis of a steam generator tube rupture accident is inadequate for both single and multiple tube failures. Amended Petition at 10. Mr. Eddleman cites Question 450.4 of the Staff's May 21, 1982 information request in support of his assertion that Applicants' analysis is inadequate.

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4 Mr. Eddleman references seventy-six of the questions posed by the Staff without any attempt to delineate the concerns raised by these questions. While many of the Staff's questions are related to Mr. Eddleman's area of concern, others appear to have little, if anything to do with power supply reliability (e.g., Questions 430.15 and 430.16 deal with the plant communication systems; 430.20 merely requests a drawing of the fuel oil piping arrangement).

Applicants do not believe that the substance of Staff Question 450.4 provides any basis for Mr. Eddleman's proposed amendment. The Staff states that the current steam generator tube rupture analysis set out in section 15.6.3[5] of the FSAR "does not contain enough information for us to complete our review" and requests that additional tables and figures depicting certain plant parameters following the postulated event be provided by Applicants. The Staff makes no allegation that the assumptions utilized in performing the accident analysis are incorrect -- and, in particular, the Staff has not requested that multiple tube failures need to be considered. Indeed, Regulatory Guide 1.70, Section 15, which sets forth the accidents to be analyzed, requires only the analysis of a single steam generator tube failure.

Mr. Eddleman, therefore, has provided no basis for his assertion that multiple tube failures, i.e., a beyond design basis event, need to be analyzed. Further, Mr. Eddleman has not attempted to show any nexus between the need to consider multiple tube failures and any specific alleged design deficiencies at the Harris Plant. Absent such a showing, Applicants submit that Mr. Eddleman's assertion that multiple tube failures need to be considered lacks sufficient basis to be admitted as a contention in this proceeding.

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5 The Staff's request incorrectly references FSAR § 15.5.3.

Similarly, Applicants contend that Mr. Eddleman has failed to provide any basis for his allegation that Applicants' analysis of a single tube rupture is inadequate. Certainly, simply referencing a request for additional information from the Staff, where the Staff has made no finding of inadequacy, does not provide the requisite basis. Beyond this, however, Mr. Eddleman has not set forth, with particularity, any disputes he has with the accident analysis presented in section 15.6.3 of the FSAR. Mr. Eddleman's proposed amendment to Contention 112 must therefore be rejected as failing to meet the requirements of 10 C.F.R. § 2.714(b).

C. New Contentions

Contention 136 asserts that Applicants and the NRC have failed to comply with Section 7(d) of the Endangered Species Act by proceeding with construction of the Harris Plant without preventing an irreversible commitment of resources "which preclude[s] reasonable alternatives such as relocating the plant site or lake, or setting aside habitat for [bald] eagles and [red-cockaded] woodpeckers that would be undisturbed during construction . . . ". Amended Petition at 1-2.

Mr. Eddleman's reference to Section 7(d) of the Endangered Species Act is misplaced. Section 7(d), adopted by amendments of 1978, provides that a federal agency or license applicant will not irreversibly commit resources having the effect of

foreclosing alternative measures which would avoid jeopardizing continued existence of a threatened species or destroying the critical habitat of an endangered species. The site of the Harris Plant is not located in a "critical habitat" as that term is defined in Section 3(5)(A) of the Endangered Species Act. Furthermore, based on extensive field surveys by Applicants, as confirmed by the NRC, it is clear that construction of the Harris Plant does not jeopardize the continued existence of a threatened species.

Potential impacts of Harris Plant construction and operation on endangered or threatened species were considered by CP&L and the NRC Staff prior to the issuance of the construction permit. See U.S. N.R.C., Revised Final Environmental Statement (Related to Construction of Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4, Carolina Power & Light Company) (March, 1974) at § 2.8.1. The Licensing Board (construction permit) found that "[n]o known terrestrial species are on the site that face extinction as a result of the reservoir . . . ." Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4) LBP-78-4, 7 N.R.C. 92, 113 (1978). Applicants' ER at § 2.2.3.1 specifically addresses the United States and North Carolina endangered species legislation. Three sightings of bald eagles were reported in August, 1973, April, 1974, and July, 1974, along the Cape Fear River outside the project boundary. No

observation of the red-cockaded woodpecker had been made between October, 1972 and preparation of the ER. As pointed out in the ER, the Harris Plant site did not support mature, open pine forest which is the preferred nesting habitat of the red-cockaded woodpecker. In response to NRC Staff questions, Applicants reported two additional sightings of bald eagles since those recorded in the ER. Applicants also observed that the Harris Reservoir is expected to provide an attractive feeding and resting area for migrant or wandering bald eagles. Applicants reported that the red-cockaded woodpecker has been observed near the Plant site on two occasions since sightings reported in the ER. However, no evidence of the species has been found at the Plant site. See Applicants' Response to NRC Staff's "Final Environmental Report Review Questions," submitted by letter dated June 3, 1982, from M. A. McDuffie to H. R. Denton.

While Applicants and the Staff have continued to monitor these species in order to confirm their earlier environmental assessments, the appropriate point in the agency decision-making process to take into consideration impacts on endangered species is at the construction permit stage. Contention 136 does not relate at all to the impacts of plant operation. Mr. Eddleman suggests in Contention 136 that the Board should, in effect, consider alternative sites to the Harris Plant site. The consideration of alternative sites is

not properly before the Board at the operating license proceeding. See 10 C.F.R. § 51.53(b).

Mr. Eddleman has failed to state a case for the failure of Applicants and the NRC to comply with the Endangered Species Act. Furthermore, he has failed to provide any basis with the requisite specificity for the assertion that Harris Plant construction had any impact on the bald eagle or red-cockaded woodpecker. In fact, information provided in the ER and in the Revised Final Environmental Statement support a contrary conclusion. This information is confirmed by updated field observations recently provided by Applicants to the NRC Staff. Mr. Eddleman simply does not address the previous attention by Applicants and the NRC to the endangered species. For all of the above reasons, Contention 136 must be rejected as without basis and as irrelevant to the operating license proceeding.

Eddleman proposed Contentions 137, 139 and 140 raise a number of emergency planning issues. In Applicants' Response to Eddleman, at 147, Applicants recognized, with respect to a number of emergency planning contentions, the absence of the critical documents generally necessary for the presentation of "bases with reasonable specificity" -- the draft emergency plans for the Harris plant. Nevertheless, where the disposition of a proposed contention will be essentially unrelated to the actual plans, e.g., where the contention constitutes a challenge to the Commission's emergency planning regulations,

the proposed contention is ripe for ruling by the Licensing Board without awaiting the issuance of draft plans.

Similarly, although the draft emergency plans themselves have not issued, section 13.3 of Applicants' FSAR includes a summary of Applicants' emergency plan, and other sections of the FSAR include detailed information on areas which are subjects of emergency planning, such as radiation monitoring. Consequently, Applicants have presented their positions on bases and specificity with respect to contentions which have been drafted without reference to the FSAR on subjects which are in fact covered in the FSAR.

Proposed Contention 137 is actually a string of disparate allegations of inadequacies in Applicants' site emergency plan. Amended Petition at 2. Mr. Eddleman first alleges that Applicants' plan is inadequate "because it does not exist." This is an uncontested assertion of fact. Applicants do not dispute that emergency plans which comply with the Commission's regulations must be prepared prior to commercial operation of the Harris plant. However, this part of the contention is so lacking in clarity and specificity that it utterly fails to put the other parties on notice of the issues for litigation and must therefore be rejected. While it is not appropriate to admit this part of the contention as presently worded, Applicants recognize that the issuance of draft emergency plans will constitute good cause for the filing of new contentions.

The proper course, then, is for Mr. Eddleman to review Applicants' on-site emergency plan when issued and thereafter submit specific contentions, if any, with respect to any deficiencies he has identified in the new information in that plan.

Mr. Eddleman further asserts that on-site planning is inadequate because it "does not provide means to guarantee that the public . . . will be promptly notified" of an accident. To the extent that this portion of the contention may be read to suggest that a notification system other than that required by 10 C.F.R. Part 50, App. E, § IV.D.3 is necessary, the contention constitutes an impermissible challenge to the Commission's regulations, and must be rejected. Though the provisions for public notification of an emergency may be the subject of a cognizable contention (so long as it does not challenge the Commission's regulations), Mr. Eddleman's generalized assertion about the public notification system -- necessarily formulated without reference to Applicants' draft plan -- must necessarily lack basis and specificity. While it is inappropriate to admit any contention on the subject at this time, Mr. Eddleman may properly review Applicants' draft plan when issued and then submit specific contentions, with bases, with respect to any deficiencies he identifies in the public notification system described therein.

Mr. Eddleman also alleges that on-site planning is inadequate because it "does not provide means to guarantee that . . . emergency response authorities and personnel will be promptly notified" of an accident. However, Mr. Eddleman has failed to detail what remedial measures he asserts are necessary to adequately provide for prompt notification of emergency response authorities and personnel. Particularly, Mr. Eddleman has not identified any deficiencies in the concept of operations of emergency response (described in section 13.3.6 of the FSAR) which would render it insufficient to provide timely notification of such persons. In fact, Mr. Eddleman has not even referenced that section of the FSAR, though it includes a detailed description of the procedures for notification of on-site and off-site emergency response authorities and personnel. Applicants therefore oppose the admission of that part of proposed Contention 137 which deals with notification of response authorities and personnel, on the ground that it is so lacking in specificity that it fails to give other parties adequate notice of the issues for litigation.

Applicants' planning is also alleged to be inadequate in that it "does not provide adequate radiation monitoring capability on-site and off-site . . . particularly pressurized ionization detectors or equivalent means to detect levels of individual radionuclides in real time." This part of proposed Contention 137 is very similar to Mr. Eddleman's proposed

Contentions 1 and 2, and should be rejected for the same reasons those proposed contentions should be rejected. See Applicants' Response to Eddleman, at 103-05 (inadequate basis due to failure to advance any deficiencies in Applicants' system or to explain superiority of proposal).

The proposed contention further asserts that Applicants' plan is defective because it "does not provide sufficient personnel sufficiently well-trained to carry out such radiation monitoring on and off-site." However, Mr. Eddleman has failed to identify the remedial measures he alleges are necessary to adequately provide for radiation monitoring. Particularly, he has not identified any deficiencies in the assessment actions described in section 13.3.6.2 of the FSAR to be implemented by, inter alia, Applicants' Emergency Monitoring Team, and DOE and state radiological personnel, nor has he criticized Applicants' specific provisions for training such personnel, described in sections 13.3.8.1.1 through 13.3.8.1.3 of the FSAR. In fact, Mr. Eddleman has not even referenced these sections of the FSAR. Applicants therefore oppose the admission of this part of the contention on the ground that it is so lacking in specificity that it fails to give other parties adequate notice of the issues for litigation.

Finally, proposed Contention 137 alleges that Applicants' on-site plan is inadequate because it fails to "provide sufficient personnel sufficiently well-trained . . . to inform

emergency response personnel and the public accurately and rapidly enough" in an accident. Applicants object to that portion of the contention relating to public notification on the grounds that it constitutes a challenge to the Commission's emergency planning regulations. While an applicant must demonstrate the existence of a system for prompt public notification of an emergency, the responsibility for actually notifying the public of an emergency rests with state and local government authorities. See 10 C.F.R. Part 50, App. E, § IV.D.3. Thus, it is neither required nor contemplated that an applicant's plans would provide for any personnel to notify the public of an emergency.

The portion of the contention challenging the provisions for personnel to alert other emergency personnel of an emergency should also be rejected. This generalized assertion, necessarily formulated without reference to Applicants' draft plan, must necessarily lack basis and specificity. While it is inappropriate to admit any contention on the subject at this time, Mr. Eddleman is free to review Applicants' draft plan when issued and then file specific contentions, with bases, with respect to any deficiencies he identifies in the provisions for notification of emergency response personnel described therein.

Proposed Contention 139 generally charges that evacuation planning for the Harris plant fails to adequately provide for

"the transient population engaged in recreational activities" in the area near the plant. Amended Petition at 7. Particularly, proposed Contention 139 alleges that evacuation planning for Harris is inadequate to remove the peak transient population "in time," due to a laundry list of alleged deficiencies including "unmonitored releases" and "inadequate evacuation planning, personnel and equipment." These generalized assertions -- necessarily formulated without reference to the draft emergency plans themselves -- clearly lack the specificity required of a litigable contention. Nor has Mr. Eddleman supplied any bases for his charges. While it is not appropriate to admit this contention as presently worded, Applicants recognize that the issuance of the draft plans will constitute good cause for the filing of new contentions. The appropriate course, then, is for Mr. Eddleman to review the draft plans when issued and then submit specific contentions with respect to any deficiencies he has identified in the newly-available information in those plans.

Proposed Contention 139 further alleges that the recreating population within 20 miles of the Harris plant should be considered in evacuation planning since, it is asserted, "Class 9" accidents "have their effects reach well beyond ten miles of the plant." This part of the proposed contention must be rejected as a clear challenge to the Commission's emergency planning regulations defining the plume exposure pathway

Emergency Planning Zone. See 10 C.F.R. § 50.47(c)(2); Applicants' Response to Eddleman, at 154-57.

Eddleman proposed Contention 140 broadly asserts that the emergency plans of Applicants, the State and local governments, and FEMA are inadequate because they do not provide for the "prompt and safe" evacuation of the recreating populations described in proposed Contention 139. Amended Petition at 8. Applicants object to that portion of the contention which deals with FEMA, on the grounds that it constitutes a challenge to the Commission's emergency planning regulations, which recognize that responsibility for the evacuation of the public rests primarily with state and local authorities. See 10 C.F.R. § 50.47(b)(10) and NUREG-0654, Criterion J.9. For similar reasons, to the extent that the contention asserts that the on-site plan must provide for the evacuation of the recreating public other than the public on property controlled by Applicants, Applicants object to the contention as it relates to Applicants' on-site plan.

Applicants further object to proposed Contention 140, necessarily framed without reference to the draft emergency plans themselves, on the ground that the contention lacks specificity and bases. While it is not appropriate to admit this generalized contention as presently worded, Applicants recognize that the issuance of the draft plans will constitute good cause for the filing of new contentions. Thus, the

appropriate course is for Mr. Eddleman to review the draft plans when issued and then submit specific contentions, with bases, with respect to any deficiencies he has identified, within the strictures of the objections outlined above.

At proposed Contention 138, Mr. Eddleman states that "the electrical drawings for SHNPP are not available at the LPDR for inspection and do not provide sufficient information to accurately analyze the circuitry to determine its response under the applicable ranges of normal and accident conditions said circuitry may face." Amended Petition at 2. The simple answer is that there is no requirement to provide the electrical drawings for the Harris Plant to the NRC. Proposed Contention 138 simply does not suggest a litigable issue. In fact, it appears to be more correctly characterized as an unlimited discovery request. Such an unfocused request would be inappropriate even in support of an admitted contention.

Applicants are entitled to be told at the outset "with clarity and precision" what arguments are being advanced. Kansas Gas and Electric Company, et al. (Wolf Creek Generation Station, Unit No. 1), ALAB-279, 1 N.R.C. 559, 576 (1975). Proposed Contention 138 is vague, unfocused, overly broad and does not lend itself to a response and must be rejected as failing to state an issue capable of being litigated.

III. CONCLUSIONS

For the foregoing reasons, none of Mr. Eddleman's new and amended contentions should be admitted for litigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Amendments to Contentions and Additional Contentions of Wells Eddleman" were served this 21st day of June, 1982, by Express Mail upon the parties identified by an asterisk and by deposit in the U.S. mail, first class, postage prepaid, upon all other parties whose names appear below.

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