August 31, 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' REPLY TO CHANGE/ELP AND CCNC
BRIEF CONCERNING SPENT FUEL TRANSSHIPMENT

On August 4, 1982, Petitioners Chapel Hill Anti-Nuclear Group Effort ("CHANGE")/Environmental Law Project ("ELP") and Conservation Council of North Carolina ("CCNC") jointly submitted a "Brief Concerning Spent Fuel Transshipment" ("Brief") in support of CHANGE/ELP Contention 9 and CCNC Contention 4. On August 10, 1982, the NRC Staff in its "Response to Licensing Board Inquiries" adopted the legal position taken by the NRC Staff in Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414, "NRC Staff Response to Board Questions on Spent Fuel Storage and Operator Qualifications", at 9 (April 5, 1982),

DS03

regarding the jurisdiction of the Board to consider environmental effects of shipping spent nuclear fuel to the Harris Plant from Applicant Carolina Power & Light Company's Robinson and Brunswick facilities. By letter dated August 10, 1982, Applicants indicated their intention to file a reply to both the August 4, 1982 Brief and the position due to be filed by the NRC Staff, by not later than August 31, 1982. Applicants Carolina Power & Light Company ("CP&L") and North Carolina Eastern Municipal Power Agency hereby reply to the Brief submitted by CHANGE/ELP and CCNC and the position stated by the NRC Staff.

I. BACKGROUND

Applicants' position regarding the issue of transshipment of spent nuclear fuel from Robinson and Brunswick to the Harris Plant has been briefed at some length in "Applicants' Response to Supplement to Petition to Intervene by Wells Eddleman" (June 15, 1982) at 67-79 and at the Prehearing Conference (Tr. 176-181). Applicants' response to CHANGE/ELP Contention 9 is found at "Applicants' Response to Supplement to Petition to Intervene by Chapel Hill Anti-Nuclear Group Effort and Environmental Law Project" (June 15, 1982) at 36-39. Applicants' response to CCNC Contention 4 is found at "Applicants' Response to Supplement to Petition to Intervene by Conservation Council of North Carolina" (June 15, 1981) at 10-11.

Briefly stated, Applicants, as part of their application for an operating license, seek authority to receive and store spent fuel from Robinson Unit 2 and Brunswick Units 1 and 2 at the Harris Plant. Applicants are not seeking authority to transship spent fuel from Robinson and Brunswick to the Harris Plant. CP&L already has authority, by virtue of its licenses to operate the Robinson and Brunswick Plants, and by virtue of the general license conferred on it by 10 C.F.R. § 70.42(b), to transfer the spent fuel "to any person authorized to receive such special nuclear material under terms of a specific license or a general license or their equivalents . . . ."

While not taking issue with Applicants' position as stated above, NRC Staff believes that inasmuch as transshipment of spent fuel from other CP&L facilities is "a reasonably foreseeable outcome" of authorization to store such spent fuel at the Harris Plant and "a necessary step to accomplish such storage," the environmental impacts of such transportation should be examined as part of the environmental evaluation of the spent fuel storage for which Applicants seek authorization. NRC Staff Response in Catawba, supra. While Applicants differ with the NRC Staff's view of the Commission's responsibility with respect to consideration of environmental impacts of such transshipment in this instance, the difference in the Applicants' and Staff's position has no practical distinction. NRC Staff also takes the position that the environmental impacts of transportation of spent fuel from Robinson and

Brunswick to the Harris Plant are encompassed in the values set forth in Table S-4 to 10 C.F.R. § 51.20. Since the values in Table S-4 demonstrate that the environmental impacts of spent fuel transportation are insignificant, incorporation of these values into the environmental impact statement for the Harris Plant operating license would have no impact on the cost/benefit analysis. See Tr. 181-182.

CHANGE/ELP and CCNC argue that (1) the environmental impacts of transportation of spent fuel from Robinson and Brunswick to the Harris Plant must be considered by the Board in the operating license proceeding, (2) that the values for environmental impacts from transportation of radioactive materials set forth in Table S-4 do not apply to the transportation of spent fuel from Robinson and Brunswick to the Harris Plant, (3) that Applicants' analysis in the ER is inadequate because it does not consider the effects of sabotage and/or diversion of spent fuel shipments, and (4) that Applicants have failed to show that transportation of spent fuel from Robinson and Brunswick to Harris will maintain radiation exposures and releases "as low as reasonably achievable." Applicants reply to each argument seriatim below.

II. ARGUMENT

A. IN CONSIDERING THE ENVIRONMENTAL IMPACTS OF THE ISSUANCE OF AN OPERATING LICENSE FOR THE HARRIS PLANT, THE COMMISSION NEED NOT TAKE INTO ACCOUNT ANY ENVIRONMENTAL IMPACTS FROM ACTIVITIES PREVIOUSLY AUTHORIZED BY A COMMISSION LICENSE AFTER COMPLIANCE WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

While it is certainly true, as noted by the Staff, that transshipment of spent fuel from Robinson and Brunswick to the Harris Plant is a reasonably foreseeable outcome of authorization to store spent fuel from those plants at the Harris facility, it does not follow that environmental impacts from such transshipments must be considered in the context of the authorization for the Harris Plant to receive and store the Robinson and Brunswick spent fuel. The National Environmental Policy Act ("NEPA") does not require preparation of duplicative environmental reviews for every licensed activity. This principle has become well-established in Appeal Board decisions regarding license amendments to operating plants, especially amendments to permit expansion of spent fuel storage pools. In one such decision the Appeal Board stated plainly:

> Nothing in NEPA or in those judicial decisions to which our attention has been directed dictates that the same ground be wholly replowed in connection with a proposed amendment to those 40 year operating licenses. Rather, it seems manifest to us that all that need be undertaken is a consideration of whether the amendment itself would bring about significant environmental consequences beyond those previously assessed and, if so, whether those consequences (to the extent unavoidable) would be sufficient on balance to require a denial of the amendment application.

Northern States Power Company (Prairie Island Generating Plant, Units 1 and 2) and Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-455, 7 N.R.C. 41, 46 n.4 (1978), remanded on other grounds sub nom. Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979). See also Portland General Electric Company (Trojan Nuclear Power Plant), ALAB-531, 9 N.R.C. 263, 266 n.6 (1979). In Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 N.R.C. 312 (1981), the Appeal Board took this line of reasoning one step further and reversed a licensing board decision which had held that an environmental impact statement ("EIS") was required to consider the environmental impacts of both spent fuel pool expansion and the additional term of operation permitted by such expansion. The licensing board had distinguished Prairie Island and Trojan, supra, because the nuclear plant in question had been licensed prior to NEPA and no environmental analysis had previously been prepared on the impacts of plant operation. The Appeal Board held that NEPA "is not an authorization to undo what has already been done," and that to formulate an EIS on continued plant operations -- an activity already licensed by the NRC -- "would trivialize NEPA's EIS requirement." Id. at 328.

Here, CP&L already has authority to ship spent fuel to a facility authorized to receive it. The issue before the Board, and the action concerning which environmental impacts are appropriately considered, is the receipt and storage of such

spent fuel at the Harris Plant. The Commission has already considered the environmental impacts of such transportation of spent fuel from Robinson and Brunswick to any facility authorized to receive it in the context of those licensing proceedings. The environmental analysis suggested by the NRC Staff and CHANGE/ELP-CCNC is duplicative and simply not required.

CHANGE/ELP and CCNC cite Duke Power Company (Oconee-McGuire, Amendment to Materials License SNM-1773), LBP-80-28, 12 N.R.C. 459 (1980) in support of their position. Brief at 4. Of course that decision was reversed by the Appeal Board in ALAB-651, 14 N.R.C. 307 (1981). CHANGE/ELP and CCNC also cite to the Oconee-McGuire licensing board decision for the proposition that Applicants must consider alternatives to transshipment. Brief at 5. The Appeal Board in reversing the licensing board there reiterated that "neither Section 102(2)(C) nor Section 102(2)(E) of NEPA obligates the federal agency 'to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expanded.'", 14 N.R.C. at 321-322, citing Trojan, supra, 9 N.R.C. at 266. Accord, Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 N.R.C. 451, 457-58 (1980); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 N.R.C. 43, 65 n.33 (1981). The impacts on the

environment of spent fuel transportation are negligible, as determined specifically for Robinson and Brunswick in their respective Final Environmental Statements and generically in Table S-4 to 10 C.F.R. § 51.20; thus consideration of alternatives is not required by NEPA.

B. EVEN IF ENVIRONMENTAL IMPACTS OF SPENT FUEL TRANSPORTATION FROM ROBINSON AND BRUNSWICK TO THE HARRIS PLANT WERE PROPERLY BEFORE THIS BOARD, SUCH IMPACTS ARE ENCOMPASSED BY THE VALUES ESTABLISHED BY RULE IN TABLE S-4 TO 10 C.F.R. § 51.20 AND ARE NOT SUBJECT TO LITIGATION IN THIS PROCEEDING

CHANGE/ELP and CCNC argue that the values for environmental impacts of the transportation of nuclear fuel, as set forth in Table S-4 to 10 C.F.R. § 51.20, do not apply to the transportation of spent fuel from Robinson and Brunswick to the Harris Plant. Brief at 5-9. They reach this conclusion by the most narrow, tortured reading possible of the Commission's regulations and the Federal Register statements accompanying the Proposed Rule and Final Rule, and by restricting their view of the situation exclusively as a shipment of irradiated spent nuclear fuel to the Harris Plant. As CHANGE/ELP and CCNC concede, Table S-4 summarizes the environmental impacts of both the transportation of fresh fuel to a light water reactor and transportation of spent fuel from that reactor. While it is true that spent fuel will be shipped to the Harris Plant, it will also be shipped from Robinson and Brunswick. Thus, such spent fuel shipments -- viewed from Robinson or Brunswick -- clearly meet every qualification in 10 C.F.R. § 51.20(g) and

the environmental impacts associated with such shipments would be encompassed in the values in Table S-4. Since such values also include the impacts of shipments of fresh nuclear fuel to Robinson and Brunswick, they necessarily overstate the environmental impacts of transportation of spent fuel to the Harris Plant. However, since such values amply demonstrate that the total impacts are insignificant, the overstatement is acceptable as an upper-bound.

C. EVEN IF ENVIRONMENTAL IMPACTS OF SPENT FUEL TRANSPORTATION FROM ROBINSON AND BRUNSWICK TO THE HARRIS PLANT WERE PROPERLY BEFORE THIS BOARD, APPLICANTS NEED NOT CONSIDER THE ENVIRONMENTAL IMPACTS OF SABOTAGE AND/OR DIVERSION OF SPENT FUEL SHIPMENTS ABSENT SUCH AN ISSUE BEING PROPERLY PLACED BEFORE THIS BOARD IN A CONTENTION SETTING FORTH A CREDIBLE SCENARIO FOR SUCH SABOTAGE OR DIVERSION WITH REQUISITE BASIS AND SPECIFICITY

CHANGE/ELP and CCNC assert that Applicants' ER is inadequate because it fails to consider the effects of sabotage and/or diversion of spent fuel shipments. Brief at 9-11. While Petitioners are correct in indicating that the environmental effects of sabotage and diversion are beyond the scope of the values set forth in Table S-4, there is no requirement of Applicants to speculate on such sabotage or diversion and to set forth the potential environmental impacts from such events. NEPA does not require Applicants to dwell on "remote and speculative" potential environmental impacts. Life of the Land v. Brinegár, 485 F.2d 460, 472 (9th Cir. 1973), cert. denied, 416 U.S. 961 (1974). Neither CHANGE/ELP nor CCNC

has set forth a contention with basis and requisite specificity that establishes a plausible scenario for sabotage and diversion of spent nuclear fuel which puts Applicants and the Board on notice that such an event and its environmental impacts need be considered.

The Commission's rule on "Physical Protection of Irradiated Reactor Fuel in Transit" requires that Applicants not rely on cask design alone in shipments of irradiated reactor fuel. 10 C.F.R. § 73.37; cf. Brief at 11. In amending its interim rule on physical protection of spent fuel shipments, the Commission established certain security requirements and administrative requirements. In doing so, the Commission "reaffirm[ed] its judgment that spent fuel can be shipped safely without constituting unreasonable risk to the health and safety of the public." 45 Fed. Reg. 37403 (June 3, 1980). Petitioners have provided nothing in their contentions nor their Brief that would challenge that Commission judgment or would demonstrate a need to take into consideration the environmental impacts of the sabotage or diversion of spent fuel shipments either to or from the Harris Plant.

D. APPLICANTS ARE UNDER NO OBLIGATION TO SHOW THAT THE TRANSPORTATION OF SPENT FUEL FROM ROBINSON AND BRUNSWICK TO THE HARRIS PLANT WILL MAINTAIN RADIATION EXPOSURES AND RELEASES "AS LOW AS IS REASONABLY ACHIEVABLE"

CHANGE/ELP and CCNC argue that Applicants have failed to compare their plan for transportation of spent fuel from Robinson and Brunswick to the Harris Plant with alternatives to determine whether Applicants' proposal will maintain radiation exposures "as low as is reasonably achievable" ("ALARA"). Brief at 11. Again Petitioners cite the licensing board in Oconee-McGuire for this proposition. While the licensing board there was not specifically reversed on its ALARA analysis, the Appeal Board carefully indicated that it was not reaching that issue since the ALARA analysis had not worked to the disadvantage of applicant's proposal, and thus to decide the issue would amount to rendering an advisory opinion. 14 N.R.C. at 323 n.30. Furthermore, the proposition that ALARA must be considered in the context of alternatives to a particular proposal for licensing appears inconsistent with the Appeal Board's decision in ALAB-455, supra, 7 N.R.C. at 56 n.13, where the Appeal Board indicated that the ALARA standard comes into play only after it has been determined that the applicant's proposal meets all other requirements imposed by 10 C.F.R. Part 20:

> It bears emphasis that the ALARA standard comes into play only after it has been determined that the applicant's proposal will comply with all other requirements imposed by Part 20, including the absolute limitations on permissible doses, levels, and concentrations set forth in 10 CFR

> 20.101 et seq. Stated otherwise, the ALARA concept is addressed to the reduction of radiation exposure to levels below those which, no matter what the economic and other considerations, must not be exceeded.

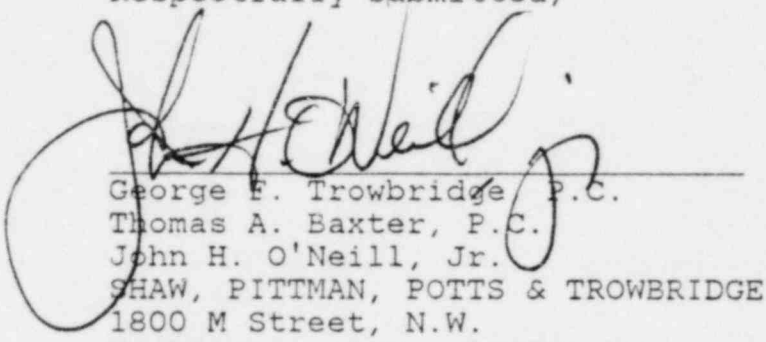
In the context of spent fuel transportation, the Commission considered ALARA implications in issuing its rule on "Physical Protection of Irradiated Reactor Fuel in Transit" and found "the difference in such small routine exposures is not a significant health factor and therefore not to be considered a significant factor in the choice of routing." 45 Fed. Reg. at 37404. Thus there is no requirement, and Petitioners have brought no information to this Board's attention which would suggest a need, for Applicants to consider ALARA in the context of transportation of spent nuclear fuel from Robinson and Brunswick to the Harris Plant.

III. CONCLUSION

For all of the reasons set forth above, CHANGE/ELP Contention 9 and CCNC Contention 4 must be rejected. The environmental impacts of spent fuel transportation from Robinson and Brunswick are not an issue cognizable before this Board. Even if the Board decides that it has jurisdiction to consider the environmental impacts of spent fuel transportation from Robinson and Brunswick to the Harris Plant, such impacts

are encompassed in the values set forth in Table S-4 and are clearly insignificant.

Respectfully submitted,



George F. Trowbridge, P.C.
Thomas A. Baxter, P.C.
John H. O'Neill, Jr.
SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Dated: August 31, 1982

August 31, 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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Reply To CHANGE/ELP and CCNC Brief Concerning Spent Fuel Transshipment" were served this 31st day of August, 1982, by deposit in the U.S. mail, first class, postage prepaid, upon all parties whose names appear below:

James L. Kelley, Esquire
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles A. Barth, Esquire
Stuart A. Treby, Esquire
Marjorie Rothschild, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Phyllis Lotchin
108 Bridle Run
Chapel Hill, North Carolina 27514

Mr. Daniel F. Read, President
Chapel Hill Anti-Nuclear Group Effort
P.O. Box 524
Chapel Hill, North Carolina 27514

Mr. John Runkle
Conservation Council of North Carolina
307 Granville Road
Chapel Hill, North Carolina 27514

M. Travis Payne, Esquire
Edelstein and Payne
P.O. Box 12643
Raleigh, North Carolina 27605

Dr. Richard D. Wilson
729 Hunter Street
Apex, North Carolina 27502

Mr. Wells Eddleman
718-A Iredell Street
Durham, North Carolina 27705

Ms. Patricia T. Newman
Mr. Slater E. Newman
Citizens Against Nuclear Power
2309 Weymouth Court
Raleigh, North Carolina 27612

Richard E. Jones, Esquire
Associate General Counsel
Carolina Power & Light Company
P.O. Box 1551
Raleigh, North Carolina 27602

John H. O'Neill, Jr.