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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES

Glenn O. Bright
Dr. James H. Carpenter
James L. Kelley, Chairman

SERVED SEP 23 1982

In the Matter of	Docket No. 50-400 OL 50-401 OL
CAROLINA POWER & LIGHT COMPANY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY	ASLBP No. 82-468-01 OL
(Shearon Harris Nuclear Power Plant, Units 1 and 2)	September 22, 1982

MEMORANDUM AND ORDER
(Reflecting Decisions Made Following Prehearing Conference)

On July 13 and 14, 1982, the Board conducted a special prehearing conference in Raleigh, North Carolina, pursuant to 10 CFR 2.751a. The primary purpose of the conference was to consider pending petitions for intervention and contentions filed in support of those petitions. This Memorandum and Order sets forth the Board's decisions on intervention, admissibility of contentions, and related matters.

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A. Admission of Parties.

Nine petitioners had originally sought intervention in this operating license proceeding: Citizens Against Nuclear Power (CANP), Conservation Council of North Carolina (CCNC), Chapel Hill Anti-Nuclear Group Effort (CHANGE), Mr. Wells Eddleman, Environmental Law Project (ELP), Kudzu Alliance (Kudzu), the Mayor's Task Force to Assess the Effect of the Shearon Harris Nuclear Power Plant on Chapel Hill (MTF), Mr. Daniel Read, and Dr. Richard Wilson. Subsequently, CHANGE and ELP sought and were granted consolidation; Mr. Read, who is also the President of CHANGE, withdrew his individual petition and permitted his interests to be represented by CHANGE. MTF also ceased to pursue intervenor status as an organization; instead, Dr. Phyllis Lotchin, the Chairman of MTF, sought intervention in her personal capacity.

These seven remaining petitioners submitted separate supplements of contentions and participated in the prehearing conference. CANP was represented by Mr. Slater Newman, a co-coordinator of that organization; CCNC was represented by Mr. John Runkle, CCNC's executive coordinator; CHANGE was represented by Mr. Daniel Read; and Kudzu was represented by counsel, Mr. Travis Payne. Mr. Eddleman, Dr. Lotchin, and Dr. Wilson represented themselves. The standing of all seven of the participating petitioners is conceded by both the Applicants and the NRC Staff. Tr. 15-16.

A petitioner for intervention is entitled to party status if he (1) establishes standing and (2) pleads at least one valid contention. As discussed hereafter, CCNC, CHANGE, Kudzu, CANP, Mr. Eddleman, and Dr. Wilson have met both tests. Accordingly, the Board orders these petitioners admitted as parties to this proceeding.

Dr. Lotchin failed to plead a valid contention at this stage. However, as discussed more fully below, the Board is deferring rulings on her contentions concerning emergency planning until after those plans, now in preparation, are available for review. At that time Dr. Lotchin's contentions, revised to take account of the plans, can be re-examined and party status may be granted.

B. Admissibility of Contentions -- General Considerations.

The seven petitioners filed over three hundred contentions. The Applicants or the Staff (or both) objected, at least initially, to most of these contentions. The objection most frequently voiced was that a contention lacked a basis stated with reasonable specificity. As noted below in our treatment of the individual contentions, that objection was well taken in many instances.

Section 714(b) of the Commission's Rules of Practice, 10 CFR 2.714(b), requires that "the bases for each contention [be] set forth with reasonable specificity." As expl ined recently by another Licensing Board, this requires that a contention include "a reasonably specific articulation of

its rationale -- e.g., why the applicant's plans fall short of certain safety requirements, or will have a particular detrimental effect on the environment." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-50, slip op. at 4 (Mar. 5, 1982). The specificity requirement facilitates determination of whether a contention is litigable and puts the applicant on notice of the issues it will have to defend. Philadelphia Electric Co. (Peach Bottom Atomic Power Station), 8 AEC 13, 20 (1974).

The Licensing Board does not, however, reach the merits of a contention at this initial pleading stage. Accordingly, the specificity requirement does not require a petition "to detail the evidence which will be offered in support of each contention." Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), 6 AEC 423, 426 (1973). If an applicant believes that it can readily disprove a contention admissible on its face, the proper course is to move for summary disposition following its admission, not to assert a lack of specific basis at the pleading stage. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), 11 NRC 542 (1980). We indicate a few instances below where the Applicants' opposition to a contention amounted to a premature defense on the merits.

Another important aspect of the specificity requirement is illustrated by the Appeal Board's recent decision in ALAB-687, Duke Power Co. (Catawba Nuclear Station) 16 NRC ____ (1982). The case concerns the typical situation of an intervenor who wishes to raise contentions in areas where

required documentation is not available before the first prehearing conference -- most importantly, the Staff's environmental statement and the emergency plans. Prior to the Catawba decision, parties opposing such intervenors could and frequently did argue a literal interpretation of the rules under which all contentions had to be filed before the first prehearing conference, even if essential documents were not available. Many intervenors would then file necessarily vague contentions that were vulnerable to exclusion for lack of specificity. On the other hand, if the intervenors waited until the necessary documents were available -- usually long after the prehearing conference -- they would be vulnerable to a claim of "lateness" and possibly required to meet the five factors for late contentions listed in 10 CFR 2.714(a)(1). As both the Licensing and Appeal Boards recognized in Catawba, this is a classic "Catch 22" situation which the rules should not be read to require.

In order to avoid such situations, the Appeal Board has now made it clear that --

> as a matter of law a contention cannot be rejected as untimely if it (1) is wholly dependent upon the content of a particular document; (2) could not therefore be advanced with any degree of specificity (if at all) in advance of the public availability of that document; and (3) is tendered with the requisite degree of promptness once the document comes into existence and is accessible for public examination. ALAB-687, slip op. at 16.

This case has progressed contemporaneously with the Catawba rulings. The contentions and responses were filed prior to the Appeal Board decision

and reflect the uncertainty of the law at that time. Apparently concerned that they might be required to file all their contentions now or be subject to the five lateness factors, the Intervenors filed a number of contentions attempting to anticipate deficiencies in the Staff's forthcoming impact statement and Safety Evaluation Report, and the emergency plans for the Harris facility.1/ For the most part, the Applicants and the Staff argued that rulings on these contentions would be premature and should be deferred until after the relevant documents are available. The Applicants expressed confidence that in any later "balancing" under the rule, the "absence of [necessary documents] would overwhelm the other good cause

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1/ Mr. Eddleman provided one Intervenor's perspective on this dilemma, as follows:

> Mr. Eddleman: Okay. Number 57. This is an emergency plan [contention], one that's pretty comprehensive and it was drafted under the apprehension of the Catawba thing. You got to remember when I wrote these things up I had no idea what position the staff and the applicants were going to take in here. I was afraid they'd be as obnoxious as the ones in Catawba and say that:
>
> > You can't do anything. You've got to use your x-ray vision of the future to project what's in this document, tell us exactly what's wrong with it and not only that, work voodoo on us so that we don't correct it by the time we write the thing so that you can have a contention." ...
>
> But at any rate, since these folks seem to be more reasonable I think the best thing to do is to defer this one until the plan comes out and let me look at it and see if I think something's wrong with it, and that's what I propose. Tr. 380.

factors."[2/] They further offered to stipulate that the subsequent appearance of new information in specified areas would constitute good cause for late filings in those areas.[3/] The NRC Staff took a similar position.[4/]

As we have seen, the Appeal Board in ALAB-687 rejected the idea of "balancing" the five lateness factors in this context. Sustaining the Licensing Board on this point, it held that contentions filed promptly after new information becomes available are timely as a matter of law. In sum, intervenors have an absolute right to file contentions on that basis, without resort to "balancing," and without the need for any stipulations from the Applicants or the Staff.

It remains for us to apply the principles of ALAB-687 to this case. If we were starting with a clean slate, we might simply extend the time for filing certain categories of contentions until necessary documentation was available (ALAB-687, slip op. at 15). But our slate is not clean and we are now confronted with numerous contentions that, from a practical standpoint, are clearly premature. In these circumstances, we believe that deferral of rulings on these contentions until necessary documents are

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2/ Applicants' Response to Wells Eddleman at 9-11.

3/ As we understand the Applicants, there must be a balancing of the five lateness factors under 10 CFR 2.714. But they believe they can predict in advance that the new information factor would outweigh everything else. Tr. 34. In our view, "balancing" exercises of that sort would not be productive, a consideration apparently appreciated by the Appeal Board.

4/ NRC Staff Response to Contentions at 5-11.

available, as discussed at the conference, is both permissible and consistent with ALAB-687.

The following procedures are adopted for considering such contentions in this case: once the relevant document -- e.g., the draft impact statement or the emergency plans -- is in an intervenor's hands, he or she must review the document and, within 30 days, serve a document advising the Board and parties as to which of his or her previously filed contentions are (1) submitted for ruling as they stand, or (2) withdrawn, or (3) revised on the basis of new information, including the text of the revision. At the same time, the intervenor shall submit any new contentions based on new information in the document. The Applicants and Staff shall serve any responses to the intervenor's revised or new contentions within 15 days following receipt. Thereafter, the Board will rule on their admissibility, possibly following another prehearing conference.

We conclude this general discussion with a few comments about impermissible attacks on Commission rules and petitions for waiver of a rule. The Commission adheres to the fundamental principle of administrative law that its rules are not subject to collateral attack in adjudicatory proceedings. We are rejecting (or the Intervenors have withdrawn) numerous proposed contentions which amount to attacks on the rules, notably in the areas of need for power, alternative energy sources, and financial qualifications.

Intervenors are authorized to file a petition for a waiver of a rule, pursuant to 10 CFR 2.758. However, the procedural requirements of that provision must be complied with. It is not enough merely to allege the

existence of "special circumstances." Such circumstances must be set forth "with particularity." In addition, as we read the regulation, the petition should be supported by proof (in affidavit or other appropriate form) sufficient for the Licensing Board to determine whether the petitioning party has made a "prima facie showing" for waiver. Intervenors should be aware that as a practical matter, in most cases, a petition for waiver of a rule under section 2.758 will involve a substantial investment in time and effort.

Section 2.758 does not specify a time limit for filing a petition. However, as discussed at the hearing, any such petitions should be prepared and filed as soon as practicable. Such a petition filed inexcusably late in the proceeding would be viewed with disfavor and possibly denied on that basis alone.

C. Summary of Board Rulings on Contentions.

Intervenor	Accepted	Rejected	Withdrawn or Superseded	Ruling Deferred	Total Contentions (by Intervenor)
Joint Contentions	6	1	0	0	7
Kudzu	0	1	10	4	15
CCNC	3	7	8	3	21
CHANGE	3	15	64	6	88
Wilson	7	8	0	2	17
Eddleman	18	95	22	40	175
CCNP	5	1	0	1	7
Lotchin	0	1	0	3	4
Total Contentions (by category)	42	129	104	59	334

D. Rulings on Contentions.

1. Joint Contentions of Intervenors.

On the first day of the prehearing conference, CHANGE, CCNC, Kudzu and Mr. Eddleman served a set of proposed Joint Contentions, which were described as combining and replacing certain of their separate contentions. The Board deferred discussion of these Joint Contentions until the following day to allow the Applicants and the NRC Staff an opportunity to review them. In addition, and with the Board's encouragement, the parties engaged in informal discussions to explore the possibility of stipulations to some of the Joint Contentions. The Board rules on the Joint Contentions as follows.

Joint Contention I concerns management capability. As revised by the parties and restated in the record (Tr. 236-237), it reads as follows:

> The applicants have not demonstrated the adequacy of their managing, engineering, operating and maintenance personnel to safely operate, maintain and manage the Shearon Harris Nuclear Power Plant as evidenced by their record of safety and performance at their other nuclear power facilities. A pattern of management inadequacies and unqualified and/or inadequate staff is likely to be reproduced at Shearon Harris Nuclear Power Plant and result in health and safety problems.

This contention was stipulated to by its Intervenor-proponents, the Applicants and the NRC Staff. Tr. 241-243. The Board finds this contention acceptable and orders it admitted.[5/]

5/ This Joint Contention supersedes the following individual contentions:

CHANGE:	21, 22, 36, 37
CCNC:	21
Kudzu:	4, 5, 6, 7
Eddleman:	3, 44, 101, 106, 123, 127, 127x

(Continued on next page)

Joint Contention II concerns health effects of radiation releases accompanying normal facility operation. It alleges that the effects of such releases, within existing guidelines, have been seriously underestimated for reasons listed in six subparagraphs (a) - (f). The Applicants stipulated to this contention, except for subparagraph (d), which refers to increases in cancer mortality rates near nuclear facilities and to a publication on that subject by Dr. Ernest Sternglass. The Staff initially opposed litigation of these generic health effects issues. In a post-conference pleading, however, the Staff conceded that the contention is admissible under the Commission's Black Fox decision,[6/] if its purpose is to bring health effects into the NEPA cost/benefit anays's for the Harris facility.

The Board so reads this contention and finds it to be otherwise acceptable. The Applicants' post-conference pleading on subparagraph (d) attempts to discredit the methods and destroy the credibility of Dr. Sternglass. They argue that a Licensing Board "is entitled to make at least a threshold determination of whether a source cited as the basis for a contention has any credibility whatsoever."[7/] Although Licensing

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5/ (Continued from previous page)

These individual contentions are not "subsumed" in the Joint Contention in the sense of incorporation by reference of all of their elements. Certain of these elements may have been abandoned in exchange for the stipulation. However, they may later shed some light, if necessary, on the intended scope of the Joint Contention. See Tr. 327, 328.

6/ Public Service Co. of Oklahoma (Black Fox Station), 12 NRC 264 (1980).

7/ Applicants' Response Concerning Health Effects Contention at 7 (Aug. 10, 1982).

Boards presumably could be given some authority to reach the merits of a contention at the pleading stage and reject seemingly frivolous contentions, they do not presently have such authority. See Houston Lighting and Power Co. (Allens Creek Station), 11 NRC 542, 546-548 (1980), and cases there cited. This well-established proposition clearly implies as a corollary that Boards have no authority to reject a contention because of an alleged lack of credibility in evidence cited by the intervenor. Joint Contention II is admitted.[8/] As discussed at the hearings (Tr. 251-256), admission of this contention is, of course, subject to the guidance for litigation laid down by the Commission in the Black Fox decision, including whether particular evidence was previously considered in the Appendix I rulemaking.

Joint Contentions III - VI concern radiation monitoring. There were no stipulations concerning these contentions.[9/]

Joint Contention III alleges that the Applicants intend to rely on thermoluminescent dosimeters (TLDs) to measure radiation in the event of an accident. Such dosimeters are alleged to be inadequate to provide

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8/ This Contention supersedes the following individual contentions:

CHANGE: 1, 19, 57, 58, 61
Kudzu: 1
Eddleman: 37 (c), (f), (g), (h), 9, 10.

9/ For this reason, we reviewed these late-filed contentions and find that they contain no new assertions. They are merely a consolidation of timely-filed contentions and we do not believe that the five factors for late filed contentions in 10 CFR 2.714(a)(1) are applicable.

prompt and accurate information to emergency planning personnel to enable them to make decisions about sheltering or evacuation.

The Applicants and Staff oppose this contention on the ground that it attributes to TLDs a function they are not intended to perform--provision of current emergency planning data. Under the Applicants' proposal, as described in FSAR Sections 11.5 and 12.3.4, such data will be supplied by real-time effluent monitoring at all significant release points and by a mobile area monitoring capability. The contention does not allege any particular deficiencies in the described approach. This proposal is rejected because it does not accurately address the Applicants' proposal.

Joint Contention IV concerns the use of TLDs to monitor occupational radiation exposure. It alleges that they are inadequate for that purpose because they are inaccurate and lack real-time monitoring capability. This contention is opposed by the Applicants on the grounds that TLDs are commonly used to measure cumulative worker exposures and that pocket dosimeters are used for real time measurements. Tr. 267, 271. If these grounds can be clearly demonstrated, this contention might eventually be a good candidate for summary disposition. For now, however, it is admitted.

Joint Contention V alleges that the proposed annual frequency of calibration and inspection of monitoring equipment is inadequate. It is opposed by the Applicants and Staff for lack of specificity. The Board finds this contention to be sufficiently specific; it is admitted. See Tr. 272-274.

Joint Contention VI alleges that the Shearon Harris monitoring system is inadequate because it is not capable of determining the specific

types and amounts of radionuclides being released. This part of the contention is accepted. The contention also alleges that parts of the monitoring system are not capable of surviving an accident and are therefore inadequate. This part of the contention is not stated with sufficient specificity. Apparently, its concern is primarily with the environmental qualification of wiring and equipment, and the contention is therefore redundant of the many Eddleman contentions on those subjects (contentions for which Joint Contention VI was not proffered as a replacement). Therefore, the part of this contention alleging that components of the monitoring system will not withstand an accident is rejected.[10/]

Joint Contention VII concerns the steam generators for the Harris facility. As revised by the parties and restated in the record (Tr. following p. 229), it reads as follows:

> Applicants have failed to demonstrate that the steam generators to be used in the Harris Plant are adequately designed and can be operated in a manner consistent with the public health and safety and ALARA exposure to maintenance personnel in light of (1) vibration problems which have developed in Westinghouse Model D-4 steam generators; (2) tube corrosion and cracking in other Westinghouse steam generators with Inconel-600 tubes and/or carbon steel support plates and AVT water chemistry; (3) present detection capability for loose metal or other foreign objects; and (4) existing tube failure analyses.

10/ The radiological monitoring Joint Contentions III-VI supersede the following individual contentions:

CHANGE:	34, 35, 65-71
Kudzu:	14, 15
Eddleman:	13, 91, 102

This contention was stipulated to by the Intervenor-proponents, the Applicants and the Staff. Tr. 231, 234. The Board finds this contention acceptable and orders it admitted.[11/]

2. Kudzu Alliance Contentions.

Kudzu 1 is superseded by Joint Contention II.

Kudzu 2 faults the Applicants and the Staff for failing to assess the impacts of accidents beyond the design basis of the facility. This contention is premature. Pursuant to the Commission's Statement of Interim Policy, 45 Fed. Reg. 40101 (1980), the Staff will be assessing the impacts of such accidents in its environmental impact statement. The Board's ruling on this contention, as it addresses the NEPA analysis, is deferred.[12/] Insofar as this contention may seek to raise safety analysis questions, it is not sufficiently specific.

Kudzu 3 addresses the effects on the environment of severe accidents. Like Kudzu 2, this contention is premature and is deferred until after the Staff's draft environmental impact statement is available.

Kudzu 4-7 are superseded by Joint Contention 1.

11/ This Joint Contention supercedes the following individual contentions:

CHANGE: 29-33, 74
Eddleman: 19, 112-114

12/ Because the Applicants advise us that their Environmental Report was submitted before July 1, 1980, the Statement of Interim Policy does not require comparable discussion in the ER of serious accidents. Applicants' Response to Wells Eddleman at 92, note 22.

Kudzu 8-10 were withdrawn. Tr. 68.

Kudzu 11 concerns the financial qualifications of certain small power companies who have acquired ownership interests in the Harris plant, to operate and later to decommission the plant. This contention is barred by the Commission's recent repeal of its financial qualification requirements. 47 Fed. Reg. 13750, 13754 (1982). As indicated at the conference, this contention might be reinstated if court challenges to the recent rule changes are successful. Tr. 72-73. At this juncture, however, it is rejected.

Kudzu 12 concerns the Harris security plan, as do several contentions referred to hereafter from other Intervenors. Contentions about the security plan raise some threshold procedural issues that should be first addressed and resolved. We discussed with the parties the initial approach that was taken recently by the Catawba Licensing Board to such threshold issues. There was general agreement that the same approach could be followed here. Tr. 39, 73, 76, 122, 327.

The following questions are drawn from the Catawba Order of April 13, 1982:

1. Have you secured the services of a qualified security plan expert? If you have, submit a statement of that person's qualifications and experience to the Board and parties.

2. If you have no expert at this time, when and how do you plan to obtain one?

3. Would a protective order substantially similar to the order entered in the Diablo Canyon case be acceptable to you? If not, why not?

A copy of that Order was attached to the Staff's Response to Contentions dated June 22, 1982.

Kudzu, CCNC,[13/] CHANGE and Mr. Eddleman shall serve their answers to the above questions by October 15, 1982. If, as indicated at the hearing, these Intervenors have decided to join forces and hire one expert (as we encourage them to do), a single set of answers will, of course, suffice. The Applicants and Staff shall within ten days following receipt of an Intervenor's statement of an expert's qualifications serve any objections they may have to such expert.

The Applicants and Staff may have objections to the Intervenors' security plan contentions, as advanced now or possibly to be developed later. As suggested by the Applicants and Staff, we need not reach those questions unless and until the Intervenors have obtained the services of a qualified security expert acceptable to the Board.

Kudzu 13 concerns emergency planning. It is deferred until after the emergency plans are available.

Kudzu 14 and 15 are superseded by Joint Contentions III - VI.

3. CCNC Contentions.

CCNC 1 seeks in subparagraphs (a) - (f) to raise questions regarding the ownership and involvement of North Carolina Eastern Municipal Power Agency with the Harris facility. These questions do not raise litigable issues, for the following reasons:

13/ We received a letter from Mr. Runkle on July 23, 1982 advising us that CCNC wishes to pursue security plan issues.

(a) The Power Agency became a co-owner of Harris by amendment to the construction permits following the construction permit hearing. Thus the fact that its qualifications were not considered in that hearing is irrelevant.

(b) The Power Agency's financial qualifications are no longer a proper subject of inquiry under the recent amendments barring such inquiries. 10 CFR 50.33(f)(1), as recently amended. See 47 Fed. Reg. 13750 (1982).

(c) The Power Agency's capability to manage Harris is irrelevant because, under the Applicants' proposal, CP&L will have sole management responsibility. See Applicants' Response to CCNC Supplement at 17.

(d) Like paragraph (b), paragraph (d) seeks to raise an impermissible financial qualifications issue.

(e) and (f) That CP&L has been receiving all communications and taking all other necessary licensing actions in this proceeding merely reflects the fact that it is the lead applicant.

Contention 1 is rejected.

CCNC 2 concerns need for power and re-examination of the cost/benefit analysis performed at the construction permit stage. The Applicants and Staff argue that this contention is barred by the Commission's recent amendment to 10 CFR 51.53, which rules out consideration of need for power and alternative energy sources in operating license proceedings. See 47 Fed. Reg. 12940 (1982). We agree. The various parts of this contention concern either need for power or matters, such as cost of construction,

that would only be relevant to alternative energy sources. This contention is rejected.

The last sentence of this contention states that:

> This contention, unless otherwise requested, will operate as a showing of special circumstances pursuant to 10 CFR 2.758 to exempt, among other regulations, 10 CFR 51.53(c).

The quoted sentence does not have the effect attributed to it because it does not meet the requirements of 10 CFR 2.758. Under that provision, an applicant for a waiver must make a "prima facie showing" of its position -- i.e., a persuasive evidentiary showing that application of the rule to the exceptional facts of this case would not serve the purposes for which the rule was adopted. See discussion at 7-8, above.

CCNC 3 concerns the Harris security plan. See discussion at 16-17, above.

CCNC 4 concerns spent fuel storage and transportation.[14/] First, it alleges that the ER must include analysis of environmental effects associated with transportation of spent fuel from other CP&L reactors to Shearon Harris. The Applicants contend that such analysis was already performed in the licensing of those reactors, Robinson Unit 2 and Brunswick Units 1 and 2. We agree with CCNC and the Staff that the impacts of transportation of spent fuel from these reactors should be factored into the NEPA analysis in this case. Although duplicative analyses are not required, it appears that the plans to store Robinson and Brunswick spent

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14/ We received and considered post-conference memoranda from CCNC and CHANGE, the Applicants and the Staff on spent fuel issues.

fuel storage at Harris could have some previously unanalyzed impacts. This aspect of the contention is accepted. The Staff has expressed its intention to perform this analysis in its draft impact statement. CCNC should review the draft when it is available and revise or withdraw its contention, as appropriate.

CCNC argues that Table S-4, summarizing environmental impacts from transportation of fuel to and from a light-water reactor, is not applicable to the proposed arrangements for shipping spent fuel from Robinson and Brunsick to Harris and, eventually, from Harris to somewhere else. The Applicants argue that S-4 does apply, at least to provide bounding numbers. Without canvassing all of the arguments, pro and con, it is our tentative view on this legal question that the S-4 Table, or some multiple thereof, can be applied to this situation. For example, it would appear that one might reasonably double some S-4 values on the theory that the fuel from Robinson and Brunswick is spent fuel in both legs of the trip, not just one. Even under that approach, however, the resulting impacts would be small. In any event the Staff will be producing its analysis based on the facts of this case. We will reconsider this question in the light of that analysis.

Finally, the contention calls for assurances of safe storage at the end of the licensing period. Contentions of this kind are precluded by the ongoing "waste confidence" rulemaking. Virginia Electric Power Co., 11 NRC 451, 465 (1980).

CCNC 5 and 6 were withdrawn. Tr. 183.

CCNC 7 - 9 concern emergency planning aspects covered or referred to in the Applicants' ER or FSAR. These contentions were withdrawn on the understanding that CCNC would have a further opportunity to file emergency plan contentions after the plans become available. Tr. 183-190.

CCNC 10 concerns collection and sharing of information about exposure of rescue personnel to radiation. The Applicants point out that their --

> health physics program is described in section 12.5 of the FSAR; in particular, section 12.5.3.6.1.3 details Applicants' methods of recording and reporting radiation exposure, including Applicants' procedures for obtaining workers' occupational exposure histories during previous employment, as well as Applicants' procedures for furnishing information about occupational exposures at Harris to the NRC.

CCNC does not identify any deficiencies in the pertinent FSAR sections. The contention is rejected for lack of specificity.

CCNC 11 concerns emergency planning; our ruling is deferred.

CCNC 12 concerns the effects on the Harris facility if the Jordan Lake Dam were to break. The Applicants' opposition goes largely to the merits of this contention. The Staff does not oppose its admission, noting, however, that the reference to the now-cancelled "Cape Fear intake facility" should be deleted. This contention is admitted, with the deletion the Staff suggests.

CCNC 13 was withdrawn. Tr. 197.

CCNC 14 concerns the effects of hydrilla verticillata (a noxious aquatic plant) on the Harris reservoir. The Applicants point to various parts of their ER, contending on the merits that the design features of their intake structures are such that hydrilla verticillata should not pose a practical problem. However, the ER apparently does not contain explicit

consideration of that plant. The Staff argues that the contention is not sufficiently specific because it does not spell out just how hydrilla verticillata will foul the intake structures. Unlike some complex postulated reactor accidents, the concept of a water weed getting stuck in an intake structure does not require much explanation. In the circumstances of this case, we think this contention is sufficiently specific, and it is admitted. If hydrilla verticillata is the non-problem the Applicants' describe, the matter may be amenable to summary disposition.

CCNC 15 was withdrawn because the transmission line it concerns has been cancelled. Tr. 203.

CCNC 16 - 18 concern the adequacy of proposed radiological monitoring at certain fixed sample points on or near the site. They allege that more frequent and discriminating monitoring should be done in order to ensure the safety of people who might otherwise be exposed to contaminated water. These contentions are similar to Joint Contention III (discussed above) in that they inaccurately ascribe to the sample points in question a function which those points are not intended to perform. As the Applicants point out, these sample points are being established to confirm certain environmental data. The monitoring function of ensuring the safety of people near the sample points and other places will be performed by the effluent radiological monitoring and sampling system described in FSAR section 11.5. These contentions do not address the adequacy of that system. They are rejected because they do not accurately address the Applicants' proposal.

CCNC 19 is identical to Kudzu 2. Ruling on it is also deferred. See discussion at 15, above.

CCNC 20 concerns decommissioning of the facility. It conflicts with the recent rulemaking on financial qualifications. The record is unclear whether this contention was withdrawn or whether it was to be denied. Tr. 209-210. Since denial is clearly warranted and does not require the proponent's consent, the contention is denied.

CCNC 21 is a management contention; it is superseded by Joint Contention I.

4. CHANGE Contentions.

CHANGE 1 is superseded by Joint Contention II on health effects.

CHANGE 2 is identical to the first two sentences of Kudzu 2; our ruling on it is similarly deferred. See discussion of Kudzu 2, above.

CHANGE 3 appears to be an attack on 10 CFR 50.47(c), which establishes the radius for the plume exposure pathway emergency planning zone at "about 10 miles." So viewed, this contention is rejected.

CHANGE 4 concerns emergency planning and our ruling is deferred.

CHANGE 5 - 7 were withdrawn. Tr. 296.

CHANGE 8 concerns matters to be discussed in the Staff's draft environmental impact statement. Our ruling is deferred.

CHANGE 9 concerns the environmental effects of spent fuel storage and is similar to CCNC 4, discussed above. This contention is accepted, subject to our postponement of a final decision on the applicability of Table S-4.

CHANGE 10 - 13, 13A and B were withdrawn. Tr. 297, 300.

CHANGE 14 concerns the potential impacts of unspecified "systems interactions." This contention is impermissibly vague and is rejected on that basis.

CHANGE 15 was withdrawn. Tr. 301.

CHANGE 16 concerns quality control in welding. This contention is quite vague as drafted. As discussed at the conference, CHANGE believed that it might be able to supply further particulars if it had time to discuss these matters confidentially with certain informants. The Board gave CHANGE 45 days to supply further particulars. Tr. 436, 450. However, that deadline is now long past and no particulars have been received. The contention is therefore rejected for lack of specificity.

CHANGE 17 and 18 were withdrawn. Tr. 306-07.

CHANGE 19 is superseded by Joint Contention II.

CHANGE 20 was withdrawn. Tr. 315.

CHANGE 21 - 22 are superseded by Joint Contention I on management.

CHANGE 23 was withdrawn. Tr. 316.

CHANGE 24 was withdrawn. Tr. 316.

CHANGE 25 alleges that the aircraft hazard analysis for Shearon Harris should be required, because there are "several" airports located a little more than five miles away from the plant. NRC Reg. Guide 1.70 (Rev.3) requires an aircraft hazard analysis if there are airports within five miles of a plant, if there are airways or approaches within two miles of a plant, or if there is an airport farther than five miles from the plant whose traffic surpasses a mathematically determined level. CHANGE has not alleged that any of these triggering factors is present; nor has it alleged

why the regulatory approach is inapplicable or deficient. Therefore, we find no basis for the contention. CHANGE 25 is rejected.

CHANGE 26 was withdrawn. Tr. 320.

CHANGE 27 was withdrawn. Tr. 320.

CHANGE 28 alleges that ultrasound methods for crack detection in the reactor vessel are inadequate. The contention is a bald statement which establishes no basis for such a conclusion, nor does it set forth any specific reasons why the ultrasound methods are not adequate. CHANGE 28 is therefore rejected.

CHANGE 29 - 33 are superseded by the Joint Contention VII on steam generators.

CHANGE 34 is superseded by Joint Contention V on radiological monitoring.

CHANGE 35 is superseded by Joint Contention IV on radiological monitoring.

CHANGE 36 and 37 are superseded by Joint Contention I on management.

CHANGE 38 alleges that use of the S-3 table is improper because of the ruling in Natural Resources Defense Council v. Nuclear Regulatory Commission, No. 74-1586, Slip. Op. (D.C. Cir., April 27, 1982). The mandate of that case, however, has not issued, and until it does, this Board must consider the S-3 rule to be in effect. CHANGE 38 is a challenge to the S-3 rule; it is therefore rejected.

CHANGE 39 and 40 allege that the Applicants' environmental report is inadequate because it fails to consider psychological stress. It is the position of the Commission, however, that psychological stress should not be considered absent a showing of circumstances not present here. NRC

Statement of Policy (July 16, 1982). CHANGE 39 and 40 are therefore rejected.

CHANGE 41 concerns emergency planning. Ruling on this contention is deferred.

CHANGE 42 was withdrawn. Tr. 324.

CHANGE 43 was withdrawn. Tr. 324.

CHANGE 44 addresses the adequacy of the reactor's water level indicator. This contention was accepted by both Staff and Applicants, and is acceptable to the Board. Contention 44 is accepted.

CHANGE 45 was withdrawn. Tr. 324.

CHANGE 46(a) - (d) address emergency plans. Our rulings are deferred.

CHANGE 46(e) - (f), although dealing with emergencies, are direct attacks on 10 CFR 50.47(c)(2) and 10 CFR Part 50, Appendix E, which require a plume exposure pathway EPZ of "about 10 miles" in radius. CHANGE 46(e) and (f) are rejected.

CHANGE 47 through 52 on need for power were withdrawn. Tr. 325.

CHANGE 53 is superseded by Joint Contention II on health effects.

CHANGE 54 was withdrawn. Tr. 325.

CHANGE 55 was withdrawn. Tr. 325.

CHANGE 56 was withdrawn. Tr. 325.

CHANGE 57 through 61 are superseded by Joint Contention II on health effects.

CHANGE 62 through 64 on decommissioning were withdrawn. Tr. 326.

CHANGE 65 through 71 on radiological monitoring are superseded by Joint Contentions III - VI.

CHANGE 72 alleges that Applicants' environmental report is deficient in that it does not adequately consider the health effects of radon. Applicants are not required to consider the effects of radon and its decay products in their ER. 10 CFR 51.21 describes the contents of the ER and relates back to 10 CFR 51.20(e); Applicants need only include the S-3 table in their evaluation of fuel cycle emissions, and are not required (but may) evaluate the environmental significance of such emissions. CHANGE 72 is therefore rejected. On the other hand, the Staff is required to consider the impact of radon in its environmental impact statement. CHANGE's real concern should be with the assessment included in the FES, and the FES has not yet been issued. 10 CFR 51.23, n.1. By the time the FES is issued, the Appeal Board may well have issued its pending decision evaluating the health effects of radon.15/ In any event, CHANGE will have an opportunity to file contentions based on any new information contained in the impact statement.

CHANGE 73(a) was withdrawn. Tr. 331.

CHANGE 73(b) alleges that the environmental assessment is inadequate in that it fails to consider the health effects associated with the possible military use of plutonium derived from Shearon Harris spent fuel. Intervenor advances the military use of plutonium in spent fuel as an alternative to storage whose effects should be considered under NEPA. The NEPA requirement that anticipated environmental effects of a proposed

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15/ The Appeal Board is including in its consideration of radon health effects the effects of radon daughters; indeed, its major concern is with the effects of the decay products. See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-640, 13 NRC 487, 496 (1981).

action be described is subject to a rule of reason. Scientists' Institute for Public Information v. AEC, 481 F.2d 1079, 1091-92 (D.C. Cir. 1973). NEPA does not require discussion of "remote and speculative" alternatives whose environmental effects "cannot be readily ascertained". NRDC v. Morton, 458 F.2d 827, 837-38 (D.C. Cir. 1972). CHANGE advances no reason why we should believe that military use and resulting environmental consequences are likely; accordingly, CHANGE 73(b) is rejected.

CHANGE 74 is superseded by Joint Contention VII on steam generators.

CHANGE 75 was withdrawn. Tr. 332.

CHANGE 76 was withdrawn. Tr. 332.

CHANGE 77 was withdrawn. Tr. 332.

CHANGE 78(a) alleges that the cost/benefit analysis in the ER is incorrect because Applicants are basing that analysis on a 70 percent capacity factor, which allegedly is not realistic. Applicants respond that in order to comply with the new need for power rule, they will be extensively revising their cost/benefit analysis, and the new analysis will be based on a range of capacity factors. We see little point, therefore, in acting now on this contention, and accordingly defer our ruling until such time as Applicants amend their ER. At that time, intervenor may amend its contention to reflect the new information and format of Applicants' analysis.

CHANGE 78(b) alleges that the demand for power is overestimated in the ER. 10 CFR 51.53(c) (amended April 26, 1982, 47 Fed. Reg. 12940) precludes consideration of need for power in the environmental report and EIS at the operating license stage. Consequently, CHANGE 78(b) is an attack on this rule and is rejected.

CHANGE 79(a) addresses Applicants' ER cost/benefit information, and alleges that psychological stress should be considered as an environmental cost. We are precluded from accepting this view by the Commission's Policy Statement of July 16, 1982. CHANGE 79(a) is rejected. 79(b) alleges that the costs of health effects from the fuel cycle are not taken into account. The emissions from the fuel cycle are quantified in the S-3 table, 10 CFR 51.20(e). Applicants, however, are not required to evaluate the environmental significance of the S-3 data. 10 CFR 51.20(e), 51.21. CHANGE 79(b) is rejected as contrary to the Commission's regulations. 79(c) alleges that the cost/benefit analysis is deficient in failing to consider the regulatory costs to the federal and state governments. This data appears to be reasonably ascertainable -- e.g., the cost of the NRC's regulatory program for operating commercial reactors should be derivable from the NRC budget. 79(c) is sufficiently specific and is accepted. 79(d) alleges that the cost/benefit analysis is incorrect because it fails to consider the cost of "applicant's reliance on this unreliable source of energy." 79(d) is simply too vague to be admitted; therefore, 79(d) is rejected. 79(e) is not a contention, but rather a conclusion that is based on 79(a) through (d). Because we have rejected all but one of those contentions, 79(e) is also rejected.

CHANGE 80 was withdrawn. Tr. 333.

5. Wilson Contentions.

Wilson Ia through Id allege that the environmental effects of cooling tower blowdown have not been adequately considered. These contentions

were accepted by both the Applicants and NRC Staff, and the Board finds them satisfactory; accordingly, these contentions are accepted.16/

Wilson Ie alleges that the environmental effects of pollutants from the Cape Fear river water to be pumped into the main reservoir have not been adequately considered. The pumping station for the Cape Fear river, however, has been cancelled, and no Cape Fear river water will be used; this contention is therefore moot and is rejected.

Wilson I(f1) through I(f3) allege that Buckhorn Creek will be inadequate by itself to satisfy the water needs of the Harris facility. Staff finds this contention acceptable, while the Applicants argue that an adequate water supply is unnecessary to the safe operation of the plant. Applicants' premise is that if the water level of the reservoirs is too low, the plants will shut down. Applicants' response delves too far into the merits of the contention; moreover, Dr. Wilson's concern is focused more on the environmental consequences of an inadequate water supply than upon safety, a concern Applicants have not addressed. If Buckhorn Creek proves inadequate as a water supply, then there may be an environmental impact associated with the shortfall or the procurement of an alternative supply. Contentions I(f1) through I(f3) are therefore accepted. Contention I(f4) alleges that the environmental effects of a Cape Fear water supply should be considered. As indicated in the preceding paragraph, such effects are too remote and speculative. I(f4) is therefore rejected.

16/ We do not limit the accepted Wilson contentions to the sentences underlined in his submission; instead, we include all the introductory and explanatory sentences accompanying the underlined sentences.

Wilson I(g) alleges that inadequate treatment is given to bioaccumulation, particularly in the plant-flowers-bees-honey-man exposure pathway. Contrary to Staff's and Applicants' assertions, we find this contention sufficiently specific. This contention is accepted.

Wilson I(h) is not a contention. It states that Dr. Wilson's orchard business may be disrupted by an accident or just by operation of the Harris facility. There is no allegation concerning health or safety or concerning the adequacy of Staff's or Applicants' environmental assessment. We view the statement in I(h) as a statement by Dr. Wilson that he has an interest that will be affected by the Harris facility. Assuming the truth of the statement, we find no issue to litigate. Wilson I(h) is therefore rejected.

Wilson II concerns emergency planning; our ruling is deferred.

Wilson III alleges that the Harris facility cannot be operated safely because of managerial deficiencies in and the reckless attitude of CP&L. Dr. Wilson points to a record of safety violations at other CP&L plants. Applicants contended in their filing that this contention addresses the Harris Q/A program, and is deficient in detail. We reject this viewpoint. As we view it, Dr. Wilson is raising a broad management issue that has been a concern since the construction permit. Nor can we accept Staff's position in their filing that the contention is irrelevant because it addresses the safety record of other plants. A safety record at other CP&L plants is relevant evidence in evaluating managerial capabilities of the top CP&L management and the attitude of the utility toward safety. This concept is incorporated in Joint Contention I, to which both the Applicants

and the Staff stipulated. Wilson III is accepted, subject to the probability that it will later be consolidated with Joint Contention I.

Wilson IVA alleges deficiencies in the Applicants' NEPA cost/benefit analysis. IVA(a) asserts that the analysis is deficient because "it fails to consider direct effects on the human population." This contention is simply too vague. To the extent that this contention seeks the assignment of a dollar value to effects on humans, it is without basis; no inadequacy in the present methodology is alleged, and no benefit of a more quantified approach is alleged. Moreover, Dr. Wilson's assertion that stress is a component of the effects that should be considered is contrary to the Commission's Statement of Policy on Psychological Stress (July 16, 1982).

IVA(b) alleges that Applicants are improperly comparing corporate benefits with public cost. Corporate benefit, i.e., the price of electricity generated and sold, is also a measure of the value the public places on that power. On this basis, we reject Wilson IVA(b), which we view as a purely legal argument. However, we note that Applicants are required to extensively revise their cost/benefit analysis to comply with the new need for power rules. The new analysis will weigh cost savings in replaced generating capacity against the environmental costs, possibly rendering present Wilson IVA(b) moot. When Applicants' revised analysis is issued, Dr. Wilson can submit new contentions addressing its adequacy.

IVA(c) alleges that construction costs are improperly considered in the analysis. Construction costs, however, are "sunk" -- that is, they have or will be expended regardless of the action of this Board. There is, therefore, no basis for considering these costs in a NEPA cost/benefit

analysis that focuses on the operation of a nuclear power plant. Only the operating costs are relevant. See Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC ___ (1982). Wilson IVA(c) is rejected.

IVA(d) alleges that the Applicants' decommissioning cost estimates are inaccurate because of the uncertainties in these costs. We recognize that there are uncertainties; these costs will not be incurred for 40 years. However, decommissioning criteria are at present the subject of generic rulemaking, and the rule will be accompanied by a generic environmental impact statement. See NUREG-0586 (Jan. 1981). In view of this rulemaking by the Commission, it would be inappropriate for us to accept Wilson IVA(d). In addition, IVA(d) is too vague; it does not indicate how or why Applicants' estimates are inferior to other estimates. Wilson IVA(a-d) is therefore rejected.

Wilson IVB alleges that the control room design will be inadequate because of human engineering discrepancies. This contention is extremely vague and cannot be accepted in its present form. As the contention points out, however, the control room will soon be the subject of a design review by the Essex. Co. This report, when it is issued, will presumably include new material, and Dr. Wilson will be permitted to file new or amended contentions. Our ruling on this contention is deferred.

Wilson IVC alleges that the preoperational radiological survey will be inadequate because of difficulty in measuring toxicity of small quantities of certain radioisotopes, the heterogeneous distribution of man-made isotopes in the environment and the insufficiency of the number of sampling points. The contention, however, does not address Applicants'

preoperational radiological survey, whose adequacy was litigated in the construction permit proceedings. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), 7 NRC 92, 122 (1978). It does not particularize how the proposed scheme should be changed; nor does it indicate how the alleged inadequacies adversely affect either public health and safety or the environmental analysis. Wilson IVC is rejected for failing to state a basis with the requisite specificity.

Wilson IVD alleges that new information on unexpected supercriticality has not been taken into account in Applicants' criticality safety analysis (FSAR Section 4.3.2.6). The contention cites a recent (1980) article in Nuclear Technology as a basis for the allegation. The conclusions reached in the article, which shows mathematically that changing the geometry of the fuel storage from an overmoderated state to one of optimim moderation increases the reactivity of the system, are neither new nor unknown. The contention does not establish a nexus between the cited article and the requirements of General Design Criterion 62 and NRC Regulatory Guide 1.13, with which standards the criticality analysis complies, nor does it set forth with any specificity just what effect upon the health and safety of the public such supercriticality would have. The contention lacks the required basis and specificity, and is rejected.

6. Eddleman Contentions.

We have a few preliminary comments before discussing Mr. Eddleman's individual contentions. Mr. Eddleman submitted a number of legal arguments and requests for Board action interspersed among the contentions in his 250

page Supplement. Some of these arguments and requests might be viewed as motions. Because the Board is now concerned only with determining the parties and their contentions, almost all of these arguments were premature. Moreover, except for simple matters that can be heard orally on the record, formal motions must be submitted in accordance with the Commission's Rules of Practice, 10 CFR 2.730. Therefore, to the extent that the legal arguments and requests in the Eddleman submission might be viewed as motions, they are denied. Mr. Eddleman may, of course, submit new motions if they comply with our procedural regulations and address issues that are ripe for consideration.

In many of his contentions Mr. Eddleman seeks to incorporate other contentions by reference. Contentions should be clear and direct statements that do not depend for coherence upon references to other statements. We have examined some referenced contentions to interpret the meaning of some other contentions, but we have not felt bound to do so. Moreover, our acceptance of a particular contention does not constitute acceptance of any other contentions it may purport to incorporate by reference.

Finally, Mr. Eddleman's submission contains a very lengthy definitional section which he asks us to apply to certain words in his contentions. The definitions are, in the main, open-ended lists that could effect a marked expansion in the plain meanings of the defined terms, or deprive them of any clear meaning. These definitions are apparently designed to serve some of the same purposes as incorporation by reference,

especially to ensure that every conceivable problem attributable to the Applicants' facility has been duly attributed. Application of these definitions was unworkable. Many of the elements in these definitions did not apply to particular contentions, and the definitions (where we looked at them) did not produce greater specificity. Accordingly, we have not adopted Mr. Eddleman's definitions; instead we have applied the plain meanings of the terms in his contentions.

Eddleman 1 alleges that Applicants should replace their thermoluminescent dosimeters (TLDs) off-site with real time radiation monitors capable of reading gamma, beta, and alpha radiation. The contention is basically the same as Joint Contention III, and the same criticism applies to each. TLDs are not used for the function Mr. Eddleman assigns to them. Because the contention does not accurately address Applicants' proposals, it is rejected.

Mr. Eddleman also submitted a proposed amendment to Eddleman 1 at the prehearing conference. This amendment, however, to the extent it differs from the original contention, is redundant of the Joint Contentions on radiological monitoring (particularly, Joint Contention VI). Accordingly, Eddleman 1 amendment is rejected.

Eddleman 2 alleges the need for pressurized ionization monitors at all discharge points, including the main stack, at the Harris plant. The monitors should be capable of determining the precise type and amount of radionuclide being emitted, and should have both high and low range capability. This contention is sufficiently specific, but it is redundant of Joint Contention VI, and is rejected.

Eddleman 2 also alleges that all towns and cities within 30 miles of the plant should have such monitors. This part is an emergency planning contention and is premature. Accordingly, it is deferred.

Eddleman 3 was superseded by Joint Contention I on management.

Eddleman 4 alleges the inadequacy of safety analysis limited to single failures. 10 CFR Part 50, Appendix A, however, establishes design criteria for nuclear plants and directs the use of a single failure approach. This contention is therefore an attack on the Commission's regulations. Even if it were not, Eddleman 4 would be too vague to be accepted. Eddleman 4 is rejected.

Eddleman 5 and 6 allege the unlawfulness of nuclear power under various theories; such argumentative statements do not qualify as contentions and, in any event, are beyond the scope of this proceeding. Eddleman 5 and 6 are rejected.

Eddleman 7 alleges the need for a comprehensive failure modes analysis. This contention is too vague. Applicants' design presumably complies with the design criteria in 10 CFR Part 50, Appendix A. The plant is designed against single failure (which includes any multiple failure resulting from a single occurrence); underlying the single failure approach is the premise that plants are designed to minimize systems interactions. Eddleman 7 would have Applicants redo all the engineering analysis which formed the basis for the Shearon Harris plant. We cannot accept such a broad contention, advanced without basis. The contention fails to identify specific problems or particular systems that might interact, and to postulate the possible consequences as a basis. Eddleman 7 is rejected.

Eddleman 8(a) alleges the inadequacy of an environmental analysis using the S-3 table emissions, 10 CFR 50.20(e), and cites NRDC v. NRC, No. 74-1586 (D.C. Cir., April 27, 1982). As discussed at CHANGE 38, supra, the S-3 table must be treated as in effect. This contention is therefore an attack on the rules and is rejected. Eddleman 8(b) and the rest of the contention assert that the health effects of the S-3 releases are inadequately assessed. No assessment, however, is required until the NRC Staff issues its draft EIS. See 10 CFR 51.20(e), 51.21, and 51.23(c). At that time a specific contention may be submitted.

Eddleman 9 alleges that Applicants have not shown compliance with the NRC's regulations on environmental qualification of electrical equipment and that Applicants' equipment does not meet those standards. Applicants admit that they have not yet amended their FSAR to show compliance with NUREG-0588, which was adopted by the Commission in CLI-80-21 as the standards meeting General Design Criteria of 10 CFR Part 50, Appendix A. Applicants assert, however, that this will be done as a matter of course, and therefore suggest that the contention be dismissed. We find this approach unpersuasive. Applicants have admitted a deficiency in their FSAR and do not reply that their equipment in fact meets the appropriate standards. If and when that deficiency is corrected, Applicants may move for partial summary disposition on this contention. We therefore accept that portion of Eddleman 9 that alleges a deficiency in the FSAR. We do not accept the part of the contention that Applicants' equipment is not environmentally qualified. This part of the contention is not sufficiently specific. After Applicants amend their FSAR to reflect the qualification

of their equipment, Mr. Eddleman can submit contentions of any specific inadequacies in qualification or non-compliance with the regulations based on that new material.

Eddleman 10 alleges that many of the references in the FSAR predate 1975 and are therefore obsolete. If the design of a safety system is based on erroneous information, then the contention should address that safety system. Similarly, if an environmental assessment is incorrect because it relies on outdated material, then the contention should address the environmental assessment. We cannot, however, examine the currency of reference material in vacuo; without a connection to a particular health and safety or environmental issue, it has no relevancy. Eddleman 10 is rejected for vagueness and lack of basis.

Eddleman 11 alleges that the safety and environmental assessments do not adequately consider the accelerated deterioration of polyvinyl chloride (PVC) and polyethylene insulators when subjected to radiation. PVC is not used in the Shearon Harris plant; therefore the part of this contention that addresses PVC is rejected as not addressing Applicants' proposal. The Shearon Harris plant will use polyethylene. Applicants respond that the safety-related cable bearing polyethyiene insulation has been tested in accordance with IEEE 323 (1974), as required by NUREG-0588 and the Commission's order CLI-80-21. This response addresses the merits of the contention, and not whether it has a basis stated with reasonable specificity. As such, it should be raised later as a motion for partial summary disposition, to which intervenor will be given an opportunity to reply. Eddleman 11, to the extent it addresses polyethylene, is accepted.

Eddleman 12 alleges that the environmental analyses do not include the environmental effect of ocean dumping of low level wastes. There is no indication that ocean dumping is contemplated, or that it is a probable consequence. As discussed at CHANGE 73(b), supra, a rule of reason applies in determining what environmental impacts should be considered. Mr. Eddleman has advanced no basis for considering ocean dumping. Eddleman 12 is therefore rejected.

Eddleman 13 was superseded by Joint Contention III - VI on radiological monitoring.

Eddleman 14 alleges that the NEPA cost/benefit analysis is deficient because it fails to take into account the price elasticity of demand. The contention alleges that the price increases associated with the capital costs of the Shearon Harris plants will result in decreased demand to the extent that the Shearon Harris plants are no longer needed. This contention is therefore inadmissible as an attack on the rules; 10 CFR 51.21 precludes discussion of need for power. If demand does decrease, we are to assume that nuclear plants would still be used to replace other less economical generating capacity. See 46 Fed. Reg. at 39440-41 (1981). Eddleman 14 is rejected.

Eddleman 15 alleges that the construction cost estimates in the environmental report are outdated and inaccurate. As stated in our discussion of Wilson IV.A(c), construction costs are deemed to be "sunk" and will not be considered in this operating license proceeding. The contention, as it addresses construction costs, is rejected. Eddleman 15 also alleges that the ER cost/benefit analysis is deficient because it does

not properly consider the costs associated with the health effects of operation, the costs associated with the health effects of the fuel cycle, and the costs of waste disposal. The costs associated with the health effects of operation are the subject of Joint Contention II, which has been accepted and to which Mr. Eddleman subscribes. This part of the contention is therefore redundant and is rejected. The costs associated with the health effects of the nuclear fuel cycle need not be included in Applicants' Environmental Report; that report requires only the inclusion of the S-3 table and makes discussion of the environmental significance optional. 10 CFR 51.20(e). Moreover, this part of the contention offers no specifics, is therefore fatally vague, and is rejected. There remains Mr. Eddleman's contention that the costs of waste disposal are understated. Waste disposal is part of the fuel cycle. To the extent this subpart of the contention addresses environmental costs of waste disposal, it is rejected for the reasons given in our discussion of fuel cycle health costs above. The contention also raises, however, the economic costs of waste disposal, and Applicants' answer goes to the merits. Therefore, we admit the contention that the economic costs of waste disposal are understated. If Applicants disagree with the contention's conclusion, then their proper course is to seek summary disposition of the issue.

Finally, Eddleman 15 attacks the benefit estimates in the ER; in particular, the contention alleges that the full output of Shearon Harris will not be salable and that the lifetime DER capacity of the Shearon Harris plant is overstated, in large part due to the problems associated with steam generators. The salability of the Harris plant's output is

clearly precluded by the need for power rule. See discussion of Wilson IV.A(c), supra. As to the remainder of the contention which addresses capacity factors, Applicants answer that they will amend their analysis to show the differential savings at a range of capacity factors. When Applicants amend their ER, this subpart of Eddleman 15 may be mooted, although new contentions may be submitted based on the new information. Until then, however, this subpart is accepted -- it is specific, has basis, and Applicants have practically admitted to the need for an analysis which considers other capacity factors.

Eddleman 16 asserts that construction should be halted because a cost/benefit analysis demonstrates that Shearon Harris is uneconomical. We have no power to halt construction. This issue was pertinent to the construction permit proceedings, and is beyond the scope of the operating license proceedings. This contention is rejected.

Eddleman 17 alleges that the cost/benefit analysis fails to take into account the rising construction costs. As discussed for Wilson IV.A(c), above, construction costs are sunk and will not be examined at these operating license proceedings. Eddleman 17 is rejected.

Eddleman 18 and 19 are superseded by Joint Contention VII on steam generators.

Eddleman 20 alleges that Shearon Harris Unit 2 will not in fact be built because of declining demand and rising costs and that the environmental cost/benefit analysis should reflect this fact. This contention cannot be admitted. It challenges the need for power rule (see discussion of CCNC 2, supra), and raises construction costs, which are not

relevant at this stage of the proceeding. See discussion of Wilson IV.A(c), supra. Eddleman 20 is rejected.

Edddleman 21 alleges that terminating construction would result in cost savings. This is the base alternative in a construction permit proceeding, but it is clearly outside the scope of an operating license proceeding. We have no jurisdiction to relitigate the issuance of a construction permit and stop construction. Eddleman 21 is rejected.

Eddleman 22 alleges further deficiencies in the ER's cost/benefit analysis. Subpart A alleges that the fuel cost estimates are too low. Applicants respond that because other parts of Eddleman 22 address construction costs, the entire contention should be rejected. We do not agree; the parts of the contention that relate to operating costs are admissible if they otherwise meet the specificity and basis requirements, which they do. Eddleman 22(A) is accepted.

Eddleman 22(B) alleges that the construction and operation payrolls are in error. As discussed for Wilson IV.A(c), supra, construction costs, and hence the construction payroll, are not relevant to this proceeding. As stated above, however, operating costs contentions are admissible. Eddleman 22(B) is accepted, but is limited to the operating payroll and its effect on the cost/benefit analysis.

Eddleman 22(C) alleges that the ER's cost/benefit analysis demonstrates a net loss. The ER is not the FES, though it is used by the NRC Staff in completing the FES. To the extent that the ER provides specific information that may be in error and that will be incorporated

into the FES, present concern with the ER is justified. As to the conclusion whether the benefits of a federal action justify th environmental costs, only the FES is relevant. Eddleman 22(C) is rejected.

Eddleman 22(D) is not a contention and is rejected.

Eddleman 22(E) raises construction cost issues and is rejected.

Eddleman 23(A) alleges that Harris power will not be needed until three years after the proposed operation date. This contention is an attack on the new need for power rule and is rejected.

Eddleman 23(B) alleges that the ER fails to update the environmental analysis from the construction permit proceedings, as required by 10 CFR 51.21. The contention lists areas of concern, i.e., radiological monitoring, waste disposal costs, health effects of radiation, operating costs, etc. Each of these areas is the subject of at least one other Eddleman contention; therefore, this contention is redundant. Moreover, as a catchall contention, it lacks specificity and in reality offers only a legal conclusion to be reached on the basis of other contentions. Eddleman 23(B) is rejected.

Eddleman 24 concerns terrorist attacks on shipments of spent fuel from Robinson and Brunswick to Harris. It postulates a variety of attack scenarios. Those which postulate use of heavy military weapons are barred by 10 CFR 50.13. See discussion of Eddleman 52, below. Those which postulate attacks with conventional weapons are, in substance if not in terms, attacks on the adequacy of the Applicants' security plans for such shipments. See 10 CFR 73.37. Such plans are required to be kept secret.

10 CFR 73.21(b)(2). This contention shall be treated like the other security plan contentions, as discussed at Kudzu 12, supra. After a qualified expert has been found to examine the transportation plan for Mr. Eddleman, we will reach any questions about the contention, including whether it may be an attack on the rules or whether it lacks sufficient specificity. Until then, our ruling is deferred.

Eddleman 25 is linked to Eddleman 24 in that it postulates the same terrorist attacks and then argues that various alternatives should be considered under NEPA in the environmental statement, including re-racking and saving all the spent fuel for transportation in a single train when the license expires. Our ruling on this contention is also deferred, pending both the availability of the draft impact statement and pending at least some further consideration of Eddleman 24. If Eddleman 24 is ruled out, the premise for this contention may be removed.

Eddleman 26 postulates a terrorist attack on the facility, including among its objectives the spent fuel pool. This is an attack on the facility security plan and shall be treated like other such contentions. See discussion of Kudzu 12, above.

Eddleman 27 is redundant of the three preceding contentions, in part. It also alleges deficiencies in the environmental statement because it does not consider the "sociological impacts of ... terrorism and the threat of it on the public." Guided by the Commission's recent Statement of Policy on Psychological Stress, we do not believe that such ephemeral matters need to be factored into the Staff's NEPA analysis. Although this ruling could

have been deferred to await the impact statement, we think the right answer is clear at this point. We reject this contention.

Eddleman 28, like 27, is a catch-all contention incorporating bits and pieces of the preceding four contentions. As such, it adds nothing. It also alleges that the applications for transport and storage are overly broad and vague. As the Applicants explain, it is not possible for various reasons to specify exact numbers of fuel assemblies that may be involved. But there is a bounding limit in the capacity of the spent fuel pool. In the absence of some more specific criticism of the applications, this contention is denied.

Eddleman 29 and 30 assert that the releases and effects of radioiodines have been underestimated and that monitoring of and protective measures against radioiodine releases are inadequate. 10 CFR Part 50, Appendix I, Section I.C establishes permissible releases of radioiodines; if an Applicant meets this standard, operation of the plant is not deemed inimical to the public health and safety. To avoid a collateral attack on the Appendix I rule, these contentions must therefore be limited to the environmental analysis of the health effects of radioiodines. However, Joint Contention 1! addresses the health effects of radionuclide emissions. Therefore this aspect of the contention is redundant and is rejected. The contentions, however, also allege that releases will exceed the Appendix I releases; if proved, this would present a serious safety concern; accordingly, this part of the contention is accepted. The portions of the contention that address the ability of radiological monitors to identify radioiodines, 29(E) and (H), we find to be redundant of the Joint

Contentions on radiological monitoring; these subparts are rejected. The portions of the contention that address providing potassium iodine pills to the public, 29(D) and 30, seek to raise emergency planning issues. Rulings on them are deferred.

Eddleman 31 alleges that the NRC Staff is incapable of carrying out its responsibilities. The Staff's capabilities are not on trial. This contention is rejected.

Eddleman 32 concerns emergency planning; ruling thereon is deferred.

Eddleman 33 is a request for intervenor funding and not a contention. This Board has no authority to approve intervenor funding; it is, in fact, proscribed by law. Pub. L. No. 97-88, § 502, 95 Stat. 1135 (1981). Therefore Eddleman 33 is rejected.

Eddleman 34 alleges the SER and FES for Shearon Harris are inadequate because they do not adequately consider terrorist attacks and sabotage. 10 CFR 50.13 provides in effect that consideration of terrorist activity is not required in plant design; hence, Eddleman 34 cannot raise this issue. Eddleman 34 may raise an issue as to the adequacy of the security plan; this contention, however, is redundant to contention 35 and is therefore rejected. Applicants argue that 10 CFR 50.13 also precludes NEPA consideration of the effects of terrorism. We do not find that the cases cited by Applicants support this proposition. The FES, however, has not yet been issued; we find the environmental portion of this contention to be premature and defer ruling on it. We do not reach any conclusion now

whether under the rule of reason the possible impact of terrorism must be considered in an environmental impact statement. See discussion of CHANGE 73(b), supra.

Eddleman 35 concerns the security plan. See discussion of Kudzu 12, above.

Eddleman 36 alleges that the SER and FES do not adequately consider "Class IX" accidents. 10 CFR Part 50, Appendix A establishes design criteria; a reactor's safety systems need only be designed against "design basis" accidents. Alleging that consideration should be given to accidents that exceed the design basis is an attack on the rule, unless the contention details a credible scenario which applies to the specific facility. That part of the contention, therefore, that addresses the adequacy of the SER is inadmissible. The NRC Staff is required to consider accidents exceeding design basis in its FES. The FES, however, is not yet prepared. This portion of Eddleman 36 is therefore premature, and we will defer ruling until the Staff issues the draft FES.

Eddleman 37. Parts (c)(f)(g)(h)(9) and (10) of this contention have been withdrawn and were superseded by Joint Contention II on health effects. 37(a) alleges that consideration should be given to psychological stress. Pursuant to recent Commission guidance on consideration of psychological stress, this contention is rejected. See U. S. Nuclear Regulatory Commission, Statement of Policy (July 16, 1982). Part (b) alleges that certain health effects other than cancer are underestimated. Applicants respond that this contention is inadequate because it fails to

aver evidence. Applicants misread Black Fox, supra; Intervenor need only aver evidence in response to a motion for summary disposition. Part (b) is therefore admitted. Parts (d) and (e) are statements regarding the credibility of studies for and against the health effects issue; as such, they do not raise a contention, but merely discuss material which may or may not be introduced into evidence. Part (i) alleges that the costs of future deaths should not be discounted to present value. The assertion in part (i) is not presented in any context -- we cannot tell if Mr. Eddleman is alleging an inadequacy in the ER or anticipating an inadequacy in the FES; this contention is fatally vague. Parts (d), (e), and (i) are rejected.

Eddleman 38 and 39 allege that operation of Shearon Harris would result in violations of the antitrust laws. These contentions exceed the scope of our jurisdiction. See Florida Power & Light Co. (St. Lucie Plant, Unit 2), 14 NRC 1117, 1123, n.15 (1981). Eddleman 38 and 39 are rejected.

Eddleman 40 broadly exhorts this Board to exercise its authority to raise issues sua sponte. See 10 CFR 2.760a. It is not a contention and is rejected. As an exhortation to this Board, it is unnecessary.

Eddleman 41 alleges that Applicants' QA/QC program fails to assure proper inspection of safety-related equipment. Mr. Eddleman alleges that defective pipe hanger welds are being approved, in part because CP&L inspectors cannot read blueprints. We reject a contention that would address the entire QA/QC program; such a contention is overbroad and vague, and Mr. Eddleman has not presented sufficient basis to support an examination to the program in general. We accept, however, a contention

that addresses what appears to be Mr. Eddleman's specific concern -- that there exist defective hanger welds that have been improperly inspected and approved.

Eddleman 42 alleges that Applicants' training program is deficient because the control room instrumentation does not provide sufficiently detailed information to permit the operators to make the appropriate response. We find the connection between the training program and the control room design to be extremely tenuous. To the expert there is a connection; it is addressed by Eddleman 132, which concerns control room analysis and which has been accepted. The specific concern raised by Eddleman 42, the absence of a failure modes and effects analysis, is also redundant (of Eddleman 7 which was rejected). Eddleman 42 is therefore rejected.

Eddleman 43 alleges that CP&L's management is deficient because CP&L has not yet environmentally qualified its equipment. Management is the central issue in Joint Contention I. Therefore, Eddleman 43 is redundant; the argument in support of the contention, that non-compliance with regulatory requirements shows lack of management capability, does not set this apart from Joint Contention I. Eddleman 43 is rejected.

Eddleman 44 was superseded by Joint Contention I on management.

Eddleman 45 alleges that the Harris design is unsafe because it is outdated. This generalized expression of concern is far too broad and vague to be accepted. However, Mr. Eddleman offers some specifics with regard to the "water hammer" phenomenon. Accordingly, the portion of Eddleman 45 that alleges a safety problem because the feedwater, ECCS, main

steam system, and their components are not properly designed, constructed and tested against water hammer is accepted.17/

Eddleman 46 on neutron shield embrittlement was withdrawn. Tr. 376.

Eddleman 47 on fast fracture was withdrawn. Tr. 377.

Eddleman 48 and 49 allege that the inspection plan for Harris is inadequate because there are no adequate means for detecting cracks in the coolant piping, reactor vessels, and their welds. Mr. Eddleman alleges that the undetected cracks could result in fast fracture. Both Eddleman 48 and Eddleman 49 reference Eddleman 47 as a basis for anticipating fast fracture. Contention 47, however, was withdrawn. Mr. Eddleman indicated at the prehearing conference that he was satisfied that the vanadium, copper and phosphorous content in the base metal and welds were at levels that would avoid embrittlement and fast fracture. Tr. 377. Since Mr. Eddleman has withdrawn the basis for Eddleman 48 and 49, these contentions are also considered withdrawn or, in the alternative, rejected.

Eddleman 50 asserts that construction of Shearon Harris should be halted because there may be cracks in the reactor vessels that could result in fast fracture. Both because Mr. Eddleman has withdrawn his basis for concern about fast fracture and because this Board has no authority to halt construction, Eddleman 50 is rejected.

Eddleman 51 on metal testing was withdrawn. Tr. 432.

17/ We are not accepting all of Eddleman 45 verbatim; it contains much extraneous and vague language.

Eddleman 52 alleges that the safety analysis is deficient because it does not consider the "consequences of terrorists commandeering a very large airplane ... and diving it into the containment." This part of this contention is barred by 10 CFR 50.13. This rule must be read in pari materia with 10 CFR 73.1(a)(1), which describes the "design basis threat" against which commercial power reactors are required to be protected. Under that provision, a plant's security plan must be designed to cope with a violent external assault by "several persons," equipped with light, portable weapons, such as hand-held automatic weapons, explosives, incapacitating agents, and the like. Read in the light of section 73.1, the principal thrust of section 50.13 is that military style attacks with heavier weapons are not a part of the design basis threat for commercial reactors. Reactors could not be effectively protected against such attacks without turning them into virtually impregnable fortresses at much higher cost. Thus applicants are not required to design against such things as artillery bombardments, missiles with nuclear warheads, or kamikaze dives by large airplanes, despite the fact that such attacks would damage and may well destroy a commercial reactor. This part of the contention is rejected.

This contention also alleges that a large airplane might accidentally crash into the reactor in a thick fog or heavy cloud cover. It suggests that the location and plans for expansion of the Raleigh-Durham airport make such accidents a greater concern for the Harris plant than for other nuclear plants. The NRC Staff applied specific criteria to determine

whether an aircraft hazard analysis should be required in a particular case. See NRC Regulatory Guide 1.70 (Rev. 3). According to the FSAR (sections 2.2.5 and 3.5.1.6), the airports and aircraft traffic in the area do not meet those criteria. The contention does not indicate specific defects in the Staff criteria or in the FSAR description of the pertinent factors. Accordingly, this aspect of the contention is rejected for lack of specificity.

Eddleman 53 hypothesizes attacks on the Harris plant by "terrorists, saboteurs and hostile nations" having access to various types of non-nuclear military equipment. This contention conflicts with 10 CFR 50.13; it is rejected.

Eddleman 54 (1st) discusses at length variations on a basic scenario in which a terrorist group (e.g., the PLO, the Red Brigades) attacks the Harris plant with thermonuclear weapons. This contention also conflicts with 10 CFR 50.13; it is also rejected.

Eddleman 54 (2d) has two aspects. It consists, in part of further postulation of terrorist military attacks against the Harris facility. This aspect is barred by 10 CFR 50.13. In addition, the contention seeks to raise questions about the Harris security plan. For example, subpart G deals with the possibility of smuggling explosives into the site. See discussion of security plan contentions of Kudzu 12, above.

Eddleman 55 postulates that "a deranged fighter plane pilot might fire on the Harris plant with air-to-ground missiles." This contention is barred by 10 CFR 50.13. In addition, we are making a judgmental

determination that the postulated risk is too remote to warrant consideration. This contention is rejected.

Eddleman 56 and 57 allege deficiencies in emergency plans for the Harris plant that do not yet exist. These contentions are deferred, a course in which Mr. Eddleman concurs. Tr. 380.

Eddleman 58 (1st) is a rambling, three-page collection of words and phrases concerning the Applicants' analyses of accidents and various other topics, some of which are treated in other contentions. We were unable to extract any meaningful contention from this material. It does not approach minimal standards of specificity and is rejected for that reason.

Eddleman 58 (2d) concerns financial qualifications of small owners. It is barred by 10 CFR 2.104, as amended, 47 Fed. Reg. 13750 (1982), and is therefore rejected.

Eddleman 59 and 60 concern need for power and alternative energy sources. They are barred by 10 CFR 51.53 and are therefore rejected.

Eddleman 61A alleges that the health effects of radon emissions during the fuel cycle have not been adequately assessed. This issue is presently before the Appeal Board. See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-480, 7 NRC 796 (1978); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-640, 13 NRC 487 (1981). Moreover, assessment of radon health effects in this operating proceeding is not required until the Staff issues its draft EIS. See 10 CFR 51.20(e), 51.21, and 51.23(c). Accordingly, Eddleman 61A is premature and cannot address with specificity the assessment that will be in the FES, an assessment that may well be made

after the Appeal Board's resolution of the issue. Eddleman 61A is deferred.

Eddleman 61B alleges that the long term health effects of radon and the radionuclides in the S-3 table have been improperly assessed. The allegation, as it addresses radon, is redundant of 61A and is rejected. The allegation, as it addresses other radionuclides, is redundant of Eddleman 8 and is therefore rejected.

Eddleman 62 alleges that Applicants have not taken appropriate measures to reduce the environmental impact of uranium milling. Applicants, however, have no control over milling; nor do the regulations require them to attempt to exert such control. Moreover, the methods of milling and its impact are appropriate issues in a materials license proceeding for the operation of a uranium mill, not for the operation of a utilization facility. See 10 CFR Part 40. Eddleman 62 is rejected.

Eddleman 63 is virtually identical to Eddleman 56, on which we deferred a ruling.

Eddleman 64 is a series of subparagraphs alleging various safety and environmental consequences flowing from the transportation and storage of spent fuel from Robinson and Brunswick to Harris. We rule on each subparagraph, as follows:

(a) is a sabotage contention; it is treated like the other contentions questioning the security plan. See discussion of Kudzu 12. Our ruling is deferred.

(b) alleges that the dangers from a spent fuel pool LOCA will be increased by the presence of spent fuel assemblies from Robinson and Brunswick. Section 9.1 of the FSAR discusses the design basis of the spent

fuel pool, including conditions at maximum storage and a safety analysis which demonstrates that the spent fuel will always be covered with water. The contention does not address this discussion and therefore is rejected for lack of a specific basis.

(c) concerns handling of spent fuel. Like (b), it fails to address the Applicants' treatment of this subject in the FSAR (section 9.1.4) and ER (section 7.1.10). It is rejected for the same reason.

Eddleman 64x. At the prehearing conference Mr. Eddleman proffered a contention 64x which contained elements essentially similar to subparagraphs (b) and (c). It is also rejected for lack of a specific basis.

(d) concerns accidents in transportation of spent fuel. Our ruling is deferred until the Staff's impact statement is available. We will then reconsider our tentative view that Table S-4 governs transportation accident impacts.

(e), like (d) concerns transportation accidents; ruling on it is also deferred.

(f) alleges that the safety valves on spent fuel casks are likely to unseat or that the plastic components of the valves would melt in a fire. The Applicants oppose on the ground that this is an attack on the rules -- i.e., Part 73 -- but they point to no specific rule. This contention is accepted.

(g) alleges that the Applicants' shipment casks are dangerous because they have never been tested physically, including tests while pressurized. The Applicants again cite all of Part 73, with which they say their casks will comply. As a common sense matter, one would think that the Applicants would, as a safety precaution, test their casks in some fashion. Since our

attention is not directed to a specific rule making cask testing unnecessary, explicitly or by implication, this contention is accepted.

(h) and (i) seek to place in issue the adequacy of NRC procedures relating to cask testing and accidents. Because they are advanced without reference to the Applicants' proposals, they are beyond the scope of this proceeding, and they are rejected.

(j) alleges that the Applicants have failed to prove that emergency fire and police personnel along their spent fuel transportation routes have adequate training and equipment. Applicants are normally not required to prove things that are largely beyond their control. The requirement of 10 CFR 50.47 of proof that off-site emergency plans are adequate -- including adequacy of training and equipment for local emergency personnel -- is exceptional, as indicated by the clause (10 CFR 50.47(c)(1)) allowing the Applicants to meet local preparedness requirements by alternate means. The security requirements governing spent fuel shipments (10 CFR 73.37) impose no express obligation to train or equip local fire and police personnel, and we decline to imply such an obligation. This contention is rejected.

(k) alleges a lack of adequate radiological monitoring along Harris spent fuel shipment routes. The Applicants contend that this is a health and safety issue over which the Board has no jurisdiction. This is correct with respect to spent fuel from Robinson and Brunswick -- the thrust of this contention, when read in context -- and the contention as drafted does not allege a NEPA violation, over which we would have jurisdiction. This contention is rejected.

Eddleman 65 alleges that the Applicants' prime contractor "has a history of building defective base mats and containments (e.g., Callaway, Wolf Creek, Farley)." Because of this, the contention calls for ultrasonic analysis of the containment and base mat to detect possible voids. If this contention can be supported by evidence, it may have substance. The Applicants' opposition to it is based on its view of the merits, not on any flaw in the contention as an abstract proposition. Contrary to the Staff's argument, we think there is a common sense nexus, based on human experience, between the kind of work an organization has done on other projects and the project in question. This contention is admitted. However, we do not intend to embark on a broad-ranging review of the contractor's past work at other projects. The circumstantial evidence possibly to be obtained would not be worth the time and effort involved. If it develops that Mr. Eddleman has little or no evidence to back up this contention, it may be amenable to summary disposition.

Eddleman 66 alleges that the Applicants lack the financial resources necessary to decontaminate following a serious, TMI-type accident. Under 10 CFR 50.54(w), the Applicants will be required to purchase private insurance to cover such decontamination costs, subject to certain conditions. Beyond this provision, no showing of financial resources is required. This contention is rejected as an attack on the cited rule.

Eddleman 67 alleges that operation of Harris is unsafe because of the absence of a low level waste disposal site. Applicants do not deny Mr. Eddleman's assertion that neighboring states will not accept low level waste from North Carolina; instead, Applicants assert that North Carolina

is responsible for providing and therefore will provide such a site. We find this response unsatisfactory, and we believe some specific provision should be made for low level waste disposal. Accordingly, Eddleman 67, as it relates to health and safety, is accepted. Eddleman 67 also alleges that low level waste disposal needs to be taken into account in the NEPA analysis. The S-3 table, however, includes low level waste disposal in its quantification of fuel cycle emissions, and Mr. Eddleman has already raised as a contention the health effects of the S-3 emissions (Eddleman 8). The NEPA issue in Eddleman 67 is therefore redundant and is rejected.

Eddleman 68 and 69 allege that there is no assurance that high level waste can be disposed of and further generation of such material should not be permitted. The availability of a high level waste disposal site is the subject of the "waste confidence" rulemaking, 44 Fed. Reg. 45362 (1979), and litigation of the issue is precluded as a collateral attack on the rulemaking proceeding. Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Unit 1), 14 NRC 43, 69 (1981). Eddleman 68 and 69 are rejected.

Eddleman 70, on containment penetration, was withdrawn. Tr. 427.

Eddleman 71 and 72 allege that Harris equipment is not adequately environmentally qualified (i.e., will withstand operating and accident conditions). Eddleman 71 also argues that equipment should be qualified to withstand Class IX accidents. Class IX accidents are not design basis accidents, and Commission Order CLI-80-21, 11 NRC 707 (1980) has endorsed NUREG-0588 as the standards meeting the general design criteria of 10 CFR

Part 50, App. A. See discussion of Eddleman 9, supra. Eddleman 71 is therefore an attack on the Commission's Order and is rejected. Eddleman 72 is redundant of Eddleman 9, and is rejected.

Eddleman 73 alleges that the Harris facility is not in compliance with unspecified parts of the TMI Action Plan which, as approved by the Commission, is in NUREG-0737. There are many separate elements in the Action Plan which the Applicants are required and committed to meet. Absent a specification by Mr. Eddleman of which of these elements will not be met, this contention must be rejected for lack of specificity.

Eddleman 74 charges that the NRC is not following the recommendations of the Kemeny Commission and the Rogovin Special Inquiry Group in changing its attitude toward safety, assisting intervenors and other matters. Unless and until a specific recommendation has been adopted by the Commission, it has no regulatory effect. The desirability of adopting a particular recommendation exceeds the scope of this proceeding. The contention is rejected.

Eddleman 75 is difficult to understand. Its six sentences contain 355 not very carefully chosen words, averaging 59 words per sentence. This "contention," to use the term loosely, touches on several complex and separate topics. It begins with a suggested loss of access to the facility's heat sink through various causes, progresses through a variety of steam generator problems, mentions the corrosive effect of biocides added to cooling tower water, and concludes with a postulated fouling of the condensers by clams, oysters or barnacles. We are told that the clams or barnacles might be brought to the cooling towers by a worker or a

"saboteur." It is claimed that the clams or barnacles might block access to the heat sink, with "serious safety consequences." Had we any authority to reject a contention on its merits, we would reject this clam and barnacle scenario because we can scarcely imagine that it could present a safety problem, as alleged. For that to happen, the clams would have to clog most of the condensers simultaneously, a very unlikely scenario. Nevertheless this contention is admitted, subject to the possibility of a summary disposition motion. The rest of this contention is rejected for lack of specificity and failure to meet minimal standards of clarity.

Eddleman 76 and 77 allege inadequacies in cable insulation and describe possible consequences. Whether the cable is properly qualified, however, is the subject of Contention 11, which has been accepted. Eddleman 76 and 77 are therefore redundant and are rejected.

Eddleman 78 is written entirely by hand. 10 CFR 2.708 requires that documents filed in adjudications be typed or printed. The main reason for the rule, as illustrated by this contention, is that handwritten documents are hard to read. We would not, of course, apply the rule to the interlineation by hand of a few words or phrases. And in Mr. Eddleman's case, we have overlooked much more than that. However, an entire lengthy contention is more than we can accept in handwriting. This contention is rejected as a violation of 10 CFR 2.708.

Eddleman 79 concerns a postulated collapse of a cooling tower resulting in a loss of "heat sink" -- i.e., inability to remove core decay heat. As explained by the Applicants (Response at 132, FSAR sections 9.2.1.2, 10.4.5), the cooling tower basins are not required for safe

shutdown or cooldown of the reactor. They are designed for different purposes. This contention is rejected because the safety assumptions it embodies cannot be accurately ascribed to this facility.

Eddleman 80 alleges that the mixing and dispersion models for radionuclide emissions from Harris are deficient because they assume more complete dispersion than is realistic and do not adequately account for rainout. Eddleman 80 is accepted.

Eddleman 81 concerns emergency planning; it is deferred.

Eddleman 82 alleges that Applicants' preoperational radiation monitoring program is inadequate because there are not enough sampling points and the procedures followed are insufficient. The contention does not indicate how the alleged inadequacies would adversely affect public health and safety or the environment; nor is an adverse impact self-evident. Accordingly, we find this contention to be without basis; Eddleman 82 is rejected.

Eddleman 83 and 84 allege that the environmental impact of chemical releases from the Shearon Harris plant has not been adequately assessed. At the prehearing conference, Mr. Eddleman submitted a reworded contention, which we view as a replacement for these two contentions. We find the reworded contention to be sufficiently specific and to provide adequate basis. We reject Applicants' position; neither consideration of this issue at the construction permit stage nor compliance with the Federal Water Pollution Control Act relieve Applicants and Staff of their duty under NEPA or foreclose contentions addressing the adequacy of the environmental

analyses. Eddleman's "proposed contention on chemical pollutants/carcinogens from SHNPP" is accepted.

Eddleman 85 and 86 allege deficiencies in the environmental statement's consideration of fish kills. Ruling on this contention is deferred until after the environmental statement is available.

Eddleman 87 alleges that the environmental statement does not sufficiently consider psychological stress. As discussed at Eddleman 37(a), supra, psychological stress should not be considered. Eddleman 87 is rejected.

Eddleman 88 asserts deficiencies in the forthcoming environmental statement and emergency plans; it is deferred.

Eddleman 89 alleges that the environmental statement will not adequately assess the destruction of wildlife habitat caused by constructing Harris and the cost of restoration after the plant is decommissioned. This proceeding addresses operation of the plant, and the environmental statement will address the environmental impact of operation. The decision to commit those resources has been made, and the impact of that commitment is no longer relevant. In addition, there is no requirement that CP&L restore the Shearon Harris site after decommissioning. Moreover, entertainment of this contention is inappropriate in view of the Commission's generic rulemaking on decommissioning criteria. See discussion of Wilson IVA(d), supra. Eddleman 89 is rejected.

Eddleman 90 alleges that the ES does not include the costs of restoring the excavations for cancelled Units 3 and 4. These costs are

irrelevant to the cost/benefit balance for operation of Shearon Harris Units 1 and 2, and their consideration would exceed the scope of this proceeding. Eddleman 90 is rejected.

Eddleman 91 concerns offsite radiation monitoring of the Harris facility by the State of North Carolina. It alleges that such monitoring is inadequate and that this situation may get worse because of anticipated budget cuts. Outside of the emergency planning context, NRC regulations do not require that any offsite monitoring be performed by the State and the Applicants do not propose to look to the State to meet offsite monitoring requirements. The Contention is rejected because it does not raise an issue within the scope of the proceeding.

Eddleman 92 alleges that the emergency core cooling system (ECCS) would be inadequate if, due to stud bolt failure, the vessel head blew off. The Contention, however, gives no indication how the ECCS is inadequate (or that any system could be adequate for such an accident); rather, the crux of the Contention is that stud bolts, when exposed to borated water, can corrode and fail. Stud bolt failure is the subject of Eddleman 131. Eddleman 92 is therefore redundant and is rejected.

Eddleman 93 alleges that the SER is inadequate in failing to analyze potential criticality in a damaged core. No credible accident scenario, however, is advanced as a basis for considering a Class IX accident (i.e., an accident where core integrity is not maintained). The safety analysis need only ensure that Shearon Harris complies with the Commission's general design criteria and the Harris safety systems are adequate to respond to design basis accidents. See 45 Fed. Reg. 65475 (1980) and discussion at

Eddleman 36, supra. Eddleman 93 is an attack on the Commission's regulations and is rejected.

Eddleman 94 concerns financial qualifications and is rejected as an attack on 10 CFR 50.33(f), as amended, 47 Fed. Reg. 13750 (1982).

Eddleman 95 concerns the environmental impact statement; it is premature and therefore deferred.

Eddleman 96 alleges that polyethylene insulation on safety-related cable could fail. This contention is redundant of Eddleman 11 and is therefore rejected.

Eddleman 97, 99 and 100 concern emergency planning; they are premature and therefore deferred.

Eddleman 98 contends that Applicants should be required to provide a new wildlife habitat to replace that destroyed by the construction of the facility. This is largely a legal argument. The Applicants assert that there is no such restoration or compensation requirement applicable to them. If there is, it would presumably be a matter of NEPA law. In any case, it would appear that any such requirement would be more appropriately imposed at the construction permit stage. We think it is incumbent on Mr. Eddleman to file a legal memorandum from qualified counsel in support of his contention if he wishes us to give it any further consideration. Such a memorandum is due 30 days following this Memorandum and Order.

Eddleman 101 is superseded by Joint Contention I on management.

Eddleman 102 is superseded by Joint Contentions III-VI on radiological monitoring.

Eddleman 103 alleges that the on-site counting laboratory is not sufficiently shielded to permit fast and accurate sample analysis in the event of an emergency. We view this as an emergency plan contention, and defer our ruling until the emergency plans are available.

Eddleman 104 alleges that the ES cost/benefit analysis is deficient in failing to take into account uncertainties in decommissioning costs. Consistent with our discussion of Wilson IVA, above, Eddleman 104 is rejected.

Eddleman 105 alleges that "new information" on credibility of class IX accidents make the established exclusion area and low population zone erroneous. This contention apparently assumes that only design basis accidents are used in establishing these zones, which are siting criteria. However, 10 CFR Part 100 requires establishing these zones based on a breach of containment accident. The contention does not indicate how the postulated releases in Reg. Guides 1.4 and 1.70 are insufficient and how the analysis should be changed. If the contention is in fact asserting that an even more severe accident should be postulated for the purposes of establishing these zones, it is not sufficiently specific. Eddleman 105 is rejected.

Eddleman 106 is superseded by Joint Contention I on management.

Eddleman 107 alleges deficiencies in the as yet unwritten Safety Evaluation Report for the Harris facility in its treatment of unresolved safety issues. This contention is premature. Mr. Eddleman should review the discussion of unresolved safety issues in the SER when it becomes

available and then revise this contention, as appropriate. Our ruling on it is deferred.

Eddleman 108. The Board experienced some difficulty in determining just what contentions were set forth in this nearly two page statement, but we believe it can be paraphrased as follows:

1. The performance of plant instrumentation and controls under normal and up through "Class 9" conditions should be evaluated on-site at either Harris or a comparable plant;

2. the performance of the Harris steam generators should also be evaluated under these conditions; and

3. a complete record of operational experience with all plant systems should be compiled to form a basis for modification of the existing systems.

Parts 1 and 2 are totally impractical insofar as performing a "Class 9" simulation in situ is concerned. Moreover, the contention does not address any inadequacies in the Applicants' test program, as set forth in FSAR Chapter 14, for both normal and abnormal conditions. Part 3 is also unsound. A record of operating experience exists, e.g., in NRC files of Licensee Event Reports. The contention fails to address any perceived inadequacies in this, and other, bodies of knowledge of operational experience. Eddleman 108 is therefore rejected.

Eddleman 109 alleges generally that the ER is deficient in its description of the chemical, radiological, and thermal releases from Shearon Harris, and in its description of environmental baseline data. This contention is vague, overbroad, and advances no basis for considering

the ER inadequate. Mr. Eddleman's specific concern with the impact of chemical releases and their interaction with existing pollutants is the subject of contentions 83 and 84, as amended, which were accepted. Eddleman 109 is rejected.

Eddleman 110 is a two page, two sentence laundry list of alleged deficiencies in the FSAR and SER, much of it incomprehensible. Boards should not be burdened with material of this quality. This contention is rejected.

Eddleman 110x alleges certain deficiencies in the unwritten environmental statement. It is deferred.

Eddleman 111 alleges that the Shearon Harris systems and controls are not sufficiently independent of one another, and a comprehensive failure modes and effects analysis is warranted. The contention does not specify which systems are interdependent. Moreover, the contention is redundant of Eddleman 7. Therefore, Eddleman 111 is rejected.

Eddleman 112 through 114 are superseded by Joint Contention VII on steam generators.

Eddleman 115 concerns the phenomenon of Anticipated Transients Without Scram (ATWS). This generic problem is currently the subject of an ongoing rulemaking. The Commission stated in initiating that rulemaking:

> The Commission believes that the likelihood of severe consequences arising from an ATWS event during the two to four year period required to implement a rule is acceptably small. ... On the basis of these considerations, the Commission believes that there is reasonable assurance of safety for continued operation until implementation of a rule is complete.

46 Fed. Reg. 57521. It is clear from the quoted language that the Commission wishes to confine these generic issues to the generic rulemaking context. The Harris facility will, of course, be subject to the outcome of the ATWS rulemaking. See Potomac Electric and Power Co. (Douglas Point Station), 8 NRC 79, 85 (1974). Therefore, Eddleman 115 is rejected.

Eddleman 116 alleges that the plant's fire protection systems are inadequate. The contention focuses primarily on alleged inadequacies with respect to the plant's computer system. As pointed out by the Applicants, this contention is faulty in two respects. First, it assumes that a properly functioning computer system is necessary for safe shutdown. This inaccurately ascribes a safety function to this plant's computer which it does not possess. The computer system is not necessary for safe shutdown or for any control function. See Applicants' response at 142-144. Second, the Applicants' fire protection systems are discussed in FSAR Section 2.5. Mr. Eddleman does not address that discussion and thus the contention lacks the required specificity. Eddleman 116 is rejected.

Eddleman 117 and 118 concern emergency planning; they are deferred.

Eddleman 119 does not appear to be a complete sentence. In any event, it is unintelligible; it is rejected.

Eddleman 120 alleges that the Harris design provides inadequate crash proof protection of wiring. The contention, however, does not address the protective measures that Applicants have taken and offers no specifics. Eddleman 120 states no basis with specificity and is rejected.

Eddleman 121 concerns emergency plans and is deferred.

Eddleman 122 is an impermissible challenge to financial qualifications; it is rejected.

Eddleman 123 is superseded by Joint Contention I.

Eddleman 124 concerns emergency plans and is deferred.

Eddleman 125 asserts that the Commission's design criteria are inadequate to project public health and safety because of the likelihood of a Class IX accident. This contention is an attack on the Commission's regulations. Eddleman 125 mentions several accident scenarios, but fails to indicate that these scenarios are credible and that Shearon Harris presents a unique risk. Eddleman 125 is rejected.

Eddleman 126 alleges that consideration of Class IX accidents must be included in the NEPA evaluation. The allegation is true. We defer ruling on Eddleman 126 until the FES is issued. See discussion of Kudzu 2, above.

Eddleman 126x alleges that the ER should analyze the environmental effects of spent fuel transportation from other CP&L plants to Harris, and factor them into the cost/benefit analysis. As discussed at CCNC 4, above, our tentative view is that Table S-4, or some multiple thereof, should govern the environmental impacts of transportation. We are deferring a ruling on this contention until after the Staff's draft impact statement is available.

Eddleman 127 and 127x are superseded by Joint Contention I.

Eddleman 128 addresses an explosive hydrogen-oxygen reaction inside containment. This issue is presently in the rulemaking process, and the contention would normally be denied. The issue can be litigated, however,

if it postulates a credible scenario for hydrogen production. The key word here, in the Board's view, is credible. The scenario presented in the contention, while imaginative, suffers from the assumption of too many "ugly horribles" to be believable. In addition, the underlying premise of the contention, that the igniter system would not work, ignores the fact that the Harris plant does not use an igniter system, but relies on redundant electric hydrogen recombiners. Eddleman 128 is rejected.

Eddleman 129 discusses the alleged effects of the capital investment in the Harris facility on the availability of jobs in the area. Such an issue might be relevant at the construction permit stage, but it is beyond the scope of this narrowly focused operating license proceeding, where construction costs are deemed to be "sunk." This contention is rejected.

Eddleman 130 alleges the possibility of vessel metal fatigue. This contention is redundant of Eddleman 47, which was withdrawn after Mr. Eddleman indicated that he was satisfied with the vessel alloy's composition. (Tr. 377). Eddleman 130 is therefore also deemed withdrawn.

Eddleman 131 alleges the possibility of stud bolt failure due to the corrosive effect of borated water. The contention, however, does not indicate why or how reactor closure studs would be exposed to borated water; in fact, the FSAR specifically provides that the studs are not to come in contact with borated water. Eddleman 131 does not indicate any failings in Applicants' fuel loading procedures that might nevertheless result in such contact. The contention is vague and speculative, and advances no basis for its consideration. Eddleman 131 is rejected.

Eddleman 132 on control room analysis, which both Staff and Applicants found acceptable, is accepted.

Eddleman 133 concerns the Harris security plan. See discussion of Kudzu 12, above.

Eddleman 134 suggests without any specificity that the diesel generators for Harris may not meet "sufficiently high" standards of construction and operation. The relevant FSAR sections are not discussed or even referred to. The contention is rejected for lack of specificity.

Eddleman 135 asserts that Applicants have failed to ensure funds are available for decommissioning. This contention is explicitly barred by Commission regulation (10 CFR 50.33(f)(1), as amended, 47 Fed. Reg. 13754 (1982)) and is rejected.

Eddleman 136 alleges that the Applicants have failed to comply with the Endangered Species Act because of the impacts of construction of Harris on the Bald Eagle and Red-cockaded Woodpecker. Like a similar Eddleman contention, number 98, the contention is largely legal argument. We are requiring submission within 30 days of a legal memorandum, preferably from qualified legal counsel, replying to the Applicants' response, before we will give this contention any further consideration.

Eddleman 137, 139 and 140 concern emergency planning; they are deferred.

Eddleman 138 alleges that the Shearon Harris electrical drawings are not in the local public document room and are not sufficiently detailed. That the electrical drawings are not in the LPDR is true. These voluminous papers are not required to be placed in the LPDR. We question whether

Mr. Eddleman has ever seen them. Assuming that he has, the claim that the drawings do not include sufficient detail is simply too broad and vague for a valid contention. Eddleman 138 is rejected.

7. Lotchin Contentions.

Lotchin 1 alleges in part that the Harris site is not "remote", that it is located in one of the most populous areas of the state. This contention could be read as an impermissible attack on the siting criteria of 10 CFR Part 100. Alternatively, it might be read to contend that the Harris site does not comply with Part 100. If read in this way, however, it would lack the required specificity. This part of the contention is rejected for those reasons.

The remainder of this contention raises policy questions beyond the scope of this proceeding. For example, it alleges that the people living near the plant were given no choice in the matter. Although the Atomic Energy Act might be amended to provide for a local referendum on nuclear plant proposals, that is not presently required.

Lotchin 2 - 4 discuss a range of topics, including some that are arguably attacks on NRC rules. However the general thrust of these contentions is toward the alleged inadequacy of emergency planning for the Harris facility. Our ruling on these contentions, like other emergency planning contentions, is deferred.

8. CANP Contentions.

CANP 1 adopts Eddleman 56, 57 and 81, on which rulings are deferred. CANP 1 is also deferred.

CANP 2 adopts Eddleman 112 and 113 on steam generators; this contention is accepted, but is limited in scope to part 2 of the joint contention on steam generators, which addresses corrosion problems.

CANP 3 adopts Eddleman 3 on management. This contention is accepted, but is limited in scope to the joint contention on management, as admitted.

CANP 4 adopts Eddleman 41 and 42. Consistent with our discussion of those contentions, CANP 4 is accepted, but it is limited in scope to the allegation that there exist defective hanger welds that have been improperly inspected and approved.

CANP 5 adopts Eddleman 37 and 82. Consistent with our discussion of those contentions, this contention is accepted, but it is limited in scope to Eddleman 37(b) and the joint contention on health effects.

CANP 6 adopts Eddleman 29. Consistent with our discussion of that contention, CANP 6 is accepted, but is limited in scope to an environmental assessment of the health effects of radioiodines.

CANP 7 alleges that consideration must be given to declining availability of "specialized engineering and manufacturing capacity" and to the trend toward deregulation. The contention is somewhat vague. It might well be suitable for discussion in a college classroom or before a Congressional committee considering a grant program for engineering students. We may be considering the qualifications of some prospective employees at Shearon Harris. But the social conditions that produce suitably trained personnel are simply beyond the scope of this narrowly focused proceeding. CANP 7 is rejected.

E. Motion by CHANGE to Defer Hearings on Unit 2.

Intervenor CHANGE has moved to defer hearings on Unit 2.[18/] At the present time, construction of that unit is only about five percent complete. CHANGE asserts that proceeding with an operating license hearing on both units when construction of Unit 2 is just beginning threatens to abrogate the two-step licensing process because intervenors may be foreclosed from contesting design changes and construction practices. Expressing concern that Unit 2 may never be completed, CHANGE argues that an operating license proceeding should not be commenced until there is "reasonable assurance that construction of the facility will be substantially completed."

The Applicants and the Staff oppose the CHANGE motion. The principal arguments they advance are (1) that bifurcation of the proceeding is outside the Board's jurisdiction, and (2) that practicality compels holding a single hearing, because the safety and design issues are common to both units.

As a matter of policy, operating license proceedings commence well before construction is complete so that facilities eligible for licensing will not be unnecessarily idled. See Statement of Policy on Conduct of Licensing Proceedings. Typically, the evidentiary hearing is not held until a year or more after the proceeding begins, and the proceeding may not be completed for another year or more. Thus there is no anomaly in

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18/ Renewal and Reformation of Motion by CHANGE/ELP, July 13, 1982. ELP had made a similar motion prior to its admission as a party and consolidation with CHANGE. Motion to Postpone or Separate Proceedings or Other Relief, March 16, 1982.

conducting an operating license proceeding while substantial amounts of construction remain to be done, particularly where two or more units are involved. See 10 CFR Part 2, App. A, § VIII(b)(1).

In addition to avoidance of delay, there are practical advantages in conducting simultaneous operating license proceedings for multiple units at the same site. For example, the effects of effluents on the environment are more realistically viewed in the aggregate from multiple units, rather than piecemeal. There are advantages for Applicants, efficiencies for the NRC Staff, and no prejudice to intervenors from the early litigation of design issues common to several units.

To be sure, if design changes are made or construction deficiencies come to light at Unit 2 toward the end of this proceeding, there is the possibility that they might escape Board scrutiny. In these circumstances, however, a late contention might well be admitted. 10 CFR 2.714(b). Furthermore, if some issues remain unresolved at the close of this proceeding, CHANGE could then move that the Board retain jurisdiction over them. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), 14 NRC 175, 209 (1981).[19/] With these considerations in mind, the CHANGE motion is denied.

19/ The Applicants argue that CHANGE's interests will be adequately protected by the right to file an enforcement petition under 10 CFR 2.206 as to matters that may arise after this proceeding is over and before construction is completed. We reject this argument because the responsible NRC enforcement officials have rather broad discretion to deny such petitions. By contrast, intervenors raise contentions as a matter of right.

F. Service of Documents.

The Rules of Practice, 10 CFR 2.701(b), require that all documents offered for filing in adjudications -- e.g., motions, testimony, briefs -- shall be served on the other parties. As pointed out by the Applicants, however, this provision does not require service of documents exchanged between the Applicants and the Staff in the review process. On the other hand, such documents can have an important bearing on an adjudicatory proceeding, particularly in developing additonal contentions based on new information. In recognition of that fact, the Licensing Board in the ongoing Catawba proceeding recently required that "the Intervenors be served with copies of all relevant documents generated by the Applicants and the Staff in connection with this operating license proceeding." We asked the Staff and the Applicants to advise us of any objections they might have to the entry of a similar order in this case.

As to the Staff, they made a commitment at the conference, reaffirmed in a later filing, to serve the papers they originate relating to the Shearon Harris operating license application on all persons admitted as Intervenors. That voluntary commitment, which is as broad as the Catawba order, is accepted by the Board. Therefore, as concerns the Staff, no Board order is necessary.

The Applicants object to a Catawba-type order, and argue that it could be too costly.[20/] Three of the Intervenors filed papers in response,

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20/ Applicants' Position on Service of Documents dated August 10, 1982.

arguing that a Catawba-type order was essential.[21/] We have considered these submissions and without restating all of the arguments conclude that a Catawba-type order, modified to lessen the costs in this case, is warranted. There could be significant costs entailed in requiring reproduction and service of papers on all six Intervenors. We think that would be unnecessary. Such costs could be very much reduced, however, by providing for service on a lead Intervenor representing other Intervenors living in the same area. Thus we can provide for service on the Kudzu Alliance as the lead for all Intervenors in the Raleigh area -- themselves, CANP and Dr. Wilson. We can provide for service of a second set of papers on CHANGE as the lead for all Intervenors in the Chapel Hill-Durham area -- themselves, CCNC and Mr. Eddleman. The Intervenors can arrange among themselves to share access to these papers.

Accordingly, the Applicants are ordered, in addition to their other service obligations,[22/] to serve copies of all relevant documents they generate for review by the NRC Staff in connection with this proceeding, including amendments to the FSAR and other written technical

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21/ Motion from Dr. Wilson to Compel Service of Documents dated August 20, 1982; CHANGE Answer in Support of Motion dated August 30, 1982; Eddleman Response to Applicants' Position dated August 17, 1982.

22/ We expect the Applicants to adhere to their commitment at the conference to serve the emergency plans on each Intervenor.

documents. Such documents shall be served upon Kudzu Alliance and CHANGE, the representatives of all Intervenors for this purpose.

G. Discovery, Schedules for Further Action, and Objections.

Discovery is authorized as of the date of this Order. See 10 CFR 2.740, et seq. The scope of discovery is confined to the contentions we have admitted.

The Board is not at this time establishing schedules for discovery or further actions in this proceeding primarily because the Staff's required documents and the emergency plans are not yet available. We will consider suggestions from the parties for schedules as those documents become available, beginning presumably with the draft environmental statement.

Orders of this kind are governed by 10 CFR 2.751a(d), which provides in pertinent part that --

> Objections to the order may be filed by a party within five (5) days after service of the order, except that the staff may file objections to such order within ten (10) days after service. Parties may not file replies to the objections unless the Board so directs. The filing of objections shall not stay the decision unless the presiding officer so orders. The board may revise the order in consideration of the objections presented and, as permitted by § 2.718(i), may certify for determination to the Commission or the Atomic Safety and Licensing Appeal Board, as appropriate, such matters raised in the objections as it deems appropriate. The order shall control the subsequent course of the proceeding unless modified for good cause.

In view of the number and complexity of contentions in this case, the Applicants and the Intervenors may mail any objections to this Memorandum

and Order no later than October 15, 1982. Any Staff objections shall be mailed by October 25, 1982.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD *

Glenn O. Bright
ADMINISTRATIVE JUDGE

Dr. James H. Carpenter
ADMINISTRATIVE JUDGE

James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,

this 22nd day of September, 1982.

* The Board gratefully acknowledges the expert assistance of David R. A. Lewis in the preparation of this Memorandum and Order.