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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the ATOMIC SAFETY AND LICENSING BOARD
James Kelley, Chair; Glenn Bright; James Carpenter

In the Matter of Carolina Power & Light Co. and N.C. Eastern Municipal Power Agency Shearon Harris Nuclear Power Plant Units 1 and 2	)	Dockets 50-401 and 50-400 O.L.

Wells Eddleman's Objections to 9/22/82 Board Memorandum and Order "Reflecting Decisions Made Following (Special) Prehearing Conference"

As stated at pages 79 and 80 of the Board's 9-22-82 Order Wells Eddleman, intervenor pro se, files these objections to that Order.

Judge Kelley stated at the special prehearing conference July 13-14 1982 that in dropping a contention, an intervenor was not conceding that it was no good. There are good contentions one simply doesn't have time or resources to pursue. Based on this understanding, I am not going to raise objections to most of the Board's rejections of my contentions. In the absence of new information I will let them be, though new information (e.g. a nuclear accident, technical reassessment, observation or new witness) might well convert one of these abandoned contentions to a valid one in the Board's estimation. In failing to object, I do not withdraw any of the supporting information for the contentions the Board has rejected, nor do I concede (except where I have done so on the record and with explicit basis) that any such information is not valid. I now raise 17 objections:

(1) My strongest objection is to the Board's order on service (or should I say non-service) of CP&L's documents.

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I telephoned all the petitioners/intervenors, including Dr. Lotchin, and they all state the Board had not consulted them about this "send it to two" plan for the seven of us. Nor had I been consulted. The board does not appear to be taking account of the circumstances of the intervenors, particularly Dr. Wilson and mme.

With respect to the "key documents" this Board order requires much less of Applicants than they were willing to commit to (in their spasm of underlining, 8/10/82, re service of documents to intervenors).

Nor is it clear that I am any better off than when only the LPDR in Raleigh received the documents, since they may be piling up unopened on someone's desk without my having any guaranteed way to find out if they have arrived. At least with the LPDR or the PDR I can call and be assured that someone is able to find out what documents are arriving. I have told the Board repeatedly that it is quite a drain on my time to commute (1 hour round trip at a rough minimum) to either Raleigh or Chapel Hill, particularly (I now emphasize) with my working more than one job and needing to do consulting work on time schedules set by clients. I am already turning down remunerative work in order to keep up with this case. The Board seems to have a greater fear of depleting Applicants' treasuries (though I am not aware of any challenge, much less a successful one, to recovery of nuclear licensing expenses in North or South Carolina for CP&L) than of imposing greater difficulties upon intervenors like myself. (I'd think Dr. Wilson, as a family physician, would be subject to like demands on his time, but he'll have to speak for himself.)

I wonder, am I to be considered "in possession of" a document that may have been delivered to CHANGE/ELP? Or to Kudzu Alliance's attorney? Am I presumed to be aware of their having it, or are

they expected to telephone or write to me when things come in from CP&L? That is, of course, an expense and a drain on their time and mine. Really, it doesn't seem reasonable. Nor is this scheme a way to avoid delays, since slower delivery of information to petitioners/ intervenors would simply delay the times when they can file contentions based on new information.

I believe that all petitioners are fully entitled to all documents CP&L files with the NRC, served upon us. Since there are clear cases of mismatching expectations and assumptions in this case already, let me be clear: I am not stating positions to bargain back from here. Like the Quakers, I am asking for what I believe is justified.

But if for the sake of argument the Board did not intend to foul up the intervenors by this "serve two in place of sever" scheme, let me suggest a nearly equivalent alternative: In Raleigh and Chapel Hill, where there are LPDRs, require the Applicants to hand-deliver of mail in their ~~[illegible]~~ documents (sent to NRC) directly. Thus, intervenors in Raleigh and Chapel Hill will have prompt access to same. For intervenors outside Raleigh and Chapel Hill (i.e. Dr. Wilson and me), order CP&L to mail copies of their responses, filings etc (inclusive) to us directly. After getting myself a hernia fixing the Raleigh LPDR's copying machine I think I've gotten beyond the level of "reasonable hardship" as the Board put it. I'd still have to go to Raleigh and copy I&E reports, etc, that NRC puts out but does not serve, but at least I wouldn't have to incur time, gas and copying expenses so often. As a consultant, I am often forgoing income by spending time in transit, plus having to make copies on equipment that is relatively slow, where I have to make way for other users, and which despite the best efforts of its maintainers, breaks down all too often. I do not think a war of attrition approach to this case will be productive; but if it appears such will be adopted,

I do not intend to easily attrite, and I know the Golden Rule.

To summarize: (A) the Board advances no reason for not serving every intervenor with CP&L-generated documents, except cost to CP&L. (B) There is no indication these costs are unreasonable to an outfit with cash flow like CP&L's or NCEMPA's; indeed, I would be surprised if they amount to a like amount of CP&L's budget as typing, copying and mailing this one response is, from my budget. CP&L has not been denied dollar-for-dollar recovery of such costs (nor of the costs of filing legal objections to serving such documents, which may be a substantial cost in itself, to the average person's way of thinking). (C) The arrangements and considerations necessary for Intervenors to deal with this Board scheme are most unclear, but they take little or no account of any of our circumstances, certainly not mine. (Unless you think being in the "Chapel Hill-Durham area" is an allowance. I'm almost exactly the same distance and travel time from the Raleigh and Chapel Hill LPDRs) (D) The Board should reverse itself and order service of CP&L's documents on all the intervenors. We have to serve everything on them and all the others too. How can it be unreasonable for me to serve 11 others (12 if you count NRC Secretary) but not for CP&L to do likewise?

(I would point out here that I've never charged CP&L for extra copiesof documents provided to them at their request in this case. I imagine after the time and chain of command it would take to provide payment, the ratepayers of CP&L would end up paying 5 or 10 times my cost, or more; but such is not the case with a service list, which goes through normal channels. The marginal cost of extra copies is, of course, less.)

(E) since this is a general issue in licensing, if the Board does not reverse itself and order all parties served, I request certification or referral to the Appeal Board on this point.

With respect to the contentions, except as noted below, I have no objection to the Board's deferrals of various contentions. I am pursuing security contentions and have retained experts. For this topic (security) alone, I have retained Deborah Greenblatt, attorney, but she does not represent me on any other matter. I have also sought legal counsel with respect to the two issues the Board ordered legal briefs on. However, I have been limited in my ability to travel (due to illness) and my attorney will move for an extension of time in which to file said briefs, before October 22, so that we have time to ~~x~~ meet and consult on these points.

(2) I presume that when the Board rejects a contention as redundant of an admitted contention (joint, or my own) that this is really saying "you could and should have let this one be superseded too" instead of saying that the equivalent contention is valid but the rejected one is not. If the Board intends any other interpretation, then I object to the rulings on "Eddleman 1 amendment" and Eddleman 2,15(FR/health effects),18,19,24,27,29(E)(H) and (health effects),34,41(insofar as it implicitly rejects the 6/28/82 amendment and statements at the special prehearing conference re QA/QC),42 and 7(re 132, Order at p.50),43, 54(2d) re security,61B,63,64(d) and(e),67(NEPA),76,77,83,84,96,~~xxxxxxx~~ ~~xxx~~,109(chemicals),111, as saying that the same contention is both admitted and rejected (an illogical position). I also ask the Board to clarify whether it has selected the better language between redundant contentions or whether (as it appears from the Order) the Board simply rejected all later contentions (in numerical order) on a topic as redundant of a previous accepted one. If the latter is so, I ask the Board to refer to the language of all such "superseded by the Board, as redundant" contentions in the same way it considers superseded contentions, at minimum. (see Note 5, Order, pp 10-11) These contentions reflect my intent

at the time they were filed, and each is as representative of my intent as the others, where several cover similar topics.

(3) It appears the Board did not take into account the 6/28/82 amendments I filed, but I find no ruling on their admissibility. Have I overlooked such? If there is none, I object to the Board's failure to consider such amendments. I also object to the Board's not considering them (if the Board has so ruled), since they were timely filed under the rules (6.28.82 amendments incorporated here by reference, for discussion of timely filing therein).

(4) The Board misunderstands at least part of the intent of 37(a). It is not about psychological stress (e.g. worry that a nuclear plant near you will have a major accident and harm you, or give you cancer from normal operation). It is about the pain and suffering of cancer victims (and others) when the health effects (cancer, retardation, etc.) that everyone, including Applicants and Staff, admit will occur, do occur. That is, 37(a) is about the actual pain and suffering that will result when the health effects of the Harris plant do occur. It says they should be taken into account under NEPA.

Surely the Board does not say that cancer victims, and their friends and families, do not suffer direct pain and suffering. (If they do, I'll be glad to take them on a visit to the Ronald McDonald House in Durham, where young cancer victims and their families stay during treatment, assuming these folks were willing to meet with the Board.) We're talking about the real pain and suffering, like that involved in having a broken leg, not the psychological stress one might experience wondering if one's leg is going to be broken.

There are clear errors in the transcript on this point, including one that misstates my position entirely by omitting a "don't". The

correct reading is "people don't just die painlessly ... they suffer". I expected at least one of the Board to remember that accurately, and in any event have not had time to correct the transcixript, and Judge Kelley said it was no rush to do so.

I ask ~~xx~~ the Board to reconsider 37a in light of the above which is on the record. I object to the mischaracterization of actual pain and suffering as "psychological stress" and point out that by no stretch of the imagination ~~x~~ can the Commission's statement on psychological stress be construed to include this sort of pain and suffering as "psychological stress". If the Board holds its position, I ask you to refer this matter to the Appeal Board, since it affects the interpretation of NEPA by NRC and can be expected to recur in other licensing proceedings.

(5) With respect to Table S-3, I am no lawyer, but the Board's stated position reminds me of the diehard Southern (or other) segregationist who stands in the doorway until federal troops force compliance with a court order. The Court of Appeals ~~x~~ has not stayed its order completely invalidating Table S-3. I agree with the points made by CHAUGP/ELP re this, including their objections. The Court refused rehearing en banc.

Yet the Board seems to say, "we can't comply with the Court" (a major general) "because the NRC (our colonel) won't let us." That again makes no sense. What is the Board going to do if the Supreme Court denies certiorari, or the NRC loses in the Supreme Court? The Board does not appear to deny the Court's jurisdiction, but seems to say, like Andrew Jackson, the Court "has made its decision, now let (them) enforce it" if they can. Middleman 8(a) and 47, which the Board says attack Table S-3, leave the Court behind them so far. I therefore object to the Board's rejecting them, in effect overruling the DC Circuit Court of Appeals, which the Board cannot do.

(6) There are several more of my contentions that are involved with litigation. On these, intervenors have not yet won. But should the Supreme Court or the World Court accept the position of plaintiffs in Honicker v. Hendrie, contentions 5 and 6 would be valid.

(7) I myself, with 6 others, am suing the NRC for violating the intent of Congress and the Administrative Procedure Act in adopting the 1982 rule on financial qualifications, under which my contentions 58(2d),66,94 and 122 were rejected. The rule was the sole reason for these rejections.

Re both (6)+(7): I do not say the Board should have admitted these contentions now. But notice the asymmetry. When the NRC rule has lost in a court, and the order invalidating the rule is not stayed, the Board upholds the NRC position over the Court's. When intervenors have lost at the NRC, and have the action before a court, the Board also upholds the NRC. Heads, NRC wins; tails, intervenors lose. That's unfair.

(8) Re Contention 87, which is really about psychological stress, and says so, I believe NRC misread the Court decision in PANT v NRC. I adopt CHANGE/ELP's arguments on this point (conserving my energy and yours, I hope). I object that the Board cannot rely on a policy statement as unsupported as NRC's on psychological stress is. The Court said TMI obviously was enough effect to warrant NRC's consideration. That is, it was clearly plenty, more than enough. NRC then mis-interprets this to say "If it's not TMI, it's not psychological stress." Moreover, this ruling tries to reach the merits of how much psychological stress exists around the Hanni's plant (by saying it doesn't match TMI, therefore it's negligible) without evidence on how much psychological stress TMI is causing. [illegible] "unsafety" ratings of 8,9 and 13 for its 3 reactors (typical is 1.5, higher is higher "unsafety") from NRC itself (see [illegible]-82-26), NRC, 7/26/82) and a "far below average" rating for safety is surely nothing to inspire confidence on minimize stress. I have previously pointed out

that CP&L's Brunswick plant had much lower safety ratings from NRC than did TMI-2 before the 3/28/1979 accident. See in this docket, Board Exhibit 8, Board Notification, in the remand hearings on CP&L management capability in 1979. I should think that is basis enough to admit a contention on psychological stress, and I object to the Board's not having admitted Eddleman 87 therefore.

(9) With respect to Eddleman 78, it is indeed handwritten, but it is printed in letters about 1/4 inch high, except for a few interlineated words and phrases. While it is clear the Board can reject it, I re-call your attention to p.247 of my 5-14-82 filing of contentions, wherein I give reasons for the interlineations etc. and ask the Board to consider the submission properly filed and "to afford me the opportunity to explain, correct, retype or have retyped, clarify or otherwise fix any part of this document or all of it which for any reason is not clear, readable or otherwise usable in this proceeding, since I could not reasonably have produced and filed it by 14 May 1982 other than in the form it is in ..." (at 247) I believe I have stated I wrote out #78 when I had not access to a typewriter, but did have space on a sheet about to be copied for submission. I raise this point because someone seeing the Board's order without the actual hand-printed contention could assume it was in some illegible cursive writing, etc., and such a ruling could then be used to nitpickingly disregard someone else's contentions in the future, for some minor technical rule violation in formatting the contention. Since Shearon Harris is not the only nuclear plant that could have a nuclear accident adversely affecting me personally (it's amazing how many are near railroads, highways and airports of significance, which I may have to travel through to work), I have a direct interest in this. It also seems to me that Eddleman 78,

if considered, would be properly deferred until NRC completes its work on Station Blackout(Sref p.36, NUREG-0606, Eddleman #78). My typing is still in trouble, but I'm nursing many viruses and have to get this done to meet the filing deadline.

A connected point here: The Board appears to say it simply adopted the plain meaning of words in place of my definitions. Those definitions (Contentions, 5/14/82, p/22 top) are intended to operate"in addition to the plain meanings" (ibid) only where it is not "too~~x~~ specific, or overly broad" ~~in~~ ibid. p.2Isection (I)). Thus, the Board has done (within its interpretation) what I asked.

(10) The argument re Harris Unit 2 is getting ridiculous. While the Board relies on Applicants' attorneys stating they "fully intend" to build Harris 2, CP&L's senior officials are announcing that they will spend no additional funds on the unit, and have previously testified (NCUC Docket No. E-2 sub 444) that they were only spending carrying charges on the unit. I believe CP&L may cancel it as soon as they can get another rate hike.

But I object strenuously to the Board's ~~[redacted]~~ dealing with Unit 2 as substantially completed. If a unit ~~[redacted]~~ (FOUR PERCENT) complete, on which no further funds are presently budgeted for actual construction, is "substantially completed", which is an implicit requirement here (explicit in McGuire, 9 NRC ~~[redacted]~~ 515), for purposes of assessing its neededness, compliance with construction and operating requirements, and so on, then there is something substantially wrong with the Board's view. You can't have a unit be "completed" and reject contentions (e.g. Eddleman 14, 15) because it is, and then say, well, we know it really isn't completed for other purposes.

The Board correctly points out that intervenors raise contentions as a matter of right. I hold that the Harris Unit 2 is not and cannot

be considered "substantially completed", and thus the need for power issue, alternatives, etc., are real issues most certainly with respect to Unit 2. (11 begins here) Eddleman contentions 17 and 20 address this point explicitly. The NRC's new rules on need for power and alternatives are only there for avoiding unnecessary ~~xxxx~~ litigation on plants substantially completed. (see pages 78 and 80, Eddleman contentions, 5/14/82).

(11) I therefore object to the Board's rejecting Eddleman #17, because the Board says "construction costs are sunk" (while CP&L is refusing to sink the money into them, in fact) and likewise I object to the Board's rejection of Eddleman #20, which alleges that Shearon Harris #2 will not in fact be built. The Harris 2 construction costs are not sunk, but like the Titanic, Harris 2 may soon sink. The lawyers' "intend" to support it. The Board is simply wrong as a matter of fact on the ~~[illegible]~~ Completion of Harris 2 -- NUREG-0030 shows it. Also please note that Eddleman #17 applies to cost increases after the present, i.e. 5-14-82 when filed. Harris 1 just went up to over $2~~1~~.165 billion, and Harris 2 to $1.~~8~~6 billion, or so, per CP&L's 6-30-82 Quarterly CWIP Progress Report to NC Utilities Commission. That was before the current delays in both units. These costs are completely out of line with the CP. Is a 2.206 request the way to deal with this, instead of this Board? Somebody at NRC ought to be less than blind to this cost escalation.

(12) I object to the Board's rejection of Eddleman 115 re ATWS. The Board quotes the NRC as saying the likelihood of ATWS is low in the next 2 to 4 years. So is the likelihood of Harris operation, which CP&L has now put off until early 1986 at the earliest. (Unless they use the "$8,784 million" rate hike they just got see Flynn, CP&L to ASLB 6 October 1982. I believe this is a typo.) Therefore it would seem appropriate to defer Eddleman 115 until

that rulemaking is complete. As the Board points out, intervenors raise contentions as a matter of right (Order, p.76 n. 19), and this right is better than raising a 2.206 petition later. My contention 115 does not attack the rulemaking. It simply alleges a number of problems, including the Harris-specific steam generator problems, which could compound an ATWS. Since the rulemaking may well be finished before the Harris plant is, deferring this contention makes more sense than rejecting it.

(13) The Board misunderstands Eddleman #105. It says that the basis for setting the Exclusion Area and Low Population Zone is to be set based on an accident more severe than the maximum credible accident (which before TMI was the design basis accident). Since TMI happened, an accident beyond design basis is for real. Therefore the conservatism of 10 CFR 100.11(a) is not maintained. See pp 210-211 of Eddleman 5-14-82 contentions.

Eddleman 105 goes on to show how TMI exceeded the "conservative" assumptions of the basis accident (beyond design basis) used in TID-14844 of 1962.

The point is, 10 CFR 100.11(a) requires the EA and LPZ to be set based on an accident more severe than any considered credible. The TMI accident was more than what was considered credible Before that; but 10 CFR 100.11a, per Farley, 7 NRC ATC 98 at 103, requires an even more severe hypothetical accident to be used in setting up the EA and LPZ. The margin between the "credible accident" and the 10CFR 100.11a "not exceeded" accident has been eroded since TMI occurred between the Harris CP and the Harris OL.

Therefore, Eddleman 105 asks the Board to remedy this problem by appropriately expanding the EA and LPZ. This contention should either be admitted, or deferred as related to emergency planning

(14) The Board's ruling on Eddleman 116 takes no account of what was said about fire protection at the special prehearing conference, nor the 6/28/82 amendments. I object to ruling against this contention in its unamended form. I have pointed out deficiencies in the FSAR and the fireprotection program showing enough basis to admit a contention that CP&L's fire protection for its computer systems is not adequate, particularly in respect to radiation monitoring/display.

(15) I object to the rejection of Eddleman #131, which describes a credible means whereby stud bolt_s could come into contact with borated water. All the FSAR says is that they won't let it happen. They don't say how. This contention is admissible: it is specific, it has basis, it shows a real risk to public health and safety.

(16) I must say I'm confused by the Board's statement that the motions submitted with my 5-14-82 contentions are denied because they don't comply with 10 CFR 2.730. They are in writing, they were served, they state the grounds for the relief sought, describe the relief sought, and so on. The only difference I can see is they are not separated out with a nice cover on each one saying "Motion xx for Such and Such". I can't find anything explicit in 2.730 that my motions don't comply with. As to arguments, they don't seem to be covered in 2.730. (Order, pp34-35). I will gladly comply with the Board's order here, but what does it mean? I joined in [illegible]'s motion re Rapp's 2, but that seems "over-ripe".

This may not be [illegible]

(17) I still intend to submit the required affidavit(s) and petition for 2.758 waiver on some issues. However, I was held up by my hernia operation and recovery, and now I await CP&L's ER amendment giving operating data per NRC's new "power is always needed" rule. This will give me a clearer idea of what affidavits are needed.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of CAROLINA POWER & LIGHT CO. Et al.)
Shearon Harris Nuclear Power Plant, Units 1 and 2)

Dockets 50-400
and 50-401 O.L.

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CERTIFICATEOF SERVICE

I hereby certify that copies of Wells Eddleman's Objections to 9/22/82 Board Memorandum and Order (post-special prehearing conference) HAVE been served this 15th day of October 1982, by deposit in the US Mail, first-class postage prepaid, upon all parties whose names are listed below, except those whose names are marked with an asterisk, for whom service was accomplished by _____

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