

January 21, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO PETITIONER PHYLLIS LOTCHIN'S  
CONTENTIONS TO AMENDMENT 5 OF THE SHNPP ENVIRONMENTAL REPORT

By a pleading dated January 10, 1983, and denominated "Contentions to Amendment 5 of the SHNPP Environmental Report", Petitioner Phyllis Lotchin submitted comments on §§ 8.2.2.2(g), (i), (k) and (l) of the Harris Environmental Report -- Operating License Stage ("ER"). Ms. Lotchin previously filed four enumerated contentions with the Board on May 14, 1982. In its Memorandum and Order (Reflecting Decisions Made Following the Prehearing Conference) dated September 22, 1982, the Board rejected Lotchin Contention 1 and deferred ruling on Lotchin Contentions 2, 3 and 4 until promulgation of the emergency plans for the Harris plant. Order at 73. Since Ms. Lotchin

failed to plead a valid contention, she was not granted party status in this proceeding. However, the Board committed to reexamine the question of her party status after the availability of the Harris emergency plan presented an opportunity for Ms. Lotchin to revise her contentions based on her review of those plans. Order at 3. Applicants are treating Ms. Lotchin's January 10, 1983 filing as a motion for leave to amend and supplement her petition to intervene by filing new contentions.

Ms. Lotchin's filing of new contentions is untimely. While she references Amendment 5 to the Harris ER, she addresses no new information contained therein in formulating her new contentions.<sup>1/</sup> Ms. Lotchin's Motion must be denied because she has failed to explain what is new about each proposed contention and why it could not have been advanced previously, and because she fails to make the showing required by 10 C.F.R. § 2.714(a)(1) for late filed contentions. Furthermore, even if the contentions had been filed timely with the Board, each contention fails to meet minimum standards for clarity and fails to demonstrate adequate basis with requisite specificity. Ms. Lotchin's discussion regarding the cost of emergency planning for communities outside the emergency

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<sup>1/</sup> Section 8.2.2.2(1), added by Amendment 5 to the ER, deals with regulatory costs; Ms. Lotchin's comments, however, go to speculative costs that communities outside the emergency planning zone might incur.

planning zone is no more than an impermissible attack on the Commission's rules on emergency planning.

A. Timeliness

The five factors to be considered in determining whether a petition for a late-filed contention should be granted are set forth in 10 C.F.R. § 2.714(a)(1):

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Perhaps the most crucial of these factors is the requirement that intervenors must demonstrate good cause for their untimely filing. The proponent of a contention at this stage in the proceeding has the burden of explaining clearly, in appropriate detail, and separate from the rest of the contention, just what is new about the contention and why it could not have been advanced previously. Absent this explanation and absent a showing on the five lateness factors, a new proposed contention may not be considered. Duke Power Co. (Catawba Nuclear

Station, Units 1 and 2), Docket Nos. 50-413 and 50-414, Memorandum and Order (Reflecting Decisions Made Following Second Prehearing Conference), slip opinion at 7-8 (December 1, 1982). Ms. Lotchin has simply failed to address the Commission's requirements for the admission of untimely filed contentions. For this reason alone, Ms. Lotchin's motion must be denied.

B. Minimum Standards of Clarity and Precision

As the Atomic Safety and Licensing Appeal Board observed in Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 N.R.C. 559, 576 (1975):

The Applicant is entitled to a fair chance to defend. It is, therefore, entitled to be told at the outset, with clarity and precision, what arguments are being advanced and what relief is being asked . . . . So is the Board below. It should not be necessary to speculate about what a pleading is supposed to mean. (Emphasis provided.)

Ms. Lotchin has not stated one or more contentions with "clarity and precision." Her one page pleading is more appropriately described as comments on certain sections of the ER as amended. It is not up to Applicants or the Board to draft 2, 3 or 4 contentions or more from the comments which Ms. Lotchin sets forth.

C. Basis and Specificity; Challenge to Commission's Rules

Applicants have previously discussed the Commission's requirement that the contentions which a petitioner seeks to

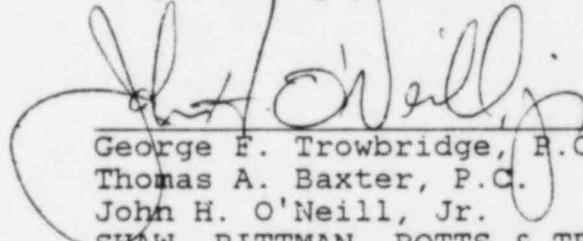
have litigated must set forth the bases for those contentions with reasonable specificity. See Applicants' Response to Supplement to Petition to Intervene by Wells Eddleman (June 15, 1982) at 3-7. In addressing her comments to ER §§ 8.2.2.2(g) and (i), Ms. Lotchin fails to provide the basis for her allegations of inadequacies regarding certain statements in the ER. Her one cryptic reference to a "recent study done for NRC by Sandia National Labs reported in Critical Mass, December, 1982" presumably refers to a report regarding the potential for radioactive contamination as a result of a worse-case accident. She does not in any way link this report to the possible impacts of normal operations of the Harris Plant on regional products.

Her comments with respect to ER §§ 8.2.2.2(k) and (l) simply are another way of raising her previously proffered contentions that emergency planning should be required outside the ten mile emergency planning zone (EPZ). Her earlier contentions are now recast in allegations that the cost of such emergency planning has not been considered in the ER. The Commission's regulations at 10 C.F.R. § 50.47(c)(2) establish that the plume EPZ shall consist of an area of approximately ten miles in radius around each nuclear plant. Therefore, to the extent that Ms. Lotchin contends that emergency planning actions are required for areas outside the ten mile EPZ, Applicants submit that it is an impermissible challenge to the Commission's regulations. See Applicants' Response to

Supplement to Petition to Intervene by Phyllis Lotchin, dated June 15, 1982, at 4-6; Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LPB-82-16, 15 N.R.C. 566, 582 (March 5, 1982). Again, Ms. Lotchin has provided no basis with the requisite specificity to support her allegations concerning the need for such activities and the resultant cost to local communities outside of the ten mile EPZ.

For all of the above reasons, Ms. Lotchin's Motion for admission of new contentions in this proceeding must be denied.

Respectfully submitted,



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