UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James L. Kelley, Chairman
Dr. James H. Carpenter
Glenn O. Bright

In the Matter of	Docket Nos. 50-400 OL 50-401 OL
CAROLINA POWER & LIGHT COMPANY, ET AL.	ASLBP No. 82-468-01 OL
(Shearon Harris Nuclear Power Plant, Units 1 and 2)	August 24, 1983

MEMORANDUM AND ORDER
(Ruling on Spent Fuel Transportation Contentions and Miscellaneous Motions)

I. Spent Fuel Transportation Contentions

In our initial rulings on contentions, we accepted two contentions, CCNC 4 and CHANGE 9, concerning the environmental impacts of transportation of spent fuel from other reactors to the Harris facility for the purpose of interim storage. Both contentions allege that a detailed site-specific analysis of such impacts is required, and that the Table S-4 values in 10 CFR 51.20(g)(1)(a)(ii) do not apply to this situation. In accepting these contentions, however, we stated our tentative view that the Table S-4 values, or some multiple thereof, might be applied to this situation. We expressed our intention to

reconsider this question in light of the Staff analysis in the draft environmental statement.*

At that time, certain very similar spent fuel transportation contentions were pending before the Licensing Board in the Catawba operating license case. The factual situations in the two cases are identical in all material respects. Catawba involved transportation of spent fuel from two other Duke Power Company reactors, Oconee and McGuire, to Catawba for interim storage. This case also involves transportation and interim fuel storage, the transportation to occur from Carolina Power and Light's Brunswick and Robinson facilities to the Harris facility. In both cases, the utility is committed to holding the volume of shipments to levels at or below those assumed in the development of Table S-4. In these circumstances, the Applicants and, ultimately, the Staff in Catawba argued that nothing beyond the Table S-4 impacts had to be considered.

The Catawba board agreed and rejected the spent fuel transportation contentions before it. That Board's Memorandum and Order analyzes the problem in detail; we need not restate it fully. The key points in the Catawba ruling are as follows:

> "The environmental costs associated with the shipments of spent fuel from Oconee and McGuire have already been taken into account and balanced against the benefits that those facilities will provide .... These environmental costs should not now be counted a second time. See Northern States Power Co. (Prairie Island Nuclear Plant), ALAB-455, 7 NRC 41, n.4 (1978).

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* See DES p. 5-30.

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"In view of Applicants' stipulation that the environmental impacts of fuel shipment to Catawba will conform to the values contained in Table S-4 ... we believe that Table S-4 and the March 1972 FES for Oconee adequately account for the environmental impacts of shipping spent fuel from Oconee and McGuire to a fuel reprocessing plant (or some other form of authorized disposal), including intermediate shipment to Catawba... If the Intervenors believe that they can make a prima facie showing that Table S-4 should not apply, identifying with reasonable specificity the environmental impacts that are not adequately accounted for by Table S-4, they may file a petition under 10 CFR 2.758 setting forth the special circumstances which would justify a waiver of the rule.

"We might assume, for the sake of argument, that there could be some incremental environmental impacts associated with the transhipment phase that are not accounted for in the earlier environmental reviews. But even under that assumption, an intervenor would be required to identify those impacts in a proposed contention with 'reasonable specificity.' DES contentions 10 and 19 do not identify any such incremental impacts; rather they refer in general terms to the environmental consequences of transhipments and to the possibilities of accidents. They accordingly lack the requisite specificity and are also rejected on that alternative basis." Duke Power Co. (Catawba Nuclear Station), Memorandum and Order dated February 25, 1983, pp. 5-7.

In his pleading of June 20, 1983 proposing new and previously deferred contentions on the Staff's DES, Mr. Eddleman has advanced a new Contention 25B regarding alternatives to transhipment of spent fuel to Harris, and has reasserted several previously deferred spent fuel transportation contentions (Nos. 25, 64D, 64E and 126X). Thereafter the Applicants filed a motion for reconsideration of our acceptance of CCNC 4 and CHANGE 9 and a response in opposition to the Eddleman spent fuel contentions.

The Applicants' motion views the spent fuel transportation situation here as identical to that presented to the Catawba Board, and

relies heavily on the Catawba rulings. Thus the Applicants argue that the impacts associated with transportation of spent fuel from Brunswick and Robinson were already considered in the licensing of those facilities; that no specific incremental impacts have been identified; and that even if the S-4 values were to be doubled or even multiplied severalfold, they would still be too small to affect the cost-benefit balance. They ask that CCNC 4, CHANGE 9, and all but one of the Eddleman spent fuel contentions be rejected. The NRC Staff filed a response fully supporting both the Applicants' motion and their opposition to the Eddleman spent fuel transportation contentions.

We have reviewed an opposition pleading from CCNC and a "MINI BRIEF" from Mr. Eddleman in support of these spent fuel contentions. Our basic problem with these submissions is that they either fail to distinguish (Eddleman) or simply ignore (CCNC) the Catawba ruling. Mr. Eddleman seeks to distinguish Catawba on the ground that "an extensive record, the Oconee-McGuire case specifically on spent fuel transportation by the utility in Catawba ... was available." We assume this refers to the separate spent fuel transportation case where a site specific environmental review was performed. See Duke Power Co. (Oconee/McGuire Spent Fuel Proceeding), 12 NRC 459 (1980). However, the Catawba Board held that a site specific review is not necessary and did not even refer to that spent fuel proceeding record.

Mr. Eddleman and CCNC attempt to identify particular significant impacts that would not be encompassed in Table S-4. Both point to the additional loading and unloading of fuel that would be necessitated by

the interim storage concept. Assuming for the sake of argument the significance of this additional activity, we do not think that it is included in the transportation contentions in question. As we view it, loading and unloading at the spent fuel storage pool are more directly associated with storage than with transportation. This is borne out by the fact that on-site loading and unloading is not covered by Table S-4, which is limited to transportation impacts outside the plant gate. See Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants, WASH-1238, p. 30. In any event, none of the contentions involved here refer specifically to risks of loading and unloading.

CCNC refers in addition to various other incremental activities associated with transhipment and interim storage but it does not explain how these activities could involve significant environmental impacts. Most of these activities -- e.g., additional security arrangements, extra checks of casks and safety equipment -- only appear to involve additional costs for the Applicants.

CCNC protests that the Applicants' approach would mean that "spent fuel could be shuffled about from reactor to reactor any number of times prior to final disposal without further consideration of the environmental consequences." CCNC envisions a nuclear "shell game" with "gypsy" spent fuel. But no such scenario has been described by the Applicants, and we are being asked to approve no more than they describe. Moreover, the "shell game" scenario implies that utilities

would shuttle spent fuel around the country merely out of whim and caprice. We decline to endorse that premise.

On the basis of the foregoing discussion, we conclude that the Catawba Board's analysis is sound and that the Applicants' motion must be granted . CCNC 4 and CHANGE 9 are dismissed from the proceeding. The pending CCNC Motion to Compel based on CCNC 4 is dismissed as moot. Eddleman 25B, 64D, 64E and 126X are rejected.

Eddleman 25 warrants separate discussion. The Applicants suggest that this contention be deferred pending further consideration of Eddleman 24, which was also deferred. Mr. Eddleman asks for a ruling on 25, but does not oppose continued deferral. For the reasons that follow, we are conditionally rejecting contentions 24 and 25. Mr. Eddleman is granted 15 days from the date of this Order to show cause why these contentions should not be rejected unconditionally.

Contention 24 seeks to raise security concerns about spent fuel transportation. We deferred a portion of this contention, noting that it would be "treated like the other security plan contentions." Memorandum and Order of September 22, 1982, p. 45. The Intervenors, including Mr. Eddleman, have already proffered various experts on the security plan for the Harris facility, and that review process is well along. If Mr. Eddleman had wished to pursue Contention 24, we do not know why he did not proffer a transportation security expert at the same time. Absent some convincing explanation, his failure to make a timely proffer of an expert on Contention 24 is sufficient reason to reject that contention.

Contention 25 begins by incorporating Contention 24 by reference. It goes on to argue that various alternatives should be considered because of the alleged security threat posed in Contention 24. This Board would not require analysis of the suggested alternatives unless and until there were proof that the alleged security threat is real.* Since the right to pursue that question apparently has been forfeited, this contention is also conditionally rejected.

II. Miscellaneous Motions

Several motions to compel discovery, a motion for an extension of time to conduct discovery, and a motion to modify the schedule are pending before the Board. We rule herein on those ripe for ruling.

A. Mr. Eddleman's Motion to Compel Discovery re Eddleman 29 and 37B

On July 11, 1983, Mr. Eddleman filed a motion to compel discovery on interrogatories concerning Contentions 29 and 37B to which Applicants had objected in their June 17, 1983 response to Mr. Eddleman's second set of interrogatories on these contentions. On July 26, 1983 Applicants supplemented some of these objections in an answer to Mr. Eddleman's motion.

In ruling upon the specific interrogatories, we have, in general, focused upon the relevance of the interrogatory to the

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* There is no occasion to compare these alternatives to the impacts associated with Table S-4 because those impacts are negligible. See Catawba ruling on spent fuel contentions, note 3.

contention, the reasonableness of its scope, and in some instances the extent to which the NRC Staff, as opposed to the Applicants, are in a better position to supply information in the areas requested.

1. Interrogatories Based on Contention 29

Contention 29 alleges that Applicants have underestimated radioiodine releases during normal operations and have failed to show that normal radioiodine releases will not exceed Appendix I criteria.

a. Interrogatory 29-1(g)

Interrogatory 29-1(g) seeks the model number, type, manufacturer, and cost of all radioiodine equipment to be installed at the Harris facility. Applicants object to providing information on the cost of any of the monitoring equipment on the grounds that such information is irrelevant to radioiodine release estimates or Appendix I compliance. They have provided the identifying information on environmental samples. Applicants state that they do not have the requested information on the in-plant monitors in the form requested by Mr. Eddleman, although they will have it prior to operation. At this time "[t]he information would have to be specially requested from the vendor." Applicants' Answer at 1-2. They do identify the vendor and refer Mr. Eddleman to Chapters 11 and 12 of the FSAR for information concerning the nature of the equipment.

Mr. Eddleman argues that cost is relevant to the quality of the equipment's performance, reasoning that more costly equipment may perform better, be more reliable or accurate, or have more extensive capabilities than Applicants' monitoring equipment. Secondly,

Mr. Eddleman argues that by knowing the cost of the equipment he can then compare those costs with the costs of other equipment that is superior in any of these respects.

Mr. Eddleman's request for information on the costs of all radioiodine monitoring equipment to be used at the Harris facility is denied. The cost of equipment is irrelevant to establishing Applicants' radioiodine release estimates or its compliance with Appendix I criteria. Even assuming that more expensive equipment might be "better", the issue is whether the Applicants' equipment is good enough to perform its intended function. Moreover, if Mr. Eddleman wishes to compare the performance capabilities of Applicants' radioiodine monitoring equipment with that used by others, he can do so without knowing the costs. Mr. Eddleman's request for information concerning the model number, type and manufacture of all the radioiodine equipment is granted to the extent that Applicants shall provide Mr. Eddleman with that information when they receive it. Applicants are not required to specially request this information from their vendor.

b. Interrogatory 29-1(g)(ii, iii and iv)

Interrogatory 29-1(g)(ii, iii, and iv) seeks all information known to Applicants concerning monitoring equipment and practices at other nuclear power plants. This interrogatory is overly broad and burdensome and is only tangentially relevant to the contention. Therefore, Mr. Eddleman's motion to compel responses to this interrogatory is denied.

c. Interrogatory 29-4(o)

Interrogatory 29-4(o) inquires about technical specifications at Robinson 2, Applicants' only operating PWR. Applicants object to providing this information on the grounds that the design at the Harris facility is so different from the design at the Robinson facility that the information is irrelevant to determining Applicants' compliance with Appendix I criteria. Applicants adequately distinguish the designs of the two plants at page 8 of their response. Moreover, Applicants indicate that no information that Applicants possess concerning Robinson 2 was used for determining radioiodine releases or Appendix I criteria at Harris.

Based upon the above representations, we find that the information sought in interrogatory 29-4(o) is irrelevant to contention 29. Therefore, Mr. Eddleman's motion to compel responses to this interrogatory is denied.

d. Interrogatory 29-6(f)(iii), (iv), (xiii), (xiv), (xv) and (xvi)

Interrogatory 29-6(f) seeks information concerning radioiodine traps, filters, and removal systems. Applicants object to providing information as to (iii) manufacturers of the components, (iv) dimensions of the components, (xiii) design life, (xiv) replacement schedules, and (xv and xvi) personnel exposures, on the grounds that the information requested has no probative value for resolution of Contention 29. They argue that the interrogatories concern "the reliability and design of Applicants' monitoring equipment," and that

the areas are beyond the scope of the contention. Applicants' Response at 10.

We accept Mr. Eddleman's argument that specific information concerning the monitoring equipment, such as manufacturers of the components, the dimensions of the components, the design life, and the replacement schedules, may be relevant to determining the adequacy of the radioiodine control system. The adequacy of the radioiodine control system in turn is relevant to determining whether Applicants can limit the releases so as not to exceed the Appendix I criteria. Therefore, Mr. Eddleman's motion to compel responses to Interrogatories 29-6(f)(iii), (iv), (xiii), and (xiv) is granted.

However, we find Mr. Eddleman's inquiry concerning radiation exposure levels to workers replacing components of the radioiodine control system to be too peripheral to the contention. Mr. Eddleman argues that if replacement schedules are not set properly, equipment might have to be replaced when the plant is "'hot' radioactively", and, therefore, when there would be higher levels of exposure to radiation. Mr. Eddleman's Motion at 9. Mr. Eddleman then reasons that the higher exposure levels might result in a deferral of repairs and replacement of equipment. Mr. Eddleman seeks to determine the anticipated radiation exposure to personnel involved in the replacement of the equipment in order to assess how that factor might affect the timely replacement of the equipment which in turn might affect the equipment's reliability. We have accepted the premise that the equipment's reliability is relevant to determining the adequacy of

the radioiodine control system. However, the connection between radiation exposures to personnel replacing parts and radioiodine releases is too tenuous even for purposes of discovery. Moreover, Mr. Eddleman's concern about radiation exposure levels seems to relate to their effect on replacement schedules. We have granted Mr. Eddleman's request to compel Applicants to directly respond to the interrogatory concerning replacement schedules. Therefore, Mr. Eddleman's motion to compel discovery on Interrogatory 29-6(f)(xv) and (xvi) is denied.

2. Interrogatories Based on Eddleman's Contention 37B

Contention 37B alleges that the NRC Staff, the Applicants and the BEIR Committee have underestimated the risks from radiation exposure.

a. Interrogatory 37B-1(c) and (d)

Interrogatory 37B-1(c) and (d) requests all information in Applicants' possession that indicate that the NRC, its models, BEIR III, EPA, Applicants, or its models underestimate radiation exposure to humans, animals, food, crops, air or water within 50 miles of Harris, or in connection with any nuclear power plant, underestimate the incidence of disease due to exposure to radiation or radioactive material.

This interrogatory is overly broad. To respond fully to the interrogatory, Applicants would be required to conduct extensive research through their files. Applicants have no obligation to conduct Mr. Eddleman's research for him. That would constitute an impermissible shift of Mr. Eddleman's burden of case preparation. Mr. Eddleman

suggests as an alternative that Applicants allow Mr. Eddleman access to their files for him to do the research himself. Applicants have no obligation to open their files to what would amount to a fishing expedition by Mr. Eddleman. Therefore, Mr. Eddleman's motion to compel discovery on Interrogatory 37B-1(c) and (d) is denied.

We note that the NRC Staff addresses in Section 5.9 of the DES the radiological impacts associated with the Harris facility and with nuclear power plants in general. Interrogatories on this topic should more appropriately be addressed to the Staff. Mr. Eddleman may submit an interrogatory on this subject to the NRC Staff, if he has not already done so. However, the interrogatory must be more sharply focused so that it is not unduly burdensome on them.

b. Interrogatory 37B-2

Interrogatory 37B-2 requests information that Applicants have concerning documents cited by Mr. Eddleman in his response to Applicants' first round of interrogatories on Contention 37B. The cited documents are those that Mr. Eddleman identified as supporting his contention. In particular, the interrogatory asks whether Applicants prepared (or had someone else prepare for them) any study of the documents cited; if so, who made the study, when was it made, what were the results, and did Applicants intend to offer the study into evidence. Although Applicants initially objected to the interrogatory in their response to Mr. Eddleman's interrogatories, they adequately answered the interrogatory in their answer to Mr. Eddleman's motion. Therefore, Mr.

Eddleman's motion to compel responses to this interrogatory is denied as moot.

c. Interrogatory 37B-3(a),(e) and (k)

Interrogatory 37B-3(a),(e) and (k) requests information concerning diseases and other health effects of radiation. Applicants note that this subject is not analyzed in the ER, but rather is addressed by the NRC Staff in the DES. Mr. Eddleman's motion to compel discovery on this interrogatory is denied. As we stated in our discussion concerning interrogatory 37B-1(c) and (d), supra, interrogatories on this subject are more appropriately directed to the Staff because it is their primary responsibility to analyze radiological impacts. Mr. Eddleman may therefore direct these interrogatories to the NRC Staff, if he has not already done so.

B. Mr.Eddleman's Motion for an Extension of Time for a Second Round of Discovery on Environmental Contentions

On June 26, 1983 Mr. Eddleman filed a motion for an extension of time:

1. Until July 20, 1983 to file a second round of interrogatories on Eddleman Contentions 29 and 37B; and to Staff on all environmental contentions; and

2. Until 15 days after receipt of answers pursuant to motions to compel to previous interrogatories on Contentions 29, 37B, 67, 75, 80, 83/84 and other environmental contentions to file a second round of interrogatories on these contentions.

Applicants filed an answer to Mr. Eddleman's motion on July 12, 1983 in which they indicate that they had agreed to Mr. Eddleman's first request, but they oppose his second request. The NRC Staff did not file an answer, but Mr. Eddleman represents at page one of his motion that the NRC Staff agreed not to oppose the requested extension of time. We also note that in Applicants' Motion To Modify The Schedule For Filing Motions For Summary Disposition On Environmental Contentions, dated August 18, 1983 (and discussed, infra), Applicants indicate at page 2 that with respect to Eddleman Contentions 29/30 and 37B, the parties mutually agreed to extend the discovery schedule. Under their agreement final responses to discovery of these contentions were due August 19, 1983. Therefore, we assume that Mr. Eddleman's motion for an extension of time until July 20 to file a second round of interrogatories on Contentions 29 and 37B is now moot.

Mr. Eddleman's other request for an extension of time to file another round of interrogatories 15 days after receipt of answers pursuant to motions to compel (that may or may not be granted) is denied on the ground that it is premature and speculative. If the motions to compel are granted and the answers provided pursuant to them are inadequate, then Mr. Eddleman will not be prejudiced by this ruling from filing a motion at that time in which he makes a specific showing of good cause and need, and in which he addresses the resulting impact on the schedule.

C. Applicants' Motion to Compel Discovery of Joint Intervenors

On August 11, 1983 Applicants' filed a motion requesting the Board to order Joint Intervenors to respond by August 19 to "Applicants' Interrogatories and Request for Production of Documents to Joint Intervenors (Third Set)", dated June 30, 1983. Answers to the interrogatories were due July 19, 1983 and a response to the document production request was due July 25, 1983. Joint Intervenors responded to the motion in an August 16, 1983 letter to the Board that they are incapable of responding to the discovery request prior to some time in September because of Joint Intervenors' limited resources. In a letter dated August 5, 1983 from Mr. Payne, counsel for Joint Intervenors, to Mr. Baxter, counsel for Applicants, Mr. Payne explains that the bulk of the requested information is in Mr. Eddleman's files and that he is so swamped with other matters in the Shearon Harris case that he will not be able to search for the information prior to September.

Although we recognize that the resources of Intervenors are more limited than those of Applicants and Staff, Intervenors must still comply with the schedule set by the Board. While the Board is willing to make adjustments to the schedule when necessary, Intervenors cannot ignore deadlines on the grounds that they have limited resources to handle in a timely fashion all that they have undertaken in these proceedings. Joint Intervenors must deliver the requested responses to Applicants' counsel, Ms. Flynn or Mr. Carrow, at Carolina Power and Light offices in Raleigh, North Carolina, no later than Wednesday,

August 31, 1983. The Joint Intervenors were advised of this obligation by telephone on August 24, 1983.

D. Applicants' Motion to Modify the Schedule

On August 18, 1983 Applicants filed "Applicants' Motion to Modify the Schedule for Filing Motions for Summary Disposition on Environmental Contentions." They request extensions of the deadlines for filing motions for summary disposition only for the following environmental contentions: Wilson I(b), I(d), I(e) and I(g), Joint Contention II, and Eddleman 29/30 and 37B.

Applicants request an extension of time until September 15, 1983 to file motions for summary disposition on the Wilson contentions because Applicants and Mr. Wilson are engaged in informal discussions concerning those contentions. Applicants represent that Mr. Wilson supports the motion. Applicants request an extension of time until September 19, 1983 for Joint Contention II and Eddleman Contentions 29/30 and 37B because discovery has been delayed on these contentions. They represent that they have discussed the motion with Mr. Eddleman and the Staff and that neither opposes the motion.

Applicants' request for an extension of time until September 15, 1983 to file summary disposition motions on Wilson I(b), I(d), I(e) and I(g) is granted. Responses to those motions shall be filed by October 11, 1983.

In light of our ruling on Applicants' Motion to Compel Discovery of Joint Intervenors, supra, granting Intervenors until August 31, 1983 to file responses to the interrogatories, we are granting Applicants an

extension of time until September 30, 1983 to file motions for summary disposition on Joint Contention II and Eddleman Contentions 29/30 and 37B. Responses to these motions shall be filed by October 26, 1983.

E. Applicants' Request for an Extension of Time to Respond to Mr. Eddleman's Motion to Compel Discovery on Contentions 64F and 67

On August 22, 1983 Applicants requested by telephone an extension of time until August 31, 1983 to respond to Mr. Eddleman's "Motion to Compel Discovery re Original Applicants' Responses on 64F, 67, and G8 and G9", dated August 8, 1983. Applicants made a showing of good cause for the requested extension. Therefore, the request is granted.

THE ATOMIC SAFETY AND
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Bethesda, Maryland

August 24, 1983.