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March 1[1]

February ~~20~~, 1984

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION





BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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| In the Matter of<br><br>CAROLINA POWER AND LIGHT CO. et al.<br>(Shearon Harris Nuclear Power Plant,<br>Units 1 and 2) | Docket 50-400 OL<br><br>ASLBP No. 82-468-01 OL |

Wells Eddleman's Answer to Staff on Summary Disposition of Eddleman Contention 65, and to Applicants' Answer of February 14 concerning the same

On 16 February, 1984, I received both Staff's "Response in Support of Applicants" on Summary Disposition of Eddleman contention 65, and Applicants" Answer to Motion for Extension of Time thereon. This answer addresses new information in the Staff response (cf. 10 CFR 2.749) as it affects the Applicants' Answer. Under 10 CFR 2.730 I have requested leave to file this short response to that Answer. (and received oral approval from Judge Kelley 2-16-84) The Staff Response shows that there have existed honeycombing/void problems in the Harris base mat (Bemis affidavit, p. 3. accompanying Staff Response). Applicants' Answer says I need show discovery useful. I had thought it obvious that I need to examine the concrete pour package data in order to assess the adequacy of the work.

I haven't been able to locate my transcripts of the conference calls on this subject, but I recall Judge Kelley in the second call saying words to the effect that Applicants should either supply me the pour packages or the requested information. I think they should supply this information before summary disposition comes to ruling.

[1] This response was to have been filed February 20; illness prevented its filing before now. Judge Kelley is aware of this illness as we discussed it by telephone. He granted leave to file this today.

It is a logical contradiction to say (as Applicants appear to ) "your contention should be dismissed for lack of information supporting it" AND "we won't give you the original information, or even copies of it, about much of the stuff your contention relates to (which information is in our possession)".

It should also be noted that there are potential whistle-blowers on concrete out there, who may come forward at any time (though of course I can't make any of them come forward of identify herself/himself). Thus, even if discovery is denied here (and I do think I'm entitled to a second round since Applicants got two rounds -- their superior numbers of people shouldn't let them just push intervenors around when discovery time is not over according to a schedule Applicants agreed to (and proposed!? ), and as a consequence the contention may get dismissed, information about concrete problems may surface elsewhere and force consideration of issues like those in Eddleman 65.

I think discovery is obviously useful in getting information concerning contentions; Applicants have been most coveruppish about information concerning Harris concrete. The Staff doesn't say it has reviewed all CP&L's concrete documentation, so they can't verify that the information I seek does not contain information which supports Eddleman 65. The only way I can tell is if I get the information to look at. I should not be put in a catch-22 situation of having to prove the information I seek will prove something, when I haven't seen the information. The very purpose of discovery is to reveal information. Without the information sought, I will not be effectively able to use basic information concerning Harris concrete (which is sought in this 2d round of discovery) to oppose Applicants' motion for summary disposition. That situation would be prejudice against me. Summary disposition is a "lethal weapon" that I should not have to face unarmed due to Applicants resisting discovery. Wells Eddleman