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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	Docket Nos. 50-400-OL 50-401-OL
CAROLINA POWER & LIGHT COMPANY and NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY	ASLBP No. 82-472-03 OL
(Shearon Harris Nuclear Plant Units 1 and 2)	July 24, 1984

MEMORANDUM AND ORDER
(Revision of and Schedule for Filing Written Testimony on Eddleman Contention 9; Rulings on Eddleman Contentions 45 and 67)

On July 12, 1984, the Applicants filed a motion to revise the text of Eddleman Contention 9 and to authorize filing of written testimony thereon by August 31, 1984. On July 20, 1984, the Staff filed in support of the motion and Mr. Eddleman filed in opposition. For the reasons summarized below, the Applicants' motion is granted, on the understanding that we would consider later contentions in the environmental qualification area based on previously unavailable information upon a balancing of the "five factors."

The open-ended preamble to Contention 9 proposed by Mr. Eddleman is rejected because it could be read as authorizing introduction of proof

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of concerns other than those now agreed to by the parties, without adequate notice to the parties and without a "five factors'" review by the Board. The preamble of Contention 9 shall be as proposed by the Applicants, viz:

> The program for environmental qualification of electrical equipment at Shearon Harris is inadequate for the following reasons:

The Applicants' statement of subcontentions A through G, which we understand is accepted by Mr. Eddleman and the Staff, is approved. Testimony on those subcontentions shall be filed by August 31, 1984.

Our rejection of Mr. Eddleman's proposed preamble does not necessarily mean that we are closing the door on any further specifications of concerns about environmental qualification. The Applicants tell us that the information they have already provided to Mr. Eddleman "is considerably more voluminous and detailed than the information which ultimately will be included in Applicants FSAR § 3.11." Motion p. 8. Mr. Eddleman appears to disagree, saying that Applicants "have not produced . . . information on certain . . . systems; nor have they filed the specifics of their ER program itself." Response, p. 2. There will be no reason for us to resolve these apparent differences of opinion unless Mr. Eddleman comes forward later with a proposed contention about some aspect of environmental qualification, other than those now set forth in subcontentions A-G. If that happens, we will then consider whether Mr. Eddleman has good cause for filing the contention late -- i.e., whether it is based on newly discovered information or whether its basis was known (or should have

been known) to Mr. Eddleman at the time of this Order or earlier. We note in conclusion that in our original acceptance of Contention 9, we did not mean to imply that an Intervenor necessarily has a right to wait until the formal amendment of the FSAR before proffering a contention on the subject of the amendment, if, for example, the pertinent information is made available to the Intervenor earlier.

Contention 45 (Water Hammer)

Eddleman Contention 45, as admitted, states as follows:

> SHNPP design cannot comply with the results of the Plant Water Hammer Experience Report, PWR S.G. (steam generator), feedwater, ECCS and Main Steam System water hammer events evaluation (including systems effect) and potential resolutions now being prepared by NRC, and the CR and NUREG reports on the water hammer question.

Applicants' filed a motion for summary disposition on May 29, 1984. Applicants' motion was supported by an extensive discussion of the technical issues raised in Contention 45. Applicants' statement was supported by five affidavits (R. S. Carlson, D. Shah, J. M. Collins, C. S. Hinnant and D. C. McCarthy).

The NRC Staff responded in support of Applicants' motion for summary disposition on July 2, 1984. The NRC Staff's motion was supported by an affidavit of A. W. Serkiz.

On July 19, 1984, Intervenor Eddleman advised the Board, by telephone, that he declines the opportunity to file in opposition to the Applicants' motion for summary disposition. In these circumstances,

there is no genuine issue as to any material fact and therefore summary disposition is granted. Alternatively, the water hammer issue is no longer contested and therefore must be dismissed. 10 C.F.R. § 2.760a. Our review of the motion papers does not indicate the presence of a "serious safety matter."

Contention 67 (Low-Level Waste Disposal)

Contention 67 was proposed by Intervenor Eddleman on May 14, 1982 and was admitted by the Board on September 22, 1982. As admitted, the contention states the following:

> There is no assured disposal site to isolate the low-level radioactive wastes produced by normal operation at Harris from the environment and the public until said waste, which includes highly toxic (radiotoxic) and long-lived nuclear wastes such as Sr-90, Cs-137 and Pu-239, has decayed to virtually zero levels of radioactivity and radiotoxicity. The lack of such an assured disposal site, endangers the health and safety of the public under AEA and this condition having changed since the CP stage (and CP FES) due to the refusal of SC, NV and WA states to continue to accept unlimited amounts of low-level radioactive wastes; and by the enactment by Congress of laws allowing states to form compacts for low-level rad-waste disposal and to exclude wastes such as SHNPP low-level radioactive wastes from states not members of such compacts. Sea disposal is not assured because EPA's proposed rule to allow disposal of low-level radioactive wastes in the oceans has not been enacted, and if enacted may be overturned by legal action or act of Congress.

The Applicants' filed a motion for summary disposition on May 8, 1984 and the NRC Staff filed a response in support of Applicants' motion on May 29, 1984. Intervenor Eddleman responded to both the Applicants' and Staff's filings on June 5, 1984.

There are two issues in this contention. The first one relates to long term disposal of the low-level waste that will be produced during the operation of the Harris facility. The second issue covers the interim storage of such materials at the Harris site.

Mr. Eddleman's response takes the posture that much of the Applicants' and Staff's filings are "irrelevant because the Southeast Low-Level Radicactive Waste Compact has not yet been approved by Congress." He asserts that "progress as they allege is not assurance," implying that "assurance" mears actual certainty. The Board cannot agree with Mr. Eddleman. The Applicants' and Staff's filings demonstrate that the development of a Southeast Compact has been proceeding in an orderly manner and this progress has reached the point where approval by the Congress is the only remaining step. The record before us does not cast any doubt that Congressional approval will be forthcoming. In the unlikely event that Congress were not to approve the Compact, the State of North Carolina is also taking steps toward provision of a waste disposal site in that State. In these circumstances, the Board's view is that there is reasonable assurance that adequate long-term disposal capacity for the Harris' low-level waste will be available when it is needed.

The other facts that Mr. Eddleman wishes to dispute are focused on Table 11.4.2-1 from Amendment 5 of the Harris FSAR. We note that Amendment 5 is obsolete, the Table was modified in Amendment 10 and Amendment 15 is the current filing in the FSAR on quantities of low-level waste. As to such quantities, the Applicants' rely primarily

on an affidavit of Mr. G. H. Warriner. Mr. Warriner has estimated the annual generation rate of solid low-level wastes for the one unit Harris facility. He concludes that over four years of storage capacity will be available, if all available space in the Waste Processing Building is utilized for Unit 1. Mr. Warriner makes no reference to the Harris FSAR.

The NRC Staff affiant, C. A. Willis, notes that Warriner's estimate "is substantially lower than the rate postulated in the FSAR (Table 11.4.2-1, Amendment 5)." However, Willis states further that "the Staff has independently calculated the annual LLRW generation rate for Harris operation and concluded that the rate calculated by Warriner is correct."

Mr. Eddleman's response draws the Board's attention to the discrepancies between the FSAR (Amendment 5) and the Applicant's affidavit. In order to explain or resolve these discrepancies, the differing estimates of low-level waste production were the subject of an on-the-record telephone conference on July 12, 1984 (see transcript, pages 2,175 through 2,184). Counsel for the Applicants, Mr. O'Neill, with affiant Warriner also present, explained each of the discrepancies in the estimates.

The Board finds that the principal reason for the differences is that the Warriner affidavit is based on Unit 1 operation only, and the obsolete Amendment 5 of the FSAR assumed the operation of two units. Cancellation of Unit 2 construction makes the estimates in Amendment 5 irrelevant. Further, the Board accepts the Warriner affidavit and its confirmation at transcript page 2,179 as a commitment by the Applicants to use an Aerojet fluid bed dryer or some similar system to reduce the volume of the materials coming from the "evaporator bottoms." On the basis of the estimates of low-level waste as they have now been explained, we find that the estimate of storage space for low-level waste of about four years of operation is reasonable. This means that the Applicants could store such waste on site well beyond the normal period of short-term storage, should they encounter temporary difficulties in obtaining long-term storage space.

Summary disposition of this contention is granted, conditioned on revision of the FSAR to reflect best estimates of quantities of

low-level waste and the commitments in the Warriner affidavit to use volume reduction equipment.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Glenn O. Bright
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Dr. James H. Carpenter
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Bethesda, Maryland
July 24, 1984