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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 MAY 30 P3:59

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
 )  
CAROLINA POWER AND LIGHT COMPANY AND )  
NORTH CAROLINA EASTERN MUNICIPAL )  
POWER AGENCY )  
 )  
(Shearon Harris Nuclear Power Plant, )  
Units 1 and 2 )

Docket Nos. 50-400 OL  
50-401 OL

NRC STAFF RESPONSE IN SUPPORT OF APPLICANTS' MOTION  
FOR SUMMARY DISPOSITION OF WELLS EDDLEMAN'S  
CONTENTION 132C(II)

I. INTRODUCTION

On May 9, 1984 the Applicants moved for summary disposition<sup>1/</sup> of Mr. Eddleman's Contention No. 132C(II). That contention alleges that if control room operators are standing at certain designated places in the control room, that designated control display cabinets will be obstructed from viewing and thereby the public safety is imperiled. The Staff's response in support of Applicants' motion follows.

II. BACKGROUND

The procedural background of Contention 132C(II) is set forth on pages 2 and 3 of the Applicants' Motion and is not repeated here. Extensive discovery was had among the parties upon the design of the control room as challenged by this contention. We do not discern in

1/ Applicants' Motion For Summary Disposition of Eddleman Contention 132C(II), dated May 9, 1984 (Applicants' Motion).

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that discovery any factual basis to support Mr. Eddleman's assertion that possible obstruction of certain control display cabinets imperils the public health and safety.

### III. DISCUSSION

#### A. Standards For Summary Disposition

Summary disposition is appropriate pursuant to the Commission's regulations if, based on a motion, the attached statements of the parties in affidavits, and other filings in the proceeding, it is shown that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 10 C.F.R. § 2.749(d). The Commission's rules governing summary disposition are analogous to Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 520 (1982). Therefore, decisions concerning the interpretation of Rule 56 may be used by the Commission's adjudicatory Boards as guidance in applying the provisions of 10 C.F.R. § 2.749. Id.

A hearing on the questions raised by an intervenor is not inevitable. See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632, 635 (1981). The purpose of summary disposition is to avoid hearings, unnecessary testimony and cross-examination in areas where there are not material issues to be tried. The Supreme Court has very clearly stated that there is no right to a trial except so far as there are issues of fact in dispute to be determined. Ex parte Peterson, 253 U.S. 300, 310 (1920). Under the Federal Rules the motion is designed

to pierce the general allegations in the pleadings, separating the substantial from the insubstantial, depositions, interrogatories or other material of evidentiary value. 6 J. Moore, Moore's Federal Practice ¶ 56.04[1] (2d ed. 1976). Mere allegations in the pleadings will not create an issue as against a motion for summary disposition supported by affidavits. 10 C.F.R. § 2.749(b); Fed. R. Civ. P. 56(c).

A party seeking summary disposition has the burden of demonstrating the absence of any genuine issue of material fact. Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977). In determining whether a motion for summary disposition should be granted, the record must be viewed in the light most favorable to the opponent of such a motion. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982).

To draw on federal practice, the Supreme Court has pointed out that Rule 56 of the Federal Rules of Civil Procedure does not permit plaintiffs to get to a trial on the basis of the allegations in the complaints coupled with the hope that something can be developed at trial in the way of evidence to support the allegations. First National Bank of Arizona v. Cities Service Co., 391, U.S. 253, 289-90 (1968), rehearing den., 393 U.S. 901 (1968). Similarly, a plaintiff may not defeat a motion for summary judgment on the hope that on cross-examination the defendants will contradict their respective affidavits. To permit trial on such a basis would nullify the purpose of Rule 56 which permits the elimination of unnecessary and costly litigation where no

genuine issues of material fact exist. See Orvis v. Brickman, 95 F. Supp 605, 607 (1951), aff'd 196 F.2d 762 (D.C. Cir. 1952), cited with approval in Gulf States Utilities Co. (River Bend Station, Units 1 and 2), 1 NRC 246, 248 (1975).

To defeat summary disposition an opposing party must present material, substantial facts to show that an issue exists. Conclusions alone will not suffice. River Bend, LBP-75-10, supra at 248; Perry, ALAB-443, supra at 754.

The federal courts have clearly held that a party opposing a motion for summary judgment is not entitled to hold back evidence, if any, until the time of trial. Lipschutz v. Gordon Jewelry Corp., 367 F. Supp. 1086, 1095 (SD Texas 1973); the opponent must come forth with evidentiary facts to show that there is an outstanding unresolved material issue to be tried. Stansifer v. Chrysler Motors Corp., 487 F.2d 59, 63 (9th Cir. 1973); and Franks v. Thompson, 59 FRD 142, 145 (M.D. Alabama 1973). Summary disposition cannot be defeated by the possibility that Mr. Eddleman might think of something new to say at hearing. O'Brien v. McDonald's Corp., 48 FRD 370, 374 (N.D. Ill. 1979); nor can the Staff's motion be defeated on the hope that Mr. Eddleman could possibly uncover something at hearing. Hurley v. Northwest Publications, Inc., 273 F. Supp. 967, 974 (Minn. 1967). Now, in opposition to the Applicants' motion, is the time for Mr. Eddleman to come forth with material of evidentiary value to contravene the Applicants and Staff's affidavits and to show the existence of a material fact to be resolved at an evidentiary hearing.

The Commission's regulations permit responses both in support of and in opposition to motions for summary disposition. 10 C.F.R. § 2.749(a). Such responses may be filed with or without supporting affidavits. Id.

However, if the motion is properly supported, the opponent of such a motion may not rest simply on allegations or denials of the contents of the motion. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). In addition, any facts not controverted by the opponent of a motion are deemed to be admitted. 10 C.F.R. § 2.749(b). The Appeal Board noted recently that a hearing on each issue raised "is not inevitable," but "wholly depends upon the ability of the intervenors to demonstrate the existence of a genuine issue of material fact . . . ." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), supra 632, 635.

Both the Appeal Board and the Commission have encouraged the use of the Commission's summary disposition procedure. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981). See, Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 241 (1973), aff'd sub nom BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-51 (1980); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424-25 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973). The Commission has stated that:

" . . . Boards should encourage the parties to invoke the summary disposition procedures on the issues of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues."

CLI-81-8, supra, 13 NRC 452, 457. The Commission's summary disposition procedures "provide . . . an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues."

Allens Creek, supra, 11 NRC at 550. Applicants have met these standards with regard to their motions for summary disposition concerning Eddleman Contention 132C(II).

B. The Allegations of the Contention

Mr. Eddleman's contention alleges that if control room operators stand in certain designated places, that vision of certain display panels will be obstructed and therefore the public health and safety is imperiled.

The Applicants' Motion is supported by an affidavit of Robert W. Prunty, Jr. who is the Principal Engineer-Electrical at the Harris site.

In preparing this response, the Staff's technical reviewer in this area, Mr. Raymond A. Ramirez, reviewed all of the Applicants' papers, blueprints of the control room and personally went to the Harris control room to analyze Mr. Eddleman's allegations (Ramirez Affidavit, at 3,<sup>2/</sup> attached hereto).

Mr. Prunty concluded the obstruction of control panels could occur as alleged by Mr. Eddleman but that the public health and safety would not thereby be imperiled (Prunty Affidavit at 5). Mr. Ramirez also concluded, based on his personal observation and analysis of the control room, that obstruction as alleged by Mr. Eddleman could occur but that this obstruction would not endanger the public health and safety (Ramirez Affidavit at 4). Mr. Ramirez concluded that unobstructed vision of the display panels cited by Mr. Eddleman is not necessary during an emergency

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<sup>2/</sup> Mr. Ramirez is not available to sign his affidavit on May 29, 1984. A signed copy of his affidavit will be sent to all parties on the service list.

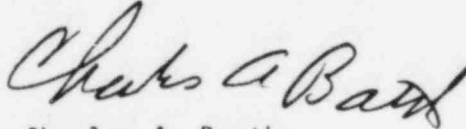


situation. Mr. Ramirez also confirms the correctness of the facts which are set forth in Mr. Prunty's Affidavit (Ramirez Affidavit at 5).

IV. CONCLUSION

At the present time there is not a material fact in dispute arising from Mr. Eddleman's Contention 132C(II) which could be resolved in an evidentiary hearing. The Applicants' Motion For Summary Disposition of Mr. Eddleman's Contention 132C(II) should be granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles A. Barth".

Charles A. Barth  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 29th day of May, 1984

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Docket Nos. 50-400 OL  
50-401 OL

AFFIDAVIT OF RAYMOND G. RAMIREZ IN SUPPORT OF  
NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF WELLS EDDLEMAN'S CONTENTION 132C(II)

Raymond G. Ramirez, being duly sworn, hereby deposes and states:

1. I am a Senior Human Factors Engineer in the Human Factors Engineering Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission. I have personal knowledge of the matters set forth herein, and believe them to be true and correct to the best of my knowledge, information and belief.

2. Since April 1980, I have been assigned to the Human Factors Engineering Branch, Division of Human Factors Safety, Office of Nuclear Reactor Regulation. I began devoting full time to human factors engineering in November 1979. Initially, I was responsible for helping to implement the recommendations of Section 7, Appendix A to NUREG-0585, "TMI-2 Lessons Learned Task Force Final Report." These included assisting in developing human factors control room design review guidelines for use by licensees to conduct year long reviews of their control rooms and surveying selected control rooms to provide a data base for



the guidelines. Since February 1980, I have been working closely with human factors expert consultants as the NRC's team leader, in conducting onsite control room design reviews and in evaluating the results thereof. I have participated in the review and evaluation of 14 control rooms.

I graduated from Ohio University in 1958 with a Bachelor of Science Degree in Electrical Engineering, and in 1971 I graduated from the University of Baltimore with a Juris Doctors Degree in Law.

From 1958 to 1960 I performed as a design engineer at the Radio Corporation of America's "Missile and Surface Radar Division," which among other things involved the instrumentation and control of large radar systems.

From 1960 to 1963 I performed as a design engineer with the Martin-Marietta Corporation which included design responsibility in several missile systems and their control and instrumentation.

From 1963 to 1972 I performed as a senior engineer, project engineer and supervisor with the Bendix Corporation involving various military and non-military systems.

From 1972 to 1979 I was employed by the AEC/NRC as a safeguards engineer. Responsibilities included developing Regulatory Guides, NUREG Reports and the writing of regulations.

3. I give this affidavit in response to Applicants' Motion for Summary Disposition of Wells Eddleman's Contention 132C(II) dated May 9, 1984 [Applicants' Motion]. Contention 132C(II) states as follows:

With respect to layout [of the Control Room, Applicants'] proposal arranges control and display cabinets such that they block or impede view of some others (see Fig. 2, p. 12, where view of/from panels 8, 9, 10 & 11 is obscured by #'s 12, 13, 14

and 15 from #'s 6, 7, and 1, 2, 3, 4 and 5. #6 and 7 are hidden from operators by 1 and 2 (as well as 3, 4 and 5) #'s 16 and 17, the incore instrumentation and nuclear instrumentation system are almost totally behind the 2 blocks 1 through 5 and 6-7 with respect to the radiation monitor equipment panels 12 through 15, the 8-11 block (startup and generator) and the 1-5 block's sections i through 4 and possibly 5. Operator inability to see, read accurately, or integrate the information on these panels can imperil public safety in an accident.

4. I have reviewed the Applicants' Motion; Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard On Wells Eddleman Contention 132C(II) dated May 9, 1984; Affidavit Of Robert W. Prunty Jr., In Support Of Applicants' Motion For Summary Disposition Of Eddleman Contention 132C(II), dated January 8, 1983. I have also reviewed drawings of the design of the control room. Subsequent to reviewing the preceding documents, on May 18, 1984, I visited the Shearon Harris control room and physically reviewed each allegation contained in Contention 132C(II) in light of the actual design and physical configuration and placement of instrumentation in that control room.

5. The Applicants acknowledge the truth of allegations made in Contention 132C(II) regarding the obscuring of certain panels from an operator standing at three postulated positions in the control room primarily away from the main control board (MCB). The Applicants further state that the three designated positions are not "normal positions" or "typical positions" where the control room operator (CRO) would be positioned or remain. In addition the Applicants state "should an operator find himself in such a position, there would be one or more other operators in the control room who would be able to monitor the equipment as necessary." The Applicants also state that "while SHNPP is operating, there will be

at all times a minimum of two licensed operators - a reactor operator and a senior operator - in the control room."

6. The Applicants state that the final configuration of the control room was determined as a result of conducting a human factors detailed control room design review (DCRDR) that the location of the panels in question does not raise a safety issue since panel #7 has no displays, panel #17 has duplicate displays in the MCB, and panels #6 and #16 require little to no monitoring. During my site visit I found that panels #'s 8, 9, 10 and 11 are located as nearly as possible to the generator control panel on the main control board (MCB) with which these panels are associated and can be observed from that position.

7. I have reviewed the documents requesting and supporting the Applicants' motion and conducted a site visit to the Shearon Harris control room physically and technically to evaluate the substance of Contention 132C(II) and the Applicants' information, analyses and assessments of the safety impact created by the arrangement of the control room. As a result of my site visit and based on my conduct of a panel by panel physical evaluation for each of the panels obscured from the three positions identified in Contention 132C(II) and an evaluation of the technical arguments in support of the Applicants' motion, I find (a) that the allegations made by Contention 132C(II) with regard to obscuring the view of certain panels to be true and (b) that the technical arguments given in support of the Applicants' motion to also be true, i.e., that such obscuring is unlikely or is not important to the public health and safety.

8. Based upon my professional experience, it is my opinion that the control panels alleged by Mr. Eddleman to be obscured when operators

are in certain positions are not important for safety purposes during an emergency operating sequence. During my site visit of May 18, 1983, I discussed this with Robert W. Prunty, Jr. and verified with him that the Shearon Harris emergency operating procedures will not require the control room operators to consult or monitor any of the panels referred to in Contention 132C(II) during an emergency operating sequence. Based on this and my review of information presented on these panels, I find that it is unlikely that safe operation of the plant would be adversely affected.

CONCLUSION

9. Based upon my review of appropriate documents and site visit, I conclude that the Applicants' assessment contained in its Motion For Summary Disposition is correct and that although the allegations in Contention 132C(II) with regard to obscuring the view of certain panels is true, the allegation that "Operator inability to see, read accurately, or integrate the information on these panels can imperil public safety in an accident" is not valid. I find that there is no merit to the substance of Wells Eddleman's Contention 132C(II).

\_\_\_\_\_  
Raymond G. Ramirez

Subscribed and sworn to before  
me this            day of May, 1984

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 MAY 30 P3:59

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OF REGULATING & SERVICE BRANCH

In the Matter of

CAROLINA POWER AND LIGHT COMPANY AND  
NORTH CAROLINA EASTERN MUNICIPAL  
POWER AGENCY

(Shearon Harris Nuclear Power Plant,  
Units 1 and 2)

Docket Nos. 50-400-0L  
50-401-0L

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN SUPPORT OF APPLICANTS' MOTION FOR SUMMARY DISPOSITION OF WELLS EDDLEMAN'S CONTENTION 132C(II)" and "AFFIDAVIT OF RAYMOND G. RAMIREZ IN SUPPORT OF NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR SUMMARY DISPOSITION OF WELLS EDDLEMAN'S CONTENTION 132C(II)" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of May, 1984:

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Administrative Judge  
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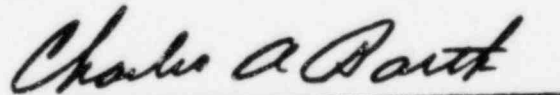
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