

June 11, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '84 JUN 14 10:41

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 TO APPLICANTS' MOTION FOR A  
DETERMINATION THAT JOINT INTERVENORS' PROPOSED  
TESTIMONY OF DR. CARL J. JOHNSON IS INADMISSIBLE

I. INTRODUCTION

On June 5, 1984, Applicants filed a document entitled "APPLICANTS' MOTION FOR A DETERMINATION THAT JOINT INTERVENORS' PROPOSED TESTIMONY OF DR. CARL J. JOHNSON IS INADMISSIBLE" [hereinafter Applicants' Motion]. The Staff supports Applicants' Motion on the ground that Dr. Johnson's testimony does not address the issues remaining as matters in controversy in this proceeding, and thus is irrelevant. <sup>1/</sup>

II. BACKGROUND

On May 31, 1984, Mr. Eddleman filed as testimony in this proceeding a letter written by Dr. Carl J. Johnson to Mr. Eddleman on May 30, 1984. The testimony filed by all parties on May 31, 1984, was to address Eddleman Contention 8F(1), Joint Contention II(c) and Joint Contention II(e). Although Dr. Johnson's letter does not indicate in

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<sup>1/</sup> Applicants also filed a motion for expedited ruling on their motion concerning the admissibility of Dr. Johnson's testimony. As Applicants noted in their motion, the Staff supports Applicants request for expedited consideration of this matter.

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Certified By EFB DSO  
6/11/84

any way which contentions are the subject of his testimony, the Staff must assume that it is filed in support of Joint Contention II subparts (c) and (e), since Joint Intervenors previously indicated that those contentions would be the subject of Dr. Johnson's testimony. Applicants have filed the instant motion requesting that the Board find Dr. Johnson's testimony inadmissible.

### III. ARGUMENT

The Staff agrees with Applicants that pursuant to its authority to exclude irrelevant evidence from a proceeding, the Board should find Dr. Johnson's testimony inadmissible. Applicants argue first that the Board has the authority to decline to admit evidence which is irrelevant to the matters in controversy in the proceeding, second that Dr. Johnson's testimony is just such evidence, and that, in addition it is not probative and should be rejected on that ground as well.

Applicants have pointed to the pertinent Commission regulations and case law which establish the Board's authority to find irrelevant evidence inadmissible. The Board receives evidence in this proceeding. 10 C.F.R. § 2.718(c). It is the policy of the Commission that, in order to avoid unnecessary delay and to avoid the compilation of an unnecessarily large record, the Board should exclude evidence that is irrelevant to the issues in controversy in the proceeding. 10 C.F.R. Part II App. A Section V (d)(7). Irrelevant matters raised in prefiled testimony may, according to Commission policy, be the subject of a motion to strike filed pursuant to the procedures of 10 C.F.R. § 2.730.

Dr. Johnson's testimony in its entirety deals with irrelevant matters and thus is an appropriate subject for a motion to have the testimony ruled inadmissible.

Applicants have provided a detailed discussion of the issues to be heard in this proceeding, and the issues covered in Dr. Johnson's testimony. The Staff agrees with Applicants that the issues to be heard at the upcoming hearing with regard to Joint Contention II(c) and (e) are as follows:

- 1) "whether the Staff should confine itself, as it has done in this case, to computations of annual doses and effects";
- 2) "whether the Staff should 'take into account the incremental impact on people who live near the facility for many years'"; and
- 3) "The long term somatic and genetic health effects of radiation releases from the facility during normal operations, even where such releases are within (sic) existing guidelines, have been seriously underestimated for the following reasons:  
(e) The radionuclide concentration models used by Applicants and the Staff are inadequate because they underestimate or exclude the following means of concentrating radionuclides in the environment . . .  
radionuclides absorbed in or attached to fly ash from coal plants which are in the air around the SHNPP site . . . ."

Applicants Motion at 6-7.

Dr. Johnson's testimony does not treat any of these issues. The bulk of his testimony deals, as Applicants have indicated, with the composition of radioactive releases. The point Dr. Johnson appears to be making is that certain nuclides are not considered as part of the source term used by the Staff and Applicants. Johnson letter at 1-3. The subject of which radionuclides were considered by the Staff and Applicants was the subject of a Board decision. As Applicants have indicated, the Board has found the source term to be appropriate. "MEMORANDUM AND ORDER (Ruling on Motions for

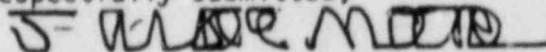
Summary Disposition of Health Effects Contention; Joint Contention II and Eddleman Contentions 37B, 8F(1) and 8F(2))" (January 27, 1984). It would be inappropriate to permit this issue to be revisited.

Dr. Johnson also raises some questions concerning the filters to be used at Harris. He does not demonstrate any familiarity with exactly what filters will be used at the plant, and does not show how this issue is related to any of the issues which are the subject of the forthcoming hearing. The same is true of the concerns Dr. Johnson raises concerning the adequacy of effluent monitoring. Finally, Dr. Johnson refers to the possible targeting of nuclear power plants in time of war. Johnson letter at 5-6. This point bears absolutely no relationship to any of the issues in controversy in this proceeding. Based on these few instances, and the instances pointed out by Applicants, Dr. Johnson's testimony in its entirety, must be viewed as irrelevant to the issues in controversy in this proceeding. Therefore, the Staff agrees with Applicants' that Joint Intervenors' proposed testimony of Dr. Carl J. Johnson should be found inadmissible.

#### IV. CONCLUSION

For the reasons set forth above the Staff concludes that Applicants' Motion for a determination that Joint Intervenors' proposed testimony of Dr. Carl J. Johnson is inadmissible should be granted.

Respectfully submitted,



Janice E. Moore  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 11th day of June, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR A DETERMINATION THAT JOINT INTERVENORS' PROPOSED TESTIMONY OF DR. CARL J. JOHNSON IS INADMISSIBLE" 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 (\*), or by hand delivery (\*\*) this 11th day of June, 1984.

James L. Kelley, Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Richard D. Wilson, M.D.  
729 Hunter Street  
Apex, NC 27502

Mr. Glenn O. Bright\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Travis Payne, Esq.\*\*  
723 W. Johnson Street  
P.O. Box 12643  
Raleigh, NC 27605

Dr. James H. Carpenter\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Linda Little  
Governor's Waste Management Building  
513 Albermarle Building  
325 North Salisbury Street  
Raleigh, NC 27611

Daniel F. Read\*\*  
CHANGE/ELP  
5707 Waycross Street  
Raleigh, NC 27605

Atomic Safety and Licensing Appeal  
Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Ruthanne G. Miller, Esq.\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Robert P. Gruber  
Executive Director  
Public Staff - NCUC  
P.O. Box 991  
Raleigh, NC 27602

Wells Eddleman\*\*  
718-A Iredell Street  
Durham, NC 27701

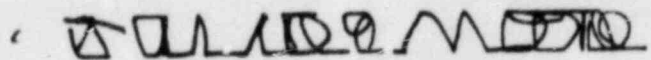
Richard E. Jones, Esq.  
Associate General Counsel  
Carolina Power & Light Company  
P.O. Box 1551  
Raleigh, NC 27602

John Runkle, Executive Coordinator  
Conservation Counsel of North Carolina  
307 Granville Rd.  
Chapel Hill, NC 27514

Bradley W. Jones, Esq.\*  
Regional Counsel, USNRC, Region II  
101 Marietta St., N.W. Suite 2900  
Atlanta, GA 27701

George Trowbridge, Esq.\*\*  
Thomas A. Baxter, Esq.  
John H. O'Neill, Jr., Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, N.W.  
Washington, DC 20036

Atomic Safety and Licensing Board  
Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555



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Janice E. Moore  
Counsel for NRC Staff