

October 8, 1984

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of)	
)	
CAROLINA POWER & LIGHT COMPANY)	
and NORTH CAROLINA EASTERN)	Docket No. 50-400 OL
MUNICIPAL POWER AGENCY)	
)	
(Shearon Harris Nuclear Power)	
Plant))	

APPLICANTS' MOTION FOR SUMMARY
DISPOSITION OF EDDLEMAN-144

Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency ("Applicants") hereby move the Atomic Safety and Licensing Board ("Board"), pursuant to 10 C.F.R. § 2.749, for summary disposition in Applicants' favor of Eddleman Contention 144. As discussed herein, there is no genuine issue as to any fact material to Eddleman Contention 144, and Applicants are entitled to a decision in their favor on Eddleman Contention 144 as a matter of law.

This motion is supported by:

1. "Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard on Eddleman-144";
2. "Affidavit of Robert G. Black, Jr. on Eddleman-144" ("Black Affidavit"); and
3. "Applicants' Memorandum of Law In Support of Motions For Summary Disposition of Emergency Planning Contentions."

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I. PROCEDURAL BACKGROUND

Eddleman Contention 144 was initially advanced in "Wells Eddleman's Motion Concerning DCRDR Information" (dated January 8, 1983; served January 10, 1983). As a basis for his proposed contention, Mr. Eddleman asserted:

The staffing levels shown in the FSAR are insufficient to meet the requirements for one damaged and one undamaged unit.

Eddleman Contention 144 was admitted as a contention in this proceeding in the Board's "Memorandum and Order (Ruling on Wells Eddleman's Proposed On-Site Emergency Planning Contentions)" (November 1, 1983), at 11-12. As admitted by the Board, Eddleman-144 contends:

CP&L's emergency personnel levels do not meet the requirements of NUREG-0737, REV 1 [sic; Supp. 1], Table 2.

Applicants have served one set of interrogatories and request for production of documents on Mr. Eddleman on the subject of Eddleman-144. See "Applicants' Emergency Planning Interrogatories and Request For Production of Documents To Intervenor Wells Eddleman (First Set)" (August 9, 1984), at 15-16. "Wells Eddleman's Response to Applicants' 8-09-84 Emergency Planning Interrogatories" was filed September 7, 1984. Neither Mr. Eddleman nor the NRC Staff filed any discovery requests on Eddleman-144. The last date for filing discovery on the contention was August 9, 1984. Discovery on this contention is, therefore, complete.

Eddleman Contention 144 is classified as an emergency planning contention to be addressed in the hearings scheduled to commence in early February, 1985. Written direct testimony on the contention is scheduled to be filed January 21, 1985. Further, the Board has established November 1, 1984 as the last day for filing summary disposition motions on this contention. Thus, the instant motion is timely, and Eddleman Contention 144 is ripe for summary disposition.

II. GOVERNING LEGAL STANDARDS

A. Summary Disposition

"Applicants' Memorandum of Law In Support of Motions For Summary Disposition of Emergency Planning Contentions," filed contemporaneously with this Motion, is fully applicable to this Motion and is incorporated by reference herein.

B. Substantive Law

The Commission's emergency planning regulations, at 10 C.F.R. § 50.47(b)(2), require, inter alia, that

* * * adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, [and] timely augmentation of response capabilities is available
* * * .

As noted in footnote 1 to 10 C.F.R. § 50.47, this standard is further addressed by NUREG-0654/FEMA-REP-1, "Criteria For Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness In Support of Nuclear Power Plants" (Rev. 1, November 1980).

NUREG-0654 Criterion B.5 provides, in relevant part:

Each licensee shall specify the positions or title and major tasks to be performed by the persons to be assigned to the functional areas of emergency activity. For emergency situations, specific assignments shall be made for all shifts and for plant staff members, both onsite and away from the site. These assignments shall cover the emergency functions in Table B-1 entitled, "Minimum Staffing Requirements for Nuclear Power Plant Emergencies." The minimum on-shift staffing levels shall be as indicated in Table B-1. The licensee must be able to augment on-shift capabilities within a short period after declaration of an emergency. This capability shall be as indicated in Table B-1.

Table B-1 appears on pages 37 and 38 of NUREG-0654. Footnote (*) to Table B-1 indicates the staffing requirements "[f]or each unaffected nuclear unit in operation" at the time of an emergency in one unit of a multi-unit plant.

Table B-1 of NUREG-0654 (including footnote (*)) is replicated in Supplement 1 to NUREG-0737, "Requirements For Emergency Response Capability" (December 1982), as Table 2 of that document. The December 17, 1982 cover letter to that document,^{1/} signed by the Director of the Division of Licensing of the Office of Nuclear Reactor Regulation, expressly states:

^{1/} A copy of this letter is Attachment A hereto.

You should * * * note that
the staffing levels in table
2 * * * are only goals and
not strict requirements.

It is Table 2 of NUREG-0737, Supp. 1 -- and, more particularly, footnote (*) to that table -- to which Mr. Eddleman refers in Contention 144.

III. ARGUMENT

Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition of Eddleman Contention 144 should be granted. As discussed in Section I above, Mr. Eddleman's contention was admitted solely on the basis of his expressed concern that staffing levels were "insufficient to meet the requirements [of NUREG-0737, Supp. 1, Table 2/NUREG-0654, Table B-1] for one damaged and one undamaged unit" (emphasis supplied). However, plans for the construction of Unit 2 of the Harris plant have since been canceled, so that Mr. Eddleman's concern about emergency staffing for a multi-unit plant is now moot. Black Affidavit, ¶ 3. Accordingly, the Board should summarily dismiss Eddleman-144 on that ground alone.

Nor can Mr. Eddleman make a showing that Applicants' on-shift staffing and augmentation for emergencies for the remaining unit of the Harris plant are in any way deficient. Applicants' compliance with Table 2 of NUREG-0737, Supplement 1 was documented in Tables 2.2-1 and 2.2-2 of revisions 0 and 1

of the Harris onsite plan. Black Affidavit, ¶ 4. In these earlier revisions of the onsite plan, the information in these tables was not in the same format as the table in the regulatory guidance. Black Affidavit, ¶ 4. In the "Safety Evaluation Report Related To The Operation of SHNPP Units 1 & 2," NUREG-0138 (November 1983), the NRC Staff recommended that the tables be revised to be more compatible with the regulatory guidance. Black Affidavit, ¶ 5.

In response to the Staff's request, Tables 2.2-1 and 2.2-2 were reformatted in Revision 2 of the onsite plan, by incorporating both tables into a new Table 2.2-1, which has substantially the same format as the table in the regulatory guidance. The main difference is that, instead of listing augmentation times of exactly 30 and 60 minutes for two categories of personnel, CP&L lists times of 30 to 45 minutes and 60 to 75 minutes, to allow for variations in time of arrival due to weather conditions. Black Affidavit, ¶ 6. In addition, while the table in the regulatory guidance lists generic titles for personnel, CP&L's table substitutes the specific position titles used at the Harris plant for personnel with the identified job function or expertise. Black Affidavit, ¶ 7. (The NRC letter transmitting NUREG-0737, Supplement 1 expressly noted that strict adherence to Table 2 of that document was not required. Black Affidavit, ¶ 6.)

In his September 7, 1984 responses to Applicants' interrogatories on Contention 144, Mr. Eddleman observed,

"NUREG-0737 requires 3 additions in I&C in the 30 minute column and CP&L only provides 2 (Repair and corrective actions)." See Response to Interrogatory 144-1. However, a typographical error was made in transferring Table B-1 of NUREG-0654 to NUREG-0737, Supplement 1. Table B-1 correctly indicates (contrary to NUREG-0737, Supplement 1) that only two such personnel are needed in the identified time period. Thus, CP&L satisfies the regulatory guidance. Black Affidavit, ¶ 8.

Mr. Eddleman further observed, "NUREG-0737 requires a radwaste operator in 60 minutes (same task area) but CP&L doesn't identify one at any time." See Response to Interrogatory 144-1. To the contrary, CP&L's routine non-emergency on shift staffing includes radwaste personnel. Since NUREG-0737 would not require a radwaste operator until after 60 minutes, CP&L's staffing on this point actually exceeds the regulatory standard. CP&L's routine non-emergency on-shift staffing also includes mechanical maintenance personnel. CP&L will bring in, if not already onsite, additional mechanical maintenance personnel as identified by Table 2.2-1 of the onsite plan. Thus, CP&L meets or exceeds regulatory guidance in this area. Black Affidavit, ¶ 9.

Finally, Mr. Eddleman criticized Table 2.2-1 of the onsite plan because "[t]he fire brigade and security are unspecified." See Response to Interrogatory 144-1. However, in admitting Contention 144, the Licensing Board clearly limited the contention to Applicants' emergency personnel, expressly ruling that

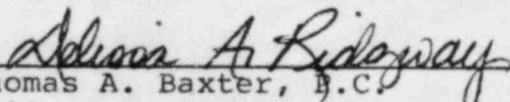
security personnel were beyond the scope of the admitted contention. "Memorandum and Order (Ruling on Wells Eddleman's Proposed On-Site Emergency Planning Contentions)" (November 1, 1983), at 11-12. In any event, fire brigade and security staffing are identified in Table 2.2-1 of the onsite plan by reference to other controlling documents, exactly as indicated in Table B-1 of NUREG-0654 (Table 2 of NUREG-0737, Supplement 1). Thus, the total number of personnel reflected in Table 2.2-1 for the emergency organization for all time frames (on shift, 30-45 minutes, and 60-75 minutes) meets or exceeds the provisions of Table B-1. Black Affidavit, ¶ 10. Indeed, the NRC Staff has reviewed Revision 2 of the onsite plan, and has approved Table 2.2-1, as revised. Black Affidavit, ¶ 11.

In summary, the basis for Mr. Eddleman's Contention 144 -- the adequacy of overall plant staffing in the event of an emergency at one unit of a multi-unit plant -- has been mooted by the cancellation of Harris Unit 2. Eddleman-144 should be dismissed on that ground alone. In any event, the NRC Staff has now reviewed the revised Table 2.2-1 of the onsite plan against the table in the regulatory guidance. While there are variances between the table in the plan and that in the guidance, the guidance itself contemplates some such variation. The NRC Staff has approved Applicants' revised table. Thus, even as to the staffing of a single unit plant (which was not the thrust of Eddleman-144 as admitted), there is no genuine issue as to any material fact.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of Applicants' compliance with Table 2 of NUREG-0737, Supplement 1, Applicants' Motion For Summary Disposition of Eddleman-144 should be granted.

Respectfully submitted,


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Counsel for Applicants

Dated: October 8, 1984



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 17, 1982

TO ALL LICENSEES OF OPERATING REACTORS, APPLICANTS FOR OPERATING
LICENSES, AND HOLDERS OF CONSTRUCTION PERMITS

Gentlemen:

SUBJECT: SUPPLEMENT 1 TO NUREG-0737 - REQUIREMENTS FOR EMERGENCY
RESPONSE CAPABILITY (GENERIC LETTER NO. 82-33)

On October 31, 1980, the NRC staff issued NUREG-0737, which incorporated into one document all TMI-related items approved for implementation by the Commission at that time. The purpose of this letter is to provide additional clarification regarding Safety Parameter Display Systems, Detailed Control Room Design Reviews, Regulatory Guide 1.97 (Revision 2) - Application to Emergency Response Facilities, Upgrade of Emergency Operating Procedures, Emergency Response Facilities, and Meteorological Data.

The enclosures to this letter are a distillation of the basic requirements for these topics from the broad range of guidance documents that the NRC has issued (principally NUREG reports and Regulatory Guides). It is our intent that the guidance documents themselves, referred to in the enclosures, are not to be used as requirements, but rather that they are to be used as sources of guidance for NRC reviewers and licensees regarding acceptable means for meeting the basic requirements.

The following items in NUREG-0737 are affected:

- I.C.1 Guidance for the Evaluation and Development of Procedures for Transients and Accidents
- I.D.1 Control Room Design Reviews
- I.D.2 Plant Safety Parameter Display Console
- III.A.1.2 Upgrade Emergency Support Facilities.
- III.A.2.2 Meteorological Data

The requirements and guidance contained in the enclosure to this letter replace the corresponding requirements in the affected NUREG-0737 items and should be used by you in meeting the goals of these action plan items. You should also note that the staffing levels in table 2 to the enclosure are only goals, and are not strict requirements.

You will note that the enclosure does not specify a schedule for completing the requirements. It has become apparent, through discussions with owners' groups and individual licensees, that our previous schedules did not adequately consider the integration of these related activities. In recognition of this and the difficulty in implementing generic deadlines, the Commission has adopted a plan to establish realistic plant-specific schedules that take into account the unique aspects of the work at each plant. By this plan, each licensee is to develop and submit its own plant-specific schedule which will be reviewed by the assigned NRC Project Manager. The NRC Project Manager and licensee will reach an agreement on the final schedule and in this manner provide for prompt implementation of these important improvements while optimizing the use of utility and NRC resources.

Applicants for construction permits are expected to comply with the requirements of 10 CFR 50.34(f), and should consider this document to be additional guidance in meeting these requirements. For holders of construction permits and applicants for operating licenses, plant-specific schedules for the implementation of these requirements will be developed in a manner similar to that being used for operating reactors, taking into consideration the degree of completion of the power plant.

In order to answer questions you may have regarding the Commission's policy on these issues and the implementation process to be used by project managers, regional workshops will be conducted by senior staff members according to the following schedule:

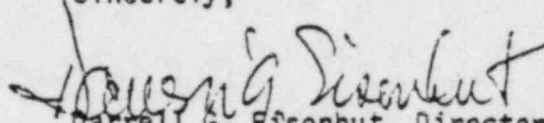
Region I	Washington, D. C.	- Week of 2/14/83
Region II	Atlanta, Ga.	- Week of 2/21/83
Region III	Chicago, Ill.	- Week of 2/21/83
Region IV & V	San Francisco, CA	- Week of 2/28/83

You will be notified of specific locations and times for the workshops at a later time.

Accordingly, pursuant to 50.54(f), operating reactor licensees and holders of construction permits are requested to furnish, no later than April 15, 1983 a proposed schedule for completing each of the basic requirements for the items identified in the enclosures to this letter. You are encouraged to work closely with your NRC Project Manager during this process so that we can reach an agreement on the final schedule as quickly as possible. In addition, you are requested to submit with it a description of your plans for phased implementation and integration of the emergency response activities. Your plans for integration will be reviewed as part of our evaluation of your proposed schedule. After the staff completes this evaluation, it will take action, as necessary, to assure that such requirements and commitments are appropriately enforceable.

This request for information was approved by the Office of Management and Budget under clearance number 3150-0065 which expires May 31, 1983. Comments on burden and duplication may be directed to the Office of Management and Budget, Reports Management Room 3208, New Executive Office Building, Washington, D. C. 20503.

Sincerely,



Darrell G. Eisenhut, Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosure:
Supplement to NUREG-0737