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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

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

OFFICE OF THE SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED JUL 27 1984

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

Docket Nos. 50-400 /oc
50-401

ASLBP No. 82-472-03 OL

July 27, 1984

MEMORANDUM AND ORDER
(Ruling on Various Safety and Procedural Questions)

Approval of Settlement Regarding Joint Intervenor Contention VII

(4). Pursuant to 10 C.F.R. § 2.759, the Applicants and the Joint Intervenor have jointly moved the Board to approve and implement a settlement agreement among them regarding the scope of the issue raised by Joint Contention VII (4), concerning steam generator tube failure analysis. The Staff supports the motion.

The background of Joint Contention VII (4) is accurately set forth in the motion, as well as the terms of the settlement agreement. In the circumstances, the Board finds the agreement to be fair and reasonable. We commend the parties for their constructive resolution of this matter.

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The Board approves the settlement agreement and is implementing it by the following order:

(1) the issue related to operator response time in the event of a steam generator tube rupture has been disposed of by agreement among the parties, and (2) the Director, Nuclear Reactor Regulation, shall include the proposed license condition as set forth in the settlement agreement in any license issued to Applicants for operation of the Shearon Harris Nuclear Power Plant.

Eddleman Contentions 24 and 25. These contentions concern the adequacy of security plans for shipment of irradiated fuel from the Brunswick and Robinson facilities to Shearon Harris. We initially deferred ruling on these contentions on the assumption that the plans could be made available to an expert designated by Mr. Eddleman and more specific contentions could then be drafted based on his in camera review. See 16 NRC 2094. Subsequently, we decided to reject these contentions, conditionally, when it appeared that Mr. Eddleman had not made a timely proffer of a qualified expert to review the plans. We gave Mr. Eddleman an opportunity to show cause why the rejections should not be made unconditional. Mr. Eddleman responded on August 31, 1983, contending that he had made a timely proffer of Mr. Maples as a transportation security expert. For the reasons spelled out in detail by the Applicant (Response of September 29, 1983, pp. 4-6), with which we agree, Mr. Maples was not effectively proffered as a transportation expert. Among other things, an effective proffer requires a resume,

plus a statement of the person's area of expertise. Tr. 518; Order of April 22, 1983. An isolated reference to "transportation" in the course of a deposition is not sufficient.

As matters have developed, these contentions are also rejectable for more fundamental reasons. The Applicants now advise us that security plans for shipping spent fuel from Robinson and Brunswick to Harris do not presently exist. Such plans would not be developed until firm plans for such shipments are made, probably after a decision is reached in this case. The Staff endorses this argument (Response of September 29, 1983) and argues that contentions of this nature are premature. We agree.

Furthermore, upon reconsideration we also accept the Applicants' argument that this operating license board does not have jurisdiction over health and safety issues (as distinguished from environmental effects) primarily associated with other licensed facilities. See 16 NRC at 2101; Duke Power Co. (Catawba Nuclear Station), 17 NRC 291, 292 (1983). Thus, for three independent reasons, Eddleman contentions 24 and 25 are rejected.

Our rejection of these contentions does not necessarily mean that Mr. Eddleman will never have an opportunity to review the adequacy of security plans for transportation of spent fuel from Brunswick or Robinson to Shearon Harris. Having registered his interest in the matter, the Applicants should be willing to inform him in advance if and when they develop any firm plans for such shipments. Mr. Eddleman could then make a request to review the plans in camera, either to the

Applicant, the NRC, or both. There should be some legal remedy for any unreasonable denial of such a request.

Summary of Rulings on Eddleman Motion to Compel. On July 17, 1984, the Board gave oral rulings on Mr. Eddleman's motion to compel dated June 14, 1983 and the Staff's response thereto, dated July 2, 1984, as described below.

A. Relief was granted as to the following questions: 145, 147 (in part), 152 and 154 (as modified).

B. Relief was denied as to the following questions, for the reasons indicated:

17, 22, 24 -- Staff's answers are adequate;

141, 144, 149, 150 -- questions unduly broad and vague;

151 -- questions largely outside scope of contention; no valid basis given in objection;

153 -- Staff not required to poll its members individually;


156 -- Staff's negative answer is adequate;

157 -- question of marginal relevance; burdens on Staff outweigh benefits to Intervenor.

Amendment of Eddleman Contention 116. The Applicants have moved to amend the originally authorized language of Eddleman Contention 116 to a

revised text set forth in the motion. Mr. Eddleman and the Staff support the motion. This unopposed motion is granted.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
July 27, 1984