

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

DOCKETED
USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
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NRC STAFF RESPONSE TO WELLS EDDLEMAN'S
CONTENTIONS ON HARRIS EMERGENCY PLAN BROCHURE

I. INTRODUCTION

In response to the Atomic Safety and Licensing Board's (Board) instructions in its August 3, 1984 rulings on the admissibility of offsite emergency planning contentions^{1/} Intervenor Wells Eddleman submitted twenty three proposed contentions which he wishes to have admitted for litigation in this proceeding.^{2/} The Staff response to these contentions is set forth below.

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- 1/ Final Set of Rulings on Admissibility of Offsite Emergency Planning Contentions, Ruling on Petition for Waiver of Need for Power Rule and Notice of Upcoming Telephone Conference Call. August 3, 1984 at 25.
 - 2/ "Wells Eddleman's Contentions on Harris Emergency Plan Brochure," dated August 10, 1984.

II. DISCUSSION

A. NRC Standards Applicable To Proffered Contentions

In order for Mr. Eddleman's proffered emergency planning contentions to be admitted as matters in controversy in this proceeding, they must satisfy two standards. First, each contention must satisfy the Commission's requirement that the basis for the contention be set forth with reasonable specificity. 10 C.F.R. § 2.714(b). Second, since they are late filed contentions under the Commission's decision in Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), balancing of the five factors of 10 C.F.R. § 2.714(a) must favor admission of the contention.

In order for proposed contentions to be found admissible, they must fall within the scope of the issues set forth in the Notice of Hearing initiating the Proceeding,^{3/} and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973). Under 10 C.F.R. § 2.714(b) a petitioner for intervention in a Commission licensing proceeding must file a supplement to its petition:

^{3/} Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976). See also, Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-290, n. 6 (1979).

. . . [w]hich must include a list of the contentions which petitioner seeks to have litigated in the matter, and basis for each contention set forth with reasonable specificity.

The purpose of the basis requirements of 10 C.F.R. § 2.714 are (1) to assure that the contention in question raises a matter appropriate for litigation in a particular proceeding, ^{4/} (2) to establish a sufficient foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion and, (3) to put the other parties sufficiently on notice " ... so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra, at 20. From the standpoint of basis, it is unnecessary for the petition to detail the evidence which will be offered in support of each contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board should not reach the merits of the contentions. Houston Lighting and Power Company

4/ A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

(Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980); Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra, at 20; Grand Gulf, supra, at 426.

As the Appeal Board instructed in Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216-217 (1974), in assessing the acceptability of a contention as a basis for granting intervention:

[T]he intervention board's task is to determine, from a scrutiny of what appears within the four corners of the contention as stated, whether (1) the requisite specificity exists; (2) there has been an adequate delineation of the basis for the contention; and (3) the issue sought to be raised is cognizable in an individual licensing proceeding. (Footnotes omitted)

This applies equally to a contention proffered by an intervenor as well as by a petitioner to intervene. If a contention meets these criteria, the contention provides a foundation for admission "irrespective of whether resort to extrinsic evidence might establish the contention to be insubstantial." Farley, supra, 7 AEC at 217. ^{5/} The question of the contention's substance is for later resolution - either by way of § 2.749 summary disposition prior to the evidentiary hearing ... or in the initial decision following the conclusion of such a hearing." Farley, supra, 7 AEC at 217. Thus, it is incumbent upon Intervenors to set forth

^{5/} However, the proposed contention should refer to and address relevant documentation, available in the public domain, which is relevant to the Harris plant, particularly the NRC requirements and The Emergency Plan. See, Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-184 (1981).

contentions and bases therefore which are sufficiently detailed and specific to demonstrate that the issues they purport to raise are admissible.

On June 30, 1983 the Commission reviewing ALAB-687, 16 NRC 460 (1982) issued its decision in Duke Power Company et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). This decision considered the standards to be applied to contentions premised upon information contained in licensing-related documents not required to be prepared early enough so as to enable an intervenor to frame contentions in a timely manner in accord with the provisions of 10 C.F.R. § 2.714(b). In Catawba the Commission determined that it is reasonable to apply the late-filing criteria in 10 C.F.R. § 2.714(a)(1) and the Appeal Board's three-part test for good cause ^{6/} to contentions that are filed late because they depend solely on information contain in institutionally unavailable licensing-related documents.^{7/} Id. at 1045. Further, the Commission determined that the institutional unavailability of a licensing-related document does not establish good cause for filing a

^{6/} 16 NRC at 1045.

^{//} The Commission believes that the five factors together are permitted by Section 189a of the Act and are reasonable procedural requirements for determining whether to admit contentions that are filed late because they rely solely on information contained in licensing-related documents that were not required to be prepared or submitted early enough to provide a basis for the timely formulation of contentions. Id. at 1045 and 1050.

contention late if information was otherwise available early enough to provide the basis for timely filing of that contention.^{8/} Id. at 1048.

The factors which must be balanced in judging the admissibility of a late-filed contention are:

- (i) Good cause, if any for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1)

With respect to the good cause factor the Commission adopted the Appeal Board's test to determine whether good cause exists for late filing of a Contention. Atawba, supra, 17 NRC at 1045. Under that test good cause exists if a contention: 1) is wholly dependent upon the content of a particular document; 2) could not therefore be advanced with any degree of specificity (if at all) in advance of the public availability of that document; and 3) is tendered with the requisite degree of promptness once the document comes into existence and is accessible for public examination. Id. at 1043-1044.

^{8/} The Commission set out in its decision the fundamental principles upon which it bases its conclusion that intervenors are required diligently to uncover and apply all publicly available information to the prompt formulation of contentions. Id. at 1048-1050.

The Appeal Board has recently discussed the showing necessary to cause the third factor to weigh in favor of the admission of a late petitioner for leave to intervene. Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 3) ALAB-747, 18 NRC, 1167, 11// (1983). In WPPSS the Appeal Board reasserted a standard it had set forth in Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). As the Appeal Board stated:

Almost a year ago, we observed that, because of the importance of the third factor, "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.

WPPSS, supra, 18 NRC at 1177. This standard is instructive in determining whether an intervenor has satisfied the third factor with respect to a late filed contention.

The Intervenor has not addressed the five factors of 10 C.F.R. § 2.716 for late filing and how they weigh in favor of admission of their new contentions. Our review of the five factors as discussed by the Commission in Catawba cited supra to be addressed for late filing leads us to conclude that the contentions proffered on the public information brochure satisfy the Commissions late filing requirements.

The Contentions addressed in this Staff response were filed promptly after the brochure was made available to Intervenor and within the time limit set by the Board in its August 3, 1984 ruling. That information was not previously available to Intervenor. New contentions will delay this proceeding, but, we feel, without prejudice to the licensing schedule. The filings by the Intervenor do not indicate that they have technical experience in emergency planning so as to enable them to make a

substantial contribution to the record. The Intervenor's interest in emergency planning would not be represented by the existing parties since no emergency planning contentions have been admitted as yet in this proceeding. On balance, therefore, these factors weigh in favor of the admission of those contentions which relate solely to the public information brochure and meet the admissibility requirements of basis and specificity.

B. Wells Eddleman's Contentions

All of Wells Eddleman's proposed contentions address alleged deficiencies and his suggestions for improvements or editorial changes in the public information brochure prepared as part of State and local emergency response plans (ERPs) for the Shearon Harris Nuclear Power Plant.

In order to evaluate the adequacy of the brochure it is necessary to acknowledge and interpret the regulatory guidelines and case law applicable to its preparation, which in turn provide standards with which to measure adequacy. The governing regulations at 10 C.F.R. § 50.47(b)(7) provide a regulatory requirement in the form of an emergency planning standard for disseminating relevant information which reads in pertinent part:

Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance, and procedures for coordinated dissemination of information to the public are established.

Appendix E, § IV.D.2 of 10 C.F.R. Part 50 requires that provisions be made for "yearly dissemination to the public within the plume exposure pathway EPZ for basic emergency planning information . . . general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency." NUREG-0654/FEMA REP-1 (Rev. 1) (hereinafter NUREG-0654) Section II.G provides evaluation criteria for measuring the ERP's provisions for public education and information against the planning standard set forth in 10 C.F.R. § 50.47(b)(7).

The criteria of NUREG-0654 were prepared for use by reviewers in determining the adequacy of State, local and nuclear power plant licensee emergency plans and preparedness. Evaluation criteria for public education and information planning standard require that the

"information shall include but not necessarily be limited to:

- a. educational material on radiation;
- b. contact for additional information;
- c. protective measures, e.g. evacuation routes and relocation centers, sheltering respiratory protection; radioprotective drugs; and
- d. special needs of the handicapped."

NUREG-0654 Section II.G.1.

The information program "should include provision for written material that is likely to be available in a residence during a emergency," as well as other opportunities for the permanent and transient adult population within the plume exposure EPZ "to become aware of the information annually." (NUREG-0654 Section II.G.2).

The brochure is only one of several suggested means of disseminating information to the public regarding how they will be notified and what their actions should be in an emergency. The evaluation criteria suggest

pre-emergency dissemination of information through "the telephone book; periodic information in utility bills; posting in public areas; and publications distributed on an annual basis . . . signs or other measures (e.g., decals, posted notices or other means, placed in hotels, motels, gasoline stations and phone booths)." NUREG-0654 Section II.G.1 and 2.

A pre-emergency public information brochure must meet the requirements of 10 C.F.R. § 50.47 and 10 C.F.R. Part 50, Appendix E, and should comport with the guidance set forth in NUREG-0654. However, since these criteria are rather broad, NRC case law has refined the specifics of these guidelines. "The most important function of the brochure is to prime the public to listen to the broadcasting media upon the activation of the sirens." Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-83-27, 17 NRC 949, 960 (1983), aff'd, ALAB-753, 18 NRC 1321, 1331 (1983).

The Licensing Board in Big Rock ^{9/} stated that "The purpose of the brochure is to give residents and transients the information they need to respond to audible alarm systems and be sufficiently knowledgeable to understand the importance of responding." Big Rock, supra, at 541. Brochures and Emergency Broadcast System (EBS) messages are meant to play different roles in an emergency. The intent of the brochures is to alert the public to the significance of the sirens and educate them

^{9/} Consumers Power Co. (Big Rock Point Plant) LBP-82-60, 16 NRC 540 (1982).

to tune in to an EBS broadcast for more detailed emergency-specific instructions,^{10/} and not to give a course in radiobiology.^{11/}

To effectively communicate the necessary information the brochure must be clear, concise and well-organized. Thus the brochure should be evaluated on "its ability to communicate and to inform." Big Rock, supra, at 544. "The level of detail . . . should be consistent with the purpose for which it is intended. Overemphasis on detail may defeat the purpose of a public information program on emergency measures . . . This is especially true for printed material aimed at providing information to be read and interpreted rapidly during an emergency situation." Three Mile Island, supra, at 1521. If the brochure includes too many details or a technical discussion on the effects of radiation, it becomes "too elaborate and extensive to communicate effectively." Big Rock, supra, at 544. The Board in Big Rock asserted that "[i]f that were to occur, the pamphlet . . . would go unread and its role as an action document would be defeated" and cautioned against unnecessary additions to the brochure because they "may cumulatively increase its bulk and complexity and reduce its ability to communicate." Id. The Board further stated "we are not censors, but limit our concern to matters that affect the document's ability to achieve its intended purpose." The Board limited its responsibility to "seeing that necessary facts about the rapid response system are communicated, that there are no serious errors

^{10/} Consolidated Edison Co. of New York (Indian Point, Unit No. 2), Power Authority of the State of New York (Indian Point, Unit No. 3), LBP-83-68, 18 NRC 811, 943 (1983).

^{11/} Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1521 (1981).

detracting from the credibility of the document and that there are no serious omissions from the distributed material." Id. In the Shearon Harris prehearing conference of May 1, 1984 (Tr. 829) Judge Kelley concurred with the Big Rock characterization of the Board's role, stating "we don't want to be editors of that brochure . . . [i]ts a matter of . . . gross examination . . . of this subject as a treatise . . ." Tr. 829.

The brochure should be judged as an action document. The overall tone should be objective. The level of language should be direct and communicative and there should not be any glaring omissions or inaccuracies. See Big Rock, supra, at 545.

The Board's August 3, 1984 Ruling explicitly requires that, in submitting revisions of his contentions on the brochure, Mr. Eddleman specify the respects in which the brochure is inadequate and why. The burden is on the Intervenor to identify specific alleged defects and provide a basis for each proposed contention which sets forth why, in relation to the applicable regulations and guidance, the brochure is inadequate.

Wells Eddleman's filing contains twenty three proposed contentions numbered 227A through 227W. To facilitate discussion of the proposed contentions the Staff has grouped them under four general categories based on their primary thrust. The categories of contentions are as follows:

1. Clarity of brochure
2. Scope of Information
3. Misrepresentation of hazards
4. Publicly unavailable information

The Staff's response to these contentions are set forth below.

1. Clarity of Brochure - Proposed Contentions 227-C, 227-D, 227-E, 227-G, 227-H, 227 L, 227-Q and 227-W

Contention 227-C:

As the primary means of public education under 10 CFR 50.47(b)(7) the brochure must assure that persons in the EPZ, including transients, understand the danger of a nuclear accident as well as how to avoid it. The brochure should be improved in clarity, particularly in labeling the pictures on page 1 (e.g. (1) (2) (3) (4)) to make it clear that these are steps in a sequential process. Also the language concerning the process should be improved, e.g. by positive language under step 1: e.g. STAY INDOORS. TURN YOUR RADIO OR TV to your EBS STATION; GET A BATTERY POWERED RADIO IF YOU HAVE ONE. DO NOT EVACUATE. It is vital that the information concerning what to do in an emergency be as clear and easy to understand as possible.

Contention 227-D:

The brochure needs to be clarified on page 1 to avoid inappropriate or possibly dangerous actions: In the 3d and 4th columns concerning school children, there should be an explicit reference (e.g. to the page re school sheltering/evacuations) to which anxious parents can turn for information. If day care center children are to be sheltered/evacuated, this should be stated. The instruction to shelter pets and livestock should be clarified -- people should not endanger themselves or use valuable time sheltering animals when they may endanger their lives or health. In the 4th column the necessity to sign in at the evacuation center should be underscored.

Contention 227-E:

The brochure (p.1) treatment of sheltering is not clear enough about protection from airborne radioactive materials. This protection is a necessary thing in an accident. 50.47(a)(1). It should explain that the reason you close windows and doors, cut off fans, fires or heaters, etc. is to KEEP FROM DRAWING RADIOACTIVE MATERIALS INTO THE HOUSE along with air. Similarly it should tell people how to effectively reduce breathing risk through the use of properly sealed breathing protective devices (e.g. as described in Contentions 227-A and B above). It fails to advise persons staying indoors to adopt breathing protection.

Contention 227-G:

The information "When you hear the sirens" on p.2 is poorly organized, wordy, often stated in passive voice, and fails to adequately answer important questions like "Why not evacuate just to be extra-safe?". The information should begin with a description of the siren signal for nuclear accidents. It should explain how it is different from fire, police, and ambulance sirens (a long steady tone of 3 to 5 minutes). It should explain when the system is tested, and why. It should describe

back-up actions later. It should be written in shorter sentences. The answer to why-not-evacuate should be that you may get more radiation outside than inside.

Contention 227-H:

The EBS Stations list on page 3 should emphasize the 24-hour radio and TV stations, so that in evacuations at night people will be able to tune in. It should emphasize the need to get hold of portable, or other battery powered radios whenever a real emergency occurs (in case of power failures during/connected with the emergency). The information in the long (nearly as invisible as the warnings in cigarette ads) box at the bottom of the page should be placed in a colored, prominent box higher on the page, so that people will know these MOST IMPORTANT INSTRUCTIONS, e.g. Do what the EBS Station says, If it's different from what's in this booklet, do what the station says. Otherwise, inappropriate actions, or inadequate information flow (thru not tuning in to an on-air station, or losing info when the power is off) could result, violating NUREG-0654 II.G and II.E.5 and 6.

Contention 227-L:

The information on evacuation is not always clearly identifiable or well presented. Since evacuation is the most difficult of the possible emergency actions, it is most important that the instructions for it be extremely straightforward and clear. For example, it's clearly important to use the exact route in the plan, even though some such routes look circuitous or turn odd directions. This goes unsaid. The need for contamination checks of vehicles during evacuation is not mentioned. The importance of not driving too fast or trying to pass up other drivers, because the opposite lanes are needed for emergency vehicles, police, fire, wreckers etc. is not mentioned. There are no instructions for the handicapped except to fill out a card (not much help if an accident is occurring) -- there should be some special instructions here for such persons.

Contention 227-Q:

The information on page 10 (sirens) is deficient in not referencing page 3 re EBS stations, and the box on page 1 where you are supposed to write names of EBS stations. This could result in delays when a test or accident occurs, in people's tuning in to the emergency broadcast stations. This would not be timely notification, in violation of 10 CFR 50.47(b)(5) and (b)(7).

Contention 227-W:

The information on page 12 is perhaps confusing and misleading in that it first emphasizes safety (touting CP&L's performance) and then says evacuation plans must be tested. Assuring residents that an accident is "unlikely" is irrelevant and against the brochure's purpose, which is to

tell people what to do in an emergency. Claims of safety and comparisons with other emergency sources are likewise irrelevant. Instead, the space would be better used clearly defining the emergency conditions, e.g. "low plant safety" and saying the plan was made because "we care".

Response

Proposed Contentions 227-C, 227-D, 227-E, 227-G, 227-H, 227-L, 227-Q, and 227-W allege that the brochure is deficient because the clarity of the brochure's treatment of a subject could be improved. The Intervenor suggests numerous editorial changes including relabeling of pictures (227-C), providing more technical or detailed explanations of how or why an action should be taken (227-D, 227-E, 227-G, 227-L, and 227-W), emphasizing information by underscoring or repetition (227-C, 227-D, 227-H, and 227-Q). The Board clearly stated its intention not to serve as editors of the brochure (Shearon Harris May 1, 1984, Tr. prehearing conference 829.) As discussed above, the Board's role is to see that there are no serious errors or omissions and concern itself with the ability of the brochure to achieve its intended purpose. Big Rock, *supra*, at 544. Intervenor does not allege any serious errors or omissions. Moreover, the level of detail in the brochure should be consistent with its intended purpose. An overemphasis on detail may defeat its effectiveness in an emergency. Three Mile Island, *supra*, at 1521. Intervenor is attempting to raise editorial issues which the Shearon Harris Board has stated are inappropriate for litigation. Suggestions made by Intervenor for "improvements" challenges the basic structure of the Commission's regulatory process and are merely generalizations regarding his view of what applicable policies ought to be. Id. Additionally, the Staff objects to the admission of these contentions on the grounds that they fail to satisfy the basic

requirements of 10 C.F.R. § 2.714(b). The Intervenor does not assert that the brochure fails to meet applicable regulatory requirements, nor does he attempt to discuss the alleged inadequacies in the context of the requirements set forth in 10 C.F.R. § 50.47 or 10 C.F.R. Part 50 Appendix E or the evaluation criteria of NUREG-0654.

In addition to discussing contentions on the clarity of the brochure as a group, the Staff offers the following discussion on individual contentions within the group

Contention 227-D

Intervenor contends that information regarding school and day care children as well as pets and livestock needs to be clarified or explicitly referenced. These specific subjects are dealt with on several pages in the brochure-both children and pets and livestock are discussed on pages 1, 4 and 5. Intervenor further contends that "the necessity of signing in at the evacuation center should be emphasized." That subject is set forth twice, once on page 1 and again on page 5. The Staff opposes the admission of Contention 227-D because it lacks basis and it is premised upon an erroneous representation of the content of the brochure.

Contention 227-G

Intervenor contends that information on distinguishing fire, police and ambulance sirens from nuclear emergency sirens is inadequate. The brochure covers these exact concerns on pages 2 and 3. Contention 227-G should be rejected for lack of basis and is premised upon an erroneous representation of the content of the brochure.

Contention 227-L

Intervenor's assertion that evacuation information is "not always clearly identifiable or well presented" is overly vague and not supported by any factual basis. Intervenor contends that the brochure should emphasize the importance of "not driving too fast or trying to pass other drivers" during evacuation if oncoming traffic consists of emergency vehicles, police, fire engines or wreckers. There is no regulatory basis for the including such details of evacuation in the initial response brochure. The Staff opposes the admission of Contention 227-L on the grounds that it fails to meet the specificity and basis requirements of 10 C.F.R. § 2.714(b).

Contention 227-W

Intervenor implies that language regarding the safety of the plant followed by the statement that "evacuation plans must be tested" is "confusing and misleading." The purpose of the brochure is to inform the public of the initial actions they must take in case of an emergency. Section 50.47(b)(14) of 10 C.F.R. requires "periodic exercises...to evaluate major portions of emergency response capabilities." Intervenor contends that the information provided for the education of the public such as the likelihood of an emergency and information concerning risk is irrelevant. This contention is without basis. Intervenor suggests that the above material be replaced by "saying the plan was made because 'we care'." This vague suggestion lacks the specificity and basis required for admissible contentions and should not be admitted.

2. Scope of Information - Proposed Contentions 227-A, 227-B, 227-F, 227-I, 227-J, 227-K, 227-M, 227-N, 227-P, 227-U, 227-V

Contention 227-A:

The brochure is deficient in discussing respiratory protection measures for sheltering and/or evacuation because it fails to explain the best such means of protection, does not tell which means are relatively ineffective or totally ineffective, and does not give sufficient emphasis to respiratory protection. NUREG/CR 2272 demonstrates substantial variability, e.g. that a higher quality wet towel (4 layers) protects much better than a sheet, shirt or handkerchief (against everything but CH₃I). Similar variations are observed for dry towels. Respirators (e.g. 3M #8710) perform best, and this should be mentioned in the brochure. Otherwise sheltering may not be effective in protecting public health and safety.

Contention 227-B:

The brochure's discussion of respiratory protection is deficient because it doesn't take sufficient account of the need for, and most effective means of, sealing around the respiratory protection. NUREG/CR-2958 establishes that leakage is least when pantyhose are used to attach the protection, and much less if only the corners are taped, for example. The need for sealing, the effective means to do it, and the need to pre-stock materials (e.g. pantyhose or tape) to do it should be stated in the brochure. Otherwise, inappropriate responses or ineffective sheltering may take place.

Contention 227-F:

The Brochure's treatment of sheltering is deficient in that it doesn't explain the necessity to get as far from walls and windows as possible, with as much mass (walls or other objects) between you and the outside as possible. Without such instructions, people may shelter in inappropriate parts of buildings. This will not be "effective" 50.47(a)(1). The instruction "few or no windows" (p.1 col. 3) is misleading if rooms farther from the house walls are available. Instead, the brochure should have persons identify a sheltering space in their home (and tell them how to do it), which they then write in the box on page one, probably after item 1: Our in-home shelter is ..._____.

Contention 227-I:

The instructions for sheltering on page 4 do not adequately explain why sheltering may be the best thing to do. It should explain that people will be ordered to take shelter when they will get less radiation exposure by staying inside, than they would get if they evacuated or

stayed outside. It should emphasize the importance of keeping out outside air (e.g. taping leaky windows), staying away from the outside walls and roof of shelters, keeping as much mass between you and the outside as possible, and respiratory protection as described in contentions 227A and B. Without such instructions clearly presented, ineffective actions may result, violating 10 CFR 50.47(a)(1). People should be encouraged to find their best home sheltering areas in advance, and be told how to do that.

Contention 227-J:

The instructions for sheltering (p.4) do not adequately explain how long one might possibly have to stay in shelter, and how to receive information (either about changing conditions, evacuation, that the accident is over, etc) if you don't have a portable radio to take with you to shelter. It might, e.g. suggest leaving your TV on, very loud, or taking the phone with you. If such instructions aren't given, or another way to provide information provided, NUREG-0654 II.E.6 may be violated, and inappropriate actions (e.g. automatically coming out after 3 or 4 hours even though a radioactive release continues) may occur, violating 10 C.F.R. § 50.47(a)(1).

Contention 227-K:

In the sheltering instructions (p.4) a risk-benefit instruction for sheltering pets or livestock is very important, but not included. If you would have to go outside to do this, and a radioactive plume is near or present, the risk may be greater than the benefit. Some notice of these risk/benefit and instructions to listen to your EBS station for information on outside radiation levels, is very important for persons who make their living with (or partly with) livestock, and for those who might be tempted to go outside to search for a pet or pets. While the plan cannot stop people from inappropriate actions in such situations, it needs to warn them, or it violates 10 CFR 50.47(a)(1) by not reasonably assuring that appropriate protective measures can and will be taken.

Contention 227-M:

The evacuation information, p.5, is deficient in not (1) explaining why doors and vents on cars should be closed and houses should be close up (to prevent radioactive material from getting in), does not explain respiratory protection well (it should be as requested in 227 A and B above), does not advocate taping over vents on cars whose vents don't seal tightly when closed; (2) emphasizing the importance of not contaminating others, especially for evacuees who do not choose to go to the evacuation center; (3) emphasizing the importance of signing in at the evacuation center, encouraging it, e.g. for the purpose of making later insurance claims. Without these emphases, inappropriate action may occur.

Contention 227-N:

The provisions for sheltering livestock for an evacuation, and taking pets with you, are insufficient on page 5 because they do not address the risks and benefits of taking time to provide for livestock versus the risk of being outside to go and come from doing that, breathing hard while working, etc. As to pets, you are instructed to take them with you only if you will not stay at an evacuation center, but this ignores how many people feel about pets and may confuse people and even delay their evacuation because they are not sure they can provide for their pets if they don't have an alternative place to stay. It would be clearer to say that after you sign in at the EC, places for people with pets to stay will be found.

Contention 227-P:

The information for handicapped persons (p.8) is deficient because it doesn't tell you what to do if you haven't sent in the card, e.g. checking with neighbors to see if they can notify you in an accident, help you close your home if you must shelter, etc. The information is also deficient in not advising of helpful actions to take while waiting for help, e.g. appropriate breathing protection (per 227 A and B), locating items you need to take in an emergency, even if you can't assemble or carry them yourself, locating open windows and staying away from drafts, etc. Without such information, handicapped persons may take inappropriate actions or not take appropriate protective actions which they can perform, violating 50.47(a)(1).

Contention 227-U:

The brochure's discussion of contamination on p.11 is inadequate because it (1) doesn't explain the amount of washing necessary for best decontamination, or that radiation detectors are needed to be sure it's off; (2) doesn't adequately explain how to reduce exposure from breathing or swallowing radioactive material (e.g. don't eat anything that's been outside, avoid eating during evacuation, take respiratory protection measures); (3) seems to imply evacuation is the only way to deal with "shine" and ground radiation, without explaining that it can be reduced through getting farther from the radiation sources or putting shielding (mass) between you and the radiation. This all violates NUREG-0654 II.G.1(c).

Contention 227-V:

Information on decontamination should be highlighted, and preventive measures and first-aid procedures for contamination should be at least

mentioned, if not listed off and explained in detail (the latter would be better), per NUREG-0654 II.G.1(c). This is an essential part of emergency preparedness for nuclear accidents because it enables people to care for themselves, reduce radiation exposure, and reduce transmission of radioactive materials (provided the importance of decontamination in evacuations is emphasized). Again, the undetectable nature of radiation to the five normal senses people have, should be emphasized.

Response

The Staff opposes the admission of proposed contentions 227-A, 227-B, 227-F, 227-H, 227-I, 227-J, 227-K, 227-M, 227-N, 227-P, 227-U and 227-V on the grounds that the contentions fail to meet the basis requirements of 10 C.F.R. § 2.714(b). Further, the proposed contentions attempt to broaden the scope of information called for by the applicable regulations thus constituting an impermissible challenge to the regulations. Although the contentions make numerous suggestions as to what additional technical or explanatory material should be included in the brochure, the Intervenor does not claim that the brochure fails to meet the regulatory requirements of 10 C.F.R. § 50.47, 10 C.F.R. Part 50 Appendix E or satisfy the evaluation criteria of NUREG-0654. All the contentions under this grouping should be rejected for failure to assert a violation of a regulatory requirement. Most of the suggestions made by the contentions are vague (i.e. "... there should be some special instructions..." Contention 227-L). Even the few which offer specific changes are, at best, generalizations regarding the Intervenor's view of what applicable policies ought to be and at worst, challenges to the the regulatory requirements and the Commission's regulatory process. (Peach Bottom, supra, at 20).

Even though the contentions purport to identify omissions of the requisite information, there is no basis for the Intervenor's assumption that the information is required by 10 C.F.R. § 50.47 nor that it has been

omitted. A thorough reading of the brochure would resolve many of the contentions' assertions that material is missing or underemphasized because allegedly missing information is in fact included in the brochure. A similar reading of the contentions by the Staff indicates redundant contentions on identical issues, e.g. respiratory protection (227-A, 227-B, 227-E, 227-I, 227-M, 227-U); sheltering of pets and livestock (227-D, 227-K, 227-N); minimizing indoor radiation exposure (227-E, 227-F, 227-J, 227-U); contamination/decontamination (227-L, 227-M, 227-U, 227-V); signing in at evacuation centers (227-D, 227-M).

These proposed contentions call for the inclusion of detailed information on subjects which would more appropriately be covered by EBS broadcasts with scenario-specific instructions or warnings. The addition of extraneous details would detract from the ability of the brochure to communicate the information called for by the Commission's regulations and guidelines.

For these reasons the proposed contentions 227-A, 227-B, 227-F, 227-H, 227-I, 227-J, 227-K, 227-M, 227-N, 227-P, 227-U, and 227-V should not be admitted.

In addition to the discussion of the contentions concerning the scope of information in the brochure as a group, the Staff offers the following discussion on specific contentions within the group.

Contentions 227-A and 227-B

The Staff opposes the admission of proposed Contention 227-A and 227-B on the grounds that they fail to satisfy the basis requirements of

10 C.F.R. § 2.714(b). The Intervenor states that the brochure is deficient "in discussing respiratory protection measures . . . because it fails to explain the best such means of protection" (227-A) and does not account for the "most effective means of sealing around the respiratory protection" (227-B), citing NUREG/CR-2272 in support of his premise. By failing to specifically identify deficiencies in relation to the applicable regulations and guidance of 10 C.F.R. § 50.47, 10 C.F.R. Part 50, Appendix E and the criteria of NUREG-0654, this proposed contention is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be. Peach Bottom, supra, at 20.

Contentions 227-F, 227-I, 227-J, 227-K and 227-L

Contentions 227-F, 227-I, 227-J, 227-K and 227-L call for editorial changes in the language of the brochure concerning sheltering (227-F, 227-I, 227-J, 227-K), respiratory protection (227-I), and sirens/evacuation (227-G, 227-L, 227-M, 227-N) because the brochure is alleged to be misleading, unclear or likely to be misunderstood. The Shearon Harris Board has stated that it is not responsible for editing the brochure. Shearon Harris Prehearing Conference Tr. 829, see also, Big Rock, supra, at 544. As discussed above, the Board need only consider serious errors or omissions which might compromise the integrity of the document or violate the regulatory requirements of 10 C.F.R. § 50.47 and 10 C.F.R. Part 50, Appendix E or fail to satisfy the evaluation criteria of NUREG-0654. These contentions must be rejected because they seek to litigate an issue which this Board has precluded from consideration-- editing the language of the brochure if it meets regulatory requirements.

Contention 227-J

Contention 227-J should be rejected because it lacks basis. Intervenor contends that "instructions for sheltering do not adequately explain how long one might possibly have to stay in shelter." The answer must be emergency-specific. However, it is nonetheless addressed in the brochure. The answer, "stay in until the EBS station tells you it is safe..." (Safety Information for the Shearon Harris Nuclear Power Plant (Brochure) at 4) is provided on the same page as the instructions to seek shelter. Contention 227-J must be rejected as lacking basis and is premised upon an erroneous representation of the content of the brochure.

Contentions 227-L and 227-P

Intervenor contends that there are no instructions (227-L) or information (227-P) for the handicapped "except to fill out a card..." and implies that the handicapped cannot read the brochure and act accordingly if they don't send in a card (227-P). NUREG-0654 calls for information addressing "special needs of the handicapped." NUREG-0654 Section II.G.1.d. Since pages 2, 4 and 8 of the brochure specifically address the needs of the handicapped, Contentions 227-L and 227-P are without basis and should be rejected.

Contentions 227-K and 227-N

Intervenor contends that risk-benefit instructions for sheltering pets and livestock are important and are not adequately addressed in the brochure. Intervenor provides no regulatory basis nor evaluation criteria to support the belief that detailed sheltering/evacuation instructions extend beyond those designed for the human population to

pets and livestock. The Staff objects to the admission of 227-K and 227-N on the grounds that they fail to meet the basis requirements of 10 C.F.R. § 2.714(b).

3. Misrepresentation of Hazards - Proposed Contentions
227-R, 227-S and 227-T

Contention 227-R:

The nature of the danger, as presented on pp. 11-12, is understated, misleading and vague. The existence of background radiation is irrelevant in evacuations or sheltering, and the discussion seems to indicate that radiation is so common that it's almost OK. It ignores a substantial body of scientific information (e.g. work of John Gofman, Radiation and Human Health 1981, K.Z. Morgan, Cancer and Low-Level Ionizing Radiation, Bull At. Sci. 9/78) that holds that low-level exposure is potentially harmful, by presenting the information in a self-contradictory manner -- radiation's in everything, but it could be harmful. This should be clarified and related directly to nuclear accidents, not to background. The contradiction between the initial statements about background radiation and the instruction to "go to a place with no radiation" in the middle of the page is especially confusing.

Contention 227-S:

The description of radiation omits its most important characteristics to the average person -- it cannot be detected by any of our senses (vision, hearing, touch) and it is transmissible. The nature of harmful health effects -- genetic damage and cancer, other diseases, is not mentioned. This non-information is misleading and could lead to inappropriate actions. Persons who don't know risks may underestimate them. Also radiation detectors should be discussed here -- why they are not always sensitive enough to tell you if you're in danger, why you should listen to the EBS. The brochure should explain these dangers of radiation and how the emergency plan is set up to help you avoid it by sheltering or evacuation if necessary.

Contention 227-T:

The information on p.11 is confusing and misleading in its discussion of nuclear accidents. Although a reactor cannot create a nuclear-bomb-like explosion, radioactive material can get out of reactors -- the plant can "blow up" from steam explosions, hydrogen explosions, ATWS or other breaches of containment. The reader should be told that the plant can release radioactive material and gases into the air during an accident, and that the wind could carry it to persons in the EPZ. The most important fact about nuclear accidents is that they are possible. That's why evacuation plans exist. The brochure should not mislead or confuse people on this important point, or people may not take the brochure or its instructions or EBS instructions seriously, leading to inappropriate actions violating 10 CFR 50.47(a)(1).

Response

The Staff opposes the admission of proposed contentions 227-R, 227-S and 227-T on the grounds that the contentions lack adequate basis and constitute a challenge to Commission regulations. Appendix E, § IV.D.2 of 10 C.F.R. Part 50 requires dissemination of "general information as to the nature and effects of radiation." NUREG-0654, Section II.G. evaluation criteria 1.a provides for "educational information about radiation." Intervenor fails to provide a basis for his implication that these regulatory requirements and standards are not satisfied and hence the contentions must be rejected for lack of basis. As discussed above, the primary purpose of the brochure is to inform the public as to how they will be notified and what initial actions to take in case of an emergency, not to provide a course in radiation biology. Three Mile Island, supra, at 1525. The proposed contentions suggest the addition of extensive technical information (i.e. cancer and low-level radiation, genetic damage, radiation detectors, etc.) which would increase the bulk and complexity of the brochure and defeat the purpose of the document. The contentions as to how educational information should be conveyed are editorial in nature and should not be the subject of litigation. For these reasons proposed contentions 227-R, 227-S and 227-T must be rejected.

4. Publicly Unavailable Information - Proposed Contention 227-0

Contention 227-0:

Because the very important maps of the EPZ zones, evacuation routes, and the schools charts are not yet available, intervenor explicitly points out here that their accuracy, clearness, readability and usefulness are crucial to evacuation (and to sheltering where parents may be so concerned for their children that they may go to them at school, if they are not convinced the children will be adequately taken care of).

Legibility of all this information is likewise important. These matters cannot be adequately taken care of without seeing that the info on pp. 6,7 and 9 meets these standards. That cannot be done until the info appears. E.G. reducing the standard EPZ map to 8½ x 11 inches would be illegible. Evacuation zones or routes printed in different colors one for each zone and its routes, e.g.)

Response

The Staff opposes the admission of proposed Contention 227-0 for lack of basis. Until the subject maps and charts are publicly available, it is impossible for the Intervenor to provide a basis to support a claim that the material is inadequate. Prior to release of this material, Intervenor can only speculate as to their content. Intervenor cannot propose reasonably specific contentions until the subject information is publicly available. However, following the issuance of the documents, Intervenor may submit late-filed contentions based on information contained in those documents accompanied by reasons that the filing meets the criteria set forth in 10 C.F.R. § 2.714(a) as discussed above.

III. CONCLUSION

For the reasons discussed above the Staff opposes the admission of all the proposed contentions submitted by Wells Eddleman in his August 10, 1984 filing.

Respectfully submitted,

Elaine I. Chan

Elaine I. Chan
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of August, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

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

'84 SEP -5 P1:48

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R. Part 2, the following information is provided:

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Elaine I. Chan

Elaine I. Chan
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of August, 1984

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'84 SEP -5 P1:48

Docket Nos. 50-400 OL
50-401 OL

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO WELLS EDDLEMAN'S CONTENTIONS ON HARRIS EMERGENCY PLAN BROCHURE", "NOTICE OF APPEARANCE, ELAINE I. CHAN" 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 30th day of August, 1984.

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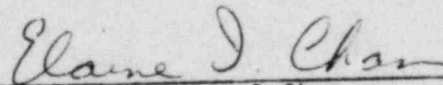
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