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February 29 1985  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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 OPPOSITION TO  
WELLS EDDLEMAN'S MOTION FOR RECONSIDERATION OF  
LICENSING BOARD ORDER ADMITTING CONTENTION 41-G

I. INTRODUCTION

On February 4, 1985, Wells Eddleman filed a motion seeking reconsideration of the Licensing Board's Order dated January 14, 1985 which admitted a modified version of his Contention 41-G as an issue in controversy in this proceeding. The Staff's response in opposition to Mr. Eddleman's motion follows.

II. BACKGROUND

At a press conference held in Raleigh, North Carolina October 22, 1984, Mr. Chan Van Vo Davis and his attorney, Mr. Robert Guild, released to the public an Affidavit of Mr. Van Vo dated October 6, 1984. That Affidavit alleged several deficiencies in the construction of the Harris facility. On October 23, 1984, at the resumption of the evidentiary hearings in this operating license proceeding, Mr. Wells Eddleman distributed Mr. Van Vo's Affidavit to all present. Subsequently

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Mr. Eddleman on behalf of himself, and Mr. John Runkle on behalf of CCNC, proffered contentions using the Chan Van Vo Davis Affidavit as their basis. The Licensing Board directed that any response to the proffered contentions based upon the Chan Van Vo Davis Affidavit be distributed to the Board and parties at the beginning of the evidentiary session beginning November 13, 1984. Mr. Eddleman's contentions are dated October 25, 1984 and were properly served. Among those was a proffered Contention 41-G, the text of which is set out below:

There exists a pattern of harassment, intimidation, & failure to respond positively to employees bringing forward QA/QC concerns at the Harris plant (see, e.g. Chan Van Vo affidavit of 10-06-84 e.g. ¶s 26, 25, 24, 23, 19, 15, 14, 13, 12, 11, 10, 9, 6, 4, 3, & 1. This prevents concerns from being brought forward & dealt with properly in compliance w/10 CFR 50 App B e.g. criteria 15, 16, 14, 1, 2, & 3

The Staff opposed admission of this proffered contention as lacking the basis and specificity required by 10 C.F.R. § 2.714. <sup>1/</sup>

The Licensing Board's Memorandum and Order dated January 14, 1985 balanced the five factors of 10 C.F.R. § 2.714(a)(1) and found that they weighed against the contention as proffered and accepted as an issue Contention 41-G in the following form:

Chan Van Vo was placed on probation and later terminated from his job with CP&L because he had sought to raise nuclear safety concerns about the Harris facility, as he alleges, and not because of poor job performance, as CP&L alleges.

"Memorandum and Order (Ruling on Certain Safety Contentions and Other Matters)" at 3.

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<sup>1/</sup> "NRC STAFF RESPONSE IN OPPOSITION TO CONTENTIONS PROFFERED BY WELLS EDDLEMAN AND CCNC BASED UPON AN OCTOBER 6, 1984 AFFIDAVIT OF CHAN VAN VO DAVIS" (November 13, 1984).

Mr. Eddleman's Motion seeks now to have his original Proffered Contention 41-G substituted for the contention admitted by the Licensing Board.

### III. DISCUSSION

Motions for reconsideration ". . . should be associated with requests for re-evaluation of an order in light of an elaboration upon, or refinement of, arguments previously advanced." <sup>2/</sup> Thus, it is appropriate to review and analyze the present motion to see if there were important facts or legal matters which the Licensing Board overlooked, misapprehended, or failed adequately to consider in its January 14, 1985 Order.

The Staff was of the view that the Proffered Contention 41-G alleged that "there exists a pattern of harassment, intimidation, and failure to respond . . . to employees . . . QA/QC concerns", and cited as basis the entire Van Vo Affidavit (see Contention 41 as submitted by Mr. Eddleman on 10/25/84). In our view Mr. Eddleman had not set forth any specifically described harassment or some rational factual basis in support thereof. The Van Vo Affidavit states on page 14 line 15 that Mr. Van Vo was pressured but no detailed description of the pressure is set forth or any description of what he was being pressured to do. On page 15 line 3 Mr. Van Vo states that there is "a great deal of pressure". However, that pressure is not detailed. A close reading of Mr. Van Vo's Affidavit does not describe an allegation of any specific pressure upon himself or

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<sup>2/</sup> Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981).

any other identifiable person to do anything wrong in regard to QA or work practices which could have adverse safety consequences. The Staff concluded that the proffered contention lacked the basis and specificity required by 10 C.F.R. § 2.714, and went beyond the Van Vo Affidavit. In our view Proffered Contention 41-G was so general that it raised no issue which could be resolved in an evidentiary hearing. We have again reviewed the matter and adhere to our previous position.

The Licensing Board's rationale for not admitting the proffered 41-G is set forth on pages 4-6 of its January, 1985 Order. The Board determined that a balancing of the five factors of 10 C.F.R. § 2.714(a)(1) weighed against admission of the proffered contention. Order at 3. Nowhere in his motion for reconsideration does Mr. Eddleman point to some inadequacy or misapprehension in the Board's legal or factual consideration of the five factors. Indeed Mr. Eddleman's motion does not address the legal basis of the Board's determination. Lacking such a demonstration which would address the Board's legal determination and factual understanding of the Van Vo affidavit and the proffered contention, the motion for reconsideration must be denied.

In addition to the foregoing, the Board's basic approach was to determine first if Mr. Van Vo's allegation that he was harassed is correct. Then the Board would consider whether to admit a broader contention. Thus, upon a full evidentiary adjudication of the merits of the Van Vo affidavit allegation of harassment the Board would then consider the broader issue.

Thirdly, Mr. Eddleman's motion for reconsideration alleged that the contention should raise as an issue "a pattern of harassment." <sup>3/</sup> Mr. Eddleman argued to the Licensing Board on October 25, 1984 (Tr. 5740 lines 19-23) that he drafted his contentions to go beyond the concerns raised by Van Vo. The original proffered 41-G did, and does, go beyond the Van Vo Affidavit and has no factual basis to support it. Our reading of Mr. Eddleman's arguments in his motion does not persuade us that the Van Vo affidavit will legally support a general allegation of a pattern of harassment.

Mr. Eddleman also argues (Motion at 3) that the Board's two step approach "appears to make delay more likely..." It is not clear from the filings that this is factually correct. Mr. Eddleman later argues that the broader issue, a pattern of harassment, would not lead to a significant delay of the proceeding. Motion at 5.

These Eddleman arguments do not go to the issue of reconsideration of the Board's denial of the proffered contention and, therefore, are extraneous to the issue now before the Board. In our view, initially litigating whether Mr. Van Vo was harassed so as adversely to affect safe construction would be less time and resource consuming than litigating the general proposition that a pattern of harassment exists, a proposition for which there is no basis.

Finally, Mr. Eddleman argues with respect to the Board's rulings on his proffered contentions that Proffered Contention 41-C should be admitted.

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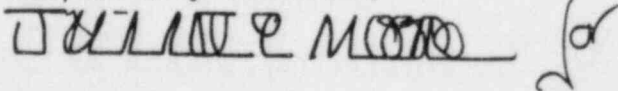
<sup>3/</sup> Motion page 1.

Motion at 8. The Board in its order ruled that the five factors weighed against the admission of Proffered Contention 41-C. Board Order at 6. Mr. Eddleman merely argues in his motion that the general issue of falsification of documents should be considered. He has not presented any refinement or elaboration of previous arguments which would warrant reconsideration by the Board of its ruling balancing the five factors against admission of the contention. Therefore, Mr. Eddleman's motion for reconsideration of this ruling should be denied.

IV. CONCLUSION

We continue to conclude that the Van Vo affidavit does not provide the basis and specificity required by 10 C.F.R. § 2.714 to support a vague, general contention that a pattern of harassment exists at Harris which could have safety significance. We further conclude that Mr. Eddleman's Motion and supporting arguments do not demonstrate a clear error of law in applying the five factors of 10 C.F.R. § 2.714(a)(1) to the proffered contention or a misunderstanding of the facts set forth in the Van Vo Affidavit by the Licensing Board which would compel them to reconsider admitting Proffered Contentions 41-G and 41-C. Therefore, the motion should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CHARLES A. BARTH" with a stylized flourish at the end.

Charles A. Barth  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 25th day of February, 1985

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I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO WELLS EDDLEMAN'S MOTION FOR RECONSIDERATION OF LICENSING BOARD ORDER ADMITTING CONTENTION 41-G" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or deposit in the Nuclear Regulatory Commission's internal mail system (\*), this 25th day of February, 1985:

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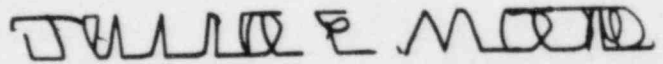
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