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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECURITY  
PROTECTIVE & SERVICE  
ATTACH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 213-a

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 213-a. As discussed herein, there is no genuine issue as to any fact material to Eddleman Contention 213-a and Applicants are entitled to a decision in their favor on Eddleman Contention 213-a 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 213-a;
2. "Affidavit Of Jesse T. Pugh, III In Support Of Applicants' Motion For Summary Disposition Of Eddleman 213-a" ("Pugh Affidavit"); and

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3. "Applicants' Memorandum Of Law In Support Of Motions For Summary Disposition Of Emergency Planning Contentions," (filed October 8, 1984).

#### I. PROCEDURAL BACKGROUND

Eddleman Contention 213-a was initially advanced in "Wells Eddleman's Contentions on the Emergency Plan (2d Set)" (April 12, 1984). Eddleman 213-a was admitted as a contention in this proceeding in the Board's "Memorandum and Order (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)," LBP-84-29B, 20 N.R.C. 389, 408-409 (1984). In its August 3, 1984 Order, the Board did not specify the precise wording of Eddleman 213-a. The Applicants, Mr. Eddleman, and the NRC Staff then entered into a stipulation codifying certain admitted contentions. See "Joint Stipulation Codifying Certain Admitted Contentions" (October 12, 1984).<sup>1/</sup> As stipulated by the parties, Eddleman 213-a reads:

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<sup>1/</sup> In their "Joint Motion for Approval of Stipulation Codifying Certain Admitted Contentions" (October 12, 1984), the applicants, Mr. Eddleman, and the NRC Staff requested Board approval of the wording of Eddleman 213-a. On December 6, 1984, the Board granted the Joint Motion of the parties. See "Order Approving Joint Stipulation Codifying Certain Admitted Contentions" (December 6, 1984).

Either each off-site ERP should contain an appendix which conforms to evaluation criterion II.P.7 of NUREG-0654 or it should be demonstrated that such an appendix is unnecessary because its functions are performed in some other way by the present form of the plans.

Applicants have served one set of interrogatories and request for production of documents on Mr. Eddleman on the subject of Eddleman 213-a. See "Applicants' Emergency Planning Interrogatories and Request for Production of Documents to Intervenor Wells Eddleman (Second Set)" (October 5, 1984), at 7-8. "Wells Eddleman's Response to Applicants' 2d Set of Emergency Planning Interrogatories" was filed October 30, 1984. Mr. Eddleman has served two sets of interrogatories on the Applicants on the subject of Eddleman 213-a. See "Wells Eddleman's General Interrogatories to the Applicants Carolina Power & Light, et al. (11th Set)" (August 31, 1984), at 10-11, and "Second Round Interrogatories on 213-a to Applicants/ Emergency Response Personnel and Request for Production of Documents" (December 3, 1984). "Applicants' Response to Wells Eddleman's General Interrogatories to Applicants (11th Set)" was filed October 1, 1984, and "Applicants' Supplemental Responses to Wells Eddleman's General Interrogatories to Applicants (11th Set)" were filed November 26, 1984.<sup>2/</sup> "Applicants'

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<sup>2/</sup> Pursuant to an agreement between Applicants and Mr. Eddleman, Applicants extended their time to respond to Mr. Eddleman's eleventh set of interrogatories due to the delay caused by Hurricane Diana. This agreement allowed Mr. Eddleman additional time to file a second round of interrogatories on the contention.

Response to Wells Eddleman's Second Round Interrogatories on 213-a to Applicants/Emergency Response Personnel and Request for Production of Documents" was filed December 21, 1984.

Mr. Eddleman has served two sets of interrogatories on the NRC Staff and FEMA on the subject of Eddleman 213-a. See "Wells Eddleman's Interrogatories to NRC Staff and FEMA (6th Set)" (August 31, 1984), at 5-6, and "Wells Eddleman's General Interrogatories and Interrogatories and Request for Production of Documents to FEMA/NRC Staff" (October 8, 1984), at 2. "FEMA Response to Interrogatories dated August 31, 1984 Propounded by Wells Eddleman" was filed September 28, 1984, and "NRC Staff and FEMA Response to Wells Eddleman's General Interrogatories, Interrogatories and Request for Production of Documents dated October 8, 1984" was filed October 25, 1984. The NRC Staff/FEMA did not file any discovery request on the subject of Eddleman 213-a. Discovery on this contention is now completed.

Eddleman Contention 213-a is classified as an emergency planning contention to be addressed in the hearings scheduled to commence June 18, 1985. Written direct testimony on the contention is scheduled to be filed June 3, 1985. Further, the Board and the parties have established January 14, 1985 as the last day for filing summary disposition motions on this contention. Thus, the instant motion is timely, and Eddleman Contention 213-a 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 October 8, 1984, is fully applicable to this Motion and is incorporated by reference herein.

### B. Substantive Law

Subsection 16 of the Commission's emergency planning standards, 10 C.F.R. § 50.47(b), requires that:

Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

10 C.F.R. § 50.47(b)(16). Criteria and guidance for reviewing the adequacy of an emergency response plan under this standard are addressed in II.P of 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) (hereinafter cited as "NUREG-0654"). The specific criterion at issue in this contention, II.P.7 of NUREG-0654, provides in full as follows:

Each plan shall contain as an appendix listing, by title, procedures required to implement the plan. The listing shall include the section(s) of the plan to be implemented by each procedure.

NUREG-0654 at 79.

### 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 213-a should be granted. As recognized by the Board in its order of August 3, 1984, the remaining issues presented by Eddleman 213-a are very narrow. As admitted by the Board, neither the adequacy of any procedure to implement the Plan nor the adequacy of the Plan itself in the absence of any specific procedure is placed in issue by Eddleman 213-a. LBP-84-29B, 20 N.R.C. 389, 408. Rather, the issues raised by Eddleman 213-a are solely limited to whether the Plan contains an appendix in accordance with II.P.7 and, if not, whether the purposes of II.P.7 are satisfied in some other way by the present form of the Plan.

As it is currently constituted, the Shearon Harris Emergency Response Plan ("ERP") contains appendices satisfying the requirements of criterion II.P.7. The Plan is divided into five parts, Parts 1-5. Part 1 sets forth the State's responsibility and involvement for emergency planning and response for Shearon Harris. Parts 2 through 5 set forth the responsibility and involvement for emergency planning and response for Chatham, Harnett, Lee and Wake Counties, respectively. See ERP and Pugh Aff. ¶ 4. Attachment 2 for each Part of the ERP lists by title various other State and county plans as well as State and county standard operating procedures to be used in the

implementation of the Plan by the State and each of the four counties, respectively. Pugh Aff. ¶ 4. For example, Attachment 2 to Part 1 lists the plans and standard operating procedures supporting the State's involvement in the Shearon Harris ERP as set forth in Part 1. Pugh Aff. ¶ 4.<sup>3/</sup> Likewise, Attachment 2 for Parts 2 through 5 sets forth the respective county procedures and plans supporting the counties' involvement in the Shearon Harris ERP as set forth in Parts 2 through 5, respectively. Id.<sup>4/</sup>

Thus, the Plan for the State and each county does contain an appendix (labelled here as an attachment) listing procedures and other plans that are used in implementing the Shearon Harris ERP. This is the precise listing of procedures called for by the first sentence of II.P.7. Indeed, FEMA, responsible for reviewing compliance of offsite ERPs with NUREG-0654, in its review has found this listing in Attachment 2 to each Part of the Plan to satisfy the requirement of II.P.7 to list by title the procedures required to implement the Plan.<sup>5/</sup>

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<sup>3/</sup> For example, the Attachment lists State procedures such as the "SERT/ECO Support Staff Organization and Standard Operating Procedure" and supporting State plans, such as the "Southern Mutual Radiation Assistance Plan." Part 1, Attachment 2 of the ERP.

<sup>4/</sup> For example, Attachment 2 for Part 5 lists various standard operating procedures ("SOPs") and plans for Wake County supporting Wake County's involvement in the Shearon Harris ERP, such as the "Wake County Evacuation Plan for Schools" and the SOP for the "Emergency Operations Center, as well as the general "Standard Operating Procedures (SOP) for Wake County."

<sup>5/</sup> See "FEMA Response to Interrogatories Dated August 31, 1984, Propounded by Wells Eddleman," Answer to Interrogatory

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Moreover, wholly apart from the procedures already listed and already found sufficient by FEMA, the State and counties are presently developing additional standard operating procedures ("SOPs") to aid in the implementation of the ERP for the Shearon Harris facility. Pugh Aff. ¶ 7. A list of additional county standard operating procedures in support of the Shearon Harris ERP currently under development is set forth in Attachment B to the Pugh Affidavit.<sup>6/</sup> As is apparent from this list, the procedures under development are detailed and extensive. They include SOPs for shelter management, warning and notification of the public, special transportation, radiological monitoring, decontamination and the like, staging areas for medical and rescue resources, traffic and roadblock control, and training. Upon their completion, the State intends to have the Shearon Harris Emergency Response Plan amended to include these new procedures as part of the implementing procedures currently identified and set forth in Attachment 2 of the various Parts of the Emergency Response Plan. Pugh Aff. ¶ 7.

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(Continued)

213-A-1(a) (September 28, 1984); "FEMA Staff Response to Wells Eddleman's General Interrogatory and Request for Production of Documents Dated October 8, 1984," Answer to Interrogatory 213-A-5(a), page 3 (October 25, 1984.)

<sup>6/</sup> Since the Board admitted Eddleman Contention 213-a, the State has already amended the Plan to add a list of State procedures and plans used in implementing the ERP at Attachment 2 to Part 1. This list was added to the Plan in the September 3, 1984 revision. See lines in right-hand margin of the Attachment.



Thus, the requirement of the first sentence of II.P.7 is satisfied. As recognized by FEMA, the respective plans for the State and counties do currently contain appendices that list procedures to be used in the Plan's implementation. Furthermore, extensive additional procedures are under development and will be added to those lists. It is irrelevant that some of those procedures to be used in implementing the Plans are not yet in final form and listed in the respective appendices. As made clear by the Board in admitting Eddleman 213-a, the issue is not the content or sufficiency of any procedure, but rather the simple question of whether the Plan contains an appendix listing the procedures that the State and counties will use in implementing the Plan.<sup>7/</sup> Each Plan contains such a listing of currently established procedures, and upon completion of those additional procedures under development, the Plan will be amended to list those procedures as well. Thus, the Plan currently conforms, and prospectively will conform, to the first sentence of criterion II.P.7.

The second requirement of II.P.7 (that the listing identify the section(s) of the Plan being implemented by each procedure) is also satisfied here. As the Plan is currently constituted, while the Attachments do not list the section(s) being implemented, the title of each supporting SOP or plan listed

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<sup>7/</sup> As noted by the Board, "[t]he mechanical details implementing procedures consist of are almost never suitable for litigation." 20 N.R.C. at 408.

does indicate the section(s) of the ERP that each supporting procedure or plan implements. For example, the title of the standard operating procedure labelled "Emergency Operations Center" listed in Attachment 2 to the respective county plans indicates that this procedure is used to implement those sections of the respective county plans concerning the operation of the county emergency operations centers. See Part 2, III.C, Part 3, III.C, Part 4, III.C and Part 5, III.C of the ERP. Similarly, the other titles of the listed procedures indicate the sections of the Plan being implemented.<sup>8/</sup>

Moreover, when the State amends Attachment 2 for the respective Parts of the Plan to add the new procedures currently under development, it will, at the same time, amend the Attachments to include more explicitly the section(s) of the Plan that each procedure, both those presently listed and those being added, are intended to implement. Pugh Aff. ¶¶ 7-8. Accordingly, at that point in time, there will be no doubt that the Plan conforms to the requirement of the second sentence of II.P.7.

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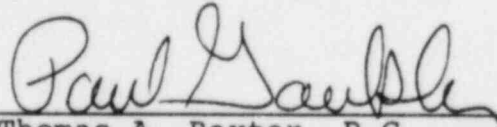
<sup>8/</sup> As explained in the affidavit of Jesse T. Pugh, Director of the Division of Emergency Management of the North Carolina Department of Crime Control and Public Safety, the general SOPs identified in the Attachments (i.e. "State Emergency Response Team Standing Operating Procedures," Part I, Attachment 2 and the "Standard Operating Procedures (SOP)" for Chatham, Lee and Wake counties, Parts 2, 4 & 5, Attachment 2) consist of a single document for each organization which sets forth generally applicable procedures to be used by that organization in emergencies generally. As such, these procedures provide additional detail for implementing the ERP as a whole.

Thus, the ERP does, and will, contain appendices that conform to evaluation criterion II.P.7. Each Part of the Shearon Harris ERP contains an Attachment listing the implementing plans and SOPs of the State and counties respectively. Additionally, these lists will be amended to list numerous new additional SOPs as well as to list the section(s) of the Plan that each of the procedures is intended to implement. Accordingly, both the requirements and purposes of evaluation criterion II.P.7 are satisfied.

#### IV. CONCLUSION

For the reasons set forth above, the Board should grant Applicants' Motion for Summary Disposition of Eddleman 213-a.

Respectfully submitted,



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Dated: January 14, 1985

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	)	
(Shearon Harris Nuclear Power	)	
Plant)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion For Summary Disposition of Eddleman 213-a," "Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard On Eddleman 213-a," "Affidavit of Jesse T. Pugh, III in Support of Applicants' Motion for Summary Disposition of Eddleman 213-a" were served this 14 day of January, 1985, by deposit in the U.S. mail, first class, postage prepaid, upon the parties listed on the attached Service List.

Paul Gaudin

Dated: 1-14-85

January 14, 1985

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MUNICIPAL POWER AGENCY	)	
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(Shearon Harris Nuclear Power Plant)	)	

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