

January 14, 1985

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UNITED STATES OF AMERICA 65 JUN 17 P1:58
NUCLEAR REGULATORY COMMISSION

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 EPJ-4(c)

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 EPJ Contention 4(c). As discussed herein, there is no genuine issue as to any fact material to EPJ Contention 4(c), and Applicants are entitled to a decision in their favor on EPJ Contention 4(c) 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 EPJ-4(c)";
2. "Affidavit of Jesse T. Pugh, III on EPJ-4(c)" ("Pugh Affidavit"); and
3. "Applicants' Memorandum of Law In Support of Motions For Summary Disposition of Emergency Planning Contentions," (filed October 8, 1984).

I. PROCEDURAL BACKGROUND

Emergency Planning Joint ("EPJ") Contention 4(c) was initially advanced in "Wells Eddleman's Contentions on the Emergency Plan (2d Set)" (April 12, 1984) as Eddleman Contentions 222 and 230, and in "Contentions of Richard Wilson Concerning North Carolina Emergency Response Plan" (April 13, 1984) as part of Wilson Contention 8.

EPJ Contention 4(c) was admitted as a contention in this proceeding in the Board's August 3, 1984 "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, 420-21. As admitted by the Board, EPJ-4(c) contends:

Section E4d of State Procedures (p. 47) is deficient because --

In normal operation, each bus makes two runs each day. Thus, two round trips to the shelter sites would be required. (This factor was not considered in traffic control plans or evacuation time estimates). Students who do not normally ride buses will be an extra burden, requiring even more round trips.

CHANGE has been designated "lead intervenor" on EPJ-4. Id.

Applicants have served one set of interrogatories and request for production of documents on the sponsors of EPJ-4(c) on the subject of EPJ-4(c). See "Applicants' Emergency

Planning Interrogatories and Request for Production of Documents to sponsors of EPJ-1 [sic; EPJ-3] (CCNC), EPJ-4 (CHANGE), and EPJ-5 (Wilson)" (October 5, 1984), at 16-17. "Response to Applicants' Emergency Planning Interrogatories to CHANGE (5 Oct. 1984)" was filed on November 9, 1984.

The sponsors of EPJ-4(c) served one set of interrogatories on Applicants on the subject of EPJ-4(c). See "Emergency Planning Interrogatories and Request for Production of Documents to Applicants" (October 8, 1984) at 4-5. "Applicants' Response to [CHANGE] Emergency Planning Interrogatories and Request for Production of Documents [On Contentions EPJ-1, EPJ-2 and EPJ-4]" was filed October 29, 1984. Mr. Eddleman has served one set of interrogatories on the NRC Staff and FEMA on the subject of EPJ-4(c). See "Wells Eddleman's Interrogatories to NRC Staff and FEMA (6th Set)" (August 31, 1984), at 1-4. "FEMA Response to Interrogatories Dated August 31, 1984 Propounded By Wells Eddleman" was filed on September 28, 1984. The NRC Staff/FEMA filed no discovery requests on the subject of EPJ-4(c). The last date for filing discovery on the contention was October 8, 1984. Discovery on this contention is, therefore, complete.

EPJ Contention 4(c) 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 EPJ Contention 4(c) 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

The Commission's emergency planning regulations, at 10 C.F.R. § 50.47(b)(10), require, in relevant part, that:

[a] range of protective actions have been developed for the plume exposure pathway EPZ for * * * the public.

As noted in footnote 1 to 10 C.F.R. § 50.47, the standards embodied in the emergency planning regulations are 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 J.9 provides, in relevant part:

Each State and local organization shall establish a capability for implementing protective measures * * *.

Criterion J.10.g further provides:

The organization's plans to implement protective measures for the plume exposure pathway shall include:

g. Means of relocation;

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 EPJ-4(c) should be granted. The underlying premise of EPJ-4(c) -- that multiple "round trips to the shelter sites would be required" for school evacuation -- is simply invalid. To the contrary, state and local emergency planning authorities, in cooperation with appropriate school officials, have made a detailed assessment of both the need for and the availability of resources for the evacuation of the ten schools in the EPZ. As explained below, their plans accomplish school evacuation in a single trip, using existing, readily available transportation resources.

In the Wake County public school system, the Apex Attendance Area has a total of 48 buses available. Of these, only 30 would be used for school evacuation. Apex Elementary School would be evacuated using seven buses. A.V. Baucom Elementary School would be evacuated using eight buses. Apex Middle School would be evacuated using eleven buses. And, at Apex High School, four buses would be used to evacuate those

students who do not provide their own transportation.^{1/} Pugh Affidavit, ¶ 3.

The Fuquay-Varina Attendance Area has a total of 38 buses available, of which 37 would be used for school evacuation. Fuquay-Varina Elementary School would be evacuated using six buses. Lincoln Heights Elementary School would be evacuated using eight buses. Fuquay-Varina Middle School would be evacuated using 14 buses. And, at Fuquay-Varina High School, nine buses would be used to evacuate those students who do not provide their own transportation. Pugh Affidavit, ¶ 4.

At Wake Chapel School, a K-8 private school in Fuquay-Varina, evacuation would be accomplished using one small bus, two larger school buses, and the personal vehicles of seven school staff members. Pugh Affidavit, ¶ 5. And Moncure Elementary School -- the only Chatham County school in the EPZ -- would evacuate using five buses. Pugh Affidavit, ¶ 6.

The figures used to assess the need for resources for school evacuation reflect several conservatisms which may reduce the number of buses needed. First, the calculations do not account for absenteeism, although school officials indicate

1/ At both the high schools within the EPZ, significant numbers of students provide their own transportation. Pursuant to school policy, with prior written parental consent, these students would be released in the event of an evacuation, to take advantage of their available means of private transportation. Pugh Affidavit, ¶ 3 n.2, ¶ 4 n.4. Ample bus capacity exists to accommodate contingencies such as, e.g., a day when fewer students than usual drive to school. Pugh Affidavit, ¶ 8.

that daily absenteeism averages 5% to 10% of enrollment. Second, the calculated capacity of buses includes no provision for standees, which would increase the capacity of each large bus by approximately 10 students. Pugh Affidavit, ¶ 7. See Consumers Power Co. (Big Rock Point Plant), LBP-83-44, 18 N.R.C. 201, 205-06 (1983) (approving both consideration of absenteeism in assessing resources for school evacuation and the use of school buses at 120% or more of rated capacity in an emergency).

In summary, based on contacts with authorities at all schools within the EPZ, and with appropriate Chatham and Wake County school officials, there is assurance that -- in an emergency -- evacuation of the schools within the EPZ would be accomplished in a single trip to the school evacuation shelters. Pugh Affidavit, ¶¶ 2, 9. The intervenor sponsors of EPJ-4(a) cannot avoid summary disposition on the basis of guesses or suspicions, or on the hope that at the hearing Applicants' evidence may be discredited or that "something may turn up." See Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 N.R.C. 246, 248 (1975). The intervenors here cannot distinguish this case from the body of NRC case law approving similar plans for the evacuation of schools. See, e.g., Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 N.R.C. 933, 995-96 (1984) (approving North Carolina plans for school evacuation); Kansas Gas & Electric

Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 N.R.C. 53, 70, 98-99 (1984) (approving plans for evacuation of school children using both buses and the personal vehicles of teachers).

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of the ability to evacuate the schools in the Harris EPZ without multiple "round trips to the shelter sites," Applicants' Motion For Summary Disposition of EPJ-4(c) should be granted.

Respectfully submitted,

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Dated: January 14, 1985

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion For Summary Disposition of EPJ-4(c)," "Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard on EPJ-4(c)," and "Affidavit of Jesse T. Pugh, III on EPJ-4(c)" were served this 14th day of January, 1985, by deposit in the U.S. mail, first class, postage prepaid, upon the parties listed on the attached Service List.

Delissa A. Ridgway
Delissa A. Ridgway

Dated: January 14, 1985

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