UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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| In the Matter of<br><br>CAROLINA POWER AND LIGHT CO. et al.<br>(Shearon Harris Nuclear Power Plant,<br>Units 1 and 2) | Dockets 50-400 OL<br>50-401 OL |

Wells Eddleman's answer to Applicants'
Response to Motion Concerning DCRDR Information
And Proposed New Contentions

With regard to the motion, Applicants admit (footnote 1, p.2 of 1-25 "response") that the DCRDR is the only information available to intervenors or NRC staff on this matter. The plain fact is that the DCRDR is not specific enough to formulate contentions on in any number of areas, e.g. the HERS for the lighting and visual alarms. If CP&L's argument is accepted, then I am to be expected to formulate specific contentions ~~at~~ as to how CP&L fails to meet NRC requirements without being able to see what CP&L has done to meet those requirements in any of the areas addressed in my motion of January 8. This is absurd. Where the sketchy DCRDR (of only 14 pages) and its appendices supply enough data to formulate contentions, I have done so. The information CP&L possesses, which they state (footnote p.2 ibid) is not available to NRC or intervenors, is listed descriptively in DCRDR Appendix A, but certainly not with enough specificity to formulate contentions with basis. They are mere descriptions. CP&L's whole argument on this motion is sophistry and if accepted will allow them to prevent contentions being formulated, by not filing information.

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With respect to the contentions, Applicants apparently seek to have their cake and eat it too in at least 3 distinct ways. First, they attempt a catch-22 trap in calling the contentions premature, knowing the Board requires them to be filed within 30 days of receipt of key documents by intervenors. I simply assert in 132B, 132 C and 132 D that Applicants have not done certain things they are required to do. Applicants admit this is true (last 2 lines of page 3 of their Response of 1-25). These contentions are based on new information and the new requirements of NUREG-0737, Revision 1, as Applicants realize (p.3). I am under no obligation to give them more time to try to meet a requirement before filing a contention within the time allowed for filing contentions.

Second, such contentions according to the Appeal Board must be based on wholly new information. That surely applies to NUREG-0737 Rev. 1 and the DCRDR, the first of which did not exist at the original time to file contentions, and the second of which just became available. Then the Applicants say, don't admit the contentions because their basis is new and we haven't had time to act on it. Again the key fact is that Applicants have not complied with these requirements. Thus, the contentions 132B,C,andD are admissible now.

Applicants also say I haven't proved they won't comply with these requirements. That goes to the merits of the contentions. I don't have to prove anything. All I have to do is show with reasonable specificity and basis that a contention is admissible. And failure to have complied with applicable NRC rules and requirements is exactly such a basis.

Finally, Applicants seem to object to my citing specific basis for my contentions, saying I am acting as an NRC reviewer. This idea is irrelevant and self-contradictory, for an intervenor must review

the available documents concerning a plant to formulate contentions thereon. Applicants admit (footnote, p.2) that their "DCRDR" is the only available info in this area on what Applicants are doing to meet NRC requirements.

Applicants admit (p.4 lines 20-22) that the basis of 132B is correct. Applicants claim that the qualifications of Essex Corp. personnel are known to CP&L and the NRC (p.5) but not that such information is available, now or previously, to intervenors or to me. That being so, how can I be expected to specifically critique the (unknown) qualifications of said reviewers? It would have been easy enough to put their resumes and a description of how their qualificate ions are appropriate for doing a DCRDR into the DCRDR. CP&L didn't. Nor has CP&L shown that the review was conducted according to accepted human engineering principles, although presumably if the Essex team is qualified to do so, it could have explained how and put that in the DCRDR too. CP&L's failure to provide information is simply no excuse for them to avoid their burden of proof. If they had adequate info on the matters of Contention 132C, they could have put it in. They didn't, and that's basis enough for alleging they didn't comply with the specific requirement of NUREG-0737 Rev. 1 section 5.1(b)(1).

Applicants admit (1st paragraph, p.6) that 132C II is correct as to factual basis and specificity. The specific concerns of this contention are well detailed, and "independence" of them from whatever is simply not a requirement for contentions.

132D is simply correct based on the info in the "DCRDR" which is all the Applicants had produced for intervenors. Again, if Mr. O'Neill's argument on the merits ("once the design for Harris unit 1 is completed and approved by the NRC") makes sense, it can only be on the basis of

things yet to be done and information not available to intervnors. Applicants have no right to expect intervenors to be clairvoyant, and it would certainly have been easy enough to state that Unit 2 would have the same design as that ~~tx~~ which might be approved for Unit 1, in the DCRDR, if that were the case. The contention is based on the DCRDR, which never mentions Unit 2. (I think this may be further evidence that Unit 2 isn't really going to be built.)

With respect to Contentions 142 through 144, the reason they weren't filed earlier is stated separate from the rest of the contentions: They are based on NUREG-0737 Rev. 1 requirements which just became available 12-17-82. The cover letter of that document states that among the items affected by its revisions are III.A.2.2 Meteorological Data, III.A.1.2 Upgrade Emergency Support Facilities. It further states (Introduction, p.2) that although it does not alter previously issued guidance which remains in effect, "This document does attempt to place that guidance in perspective by identifying the elements that the NRC staff believes to be essential to upgrade emergency response capabilities."

With respect to Contention 142, Section 6.1 of NuREG o737 Rev. 1 provides that CP&L's program must provide reliable indication of variables including wind direction, wind speed and atmospheric stability. This is exactly the deficiency I allege, since CP&L has only one site in the midst of this region of variable atmospheric condictions. Such conditions are highly variable within 10 miles of SHNPP, as anyone who watches the weather radar or travels through the area knows.

Also, Applicants allege that RDU airport data are not representative of the plant area, but section 6.1(b) requires such information to be available via communication with the National Weather Service. The above (all) are stated to be "requirements" that supersede NUREG-0737.

Re Contention 143, NRC review of all these interrelated items is clearly required. E.g. see Section 7.2NRC "will perform a pre-implementation review of the Technical Guidelines." While section 6 allows implementation without NRC review, the interrelationships must be considered. This isn't done until the NRC audit. Particularly relevant is section 8.4.2 (p.23) of NUREG-0737 Rev. 1, which states "The conceptual design for emergency response facilities (TSC, OSC and EOF) have been submitted to NRC for review. In many cases, the lack of detail in these submittals has precluded an NRC decision of acceptability. Some designs have been disapproved because they clearly did not meet the intent of the regulations. NRC does not intend to approve each design prior to implementation, but rather has provided in this document those requirements which should be satisfied. " (emphasis added).

The introduction (p.2) states that these requirements "are, therefore, to be accorded the status on approved NUREG-0737 items as set forth in the Commissions's Statement of Policy" 45 FR 85236. Thus, 143 can be rephrased to state that the designs and construction of the CP&L Harris TSC, OSC and EOF have not been demonstrated to comply with the requirements of NUREG-0737, Rev. 1. The basis is admitted, they are not designed or built. It is difficult to guess just where Applicants will not or may not comply with these guidelines when they haven't implemented them yet; I filed these 142-144 contentions knowing they may be deferred, but that I should file them when the basis information became available. But from the "DCRDR" it is easy to guess that they will fail (or may fail) to use human factored, function oriented emergency operating procedures and reanalyze transients (7.1 a and b, p.15); the lack of tested communications lines is basis for noncompliance with 8.1 "8"; the unbuilt TSC ~~xx~~ fails

8.2.1 b,c,d,e, and f; its lack of tested communications lines violates 8.2.1 g and 8.3.1 c; the unbuilt EOF does not provide for the requirements of 8.4.1 b, c, d, k, and e; its untested, unbuilt communications violate 8.4.1 f and g; not having the information required in 8.4.1 (h); CP&L's erroneous Blueprints of the Brunswick torus and the mess they caused in prefab structures for use inside it provides some basis for CP&L's not providing accurate up to date records and procedures at the EOF. Finally, note that 8.4.1 i provides for staffing per Table 2 (Contention 144) as a requirement unless exceptions are justified to NRC staff, which has not been done. The Table 1 requirements (contention 143) are clearly not met where the facilities do not exist.

I think the above provides plenty of clarity; the reason this amount of detail didn't go into the original contentions was simply that I had other pressing business and deadlines between the DCRDR and its filing deadline, and specified as clearly as time permitted. Moreover, use of the above info will not broaden the issues beyond Eddleman 132 and deferred emergency planning contentions; will not delay the proceeding at this point since these contentions have not been ruled on. No other parties have taken up these issues with contentions, so there are no other means to protect my interest on this point. And it is clear that these are important requirements, vital to protecting the public health and safety, that contentions 142 through 144 address, so hearing them will clearly help to develop a sound record. Therefore I respectfully request that the above information, if necessary to the admissibility of contentions filed January 10th 1983, be used on the basis of my showing re the late-filing requirements above, and that each of those contentions as filed (perhaps renumbering 132C II as 132A) be admitted.

Wells Eddleman