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OFFICE OF GENERAL COUNSEL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
 )  
CAROLINA POWER AND LIGHT )  
COMPANY AND NORTH CAROLINA )  
EASTERN MUNICIPAL POWER )  
AGENCY )  
 )  
(Shearon Harris Nuclear Power Plant, )  
Unit 1) )

Docket No. 50-400 OL

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NRC STAFF'S ANSWER TO  
PETITION FOR COMMISSION REVIEW

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Stuart A. Treby  
Deputy Assistant General Counsel

August 14, 1986

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OFFICE OF SECRETARY  
DOCKETING DIVISION

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I. INTRODUCTION

On July 30, 1986, a "Petition For Commission Review Pursuant To 10 CFR 2.786" ("Petition") was filed by two representatives of the Coalition for Alternatives to Shearon Harris ("CASH") and Mr. Wells Eddleman. <sup>1/</sup> The Petition seeks Commission review of two matters: first, on behalf of CASH, Calvin Ragan, et al., and Patricia Miriello, review of the Memorandum and Order by the Atomic Safety and Licensing Appeal Board issued July 11, 1986 ("Memorandum and Order") which denied CASH's Petition to Intervene and second, on behalf of CASH and Wells Eddleman, pro se, review of the same Appeal Board Memorandum and Order which denied a stay of the license authorization for the Shearon Harris facility.

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<sup>1/</sup> The Petition was signed on behalf of "Wells Eddleman, pro se". Mr. Eddleman also is a member of CASH.

Pursuant to 10 C.F.R. § 2.786(b)(3), the NRC Staff ("Staff") files its answer to the Petition. For the reasons more fully set forth below, the Staff opposes the Petition in all aspects and recommends that it be denied.

## II. BACKGROUND

On April 28, 1986, the Atomic Safety and Licensing Board ("Licensing Board") issued its Final Licensing Board Decision ("FLBD"). Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-86-11, 23 NRC 294 (1986). <sup>2/</sup> The FLBD authorized the Director of Nuclear Reactor Regulation, upon making the other requisite findings, to issue to Applicants a license to operate the Harris plant. LBP-86-11, supra, 23 NRC at 408-09. On June 9, 1986 intervenors Wells Eddleman and the Conservation Council of North Carolina ("CCNC") filed "Appeal From Final Licensing Board Decision" which currently remains pending before the Appeal Board.

On June 9, 1986, the same date intervenors who participated in the hearings before the Licensing Board filed their appeal, CASH filed a petition for leave to intervene and, together with Wells Eddleman, filed a joint motion for a stay of the immediate effectiveness of the FLBD. The petition for leave to intervene was untimely, having been filed more than four years after the notice of opportunity for hearing was published in the Federal

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<sup>2/</sup> The FLBD was preceded by three Partial Initial Decisions. Appeals are pending before the Appeal Board from the Partial Initial Decision on Safety Contentions, LBP-85-28, 22 NRC 232 (1985), and from the Partial Initial Decision on Emergency Planning and Safety Contentions, LBP-85-49, 22 NRC 899 (1985). The Partial Initial Decision on Environmental Contentions, LBP-85-5, 21 NRC 410 (1985), was affirmed by the Appeal Board in ALAB-837, 23 NRC 525 (1986).

Register. <sup>3/</sup> The Appeal Board, noting that all operating license proceedings before the Licensing Board had been completed and that most of the case was before it, denied the petition for leave to intervene on the grounds that CASH may not appeal matters in which it did not participate below. Memorandum and Order at 3.

The Appeal Board also denied the motion for a stay. Memorandum and Order at 7. The motion was premised on two grounds: first, Chatham County, one of the counties in the Shearon Harris emergency planning zone, had rescinded its prior approval of the offsite emergency response plan for Shearon Harris pending further examination of certain unspecified unresolved issues; and second, allegations by Patricia Miriello, a former employee of one of the applicants, regarding alleged deficiencies in the Applicants' health physics, radiation protection and on-site emergency preparedness programs (the Miriello allegations). The Appeal Board determined that a foundation no longer existed with respect to the Chatham County issue. This was because the Chatham County Board of Commissioners on July 7, 1986 adopted a resolution endorsing the offsite emergency response plan for Shearon Harris

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<sup>3/</sup> 47 Fed Reg. 3898 (January 27, 1982). The Notice established February 26, 1982 as the deadline for filing petitions for leave to intervene. CASH acknowledges that it was organized in April, 1986, and that many of its members were either underage or not residents of the area of the Harris site when notice was given in January, 1982. Petition at 7. CASH states it is rich in energy and commitment and at this stage of the proceeding seeks to raise numerous substantive issues. Id. Commission case law is well established that newly acquired standing (or organizational existence) is not sufficient, in and of itself, to justify permitting belated intervention. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979). The Appeal Board reasoned that the necessary consequence would be that the parties to the proceeding would never be determined with certainty until the final curtain fell and that no adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap. Id.

and affirming the County's commitment to participate in the plan. Id. at 5. Insofar as the stay motion was based on the Miriello allegations, the Appeal Board found an analysis of the four factors of 10 C.F.R. § 2.788(e) "demonstrates that a stay is totally unwarranted." Id. at 6. The Petition seeking review of the Appeal Board's Memorandum and Order was filed on July 30, 1986.

### III. DISCUSSION

#### A. Standards for Commission Review

The standards governing the grant of petitions seeking Commission review of Appeal Board decisions are well defined. The Commission's regulations provide that a party may file a petition for review "on the ground that the decision or action is erroneous with respect to an important question of fact, law, or policy." 10 C.F.R. § 2.786(b)(1). While the grant of such a petition is within the discretion of the Commission, as set forth in 10 C.F.R. § 2.786(b)(4), it is clear that a petition seeking review of matters of law or policy must present an important question which merits the Commission's review:

(i) A petition for review of matters of law or policy will not ordinarily be granted unless it appears the case involves an important matter that could significantly affect the environment, the public health and safety, or the common defense and security, constitutes an important antitrust question, involves an important procedural issue, or otherwise raises important questions of public policy.

10 C.F.R. § 2.786(b)(4)(i). Further, a petition seeking review of matters of fact must demonstrate that the Appeal Board has resolved a factual issue necessary for decision in a clearly erroneous manner contrary to the resolution of that same issue by the Licensing Board. 10 C.F.R.

§ 2.786(b)(4)(ii). The Staff submits that the Petition seeking Commission review of The Appeal Board's Memorandum and Order fails to satisfy these standards <sup>4/</sup> and should be denied.

B. Denial of CASH's Petition to Intervene

The posture of this proceeding is that the Licensing Board has completed hearings on all matters placed into controversy and issued its final decision, and that appeals of certain partial initial decisions are pending before the Appeal Board. CASH seeks to participate at the appellate level. The Appeal Board has ruled that since CASH was not a party before the Licensing Board and did not participate in any Licensing Board hearings, under the Commission's Rules of Practice, it has no right to appeal any of the Licensing Board's procedural rulings or any issues litigated below. CASH does not address the ruling of the Appeal Board nor attempt to demonstrate that it presents an "important question" for Commission review as required by 10 C.F.R. § 2.786. Rather, the Petition merely restates the assertion of CASH that it has standing as an organization representing persons residing within five miles based on the affidavit previously filed before the Appeal Board by Calvin Ragan and based upon the desire of Ms. Miriello to have CASH represent her interest. Petition at 2.

Based on CASH's filings to date, its assertions of standing are without foundation. The Petition to Intervene, as well as the current Petition, are deficient since they do not establish that any of the named individuals are members of CASH. See Houston Lighting and Power Co. (Allens Creek

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<sup>4/</sup> The Commission regulation 10 C.F.R. § 2.786(b)(2) sets forth form and content requirements for petitions seeking Commission review of Appeal Board decisions. The Petition fails to meet these requirements as well.

Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979). With regard to Mr. Ragan and the other five individuals named in the Petition to Intervene, aside from the assertion that they live within five miles of the plant, there is no indication of how these individuals consider themselves potentially harmed by the outcome of the proceeding. See Allens Creek, supra, 9 NRC at 383. (There is no presumption that every individual who lives near the plant will consider himself potentially harmed. Therefore, it is important that the nature of the invasion of an individual's personal interest be identified). While it is true that Commission adjudicatory boards have found that persons who live near the site have standing to intervene merely if they allege a potential for injury from operation of the facility, such an allegation is not made in the Petition to Intervene or the current Petition. With regard to Ms. Miriello, there is no showing how her past employment at Harris gives her standing in this proceeding.

In sum, the arguments proffered in the Petition fail to address why the Appeal Board's denial of CASH's Petition To Intervene presents an "important question" for Commission review. In fact, denial of the Petition To Intervene was proper not only for the reasons stated by the Appeal Board, but also because CASH's Petition to Intervene does not satisfy the requirements in 10 C.F.R. § 2.714 for standing or justification of lateness.



C. Denial of the Stay Motion

The Appeal Board denied Mr. Eddleman's request for a stay <sup>5/</sup> ruling that a foundation no longer exists for the Chatham County issue and that an analysis of the four factors of 10 C.F.R. § 2.788(e) demonstrates that a stay based on the Miriello allegations is unwarranted. Again, the Petition does not address these rulings of the Appeal Board nor attempt to demonstrate that they present "important questions" for Commission review as required by 10 C.F.R. § 2.786. Further, the Petition does not address the four factors of 10 C.F.R. § 2.788(e), the Commission's regulation governing stay motions, nor attempt to demonstrate that an analysis of these factors favors granting the stay motion. The Commission has held that summary denial of a stay request is appropriate in those instances where petitioners fail to address the criteria for a stay set forth in 10 C.F.R. § 2.788. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), CLI-86-6, 23 NRC 130, 134 (1986).

Rather, the Petition restates the arguments made to the Appeal Board in Mr. Eddleman's stay motion. With regard to the "Chatham County issue", the Petition asserts the issue is far from resolved and that a stay is warranted pending the complete analysis by the Commission of new facts and subsequent implementation and testing of the plan. Petition at 4-5. Contrary to this assertion in the Petition, the Appeal Board found, and the

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<sup>5/</sup> The Appeal Board treated the stay motion as being sponsored solely by Mr. Eddleman, an intervenor in the proceeding before the Licensing Board. The Appeal Board stated that since it had denied CASH's intervention petition, CASH was not a proper party to seek a stay of any Licensing Board action in this proceeding. Memorandum and Order at 3-4.

documents filed with the Commission <sup>6/</sup> demonstrate, that the "Chatham County issue" has been resolved. A resolution adopted by the Chatham County Board of Commissioners on July 7, 1986 endorsed the Shearon Harris emergency plan and affirmed the County's commitment to participate in the plan. The record demonstrates that FEMA has reviewed the State and local plans, including the local plan for Chatham County, and found the plans are adequate and capable of being implemented and the exercise demonstrated that offsite preparedness is adequate to provide reasonable assurance that appropriate measure can and will be taken to protect the health and safety of the public living in the vicinity of the Shearon Harris station in the event of a radiological emergency. NUREG-1038 (Safety Evaluation Report related to the operation of Shearon Harris Nuclear Power Plant, Unit No. 1), Supplement No. 3 (May 1986), at 13-2. The Staff has found that the state of onsite and offsite emergency preparedness at Shearon Harris provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Id. at 13-3.

The Petition also argues that the investigation by the Commission's Office of Investigation of Ms. Miriello's allegations is ongoing but the results may implicate the Applicants' quality assurance program as well as the radiation protection program for employees of the plants. Petition at 6. Ms. Miriello's allegations concerning falsification of radiation exposure

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<sup>6/</sup> On July 7, 1986, the Chairman of the Chatham County Board of Commissioners sent a copy of the resolution to Chairman Zech. A copy is attached for the convenience of the Commission. Contrary to the allegation that the resolution states that the County needs to strengthen its ability to respond to radiological emergencies and cites numerous areas of necessary improvement from the plan tested by FEMA in May, 1985 (Petition at 5), the resolution indicates Chatham County's intention to exceed FEMA-NRC requirements, not that there is any defect with the existing emergency plans. Resolution at 4, Section 1.

records were the subject of a proffered contention, WB-4, by CCNC, an intervenor below, which was rejected by the Licensing Board. Memorandum and Order (Rejecting Late Proposed Contention Concerning Alleged Falsification of Radiation Exposure Records (June 13, 1986). This decision was never appealed by CCNC to the Appeal Board and Petitioners are precluded from now raising the issue before the Commission. 10 C.F.R. § 2.786(b)(4)(iii). In sum, the arguments proffered in the Petition fail to address why the Appeal Board's denial of Mr. Eddleman's stay motion presents an "important question" for Commission review. Further, the Petition fails to demonstrate that, or for the most part even address, why the reasons stated by the Appeal Board for denial of the stay motion are not correct. As discussed above, there is no basis for granting the stay motion and the Appeal Board's denial of the motion was proper.

D. Matters Not In the Appeal Board's Memorandum and Order Raised Before The Commission

The Petition raises a number of matters not considered by the Appeal Board in its Memorandum and Order. These matters are not appropriate to be raised in this Petition for Commission review. The first of these matters is the allegation that an issue of fact was resolved incorrectly by the Licensing Board. Petition at 3-4. The issue raised by Petitioners relates to the Licensing Board's grant of Applicants' motion for summary disposition of Joint Contention II(a). This contention concerned deficiencies perceived in the BEIR-III methodology for estimating cancer and genetic risks due to radiation. Joint Intervenors, which included Mr. Eddleman, did not appeal this Licensing Board ruling. The Commission's regulations indicate that Commission review will not be granted of matters that could have been but were not raised before the Appeal Board. 10 C.F.R. § 2.786(b)(4)(iii).

Also Commission review of matters of fact will not be granted unless there is a conflict in the resolution of the fact between the Appeal Board and Licensing Board. 10 C.F.R. § 2.786(b)(4)(ii). There is no conflict in this case and accordingly, Commission review should not be granted.

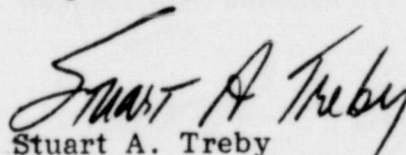
Another matter raised in the Petition relates to an alleged failure of Applicants' emergency notification system. Petition at 5. This matter currently is included in a petition filed on July 2, 1986 by CASH pursuant to 10 C.F.R. § 2.206. No decision has been reached on this Petition by the Director of Nuclear Reactor Regulation. Commission review of this matter prior to the Director's decision is not warranted.

Finally, the Petition raises the matter of evacuation of the Lake Jordan Recreation Area as a subject for Commission review. Petition at 6-7. This is not a subject which has been appealed to the Appeal Board although CCNC, an intervenor below, proffered a contention on this subject which was rejected by the Licensing Board. LBP-84-29B, 20 NRC 389, 418-19 (1984). Commission review of the matter is not warranted. 10 C.F.R. § 2.786(b)(4)(iii).

#### IV. CONCLUSION

For the reasons set forth above, the Staff submits that CASH's Petition for Commission review should be denied.

Respectfully submitted,



Stuart A. Treby  
Deputy Assistant General Counsel

Dated in Bethesda, Maryland  
this 14th day of August, 1986

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DOCKET NUMBER 58-400-01  
PROD. & UTIL. FAC. *Shearon Harris*

# COUNTY OF CHATHAM

669324

**COMMISSIONERS**  
EARL D. THOMPSON, Chairman  
HENRY DUNLAP, JR.  
GUS MURCHISON, JR.  
C. W. LUTTERLOH  
CARL THOMPSON



P. O. BOX 37  
PITTSBORO, N. C. 27312

ORGANIZED 1770 707 SQUARE MILES

July 7, 1986

MARVIN K. HOFFMAN  
County Administrator

ROBERT L. GUNN  
County Attorney

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OFFICE OF SECURITY AND  
DOCKETING & SERVICE  
BRANCH

Mr. Lando W. Zech, Jr.  
Chairman  
Nuclear Regulatory Commission  
1717 H Street NW  
Washington, D.C. 20555

SERVED JUL 9 1986

Dear Mr. Chairman:

The Chatham County Board of Commissioners considered the matter of the Emergency Plan in Support of the Shearon Harris Nuclear Power Plant operated by Carolina Power and Light Company at its July 7, 1986 regular meeting. The Board unanimously adopted a resolution, a copy of which is attached, indicating that Chatham County agrees to carry out its operational roles as outlined in the Plan. County agencies and departments will participate in exercises of the plan and will render support in the event of an emergency at the Harris facility.

A copy of this letter is being forwarded to Governor James G. Martin and to the Federal Emergency Management Agency.

Sincerely yours,

*Earl D. Thompson*

Earl D. Thompson  
Chairman

A RESOLUTION CONCERNING THE  
SHEARON HARRIS NUCLEAR POWER PLANT

DOCKETED  
USNRC

WHEREAS, on May 27, 1986, the Board of Commissioners rescinded its prior approval of the Shearon Harris Emergency Plan, said action being taken in response to a great deal of public concern which was expressed to the Commissioners over Memorial Day Weekend during which the Commissioners were repeatedly asked by the Coalition for Alternatives to Shearon Harris (CASH) and by other citizens for the Commissioners to examine the Emergency Plan because of numerous alleged defects. In our meeting, and in numerous personal visits, many citizens requested a delay so that the Commissioners could take time to examine the plan; and

WHEREAS many persons who oppose nuclear energy have come to the Board of Commissioners asking it to be a court of last resort and somehow initiate a complete review of the nation's energy policy as well as all of the economic and construction details of the Harris Plant which was started fifteen years ago, but after hearing the concerns and carefully studying the issue, we find that legally the Commissioners have no authority to conduct this review, and that questions of this type must be settled by the appropriate federal and state agencies, or in the Courts; and

WHEREAS, THE Board of Commissioners was asked to give the public both within and in the surrounding counties time to consider the plan, and now, after six weeks of this debate, no other county has found the jointly developed Emergency Plan to be unacceptable; and

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DOCKETING & CONCERN  
BRANCH

WHEREAS, nothing in the past six weeks has happened to stop the imminent fueling of the Harris Plant, authorization for which comes from the federal government and does not require an approved emergency plan to be in place, and no action of Chatham County Commissioners can stop the fueling, and the Commissioners have, therefore concluded that it is time to insure that the emergency planning for residents of Chatham County is done by local, rather than State or federal officials; and

WHEREAS, over the past six weeks the Commissioners have studied the plan, and consulted with state and local emergency personnel and the public at large; and

WHEREAS, N. C. G. S. Section 166A-7 provides that, "The governing body of each county is responsible for emergency management, ... within the geographical limits of such county." and in order to effectively perform its mandated duties, each county must have an effective emergency management plan; and

WHEREAS, after hearing from the public over the past six weeks the board is convinced that the majority of the public supports the County strengthening its ability to respond to all emergencies, whether that emergency be from a nuclear plant, from a hazardous materials spill or a weather-related emergency. Listening to the public for the last six weeks has shown that some of our residents felt that the original plan was adequate, some felt that more public education was needed, others wanted the evacuation planning area enlarged, and still others stated that they did not want any plan at all. Our responsibility is, however, to

act in the interest of the public as a whole; and

WHEREAS, the Commissioners have determined that certain steps must be taken at this time in order to carry out their mandated responsibilities;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF CHATHAM COUNTY AS FOLLOWS:

Section 1. Because of public concern about the adequacy of a ten mile planning area, Chatham County, with State assistance, will develop an all hazards emergency plan for Chatham County which will deal with the possibility that other areas of the County may need to be evacuated. This plan will far exceed any federal or state requirement.

Section 2. Improvements will be made to the County communications systems in order to insure that additional personnel in the County Government, including Commissioners, school authorities, department heads, additional personnel from the Social Services and the Health Departments, and others who may need to be alerted can be instantly contacted should any emergency arise.

Section 3. Additional training will be provided for each person involved in the emergency response plan in order to minimize confusion about each persons emergency duties under the Plan. This training shall henceforth be an on-going activity.

Section 4. The County Director of Emergency Preparedness shall see that clearly written standard operating procedures



are given to each emergency worker as to his or her duties in an emergency.

Section 5. Chatham County personnel will fully participate in a Shearon Harris exercise now scheduled for later this summer. This exercise will be carefully evaluated in order to further refine the County's needs in the area of emergency preparedness. In order to assure a continuing high level of preparedness for emergencies, a county policy is hereby established that a major disaster exercise will be conducted each year within Chatham County. This annual exercise will involve those personnel and agencies which would be expected to respond in an emergency.

Section 6. A Disaster Preparedness Advisory Committee is hereby created which will function to advise the Commissioners on emergency management planning matters. The membership of this committee is as follows:

Section 7. The plan for emergency evacuation of approximately two thousand residents of the emergency planning zone around the plant within a maximum four hour time frame is feasible.

Section 8. Chatham County will resume participation in the Shearon Harris planning in order to insure that the County's interests are protected by Chatham County officials.

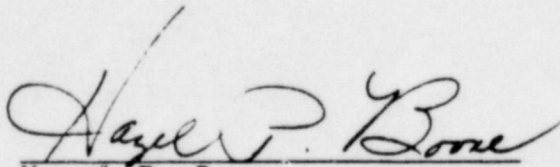
Section 9. Chatham County endorses the emergency plan jointly developed with Wake, Lee, and Harnett Counties and the State of North Carolina.

Section 10. Chatham County agrees to carry out the responsibilities identified in the plan both during training exercises and in the event of an actual emergency.

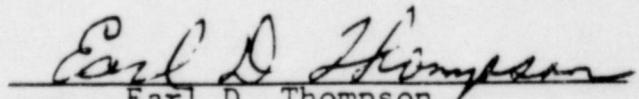
Section 11. The medical staff at Chatham Hospital is being asked to identify its needs for specialized equipment and/or training to deal with radiation emergencies. Agreement has been reached with Carolina Power and Light <sup>COMPANY</sup> to pay all reasonable costs in this regard. <sup>^</sup>

Section 12. This Resolution is effective upon its adoption.

This 7 day of July 1986.



Hazel P. Boone  
Clerk of the Board

  
Earl D. Thompson  
Chairman

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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)  
(Shearon Harris Nuclear Power Plant, )  
Unit 1) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO PETITION FOR COMMISSION REVIEW" in the above-captioned proceeding have been served on the following by deposit in the United States mail first class, or (\*) through deposit in the Nuclear Regulatory Commission's internal mail system, this 14th day of August, 1986:

James L. Kelley, Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Richard D. Wilson, M.D.  
729 Hunter Street  
Apex, NC 27502

Mr. Glenn O. Bright\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Travis Payne, Esq.  
723 W. Johnson Street  
P.O. Box 12643  
Raleigh, NC 27605

Dr. James H. Carpenter\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Linda Little  
Governor's Waste Management Building  
513 Albermarle Building  
325 North Salisbury Street  
Raleigh, NC 27611

Daniel F. Read  
CHANGE  
P.O. Box 2151  
Raleigh, NC 27602

John Runkle, Esq. Executive Coordinator  
Conservation Counsel of North Carolina  
307 Granville Rd.  
Chapel Hill, NC 27514

Steven P. Katz  
Joseph T. Mughes, Jr.  
CASH Legal Committee  
604 W. Chapel Mill Street  
Durham, NC

Atomic Safety and Licensing Appeal  
Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Robert P. Gruber  
Executive Director  
Public Staff - NCUC  
P.O. Box 991  
Raleigh, NC 27602

Wells Eddleman  
812 Yancy Street  
Durham, NC 27701

Richard E. Jones, Esq.  
Vice President and Senior Counsel  
Carolina Power & Light Company  
411 Fayetteville Street Mall  
Raleigh, NC 27602

Docketing and Service Section\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

H. Joseph Flynn, Esq.  
Associate General Counsel  
Office of General Counsel  
FEMA  
500 C Street, S.W. Rm 840  
Washington, DC 20472

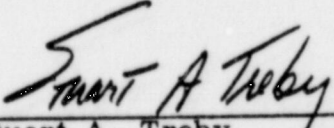
Bradley W. Jones, Esq.  
Regional Counsel, USNRC, Region II  
101 Marietta St., N.W. Suite 2900  
Atlanta, GA 30323

Thomas A. Baxter, Esq.  
John H. O'Neill, Jr., Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, N.W.  
Washington, DC 20036

Atomic Safety and Licensing Board  
Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

H. A. Cole, Jr., Esq.  
Special Deputy Attorney General  
P.O. Box 629  
Raleigh, NC 27601

Samuel J. Chilk\*  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

  
\_\_\_\_\_  
Stuart A. Treby  
Deputy Assistant General Counsel