

Orange County v. NRC, No. 01-1073 (D.C. Cir., filed Feb. 16, 2001)

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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ORANGE COUNTY, NORTH CAROLINA, )  
Petitioner, ) No. \_\_\_\_\_  
v. )  
UNITED STATES NUCLEAR REGULATORY )  
COMMISSION and the UNITED STATES )  
OF AMERICA, )  
Respondents )  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that on February 16, 2001, copies of the foregoing Petition for Review were served on the following by first-class mail:

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Respectfully submitted,

  
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February 16, 2001

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No. **01-1073**

UNITED STATES COURT OF APPEALS  
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FILED FEB 16 2001  
CLERK

**PETITION FOR REVIEW**

The Board of Commissioners of Orange County, North Carolina (hereinafter "Orange County"), hereby petitions the Court for review of the following final order by the U.S. Nuclear Regulatory Commission in a license amendment proceeding concerning the Shearon Harris Nuclear Power Plant: United States Nuclear Regulatory Commission, Carolina Power & Light Company, Docket No. 50-400, Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration (December 21, 2000). A copy of the decision is attached as an Exhibit. The order was issued pursuant to 42 U.S.C. § 2239(a)(2)(A) and 10 C.F.R. § 50.92(c).

Orange County seeks review and reversal of the order on the grounds that it violated the Atomic Energy Act and its implementing regulations, the Administrative Procedures Act, and the National Environmental Policy Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diane Curran". The signature is fluid and cursive, with a prominent initial "D" and "C".

Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.

1726 M Street N.W., Suite 600

Washington, D.C. 20036

Attorney for Orange County

February 16, 2001

UNITED STATES NUCLEAR REGULATORY COMMISSION  
CAROLINA POWER & LIGHT COMPANY  
DOCKET NO. 50-400  
NOTICE OF ISSUANCE OF AMENDMENT TO  
FACILITY OPERATING LICENSE  
AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 103 to Facility Operating License No. NPF-63 issued to Carolina Power & Light Company (CP&L, the licensee), which revised the Technical Specifications (TS) for operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP), located in Wake and Chatham Counties, North Carolina. The amendment is effective as of the date of issuance.

The amendment modified the TS to support a modification to HNP to increase the spent fuel storage capacity by adding rack modules to spent fuel pools (SFPs) C and D and placing the pools in service. Specifically, the amendment consists of: 1) a revision to TS 5.6 to identify pressurized water reactor fuel burnup restrictions, boiling water reactor fuel enrichment limits, pool capacities, heat load limitations, and nominal center-to-center distances between fuel assemblies in the racks to be installed in SFPs C and D; 2) an alternative plan in accordance with the requirements of 10 CFR 50.55a to demonstrate an acceptable level of quality and safety in completion of the component cooling water (CCW) and SFPs C and D cooling and cleanup system piping; and 3) an unreviewed safety question for additional heat load on the CCW system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the FEDERAL REGISTER on January 13, 1999 (64 FR 2237). A request for a hearing was filed on February 12, 1999, by the Board of Commissioners of Orange County, North Carolina (BCOC).

On July 12, 1999, the Atomic Safety and Licensing Board (ASLB) ruled that BCOC had standing and had submitted two admissible contentions. The two contentions related to (1) whether General Design Criterion 62 allows the use of administrative controls to prevent criticality (TC-2); and (2) the adequacy of the licensee's proposed alternative plan for the cooling system piping (TC-3). On July 29, 1999, the ASLB granted CP&L's request to hold the hearing in accordance with the hybrid hearing procedures of 10 CFR Part 2, Subpart K. On January 4, 2000, all parties filed written summaries and on January 21, 2000, the ASLB heard oral arguments related to the two admitted contentions. On May 5, 2000, the ASLB issued a decision in favor of CP&L, stating that "(1) there is no genuine and substantial dispute of fact or law that can only be resolved with sufficient accuracy by the introduction of evidence in an evidentiary hearing; and (2) contentions TC-2 and TC-3 are disposed of as being resolved in favor of CP&L."

On January 31, 2000, BCOC filed four late-filed environmental contentions that challenged the adequacy of the staff's December 21, 1999, environmental assessment related to CP&L's amendment request. On March 3, 2000, the NRC and CP&L responded to the late-filed contentions, and on March 13, 2000, BCOC submitted its reply to the responses. On August 7, 2000, the ASLB issued its Ruling on Late-filed Environmental Contentions. In its ruling, the ASLB admitted one environmental contention (EC-6) regarding the probability of occurrence of BCOC's postulated accident scenario. On November 20, 2000, all parties filed written summaries and on December 7, 2000, the ASLB heard oral arguments related to EC-6.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in

advance of the holding or completion of any required hearing, where it has determined that no significant hazards considerations are involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards considerations. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (64 FR 71514).

For further details with respect to the action see (1) the application for amendment dated December 23, 1998, as supplemented on March 15, April 5, April 30, June 14, July 23, September 3, October 15, and October 29, 1999, and April 14, and July 19, 2000, (2) Amendment No. 103 to License No. NPF-63, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 21st day of December 2000.

FOR THE NUCLEAR REGULATORY COMMISSION



Richard P. Correia, Chief, Section 2  
Project Directorate II  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation