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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

In the Matter of)
)
CAROLINA POWER & LIGHT) Docket No. 50-400-LA
COMPANY)
(Shearon Harris Nuclear Power Plant)) ASLBP No. 99-762-02-LA

**APPLICANT'S REPLY TO PARTIES' RESPONSES REGARDING
RELEVANCE OF ACRS LETTER ADDRESSING NRC STAFF
DRAFT DECOMMISSIONING STUDY**

Pursuant to the Licensing Board's May 5, 2000 Memorandum and Order (Requesting Additional Information), Applicant Carolina Power & Light Company ("CP&L" or "Applicant") files this reply to the other parties' responses regarding the relevance, if any, of the April 13, 2000 Advisory Committee on Reactor Safeguards ("ACRS") letter providing the ACRS's comments on the NRC Staff's February 15, 2000 "Draft Final Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants" ("Decommissioning Study" or "Study"). All parties filed responses to the Board's Request for Information on May 15, 2000.¹

¹ See "NRC Staff Response to the Atomic Safety and Licensing Board's Second Request for Additional Information" (May 15, 2000) ("Staff's Response on ACRS Letter"); "Orange County's Response to May 5, 2000, Memorandum and Order (Requesting Additional Information)" (May 15, 2000) ("BCOC's Response on ACRS Letter"); "Applicant's Response to Board's Request Regarding Relevance of ACRS Letter Addressing Staff Draft Decommissioning Study" (May 15, 2000) ("Applicant's Response on ACRS Letter").

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As with the Staff's draft Study on which the ACRS letter comments, the ACRS letter itself is similarly irrelevant to the admissibility of BCOC's late-filed environmental contentions. Little more than one month ago, all parties to this proceeding agreed that the NRC Staff's draft Decommissioning Study was not relevant to the remaining issue before this Board, the admissibility of BCOC's late-filed environmental contentions.² Here again, all the parties agree that this ACRS letter is not relevant to the admissibility of BCOC's late-filed contentions.³ BCOC effectively summed up the parties' position on the irrelevance of the ACRS letter in its conclusion statement:

Because it focuses only on decommissioning plants and not operating plants, the ACRS letter sheds no light on whether a degraded-core reactor accident with containment failure or bypass will, as the County claims, almost certainly cause adjacent pools to lose water by evaporation.

BCOC's Response on ACRS Letter at 4. Because the ACRS letter sheds no light on BCOC's environmental contentions, the Board need not consider the ACRS letter in making its decision regarding BCOC's late-filed environmental contentions.

Even though BCOC admits in its filing that the ACRS letter sheds no light on the environmental contentions that BCOC has pending before this Board, BCOC nonetheless improperly attempts to inject new issues into this proceeding. By way of background, BCOC raised four issues in its late-filed environmental contentions:

- (1) A degraded-core reactor accident followed by containment failure or bypass will make spent fuel pool cooling and makeup systems completely inaccessible and result in irrecoverable loss of pool water through evaporation;

² See Applicant's Response on ACRS Letter at 2 n.1 (citing all parties March 29, 2000 response filings and April 5, 2000 reply filings).

³ Staff's Response on ACRS Letter at 1; Applicant's Response on ACRS Letter at 1; BCOC's Response on ACRS Letter at 4.

- (2) Cumulative impacts from operating pools A, B, C, and D;
- (3) Evaluation of dry storage at Brunswick and Robinson;
- (4) Board should order the NRC Staff to perform an EIS as an exercise of the Board's discretion.

See Orange County's Request for Admission of Late-Filed Contentions ("BCOC Env. Cont.") at 7-20 (January 31, 2000). Commission case law clearly establishes that the scope of a proposed contention is confined to the literal words of the contention coupled with its stated basis. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988). See also Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981). Without regard to the scope of its late-filed contentions and applicable NRC case law, BCOC claims that the following seven issues raised in the ACRS letter are somehow related to this proceeding:

- a) Ruthenium source term;
- b) Narrow and low-rising plume;
- c) Zirconium hydride combustion (shedding of protective oxide layer on the cladding);
- d) Nitrogen-zirconium reaction;
- e) Criteria for determining dangerous fuel condition (e.g., cladding rupture);
- f) Intermetallic reactions (e.g., aluminum with stainless steel);
- g) Uncertainty analyses of human error or earthquake.

BCOC's Response on ACRS Letter at 2-3. It is readily apparent that none of these seven technical issues were raised in the four environmental contentions that BCOC has filed with this Board. See generally BCOC's Env. Cont. (none of these seven issues is mentioned anywhere in the filing). Indeed, BCOC does not even attempt to link these

new issues to its filed contentions.⁴ The Board should reject out-of-hand BCOC's attempt to back-door new issues into this proceeding.

Similarly, BCOC's comments and critiques on the ACRS's review have no place in this proceeding. In its response, BCOC identifies several areas in which BCOC "considers the ACRS Letter to be deficient...." See, e.g., BCOC's Response on ACRS Letter at 3-4. This proceeding is no forum for BCOC to take on the ACRS.⁵ Similarly out of place are BCOC's comments on the NRC Staff's draft Decommissioning Study.⁶ BCOC's criticisms of the ACRS's and NRC Staff's actions should be lodged with the ACRS and the NRC Staff, not with this Board.

The Applicant agrees with the NRC Staff's position regarding the relevance of the ACRS letter to this proceeding. In its response, the Staff stated that:

BCOC has not submitted an admissible contention. The contentions proffered do not meet the standards for

⁴ Furthermore, if BCOC were to file these new issues as new late-filed contentions, Applicant would oppose their admission for lack of good cause, *inter alia*, because these issues are based on technical references that are between 4 and 29 years old. See Applicant's Response on ACRS Letter at 3 n.2.

⁵ In the same vein, Dr. Gordon Thompson's requests for the ACRS to "use the powers and resources at its command" to embark on a sweeping review of spent fuel pool accident issues and to recommend the NRC Staff do the same thing are an undisguised fishing expedition to have other organizations attempt to do what Dr. Thompson has been unable to do, i.e. find some basis with specificity to challenge Applicant's license amendment application. See Letter from G. Thompson, BCOC, to D. Powers, ACRS, at 2 (May 15, 2000) (filed with BCOC's Response on ACRS Letter). Dr. Thompson's sweeping request for help only serves to illustrate that Dr. Thompson, himself, has been unable to articulate any technical basis with specificity on which to challenge the Staff's Harris-specific Environmental Assessment for Applicant's amendment to the Harris facility license. Dr. Thompson, as any member of the public, may send letters to the ACRS commenting on the ACRS's business. However, Dr. Thompson's letter has no bearing on this proceeding where BCOC admits that the ACRS letter "sheds no light" on BCOC's late-filed environmental contentions. See BCOC's Response on ACRS Letter at 4. Dr. Thompson's desire to pursue "a fishing expedition which might produce relevant supporting facts" is no basis for an admissible contention. 54 Fed. Reg. 33,168, 33,171 (1989).

⁶ As Applicant previously noted, BCOC's comments on the Staff's draft Study are improperly lodged with the Board, and would be more appropriately filed with the "Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001." See Applicant's Reply to Parties' Responses Regarding Relevance of Staff's Draft Decommissioning Study (April 5, 2000) at 2-3 (citing 65 Fed. Reg. 8,752 (2000)).

admission in an NRC proceeding. Nothing contained in the Study or the ACRS Letter alters that conclusion.

Staff's Response on ACRS Letter at 2 (emphasis added). Therefore, with regard to the relevance of the ACRS letter to the late-filed environmental contentions pending before the Board, the NRC Staff concluded that:

BCOC did not meet its burden to demonstrate that there is a credible basis for its postulated accident scenario and nothing in the Study or the ACRS Letter provides a basis for the contentions. Consequently, the ACRS Letter is irrelevant to the Harris case.

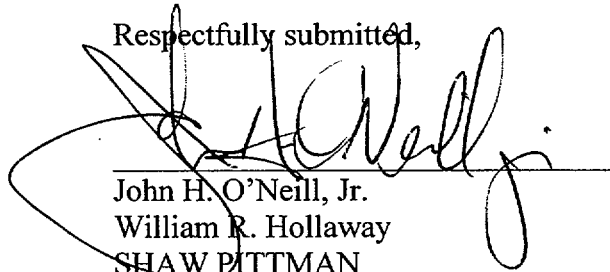
Id. at 3 (emphasis added). The Applicant concurs with the Staff's position.

All parties have agreed that the ACRS letter, like the draft Decommissioning Study on which it comments, sheds no light on BCOC's late-filed environmental contentions. Therefore, the Board should not consider the ACRS letter commenting on the draft Decommissioning Study in its decision regarding BCOC's late-filed environmental contentions.

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Dated: May 22, 2000

Respectfully submitted,



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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

OFFICE OF THE SECRETARY
U.S. NUCLEAR REGULATORY COMMISSION
ADJUDICATIONS DIVISION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Reply to Parties' Responses Regarding Relevance of ACRS Letter Addressing NRC Staff Draft Decommissioning Study" were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail transmission, this 22nd day of May, 2000.

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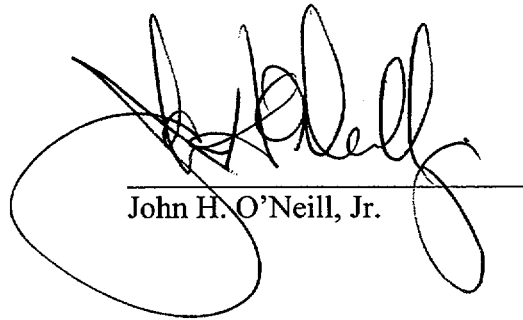
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