

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Carolina Power & Light Company)	Docket No. 50-400-OLA
)	
(Shearon Harris Nuclear Power Plant))	ASLBP No. 99-762-02-LA
)	

NRC STAFF'S RESPONSE TO ORANGE COUNTY'S
FIRST SET OF ENVIRONMENTAL DISCOVERY REQUESTS
DIRECTED TO NRC STAFF

The Nuclear Regulatory Commission staff (Staff) hereby responds to Orange County's¹ First Set of Environmental Discovery Requests Directed to NRC Staff, filed August 21, 2000.

As a preliminary matter, the Staff notes that it is not required to respond to BCOC's discovery request absent prior findings by the Atomic Safety and Licensing Board (Board) that such response should be required, pursuant to 10 C.F.R. § 2.720(h)(2)(ii)(in the case of the interrogatories)² and 10 C.F.R. § 2.744 (d) (in the case of the request for production of documents).³

The Staff further notes that 10 C.F.R. §§ 2.744 and 2.790, which govern the production of NRC records and documents, contemplate that most NRC documents will be available for

¹ Hereinafter "BCOC."

² 10 C.F.R. § 2.720(h)(2)(ii) provides that "[u]pon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories."

³ 10 C.F.R. § 2.744(c) provides that if the Executive Director for Operations ("EDO") objects to producing a record or document, the requesting party must make written application to the presiding officer to compel production, and the document is then to be reviewed *in camera* by the presiding officer. 10 C.F.R. § 2.744(d) provides that the presiding officer must determine that (1) the document or record is relevant, (2) its production is not exempt from disclosure under § 2.790, or if exempt, that its disclosure is necessary to a proper decision in the proceeding, and (3) the information contained in the record or document is not reasonably obtainable elsewhere, before ordering the EDO to produce the document.

inspection and copying in the public document room and, if they have been withheld from the public document room pursuant to § 2.790, a request to the Executive Director for Operations for the production of such a document is required by § 2.744, which must state, among other things, why the requested record or document is relevant to the proceeding.

Notwithstanding these regulations, without waiving any objections or privileges, and except as specified below, the Staff is now voluntarily providing responses to BCOC's interrogatories. The Staff will respond to BCOC's request for production of documents within thirty days, pursuant to 10 C.F.R. § 2.741. By responding to the instant discovery request, the Staff does not waive its right to require that the appropriate procedure be followed and that the required findings be made, pursuant to the Commission's regulations, before responding to any future discovery requests.

I. GENERAL OBJECTIONS

1. The Staff objects to Intervenors' discovery requests to the extent that they call for disclosure of litigation strategy and other material protected under 10 C.F.R. § 2.740 or other protection provided by law, attorney work product, privileged attorney-client materials, and other privileged materials, such as draft agency documents protected by executive privilege.

2. The Staff objects to Intervenors' discovery requests to the extent that they request information or documents relating to licensees and/or entities other than Carolina Power & Light Company's Shearon Harris Nuclear Power Plant. Such discovery requests call for information which is irrelevant, immaterial, and not calculated to lead to the discovery of admissible evidence, and are overbroad and unduly burdensome.

3. The Staff objects to Intervenors' discovery requests to the extent that they are unreasonably cumulative, and are obtainable from another source that is more convenient, less burdensome, or less expensive.

II. GENERAL DISCOVERY REQUESTS

A. GENERAL INTERROGATORIES

GENERAL INTERROGATORY No.1.

State the name, business address, and job title of each person who supplied information for responding to these interrogatories, requests for admission, and requests for the production of documents. Specifically note for which interrogatories and requests for admissions each such person supplied information. For requests for production, note for which contention each such person supplied information.

STAFF'S RESPONSE:

The following persons supplied information for responding to BCOC's First Environmental Discovery Requests:

Richard Laufer
Project Manager, Shearon Harris Nuclear Power Plant
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Christopher Gratton
Reactor Systems Engineer
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen LaVie
Health Physicist
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert Palla
Senior Reactor Engineer
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gareth Parry
Senior Level Advisor for Probabilistic Risk Analysis
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

The Staff reserves the right to amend this answer as discovery continues.

GENERAL INTERROGATORY No. 2.

For Contention EC-6, give the name, address, profession, employer, area of professional expertise, and educational and scientific experience of each person whom the NRC Staff expects to call as a fact or expert witness at the hearing and/or whose affidavit/declaration the Staff expects to submit in the Subpart K proceeding described in the Board's August 7, 2000, Memorandum and Order. For expert witnesses, provide a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has provided expert trial or deposition testimony or submitted affidavit(s) or declaration(s) within the preceding four years. For purposes of answering this interrogatory, the educational and scientific experience of expected affiants and declarants may be provided by a resume of the person attached to the response.

STAFF'S RESPONSE:

The Staff has not yet made a final determination regarding who will provide sworn affidavits, but provides the following as persons who are likely to provide a sworn affidavit or declaration in this proceeding:

Christopher Gratton
Reactor Systems Engineer
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen LaVie
Health Physicist
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert Palla
Senior Reactor Engineer
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gareth Parry
Senior Level Advisor for Probabilistic Risk Analysis
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

A copy of the resume of each person named in this answer is annexed hereto as Attachment 1.

The Staff reserves the right to amend this answer as discovery continues.

GENERAL INTERROGATORY No. 3.

For each witness identified in response to General Interrogatory No. 2 above, describe the facts and/or opinions to which each witness is expected to testify, including a summary of the grounds for each opinion, and identify the documents (including all pertinent pages or parts thereof), data or other information which each witness has reviewed and considered, or is expected to consider or to rely on for his or her testimony.

STAFF RESPONSE:

The Staff objects to this interrogatory to the extent that it seeks privileged material. Without waiving that objection, the Staff states that no information responsive to this interrogatory is available at this time. As stated above in the Staff's answer to General Interrogatory No. 2, the Staff has not yet made a final determination regarding who will provide affidavits or declarations in this proceeding. To the extent that there are identifiable and nonobjectionable documents, they will be identified in the Staff's response to BCOC's request for documents.

III. SPECIFIC DISCOVERY

A. SPECIFIC INTERROGATORIES

SPECIFIC INTERROGATORY NO. 1.

Please provide any information in your possession which is responsive to the question posed in paragraph 1 on page 17 of the Board's August 7, 2000, Memorandum and Order.

STAFF RESPONSE:

None at this time. To the extent that there are identifiable and nonobjectionable documents, they will be identified in the Staff's response to BCOC's request for documents.

The Staff reserves the right to amend this answer as discovery continues.

SPECIFIC INTERROGATORY NO. 2.

Please provide any information in your possession which is responsive to the Board's August 7, 2000, Memorandum and Order. To wit, please identify any old or recent information relating to the estimation of the probabilities of the individual events in the chain of seven events referred to on page 13 of the Board's August 7 Memorandum and Order, and provide any information which is responsive to the two questions posed in paragraph 2.

STAFF RESPONSE:

None at this time. To the extent that there are identifiable and nonobjectionable documents, they will be identified in the Staff's response to BCOC's request for documents.

The Staff reserves the right to amend this answer as discovery continues.

SPECIFIC INTERROGATORY NO. 3.

Please provide any information in your possession which is responsive to the question posed in paragraph 3 on page 17 of the Licensing Board's August 7, 2000, Memorandum and Order.

STAFF RESPONSE:

The Staff objects to Specific Interrogatory No. 3. Although Federal Rule of Civil Procedure 33(c) permits interrogatories which relate to "the application of law to fact", this interrogatory does not request application of law to the facts presented by the Intervenors. Instead, the interrogatory

asks for a pure legal conclusion. The Advisory Committee Notes on the 1970 amendments to this rule specifically state that "interrogatories may not extend to issues of 'pure law,' i.e., legal issues unrelated to the facts of the case." The interrogatory posed by the Intervenors requests the NRC to state, as a matter of law, what the scope of an environmental analysis would be assuming the Licensing Board concludes that the accident sequence posed by the Intervenors is not remote and speculative. Since the scope of a potential EIS is a purely legal issue, the NRC objects to this interrogatory.

Respectfully submitted,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of September 2000