

RAS 2648

DOCKETED 01/22/00

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF OPPOSITION TO ORANGE COUNTY'S MOTION FOR LEAVE TO
REPLY TO NRC STAFF'S AND CP&L'S OPPOSITIONS TO ORANGE COUNTY'S
DECEMBER 22, 2000 PETITION FOR REVIEW, REQUEST FOR IMMEDIATE
SUSPENSION AND STAY

Susan L. Uttal
Counsel for NRC Staff

January 19, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF OPPOSITION TO ORANGE COUNTY'S
MOTION FOR LEAVE TO REPLY TO NRC STAFF'S AND CP&L'S OPPOSITIONS
TO ORANGE COUNTY'S DECEMBER 22, 2000 PETITION FOR REVIEW,
REQUEST FOR IMMEDIATE SUSPENSION AND STAY

INTRODUCTION

On January 16, 2001, the Board of Commissioners of Orange County (BCOC) filed "Orange County's Motion For Leave to Reply to NRC Staff's and CP&L's Oppositions to Petition for Review and Request for Immediate Suspension and Stay of The NRC Staff's No Significant Hazards Determination And Issuance of License Amendment For Harris Spent Fuel Pool Expansion And Request for Expedited Consideration" (Motion to Reply), and "Orange County's Reply to NRC Staff's and CP&L's Oppositions to Petition for Review and Request for Immediate Suspension and Stay of The NRC Staff's No Significant Hazards Determination And Issuance of License Amendment For Harris Spent Fuel Pool Expansion" (Proposed Reply). For reasons discussed below, the NRC Staff (Staff) opposes the motion and respectfully requests that the Commission deny BCOC's motion.

DISCUSSION

On December 22, 2000, BCOC filed "Orange County's Petition for Review and Request for Immediate Suspension and Stay of the NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion and Request for Expedited Consideration" (Petition for Review). On January 8, 2001, both the Staff and the applicant, Carolina Power & Light Company (CP&L), filed responses opposing BCOC's pleading.¹ BCOC is now seeking leave to file a reply to the Staff's Opposition and CP&L's Response.²

As discussed in the Staff's Opposition, the Petition for Review filed by BCOC is expressly prohibited by the Commission's regulations. The regulation could not be clearer or less ambiguous: "**NO** petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission." 10 C.F.R. § 50.58(b)(6) (emphasis supplied). If the Commission's regulations are to have meaning, they must be complied with and enforced. Thus, as the Staff previously pointed

¹ NRC Staff Opposition to Orange County's Petition for Review and Request for Immediate Suspension and Stay of the NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion And Request for Expedited Consideration, January 8, 2001 (Staff's Opposition); Carolina Power & Light's Response to Orange County's December 22, 2000, Filing, January 8, 2001 (CP&L's Response).

² Because the Proposed Reply filed by BCOC is an unsanctioned pleading, based upon a prohibited Petition for Review, the Staff will not address the substance of the Proposed Reply, except to note the following. BCOC asserts that by failing to address BCOC's argument regarding the alleged deficiencies of the no significant hazards determination, the Staff has conceded the issue. (Proposed Reply at 4-5). The Staff has conceded nothing. BCOC's Petition for Review is expressly prohibited by the regulations and should not be entertained at all. There was no need to address the substance of such a fatally flawed Petition. Therefore, the Staff opposed the Petition for Review on the ground that it is prohibited by the Commission's regulations. There is nothing in the Staff's Opposition that can be interpreted as a concession of any issue.

out, the Petition for Review is unsanctioned and should not be entertained by the Commission.

Compounding its disregard for the Commission's regulations, BCOC has followed its earlier unsanctioned Petition for Review with the instant Motion to Reply and a Proposed Reply. Clearly, if the initial Petition for Review is not permitted, the Motion to Reply and Proposed Reply are similarly impermissible. The Commission should not permit its regulations to be flouted and should refuse to consider either the Petition for Review or the Motion to Reply.

CONCLUSION

Based on the foregoing, the Staff respectfully submits that the Motion to Reply should be denied and the Proposed Reply should not be considered.

Respectfully submitted,

/RA/

Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of January, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OPPOSITION TO ORANGE COUNTY'S MOTION FOR LEAVE TO REPLY TO NRC STAFF'S AND CP&L'S OPPOSITIONS TO ORANGE COUNTY'S DECEMBER 22, 2000 PETITION FOR REVIEW, REQUEST FOR IMMEDIATE SUSPENSION AND STAY" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in U.S. Postal Service as indicated by double asterisk, with copies by electronic mail as indicated this 19TH day of January, 2001:

G. Paul Bollwerk, III, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Thomas D Murphy*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dr. Peter Lam*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary*
ATTN: Rulemaking and Adjudications
Staff
Mail Stop: O 16-C-1
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Commission Appellate
Adjudication
Mail Stop: O 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

James M. Cutchin, Jr.*
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Diane Curran, Esq.**
Harmon, Curran, Spielberg
& Eisenberg, L.L. P.
1726 M. Street, N.W., Suite 600
Washington, DC 20025

John H. O'Neill, Jr.**
Douglas Rosinski**
Counsel for Licensee
Shaw Pittman Potts & Trowbridge
2300 "N" Street, N.W.
Washington, DC 20037-1128

Steven Carr**
Legal Department
Carolina Power and Light Co.
411 Fayetteville Street Mall
P.O. Box 1551 - CPB 13A2
Raleigh, North Carolina 27602

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
T-3F23
Washington, DC 20555

/RA/

Susan L. Uttal
Counsel for NRC Staff