

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))	
)	

ERRATA TO THE 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

The NRC Staff has discovered that the 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 (Staff Opposition), filed January 8, 2001, did not properly label exhibit numbers in the brief. Specifically, the Affidavit of Gareth W. Parry (Parry Affidavit), attached as the first exhibit, was not identified as Exhibit 1 on pages 6, 10, and 11 of the Staff Opposition. Additionally, Paragraph 1 of the Parry Affidavit, on page 2 of the Affidavit, listed Dr. Parry's resume as Exhibit 1. The resume should be identified as Attachment 1 to the Parry Affidavit.

Therefore, the NRC Staff is submitting corrected copies of pages 6, 10 and 11 of the Staff Opposition and page 2 of the Parry Affidavit.

Respectfully submitted,

Jennifer M. Euchner/**R**/
Counsel for NRC Staff

Dated at Rockville, Maryland
This 26th day of January 2001

accident sequence postulated by its witness, Dr. Thompson, as EC-6 is not remote and speculative and requires preparation of an EIS.

BCOC makes a number of unsupported, and inaccurate, statements regarding the merits of the proceeding in front of the Licensing Board. BCOC identifies five points on which it believes it will succeed on the merits before the Licensing Board: 1) CP&L and the Staff prepared inadequate onsite radiation dose analyses; 2) the Staff unlawfully assumed in its radiation dose analyses that workers would receive greater than the 5 rem TEDE occupational dose limit; 3) CP&L and the Staff agree with BCOC that the probability of a fire in the spent fuel pools is 1.0; 4) the issuance of the NSHC and the license amendment prior to the Licensing Board decision violates NEPA; and 5) the technical disagreements between the parties requires an evidentiary hearing before the Licensing Board. As explained below, the Staff believes that BCOC has failed to establish a strong likelihood of success on the merits of any of the above points.

The first point on which BCOC claims success is that CP&L completely failed to address onsite radiation doses that would be incurred as a result of the postulated accident sequence and that the Staff oversimplified onsite radiation doses. Petition at 7. Contrary to BCOC's assertion, CP&L did address onsite radiation doses in its brief, and in the supporting affidavits of Dr. Burns, Mr. Morgan, and Mr. DeVoe. Summary of Facts, Data, and Arguments on Which Applicant Proposes to Rely at the Subpart K Oral Argument Regarding Contention EC-6, at 57-60 citing Burns Affidavit at ¶ 17; Morgan Affidavit at ¶¶ 6-19; DeVoe Affidavit at ¶¶ 5, 6, 12. CP&L did perform onsite radiation dose calculations and submitted the results to the Licensing Board. It did not submit the actual calculations, because that level of detail was unnecessary. Parry Affidavit at ¶ 4(Exhibit 1). The documents submitted adequately address the onsite radiation doses, and provide much more detailed information than that provided by Dr. Thompson. For example, Dr. Thompson's report states that a person in the contaminated area the first day after release would receive a dose

BCOC's next argument is raised by Dr. Thompson in his declaration. Dr. Thompson claims that "[a] notable area of agreement is that Orange County, the NRC staff and CP&L agree that a loss of water from pools C and D, leading to partial or total exposure of the spent fuel to air, would inevitably cause a pool fire." Thompson Declaration ¶ 16. This statement misrepresents the NRC's position. The NRC Staff does not agree that the probability of a fire in the spent fuel pools is 1.0, but elected to assume conservatively that the probability of a fire is 1.0. The Staff did not specifically address the probability of a fire in pools C & D because it was able to demonstrate that the likelihood of the accident was sufficiently low even with the assumption that the probability of the fire was 1.0. Parry Affidavit at ¶ 9 (Exhibit 1). Since the Staff's calculations determined that the probability of reaching the point of a pool fire was so low as to be remote and speculative, even if the probability of the fire is 1.0, the accident sequence remains remote and speculative.

BCOC next claims that the Staff's no significant hazards determination and issuance of the license amendment violates NEPA because NEPA requires federal agencies to examine the environmental consequences of their actions before taking the actions. The Staff examined the potential environmental impacts from the license amendment in the Environmental Assessment (EA), and made a finding of no significant impact (FONSI). 64 Fed. Reg. 71514 (Dec. 21, 1999). Although BCOC has challenged the EA and FONSI, no decision has been made that the Staff violated NEPA and the regulations do not prohibit the Staff from issuing a license amendment while a Licensing Board decision is pending. Because the Staff has met all NEPA procedural requirements and because the no significant hazards determination has been made, issuance of the license before completion of the proceedings below is not unlawful.

Finally, BCOC and Dr. Thompson repeatedly state that the issues raised in the Subpart K proceeding before the Licensing Board require an evidentiary hearing because there are areas of technical disagreement between the parties. The NRC Staff does not believe that an evidentiary

hearing on EC-6 is necessary because the Licensing Board can resolve the issues by reviewing the parties' submittals, including the affidavits and supporting exhibits, and the transcript of the oral argument itself. An evidentiary hearing is not needed because further questioning of the witnesses would only serve to further demonstrate Dr. Thompson's lack of expertise and understanding and reinforce the unassailable conclusion that the information provided by the experts for the Staff and CP&L was accurate and their conclusion that the postulated accident sequence is remote and speculative is well-founded and supported with data, expert analysis and expert opinion, and therefore does not require the preparation of an EIS.⁵ See Parry Affidavit at ¶ 3 (Exhibit 1).

BCOC's petition for a stay of the license amendment and Dr. Thompson's supporting declaration fail to demonstrate that BCOC has a likelihood of prevailing on the merits of the Licensing Board proceeding and that a further evidentiary hearing on Contention EC-6 is necessary.

b. Irreparable Injury

BCOC alleges irreparable injury in the form of the increased risk of a severe accident in the SFPs. According to BCOC and Dr. Thompson, the consequences from this increased risk include irreparable harm from radiation to the affected environment, persons who inhabit the affected environment, and persons who consume food and water from the affected environment. Petition at 18, Thompson Declaration at ¶ 4. They argue that these consequences will be as much as 2.5 times greater than the consequences from an accident with only the fuel in pools A and B. Petition at 19; Thompson Declaration at ¶ 7.

⁵ Although, at oral argument the Licensing Board questioned counsel for BCOC regarding any additional witnesses BCOC may call if the matter proceeds to hearing, the Staff submits that it is far from clear that additional discovery or the addition of other witnesses is contemplated in Subpart K. The Statement of Consideration for the Final Rule for Subpart K notes that "because discovery would precede the oral argument, there would ordinarily be no need for further discovery prior to the adjudicatory hearing." 50 Fed. Reg. 41662, 41664 (Oct. 15, 1985).

of Science degree in Physics also from Imperial College. I have more than 25 years of experience in the analysis of safety of nuclear reactors. My resume, including a list of publications is attached (Attachment 1).

2. This affidavit draws upon the Affidavit of Gareth W. Parry, Stephen F. LaVie, Robert L. Palla and Christopher Gratton in Support of NRC Staff Brief And Summary of Relevant Facts, Data And Arguments Upon Which The Staff Proposes To Rely at Oral Argument on Environmental Contention EC-6 (Exhibit 2), and the NRC Staff's November 20, 2000 Brief and Summary filed before the Licensing Board below.¹ The purpose of the affidavit is to address those technical issues that are raised in either the declaration of December 22, 2000 by Dr. Gordon Thompson regarding the potential for a severe accident at spent fuel pools C and D at the Harris Nuclear Power Plant² or in the Board of Commissioners of Orange County's (BCOC) Petition for Review and Request for Immediate Suspension and Stay of NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion,³ and with which the Staff disagrees.

3. BCOC relies heavily on the declaration filed by Gordon Thompson, who it claims is "a nuclear safety expert with extensive experience in the field of probabilistic risk assessment." In paragraph 1 of his declaration, Dr. Thompson himself claims "extensive experience in assessing the hazards posed by nuclear facilities. . ." As discussed in Section IV B of the Staff Brief and

¹ NRC Staff Brief And Summary of Relevant Facts, Data And Arguments Upon Which The Staff Proposes To Rely at Oral Argument on Environmental Contention EC-6, November 20, 2000 (Staff Brief and Summary).

² Declaration of 22 December 2000 by Dr. Gordon Thompson Regarding the Potential for a Severe Accident at Spent Fuel Pools C & D at the Harris Nuclear Power Plant, December 22, 2000 (Thompson Declaration).

³ 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 Expansion, December 22, 2000 (Petition for Review).

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(Shearon Harris Nuclear Power Plant))
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CERTIFICATE OF SERVICE

I hereby certify that copies of "ERRATA TO THE 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" 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 26TH day of January, 2001:

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