

DOCKETED  
USNRC  
April 3, 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

01 APR -5 P3:14

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

**ORANGE COUNTY'S RESPONSE TO NRC STAFF'S  
MOTION TO STRIKE**

The Board of Commissioners of Orange County, North Carolina ("Orange County") hereby responds to the Nuclear Regulatory Commission ("NRC" or "Commission") Staff's motion to strike paragraphs 15 through 17 of the Declaration of 16 March 2001 by Dr. Gordon Thompson in Support of Orange County's Stay Motion of 16 March 2001.<sup>1</sup> NRC Staff Opposition to Orange County's Motion for Emergency Stay of LBP-01-09 and NRC Motion to Strike (April 2, 2001) ("NRC Staff Motion"). Dr. Thompson's Declaration provides a detailed analysis of the technical errors and misrepresentations committed by the Licensing Board in LBP-01-09, when it concluded that the risk of a spent fuel pool accident is negligible.<sup>2</sup>

According to the Staff Dr. Thompson's Declaration should be stricken because his analysis is not relied on in the Stay Motion, and because it is irrelevant. NRC Staff

<sup>1</sup> Dr. Thompson's Declaration was submitted in support of Orange County's Request for Emergency Stay of LBP-01-09 (March 16, 2001).

<sup>2</sup> Dr. Thompson's Declaration also provides background information on the circumstances of the license amendment application, the state of knowledge regarding spent fuel pool accident risks, and an analysis of the areas of agreement between the parties. Contrary to the Staff's assertion in note 1, all of this information is necessary to a thorough understanding of Dr. Thompson's analysis of the deficiencies of

Motion at 3. The first argument is based on a misrepresentation of the record, and the second is disingenuous. The motion should be rejected as utterly without merit.

With respect to the first argument, the Staff boldly declares that the County does not rely on Dr. Thompson's Declaration, because it makes "no further reference" to Dr. Thompson's Declaration other than to state on page 1 that the Declaration is relied on to show irreparable injury. Staff Motion at 3. Apparently the Staff has not read all ten pages of the Orange County's Motion, including page nine and footnote 19. There, Orange County explained that, "[b]ecause of the many errors made by the Licensing Board in LBP-01-09, it significantly understates the potential for a severe accident in the Harris spent fuel pools;" and referred in footnote 19 to Dr. Thompson's discussion of "[t]he errors by the Licensing Board which result in the underestimation of accident probability."

Moreover, the Staff's claim that the bulk of Dr. Thompson's Declaration is irrelevant to the County's Stay Motion is disingenuous. The Staff apparently believes that the Board's analysis of severe accident probability in LBP-01-09 is relevant to the Stay Motion, but that any criticism of the Board's analysis is not relevant. The Staff acknowledges its reliance on LBP-01-09:

The Licensing Board carefully weighed the evidence and arguments, as well as the evidence and arguments presented by the Staff and CP&L, and found that the risk of an accident was so low as to be remote and speculative. *See* LBP-01-09 at 41. In such a fact specific area of disagreement, the Commission's deference to the trier of fact is quite high.

Staff Motion at 6.<sup>3</sup> Incredibly, at the same time that it relies on LBP-01-09 and asks the Commission to defer to the Licensing Board's factual determinations in LBP-01-09, the Staff also argues that any questions about the reliability of the Board's conclusions are off-limits to Orange County.

The Commission should reject the Staff's self-serving and internally inconsistent argument out of hand. In addressing the question of the likelihood of irreparable harm, it was appropriate and indeed absolutely necessary, for Orange County to address the probity of the Board's analysis and conclusion that the risk of a severe spent fuel pool accident is remote and speculative.<sup>4</sup>

Accordingly, the Staff's Motion to Strike should be denied.

Respectfully submitted,



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<sup>3</sup> Notably, the Staff offers no affidavit of its own to support the allegedly extreme unlikelihood of a severe spent fuel pool accident, but relies entirely on LBP-01-09.

<sup>4</sup> In this regard, it should be remembered that the Board's analysis in LBP-01-09 is based on the uncritical acceptance of evidence submitted by the Staff and CP&L, which Orange County has never had the opportunity to challenge in the context of a full trial-type hearing. Thus, the reliability of the technical evidence accepted by the Licensing Board in LBP-01-09 has not been tested in the crucible of a trial-type hearing.

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	)	

I certify that on April 3, 2001, copies of the foregoing ORANGE COUNTY'S RESPONSE TO NRC STAFF'S MOTION TO STRIKE, ORANGE COUNTY'S MOTION FOR LEAVE TO REPLY TO NRC STAFF'S AND CP&L'S OPPOSITIONS TO PETITION FOR REVIEW AND EMERGENCY REQUEST FOR STAY; and ORANGE COUNTY'S REPLY TO NRC STAFF'S AND CP&L'S OPPOSITIONS TO PETITION FOR REVIEW AND EMERGENCY REQUEST FOR STAY were served on the following by first class mail. They were also served by e-mail on April 3, 2001.

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