RAS 199

March 1, 1999

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 ANSWER TO BCOC'S REQUEST FOR HEARING AND PETITION TO INTERVENE

I. INTRODUCTION

Applicant Carolina Power & Light Company ("Applicant" or "CP&L") hereby submits its answer to petitioner Board of Commissioners of Orange County, North Carolina's ("BCOC") "Request for Hearing and Petition to Intervene" ("BCOC Pet.") dated February 12, 1999. CP&L submits that BCOC's petition to intervene has failed to meet the Commission's requirements to establish standing, either through (1) "organizational standing" based on injury-in-fact to BCOC itself, or (2) "representational standing" based on injury-in-fact to one of its citizens.

II. FACTUAL BACKGROUND

On December 23, 1998, CP&L submitted a license amendment request to use additional spent fuel storage capacity at the Harris Nuclear Plant ("HNP") by adding rack modules to spent fuel pools "C" and "D," and placing pools "C" and "D" in service. On January 13, 1999, the Federal Register published a notice of opportunity to request a

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hearing and petition to intervene which required petitions to intervene to be filed by February 12, 1999. 64 Fed. Reg. 2,237 (1999). BCOC timely filed a request for hearing and petition to intervene on February 12, 1999. On February 24, 1999, the Board issued an Initial Prehearing Ordering directing CP&L's answer to BCOC's petition to be filed on or before March 1, 1999.

CP&L's proposed amendment would expand the spent fuel storage capacity of HNP by placing into service two spent fuel pools, pools "C" and "D," that were originally designed and built for HNP, but have not yet been placed into service. HNP currently stores spent fuel from HNP Unit 1, as well as spent fuel transshipped from CP&L's other nuclear power plants, Brunswick Units 1 & 2 and Robinson Unit 2, pursuant to the initial operating license for HNP Unit 1. CP&L's proposed amendment would simply permit CP&L to make use of existing, additional spent fuel pool storage capacity to store spent fuel from these four reactors, with the additional limitation that pools "C" and "D" would store only "old fuel which has been cooled at least 5 years." Amend. Req., Encl. 6 at 5-2. The design of pools "C" and "D" is similar to currently operating pools "A" and "B," and the storage rack technology used for pools "C" and "D" will be the same as that currently used for pools "A" and "B," as well as for nuclear power plants throughout the country.

To make pools "C" and "D" operational, CP&L proposes to add fuel storage racks to the pools, complete the pools' cooling system piping, and connect the cooling system

piping to the Component Cooling Water ("CCW") system for HNP Unit 1.[1] The Unit 1 CCW system has been in place and operational since the unit was licensed for operation in 1987. Recent calculations performed to support this amendment request demonstrate that the Unit 1 CCW system has more than sufficient heat removal capability to accommodate the additional heat load from pools "C" and "D."

III. LEGAL REQUIREMENTS FOR STANDING

Each intervention petitioner wishing to participate as a party in an NRC licensing proceeding must establish standing. In order to establish standing, each petitioner is required by 10 C.F.R. § 2.714 to set forth with particularity the petitioner's interest in the proceeding with particular reference to:

> (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest.

64 Fed. Reg. at 2,240. In determining a petitioner's standing, the Commission has applied "'contemporaneous judicial concepts' of standing to determine whether a petitioner has a sufficient interest in a proceeding to be entitled to intervene as a matter of right." Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-

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[1] The CCW system for HNP Unit 2, to which pools "C" and "D" cooling system was originally planned to connect, was never completed. HNP was originally planned as a four nuclear unit site (Units 1, 2, 3 & 4) with a common Fuel Handling Building. While all four spent fuel pools were constructed, only the Unit 1 reactor was ultimately completed. Additional detail is provided in CP&L's amendment request. See, e.g., Amend. Req., Encl. 1 at 1-2.

89-21, 30 NRC 325, 329 (1989). The Commission has determined that contemporaneous judicial concepts of standing require a petitioner to demonstrate that:

(1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;

(2) that the injury can fairly be traced to the challenged action; and

(3) that the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). To meet the first prong of this test, the petitioner must establish that the alleged injury is "concrete and particularized, not 'conjectural' or 'hypothetical.'" Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994).

Agency decisions have used a "geographical proximity" test to determine injury-in-fact in spent fuel pool expansion proceedings. Virginia Electric Power and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). While agency decisions have often applied a 50-mile geographic proximity rule for reactor operating license proceedings, the agency has applied more stringent geographic proximity standards to proceedings involving license amendments with lesser potential off-site consequences. See, e.g., Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), affirmed on other grounds, ALAB-816, 22 NRC

461 (1985) (43 miles inadequate for standing because risk is less for spent fuel pool).[2]

The Commission has stated that:

> potential safety hazards associated with spent fuel pool expansions are not as large as those associated with the reactor operation because the purpose of the expansion is to allow longer term storage of aged spent fuel.

51 Fed. Reg. 7,744, 7,754 (1986) (Statement of considerations addressing the safety hazards of reracking and spent fuel pool expansion). Instead of the 50 miles used for reactor operations, petitioners in spent fuel pool expansion proceedings must demonstrate "close proximity . . . to establish the requisite interest" for standing. North Anna, ALAB-522, supra, 9 NRC at 56 (emphasis added) (stating in addition that the "zone of harm" is different for spent fuel pool expansion than for a reactor operating license). Where standing has been contested in spent fuel pool expansion proceedings, the Appeals Board determined that petitioners "living little more than a stone's throw from the facility" meet the "close proximity" test. Id. at 55-56 (petitioners residing on Lake Anna were considered to be "in very close proximity to the North Anna facility").[3] In a spent fuel pool expansion case a decade ago, a Licensing Board found a person residing "approximately 10 miles" from the facility to have standing. Florida Power & Light Co.

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[2] The Board in Pilgrim stated that "[i]n making this ruling, we note that we know of no scenario under which radiation attributable to the fuel pool could affect a residence 43 miles distant from the fuel pool." Pilgrim, LBP-85-24, supra, 22 NRC at 99.

[3] In another case involving spent fuel pool issues, the Board determined that a petitioner working within 1 mile of the facility, and another petitioner residing within ½ mile of the facility, had sufficient injury-in-fact to establish standing. General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 157-59 (1996). While not decided on geographic proximity grounds, Oyster Creek indicates that a distance of 1 mile likely meets the "close proximity" test for standing in spent fuel pool expansion cases.

(St. Lucie Nuclear Power Plant, Unit 1), LBP-88-10A, 27 NRC 452, 455 (1988). However, the Board provides no discussion of its analysis or any additional factors it may have taken into consideration, and standing was not challenged by the parties. Id. Subsequent to the St. Lucie case, the Commission has granted several exemptions reducing the Emergency Planning Zone ("EPZ") for shutdown nuclear facilities with only spent fuel pool storage from 50 miles down to the site boundary. See, e.g., 63 Fed. Reg. 48,768 (1998) (Maine Yankee); 63 Fed. Reg. 47,331 (1998) (Connecticut Yankee); 63 Fed. Reg. 53,940 (1998) (Big Rock Point). The Commission's exemption is based on a determination that the reduction in EPZ to the site boundary "is acceptable in view of the greatly reduced offsite radiological consequences associated with [spent fuel pool storage]."[4] 63 Fed. Reg. at 48,770. The St. Lucie Board issued its order without the benefit of these later Commission determinations on the greatly reduced hazard from spent fuel pool storage.

Where an organization seeks to establish standing to intervene in an NRC licensing proceeding, the organization must demonstrate that the action will cause an injury-in-fact to either (a) the organization's interests or (b) the interests of its members. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). Where standing is based on injury to the organization itself ("organizational standing"), the petitioner must demonstrate that its own interests have been adversely

[4] The analyses to support this conclusion assume spent fuel cooled as little as 1 year after discharge. See 63 Fed. Reg. at 48,769-70. As stated supra, spent fuel must be cooled at least 5 years to be stored in HNP pools "C" and "D" pursuant to this amendment request.

affected to the same injury-in-fact standard as for an individual. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 NRC 120, 126 (1992). Where standing is based on injury to its members ("representational standing"), the petitioner must "identify at least one of its members by name and address and demonstrate how that member may be affected . . . and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of that member." Northern States Power Co. (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138, 141 (1996). The identified individual must be able to demonstrate standing, and therefore sufficient injury-in-fact, in his or her own right to support "representational standing." Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396-97 (1979).[5]

IV. LEGAL ARGUMENT

BCOC has failed to establish either "organizational standing" or "representational standing" for the following reasons:

A. BCOC has Not Established "Organizational Standing" Because It Has Failed to Identify Any Injury-In-Fact to Its Interests as an Organization

BCOC's petition appears to use "organizational standing" as the basis for its intervention, stating that "Orange County will suffer injury-in-fact if the proposed license

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[5] CP&L notes that the Commission also has provisions for discretionary intervention by petitioners who cannot establish standing as of right. See Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). To establish discretionary intervention the petitioner must demonstrate that the six Pebble Springs factors weigh in his or her favor. Id. Since BCOC's petition fails to even address discretionary intervention, much less demonstrate how it meets the Pebble Springs factors, CP&L has not discussed the legal standards for discretionary intervention in NRC proceedings.

is granted." BCOC Pet. at 2. To establish "organizational standing," BCOC must demonstrate that its own interests (not those of its members) have been adversely affected. Rancho Seco, LBP-92-23, supra, 36 NRC at 126. The petition, however, fails to establish any "concrete and particularized" injury whatsoever to BCOC's own interests. See Sequoyah Fuels Corp., CLI-94-12, supra, 40 NRC at 72. The petition merely states that the BCOC is responsible "for carrying out state policies on a local level." BCOC Pet. at 3. BCOC further claims that it is "authorized to protect the citizens of the County through its police powers." Id. Next, BCOC vaguely claims that "the proposed license amendment threatens the County's interest in protecting the health and welfare of its citizens and the integrity of the environment in which they live." Id. (emphasis added). None of these statements demonstrate, or even allege, any injury-in-fact to the organization (required for a showing of "organizational standing"). Nor do these statements show a "concrete and particularized" injury to any citizens of the County.[6] Consequently, BCOC has failed to identify any injury to its own interests as an organization, and has therefore failed to establish "organizational standing."

B. BCOC Has Not Established "Representational Standing" Because It Has Failed to Identify a Single Individual with A Concrete and Particularized Injury-In-Fact

Because BCOC has failed to identify any injury-in-fact to its organizational interests, it must establish "representational standing" based on injury-in-fact to one or

[6] Moreover, an injury to the interests of the County's citizens would address "representational standing," rather than "organizational standing." See Yankee Atomic, CLI-94-3, supra, 39 NRC at 102 n.10.

more of its citizens. BCOC's petition, however, fails to meet the Commission's requirements for "representational standing" either procedurally or in substance.

1. BCOC Fails to Identify a Single Citizen Who May be Affected

Agency decisions require an organization petitioning to intervene on the basis of "representational standing" to "identify at least one of its members by name and address and demonstrate how that member may be affected . . . and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of the member." Northern States Power, LBP-96-22, supra, 44 NRC at 141. The "members" in this instance would presumably be citizens of Orange County.[7] BCOC's petition fails to identify a single member or citizen who may be affected by name and address, and fails to provide an affidavit or other indicia of authority showing that the citizen authorizes BCOC to request a hearing on his or her behalf. Thus, BCOC has failed to meet the Commission's pleading requirements to establish standing as an organization.

2. BCOC Fails to Demonstrate Any "Concrete and Particularized" Injury-In-Fact to Any of the County's Citizens

Even had an individual been identified, BCOC's petition fails to demonstrate any "concrete and particularized" injury-in-fact to its citizens, as is required under

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[7] As discussed infra, BCOC could have requested to participate as an interested county, pursuant to 10 C.F.R. §2.715(c), in which case it would not have had to meet the procedural requirements necessary to establish "representational standing."

Commission case law to establish standing. BCOC's petition makes a vague and conjectural assertion that "the proposed license amendment threatens the County's interest in protecting the health and welfare of its citizens and the integrity of the environment in which they live." BCOC Pet. at 3. This general assertion is not a "concrete and particularized" statement of injury-in-fact required to establish standing.

BCOC also asserts that the amendment would create "an increased risk of an accident in the spent fuel pool or plant, which could cause a significant radiological release to the environment." BCOC Pet. at 3 (emphasis added). BCOC does not comment further on the potential for such a release – and with good reason. BCOC's assertion is based on the accompanying declaration of Gordon Thompson, which hypothesizes a variety of beyond-design-basis accidents. See generally, Thompson Decl. The agency has determined, however, that such "beyond-design-basis" accident scenarios are "remote," "highly speculative and of low probability. . .." See, e.g., St. Lucie, LBP-88-10A, supra, 27 NRC at 458-59. As such, any alleged injury-in-fact premised on these beyond-design-basis accident scenarios is too "'conjectural' or 'hypothetical'" to form a sufficient basis for standing. Sequoyah Fuels, CLI-94-12, supra, 40 NRC at 72.

3. Orange County is Too Remote to Satisfy the "Close Proximity" Test

Moreover, based on the limited information provided in BCOC's petition, BCOC's citizens would not satisfy the "close proximity" test for spent fuel pool expansion cases, even had BCOC properly pleaded "representational standing." Agency decisions show "close proximity" to be met by individuals within "a stone's throw of the

facility." See, e.g., North Anna, ALAB-522, supra, 9 NRC at 56.[8] The shortest distance between the HNP site boundary and the geographical boundary of Orange County, over which BCOC has jurisdiction, is over 15 miles. The vast majority of the geographical area of Orange County lies in excess of 20 miles from the HNP site boundary. See Exhibit 1 (fifty mile radial area surrounding HNP). This is well beyond the distances found to meet the "close proximity" test, and well beyond the site boundary established by the Commission as an appropriate EPZ for hazards from spent fuel pool storage. See 63 Fed. Reg. 48,768. BCOC's petition says nothing to demonstrate how it would satisfy the "close proximity" test, appearing rather to assume incorrectly that the 50-mile reactor operating license test automatically applies in all agency proceedings. In light of the Commission's recent recognition of the "greatly reduced offsite radiological consequences" associated with spent fuel pool storage, BCOC has the burden of identifying a credible concrete and particularized injury that could occur to residents in Orange County, 15 to 45 miles from the HNP site boundary. BCOC has not done so and simply fails to meet any of the Commission's requirements for injury-in-fact sufficient to establish "representational standing."

[8] As discussed supra, the St. Lucie Board found standing for an individual who resided approximately 10 miles away, but provided no elucidation of its analysis or any additional determinant factors. Furthermore, the Board's order there does not take into consideration the Commission's recent decisions to reduce the EPZ for spent fuel pool storage from 50 miles to the site boundary. See, e.g., 63 Fed. Reg. 48,768.

C. BCOC's Statement of Aspects Inappropriately Challenges the Staff's Proposed No Significant Hazards Considerations Determination

The Commission's pleading requirements in 10 C.F.R. § 2.714 require a petitioner to "identify the specific aspect(s) of the proceeding on which the petitioner wishes to intervene." 64 Fed. Reg. at 2,240. In its petition, BCOC states that:

> The aspects of the proceeding on which [it] seeks to intervene are set forth in detail in the attached Declaration of Dr. Gordon Thompson, Sections F and G, and in the attached No Significant Hazards Comments, Section II.

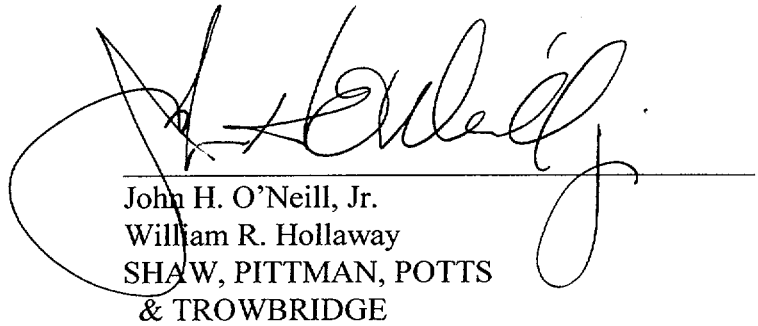
BCOC Pet. at 4 (emphasis added). The referenced "Declaration of Dr. Gordon Thompson" is itself a set of comments on the NRC staff's proposed determination of No Significant Hazards Considerations for CP&L's requested license amendment. The Commission has determined that the staff's No Significant Hazards Considerations determination is not subject to challenge in an agency licensing proceeding. See 10 C.F.R. § 50.58(b)(6); 51 Fed. Reg. at 7,759; see also St. Lucie, LBP-88-10A, supra, 27 NRC at 456-57. BCOC's statement of aspects challenging the staff's proposed No Significant Hazards Considerations is inappropriate and cannot support intervention in a license amendment proceeding.

V. CONCLUSION

For the forgoing reasons, the Board should deny BCOC's request for hearing and petition to intervene in this licensing action because BCOC has failed to establish either

"organizational standing" or "representational standing" sufficient to meet the Commission's requirements for standing under 10 C.F.R. § 2.714.[9]

Respectfully submitted,



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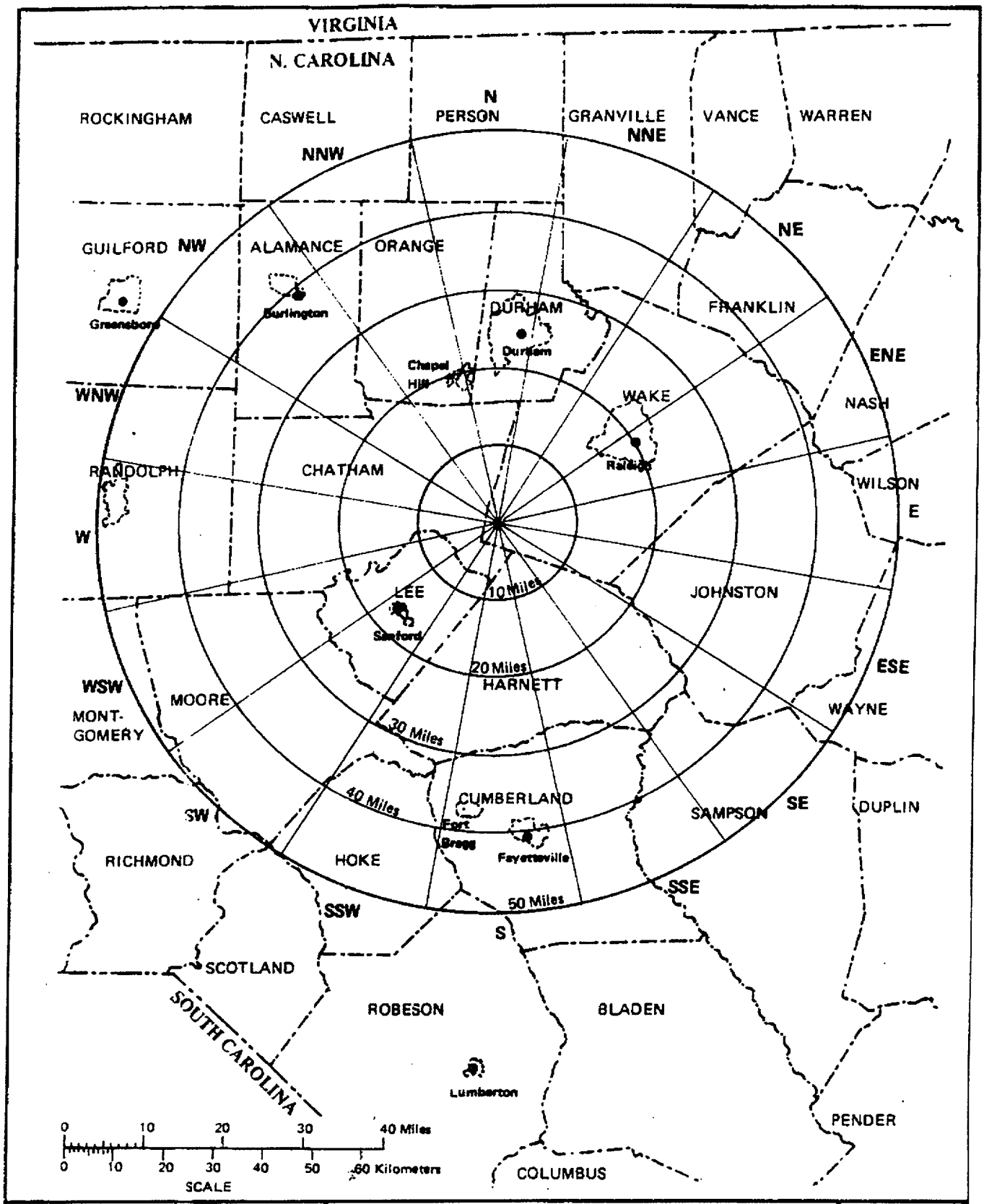
Dated: March 1, 1999

[9] CP&L notes that petitioner BCOC could have requested to participate in the proceeding as an "interested State, county, municipality, and/or agenc[y] thereof" pursuant to the Commission's regulations in 10 C.F.R. § 2.715(c). Since BCOC has made no such request, CP&L has not discussed the NRC's legal requirements for such participation.



SHEARON HARRIS NUCLEAR POWER PLANT Carolina Power & Light Company ENVIRONMENTAL REPORT	FIFTY MILE RADIAL AREA SURROUNDING THE SHEARON HARRIS NUCLEAR POWER PLANT	FIGURE 2.1.2-2

March 1, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

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Admissions:	Supreme Court of the United States and various other Federal courts District of Columbia State of Maryland
Name of Party:	Carolina Power & Light Company

Respectfully submitted,

John H. O'Neill, Jr.
Counsel for Carolina Power & Light Company

Dated at Washington, D.C.
This 1st day of March 1999.

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned mater. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Admissions:	Commonwealth of Virginia United States Court of Appeals for the Fourth Circuit
Name of Party:	Carolina Power & Light Company

Respectfully submitted,

William R. Hollaway
Counsel for Carolina Power & Light Company

Dated at Washington, D.C.
This 1st day of March 1999.

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-LA
	)	ASLBP No. 99-762-02-LA
(Shearon Harris Nuclear Power Plant)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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State of Florida
State of Kansas
4th, 8th and 10th Circuit Courts of Appeals
Various federal district courts

Name of Party: Carolina Power & Light Company

Respectfully submitted,

Steven Carr
Counsel for Carolina Power & Light Company

Dated at Raleigh, North Carolina
This 26th day of February 1999

March 1, 1999

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer Opposing Orange County's Request for Hearing and Petition to Intervene," "Notice of Appearance" for John H. O'Neill, Jr., "Notice of Appearance" for William R. Hollaway, dated March 1, 1999 and "Notice of Appearance" for Steven Carr, dated February 26, 1999, were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail transmission, this 1st day of March, 1999.

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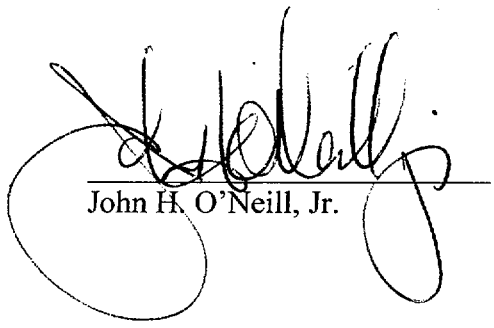

John H. O'Neill, Jr.

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