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June 11, 2002

BY HAND DELIVERY

Mark Langer, Clerk
U.S. Court of Appeals
For the District of Columbia Circuit
3rd and Constitution Avenues N.W.
Washington, D.C. 20001

SUBJECT: *Orange County v. NRC, Nos. 01-1073 and 01-1246*

Dear Mr. Langer,

On May 28, 2002, on behalf of Orange County, North Carolina, I filed a reply brief in the above-captioned case. Subsequently, I received a call from the clerk's office, informing me that the reply brief should have included a summary of the argument, and the table of authorities should have included designation of authorities principally relied on.

I am enclosing various errata to the brief, including a summary of the argument and a corrected table of contents, which reflects the addition of the summary of the argument as Section II and renumbering of subsequent sections. In addition, I am enclosing a revised table of authorities. Finally, I am enclosing an amended certificate showing that with the inclusion of the summary of the argument, Orange County is still within the page limitation imposed by the Court. Copies have also been served on the parties.

I regret any inconvenience that my oversight may have caused the Court.

Sincerely,



Diane Curran

Encl: As Stated

Cc. w/Encl.: Service list

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CASE SCHEDULED FOR ORAL ARGUMENT SEPTEMBER 5, 2002

In the

**United States Court of Appeals
For the District of Columbia Circuit**

Nos. 01-1073 and 01-1246 (Consolidated)

ORANGE COUNTY, NORTH CAROLINA

Petitioner

v.

**UNITED STATES NUCLEAR REGULATORY COMMISSION
And the UNITED STATES OF AMERICA,**

Respondents

CAROLINA POWER & LIGHT COMPANY

Intervenor-Respondent

**PETITION TO REVIEW A FINAL DECISION OF THE
U.S. NUCLEAR REGULATORY COMMISSION**

**ERRATA TO
REPLY BRIEF FOR PETITIONER**

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF THE ARGUMENT.....	2
III.	ARGUMENT.....	4
A.	Stricter Review is Required for NRC Procedural Decisions.....	4
B.	By Imposing a New Test for the Admissibility of Orange County's Contention, the NRC Violated Both NEPA and Its Own Procedural Regulations for the Admission of Contentions.....	5
1.	Contention EC-6 satisfies the NEPA standard for consideration of new information.....	5
2.	The new information raised in Contention EC-6 has never been analyzed before in an EIS.....	8
3.	The threshold requirement to plead detailed accident scenarios was not a reasonable or relevant means of judging whether Contention EC-6 satisfied 10 C.F.R. § 2.714(b).....	13
C.	Radiation exposures to workers are reasonably foreseeable impacts in the seven-step scenario, and therefore must be considered in an EIS...15	
D.	In Ruling on the Merits of the Seven-step Scenario, the ASLB Unlawfully Shifted the Burden of Proof to Orange County.....	18
1.	CLI-01-11 shifted the burden of proof to Orange County.....	18
2.	The ASLB failed to reconcile internal differences in positions within the Staff of the NRC.....	19
3.	The ASLB arbitrarily disregarded Orange County's evidence and relied on non-existent evidence from CP&L regarding Event 4 (preclusion of access).....	22
E.	The NRC Violated NEPA and Its Own Regulations In Making the No Significant Hazards Determination.....	24
IV.	CONCLUSION.....	26

TABLE OF AUTHORITIES

COURT CASES

<i>A.J. McNulty & Co. Inc. v. Secretary of Labor</i> , 283 F.3d 328 (D.C. Cir. 2002).....	3
<i>Baltimore Gas & Electric Co. v. NRDC</i> , 462 U.S. 87 (1983).....	3
<i>Bowles v. Seminole Rock & Sand Co.</i> , 325 U.S. 410 (1945).....	3
<i>Carstens v. NRC</i> , 742 F.2d 1546 (D.C. Cir. 1984), <i>cert. denied</i> , 471 U.S. 1136 (1985).....	3
<i>Commonwealth of Massachusetts v. NRC</i> , 924 F.2d 311(D.C. Cir. 1991).....	12
<i>Hughes River Watershed Conservancy v. Glickman</i> , 81 F.3d 437 (4 th Cir. 1996)....	22
<i>*Marsh v. Oregon Natural Resources Council</i> , 490 U.S. 360 (1989).....	1, 4, 5, 12
<i>Public Citizen v. FAA</i> , 988 F.2d 186 (D. C. Cir. 1993).....	25
<i>Robertson v. Methow Valley Citizens Council</i> , 490 U.S. 332 (1989).....	3
<i>*Sierra Club v. NRC</i> , 862 F.2d 222 (9 th Cir. 1988)	3, 13
<i>St. James Hospital v. Heckler</i> , 760 F.2d 1460 (7 th Cir.), <i>cert. denied</i> , 474 U.S. 902 (1985).....	24
<i>Tennessee Valley Authority v. Hill</i> , 437 U.S. 153, 189 (1978).....	25
<i>Warm Springs Dam Task Force v. Gribble</i> , 621 F.2d 1017 (9 th Cir. 1980).....	1

NRC CASES

<i>Dominion Nuclear Connecticut, Inc.</i> (Millstone Nuclear Power Station), LBP-02-05, 55 NRC 131 (2002).....	10
<i>*Pacific Gas & Electric Co.</i> (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, <i>rev'd on other ground sub nom.</i> <i>San Luis Obispo Mothers for Peace v. NRC</i> , 799 F.2d 1268 (9 th Cir. 1986).....	13

* Asterisks denote authorities principally relied on.

<i>Tennessee Valley Authority</i> (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341 (1978).	18
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STATUTES

Atomic Energy Act, "Sholly Amendment," 42 U.S.C. § 2239(a)(2)(A)	25
National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq.....	passim
Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. § 10101, <i>et seq.</i>	17

REGULATIONS

10 C.F.R. § 2.714(b).....	1, 4, 7, 12
10 C.F.R. Part 2, Supbart K.....	17, 18
10 C.F.R. § 50.47	15
10 C.F.R. Part 50, Appendix E	15

FEDERAL REGISTER NOTICES

61 Fed. Reg. 66,537, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses" (December 18, 1996).....	8
Final Rule, Review and Final Revision of Waste Confidence Decision, 55 Fed. Reg. 38474, (September 18, 1990).....	8, 9

MISCELLANEOUS

NUREG-0575, <i>Handling and Storage of Spent Light Water Power Reactor Fuel</i> (1979)...	passim
NUREG-0396/ EPA 520/1-78-016, <i>Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants</i> (December 1978)	15
NUREG-1353, <i>Regulatory Analysis for the Resolution of Generic Issue 82, Beyond Design Basis Accidents in Spent Fuel Pools</i>	9, 10
NUREG-1437, Generic Environmental Impact Statement for License Renewal (May 1996).....	8

NUREG-1560, <i>Individual Plant Examination Program: Perspectives on Reactor Safety and Plant Performance, Vol. 1</i> (1997).....	20
NUREG-1738, <i>Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants</i> (January 2001)	6, 9, 10, 11
NUREG/CR-4982, <i>Severe Accidents in Spent Fuel Pools in Support of Generic Issue 82</i> (1987).....	9
NUREG/CR-5176, <i>Seismic Failure and Cask Drop Analysis of the Spent Fuel Pools at Two Representative Nuclear Power Plants</i> (1989).....	9
NUREG/CR-5281, <i>Value/Impact Analysis of Accident Preventative and Mitigative Options for Spent Fuel Pools</i>	9
NUREG/CR-0649, <i>Spent Fuel Heatup Following Loss of Water During Storage</i> (1979)...	15
NUREG/CR-6331, <i>Atmospheric Relative Concentrations in Building Wake</i> , (1997).	20
United States Nuclear Regulatory Commission, Carolina Power & Light Co., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact (December 15, 1999).....	4, 9

II. SUMMARY OF THE ARGUMENT

The NRC argues that in order to gain admission of a contention demanding a new EIS for expanded spent fuel pool storage at Harris, Orange County was required to describe in detail a scenario for every accident it wished the NRC to consider in a new EIS. This argument misstates the standard for requiring a new EIS as set forth in *Marsh v. Oregon Natural Resources Council*, 490 U.S. at 374. Under *Marsh*, Orange County simply was required to show the existence of new information that would change the Commission's previous conclusion in the 1979 GEIS. Orange County satisfied the *Marsh* standard, by presenting new information about the behavior of spent fuel under drainage conditions that fatally undermined the 1979 GEIS's conclusion that pool drainage accidents would have minimal consequences. In presenting this new information, Orange County also satisfied the NRC's own admissibility standard by describing the new information with specificity, detail, and documented support.

Having met the *Marsh* and NRC admissibility tests, Orange County was entitled to a hearing on whether a new EIS must be prepared. If Orange County prevailed in the hearing, it would then be incumbent on the NRC to evaluate in a new EIS the plausibility of a range of accident scenarios involving loss of pool water. The NRC could not shift that responsibility to Orange County by recasting it as a threshold pleading requirement.

In any event, in the limited hearing that the NRC did allow regarding the plausibility of a single seven-step accident scenario, the agency violated NEPA and failed to hold the NRC Staff to its burden of proving that the likelihood of the scenario was "remote and speculative." LBP-00-19, 52 NRC at 97. In order to come up with an

extremely low accident probability estimate for the seven-step scenario, the Atomic Safety and Licensing Board (“ASLB”) assumed that plant workers would incur doses above normal occupational limits in order to stem the progress of the accident. The Commission does not dispute Orange County’s argument that in considering the seven-step scenario, it would be unlawful to depress calculations of accident probability by assuming that workers could be exposed to doses in excess of federal occupational limits. Instead, the NRC argues that such potential harm to workers occurs so late in the seven-step scenario that it is remote and speculative and therefore of no legal consequence. In fact, however, the potential for harm to workers occurs at an early stage in the accident sequence, when there has been a degraded-core accident with containment failure or bypass, coincident with a loss of spent fuel cooling. Based on the NRC’s own established regulatory precedents, there can be no doubt that the agency considers this stage of a nuclear power plant accident to be foreseeable.

In defending the NRC Staff’s determination of No Significant Hazards Considerations (hereinafter “NSH Determination”), the Commission argues that the decision was valid because the Staff did respond to Orange County’s comments. However, the Staff did not respond at all to Orange County’s important comment that the NSH criteria were not satisfied because the potential for a severe spent fuel pool accident at Harris had never before been considered. Moreover, the NRC’s argument that the “Sholly Amendment” overrides NEPA is inconsistent with fundamental principles of statutory construction.

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**AMENDED CERTIFICATE REQUIRED BY
FRAP 32(A)(7)(C) REGARDING WORD COUNT**

The undersigned, counsel of record for Petitioner Board of Commissioners of Orange County, North Carolina, certifies that the number of words in the Reply Brief for Petitioner, excluding the Table of Contents, Table of Authorities, Glossary, Addendum, and certificates of counsel, is 6,977 as counted by the Microsoft Word program.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on June 11, 2002, copies of Orange County's Summary of the Argument, corrected Table of Contents and Table of Authorities, and Amended Certificate Required by FRAP 32(A)(7)(C) Regarding Word Count, were served on the Court by hand, and on the following parties by e-mail and/or first-class mail as indicated below:

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diane Curran". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

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