

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
CAROLINA POWER & LIGHT COMPANY) Docket Nos. 50-400 OL
AND NORTH CAROLINA EASTERN) 50-401 OL
MUNICIPAL POWER AGENCY)
)
(Shearon Harris Nuclear Power)
Plant, Units 1 and 2))

APPLICANTS' RESPONSE TO SUPPLEMENT TO
PETITION TO INTERVENE BY PHYLLIS LOTCHIN

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I. INTRODUCTION

By a pleading entitled "Contentions Filed in the Licensing Proceedings of the Shearon Harris Nuclear Plant," dated May 14, 1982, Ms. Phyllis Lotchin proposed four enumerated contentions. Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency herein present their response to the contentions proposed by Ms. Lotchin.

Seven prospective intervenors in the above-captioned proceeding have filed proposed contentions. Many of the proposed contentions duplicate similar issues raised by other petitioners. Mr. Wells Eddleman proposed approximately 135 enumerated contentions which are addressed in "Applicants' Response to Supplement to Petition to Intervene by Wells Eddleman," (hereinafter referred to as "Applicants' Response to

Eddleman") which has been filed with all prospective parties contemporaneously with this response. Most of the issues raised by Ms. Lotchin are subsumed in contentions proposed by Mr. Eddleman. Thus, rather than duplicating the detailed responses to Mr. Eddleman's similar contentions here, Applicants have liberally cross-referenced to the discussion in Applicants' Response to Eddleman.

II. RESPONSE TO CONTENTIONS

A. Requirements for Contentions

See Applicants' Response to Eddleman, at 2-16, for a general discussion of the legal requirements which proposed contentions must meet in order to be admitted for adjudication in this proceeding.

B. Plant Design (Contention 1)

Lotchin proposed Contention 1 appears to question the siting of the Harris plant in light of the density or distribution of the population in the area of the site, and to complain about the risks and benefits to persons within a 50-mile radius of the plant. With respect to siting, the contention appears to be a challenge to the Commission's siting criteria in 10 C.F.R. Part 100, which may not be heard absent the showing required by 10 C.F.R. § 2.758. If Ms. Lotchin means to

challenge Applicants' compliance with Part 100, the contention lacks any basis with a reasonable degree of specificity on the nature of the noncompliance. Furthermore, the adequacy of the site, while not contested by any intervenor, was considered at the construction permit hearings for this plant. See in this docket, LBP-78-4, 7 N.R.C. 92, 100-103 (1978). The presiding Licensing Board concluded its findings on the site as follows:

The Board finds that the population density and the use characteristics of the environs of the site and the physical characteristics of the site have been adequately described in the record, that they have been given appropriate consideration in the design of the Shearon Harris Plant, and that they conform to the Commission's reactor site criteria, 10 CFR Part 100, taking into account the plant design and proposed engineered safety features. The Board therefore finds that, taking into consideration the site criteria contained in 10 CFR Part 100, the proposed plant can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

7 N.R.C. at 103. That Licensing Board, pursuant to the National Environmental Policy Act of 1969, also weighed the benefits of the facility against its environmental costs (including the transportation of radioactive materials) and, considering available alternatives, found that construction of the facility was warranted. Id. at 116, 144. Proposed Contention 1 is nothing more than a general complaint about the decision, long since final, to construct the Harris plant. No cognizable issue for the operating license proceeding is raised.

C. Emergency Planning (Contentions 2, 3 and 4)

Ms. Lotchin's proposed Contentions 2, 3 and 4, while seeming to raise a number of issues, in reality are all based upon the assertion that emergency planning in the vicinity of the Harris Plant is inadequate in that the plume emergency planning zone (EPZ) extends to a distance of only 10 miles around the site and does not consider the consequences of a core melt/containment breach scenario.^{1/} Indeed, Ms. Lotchin's proposed contentions do not appear to raise any asserted deficiencies in emergency planning provisions within the 10-mile EPZ.

Section II.J of Applicants' Response to Eddleman, incorporated herein by reference, presents a detailed discussion of the basis upon which the 10-mile EPZ was established. For the reasons set forth in that discussion, which are summarized below, Applicants object to the admission of proposed Contentions 2, 3 and 4 as lacking sufficient bases, constituting a challenge to the Commission's emergency planning regulations and attempting to raise issues which are the subject of rulemaking before the Commission.

^{1/} For example, proposed Contention 4 discusses a number of alleged emergency preparedness deficiencies for the Chapel Hill area. However, Chapel Hill is well beyond the 10-mile plume EPZ and therefore is not included in planning for protective measures to be taken for the population within the plume EPZ.

The Commission's regulations, at 10 C.F.R. §50.47(c)(2), establish that the plume EPZ shall consist of an area of approximately 10 miles in radius around each nuclear power plant, and that the ingestion pathway EPZ shall consist of an area of approximately 50 miles in radius from the plant (protective actions for the 50-mile EPZ are to focus on protection of the food ingestion pathway). Therefore, to the extent that Ms. Lotchin contends that emergency planning actions beyond protection of the food ingestion pathway are required for the areas outside the 10-mile EPZ, Applicants submit that proposed Contentions 2, 3 and 4 constitute an impermissible challenge to the Commission's regulations. See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), LBP-82-____, 15 N.R.C. ____ (March 5, 1982), slip op. at 25-26.

Further, a request that the Commission's regulations be amended to require, inter alia, that the current 10-mile EPZ be extended to 20 miles is currently under consideration by the Commission.^{2/} See Petition for Rulemaking, Docket No. PRM-50-31, 47 Fed. Reg. 12639 (March 24, 1982).

^{2/} We note, for the Board's information, that extension of the 10-mile EPZ was the subject of a petition for rulemaking filed with the Commission in 1979 by the Critical Mass Energy Project, et al. In its ruling on that petition, the Commission decided not to extend the plume exposure EPZ beyond 10 miles. See 46 Fed. Reg. 11288 at 11289 (1981).

Ms. Lotchin, in attempting to provide a basis for her assertion that protective actions are required for those areas beyond the EPZ associated with the Harris Plant, claims that no consideration has been given to the need to protect the population in the event of a core melt and breach of containment accident. Contrary to this claim, as discussed in Applicants' response to Eddleman proposed Contention 57, Part B, NUREG-0396 did consider worst case Class 9 accidents and found that the 10-mile EPZ would provide significant savings of early injuries and deaths, even in the unlikely event of a containment breach accident. See NUREG-0396 at I-6, I-7. Therefore, it is clear that proposed Contentions 2, 3 and 4, in addition to constituting impermissible challenges to 10 C.F.R. §50.47(c)(2), lack sufficient basis, as required by 10 C.F.R. §2.714(b), to warrant consideration in this proceeding.

Applicants believe that, inasmuch as Ms. Lotchin's entire argument on emergency planning issues is based on the assertion that the EPZ should be extended substantially beyond 10 miles, consideration of these contentions is precluded for the reasons set forth above. However, there are two points raised by proposed Contention 4 which warrant further mention here. Ms. Lotchin makes very vague accusations that there is insufficient baseline data on background radiation, and that the radiation monitoring system is inadequate in that an "independent" monitoring capability is required and the state purportedly has

only limited monitoring equipment. Petition at 5. Applicants have addressed these issues in their responses to Eddleman proposed Contentions 82 (§I.C) and 13 (§II.I.1), respectively, which responses are incorporated herein by reference. Ms. Lotchin's general allegations of inadequacies, like Mr. Eddleman's, fail to set forth any specific complaints with the information contained in Applicants' Environmental Report and Final Safety Analysis Report and, indeed, are so vague as to fail to put the parties on notice with respect to the issues Ms. Lotchin seeks to litigate. These portions of proposed Contention 4 must be rejected, then, as failing to meet the "bases with reasonable specificity" requirements of 10 C.F.R. §2.714(b).

While Applicants recognize here, as they have in response to the proposed emergency planning contentions raised by other petitioners, the absence of the critical documents generally necessary for the presentation of "bases with reasonable specificity" -- the draft emergency plans for the Harris plant -- it is clear that Ms. Lotchin's contentions are essentially unrelated to the actual plans. For example, while the precise boundary of the 10-mile plume exposure EPZ has not been proposed, it is certain that it will not extend for 20 miles. Consequently, in this unique situation where the attack is plainly on the Commission's regulations and their underlying bases, Applicants submit that the proposed contentions are ripe

for rulings by the Licensing Board, without awaiting the issuance of draft plans.

III. CONCLUSION

In order to be admitted as a party to an NRC proceeding a petitioner must demonstrate an interest in the proceeding and proffer at least one admissible contention. See Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 A.E.C. 423, 424 (1973); Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 A.E.C. 371 (1973).

In Applicants' February 23, 1982, response to Ms. Lotchin's petition, Applicants took the position that Ms. Lotchin had not demonstrated her legal interest in the proceeding. In this response we have shown that she has not advanced a single admissible contention. Therefore,

Ms. Lotchin's petition for leave to intervene should be denied,
and she should not be admitted as a party to this proceeding.

Respectfully submitted,

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