

03/18/83

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
CAROLINA POWER AND LIGHT COMPANY	)	Docket No. 50-261
(H.B. Robinson Steam Electric	)	(Steam Generator Repair)
Plant, Unit 2)	)	

RESPONSE OF THE NRC STAFF TO PROPOSED  
CONTENTIONS OF HARTSVILLE GROUP  
AND CONCERNED FOOLS OF DARLINGTON COUNTY

I. INTRODUCTION

On November 24, 1982, the Nuclear Regulatory Commission published a notice in the Federal Register (47 Fed. Reg. 51357) entitled "Proposed Issuance of Amendment to Facility Operating License" regarding the Carolina Power and Light Co's (Licensee) application for an amendment to the operating license for H.B. Robinson Steam Electric Plant, Unit 2, to permit repair to steam generators by replacement of major components, including the tube bundles. This Board ruled that petitioners must file their contentions set forth with bases by March 1, 1983. Each of the petitioners above filed a document which sets forth the contentions asserted to be litigated in this proceeding. Pursuant to the schedule in the Board's Order of February 15, 1983, the Staff sets forth below its position regarding the proposed contentions for this proceeding.

DESIGNATED ORIGINAL

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## II. DISCUSSION

### A. Legal Principles Governing Admissibility of Contentions

Contentions may be admitted in a Commission licensing proceeding if they fall within the scope of issues set forth in the Federal Register notice of opportunity for hearing (Portland General Electric Co.; (Trojan Nuclear Plant, ALAB-534, 9 NRC 287, 289-90 n.6 (1979); Public Service Co. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)), and applicable Commission case law. See, e.g., Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973), affirmed, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquense Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974)).

Pursuant to 10 C.F.R. § 2.714(b), intervenors are required to file "a list of contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." An intervenor who fails to file at least one contention which satisfies the requirements of § 2.714(b) will not be permitted to participate as a party. A contention must be rejected where:

- (1) It constitutes an attack on applicable statutory requirements;
- (2) It challenges the basic structures of the Commission's regulatory process or is an attack on the regulations;
- (3) It is nothing more than a generalization regarding the Intervenor's view of what applicable policies ought to be;
- (4) It seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) It seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The purpose of the basis requirement of 10 C.F.R. § 2.714(b) is (a) to assure that the matter sought to be put into question does not suffer from any of the infirmities set forth in Peach Bottom, supra, at 20-21, (b) to establish sufficient foundation to warrant further inquiry into the subject matter and (c) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20.

At the early stages of a proceeding, initial contentions need only identify the reasons for each contention. See, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 2), ALAB-590, 11 NRC 542, 548 (1980). In addition, the basis stated for each contention need not "detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), 6 AEC 423, 426 (1973). Accordingly, in examining contentions and the basis therefore, a licensing board may not reach the merits of contentions. Id., Peach Bottom, supra at 20. Nevertheless, the basis for contentions must be sufficiently detailed and specific (a) to demonstrate that the issues raised are admissible and further inquire into the matter is warranted and (b) to put the parties on notice as to what they will have to defend against or oppose. This is particularly important in a proceeding involving an application for an operating license or an amendment to an operating license, where a hearing is not mandatory, in order to assure that an asserted contentions raises an issue which clearly is open to adjudication. See, 10 C.F.R. § 2.760(a)

and App. A. to Part 2, VIII; Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974); River Bend, ALAB-444, 6 NRC 760, 768-69 (1977).

In addition, a board is not authorized "to admit conditionally for any reason, a contention that falls short of meeting the specificity requirements." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC \_\_\_\_ (August 19, 1982), slip op. at 11. The NRC's Rules of Practice do not permit "the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff." Id., slip op. at 13.

Finally, a licensing board has no duty to recast contentions offered by a petitioner to remedy the infirmities of the type described in Peach Bottom, supra, for which they may be rejected, in order to make inadmissible contentions meet the requirements of 10 C.F.R. § 2.714. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). Should a board nevertheless elect to rewrite a petitioner's inadmissible contentions as so to eliminate the infirmities which render the contentions inadmissible, the scope of the reworded contentions may be made no broader than the bases that were previously provided by the petitioner for the inadmissible contentions. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114-16 (1982).

B. Contentions of Concerned Fools of Darlington County

In its Supplement to Petition to Intervene filed by the Concerned Fools of Darlington (CFDC), the petitioner lists five contentions, some of which cite the Atomic Energy Act of 1954 and Commission Rules and Regulations. It is impossible for the Staff to discern, on the basis of the Supplement, what the contentions really are, so that the parties will know what they have to defend against or oppose. Peach Bottom, supra. There is a complete failure on the part of the petitioner to cite the bases for each contention with reasonable specificity as required by 10 C.F.R. § 2.714(b). On its face, the Petition to Intervene should be denied.

C. Contentions of Hartsville Group

In its Supplement to Petition to Intervene, the Hartsville Group (Hartsville) submitted nine contentions which it wishes to be litigated in the event a hearing on subject amendment application is granted. The Staff response to the contentions is as follows.

Contention 1

This contention alleges that the Carolina Power & Light Co. (Applicant) should not be issued the amendment sought because of a past history and regulatory requirement violations and demonstrated inadequate management capability to carry out proposed steam generator repairs. The counsel for Applicant and Staff counsel had a telephone conversation with the representative of Hartsville on March 8, 1983, in an effort to simplify the issues relative to the contentions and to make more specific, if possible, the objectives of the intervention contentions. It was indicated to Mr. Matthews that the Staff had some difficulty in relating



a nexus between the contention and the present application. The Applicant, in its response to the contentions, dated March 14, 1983 had suggested a reworded contention as follows:

"The Licensing Amendment should not be issued because Carolina Power and Light Company's history of violation involving installation or repair of plant equipment demonstrates inadequate ability to provide reasonable assurance that they will carry out the steam generator repairs in compliance with the regulations in 10 CFR Chapter I, including Part 20, and the health and safety of the public will not be endangered as required by 10 CFR 50 and the Atomic Energy Act.

The Staff agrees that this reworded contention would have the required specificity to be an admitted contention in this proceeding.

#### Contention 2

Hartsville's Contention 2 calls for the preparation of an environmental impact statement for the steam generator repairs as being required by the National Environmental Policy Act, as amended. The basis given is an estimated 2010 man-rem of occupational exposure. The Staff is currently preparing an environmental impact appraisal to determine whether the instant application is a major Commission action significantly affecting the quality of the human environment. If it determines that an environmental impact statement (EIS) is required, then that contention will become moot. If the Staff determines that an EIS is not required, the Staff feels that determination can be litigated in this proceeding.

Contention 3

The thrust of Hartsville's Contention 3 is that "a cost-benefit balance should be struck against the repair of the steam generators in favor of Robinson as the most cost-beneficial alternative. Hartsville says such a balance is required by NEPA. In support of the contentions, Hartsville cites a report on the economics of closing the Indian Point Power plants. As indicated in our response to Contention 2, the Staff has not yet determined whether it believes the application significantly affects the quality of the human environment. Unless the Board rules that it does, the Staff is of the opinion that this contentions will fall. In the event it is ruled by the Board that an EIS is required, this part of the contention can be litigated. The Staff agrees with the Applicant's response to the latter part of Contention 3 relative to the statement "the Applicant cannot demonstrate that the proposed changes in the Model 44F steam generators will resolve the problems which have led to tube leaks in the old Model 44F steam generators. . . ." The Staff urges that this portion of the contention be stricken as lacking the required specificity for a valid contention.

Contention 4

This contention alleges that the proposed amendment would violate the provisions of 10 C.F.R. Part 20. As support for such contention, Hartsville repeats the same cost-benefit arguments as in Contention 3 to show that the exposure would not be kept as low as reasonably achievable as required by Part 20. The Staff urges that this contention be denied as lacking the required bases and specificity.

Contention 5

Hartsville claims that the Applicant has not demonstrated that they can get the workers to accomplish the proposed amendment. The petitioner has furnished no bases for such assumption, and the contention should be denied.

Contention 6

This contention once again infers that the Applicant's Q.A. history demonstrates an inability to do the proposed job properly. There is very little difference between the contention and Contention 1. The Staff has agreed to the proposed rewording of Contention 1, we urge the Board to consolidate Contention 6 into revised Contention 1.

Contention 7

This contention relates to safety surrounding the crane removal of the old steam generator's lower assembly. Hartsville postulates several kinds of accidents which, because of the lack of conservatism, could cause damage to the containment shell. The Applicant has indicated in the Final Steam Generator Repair Report all fuel will have been removed from containment during repairs. The fuel will be placed in the storage pool. The Staff position on this contention is that no basis has been given to demonstrate that even in the event of the postulated accident there would be any harm, other than economic. The contention should be denied.



Contention 8

This contention deals with accumulation of radioactive wastes and transportation of such wastes, all resulting from the proposed steam generator repair program. The Applicant, in its response to the amended petition of Hartsville, has indicated that it has decided for on-site storage of the waste, thereby obviating any necessity for transportation. We are told that the Applicant "expects shortly to file with NRC an amendment to the FSGRR" which calls for the on-site storage. Assuming that is done, that part of the contention relating to transportation of wastes will no longer apply. In addition, Hartsville questions Applicant's ability to handle the waste resulting from the repair. The Applicant has, in its FSGRR, submitted alternative methods of waste control. It has not selected the final method yet. The petitioner has not indicated in what respect it feels that either or both methods cited are deficient. This part of the contention lacks bases or specificity and should be denied.

Contention 9

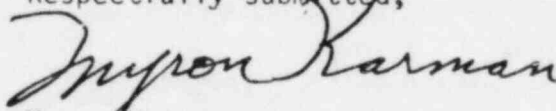
Hartsville's position with respect to Contention 9 is basically that nobody has the solution for the troubles of Westinghouse steam generators and that that company is "apparently incapable of designing and fabricating a steam generator not susceptible to tube degradation and leakage." They state that by such replacement the Applicant cannot meet General Design Criterion 14 (10 C.F.R. Part 50, App. A).

The Staff is of the opinion that the petitioner has not met its responsibility relative to specificity of contentions because they do not, in effect, indicate how the Applicant's proposed repair program is deficient, other than to infer that Westinghouse steam generators were no good and replacement will be no better. The contention lacks specificity should be denied.

### III. CONCLUSION

The Staff recommends that the Hartsville Contention 1 be reworded as indicated and consolidated with Contention 6; Contention 2 and cost-benefit part of Contention 3 be held in abeyance pending the Staff's EIA review. The latter part of Contention 3 relating to the Model 44 steam generators should be denied. Contentions 4, 5, 7, 8 and 9 should be denied. Since the Staff agrees that at least one valid contention has been submitted by Hartsville, that organization should be admitted as an intervenor in the proceeding, and that a hearing be held on subject application. The Staff also urges that the petition of the Concerned Fools of Darlington County be denied.

Respectfully submitted,



Myron Karman  
Deputy Assistant Chief  
Hearing Counsel

Dated at Bethesda, Maryland  
this 18th day of March, 1983

