UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James P. Gleason, Chairman
Frederick J. Shon
Dr. Oscar H. Paris

In the Matter of	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)	Docket Nos. 50-247 SP 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3)	March 17, 1983

LICENSEES' MOTION TO IMPOSE SANCTIONS AGAINST DEAN CORREN, GREATER NEW YORK COUNCIL ON ENERGY AND ENERGY SYSTEMS RESEARCH GROUP, INC. FOR FAILURE TO RESPOND TO INTERROGATORIES

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INTRODUCTION

This motion seeks to impose sanctions against a party to this proceeding, Greater New York Council on Energy (GNYCE), its representative, Dean Corren (Corren) and a consultant to GNYCE, Energy Systems Research Group, Inc. (ESRG), which is performing a study, or studies, for GNYCE. The motion seeks, initially, to preclude the use of any study or related materials in this proceeding, prepared prior to March 17, 1983, because of GNYCE's failure to respond to interrogatories from licensees. Furthermore, licensees request that immediate oral examinations and document requests, directed to the issue of GNYCE's failure to respond to interrogatories, be permitted on an expedited basis. Licensees seek to conduct such discovery to determine the appropriateness of further sanctions against GNYCE's representative, Corren, and GNYCE's consultant, ESRG. Licensees intend to determine whether either Corren, Rosen or both intentionally misrepresented the status of the cost shutdown study. If intentional misrepresentation occurred, licensees request that the individual or individuals making that representation be disqualified from further participation in the hearings.

This motion is made because licensees have discovered that GNYCE's responses to interrogatories have not been fully accurate. In particular, GNYCE has refused to produce an ESRG cost study of an Indian Point shutdown. GNYCE has asserted that the study did not exist. Contrary to these claims that it

did not exist, licensees have recently discovered that such a study does exist and has, in fact, been used in another proceeding. This use, licensees submit, demonstrates that GNYCE's assertions that the ESRG study does not exist are not accurate.

STATEMENT OF FACTS

On June 9, 1982, licensees submitted their First Set of Interrogatories and Document Requests Under Commission Question 6 to GNYCE. While these interrogatories covered many aspects of GNYCE's assertions, three interrogatories focused on a proposed study by ESRG.

> 22. Provide a scope of study and working papers or draft conclusions of the economic study to be performed by Energy Systems Research Group "ESRG".
>
> 23. Provide documents, draft or final, relied upon by ESRG.
>
> 24. Provide documents, draft or final, used as exhibits by ESRG.

Licensees First Set of Interrogatories and Document Requests under Commission Question 6 (June 9, 1982) at 11.

GNYCE did not timely respond to these interrogatories. On July 14, 1982 three weeks after the deadline imposed by Commission regulations, 10 C.F.R. § 2.740(b). GNYCE supplied what it claimed to be appropriate answers. Those purported responses contained numerous responses that were evasive, incomplete and non-specific. GNYCE's July 14th responses to

Interrogatories 22, 23 and 24 on were provided by Dr. Richard Rosen (Rosen) of ESRG. GNYCE's responding pleading was signed by Corren.

The response to the three interrogatories identified above provided simply that: "The economic investigation is in progress. Study design, results, assumptions, and reference documents will be provided with submission." Response of GNYCE to Interrogatories of Licensees Under Commission Question 6 (July 14, 1982) at 2. GNYCE provided neither substantive response to the interrogatories nor any documents.

A second attempt to obtain responses to licensees' interrogatories was made by sending a letter to Corren on December 3, 1982. This informal approach was adopted in response to the Board's direction. On January 7, 1983 GNYCE served supplemental responses to licensees' interrogatories. GNYCE's January 7th response was no more forthcoming than the original answers. With respect to Interrogatories 22-24, GNYCE, through its representative Corren, stated explicitly that the "[s]upplemental information anticipated for the following interrogatories is still not available to GNYCE at this time ...." (emphasis added) Licensees therefore, filed a Motion to Compel Further Responses from GNYCE to First Set of Interrogatories and Document Requests Under Commision Question 6 on March 4, 1983. That motion is pending. GNYCE has not yet responded to the motion.

Following the submission of the Motion to Compel Further Responses by GNYCE, licensees learned that GNYCE's responses to licensees' interrogatories and to licensees' effort in December, 1982 to obtain adequate discovery responses were inaccurate as it failed to disclose existence of an ESRG study that purports to analyze the costs of a shutdown of Indian Point. Licensees learned that in or by October, 1982 ESRG had prepared a study entitled, The Economics of Closing the Indian Point Nuclear Power Plants. This information was disclosed by a would-be intervenor in an unrelated case which relied on the October 1982 Indian Point study. Specifically, on March 1, 1983, the Hartsville Group, as a supplement to its petition to intervene in a proceeding before the Commission involving one of Carolina Power & Light's H.B. Robinson plants disclosed the hitherto concealed report. Supplement to Petition to Intervene and Request for Hearings, at 3 (March 7, 1982) A copy of the Hartsville Group's pleading is attached to this motion as Exhibit "A".

This information is inconsistent with GNYCE's claims made in January 1983 about the status of such study. The January 7th response from GNYCE, signed by Corren, states that information to respond to Interrogatories 22 through 24 "is [sic] still not available...." The use of "still" indicates a continuing non-availability and relates back, by necessary implication, to the earlier answer to the same interrogatories

when GNYCE stated that the studies were in progress. Significantly, as noted above, the answers in July, 1982 to Interrogatories 22 through 24 were prepared by Richard Rosen, ESRG's Executive Vice President.

On March 11, 1983 Corren telephoned the Power Authority of the State of New York, in purported response to licensees' motion to compel further response to interrogatories. Corren announced in that telephone communication that the ESRG study had just recently been completed. Under pointed interrogation Corren maintained that the study was just completed. The details of this telephone communication are set forth in the affidavit of Charles M. Pratt, sworn to on March 17, 1983, which is attached to the motion as Exhibit "B".

GNYCE's failure to respond fully to the interrogatories must be viewed in the context of its otherwise refusal to abide by the normal rules of discovery. GNYCE has provided no documents whatsoever to licensees. GNYCE, moreover, has not provided even preliminary or draft material concerning the ESRG study. This is particularly egregious at the light of Corren's representations about the ESRG study in April, 1982 pre-hearing conference. Corren stated at that time that the study was the basis for GNYCE's position in this case. Transcript of pre-hearing conference on April 14, 1982, page 886 et seq. At that pre-hearing conference, Corren stated:

> Now, during that whole period, we have been endeavoring to provide for a full-scale economic analysis of the economic shutdown of Indian Point, and we are at the stage where we can say that we will be providing that to the Board, and we think that is very important. That looks at many, many factors other than the alternate sources from which that energy would come.

Transcript, pages 886-87. The Board interrogated Corren on the schedule for producing the ESRG study:

> JUDGE PARIS: I think Mr. Morgan's point [that a date certain for producing the ESRG study be established] is well taken, and I would ask you to tell us a little bit more about the study that you say you may be able to get from Energy Systems Research Group.
>
> How firm is your arrangement with Energy Systems Research Group, and if it is firm at all, when would they be able to provide a report? Will it come soon enough for us to look at in this proceeding?
>
> MR. CORREN: Yes. As of Monday I am authorized by them to confirm to you that the report will be forthcoming and <u>it will be available by the beginning of July</u>....

Transcript, pages 901-02 (emphasis added).

Corren, as noted above, states that the ESRG study will look at "many, many factors". Moreover, the amorphous nature of his contention makes adequate discovery particularly important. Licensees' need to have early access for review of the technical study is not novel. In an anologous situation, the NRC staff, enthusiastically joined by UCS/NYPIRG, requested that the hearings on risk testimony be delayed on the basis of the need to review the recently received safety study.

Transcript, Prehearing Conference, April 13, 1982 at 723. The Staff would have "breathing room" for a technical review. Id. at 724. Licensees have a similar need to have the shutdown cost study before the last week before cross-examination.

As this motion was being finalized, ESRG provided the Power Authority of the State of New York (Power Authority) with a document which purports to be a study of the cost of a shutdown of Indian Point. This "eleventh hour" production of a document, which has not been reviewed or analyzed by licensees, does not vitiate GNYCE's failure to comply with the Commission' discovery rules.

I.

GNYCE SHOULD BE PRECLUDED FROM INTRODUCING THE ESRG STUDY BECAUSE OF ITS FAILURE TO COMPLY WITH THE RULES OF DISCOVERY

Corren is the authorized representative of GNYCE. See 10 CFR § 2.713(b). As such, he is that party's spokesman in this special proceeding. The two rounds of answers to licensees' interrogatories, the initial formal responses and the second informal responses, are signed by Corren. Thus, he is responsible for their accuracy. Section 2.708(c) of the Commission's rules provides that the signature of a person in representative capacity is a representation that to the best of the representative's knowledge, information or belief the statements made in it are true and not interposed for delay.

Corren's and GNYCE's response to Interrogatories 22 through 24 are not accurate. GNYCE's claims concerning the non-

existence of any ESRG study is belied by its use as a factual basis for a contention in at least one other proceeding. Licensees do not know what other uses ESRG, GNYCE or Corren may have made of the ESRG study or its drafts.

The mistatement of facts as to the availability of a scope of work, working papers, intermediate or final drafts of the ESRG study must not go unnoticed. In fact, such behavior merits very serious sanction as it has undermined the very purpose of the discovery process. The Commission's rules of practice require that all parties and their representatives in adjudicatory proceedings conduct themselves with honor, dignity and decorum as they should before a court of law. 10 C.F.R. § 2.713(a).

Attorneys have a "manifest and iron clad obligation of candor" when appearing before an Atomic Safety and Licensing Board (Board). See Public Service Company Oklahoma (Black Fox Station, Units 1 and 2), 8 NRC 527, 532, reconsideration denied, 8 NRC 559 (1978); Consumers Power Co. (Midland Plant, Units 1 and 2), 14 NRC 1768, 1773-785 (1981). Not only do the rules demand candor, but also prompt and affirmative disclosure of either new information or of changes in factual matters during the course of adjudication. See Consumers Power Co., id. at 1782-83. The duty to disclose relevant information is one of the most important aspects of "trial techniques." Furthermore, the duty to make such disclosures is a continuing one. Board

Order, June 3, 1982; Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), 6 AEC 623, 625-6 (1973); see also Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), 2 NRC 404, 408-12 (1975).

While a Board may not require the same precision in the filings of laymen that is demanded of lawyers, this is not a matter of legal expertise but integrity. Interrogatories 22, 23 and 24 could have been answered simply by supplying the requested documents. Instead, GNYCE through its representative Corren, claimed that neither the documents nor the information were available as late as January 1983. Meanwhile, some form of the ESRG study was being circulated to at least one intervenor in a proceeding totally unrelated to this one.

In the Consumers Power Co. case, noted above, the Appeal Board described the discovery standards expected to be followed by both lawyers and lay people:

> Insofar as the integrity of the proceedings or the good faith of the parties is concerned, there is no parallel between zealous advocacy in support of an arguable legal position and, e.g., the withholding of relevant factual information. We note that in the latter regard we fully expect both clients and lawyers to adhere to the highest standards. See, e.g. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Station), ALAB-138, 6 AEC 520, 533 (1973).

14 NRC at 1778. In Consumers Power Co. events occurred during the preparation of written testimony concerning the potential sale of process steam from the proposed plant which demonstrated that parties failed to disclose affirmatively

information to the Board. Attorneys for the construction permit applicant were stated to have coerced Dow Chemical, the expected buyer of the steam, into supporting Consumers Power Co.'s continued need for construction of the Midland units. Applicant, therefore, failed to disclose to the Board changed circumstances regarding Dow's need for process steam and the intended continued operation of Dow's fossil-fueled facilities.

The Appeal Board concluded that the Board should not have been subjected to gamesmanship between or among lawyers, and that the parties had a nondelegable duty to adhere to the highest standards of disclosing relevant information. 14 NRC at 1800.

The disclosure requirement licensees suggest in this proceeding is not the product of overly procedural formalism - it goes to the heart of the adjudicatory process. See Duke Power Company, supra at 626. Licensees are entitled to know the basis of GNYCE's case. To allow a substantial defect in the discovery process to go unpunished is to deny licensees due process. Its sacrifice for the sake of expediency cannot be justified nor tolerated. Id.

Turning to Rosen's responsibility for GNYCE's responses to interrogatories, he has assisted Corren in this case since at least April 1982, the time of the pre-hearing conference. GNYCE's July 1982 response to licensees' interrogatories lists Rosen as a participant in the preparation of the responses and

as one of the preparers of the testimony. As a major author, if not the sole author, of the October 1982 ESRG study, Rosen must have known of its completion. It is reasonable to infer that he had contacts with GNYCE throughout the period July 1982 - January 1983, when GNYCE reported that the study was "still" unavailable.

GNYCE's failure to provide licensees any materials concerning the ESRG study and the apparent misrepresentation about the existence of the study on a timely basis has severely prejudiced licensees. Providing this study to licensees at the eleventh hour, not long before the commencement of cross-examination does not alter the underlying prejudice. Licensees' ability to analyze the study and to check its references (see Judge Carter's discussion at Transcript, Prehearing Conference, April 14, 1982 at 894 about licensees' requirements in this regard) will be limited at best.

Licensees submit that the appropriate minimum remedy for this substantial breach of the Commission's discovery rules is to preclude the introduction rule of the October 1982 ESRG study into the proceeding. The Board has the authority to preclude this evidence and all later manifestations of that study. See Rule 37(b)(2)(B) of the Federal Rules of Civil Procedure, which providee that a court can issue an order prohibiting a party from introducing designated matters in evidence upon that party's failure to comply with the rules

governing discovery. This remedy will maintain the authority of the Commission's discovery rules against an apparent attempt to subvert them. Yet, to the extent that ESRG has recently completed an independent study of the shutdown costs of Indian Point, it may be allowed to be used. This distinction allows a balance between maintaining the orderly practice inherent in the Commission's rule, and enabling GNYCE to provide the Board with any appropriate evidence. With respect to any purported late-produced studies, there must be a comparison between any purported late-produced study and the October 1982 study. Identical, or borrowed material, should be precluded.

II.

DISQUALIFICATION OF CORREN AND ROSEN FROM FURTHER PARTICIPATION IN THE PROCEEDING MAY BE WARRANTED IF THE ACTIONS WERE INTENTONAL

Merely precluding the use of the ESRG study may not be the limit of the appropriate sanctions for the substantial non-compliance with the Commission's rules of discovery that exists here. The individual participants in a proceeding before the Commission have individual responsibility to comply with the rules of procedure. The Commission's rules explicitly require parties to conduct themselves as they would during an adjudication by a court of law. 10 C.F.R. § 2.713(a). Thus, Corren, must be held to the same level of candor and disclosure as any attorney practicing before a court of law.

In general, the Code of Professional Responsibility for lawyers promotes honesty and fair-dealing between members of the Bench and Bar and members of the public. The Code recognizes that a lawyer has the duty to represent his client zealously, but forbids the lawyer from engaging in any conduct that offends the dignity and decorum of proceedings. EC 7-36, Model Code of Professional Responsibility, American Bar Association (1980). Proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law. EC 7-39.

Any person who shall be guilty of contemptuous conduct can be reprimanded, censured or suspended from the proceeding. 10 C.F.R. § 2.713(c)(1). The Commission has the power to disqualify an attorney for unprofessional conduct, whatever its form. Toledo Edison Co. (Davis-Besse Nuclear Power Station) 3 NRC 785 (1976).

These matters, however, as they involve serious personal sanctions, based on the intent of the actors, require a thorough examination to discover the relevant facts. While there has been a failure to disclose, Licensees at this time cannot know the extent of Corren's and Rosen's culpability as to that failure to disclose. Licensees, therefore, request

that the Board (1) compel Corren and Rosen to respond to a document request directed at the issues raised by this motion and (2) direct Corren and Rosen to submit to examination upon oral questions about such issues. Licensees submit that such depositions should take place during the week of March 21, 1983, and propose March 22, 1983 for the depositions. Licensees' document request is attached to this matter as Exhibit "C".

CONCLUSION

Based upon the deficiencies in responses to interrogatories and the tacit refusal to provide the study which forms the bases for the contention, licensees request that the Board issue an order:

(1) prohibiting GNYCE from introducing any materials relating to the cost of a shutdown of the Indian Point units prepared for or by GNYCE or ESRG prior to March 7, 1983;

(2) directing that Corren and Rosen submit to immediate, consecutive and sequestered depositions in New York City relating to the issues referred to herein;

(3) disqualifying any representative of GNYCE or ESRG who the Board finds has intentionally misrepresented the status of the shutdown cost data in discovery from participating in this proceeding, and

(4) imposing any other sanctions which the Board deems reasonable and just.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	)	Docket Nos.
(Indian Point, Unit No. 2)	)	50-247 SP
	)	50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK	)	
(Indian Point, Unit No. 3)	)	March 17, 1983

Certificate of Service

I hereby certify that I have served copies of the LICENSEES' MOTION TO IMPOSE SANCTIONS AGAINST DEAN CORREN, GREATER NEW YORK COUNCIL ON ENERGY AND ENERGY SYSTEMS RESEARCH GROUP, INC. FOR FAILURE TO RESPOND TO INTERROGATORIES to the service list below on this 17th day of March, 1983 by depositing it in the United States mail, first class.

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Appendix "A"

UNITED STATE. OF AMERICA

BEFORE THE NUCLEAR REGULATORY COMMISSION

Ex Parte: HARTSVILLE GROUP,	)
Petitioner,	)
In the Matter of:	)
CAROLINA POWER AND LIGHT COMPANY	)
(h. B. Robinson Steam Electric Plant, Unit 2),	)
Applicant.	)

SUPPLEMENT TO PETITION TO INTERVENE AND REQUEST FOR HEARINGS

Under provisions of 10 CFR 2.714 (a) (3) (b), Petitioner Hartsville Group herewith submits as a supplement to its petition to intervene and request for hearings a list of the contentions which it seeks to have litigated in this proceeding together with the basis for each such contention, reserving fully its right to amend and make additions to this Supplement prior to the completion of the evidentiary hearing in this proceeding.

The Petitioner asks that should the Licensing Board construe any of these contentions as an attack upon any rule or regulation of the Commission, or any provision thereof, such rule or regulation be identified and the Petitioner allowed to petition the Commisssion for exception to or waiver of the application of such rule or regulation for the purposes of this particular proceeding.

Contention 1. The License Amendment should not be issued because Carolina Power & Light Company's history of frequent an repeated violations of and noncompliance with regulatory requirements demonstrates inadequate management ability to provide reasonable assurance that they will carry out the steam

generator repairs in compliance with the regulations in 10 CFR Chapter 1, including Part 20, and that the health and safety of the Public will not be endangered, as required by 10 CFR 50.40 and the Atomic Energy Act.

The NRC has repeatedly fined CP&L for regulatory violations. The NRC Region II Administrator noted in a December 22, 1982 meeting with the Applicant that "the number of (personnel) errors recently reported is greater than would normally be expected" and expressed concern "regarding the number of items of noncompliance with regulatory requirements that have been reported for the Brunswick and Robinson sites." The Regional Administrator stated that "the ability (of CP&L) to fully implement ... (corrective action) programs has not been demonstrated." James P. O'Reilly, Regional Administrator, Region II, NRC, to Carolina Power & Light Company, December 29, 1982, Docket Nos. 50-261, 50-324, and 50-325.

These noncompliances have led the NRC staff to propose the largest fine in the history of the NRC for "alleged noncompliances with NRC requirements that occured over a period of several years at the Brunswick nuclear power plant...." USNRC, Office of Public Affairs, Region II, II-83-20, February 18, 1983. According to Richard C. DeYoung, Director of the NRC Office of Inspection and Enforcement, the problem (which led to the fine) was primarily caused by poor corporate and facility management controls." Id.

Although the NRC staff suggests that they are satisfied with the "responsiveness of CP&L to correct the immediate causes of the problems," (Id.) the Board should look at CP&L like a sinner who has answered the alter call at every revival but is back in the ways of sin within the week every time. This is scarcely CP&L's first fine, although it is the largest.

Prior fines were levied of $40,000 in May 1981; $50,000 in December 1981; and $120,000 in 1982. There may be others.

Wire service accounts quoting Kenneth M. Clark of the Region II Office suggest that another fine - for violations of NRC procedures during a refueling

at Brunswick - may be imposed on CP&L.

Contention 2. Section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332(2)(c)) or 10 CFR Section 51.5 requires the prepatation of an Environmental Impact Statement prior to the issuance of amendments to the operating license for H.B. Robinson, Unit 2, authorizing Carolina Power & Light to repair the steam generators now in use at the facility.

The FSGRR postulates worker exposure of 2120 man-rems in the repair of steam generators at Robinson. That occupational exposure increases risks of somatic and genetic damage, significantly and adversely affecting the quality of the human environment. See Virginia Electric Power Company (Surry Nuclear Power Station, Units 1 and 2), CLI-80-4, 11 NRC 405 (1980).

Contention 3. The Applicant's Evaluation of Alternatives incorrectly weighs the costs of retirement of Robinson. The cost-benefit balance should be struck against the repair of the steam generators in favor of retirement of Robinson as the most cost-beneficial alternative. The EIS should strike that balance. An analysis of the alternative of closing Robinson 2 is required by 102(2)(e) 42 USC 4332(2)(e).

The cost-benefit analysis involving repairs to an aging nuclear plant like Robinson 2 is analagous to the analysis of major repairs to an aging automobile. Repairing the steam generators at Robinson is like putting new tires on a car with bad main bearings.

The Energy Systems Research Group of Boston found in an October 1982 study of Indian Point, The Economics of Closing the Indian Point Nuclear Power Plants, that the percentage impact on rates of closing those facilities would be less than 2%. Application of their Cost Assessment of Nuclear Substitution model to Robinson would show that the proposed steam generator repair to keep Robinson operating is not cost-effective. Robinson 2 is older than the Indian Point plants, and has continuing major equipment problems and reactor embrittlement which compounds the potential for Pressurized Thermal Shock, which may close Robinson 2 down within three to six years and/or result in significant derating. Non-oil

fired make-up power is available to substitute for power that Robinson would have generated.

The cost-benefit analysis should include not just the cost of repairs to Robinson 2, but other avoided future costs if Robinson 2 is retired, including expenditures on nuclear fuel, operating and maintenance expenses, and a portion of the costs of nuclear waste disposal.

Because the Applicant cannot demonstrate that the proposed changes in the Model 44F steam generators will solve the problems which have led to tube leaks in the old Model 44F steam generators, the Applicant cannot rightly claim that occupational exposures to workers during testing and repair of the new steam generators will be reduced but should be required to assume that future exposures will be substantially the same as current exposures. As the staff's "Steam Generator Status Report" of February 18, 1982 notes regarding earlier "fixes": "these fixes have met with varying degrees of success, but none of them is a panacea. Furthermore, short-term solutions to one problem may create other problems."

Contention 4. The License Amendment should not be issued because the repair of steam generators at Robinson 2 would violate 10 CFR Part 20. Requirements that worker exposures be kept "as low as is reasonably achievable" taking into account the state of technology, and the economics of inprovements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations.

Where, as in this case, it can be shown that an alternative approach to providing needed power is both more cost-beneficial than the proposed action and entails avoiding the proposed exposures, then no exposures may be incurred without violating ALARA principles.

Robinson 2 is an aging plant. No sure fix has been found to the steam generator degradation problems which have heretofore plagued the facility. The embrittlement of the reactor vessel is increasing at such a rate that the

Pressurized Thermal Shock screening criteria will be exceeded in February 1988. Non-oil-fired make-up power is available to substitute for the power that Robinson would have generated.

Sophisticated quantitative estimates of the streams of costs and benefits over a ten to twenty year planning time frame which would result from closing Robinson 2 utilizing the Cost Assessment of Nuclear Substitution model will show that the proposed steam generator investment to keep Robinson 2 going is not cost effective.

Any analysis of ALARA considerations should take into account future worker exposures which can be avoided by timely retirement of Robinson, including, but not limited to, lowered exposures during decommissioning, avoided exposures from future repairs and inspections of steam generators, and avoided exposures during operations involved in dealing with the premature embrittlement of the reactor vessel.

Contention 5. The License Amendment should be denied because CP&L cannot provide reasonable assurance that Commission Quality Assurance and Quality Control regulations at 10 CFR Part 50, App. B can be met in that the Applicant has failed to demonstrate that the numbers of workers needed to make the repairs within the limits of 10 CFR Part 20 will not overtax the available supply of qualified workers.

Contention 6. The Applicant should not be permitted to proceed with steam generator repairs and the License Amendment should be denied because the Applicant has demonstrated an inability to comply with NRC Quality Assurance regulations as set forth at 10 CFR Part 50, Appendix B.

The NRC staff has just announced a proposed fine - the largest in NRC history - which includes a $100,000 fine for "failure of CP&L's quality assurance staff to identify the problem or to take appropriate corrective action." NRC, Office of Public Affairs, Region II, II-83-20, February 18, 1983. According to Richard C. DeYoung, Director of the NRC Office of Inspection and Enforcement,

"the problem was primarily caused by poor corporate and facility management controls." Ibid. (Emphasis added).

Presumably, CP&L's previous QA program had been approved by the staff. Merely making more plans and programs cannot be relied upon for providing reasonable assurance that CP&L can carry out these steam generator repairs without endangering the health and safety of the general public. The Applicant has demonstrated that acceptable plans are not the same as acceptable performance.

Contention 7. The Applicant should be required to demonstrate conservatism in safety margin by testing at 125% of rating the crane which will lift the old steam generator's lower assemblies.

The crane which is to lift the SGLA's is currently rated at only 155 tons and would be rerated at 212 tons. The Applicant plans to test the crane at only 100% of its new rating instead of the normal 125%. A freefalling crane boom could cause "significant damage" to the containment shell (FSGRR, p. 89). A failed lifting frame striking the north building crane runway could cause "unacceptable consequences" (FSGRR, p. 89). Each lower steam generator assembly weighs approximately 195 tons--only 9% less than the proposed tested load strength.

The Applicant has failed to demonstrate the suitability and accuracy of the analytical techniques to be employed in rerating the cranes.

Contention 8. No reasonable assurance can be had that the proposed steam generator repairs can be accomplished without endangering the public health and safety because the replacement of the H. B. Robinson steam generators will create large amounts of radioactive wastes, the transportation and on-site storage of which has not been addressed by CP&L with adequate specificity.

According the Final Steam Generator Repair Report, the steam generator repairs will crea 41,000 cubic feet of dry active and concrete waste, the packing and shipping of which will try the Applicant's ability to handle such large volumes of waste. CP&L has not stated which method of deconning the channel head will be used or how it will handle solid waste disposal. Until such time as CP&L

provides specific information on its plans for deconning the channel head and solid waste disposal, no reasonable assurance can be given that they will comply with applicable U. S. Department of Transportation regulations and burial site criteria.

The Applicant has not addressed either the radioactivity or the volume of solid radioactive wastes from the SGLAs themselves. The Applicant has failed to demonstrate that there is a place to safely dispose of the SGLA hulks after replacement. The Applicant has not demonstrated that shipping the approximately 5,000 cubic foot SGLAs to an off-site burial facility would not violate volume limitations at a site such as the Barnwell low-level nuclear waste dump.

Contention 9. By replacing the leaking steam generators with essentially equivalent Westinghouse Model 44F steam generators, CP&L cannot meet General Design Criterion 14(10 CFR Part 50, App. A) and the license amendment should not issue. There is no reasonable assurance that the new steam generators on order will be of significantly lower probability of suffering from abnormal leakages or gross rupture.

The Final Steam Generator Repair Report for Robinson 2 analyzes (at page 96) causes of corrosion and degradation but is unable to identify the mechanism causing most of the tube degradation in the current steam generators. The design changes in the new steam generators cannot be relied upon to have solved the problem.

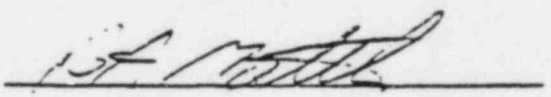
In reviewing proposed changes to steam generators, including replacement, reduced operating temperatures, support plate modifications, condenser retubing, and removal of copper based alloys from the secondary system, the staff's "Steam Generator Status Report" of February 18, 1982 notes:

> These fixes have met with varying degrees of success, but none of them is a panacea. Furthermore, short term solutions to one problem may create other problems. Conversion from phosphate to AVT water chemistry, which minimized wastage and stress corrosion cracking but was followed by denting, is a case in point.

Since Westinghouse steam generators have been in operation, they have consistently developed degradation problems. All four of the significant steam generator tube ruptures which have occurred in domestic PWR's in the period 1975 through 1982 were Westinghouse design. Westinghouse is apparently incapable of designing and fabricating a steam generator not susceptible to tube degradation and leakage.

WHEREFORE having supplemented its Petition to Intervene with this list of the contentions which it seeks to have litigated in this proceeding, and the basis therefor, Petitioner Hartsville Group requests that its Petition be granted, that it be provided an opportunity to be heard in support of its interest in this matter, and that the Application of Carolina Power and Light Company for an amendment to the Operating License of the H. B. Robinson Steam Electric Plant, Unit 2, be denied, or so conditioned as to protect the health, safety and economic interests of Hartsville Group and the public.

March 1, 1983



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Authorized Representative
for Hartsville Group

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	
	)	DOCKET NO. 50-261
(H.B. Robinson Steam Electric Plant, Unit 2)	)	
	)	
	)	
	)	

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED before me, B.A. Matthews, who does affirm that he did on this 1st day of MARCH, 1983, serve copies of the attached Supplement to Petition to Intervene and Request for Hearings upon the parties on the attached Service List by deposit in the United States mail, first class, postage paid.

B.A. Matthews

Authorized Representative
of Hartsville Group

DONE before me this
1st day of March, 1983,
at Hartsville, South Carolina.

Patricia W. Douglas
NOTARY PUBLIC FOR SOUTH CAROLINA (LS)

My commission expires 1-24-84.

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(H. B. Robinson Steam Electric Plant, Unit 2)	)	
	)	

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