

February 28, 1985

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)
CAROLINA POWER AND LIGHT COMPANY AND)
NORTH CAROLINA EASTERN MUNICIPAL)
POWER AGENCY)
(Shearon Harris Nuclear Power Plant,)
Units 1 and 2)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-400 OL
50-401 OL

NRC STAFF MOTION TO STRIKE JOINT
INTERVENORS' PROPOSED FINDING #100

I. INTRODUCTION

The Joint Intervenors filed proposed findings upon Joint
Contention 1 (Management Capability) by document dated January 9, 1985.
Proposed finding 100 is without a basis in the record and should be
stricken.

II. BACKGROUND

The hearing in this proceeding on management qualification and
safety issues was held between September 5, 1984 and November 15, 1984.
During the course of this hearing the Staff called as a witness Mr. Paul R.
Bemis, now Director of the NRC's Region II Reactor Safety Division.
Mr. Bemis testified regarding the NRC's Systematic Assessment of Licensee
Performance (SALP) Program and how it is usually administered in Region II
(Tr. 3654-3655). Specifically, Mr. Bemis testified regarding the SALP
evaluation of the Shearon Harris facility which was appended to his

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prefiled written testimony which covers the period February 1, 1983 through April 30, 1984, referred to at the hearing as SALP IV (Tr. 3654-3655).

Prior to Mr. Bemis' testimony, the Joint Intervenors introduced into evidence the SALP reports for the Shearon Harris facility from April 1979 through January 31, 1983 as their Exhibits 19, 20 and 21. During Mr. Bemis' testimony, he was cross-examined at length by Joint Intervenors on the SALP reports (Tr. 3780-3813). However, no evidence was introduced by the Joint Intervenors or elicited on cross-examination challenging the accuracy or motivation of any of Mr. Bemis' direct evidence or responses to cross-examination.

Following the conclusion of the hearing, the Joint Intervenors filed proposed findings of fact and conclusions of law. In their proposed finding 100, the Intervenors state:

The improvements which the SALP IV report states were made by the Applicants also have a bearing on whether Mr. Bemis was adequately fulfilling his duties in his role as overseer of CP&L activities. Mr. Bemis's testimony is replete with self-serving statements and it is not unreasonable to infer that better SALP ratings for CP&L would make Mr. Bemis look better. Tr. 3781-3782 (Bemis).

The Staff, in its proposed findings, responded to this assertion and observed that:

"This finding as quoted above improperly impugns the integrity of Mr. Bemis and of all NRC employees and should be stricken."

For the foregoing reasons, the Staff now separately moves to strike Joint Intervenors' Finding 100.

III. DISCUSSION

The Commission's Regulations expressly provide that "[p]roposed findings of fact ... shall be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding" (10 CFR § 2.754(c)). In the present case, the record of this proceeding does not support the assertions contained in Joint Intervenors' Proposed Finding 100 that it "is not unreasonable to infer that better SALP ratings for CP&L would make Mr. Bemis look better." Moreover, at no time have the Intervenors proffered any evidence to support the suggestion that Mr. Bemis' actions in the SALP review or as a witness at the hearing were motivated by anything but the highest professional standards.

The clear inference suggested by the Joint Intervenors' Finding 100 is that Mr. Bemis slanted SALP IV to make Applicants look better in order to enhance his own position. While it is true, as the Staff stated in its Proposed Finding 123, that the four SALPs do show substantial across-the-board improvement in the management of Applicant's nuclear facilities, Mr. Bemis was not a member of the SALP committees for any of the four SALP reports introduced into evidence in this proceeding. ^{1/} Moreover, since Mr. Bemis was assigned the position of managing the NRC inspection and enforcement program of Applicants' nuclear facilities in November 1982, ^{2/} he has been a SALP Board attendee only. ^{3/} And as the

^{1/} See J.I. Ex. 19, SALP I page 1-1; J.I. Ex. 20, SALP II, page 4; J.I. Ex. 21, SALP III, page 5; SALP IV, page 8, following Tr. 3660.

^{2/} Bemis prefiled written testimony at 6, following Tr. 3660.

^{3/} See SALP III and IV as cited in footnote 2 above.

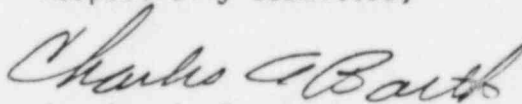
record in this proceeding establishes, the SALP reports themselves and the ratings ultimately given to the utility are established by secret ballot of the SALP Board members, of which Mr. Bemis was not one. ^{4/} Thus, Joint Intervenors' suggestion that the SALP ratings given Shearon Harris were motivated by a desire to "make Mr. Bemis look better" is uncalled for and clearly unsupported in the record.

IV. CONCLUSION

Accordingly, for the foregoing reasons, Joint Intervenors' Proposed Finding 100 should, under the Commission's Rules, be stricken as unsupported by the record.

In addition, given the serious nature of the unsupported allegations contained in Proposed Finding 100, Counsel for Intervenors should also be cautioned that not only are unsupported findings not permitted, unsupported statements which cast an aspersion on another's character or competence are viewed with great disfavor in NRC proceedings.

Respectfully submitted,



Charles A. Barth
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 28th day of February, 1985

^{4/} At transcript page 3654 Mr. Bemis described his role in the preparation of SALP III and IV and the SALP process.

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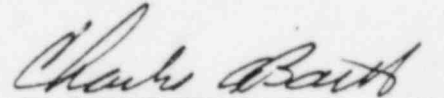
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