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Coalition for Alternatives  
to Shearon Harris (CASH)  
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Commissioners Zech, Roberts, Bernthal and Asselstine  
US Nuclear Regulatory Commission  
Washington, DC 20555

SERVED AUG 5 1986

Dear Commissioners,

On July 10, 1986, Carolina Power and Light Company (CP&L) re-activated its request for an Exemption from the requirements of 10 C.F.R. 50, Appendix E, Section IV.F.1 that a full-participation emergency preparedness exercise be performed "within 1 year prior to issuance of the first operating license for full power and prior to operation above 5 percent of rated power ...." for the Shearon Harris Nuclear Power Plant ("SHNPP" or "Harris plant" or "plant").

This is a request for hearing on that exemption request. We believe that in issuing any license the Commission must find that the licensee is in compliance with all applicable NRC rules and regulations. Therefore, granting an exemption from a regulation would be acting to grant a license, and a public hearing is guaranteed in any proceeding where the NRC would grant, amend, suspend or revoke an operating license (Section 189(a) of the Atomic Energy Act).

CP&L has applied for this exemption outside the proceeding for its application for an operating license for the Harris nuclear plant. In effect, CP&L seeks to avoid a hearing on its exemption request and thus obtain through the exemption process something the Commission cannot grant without a public hearing: an operating license for the Harris nuclear plant, without a public hearing on the exemption request.

Both CASH and Wells Eddleman join in this request for a public hearing, and would and do petition to intervene in such a hearing. Wells Eddleman has been an intervenor in the Harris operating license proceeding (DOcket 50-400 O.L.) and thus has standing in such a hearing. CASH is duly authorized to represent and intervene on behalf of various persons whose interest may be affected by the issuance of a license (or, obviously, an exemption which leads to the granting of a license) for the Shearon Harris Nuclear Power Plant to operate. These persons include Calvin P. Ragan, Warren Thomas, Rachel Thomas, Wray Harris, Susie Harris and Wayne Sikes (see Attachment I), all of whom live in the 5 mile radius ("zone") surrounding the Harris nuclear plant, who believe their interests have "never been recognized or represented".

We believe that CP&L's exemption request constitutes either an amendment to its operating license request or the granting of a license. CP&L could not otherwise receive without meeting the requirements of 10 CFR 50 Appendix E, IV.F.1, from which they seek exemption. In the latter case, a hearing is guaranteed on granting a license, as pointed out above, by the provisions of section 189(a) of the Atomic Energy Act. In either case, the exemption would allow CP&L "authority to do something it otherwise could not have done" which constitutes an amendment as held in Sholly v. NRC, 651 F.2d 780.

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(1980) (per curiam), vacated on other grounds, 459 US 1194 (1983). Of course, Section 189(a) of the Atomic Energy Act, 42 USCA 2239(a), also guarantees a hearing on amending a license. Since CP&L did not direct its request to the Licensing Board having jurisdiction over the Shearon Harris plant, its exemption request cannot be handled in that proceeding. Moreover that Board has terminated its own jurisdiction in June 1986.

We emphasize that the difficulty CP&L is in is entirely CP&L's fault. In spite of information available (e.g. to the NRC caseload forecast panel meeting in June 1985) that CP&L would be about 6 months behind schedule in completing and testing the Harris nuclear plant, CP&L scheduled an emergency planning exercise as if CP&L could meet its stated (and unrealistic) fuel load date of March, 1986. In the last year, CP&L has delayed that fuel load date 3 times, to "June", to "July 25" or "late July", and most recently to "late August or early September" or "early fall". Indeed, with further delays, CP&L might not require any exemption at all, since another exercise ("full participation" is scheduled for February 1987.

But in light of the numerous deficiencies the public has found in the present emergency plans, and the concerns of participants in the exercise of 1985 that the exercise did not show the plan would work, that they were not clear on what to do, and did not know clearly what their responsibilities were, and were inadequately trained, there is good reason to require the emergency plan exercise BEFORE CP&L begins operation of the nuclear plant (were it operable and licensable) at above 5% power. (Indeed, we prefer the plant not operate at all before a contemporaneous full-participation test shows the emergency plan is fully effective for the most severe accident possible at Harris, since making the plant radioactive, even in "low power" testing necessitates the disposal of much of the plant as nuclear waste.)

The Atomic Energy Act requires a public hearing for all amendments to a license. The US Circuit Court of Appeals (DC Circuit) said:


We believe, however, that the reference to "amendments" in section 189(a) means all amendment, and not just those that effect a substantial change in the plant's status.  
(emphasis original)

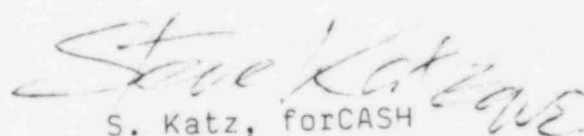
Deukmejian v. NRC, 751 F.2d 1288, 1314-15.

Even the extension of a construction permit is an "amendment" under section 189(a) of the Atomic Energy Act. Brooks v. AEC, 476 F.2d 924 (D.C. Circuit, 1973) (per curiam). The Court in Deukmejian reasoned that "if anything, concerns of public safety are more strongly implicated by the extension of an operating license ...". 751 F.2d at 1314. Logically, the granting or amending of an operating license even more strongly implicates the interests of public health and safety. The emphasis in the above quote is also original.

The NRC cannot lawfully apply the requirements for reopening the record where a right to a hearing is guaranteed under section 189(a) of the Atomic Energy Act. Deukmejian, supra, at 1316.

Nor can the NRC deny, through exemption from its own rules, a hearing the right to which is guaranteed under the Atomic Energy Act. To allow this would make an absolute mockery of the Act and its guarantees of the right to a public hearing.

  
Wells Eddleman, pro se

  
S. Katz, for CASH

XC: Docketing + Service [62-400] 3x  
Tom Baxter, Counsel for CP+L  
J Moore OELD

# Attachment 1

We would like the Coalition for Alternatives to Shearon Harris (C.A.S.H.) to represent us and to intervene on our behalf before the Nuclear Regulatory Commission in the matter of licensing the Shearon Harris Nuclear Power Plant. We do not believe that the interests of the residents living within the Five Mile Zone around the Harris plant have ever been recognized or represented.

NAME	ADDRESS	DO YOU LIVE INSIDE THE FIVE MILE ZONE?
Calvin P. Ragan	Rt 1 Box 323 New Hill NC 27562	YES
Warren Thomas	Rt 1 Box 357 New Hill, N.C. 27562	YES
Rachel Thomas	Rt. 1, Box 357 New Hill NC 27562	
Mary Harris	P.O. Box 96 New Hill, N.C. 27562	YES
Lusie Harris	P.O. Box 96 New Hill, N.C. 27562	YES
(Signed for her by her husband - hurt hands)		
Alvin Harris	Rt 1, Box 129 New Hill NC 27562	YES

## APPENDIX I