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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:*

Thomas S. Moore, Chairman
Howard A. Wilber

October 16, 1986

In the Matter of	
CAROLINA POWER AND LIGHT COMPANY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY	Docket No. 50-400 OL
(Shearon Harris Nuclear Power Plant)	

MEMORANDUM AND ORDER

We have before us a motion to reopen the record in this operating license proceeding filed on September 15, 1986 by Coalition for Alternatives to Shearon Harris (CASH), Wells Eddleman and Conservation Council of North Carolina (CCNC).[1] For the reasons that follow, the motion is denied.

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* Dr. Reginald L. Gotchy resigned from the Appeal Panel October 1, 1986, and therefore he is no longer a member of the Board.

[1] Unlike CCNC and Wells Eddleman, CASH was never admitted as an intervenor to this operating license proceeding. Theoretically, a non-party can pursue a motion to reopen a closed evidentiary record. To do so, however, the non-party also would have to file, and prevail on, a petition for leave to intervene pursuant to 10 C.F.R. § 2.714, as well as proffer at least one admissible contention. Compare Appeal Board Memorandum and Order of July 11, 1986. CASH has not done so here. Inasmuch as CASH is not a proper party to seek a reopening of the record, we

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To prevail on a motion to reopen, the movants must satisfy the criteria laid out in 10 C.F.R. § 2.734.[2] The motion must (1) be timely; (2) address a significant safety or environmental issue; and (3) demonstrate that a materially different result would have been likely had the newly proffered evidence been considered initially. In addition, because this motion seeks to raise an issue not previously in controversy, it must also satisfy the requirements for late contentions in section 2.714(a)(1).[3] Our review indicates that none of these factors has been met. There is no need, however, to engage in a point-by-point analysis of each of these provisions, because the motion clearly does not raise a significant safety issue, and no motion to reopen can succeed without meeting that pivotal requirement.[4]

The instant motion is far from a model of clarity. It is duplicative in its allegations, and the movants do not, in terms, spell out the new contention(s) they seek to

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will treat the motion as having been filed by intervenors CCNC and Eddleman.

[2] See 51 Fed. Reg. 19,535, 19,539 (1986).

[3] Id.

[4] See, e.g., Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-831, 23 NRC 62, 66 (1986).

introduce into the proceeding.[5] As best we can ascertain, the central thrust of the motion appears to be an attack on the in-service inspection (ISI) of safety-related piping welds at Shearon Harris.[6] The motion recounts an incident where ISI records were corrected without following the proper procedure for revision of such records. This impropriety, however, was discovered by NRC inspectors, and resulted in a notice of violation for a matter of minor safety concern -- a Severity Level V Violation. Although the method of record revision was improper, later

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[5] See 10 C.F.R. § 2.734(b).

[6] The in-service inspection program (ISI) "is a programmed system of planned, repetitive tests, inspections and examinations carried out prior to initial operations and at regular intervals throughout the service life of an operating nuclear plant. Prior to plant operation, preservice tests and examinations establish a baseline against which to compare the results of subsequent inspections. . . . ISI during plant life can help identify conditions in safety-related systems and components which could lead to failures, can serve as the basis of extending the design life of plant systems and components, and can enhance reliability." Applicants' Answer in Opposition to Motion to Reopen the Record, Affidavit of Thomas W. Brombach (Enclosure 2) at 4 (September 25, 1986). See generally 10 C.F.R. § 50.55a(g). As the intervenors apparently concede in their motion, ISI is not used to confirm the quality of construction. Motion to Reopen the Record at 3. See also Applicants' Answer in Opposition to Motion to Reopen the Record, Affidavit of Thomas W. Brombach (Enclosure 2) at 4.

inspections of the welds in question by NRC inspectors confirmed that the revised data was correct.[7]

The intervenors further allege that the ISI inspection reports on some 10-20 welds are incorrect. This was due to the welds being cut out and reworked after having been inspected, and then not being reinspected for ISI purposes after being repaired. In their answer, the applicants acknowledge this. After discovering this error, however, the applicants had the welds in question reinspected for baseline data. They also instituted procedures to assure that all welds are reinspected after having been reworked.[8] The intervenors' reliance on this problem, therefore, can no longer support their motion to reopen.

Finally, the intervenors allege that the contractor that conducted the eddy current inspection of steam

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[7] Id. at 5-6. The intervenors also allege that "approximately 10% of the welds in the [ISI] program . . . are defective and improperly documented based on the number of data sheets which were altered. Moreover, one third or about 1000 of the [ISI] records are questionable as to being actual inspections (records) of welds presently in the plant. These [ISI] records were altered and changed without following the proper NRC procedure for record revisions on pipe welds." Motion to Reopen the Record at 5. These allegations, however, are not substantiated as required by section 2.734(b). Accordingly, such assertions of wrongdoing cannot support the motion to reopen.

[8] Applicants' Answer in Opposition to Motion to Reopen the Record, Affidavit of Thomas W. Brombach (Enclosure 4) at 5-6.

generator tubes missed one row of tubes. Again, while this error was made, the oversight was discovered by the contractor and the tubes in question were inspected. The applicants instituted a review of the data and verified that the contractor had inspected every tube. In addition, the applicants later hired the Electric Power Research Institute to conduct a 5% eddy current tape inspection review that verified the quality of the earlier inspection.[9]

It is thus apparent that all of the movants' allegations are of problems that already have been corrected by the applicants.[10] This being the case, it is clear that

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[9] Id. at 4-5. Furthermore, NRC Region II inspectors reviewed records of the steam generator eddy current examinations. Among other things, the inspectors were concerned that "100% coverage of steam generator tubes occur[ed] during the examination[.]" The inspectors were satisfied that this was the case. See Report No. 50-400/85-48, attached to NRC Staff Answer in Opposition to Motion to Reopen the Record, Affidavit of Ronald W. Newsome (Exhibit A) (October 6, 1986).

[10] The intervenors also make several allegations that the applicants falsified radiation exposure records, and that this somehow is another indication of the failure of the applicants' in-service inspection program. Their attempt to link these two subjects is, at best, confusing. Contrary to the intervenors' assertions, radiation records have nothing to do with in-service inspection. To the extent that the movants intend to use these allegations to support their motion, we also note that they previously attempted to introduce a late-filed contention on this very subject. The Licensing Board rejected the proffered contention. See Licensing Board Memorandum and Order (Rejecting Late Proposed Contention Concerning Alleged Falsification of Radiation Exposure Records) (June 13,

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the instant motion does not raise any matters significant to safety, and, therefore, must fail.

The motion is denied.

It is so ORDERED

FOR THE APPEAL BOARD

C. Jean Shoemaker
Secretary to the
Appeal Board

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1986). No appeal was taken from that ruling. Having passed up their opportunity to have us decide if these matters should have been litigated, the intervenors cannot now attempt to accomplish the same objective by way of a motion to reopen.