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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF STAFF COUNSEL
NUCLEAR REGULATORY COMMISSION
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-400-LA
CAROLINA POWER & LIGHT)	
COMPANY)	ASLBP No. 99-762-02-LA
)	
(Shearon Harris Nuclear Power Plant))	
)	

NRC STAFF'S RESPONSE AND OBJECTIONS TO ORANGE COUNTY'S
SECOND SET OF DISCOVERY REQUESTS TO NRC STAFF

The Nuclear Regulatory Commission staff (Staff) hereby responds to Orange County's Second Set of Discovery Requests to NRC Staff, filed September 29, 1999.

The Staff notes that 10 C.F.R. §§ 2.744 and 2.790, which govern the production of NRC records and documents, contemplate that most NRC documents will be available for inspection and copying in the public document room, and, if they have been withheld from the public document room pursuant to § 2.790, a request to the Executive Director for Operations for the production of such a document is required by § 2.744, which must state, among other things, why the requested record or document is relevant to the proceeding.

Notwithstanding these regulations, and without waiving any objections or privileges, and except as specified below, the Staff is now voluntarily providing responses to Orange County's request for production of documents. In doing so, the Staff is not waiving its right to require full compliance with the Commission's regulations regarding any future discovery

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requests made by Orange County in this matter. Other than as specified below, only final NRC records and documents, under 10 C.F.R. § 2.790, will be produced. Responsive documents not available in the PDR and not otherwise withheld because of their privileged or proprietary nature, will be made available for inspection and copying.

I. GENERAL OBJECTIONS

1. The Staff objects to Orange County's discovery requests to the extent that they call for disclosure of litigation strategy and other material protected under 10 C.F.R. § 2.740 or other protection provided by law, attorney work product, privileged attorney-client materials, and other privileged materials such as materials protected by the governmental deliberative process privilege, draft agency documents protected by executive privilege, or documents not subject to disclosure pursuant to 10 C.F.R. § 2.790.

2. The Staff objects to Orange County's discovery requests to the extent that they request information or documents relating to licensees and/or entities other than Carolina Power & Light's Shearon Harris Nuclear Plant. Such discovery requests call for information which is irrelevant, immaterial, and not calculated to lead to the discovery of admissible evidence, and are over-broad and unduly burdensome.

3. The Staff objects to Orange County's discovery requests to the extent that they call for irrelevant materials, are not reasonably calculated to lead to the discovery of admissible evidence, are unreasonably cumulative, and are obtainable from some other source that is more convenient, less burdensome, or less expensive.

4. The Staff objects to Orange County's discovery requests to the extent that they

seek discovery which is beyond the scope of the two contentions admitted by the Board in this proceeding. Orange County is only permitted to obtain discovery of matters that pertain to the subject matter within the scope of this proceeding.

5. The Staff objects to Orange County's discovery requests to the extent that they seek information relied upon by the "NRC Commissioners." The Staff, as a party to this proceeding, is an entity that is distinct from the NRC Commissioners or the Commission, and other entities which may be employed by the Commission and who do not report through the Executive Director for Operations. Those persons and entities are not parties to this proceeding and are not represented herein by Staff Counsel. To the extent that the discovery requests seek documents which are in the possession of the NRC Commissioners or which were relied upon by the NRC Commissioners, they are overly broad, unduly burdensome and irrelevant. Accordingly, responses to Orange County's Second Set of Discovery Requests are herein provided only on behalf of the NRC Staff, as described above.

II. GENERAL DOCUMENT REQUESTS

The County requests the Staff to produce the following documents directly or indirectly within its possession, custody or control:

REQUEST NO. 1. All documents produced in response to any discovery requests submitted to the Staff by the Applicant, Carolina Power & Light Co.

STAFF RESPONSE: Previously produced.

III. SPECIFIC DOCUMENT REQUESTS

The County requests the Staff to produce the following documents directly or indirectly within its possession, custody or control:

A. TECHNICAL CONTENTION 2 (Criticality Safety):

REQUEST NO. 1. Copies of the Federal Register notices for the proposed and final versions of the General Design Criteria in Appendix A to 10 C.F.R. Part 50 (32 Fed. Reg. 10213, July 11, 1967) and 36 Fed. Reg. 3,255, February 20, 1971).

STAFF RESPONSE: Pursuant to agreement of counsel, the requested documents will be produced.

REQUEST NO. 2. All correspondence, reports, memoranda, and notes, considered or relied on by the NRC Commissioners in promulgating General Design Criteria 62 in Appendix A to 10 C.F.R. Part 50, regarding criticality control. (Note that GDC 62 was given a different number in the proposed rule.) This request does not seek copies of comments that are already on file in the NRC's Public Document Room.

STAFF RESPONSE: The staff objects to this discovery request as requesting information in the possession, custody and knowledge of the NRC Commission or Commissioners. The Staff objects on the basis of General Objection 5, *supra*. The request is therefore, overly broad, unduly burdensome and irrelevant. The Staff further objects to the extent that this document request to the extent that it seeks predecisional documents or draft agency documents exempt from disclosure under 10 C.F.R. § 2.790. Without waiving any objection, to the extent that the Staff is in possession of non-objectionable, responsive, documents, not known to be in the PDR, they will be produced. Some documents responsive

to this request were previously produced, on October 25, 1999, in the Staff's response to the Applicant's First Set of Discovery Requests to the NRC Staff.

REQUEST NO. 3. All revisions to Regulatory Guide 1.13, Spent Fuel Storage Facility Design Basis.

STAFF RESPONSE: The Staff objects to this document request to the extent that it seeks predecisional documents or draft agency documents exempt from disclosure under 10 C.F.R. § 2.790. Without waiving this objection, the Staff will produce Revision 1 of RG 1.13.

REQUEST NO. 4. All regulations, draft and final regulatory guides, other guidance documents, or decisions of the NRC Commissioners that are used by the NRC staff in interpreting General Design Criterion 62 of Appendix A to 10 C.F.R. Part 50, evaluating compliance with GDC 62, or otherwise evaluating the adequacy of criticality control in nuclear power plant spent fuel pools.

STAFF RESPONSE: Standard Review Plan (SRP) 9.1.2; Memorandum from Laurence Kopp to Timothy Collins, Re: "Guidance on the Regulatory Requirements for Criticality Analysis of Fuel Storage at Light Water Reactor Power Plants, dated 8/9/98; Letter from Brian K. Grimes, NRC, to All Power Reactor Licensees, Re: NRC Guidance on Spent Fuel Modifications, dated April 14, 1978; Draft Regulatory Guide 1.13; and the standards, codes and other documents referenced in these documents. These documents have either been previously produced or may be found in the PDR, on the NRC website, or, if copyrighted material, from the originator.

REQUEST NO. 5. All documents considered or relied on by the NRC Staff in preparing Draft Revision 2 to Regulatory Guide 1.13, Spent Fuel Storage Facility Design Basis

(December 1981).

STAFF RESPONSE: See answer to Request No. 3. In addition, the Staff states that it is unable to locate any other documents responsive to this request.

REQUEST NO. 6. All comments on Draft Revision 2 to Regulatory Guide 1.13.

STAFF RESPONSE: See answers to Requests Nos, 3 and 5..

REQUEST NO. 7. All documents showing any further work performed by the NRC Staff on Rev. 2 of Reg. Guide 1.13 after December 1981, including but not limited to evaluation of comments or other correspondence received by the Staff; notes, correspondence, or memoranda prepared by the Staff; or further revisions to the text of Reg. Guide 1.13.

STAFF RESPONSE: See answers to Requests Nos. 3 and 5. In addition, the Staff objects to this document request to the extent that it seeks predecisional documents or draft agency documents exempt from disclosure under 10 C.F.R. § 2.790. A privilege log listing the documents withheld is attached.

REQUEST NO. 8. All documents that describe nuclear power plant operators' practical experience with misplacement of fresh or spent fuel in fuel pools.

STAFF RESPONSE: The Staff objects to this discovery request as being beyond the scope of the contentions admitted to this proceeding and not designed to lead to discoverable information. Contention 2, basis 2, as admitted to this proceeding, assumes that a fuel misplacement has already taken place. Therefore, any documents relating to nuclear power plant operators' experience with fuel misplacements are irrelevant, and not calculated to lead to admissible evidence. Without waiving this objection, and without waiving its right to

object to the admission of evidence or testimony based upon such documents at the Subpart K or other proceeding in this matter, the Staff will produce a list of file numbers of Licensee Event Reports (LERs) relating to fuel misplacements that are presently known to Staff. LERs are publically available and are generally found in the PDR, as are other documents which may be responsive to this request. Since the documents requested are irrelevant and are obtainable from another source and accessible to BCOC, they will not be produced.

REQUEST NO. 9 . All documents that analyze or evaluate nuclear power plant operators' experience with fresh or spent fuel misplacement in fuel pools.

STAFF RESPONSE: The Staff objects to this discovery request as being beyond the scope of the contentions admitted to this proceeding and not designed to lead to discoverable information. Contention 2, basis 2, as admitted to this proceeding, assumes that a fuel misplacement has already taken place. Therefore, any documents relating to analysis of nuclear power plant operators' experience with fuel misplacements are irrelevant, and not calculated to lead to admissible evidence. The Staff also objects to this request to the extent that it seeks predecisional materials or draft agency documents exempt from disclosure pursuant to 10 C.F.R. § 2.790. Without waiving these objections, and without waiving its right to object to the admission of evidence or testimony based upon such documents at the Subpart K or other proceeding in this matter, the Staff states that such documents, to the extent they exist and are in the public domain, are available to BCOC from other sources, such as the PDR.

REQUEST NO. 10. All documents containing any analysis

of the probability and/or consequences of potential misplacements of fresh or spent fuel in spent fuel pools.

STAFF RESPONSE: The Staff objects to this discovery request to the extent that it seeks materials which are beyond the scope of the contentions admitted to this proceeding and not designed to lead to discoverable information. Contention 2, basis 2, as admitted to this proceeding, assumes that a fuel misplacement has already taken place. Therefore, any documents relating to the probability of fuel misplacements are irrelevant, and not calculated to lead to admissible evidence. The Staff further objects to the extent that the request seeks predecisional or privileged material or draft agency documents exempt from disclosure pursuant to 10 C.F.R. § 2.790. Without waiving these objections, and without waiving its right to object to the admission of evidence or testimony based upon such documents at the Subpart K or other proceeding in this matter, the Staff states that such documents include documents submitted by the Applicant in this matter and in licensee submittals and staff reviews of other license amendments to expand fuel pools. A list of PDR accession numbers for a number of such staff reviews was served on counsel on October 25, 1999. Additional accession numbers, references or documents are provided herewith.

REQUEST NO. 11. All documents that describe nuclear power plant operators' practical experience with errors in controlling boron concentration in the water in fuel pools.

STAFF RESPONSE: The staff objects to this interrogatory as being overly broad and burdensome and irrelevant. The Staff further objects to the extent that the request seeks predecisional or privileged material or draft agency documents exempt from disclosure

pursuant to 10 C.F.R. § 2.790. Without waiving these objections, the Staff will produce a list of file numbers of Licensee Event Reports (LERs) relating to boron control that are presently known to Staff. LERs, as well as other documents, such as inspection reports, which may be responsive to this request, are generally publically available and found in the PDR. They are therefore, obtainable from another source and accessible to BCOC. Additional documents responsive to this request have previously been served on counsel or are being produced herewith.

REQUEST NO. 12. All documents that describe practical experience with events or processes that affect the boron loading in the walls of racks in fuel pools.

STAFF RESPONSE: The Staff objects to this discovery request as being beyond the scope of the contentions admitted to this proceeding, irrelevant, and not designed to lead to discoverable information. The Staff further objects to the extent that the request seeks predecisional or privileged material or draft agency documents exempt from disclosure pursuant to 10 C.F.R. § 2.790. Without waiving this objection, and without waiving its right to object to the admission of evidence or testimony based upon such documents at the Subpart K or other proceeding in this matter, the Staff will provide a list of accession numbers for documents relating to Boraflex issues. Other responsive documents relating to Boraf are being produced herewith.

REQUEST NO. 13. All documents containing any analysis of nuclear power plant operators' experience with errors in controlling boron concentration in the water in fuel pools.

STAFF RESPONSE: See response to Request No. 11.

REQUEST NO. 14. All documents containing any analysis of nuclear power plant operators' experience with events or processes that affect the boron loading in the walls of racks in fuel pools.

STAFF RESPONSE: See response to Request No. 12.

REQUEST NO.15. All documents containing any analysis of the probability and/or consequences of potential accidents resulting from improper boron concentrations in spent fuel pools or improper boron loadings in the rack walls.

STAFF RESPONSE: See response to Request Nos. 11 and 12.

REQUEST NO. 16. All documents containing any analysis of the probability and/or consequences of potential criticality events in fuel pools, involving fresh and/or spent fuel.

STAFF RESPONSE: The Staff objects to this interrogatory to the extent that it seeks predecisional or privileged documents or draft agency documents exempt from disclosure pursuant to regulations. Without waiving this objection, the Staff will produce non-objectionable, non-privileged, responsive documents, not known to be in the PDR.

Responsive documents also include SECY-83-337, Study on Significant Hazards, Accession No. 8312280012; SERs and other documents previously identified.

B. TECHNICAL CONTENTION 3 (Quality Assurance)

REQUEST NO. 1. All documents that describe nuclear power plant operators' practical experience with leakage of water from piping that is embedded in concrete.

STAFF RESPONSE: The Staff objects to this interrogatory as being overly broad and burdensome. To search for such documents in response to this request would require the expenditure of many hours of staff time. The Staff objects to this request as it would require

the staff to engage in an excessive amount of research and compilation of data, much of which is publicly available to BCOC.

REQUEST NO. 2. All documents that describe nuclear power plant operators' practical experience with leakage of water from fuel pools and/or from piping or equipment associated with fuel pools.

STAFF RESPONSE: See Response to Request No. 1.

REQUEST NO. 3. All documents containing any analysis of nuclear power plant operators' experience with leakage of water from embedded piping, from fuel pools, or from piping or equipment associated with fuel pools, seeking to learn generic lessons from this experience.

STAFF RESPONSE: See response to Request No. 1. Without waiving this objection, the Staff is aware of the following publicly available generic documents: NUREG-1275, Vol. 12, Operating Experience Feedback Report, Assessment of Spent Fuel Cooling, February 1997; Resolution of Spent Fuel Storage Pool Action Plan Issues, July 26, 1996; Followup Activities on the Spent Fuel Pool Action Plan, September 30, 1997.

REQUEST NO. 4. All documents that describe or predict the effects on reinforced concrete structures of prolonged internal exposure to water.

STAFF RESPONSE: The Staff objects to this request as being overly broad and burdensome. Without waiving this objection, the Staff states that it is unaware of any responsive documents that predict effects of internal exposure to water on reinforced concrete structures in spent fuel pools or spent fuel buildings.

REQUEST NO. 5. All documents containing any analysis of the implications for safe operation of a fuel pool if the cooling and/or cleanup system becomes unavailable for a prolonged period.

STAFF RESPONSE: See response to Request No. 3.

REQUEST NO 6. All documents that describe nuclear power plant operators' practical experience with prolonged layup of piping or equipment associated with fuel pools, or of similar piping or equipment.

STAFF RESPONSE: The Staff objects to this interrogatory as being imprecise, overly broad, and burdensome. To search for such documents in response to this request would require the expenditure of many hours of staff time. The Staff objects to this request as it would require the staff to engage in an excessive amount of research and compilation of data, much of which is publicly available to BCOC. Without waiving this objection, the Staff has previously produced several documents relating to piping containing stagnant water.

REQUEST NO 7. All documents that contain any analysis of nuclear power plant operators' experience with prolonged layup of piping or equipment.

STAFF RESPONSE: See response to Request No. 6.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Susan L. Uttal". The signature is written in a cursive style with a large initial "S" and "U".

Susan L. Uttal
Counsel for NRC staff

Dated at Rockville, Maryland
this 29th day of October 1999

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE SECRETARY
FOR REGULATORY AND
ADJUDICATION STAFF

In the Matter of)
)
CAROLINA POWER & LIGHT COMPANY) Docket No.50-400-LA
) ASLBP No. 99-762-02-LA
(Shearon Harris Nuclear Power Plant))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE AND OBJECTIONS TO ORANGE COUNTY'S SECOND SET OF DISCOVERY REQUESTS TO NRC STAFF" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system or as indicated by an asterisk, by first-class mail and by electronic mail (e-Mail), or by 2 asterisks, by hand-delivery this 29th day of October, 1999:

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