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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)

CAROLINA POWER & LIGHT)
COMPANY)

(Shearon Harris Nuclear Power Plant))

Docket No. 50-400-LA

ASLBP No. 99-762-02-LA

**APPLICANT'S COMMENTS ON RELEVANCE OF JUNE ACRS
LETTER TO PENDING ENVIRONMENTAL CONTENTIONS**

Pursuant to the Licensing Board's July 13, 2000 Memorandum and Order, Applicant Carolina Power & Light Company ("CP&L" or "Applicant") files its comments on the relevance of the June 20, 2000 letter from the Advisory Committee on Reactor Safeguards ("ACRS") to NRC Chairman Richard Meserve ("June ACRS Letter") to the four pending environmental contentions filed by the Board of Commissioners of Orange County ("BCOC") on January 31, 2000. The June ACRS Letter is not relevant in any way to the admissibility of BCOC's four late-filed environmental contentions. The June ACRS Letter concerns only the consequences of a postulated spent fuel pool accident and the screening criteria used for safety enhancement backfits. It does not address the likelihood of occurrence of a spent fuel pool accident nor the specific beyond-design-basis degraded-core reactor accident scenario that forms the basis for BCOC's proposed contentions. As both the NRC Staff and the Applicant have pointed out, none of the four contentions proposed by BCOC meets the Commission's standards for admission in an NRC licensing proceeding. Nothing in the June ACRS Letter affects this conclusion.

Template = SECY-040

SECY-02

I. BACKGROUND

On April 13, 2000, ACRS Chairman Dana Powers sent a letter to NRC Chairman Meserve ("April ACRS Letter") regarding the NRC Staff's study of spent fuel pool accident risks at decommissioning nuclear power plants. April ACRS Letter at 1. Pursuant to the Board's May 5, 2000 Memorandum and Order (Requesting Additional Information), all parties provided responses on the relevance of the April ACRS Letter to BCOC's late-filed environmental contentions. See, e.g., "Applicant's Response to Board's Request Regarding Relevance of ACRS Letter Addressing NRC Staff Draft Decommissioning Study" ("Applicant's Response on April ACRS Letter") (May 15, 2000). All of the parties agreed in their responses that the information provided in the April ACRS Letter was not relevant and sheds no light on BCOC's four pending environmental contentions. See "Applicant's Reply to Parties' Responses Regarding Relevance of ACRS Letter Addressing NRC Staff Draft Decommissioning Study" at 2, 5 (May 22, 2000) (citing "Orange County's Response to May 5, 2000, Memorandum and Order (Requesting Additional Information)" at 4 ("BCOC's Response on April ACRS Letter") (May 15, 2000)).

On June 20, 2000, ACRS Chairman Dana Powers sent a three-page letter to NRC Chairman Meserve discussing some of the same information previously discussed in the April ACRS Letter and its relevance to the NRC Staff's proposed resolution of Generic Safety Issue ("GSI")-173A, "Spent Fuel Storage Pool for Operating Facilities." June ACRS Letter at 1. The June ACRS Letter simply pointed out that certain of the issues identified in the April ACRS Letter regarding spent fuel pool accident risks for a pool supporting a decommissioning plant also apply for a pool supporting an operating plant. June ACRS Letter at 1. The ACRS sent two separate letters with the same information because it was commenting on two separate NRC Staff initiatives, the first regarding the

Staff's study of spent fuel pool accident risks at decommissioning plants (discussed at the 471st meeting of the ACRS), see April ACRS Letter at 1, and the second regarding the Staff's proposed resolution of GSI-173A on spent fuel pool accident risks at operating plants (discussed at the 473rd meeting of the ACRS), see June ACRS Letter at 1.

On July 12, 2000, BCOC requested an opportunity to "comment on the relevance to its pending environmental contentions" of the June ACRS Letter. "Orange County's Motion for Leave to Comment on June 20, 2000 ACRS Letter" at 1 (July 12, 2000). The Board granted BCOC's request and invited all parties to file their "comments regarding the ACRS letter" with the Board by July 20, 2000. Board Order of July 13, 2000 at 1-2.

II. RELEVANCE OF THE JUNE ACRS LETTER TO PENDING ENVIRONMENTAL CONTENTIONS

A. The June ACRS Letter has Limited Scope

The scope of the June ACRS Letter is limited to two issues: (1) Ruthenium and fuel fines in the source term following a spent fuel pool accident; and (2) screening criteria derived from the quantitative health objective ("QHO") used by the Staff for the backfit of safety equipment. June ACRS Letter at 2. This information is essentially a repeat of part of the April ACRS Letter. See April ACRS Letter at 2 (discussion of Ruthenium/fuel fines source term and screening criteria derived from the QHO for safety issues). While the April ACRS Letter raises several other issues with respect to decommissioning plants, the June ACRS Letter raises only these two issues with regard to operating plants. Significantly, the June ACRS Letter says nothing about the likelihood or consequences of degraded-core reactor accidents, the frequency of occurrence of spent fuel pool accidents based on degraded-core reactor accidents, or the need for environmental impact analyses.

B. The Two Issues Raised in the June ACRS Letter are Not Relevant to Admissibility of the Four Pending Environmental Contentions

Neither of the two issues raised in the June ACRS Letter addresses the threshold for an Environmental Impact Statement (“EIS”), which is the focus of BCOC’s pending environmental contentions. A threshold criterion for a NEPA accident analysis is whether the frequency of occurrence (*i.e.*, initiation) of the accident event is remote and speculative. San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1300 (D.C. Cir. 1984), rehearing en banc granted on other grounds, 760 F.2d 1320 (D.C. Cir. 1985), aff’d en banc, 789 F.2d 26, cert. denied 479 U.S. 923 (1986). NEPA does not require NRC environmental reviews to consider scenarios based on “severe, beyond design-basis [“Class 9”] accidents because they are, by definition, highly improbable — *i.e.*, remote and speculative — events.”¹ Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-869, 26 NRC 13, 30-31 (1987); see also San Luis Obispo, 751 F.2d at 1301 (“NEPA . . . does not require the considerations of Class Nine accidents in future EISs.”). The June ACRS Letter says nothing about the remote and speculative criterion for a NEPA accident analysis, nor does the June ACRS Letter address in any way the Staff’s analysis of the frequency of occurrence of initiating events for spent fuel pool accidents at operating reactors.

The first issue, Ruthenium/fuel fines source term, relates only to consequences after a spent fuel pool accident is assumed to occur, not the likelihood that such an accident will occur. The June ACRS Letter says nothing about the frequency of

¹ As Applicant has pointed out in a previous filing, BCOC’s pending environmental contentions are explicitly based on a Class 9, beyond-design-basis degraded-core reactor accident. See “Applicant’s Response to BCOC’s Late-Filed Environmental Contentions” (“Applicant’s Contentions Response”) at 9-12 (March 3, 2000).

occurrence of spent fuel pool accidents at Harris or any other operating plant. To be sure, the June ACRS Letter says nothing at all about the likelihood that “a degraded-core reactor accident with containment failure or bypass will, as the County claims, almost certainly cause adjacent pools to lose water by evaporation.” See BCOC’s Response on April ACRS Letter at 4.

The second issue, criteria for safety equipment backfit under GSI-173A, does not address the frequency of occurrence of spent fuel pool accidents. Rather, it addresses only the criteria for a frequency assessment used in making decisions about backfitting safety equipment. Therefore, the discussion of such backfit criteria in the June ACRS Letter sheds no light on the actual frequency of occurrence of such events. Moreover, the criteria used for backfit of safety equipment are unrelated to the remote and speculative criterion used for NEPA determinations.

Nothing in the June ACRS Letter addresses the frequency of occurrence of spent fuel pool accidents at operating plants or in any way criticizes the Staff’s evaluation of the frequency of occurrence of such events at operating plants. Moreover, nothing in the June ACRS Letter says anything about BCOC’s postulated scenario of a degraded-core reactor accident, coupled with containment bypass, and Class 9-based radiation doses as the initiating event for a spent fuel pool accident. Thus, just like the April ACRS Letter, the June ACRS Letter “sheds no light on whether a degraded-core reactor accident with containment failure or bypass will . . . almost certainly cause adjacent pools to lose water by evaporation.” See id. The June ACRS Letter is simply irrelevant to the four late-filed environmental contentions pending before the Board.

C. The June ACRS Letter Does Not Cure the Flaws in BCOC's Environmental Contentions

BCOC has four late-filed environmental contentions pending before the Board. See "Orange County's Request for Admission of Late-Filed Environmental Contentions" at 7-20 (Jan. 31, 2000). The issues in its four late-filed environmental contentions are:

- (1) A degraded-core reactor accident followed by containment failure or bypass will render spent fuel pool cooling and makeup systems completely inaccessible, resulting in irrecoverable loss of pool water through evaporation in Harris pools C and D;
- (2) Cumulative impacts from operating Harris pools A, B, C and D;
- (3) Evaluation of dry storage at the Brunswick and Robinson plants; and
- (4) The Board should order the NRC Staff to perform an EIS as an exercise of the Board's discretion.

Id. The two issues raised in the June ACRS Letter, Ruthenium/fuel fines source term and criteria for backfit of safety equipment, are not relevant to the admissibility of any of BCOC's four proposed contentions. Each contention is inadmissible for reasons that certainly cannot be cured by the information in the June ACRS Letter.

Contention 1 is founded on a scenario based on a Class 9, beyond-design-basis degraded-core reactor accident followed by containment bypass and Class 9 radiation dose levels. None of the issues has been connected to Harris. The radiation doses used as the basis for the scenario are taken, without justification, from the most extreme postulated accident in a Department of Health and Human Services' evaluation of Class 9 events. See Applicant's Contentions Response at 11-12. The two issues in the June ACRS Letter shed no light on these issues and cannot cure the defects of the contention as proposed.

Contention 2 alleges the same scenario for Harris pools A and B, pools which are not the subject of this license amendment request or this proceeding, and were licensed for operation almost 15 years ago. In addition to being outside the scope of this proceeding, the issues in Contention 2 are similarly unrelated to Ruthenium/fuel fines source term and the Staff's criteria for backfit of safety equipment, the only two issues in the June ACRS Letter.

Contention 3 alleges that spent fuel storage at two other nuclear plants, Brunswick and Robinson, should be evaluated as part of the Harris spent fuel pool license amendment. In addition to being outside the scope of this proceeding and contrary to NRC case law, this contention is completely unrelated to Ruthenium/fuel fines source term and Staff's criteria for backfit of safety equipment, the only two issues in the June ACRS Letter.

Contention 4 requests the Board to direct the Staff to do an EIS as a matter of the Board's discretion, even if an EIS is not required as a matter of law. In addition to requesting the Board to take an action outside its scope of authority under NRC regulations, this issue also has nothing to do with Ruthenium/fuel fines source term or the Staff's criteria for backfit of safety equipment, the only two issues in the June ACRS Letter.

In sum, nothing in the June ACRS Letter is relevant to the admissibility of BCOC's four late-filed environmental contentions pending. Each of the four contentions is inadmissible for reasons that cannot be cured by the June ACRS Letter.

D. The June ACRS Letter Provides No New Information

Furthermore, none of the information in the June ACRS Letter is new. The letter relates to resolution of the Staff GSI-173A. The subject matter of GSI-173A has been under review by the NRC for almost eight years. See Memorandum from J. Callan to Commissioners regarding "Followup Activities on the Spent Fuel Pool Action Plan," Att. at 1 (Sept. 30, 1997). In fact, one of BCOC's two witnesses, Mr. David Lochbaum, was an author of the November 1992 report that launched GSI-173A. See id. Moreover, as the Applicant has already pointed out in its response regarding the April ACRS Letter, the information on which the ACRS based its statements about Ruthenium/fuel fines source term is from documents between 4 and 29 years old. See Applicant's Response on April ACRS Letter at 3 n.2. Therefore, all of this information has been available since long before BCOC's environmental contentions were filed on January 31, 2000.

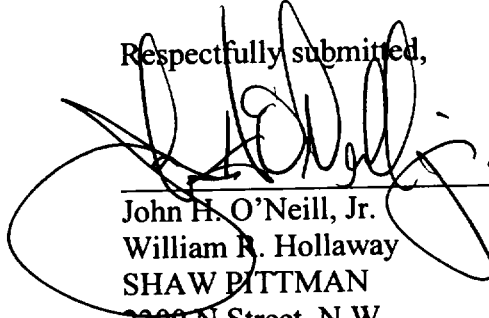
Moreover, as pointed out earlier, the two issues raised in the June ACRS Letter are essentially identical to issues raised in the April ACRS Letter over three months ago. Compare June ACRS Letter at 2 to April ACRS Letter at 2. Thus, there is no new information here that the Board and the parties have not already seen.

III. CONCLUSION

Neither the April ACRS Letter nor the June ACRS Letter "sheds [any] light" on BCOC's postulated degraded-core reactor accident with containment failure or bypass scenario that forms the basis for its contentions. See BCOC's Response on April ACRS Letter at 4. Indeed, there is no new information in the June ACRS Letter. There is nothing in the June ACRS Letter that supports BCOC's assertion that its postulated scenario is probable, and not remote and speculative, for Harris pools C and D. The four late-filed environmental contentions filed by BCOC fail to meet the Commission's

requirements for an admissible contention. It is therefore appropriate for the Board to now dismiss BCOC's flawed proposed environmental contentions and terminate this proceeding.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "John H. O'Neill, Jr.", is written over a horizontal line.

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Dated: July 20, 2000

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NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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CAROLINA POWER & LIGHT)	Docket No. 50-400-LA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Comments on Relevance of June ACRS Letter to Pending Environmental Contentions" were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail transmission, this 20th day of July, 2000.

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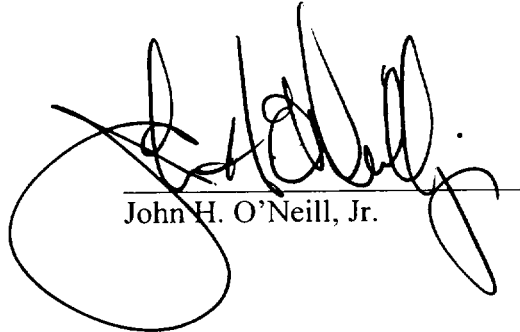
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