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May 22, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
CAROLINA POWER & LIGHT COMPANY)	Docket Nos. 50-400
)	401
(Shearon Harris Nuclear Power)	402
Plant, Units 1, 2, 3 and 4))	403

APPLICANT'S REPLY TO THE PROPOSED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW OF THE NRC STAFF

Pursuant to the Commission's Rules of Practice, at 10 C.F.R. § 2.754(b)(3), and to the Atomic Safety and Licensing Board's order on the schedule for proposed findings (Tr. 3791), Applicant herein submits its reply to the "Staff's Proposed Findings of Fact and Conclusions of Law in the Form of a Supplemental Initial Decision (Construction Permits)," dated May 10, 1979 ("Staff's Proposed Findings"). To the extent that proposed findings of fact by the Staff have not been addressed specifically herein, Applicant's position on those proposed findings is expressed in "Applicant's Proposed Findings of Fact and Conclusion of Law in the Form of a Supplemental Initial

Decision (Construction Permits)", dated April 17, 1979 ("Applicant's Proposed Findings").¹

Staff's Proposed Findings (except for the matters noted below) are generally consistent with Applicant's Proposed Findings and accurately reflect the record of this proceeding. However, we believe Staff's Proposed Findings are deficient in not attempting to reconcile differing views of Mr. Cantrell with other Staff witnesses. In fact, Staff's Proposed Findings generally simply summarize testimony presented by its witnesses (Section III - Panel IV; Section IV - Panel I; Section V - Panel II; Section VI - Panel III; Section VII - Mr. Cantrell). While we have no quarrel with the Staff's overall conclusions, we believe that Staff's Proposed Findings fail to place the views of Mr. Cantrell in any perspective. Section VII of Staff's Proposed Findings is at best a recitation of Mr. Cantrell's allegations without any attempt to address Applicant's rebuttal testimony or admissions by Mr. Cantrell during cross examination. In contrast Applicant's Proposed Findings (at 22-26) provide an essential context for Mr. Cantrell's testimony, and (at 26-41) address both Applicant's and Mr. Cantrell's views of certain technical problems.

At Staff's Proposed Finding 105, turnover at the Brunswick Plant is discussed from Mr. Cantrell's perspective.

¹ We adopt herein all abbreviated forms of citations and references established in Applicant's Proposed Findings.

Mr. Cantrell had noted that during the period of his tenure as an inspector at Brunswick, six of the eight top or middle management positions at the Brunswick Plant had three incumbents. Cantrell Testimony at 11. The Staff ignores Mr. Utley's detailed explanation of the reason for much of the Staff turnover. Changes in personnel were made in order to strengthen the Plant organization, which was necessitated in part by the additions of new plant management positions. Staff witnesses agreed that some of the changes in personnel and additions of new plant personnel were indeed responsive to I&E concerns expressed to CP&L management. See Applicant's Proposed Findings at 30-31. In further discussion of turnover at the Brunswick Plant, at Staff's Proposed Finding 112, the following comment appears: "The Test and Start-up Superintendent had left CP&L, and the new plant manager did not have experience with boiling water reactors." This statement is made in the context of expressing concern with respect to the adequacy of the Brunswick Plant staff. At the time the Test and Startup Superintendent resigned, startup testing was near completion and commercial operations were about to begin; thus he was not replaced. Tr. 3624 (Utley). The Brunswick Plant manager, Mr. Tollison, served as a superintendent at Brunswick for over six months before assuming the responsibilities of plant manager. Previously he had held a SRO license at the Robinson Plant, with experience as an operating

supervisor, engineering supervisor and maintenance supervisor. Prior to employment with CP&L, he had served for six years as a nuclear engineer in the U.S. Navy's submarine program. His qualifications and depth of experience speak for themselves. The improvements in Brunswick operations attest to the prudence of CP&L's personnel changes to strengthen the management at the Brunswick Plant. Tr. 3532-3535 (Utley).

Staff's Proposed Finding 106 has blurred the chronology of events and is inaccurate in one respect. The five percent across-the-board salary cut for CP&L employees lasted four months and was not in effect during the fall and early winter of 1974 when Brunswick supervisory personnel were working long hours in order to obtain an operating license for Brunswick Unit 2 prior to the December 28, 1974 deadline. Tr. 3566, 3633 (Jones). CP&L did not cease hiring personnel needed for its nuclear projects. The Staff's citations (Tr. 3572, 3578, 3623-24) do not support such a statement. In fact, the earnings improvement program was designed not to interfere with the nuclear plants. Tr. 3572 (Jones). In the same finding the Staff states: "Thus, CP&L viewed it as essential to have its Brunswick Unit No. 2 licensed by December 27, 1974, [sic] in order to minimize its costs." The costs were certainly one factor which concerned CP&L management. Foremost, as established by the uncontroverted evidence in this proceeding, a delay in obtaining the operating license for Brunswick Unit 2

was viewed by CP&L management, at the time, as having a potentially adverse impact on CP&L's ability to adequately serve its customers during 1975. Utley-Banks Testimony at 46-47; Applicant's Proposed Findings at 23-24.

In discussing the numbers of Brunswick Plant management personnel with SRO licenses, the Staff stated at Staff's Proposed Finding 108: "If a majority of these officials had had the license or the training or experience for a license for boiling water reactor plants, they might have been more alert to and conscious of safety and quality control problems." This statement is followed by a string of citations to Mr. Cantrell. (The one citation to Panel III Testimony (at 52-53) supports a different conclusion: "There may have been a slight decrease in efficiency of facility operation based on management decisions. ... We don't believe plant safety was affected.") In fact, upon cross examination, Mr. Cantrell could not establish a causal relationship between the problems he observed and the failure of any plant manager to possess an SRO license. See e.g. Tr. 3359-3361; 3401; 3406-3407.

Staff's Proposed Finding 109 misrepresents Applicant's discussion of the root causes of the understaffing problem that it encountered. Applicant described in detail the range of problems that were encountered during the construction and startup of Brunswick. Utley-Banks Testimony at 33-53. One of the most significant impacts, and perhaps the least foreseeable, was due to the changing regulatory requirements.

Staff's suggestion that "much of the requirements, particularly as to the quality assurance program had been promulgated or announced years before" misses the whole point which was established during the hearing concerning the fluid dynamics of the regulatory process. There is no evidence in the record that anyone could have predicted the pervasive expansion of quality assurance requirements when the Quality Assurance Criteria, Appendix B to 10 C.F.R. Part 50, were announced. Staff witnesses agreed that regulatory requirements were changing during the period of the Brunswick Plant startup and that the changes and increases in regulations required additional plant staffing. Tr. 2307-2308 (Long): 3295-3305 (Panel IV); Panel IV Testimony at Appendix D.

Staff's Proposed Finding 110 neglects to relate Mr. Wilber's conclusions with respect to CP&L's managerial capability as a result of his inspection of the off-gas explosion. He noted that CP&L set up a task force that performed an in-depth review. The findings of the task force were evaluated by the Plant Nuclear Safety Committee. In summary, Mr. Wilber believed CP&L "acted properly" and "in a very responsible manner." Tr. 2850.

We note that the table of LER's in Staff's Proposed Finding 114 is incorrect. The numbers for each Brunswick unit are correct; the "Brunswick Combined" column should reflect the sum of the two units for each year. See Utley-Banks Testimony at 61, as corrected at Tr. 3535-3536 (Banks).

The conclusion, in Staff's Proposed Finding 115, that the LER's, in areas other than instrument set points and the containment atmosphere control system have apparently increased, ignores Mr. Banks response to that statement (in the form of a question by Staff counsel) during the hearing. In looking at raw numbers of LER's for purposes of establishing trends, some consideration must be made for the additional regulatory requirements and, in particular, the implementation of the standardized technical specifications which significantly increased the potential for submitting LER's. Tr. 3695 (Banks). See Applicant's Proposed Findings at 31-32.

Staff's Proposed Finding 117 discusses the RCIC overspeed trip. The introductory phrase to Staff's Proposed Finding 118 suggests that the RCIC problem was somehow established as "a failure of CP&L management control." Neither Staff's Proposed Finding 117 nor the record of this proceeding supports a conclusion that the problem with the RCIC overspeed trip was in any way a failure of CP&L's management control. See Applicant's Proposed Findings at 33-34.

The citations to the following statement in Staff's Proposed Finding 118 are misleading, in that it appears to represent that Mr. Banks supported the full import of the statement: "However, CP&L did not immediately sample oil from that [No. 1] Generator or Diesel Generators No. 3 or 4, to see if waste oil had been put in their lubricating systems of this emergency equipment prior to the incident on October 2, 1975,

although it should have and could have done so. (3378, 3387-8, 3558, 3680 (Banks))." (emphasis supplied). Mr. Banks agreed that the Brunswick Plant staff could have sampled the oil (Tr. 3680). Mr. Cantrell felt that CP&L should have sampled the oil (Tr. 3378, 3387-8). The Brunswick Plant staff had responsibly investigated the waste oil incident and had verified that waste fuel oil had not been added to the other diesels by checking oil addition records. Even if waste oil had been added inadvertently, the Brunswick Plant staff had determined that the change in viscosity would have been small in any event. In an abundance of caution, samples of the other diesels' lubricating oil were sent to Mobil Oil Corporation under the normal contract for oil analysis. See Applicant's Proposed Findings at 34-36.

The correct date in the second sentence of Staff's Proposed Finding 120 is April 28, 1977. It is true that the modifications to the HPCI isolation function on differential temperature was not made by June, 1977, even though the change to the technical specification was granted on April 28, 1977. This was due to other priority work and the fact that the problem, which the modification was to correct, only occurred during cold weather. See Applicant's Proposed Findings at 36-38. CP&L did not explain its delay until September 3, 1977, in performing tests of the HPCI system requested by NRR "because it needed hot weather to perform them." The initial condition of an ambient temperature as high as possible could

not have been met in May or June. Thereafter, operational concerns about the test and other priority work delayed the performance of the test until early September. Utley-Banks Testimony at 68-69.

Nowhere is there support in the record for the statement in Staff's Proposed Finding 121: "CP&L did not understand that leaving the doors open so that flooding could occur in all compartments in an emergency would make the equipment of little use in such a situation." In fact, that statement is contradicted by both the preceeding and immediately following sentences in the same paragraph. We assume that it was an inadvertent misstatement by the Staff.

It is not clear what the Staff intends by the following comment at Staff's Proposed Finding 59: "In the past CP&L has had some problems in obtaining and retaining site workers, but this has not adversely affected the construction schedules nor compromised the quality of work." CP&L has not had problems in obtaining and retaining site workers for the Harris construction project. See McDuffie Testimony at 37-40. Perhaps Staff's reference to "in the past" is directed to the Brunswick construction project where there was a problem with welder turnover.

Applicant also objects to a number of comments in Staff's Proposed Findings, which are best characterized as self-serving, and which are in any event not supported by the record of this proceeding. For example Staff's Proposed

Finding 87 includes the comment: "CP&L's security record has improved since 1975, perhaps the penalty having served a useful purpose (Staff Panel III, p. 25)." Neither the citation offered nor any other evidence in the record supports the speculative remark with respect to the usefulness of a penalty. Such comments are particularly inappropriate for Board findings.

At Staff Proposed Finding 20 appears the statement: "However, the [sic] CP&L's concern with safety is not the same as the NRC's." While this statement may well be a statement of fact - given the subjective nature of a "concern" - implicit in the development of this finding is a suggestion that CP&L's attitude, motivation, degree of attention to problems and/or resolve in correcting deficiencies (as they relate to safety) is qualitatively something less than the NRC's. The Staff's citation to Mr. Utley (Tr. 3627) only supports the proposition that CP&L's responsibilities are considerably broader than NRC's because CP&L must manage a large company to provide adequate electric service to the consumers in its service area in North and South Carolina. Staff's citation to Mr. Jones (Tr. 3637) simply reinforces the fact that CP&L has the ultimate responsibility for the safe operation of its nuclear plants, notwithstanding the positions that NRC personnel might take on any given matter. Further, the Staff appears to find fault with the fact that "the Senior Vice President for Power Supply receives power generation reports each day and immediate

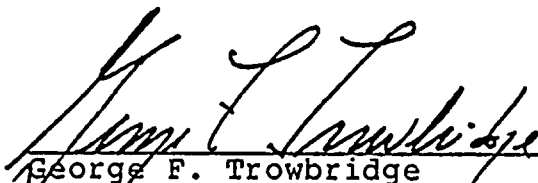
reports each day and immediate reports on units put out of service ... [but] not all licensee event reports sent to the NRC." (emphasis supplied). LER's include not only significant potential safety system problems, but also a great many routine administrative and maintenance type items. Utley-Banks Testimony at 57. Neither senior management at CP&L nor, we trust, senior management at the NRC concern themselves with all such routine matters.

The Staff further attempts to develop Finding 20 by noting CP&L's "conservative" attitude. While individual I&E inspectors might feel more secure if licensees were to agree with their every suggestion, I&E management finds CP&L's attitude healthy. I&E inspectors can be wrong in their views and the cooperative tension between licensee and regulator results in more carefully considered judgments. See Tr. 2971-2974, 2976 (Long, Dance); Tr. 3337-3339 (Minor); Staff's Proposed Findings at 13-14. While CP&L's perspective and responsibilities are broader and clearly different than NRC's, we take issue with any suggestion that CP&L and its employees - who operate the nuclear power plants, who have the ultimate responsibility for the health and safety of the public, and who

would bear the financial burden of any breach of the safe operation of the nuclear plants - are not fully committed to safety. See Applicant's Proposed Findings at 44-45.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE


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Dated: May 22, 1979


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
"Applicant's Reply to the Proposed Findings of Fact and
Conclusions of Law of the NRC Staff" have been served
upon each of the persons listed on the attached service
list by mail, postage prepaid, this 22nd day of May, 1979.


John H. O'Neill, Jr.

May 22, 1979

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