UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 MAY 28 A10:32

In the Matter of CAROLINA POWER AND LIGHT COMPANY et al. (Shearon Harris Nuclear Power Plants, Units 1 and 2)

Dockets 50-400
50-401

SERVED MAY 28 1982

May 24, 1982

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

AMENDMENT OF PETITION FOR LEAVE TO INTERVENE OF CHAPEL HILL ANTI-NUCLEAR GROUP EFFORT (CHANGE) AND ENVIRONMENTAL LAW PROJECT (ELP)

Now comes Petitioner CHANGE/ELP, P.O. Box 524, Chapel Hill, NC 27514, and amends its petition for leave to intervene and the supplement thereto filed May 14, 1982, pursuant to 10 C.F.R. 2.714(a)(3). Petitioner takes this action not to "shoehorn in" extra contentions, but to clarify and make more specific those contentions it has already submitted. Petitioner may do this without prior approval of the presiding officer up to 15 days prior to the special prehearing conference, 10 C.F.R. 2.714(a)(3), since contentions are a supplement to the petition for leave to intervene and therfore part thereof, 10 C.F.R. 2.714(b).

Petitioner would amend its "Supplement to Petition for Leave to Intervene," May 14, 1982, in the following ways, contending the following without waiving any right to further amend its contentions within the time specified by 10 C.F.R. 2.714(a)(3):

1. Amend contention number 80 at page 24 to read as follows: "80. CHANGE/ELP has already satisfied the interest test, see "Applicants' Response to Petition to Intervene by Chapel Hill Anti-Nuclear Group Effort," March 3, 1982, and similar

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response to petition by ELP, and see also "NRC Staff Response to Petitions for Leave to Intervene," March 9, 1982, pp. 15, 18, 25. Therefore it should be granted party status automatically upon filing these contentions. The NRC's position on and use of contentions reflect an intent to limit the participation of citizen intervenors, contrary to the intent of Congress in passing the Energy Reorganization Act of 1974 (see 93 U.S. Code Cong. & Admin. News 5484-85), contrary to the recommendations of the Kemeny Commission, and contrary to the spirit of the Due Process Clause of the United States Constitution.

There is support in the case law and the general body of administrative law for this contention. Although no court has held that there exists an absolute right to intervene, in Cities of Statesville et al. v. AEC, 441 F.2d 962 (D.C.Cir. 1969) (en banc) the court held "that when a petitioner can show it possesses a substantial interest in the outcome of the proceddings it has a right to intervene," subject to the rules for public participation established by the agency. In Statesville intervention was denied only because of substantial identity of interest, not because petitioners had failed to raise substantial issues: in fact, the court was willing to expand the scope of the proceeding significantly in even considering petitioner's anti-trust arguments. The issue was considered at greater length in BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974), where the court cited the legislative history for the proposition that contentions must be reasonably specific to guarantee the right to intervene. "The statement of contentions is analogous to good pleadings in civil cases, i.e., the allegations must be reasonably specific." What constitutes "good pleadings" has been the subject of much litigation in the civil courts: the modern trend has been to hold pleadings valid which when construed in favor of the plaintiff gave the other parties reasonable notice, see for example Dioguardi v. Durning, (2d Cir. 1944). This is especially true where, as in these proceedings, information upon which specific pleadings might be based is under the control of the adverse party, see Lodge 743, International

Association of Machinists v. United Aircraft Corp., 30 F.R.D. 142 (1962). This notice concept of pleading and contention would be in line with the desire and purpose of the rule to weed out "nuisance interventions," see BPI v. AEC, 502 F.2d at 428. CHANGE/ELP has raised many issues of substantial concern and provided reasonable notice to Applicants and the Staff of the seriousness and responsibleness with which they are approaching the proceedings. Therefore the granting of party status should be a formality, not a careful grilling of each point of Petitioner's contentions; in light of accepted civil practice, Petitioner would ask the Board in ruling on its contentions to construe them in the light most favorable to Petitioner, rather than Applicants, and would suggest the same treatment be given the contentions of the other Petitoners."

2. Amend contention number 30 at page 12 to read as follows: "30. The analysis of mechancial and flow-induced vibration is inadequate, in that it overlooks the "shake and break" phenomenon which is prevalent in Westinghouse model D and E steam generators with pre-heater design. The Harris plant will use Westinghouse D4 steam generators, which are suspected to share the defect with other D models, as the recent notice that Yugoslavia's Krsko reactor (which uses a D4 model) cannot operate at full power corroborates. Although Westinghouse has asserted that it will solve this problem in the next year or so, their past assertions about steam generator problems and anticipated resolution times have been incorrect, and there is no reason to believe that a satisfactory resolution to the problem will be reached before the plant goes on line. Therefore, there is inadequate assurance that the plant can be operated safely at the levels of power at which Applicants propose to operate it, and there is also no reason to believe that in light of this problem that the cost-benefit analysis conducted by Applicants is still valid."

3. Amend contention 38 at page 14 to insert the words "is based" after the words "operation of the plant" (line 2).

4. Amend contentions 12 and 13 at page 7 to add contention

12-13A to read as follows:

"12-13A. As the foregoing two contentions indicate, there is serious doubt that Applicants are in fact financially qualified to use, operate, and possess the Shearon Harris plants. As the accident at TMI demonstrates, a major accident can have a severe impact on the financial health of a utility, even threatening it with bankruptcy. In addition, during the normal operation of the plant decisions may be made on a cost/safety balancing basis, and a financially weak utility may in such decisions try to spare its already weak cash situation at the expense of public safety (e.g., by operating a plant with parts of emergency systems or redundant systems out of order and delaying repair until the next refueling outage). Therefore a consideration of Applicants' financial qualifications is in order to determine if in fact they can provide reasonable assurance that they can operate the plant safely and that they can deal with accidents effectively without endangering the public safety. This is particularly so because executives of Applicant CP&L have repeatedly stressed their belief that the company's financial picture is unfavorable: in testimony before the N.C. House Public Utilities Committee in 1981, CP&L's William Graham eloquently described the financial hardship repeal or modification of existing construction work in progress provisions of N.C. Gen. Stat. 62-133 would work on the company. Other utility executives have repeatedly stressed that the industry, CP&L included, is "sick" and "ailing" (see letter from Carl Horn of Duke Power, specifically discussing CP&L, Raleigh News and Observer, April 2 1982, p. 4A). Therefore Petitioner CHANGE/ELP asks that the Board waive those amendments to 10 C.F.R. Parts 2 and 50 promulgated at 47 F.R. 13750 (March 31, 1982), and allow Petitioner to show that Applicants CP&L and NCMPA3 are not financially qualified to operate the plant safely and to deal with a major accident at the plant."

DANIEL F. READ
President, CHANGE

CERTIFICATE

I hereby certify that the parties listed below have been served with a copy of this "Amendment of Petition for Leave to Intervene of Chapel Hill Anti-Nuclear Group Effort (CHANGE) and Environmental Law Project" by placing copies of same in a United States mail box, first-class postage prepaid, this 25th day of May, 1982, addressed as indicated below.

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