

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD⁸³ MAY -2 11:23

In the Matter of)	
)	Docket No. 50-261-OLA
CAROLINA POWER & LIGHT COMPANY))	
)	
(H.B. Robinson Steam Electric))	April 26, 1983
Plant, Unit 2))	
)	

THE HARTSVILLE GROUP'S OBJECTION TO
ORDER FOLLOWING SPECIAL PREHEARING CONFERENCE
AND MOTION FOR REFERRAL

I
INTRODUCTION

Pursuant to 10 CFR Section 2.751a(d) and the authorization of the Licensing Board in its Memorandum and Order (Report on Special Prehearing Conference Held Pursuant to 10 CFR 2.751a), ASLBP 83-484-03LA, dated April 12, 1983 ("April 12 Order"), Intervenor The Hartsville Group ("Hartsville") hereby objects to those portions of the April 12 Order disallowing and dismissing Hartsville's Contentions 4, 5 and 9. Should the Board determine that, in its view, revision of the April 12 Order with respect to Contention 4 is not warranted, then, in the alternative, Hartsville requests that, pursuant to 10 CFR Sections 2.751a(d), 2.718(i) and 2.730(f), this Board refer or certify its ruling to the Atomic Safety and Licensing Appeal Board.

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II DISCUSSION

In its April 12 Order, The Licensing Board admitted Hartsville as an party intervenor to this proceeding, accepting into the proceeding Hartsville Contentions 1 (renumber 1a), 2, 3, 6 (renumbered 1b), and 8. The Board disallowed and dismissed Contentions 4, 5, 7 and 9.

Hartsville objects to those portions of the Board's April 12 Order disallowing and dismissing Contentions 4, 5 and 9 and, further, requests referral to the Atomic Safety and Licensing Appeal Board in the event that the Licensing Board determines not to revise its Order with regard to Contention 4.

CONTENTION 4

The thrust of Hartsville's Contention 4 is that Part 20 ALARA requirements would be violated by the repairs in that a cost-benefit weighing would go against conducting the replacement of the steam generator lower assemblies as compared to shutting Robinson 2 down. In that the timely retirement of Robinson 2 is a "reasonable" alternative, then no worker exposures resulting from steam generator replacement or repair can be justified under the ALARA principles of Part 20.

In its April 12 Order, the Board decides, at page 13, that "under these rules [Part 20] no alternatives to the proposed action need be considered nor is a cost-benefit analysis required."

The Board dismisses Hartsville's reference to an advance notice of proposed rulemaking, request for public comment published at 45 Federal Register 18023, because it "contains

only a proposed list of subjects that a later rule could address" (April 12 Order, p. 13).

Hartsville, in responding and objecting, would point first to the plain language of the regulation:

The term "as low as is reasonably achievable" means as low as is reasonably achievable taking into account the state of technology, and the economics of improvements in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of atomic energy in the public interest.

10 CFR Section 20.1(c) .

The regulation is clear that "the economics of improvements" must be considered "in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations" Plainly, a cost-benefit balance is to be struck. And, there can be little doubt that such balances have been struck regarding specific projects and means of carrying them out. (See, e.g., Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-77-55, 6 NRC 473 (1977).)

The Licensing Board asserts that "Hartsville is not aided . . . " by its reference to an advance notice of proposed rulemaking regarding Part 20 which asserts:

(1) No practice or operation involving exposures to radiation should be adopted unless its introduction produces a positive net benefit.

45 FR 18023, cited from NRC Rules and Regulation, Vol. 3, p.20-30 .
Hartsville cites this reference, not to suggest that this

The Board may refer a ruling to the Appeal Board which would otherwise be prohibited, where:

. . . prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense . . .

10 CFR Section 2.730(f).

Contention 5

The gravamen of Hartsville's Contention 6 is that Carolina has failed to demonstrate that it can both meet the Commission's ALARA regulations and comply with Quality Assurance and Quality Control regulations at Part 50, Appendix B.

In dismissing the contention, the Board finds:

There was no attempt at establishing the number of qualified workers available and how the doses would relate to them.

April 12 Order, p. 6.

Hartsville has no way of determining the number of qualified workers required for the replacement job except from CP & L or the NRC Staff. Hartsville finds no such figure in the Final Steam Generator Repair Report (FSGRR) and neither the Applicant nor the NRC Staff refers the Board to such a figure. Carolina's Response, p. 6; Response of the NRC Staff, p. 8. Carolina argues that the task has been performed elsewhere. Carolina Response, p. 6.

But, that it has been performed elsewhere goes to the merits of the contention and not to its admissability. The Licensing Board cannot go to the merits at this stage of the proceeding. Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), 6 AEC 423, 426 (1973);

Contention 9

The thrust of Contention 9 is that by replacing the Westinghouse Model 44F steam generators with essentially equivalent steam generators, CP & L is unable to meet General Design Criterion 14 (10 CFR Part 50, App. A).

In dismissing Contention 9, the Board asserts that Hartsville must demonstrate that the existing steam generators did not meet Design Criterion 14 and some reason or basis for asserting that the proposed changes set forth in the FSGRR will "be insufficient in some manner". April 12 Order, pp. 22-24.

Hartsville asserts, in general, that Westinghouse has proven incapable of designing a steam generator that will not degrade. Shippingport was the first Westinghouse reactor to require replacement of steam generator tubes - some 20 years ago. Nunzio J. Palladino, Response to Congressman Markey's Questions to Chairman Palladino in January 21, 1983 Letter, March 21, 1983, page 1. They continue to build bad steam generators as evidenced by the design defects in the Model D2 and D3 steam generators which have required substantial modification to permit operation at more than 50% power.

The Board finds that Hartsville has failed to adduce evidence that the Model 44F steam generators do not meet Design Criterion 14. Hartsville would direct the Board's attention to Table 2, Steam Generator Tube Leakage since November 1981," Report to Congress on Abnormal Occurrences, April-June 1982, NUREG 0090, Vol. 5, No.2, p. 22. Hartsville referred the Board to this document during the Special Prehearing Conference. Tr. _____. There, nine

The Board has placed too heavy a burden on Hartsville at this stage. The pleadings as supplemented at the prehearing conference put Carolina on notice as to what it must defend against. Philadelphia Electric Company (Peach Bottom Atomic Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

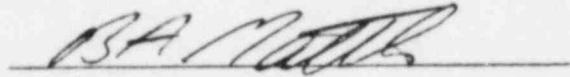
Contrary to the Board's finding that "there is no concrete issue to litigate " (April 12 Order, p. 24), there is a clear and concrete issue. Doubtless, it will be difficult for Carolina to defend against it, but that is because of the weakness of their position. And Carolina bears the burden of proving that these steam generators will meet the laws and regulations. Hartsville has met its burden of presenting sufficient basis to cause reasonable minds to inquire further.

III CONCLUSION

For the reasons set forth above, Hartsville:

- 1) objects to the portions of the Board's Order of April 12, 1983, disallowing and dismissing Contentions 4, 5 and 9;
- 2) requests the Board to reconsider those portions of its Order and admit those contentions; and,
- 3) should the Board determine not to revise its Order with regard to Contention 4, requests the Board to refer that ruling to the Appeal Board.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "B.A. Matthews", is written over a horizontal line.

B.A. Matthews
Authorized Representative for
The Hartsville Group
P.O. Box 1089
Hartsville, South Carolina 29550

DONE this 26th day of

April 1983 at Hartsville, South Carolina.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me B.A. Matthews who does affirm that he did this 26th day of April 1983 serve copies of the attached THE HARTSVILLE GROUP'S OBJECTIONS TO ORDER FOLLOWING SPECIAL PREHEARING CONFERENCE AND MOTION FOR REFERRAL on the below-named persons by placing them in the United States mail, postage prepaid.

Administrative Judge Morton B. Margulies
Chairman, Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge David L. Hetrick
Atomic Safety and Licensing Board
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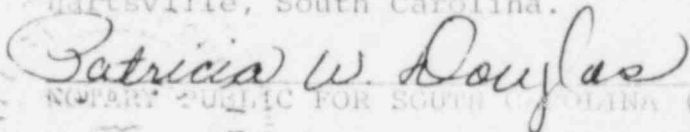
Atomic Safety and Licensing Appeal Board Panel
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Washington, D.C. 20555


B.A. Matthews

DONE before me this 26th

day of April 1983 at

Hartsville, South Carolina.


PATRICIA W. DOUGLAS
NOTARY PUBLIC FOR SOUTH CAROLINA (L.S.)

My Commission Expires: 1-24-84