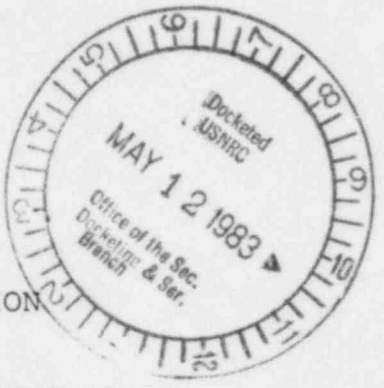
May 11, 1983



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket No. 50-261-OLA
	)	
(H. B. Robinson Steam Electric Plant, Unit 2)	)	ASLBP No. 83-484-03LA
	)	

APPLICANT'S RESPONSE TO
HARTSVILLE GROUP'S OBJECTIONS TO
SPECIAL PREHEARING CONFERENCE ORDER
AND MOTION FOR REFERRAL

I. INTRODUCTION

The Licensing Board's "Memorandum and Order (Report On Special Prehearing Conference Held Pursuant To 10 CFR 2.751a)" ("Special Prehearing Conference Order") was served on April 12, 1983. That order ruled on the pending petitions for intervention of the Concerned Fools of Darlington County ("CFDC") and the Hartsville Group ("Hartsville"), rejecting CFDC's petition, but admitting Hartsville as a party intervenor in this proceeding, allowing five and rejecting four of its proposed contentions.

"The Hartsville Group's Objection To Order Following Special Prehearing Conference and Motion For Referral" ("Objec-

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tion") was timely filed on April 26, 1983. See Special Prehearing Conference Order, at 30, modified at "Request For Extension of Time To Object To Order" (April 21, 1983). Hartsville requests that the Licensing Board reconsider its rulings rejecting proposed Contentions 4, 5 and 9. Should the Licensing Board decline to revise its order with respect to proposed Contention 4, Hartsville alternatively requests that the Licensing Board refer or certify its ruling to the Appeal Board.

In accordance with the Licensing Board's May 6, 1983 memorandum on "Request of Applicant For Permission To Reply To Intervenor's Objections To Special Prehearing Conference Order," Applicant responds below to each of Hartsville's objections.

II. ARGUMENT

A. Proposed Contention 4

1. Reconsideration of ASLB ruling

Hartsville's proposed Contention 4 asserts that the "as low as is reasonably achievable" ("ALARA") requirement of 10 C.F.R. 20.1(c) requires a cost/benefit analysis for the continued operation of the plant as a whole. According to Hartsville, "[i]n 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." Objection, at 2. Hartsville would, in effect, have the Board

interpret the ALARA provisions of Part 20 to require reanalysis of the NEPA cost/benefit balance for a plant each time some operational task involving occupational exposure is undertaken.

The Board's Special Prehearing Conference Order rejected proposed Contention 4, ruling:

> The Board finds no basis in 10 CFR 20 in general or its ALARA requirements in particular for requiring the cost benefit analysis demanded by the Hartsville group. The function of Part 20 is to set specific limits on radiation exposures to workers and the general public. The ALARA provision sets an additional requirement on licensees to conduct their operations involving radiation such that doses will be as far below the numerical limits as is reasonably achievable. While licensees at their option might well consider alternative ways of carrying out specific tasks, under these rules no alternatives to the proposed action need be considered nor is a cost benefit analysis required. Thus the Board finds that Hartsville's reliance on 10 CFR Part 20 in this contention is misplaced and does not provide the requisite basis for its contention.

Special Prehearing Conference Order, at 12-13.

Even in its Objection, Hartsville still has not cited any authority to support its novel interpretation of the Commission's ALARA regulations. As Applicant and the Staff have previously observed, and as the Board has acknowledged, the ALARA inquiry has historically focused not on whether or not a particular operation or modification should be undertaken at all (given the attendant radiological exposure), but rather on the reasonable use of equipment and procedures to limit the attendant exposure.

This interpretation of the ALARA regulations is consistent with the history of the promulgation of the regulations. There is no indication whatsoever that -- in framing the subject regulations -- the Commission sought to require cost/benefit justifications of plant operations and proposed modifications, as Hartsville here suggests. Rather, the Statements of Considerations which accompanied both the proposed rule and the final rule incorporating the "ALAP" ("as low as practicable")*/ principle into 10 C.F.R. Part 20 emphasize the use of equipment and procedures to reasonably limit the level of radioactivity in plant effluents, for the protection of the general public. See 35 Fed. Reg. 5414 (April 1, 1970); 35 Fed. Reg. 18385 (December 3, 1970). Indeed, in incorporating the "ALAP" principle into Part 20, the Commission simultaneously amended 10 C.F.R. Part 50, adding sections 50.34a and 50.36a ("Design objectives for equipment to control releases of radioactive material in effluents -- nuclear power reactors" and Technical specifications on effluents from nuclear power reactors"). This amendment of the Commission's plant design regulations concurrent with the adoption of the "ALAP" principle underscores the Commission's purpose in adopting the "ALAP" criteria -- to ensure the employment of reasonable measures (e.g., the installation of equipment and the establishment of procedures) to limit radiation exposure attendant to reactor operations.

While the initial regulations focused primarily on the protection of the public health and safety, the ALARA principle also extends to occupational exposure. The focus is logically

*/ The "ALAP" terminology was later replaced by the "ALARA" terminology. The change in terminology involved no change to the concept or substance of the regulations. See 40 Fed. Reg. 58847 (December 19, 1975).

the same in both cases -- the use of reasonable measures to limit radiological exposure. Thus,

> [e]valuation whether an occupational exposure conforms to the ALARA requirements requires consideration of both the total amount of the exposure and the financial aspects of lowering that exposure, [although] the Commission has not spelled out the amount which it may require a Licensee to expend to achieve lowered radiation exposures.

Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 N.R.C. 108, 121 (1979) (emphasis supplied).

Hartsville asserts that the Prairie Island proceeding involved a cost/benefit analysis under ALARA, such as the analysis it urges here. See Objection, at 3. But Prairie Island, a spent fuel pool expansion proceeding, involved a conventional application of the ALARA principle. The issue presented was not whether (under ALARA) the pool should be expanded at all, or even whether the removed racks should be disposed of, but rather the relative merits of two different methods of rack disposal. In reviewing the licensing board's application of the ALARA principle, the Appeal Board noted:

> [W]hether a particular method of rack disposal meets the ALARA test does not hinge entirely upon the existence or nonexistence of some alternative, feasible method [of rack disposal] which would occasion a lesser amount of radiation exposure. Assuming that (as here) such an alternative does exist but would be more expensive to implement, it must also be determined, inter alia, whether the health and safety benefits which might be occasioned by the exposure reduction are sufficient to warrant the additional monetary expenditure.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 N.R.C. 41, 56 (1978), vacating in part and clarifying LBP-77-51, 6 N.R.C. 265 (1977). Thus, even the Prairie Island proceeding cited by Hartsville supports this Licensing Board's interpretation of the ALARA regulations.

In the absence of any authority for Hartsville's unprecedented interpretation of the ALARA criteria, there is no basis for reconsideration of the Board's ruling on proposed Contention 4. Accordingly, the Board's rejection of the contention must stand.

2. Referral or certification of ASLB ruling

Applicant does not oppose Hartsville's request that, should the Licensing Board determine that revision of its Special Prehearing Order is not warranted with respect to proposed Contention 4, the Board refer or certify its ruling to the Appeal Board. Objection, at 1, 2, 5-6. Like Hartsville, Applicant is mindful of the potential for costly and burdensome delay which might be occasioned by a remand, should Hartsville successfully appeal the rejection of Contention 4, following a Licensing Board initial decision authorizing the repairs. See Objection, at 5-6.

In this respect, Applicant notes that Hartsville's discovery on rejected Contention 4 would essentially duplicate its discovery on its Contention 3, which the Licensing Board admitted. Accordingly, Hartsville can and should avail itself fully of all present opportunities for discovery, to preclude any further need for discovery should Contention 4 later be admitted to this proceeding.

B. Proposed Contention 5

Hartsville's proposed Contention 5 essentially asserts that Applicant will be unable to find sufficient numbers of qualified workers to perform the repairs at Robinson 2. The Licensing Board rejected proposed Contention 5:

> No acceptable basis has been submitted to substantiate the proposed contention. There was no attempt at establishing the number of qualified workers available and how the anticipated doses would relate to them. Even if the number of qualified workers were reduced, there is nothing to indicate Applicant would press on with those unqualified to make the repairs rather than drawing out the project over a longer period of time.

Special Prehearing Conference Order, at 14-15.

Hartsville's references (in its contentions and Objection) to Surry, Turkey Point and Point Beach establish Hartsville's knowledge that steam generator repairs of a scope comparable to those planned for Robinson have been performed elsewhere. Yet Hartsville still has provided no indication that those licensees (or any other licensee undertaking similar repairs) experienced any difficulty in procuring sufficient numbers of qualified workers. Nor has Hartsville suggested that this repair project will require significantly more workers than prior similar projects, or that this project will experience greater difficulties attracting workers than have other projects. Nor, for that matter, has Hartsville challenged the Licensing Board's reasoning that, even assuming Applicant lacked

sufficient numbers of qualified workers to perform the work as scheduled, Applicant could extend the repairs over a longer period.

In sum, the Licensing Board and the other parties were not required to accept at face value Hartsville's bald assertion that there will not be enough qualified workers to perform the Robinson repairs, especially where -- as here -- essentially identical repairs have been successfully performed elsewhere. As a practical matter, the prior performance of similar repairs raised the threshhold showing for basis to be made by Hartsville. At a minimum, Hartsville must show some special circumstances applicable to Robinson. It is beyond cavil that the Commission's regulations require some basis for a contention, and Hartsville has provided none here -- not prior to or during the Special Prehearing Conference, and not even in its Objection. Accordingly, the Licensing Board's order rejecting proposed Contention 5 must stand.

C. Proposed Contention 9

Hartsville's proposed Contention 9 asserts that Licensee is replacing the present steam generators with "essentially equivalent Westinghouse Model 44F steam generators" which will not meet General Design Criterion 14 ("GDC-14"). In support of its contention, Hartsville charges broadly that "Westinghouse

has proven incapable of designed a steam generator that will not degrade." Objection, at 8.

The Licensing Board rejected proposed Contention 9, explaining:

> It is not sufficient * * * for Petitioner to claim the proposed replacement of steam generators cannot meet the requirements of the regulations and merely cite the regulations. For a litigable contention we need some specificity as to how or why the proposed steam generators will not meet these criteria.

Special Prehearing Conference Order, at 22. The Board further noted:

> Applicant has supplied in the Steam Generator Repair Report information on certain incremental improvements it asserts were made in the new steam generators as compared to the ones they are to replace. Petitioner therefore has at the very least an obligation to come forward with some reason or basis that these improvements will fail or be insufficient in some manner, and that the result will constitute some hazard to public health and safety. Petitioner has not done so.

Special Prehearing Conference Order, at 23-24. Even in its Objection, Hartsville has not attempted to respond to the design and other modifications identified by Licensee to correct the steam generator degradation problem. Instead, Hartsville continues to press its unparticularized, generic indictment of steam generators,

in violation of its "ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, slip opinion at 13 (August 19, 1982).

The licensing board in the Point Beach steam generator replacement proceeding recently rejected a comparable contention on similar grounds. The licensing board there held:

> This contention, "Unspecified Problems with Proposed Steam Generators", is ingenious but insufficient. * * * It does not find any problem with the repair project; it merely finds that past models of steam generators have had unanticipated problems and concludes that those problems create enough of a basis to inquire further about this steam generator repair. We do not accept this as sufficient basis for inquiring further about this particular steam generator, whose adequacy is attested to by the Report, an extensive technical document that [Intervenor] has been able to examine.
>
> Additionally, this contention is so vague that it gives applicant no notice of what is being alleged. Thus, it is entirely lacking in the required specificity. Furthermore, even if [Intervenor] proved its allegation that Westinghouse Model D and Model 51 steam generators experienced unanticipated forms of degradation, proof of those facts would not entitle it to any relief because it would not have demonstrated what license conditions should be imposed on this steam generator or that this steam generator was unsatisfactory and ought not to be licensed.
>
> Consequently, we reject this contention.

Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), LBP-82-108, slip opinion at 13-14 (December 10, 1982), affirmed on other grounds, ALAB-719 (March 22, 1983).

Accordingly, Hartsville still has not provided any basis for its proposed Contention 9; nor has it in any other way undermined the wisdom of the Board's ruling on that contention. The Board's rejection of proposed Contention 9 must therefore stand.

III. CONCLUSION

Hartsville has failed to challenge the foundation for the Licensing Board's rulings rejecting Hartsville's proposed Contentions 4, 5 and 9. Accordingly, the Licensing Board's Special Prehearing Conference Order must stand.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Delissa A. Ridgway

Counsel for Applicant

Dated: May 11, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket No. 50-261-OLA
	)	
(H. B. Robinson Steam Electric Plant, Unit 2)	)	ASLBP No. 83-484-03LA
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Response to Hartsville Group's Objections to Special Prehearing Conference Order and Motion for Referral" were served this 11th day of May, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties identified on the attached Service List and hand-delivered to Myron Karman, Esquire.

Delissa A. Ridgway

Delissa A. Ridgway

Dated: May 11, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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