

Enforcement Policy states: "Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty."

The claim that the Licensee realized no appreciable profit from the transactions is not relevant to the fact that the licensee violated its license. As to whether this civil penalty serves the purposes of the NRC's enforcement program, it clearly does so. In cases such as this, an NRC enforcement action is used, in part, as a deterrent to emphasize the importance of management being aware of license requirements, and where there is a question as to the meaning of a requirement, of the need to seek clarification. If a licensee believes that license conditions are unwarranted, the licensee should seek an amendment, and comply with the license until the amendment is granted.

#### *Summary of Licensee's Request for Mitigation*

The Licensee contends that the enforcement action imposes a severe financial hardship on the Licensee, that the NRC standards for imposing civil penalties are too vague to meet standards of due process, and that the penalty should not be imposed because the basic information on which the decision is being made has not been made available to the Licensee in preparation of its defense.

#### *NRC Evaluation of Licensee's Request for Mitigation*

The Licensee sought mitigation complaining that the NRC standards for imposing civil penalties are too vague to meet the standards of due process but did not provide further argument or explanation of that claim. The Congress has provided the Commission with the discretion to issue civil penalties of up to \$110,000 per day per violation. The NRC has for almost 15 years provided publicly available guidelines for developing enforcement actions, including civil penalties. These guidelines are published in the Enforcement Policy.

As to the Licensee's claim that the basic information on which the action was taken was not made available to the Licensee, although the OI Report had not yet been provided to the Licensee because the Licensee had not paid the required charges,<sup>1</sup> the discussion at the Predecisional Enforcement Conference centered on these violations and how they occurred. Further, during the OI investigation the NRC obtained copies of records from the Licensee, including purchase documents for luminous sources and sales documentation. The nature of the violations cited is such that these documents and the personal knowledge of Licensee employees were clearly the basis for the citations and were available to the Licensee.

The staff has reviewed the assessment of the civil penalty, including the exercise of discretion which escalated the civil penalty to \$7,500. In assessing a civil penalty, the NRC weighs both the potential safety

significance and the regulatory significance. While the safety concerns in this matter may not be significant, the regulatory concerns are significant because Licensee management failed to apply the meticulous attention to compliance with license conditions that is required of a licensee. While the NRC remains concerned about management involvement in these violations, the civil penalty has been reconsidered in light of the safety significance of the actual violations. The civil penalty is, therefore, being mitigated by \$5,000.

As to alleged financial hardship, the NRC's Enforcement Policy provides: ". . . it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities."

Therefore, to balance these considerations and to be responsive to the potential financial hardship to the Licensee, the NRC will allow the Licensee, if it wishes, to pay the civil penalty in monthly installments.

#### *NRC Conclusion*

The NRC has concluded that the violations occurred as stated and that the Licensee provided an adequate basis for mitigation of the civil penalty. However, full mitigation is not warranted because of the importance of emphasizing the role of management in ensuring that it understands regulatory requirements and that these requirements are implemented. Here, the new management did not make sufficient effort to ensure compliance. Consequently, a civil penalty in the amount of \$2,500 should be imposed. However, to be responsive to the potential for further financial hardship, the NRC will permit the Licensee to pay the civil penalty in monthly installments.

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## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-400]

### **Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-63 issued to Carolina Power & Light Company (the licensee) for operation of the Shearon Harris Nuclear Power Plant, Unit 1, located in New Hill, North Carolina.

The proposed amendment would modify the emergency diesel generator (EDG) circuitry to return the onsite power system to its original functional

design basis, minimize the need for operator action if a loss of off-site power (LOOP) occurs during EDG testing, and to eliminate the need to declare the EDG inoperable during periodic testing. The proposed amendment must be issued in a timely manner to avoid an unnecessary delay in the modification of the EDG circuitry, and thus an unnecessary delay of the Harris unit 1 restart as a result of the recent discovery by the licensee that the EDG circuitry is not in compliance with the current plant Final Safety Analysis Report (FSAR) and licensing basis requirements. Such a forced delay in the unit restart is unnecessarily costly to the licensee, and the proposed amendment would improve the reliability of the EDG in its designed function during postulated design bases events. The licensee held a meeting with the staff on April 7, 1997, to discuss the proposed modification to the EDG protection circuitry and formally notified the NRC staff that the proposed modification constitutes an unreviewed safety question; and thus the modification would need the NRC review and approval pursuant to the requirements of 10 CFR 50.59(c) and 10 CFR 50.90. On April 18, 1997, the licensee submitted their proposed modification to the EDG circuitry and requested that staff approval be granted under exigent circumstances pursuant to 10 CFR 50.91(a)(6). The NRC staff is thus satisfied that, once formally notified of the potential deficiency in the EDG protection circuitry, the licensee used its best efforts to make a timely amendment request.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

<sup>1</sup> The OI Report was provided to the Licensee on October 16, 1996.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed design change does not change the overall design, layout, and functional performance of the plant structures, systems, and components (SSC), nor does it lower the quality class of any SSC. Specifically, the probability of loss of both divisions of onsite power remains unchanged because the safety related electrical isolation feature of the LOOP relays is not affected and the Technical Specification and FSAR requirement to test only one EDG at a time is retained. The proposed design change does not increase the onsite or offsite radiological effects previously evaluated in the FSAR as a consequence of an accident.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification does not create any new accident initiators. The proposed modification restores the ability of the EDG to respond to a bona fide LOOP as described in the FSAR. The consequences of failure of any circuit components associated with this modification would not result in accidents other than those already addressed in the FSAR.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The margins of safety defined in the Technical Specification Bases are not changed by the proposed modification. The proposed modification restores the ability of the EDG to respond to a bona fide LOOP as described in the FSAR and does not change the acceptance limits defined in the Technical Specifications or the FSAR.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period such that

failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 23, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request

and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Docketing and Services Branch*, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mark Reinhart: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina, 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 18, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland, this 18th day of April 1997.

For the Nuclear Regulatory Commission.

**Ngoc B. Le,**

*Project Manager, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-255, 50-266/301, 50-313/368, 72-5, 72-7, 72-13]

### **Consumers Power Company, Palisades Nuclear Plant, Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2), Entergy Operations, Inc. (Arkansas Nuclear one, Units 1 and 2), Issuance of Director's Decision Under 10 CFR 2.206**

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated September 30, 1996, filed by Citizens' Utility Board (Petitioner) under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition requested that the NRC (1) Require Wisconsin Electric Power Company to retain 24 empty and available spaces in the Point Beach Nuclear Plant spent fuel pool to accommodate retrieval of spent fuel from a VSC-24 cask, and (2) prohibit loading of VSC-24 casks until the Certificate of Compliance, the Safety Analysis Report, and the Safety Evaluation Report are amended to contain operating controls and limits to prevent hazardous conditions.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD-97-09), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room,

the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland, this 17th day of April 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

### **Director's Decision Under 10 CFR 2.206**

#### *I. Introduction*

On September 30, 1996, Citizens' Utility Board filed a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) take the following actions:

1. Order Wisconsin Electric Power Company (WEPCO) to retain 24 empty and available spaces in the Point Beach Nuclear Plant spent fuel pool to provide the capability to permit retrieval of spent fuel from a VSC-24 cask in the event of an accident requiring removal of spent fuel from the cask or in the event that conditions of the certificate of compliance (COC) for the VSC-24 require removal of spent fuel from the cask, until such time that WEPCO has other options available to it to remove spent fuel from a cask in the event conditions warrant it; and
2. Order users of the VSC-24 cask not to load VSC-24 casks until the COC, safety analysis report (SAR), and safety evaluation report (SER) are amended to contain operating controls and limits that prevent hazardous conditions, including but not limited to the generation of explosive gases, due to VSC-24 material reactions with environments encountered during loading, storage, and unloading of the VSC-24 cask. The SAR and SER must be amended such that each operating control and limit is clearly documented and justified in the technical review sections of the SAR and associated SER as necessary and sufficient for safe cask operation.

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letters dated October 11 and December 10, 1996, to Mr. Dennis Dums, on behalf of the Petitioner, acknowledged receipt of the Petition and provided the NRC staff's determination that the Petition did not require immediate action by the NRC. Notice of receipt was published in the **Federal Register** on December 16, 1996 (61 FR 66063).