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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD '00 JAN 13 P3:19

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Frederick J. Shon
Dr. Peter S. Lam

OFFICE OF THE
ADMINISTRATIVE JUDGES

In the Matter of

CAROLINA POWER & LIGHT COMPANY

(Shearon Harris Nuclear
Power Plant)

Docket No. 50-400-LA

ASLBP No. 99-762-02-LA

January 13, 2000

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MEMORANDUM AND ORDER
(Subpart K Oral
Argument Procedures)

In this proceeding regarding the request of applicant Carolina Power & Light Company (CP&L) to expand the spent fuel pool capacity at its Shearon Harris Nuclear Power Plant, in accordance with 10 C.F.R. § 2.1113 the Licensing Board is scheduled to conduct an oral argument on January 21, 2000. Pursuant to its authority under 10 C.F.R. § 2.718(e), the Board establishes the following procedures to govern the conduct of that argument.

I. ORDER OF PRESENTATION

Subpart K of 10 C.F.R. Part 2, which is applicable in this proceeding by virtue of CP&L's election under 10 C.F.R. § 2.1109, does not establish an order of presentation for a

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section 2.1113 oral argument. The agency's rules of practice suggest that, as the license amendment applicant, CP&L has the burden of proof with respect to a merits resolution of any of the substantive matters at issue in this proceeding, including the two admitted technical contentions (TC) sponsored by intervenor Board of Commissioners of Orange County, North Carolina, (BCOC) that will be discussed at the oral argument. See 10 C.F.R. § 2.732; see also Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-697, 16 NRC 1265, 1271 (1982). It also is clear, however, that a central question for Board consideration and resolution in the context of the oral argument is whether there are any disputed factual issues concerning the BCOC contentions that are appropriate for examination in an evidentiary hearing. See 10 C.F.R. § 2.1115(b). Regarding this determination, the Commission has declared that "the burden . . . [is] on the party requesting adjudication." 50 Fed. Reg. 41,662, 41,667 (1985) (statement of considerations for final rule adopting 10 C.F.R. Part 2, Subpart K). From the parties' January 4, 2000 written summaries, it is apparent that BCOC is requesting that an evidentiary hearing be conducted on one or more aspects of its admitted contentions, a suggestion opposed by both CP&L and the NRC staff.

In the context of this Subpart K proceeding, pursuant to its authority under 10 C.F.R. §§ 2.718(e), 2.731, see Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1245-46 (1984), rev'd in part on other grounds, CLI-85-2, 21 NRC 282 (1985), the Board directs that the order of presentation for the January 21 oral argument will be as follows:

Initial oral presentation:	BCOC
Responsive oral presentation:	CP&L
Responsive oral presentation:	NRC staff
Reply oral presentation:	BCOC

Utilizing this order of presentation, the Board will first entertain argument by all parties on contention TC-2, followed by argument on contention TC-3. Counsel should use the oral argument as an opportunity to "join the issues" by addressing matters that are in dispute rather than simply repeating arguments made in their January 4, 2000 written summaries, with which the Board will be fully conversant.¹

¹ By letter dated January 12, 2000, CP&L requested that the Board convene a prehearing conference to discuss (1) the question of burden of proof/order of presentation as well as its concerns about BCOC's purported introduction of a new legal issue regarding contention TC-3 and its reformulation of the bases for contention TC-2. We address the burden of proof/order of presentation issue in this order; the remaining matters can be addressed by the parties during the oral argument.

II. EVIDENTIARY DISPUTES

In its January 4, 2000 written summary, the staff challenges the status of BCOC witnesses Dr. Gordon Thompson and Mr. David Lochbaum as "experts" and asks to have their written declarations in support of BCOC's position on its contentions stricken from the decisional record. See NRC Staff Brief and Summary of Relevant Facts, Data and Arguments Upon Which the Staff Proposes to Rely at Oral Argument on Technical Contentions 2 and 3 (Jan. 4, 2000) at 14-19, 65-66. BCOC counsel will be provided an opportunity to respond to this staff request at the oral argument. Also, at the oral argument the parties should be prepared to identify and discuss any other particular challenges they may have to the evidentiary materials filed by other parties.

III. USE OF PROPRIETARY INFORMATION

In support of their written summaries, both CP&L and the staff have provided several documents that purportedly contain 10 C.F.R. § 2.790 proprietary information. Given the confidential nature of such information, it generally is incumbent upon the Board to close any portion of a public proceeding in which there is a discussion of such information.

To aid the Board in determining whether it will be necessary to close to the public any portion of the January 21 oral argument, we request that the parties discuss whether they intend to utilize proprietary information during the course of the oral argument and, if so, whether that discussion can be limited or segmented in a way that will minimize the need for nonpublic proceedings. On or before close of business (4:30 p.m. EST) on Wednesday, January 19, 2000, CP&L counsel should provide the Board Chairman with a joint report outlining the parties' positions/suggestions regarding the use of proprietary

information at the oral argument. Thereafter, the Board will take further action as may be appropriate.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

This memorandum and order is issued pursuant to the authority of the Chairman of the Atomic Safety and Licensing Board designated for this proceeding.

Rockville, Maryland

January 13, 2000

²Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant CP&L; (2) intervenor BCOC; and (3) the staff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (SUBPART K ORAL ARGU..) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)50-400-LA
LB M&O (SUBPART K ORAL ARGU..)

Dated at Rockville, Md. this
13 day of January 2000

Adrian T. Byrdson
Office of the Secretary of the Commission