

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket No. 50-400-LA
	)	
(Shearon Harris Nuclear Power Plant)	)	ASLBP No. 99-762-LA
	)	

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MOTION TO SET DATE FOR FILING OF RESPONSES

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Susan L. Uttal  
Counsel for NRC Staff

December 28, 2000

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-400-LA
CAROLINA POWER & LIGHT	)	
COMPANY	)	ASLBP No. 99-762-02-LA
(Shearon Harris Nuclear Power Plant)	)	
	)	

MOTION TO SET DATE FOR FILING OF RESPONSES

INTRODUCTION

On December 22, 2000, the Board of Commissioners of Orange County (BCOC) filed a pleading entitled "Orange County's Petition for Review and Request for Immediate Suspension and Stay of the NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion." The NRC staff (Staff) hereby respectfully requests that the Commission, should it deem responses to be necessary, set a date for the filing of responses to BCOC's pleading. The Staff further requests that the date set not be earlier than January 8, 2001.

BACKGROUND

This matter arises from a license amendment request by CP&L to expand fuel pool capacity at the Shearon Harris Nuclear Power Plant, by placing two additional fuel pools into service. BCOC sought intervention, which was granted, as to two technical contentions. LBP-99-25, 50 NRC 25 (1999). The matter proceeded to oral argument, pursuant to Subpart K (10 C.F.R. § 2.1101, *et seq.*), resulting in the denial of a hearing and resolution of the contentions in favor of the licensee. LBP-00-12, 51 NRC 247 (2000).

On December 15, 1999, the Staff issued an Environmental Assessment and Finding of No Significant Impact. Thereafter, BCOC filed a motion for admission of late-filed environmental contentions, which was granted as to one contention. LBP-00-19, 52 NRC 85 (2000). On December 7, 2000, oral argument, pursuant to Subpart K, was held as to the one environmental contention. The decision of the Atomic Safety and Licensing Board is pending.

On December 21, 2000, the Staff, in accordance with 10 C.F.R. §§ 50.58(b)(5) and 50.92, issued a final Determination of No Significant Hazards and the requested license amendment.<sup>1</sup> On December 22, 2000, BCOC filed its pleading.<sup>2</sup>

#### DISCUSSION

The Staff requests that the Commission set a date for the filing of responses to BCOC's pleading due, in part, to the timing (11:14 p.m. on the Friday before a holiday weekend) and mode of service (e-mail and regular mail). The late filing, well after the close of business and without advance notice to the other parties, prevented the Staff from seeing BCOC's pleading until Tuesday, December 26, 2000, the next business day. This situation significantly shortened the Staff's response time.

Although 10 C.F.R. § 2.712(c) permits service to be made by personal delivery, first class, certified or registered mail, telegraph or as otherwise authorized by law, it does not

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<sup>1</sup> Letter from Richard Laufer, NRR, to James Scarola, CP&L, Shearon Harris Nuclear Power Plant, Unit 1 - Issuance of Amendment Re: Expansion of Spent Fuel Storage Capacity, December 21, 2000.

<sup>2</sup> The pleading was filed electronically (by e-mail) at approximately 11:14 p.m.

authorize the use of e-mail.<sup>3</sup> The use of e-mail in the instant case has led to an anomalous result, that is, not same day service, but service completed some four days later. Pursuant to 10 C.F.R. § 2.710, if a party is required to take action within a certain time after service, five days are added to the time if service is made by mail, and, if service is by express mail, two days are added. Based upon the foregoing, the Staff submits that, if responses are deemed to be necessary, that they should not be required to be filed before January 8, 2001.

On its face, BCOC's pleading does not appear to be one permitted by the Commission's regulations -- it seeks to challenge the Staff's final No Significant Hazards Consideration determination and the resulting issuance of the license amendment. See 10 C.F.R. § 50.58(b)(6). See also *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), C/LI-86-12, 24 NRC 1, 4-5 (1986). And, although the stay provisions of 10 C.F.R. § 2.788 are arguably applicable to the extent that the pleading requests a stay, the procedural provisions are not, because the request is not related to the action of a licensing board. It is, rather, an impermissible challenge to a Staff action not provided for in the Commission's Rules of Practice. In any event, service of this pleading was made, as noted above, in a manner which has the effect of depriving the other parties of a fair opportunity to prepare meaningful responses, especially in light of the holiday season during which individuals necessary to prepare a response are unavailable. If treated as a stay request pursuant to 10 C.F.R. § 2.788, and if the e-mail service is deemed to be effective, responses

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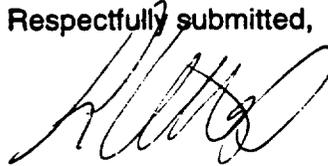
<sup>3</sup> The Licensing Board previously issued an order specifically sanctioning service by e-mail and regular mail, but the applicability of that order is limited to the proceedings before the Licensing Board. Memorandum and Order (Initial Prehearing Order), February 24, 1999. But that Order also required that e-mail service must ensure receipt on the day of filing. Clearly, the filing of a pleading at 11:14pm, without prior notice to the other parties, does not satisfy the intent of the Licensing Board's Order.

from the Staff and Licensee are to be filed by January 2, 2001. In light of the foregoing, the Staff requests that in accordance with 10 C.F.R. § 2.711, the Commission should set a date for filing of responses, if responses are determined to be necessary, or extend the time for responses. The Staff respectfully requests that the Commission set a date not earlier than January 8, 2001.

**CONCLUSION**

Based on the foregoing, the Staff respectfully requests that the Commission, should it deem responses to BCOC's filing to be necessary, set a date for party responses to BCOC's pleading not earlier than January 8, 2001.

Respectfully submitted,



Susan L. Uttal  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 28<sup>th</sup> day of December, 2000

UNITED STATES OF AMERICA  
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(Shearon Harris Nuclear Power Plant)	)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of "MOTION TO SET DATE FOR FILING OF RESPONSES" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in U.S. Postal Service as indicated by double asterisk, with copies by electronic mail as indicated this 28<sup>TH</sup> day of December, 2000:

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Atomic Safety and Licensing Board  
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Washington, DC 20555-0001

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