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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'99 FEB 24 P2:52

Before Administrative Judges:

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

Office  
for  
Adjudication

**SERVED FEB 24 1999**

In the Matter of  
  
CAROLINA POWER & LIGHT COMPANY  
  
(Shearon Harris Nuclear  
Power Plant)

Docket No. 50-400-LA  
ASLBP No. 99-762-02-LA  
February 24, 1999

MEMORANDUM AND ORDER  
(Initial Prehearing Order)

In this proceeding, Carolina Power & Light Company (CP&L) has applied under 10 C.F.R. § 50.90 for a license amendment to increase the spent fuel storage capacity at its Shearon Harris Nuclear Power Plant, located in Wake and Chatham Counties, North Carolina. In its December 23, 1998 amendment request, CP&L seeks authorization to add rack modules to spent fuel pools "C" and "D" and place the pools in service. On January 7, 1999, the NRC staff issued a notice that the agency is (1) considering this license application; (2) considering making a no significant hazards determination under 10 C.F.R. § 50.92 that would permit issuance of the amendment; and (3) affording the opportunity for a formal adjudicatory hearing on the CP&L application.

Template = SECY-039

SECY-02

The notice was published in the Federal Register on January 13, 1999. See 64 Fed. Reg. 2237 (1999).

By filing dated February 12, 1999, petitioner Board of Commissioners of Orange County, North Carolina, (BCOC) has asked for a hearing relative to the CP&L license amendment application. On February 18, 1999, the Secretary of the Commission referred the CP&L application to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On February 24, 1999, this Licensing Board was appointed to preside over this proceeding. See 64 Fed. Reg. \_\_\_\_\_ (1999).

In accordance with its authority under 10 C.F.R. § 2.718, the Licensing Board establishes the following directives regarding the conduct of this proceeding:

I. SCHEDULE FOR FURTHER FILINGS REGARDING  
PETITIONER'S HEARING REQUEST/INTERVENTION PETITION  
AND FOR PREHEARING CONFERENCE

A. Answers to Hearing Request/Intervention Petition

Applicant CP&L's answer to the pending hearing request/intervention petition shall be filed on or before Monday, March 1, 1999. The staff's answer to the pending hearing request/intervention petition shall be filed on or before Thursday, March 4, 1999. See 10 C.F.R. § 2.714(c).

B. Supplement to Hearing Requests/Intervention Petitions and Responses

Pursuant to 10 C.F.R. § 2.714 (a)(3), (b)(1), on or before Monday, April 5, 1999, petitioner BCOC may file a supplement to its hearing petition/intervention request, which must include its list of contentions and supporting bases. Any contention submitted after this date will be considered a late-filed contention that must meet the requirements for admission set forth in section 2.714(a)(1)(i)-(v).

Each contention shall be given a separate numeric or alpha designation within one of the following three groups:

1. Technical -- primarily concerns issues relating to matters discussed or referenced in Enclosures 1, 4, 5, 6/7, 8, and 9 of the CP&L application.<sup>1</sup>
2. Environmental -- primarily concerns issues relating to matters discussed or referenced in Enclosure 3 of the CP&L application.
3. Miscellaneous -- does not fall into one of the two categories outlined above.

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<sup>1</sup> Enclosure 7 to the CP&L application is a proprietary version of Enclosure 6, which is a licensing report supporting the expansion of spent fuel pools "C" and "D." If petitioner BCOC desires access to the proprietary version of the report, BCOC counsel should contact applicant's counsel immediately and discuss the need for a protective order. Any request for such an order, which should include a draft of the order, should be filed with the Board on or before Thursday, March 4, 1999. That request should indicate whether the applicant and the staff oppose the issuance of a protective order.

If the petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these three categories, it must set forth the contention and supporting bases in full separately for each category into which it is asserted to fall with a separate designation for that category (e.g., Technical-3 and Environmental-3).

Applicant and staff responses to the petitioner's supplement shall be filed on or before Wednesday, May 5, 1999.

C. Prehearing Conference

The Licensing Board intends to hold a prehearing conference at the Atomic Safety and Licensing Board Panel Hearing Room, Room T-3B45, Third Floor, Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland, during the week of May 10, 1999. During this prehearing hearing conference the Board will entertain participant oral arguments concerning the petitioner's standing and the admissibility of its contentions. Any participant who has a potential scheduling conflict the week of May 10, 1999, should contact the Board Chairman immediately at (301) 415-7454.

## II. ADMINISTRATIVE MATTERS

### A. Notice of Appearance

If they have not already done so, within five days of the date of this memorandum and order, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.713(b). In each notice of appearance, besides providing a business address and telephone number, if an attorney or representative has a facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well. Counsel who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information within five days of the date of this issuance.

### B. Service on the Licensing Board Members and Other Participants

#### 1. Service on Licensing Board Members

For each pleading or other submission filed before the Licensing Board or the Commission in this proceeding, subject to the requirement of section II.B.1.g below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.708(d) and serving a copy on every other participant in accordance with section 2.701(b), a participant should serve

conforming copies on the members of the Licensing Board by one of the following methods:

a. Regular Mail. To complete service on the members of the Licensing Board via United States Postal Service first-class mail, a participant should send conforming copies to each of the Licensing Board members at the following address:

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

For regular mail service, the staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

b. Overnight or Hand Delivery. To complete service on the members of the Licensing Board via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to each of the Licensing Board members at the following address:

Atomic Safety and Licensing Board Panel  
Third Floor, Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852

It should be noted that use of the Board's regular mail address (see section II.B.1.a above) on an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

c. Facsimile Transmission. To complete service on the members of the Licensing Board by facsimile transmission, a participant should (a) send one copy by rapifax to the attention of the members of the Licensing Board at (301) 415-5599 (verification (301) 415-7393); and (b) that same date, send conforming copies to each of the Licensing Board members by regular mail at the address given in section II.B.1.a above.

d. E-Mail. To complete service on the members of the Licensing Board by e-mail transmission, a participant should (a) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to each of the Licensing Board members (Internet IDs: gpb@nrc.gov, fjs@nrc.gov, psl@nrc.gov; NRC Agency Upgrade of Technology for Office Systems (AUTOS) Wide Area Network (WAN) System IDs: GPB, FJS, PSL); and (b) send paper conforming copies that same date to each of the Licensing Board members by regular mail at the address given in section II.B.1.a above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The

e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to each of the Licensing Board members by regular mail at the address given in section II.B.1.a above.

- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen pages, the pleading should be sent by e-mail and the paper conforming copy of the pleading with the attachments should be sent to each of the Licensing Board members by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To be timely, any pleading or other submission served on the Licensing Board members by hand delivery, facsimile transmission, or e-mail must be received by the Licensing Board no later than 12:00 a.m. (midnight) Eastern Time on the date due.

f. Service on Other Participants. Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Licensing Board, the participant serving the pleading should make service on all other participants and the Office of the Secretary by the same or a comparable method.

g. Service of all Filings. Absent some other directive from the Board, all filings in this case directed to the Board shall be served on the Board and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the Board, the participants may use any of the methods outlined above so long as the filing is timely received by the Board and the other participants.

C. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent preapproval of the Board.<sup>2</sup> A request for Board preapproval to exceed this page limitation shall be sought in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be

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<sup>2</sup> The intervention petition supplement and any responses thereto permitted under section I.B are not subject to this page limitation. However, any subsequent motion for admission of a late-filed contention and responses thereto are subject to this page limitation.

filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.730(c). A request for Board preapproval to file a reply shall be sought in writing no less than three business days prior to the time the reply will be filed.<sup>3</sup> A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

D. Motions for Extension of Time

A motion for extension of time filed with the Board in this proceeding shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; and (2) demonstrate good cause that supports permitting the extension.

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<sup>3</sup> Although the agency's rules of practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within ten days of the date of service of the response it is intended to address.

E. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Board, the Office of the Secretary, and counsel for the other participants by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

F. Exhibits/Attachments to Filings.

If a participant files a pleading or other submission with the Board that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.C.1 above.

### III. ELECTRONIC HEARING DATABASE

Establishing an electronic database for this case will be a significant aid to the Licensing Board and the participants as the proceeding goes forward. Although the

agency's rules of practice do not yet incorporate provisions for filing and docketing documents electronically, the Board nonetheless would like to have the participants' cooperation in establishing an electronic database for this proceeding.

To this end, the Board requests that for each filing or submission that a participant makes, it provide the Board with an electronic version of the document. The electronic version of the document can be submitted by e-mail or on a 3.5 inch diskette. Text documents can be forwarded in their native wordprocessing format (e.g., Word, WordPerfect).<sup>4</sup> Any nontext documents/attachments (e.g., maps or older text documents for which an electronic version is not available) should be provided in any standard image format (e.g., BMP, TIFF, JPG, GIF).<sup>5</sup>

So that the Licensing Board can begin creating this database, within ten days from the date of this memorandum

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<sup>4</sup> In submitting the electronic version of text documents, the participants should be careful to ensure that any dates in the documents are entered using characters rather than a "date code." Inserting a date code may cause the date to appear as the current date when the document is viewed, thereby creating confusion about the actual date of the document.

Also in this regard, as an aid to the Board, we request that participants place the date of each pleading (i.e., the date it is filed and served) on the document's first page.

<sup>5</sup> A participant that has any questions about image format compatibility or does not have the capability of providing images of nontext documents should contact Mr. James Cutchin at the phone number given in the text below.

and order, each of the participants should provide the Board with an electronic version of any document (e.g., petitioner's hearing petition/intervention request) they already have filed in this proceeding. Electronic copies of future filings should be provided to the Board contemporaneously with the submission of the document.

Electronic copies of filings should be sent to James M. Cutchin V by regular mail at the address given in section II.B.1.a above or by Internet e-mail to [jmc3@nrc.gov](mailto:jmc3@nrc.gov) (NRC AUTOS address JMC3). Mr. Cutchin can be reached at (301) 415-7397 if the participants have any questions about formatting or submitting electronic documents.

In addition, the Board requests that on or before Thursday, March 4, 1999, either applicant CP&L or the staff provide the Board with an electronic version (if available)

and one paper copy of the December 23, 1998 CP&L license amendment application and any subsequent revisions thereto.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>6</sup>



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G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 24, 1999

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<sup>6</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for applicant CP&L, petitioner BCOC, and the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
CAROLINA POWER & LIGHT COMPANY  
(Shearon Harris Nuclear Power Plant)

Docket No.(s) 50-400-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (INITIAL PREH. ORDER) 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.

Office of Commission Appellate  
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Washington, DC 20555

Administrative Judge  
G. Paul Bollwerk, III, Chairman  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Frederick J. Shon  
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Dated at Rockville, Md. this  
24 day of February 1999

  
Office of the Secretary of the Commission