

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKET # 50-400-LA
33-1

ATOMIC SAFETY AND LICENSING BOARD

'99 JUL 29 P3:31

Before Administrative Judges:

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

OFFICE
OF THE
ADMINISTRATIVE
JUDGES

SERVED JUL 30 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
July 29, 1999

MEMORANDUM AND ORDER
(Granting Request to Invoke
10 C.F.R. Part 2, Subpart K
Procedures and Establishing Schedule)

In response to the Licensing Board's July 12, 1999 memorandum and order admitting petitioner Board of Commissioners of Orange County, North Carolina, (BCOC) as a party to this proceeding, see LBP-99-25, 50 NRC ____ (July 12, 1999), in a filing dated July 21, 1999, applicant Carolina Power and Light Company (CP&L) has requested that this proceeding be conducted in accordance with the hybrid hearing procedures of 10 C.F.R. Part 2, Subpart K. In addition, CP&L has proposed a schedule for the ninety-day discovery period permitted under 10 C.F.R. § 2.1111, submitting the written summaries provided for under section 2.1113(a), and holding the oral argument mandated by section 2.1113(a) concerning whether there are disputed

issues of law or fact that require resolution in an evidentiary hearing. In its request, CP&L also indicated that while the staff agrees with this schedule, which would culminate in an oral argument in mid-December 1999, intervenor BCOC was unable to agree or disagree because of the unavailability of one of its experts.

To obtain more information regarding BCOC's position, on July 27, 1999, we conducted a telephone conference with the parties. Citing scheduling problems regarding the availability of its experts and its counsel, BCOC suggested a schedule under which the oral argument be held in mid-January 2000. Both CP&L and the staff objected to this request, asserting the BCOC had failed to demonstrate sufficient grounds for its alternative schedule.

Under section 2.1109(a)(1), a timely request by any party to a spent fuel storage expansion proceeding to invoke the Subpart K hybrid hearing procedures must be approved. Accordingly, we grant the July 21, 1999 CP&L request to proceed under Subpart K. Further, bearing in mind the various parties' concerns about scheduling as expressed during the July 27 telephone conference, we establish the following timetable for utilizing the Subpart K procedures:

Discovery Begins	Monday, August 2, 1999
Discovery Ends	Sunday, October 31, 1999
Written Summaries Filed	Monday, December 20, 1999

Oral Argument

Tuesday, January 4, 2000

Relative to this schedule, we make the following additional observations. Although we explored with the parties the utility of using informal discovery methods (e.g., document exchanges and witness interviews) during the first portion of the discovery period, CP&L suggested that given the limited time period involved, this would not result in any significant time or resource savings. Neither BCOC nor the staff voiced strong objections to this position. Accordingly, we will permit the ab initio use of the formal discovery techniques set forth in 10 C.F.R. §§ 2.740-.744. As we noted during the telephone conference, however, we expect that all the parties will attempt to be as specific as possible in their information requests and provide access to requested documents and knowledgeable individuals to the maximum degree possible.

In connection with the discovery process, the parties also are advised of the following limitations and guidelines:

1. Absent prior leave of the Board or written stipulation, relative to each admitted contention each party may serve on the other two parties not more than fifteen interrogatories per party, including all discrete subparts, and not more than three deposition notices per party.

2. To be timely, a discovery request must permit a timely response on or before the day the discovery period closes.¹ Likewise, depositions should be scheduled to conclude on or before the date discovery closes.

3. Absent some other agreement of the parties, discovery requests and responses (including requests for admissions) should be served on the Board (if required by agency rules) and the other parties by e-mail, facsimile transmission, or other means that will ensure receipt on the day of filing, with conforming paper copies to follow.

4. As part of any motion to compel/motion for protective order, counsel for the moving party shall provide a certification that he or she previously has (a) provided the opposing party to whom the motion is directed a clear and concise written statement of the asserted deficiencies or objections and the requested action relative to the discovery request; and (b) after providing this statement, consulted with that party's counsel in an attempt to resolve all the disputed matters without Board action.

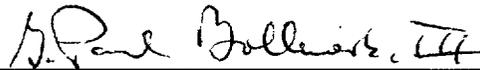
Finally, for planning purposes, the parties should be aware that the Board intends to conduct the Subpart K oral

¹ The filing deadlines specified for interrogatory, admission, and document production responses can be extended by agreement of the parties involved so long as the response does not run beyond the scheduled discovery cut-off date. The filing deadline for motions to compel can be extended only by leave of the Board.

argument in the Atomic Safety and Licensing Board Panel Hearing Room at NRC Headquarters in Rockville, Maryland. In addition, the parties are advised that the Board intends to conduct one or more sessions to receive 10 C.F.R. § 2.715(a) limited appearance statements in the vicinity of the Shearon Harris facility during the first half of December 1999.² Additional details on these sessions will be provided at a later time.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 29, 1999

² If the parties have any suggestions regarding potential appropriate venues for limited appearance sessions, they should contact Licensing Board Panel administrative director Jack Whetstine at (301) 415-7319 on or before Friday, August 13, 1999.

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

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NUCLEAR REGULATORY COMMISSION

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CAROLINA POWER & LIGHT COMPANY) Docket No. 50-400-LA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING REQUEST TO INVOKE 10 C.F.R. PART 2, SUBPART K PROCEDURES AND ESTABLISHING SCHEDULE) 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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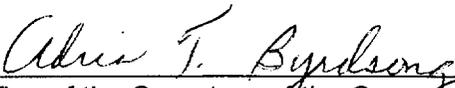
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Docket No. 50-400-LA


Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of July 1999