UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 13813 **DOCKETED 06/29/07**

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 06/29/07

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Peter S. Lam
Dr. Alice Mignerey

In the Matter of:	Docket No. 50-400-LR
CAROLINA POWER & LIGHT COMPANY	ASLBP No. 07-855-02-LR-BD01
(Shearon Harris Nuclear Power Plant, Unit 1)	June 29, 2007

ORDER
(Regarding Questions to Focus on in Oral Argument; Timing of Oral Argument)

On July 17, 2007, the Licensing Board will hold oral argument on the pending petition for hearing of the North Carolina Waste Awareness and Reduction Network and the Nuclear Information and Resource Service in the above-captioned license renewal proceeding. At the oral argument, the Board will expect the parties to focus primarily on the following issues:

Contention TC-1:

1. The relevance of three statements relating to the scope of license renewal that are found in Section 2.3.3.31 of the License Renewal Application (*see* fourth paragraph and final line of page 2.3-116), to whether Contention TC-1 is within the scope of license renewal and admissible in this proceeding.

2. The relevance of the language from the 2005 Standard Review Plan for License Renewal (NUREG-1800) that is quoted at the bottom of page 7 of Petitioners' Reply,[1] to

[1] The language in question is the following, from the Introduction to NUREG 1800:

> In addition to the technical information required by 10 CFR 54.21, a license renewal application must contain general information (10 CFR 54.19),

(continued...)

whether Contention TC-1 is within the scope of license renewal and admissible in this proceeding, in light of the discussion of "Fire Protection Review Criteria for License Renewal" found in NUREG-0800, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, Section 9.5.1, App. B at 9.5.1-22 to -23 (Rev. 5, 2007), as well as in light of the following additional statements from NUREG-1800 and the Commission's *Turkey Point* decision:

> License renewal reviews focus on the period of extended operation. Pursuant to 10 CFR 54.30, if the reviews required by 10 CFR 54.21(a) or (c) show that there is not reasonable assurance during the current license term that licensed activities will be conducted in accordance with the CLB, the licensee is required to take measures under its current license to ensure that the intended function of those systems, structures, or components will be maintained in accordance with the CLB throughout the term of the current license. The adequacy of the measures for the term of the current license is not within the scope of the license renewal review.

NUREG-1800 at p.4.7-1

> Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review, for our hearing process (like our Staff's review) necessarily examines only the questions our safety rules make pertinent.

Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001).

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[1](...continued)

> necessary technical specification changes (10 CFR 54.22), and environmental information (10 CFR 54.23). The application must be sufficiently detailed to permit the reviewers to determine (1) whether there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB and (2) whether any changes made to the plant's CLB to comply with 10 CFR Part 54 are in accord with the Atomic Energy Act of 1954 and NRC regulations.

NUREG 1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (Rev. 1, 2005), at 1.

3. The relevance of any future license amendment adjudicatory proceeding, as referenced in the final Director's Decision in the *Shearon Harris* § 2.206 proceeding, *see* DD-07-03, Director's Decision Under 10 C.F.R. § 2.206 (pp. 7-8), to this license renewal proceeding and to the admissibility of Contention TC-1 in this proceeding.

Contentions EC-1, EC-2:

1. The precedential effect of the Commission's decision (in the nature of an appellate court decision) in *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-29 (2007), *aff'g* LBP-06-7, 63 NRC 188 (2006), in this license renewal proceeding (which is in the nature of a trial court proceeding), and whether, and if so how, the issues and alleged facts in this *Shearon Harris* proceeding may, in such light, be distinguished from those in the *Oyster Creek* proceeding.

2. The precedential effect of the U.S. Supreme Court's denial of certiorari in the case of *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied sub nom. Pacific Gas & Elec. Co. v. San Luis Obispo Mothers for Peace*, 127 S.Ct. 1124 (2007), in light of the following authority: *Maryland v. Baltimore Radio Show*, 338 U.S. 912 (1950); *Excel Communications, Inc. v. AT&T Corp.*, 528 U.S. 946 (1999); *Evans v. Stephens*, 544 U.S. 942 (2005).

Contention EC-3:

1. Whether Contention EC-3 meets the requirements of 10 C.F.R. § 2.309(f), particularly those at subsections (f)(1)(i) and (f)(1)(vi), in light of the Licensing Board's analysis and ruling on a somewhat similar contention in the *Pilgrim* license renewal case, *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 323-41 (2006).

2. The relevance of the possibility of Petitioners being able to address their concerns expressed in Contention EC-3 through an enforcement and/or rulemaking petition(s), as suggested by Staff in its Response to the Petition (p. 23 n.29); and the extent to which any such action would address Petitioners' concerns.

Timing of Oral Argument

In order to facilitate the most effective use of time during the July 17 oral argument, the parties will be permitted to make brief arguments on each contention, limited to the time periods specified below, on the issues stated above and otherwise only as necessary to respond to matters not already addressed in the parties' written filings. Counsel should be prepared to respond to questions from the Board on these and any other issues that arise in the course of oral argument, so as to assist the Board in analyzing effectively and appropriately, under governing legal authority, the significant issues presented by Petitioners' contentions.

Contention TC-1 — Approximately 15 minutes for each party's counsel.
Contention EC-1 and EC-2 (combined) — Approximately 7-10 minutes each counsel.
Contention EC-3 — Approximately 10-12 minutes each counsel.

The Board anticipates that most of the parties' and Board's time will be taken up in question-and-answer discussion on the focus issues set forth above, along with any other appropriate issues that may arise.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 29, 2007[2]

[2]Copies of this Order were sent this date by Internet e-mail to all parties' counsel.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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CAROLINA POWER & LIGHT CO.	)	Docket No. 50-400-LR
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(Shearon Harris Nuclear Power Plant, Unit 1)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REGARDING QUESTIONS TO FOCUS ON IN ORAL ARGUMENT; TIMING OF ORAL ARGUMENT) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-400-LR
LB ORDER (REGARDING QUESTIONS TO FOCUS ON IN ORAL ARGUMENT; TIMING OF ORAL ARGUMENT)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 29th day of June 2007