

RAS 13916

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

July 26, 2007 (4:00pm)

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative Judges:

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

In the Matter of:

CAROLINA POWER & LIGHT COMPANY  
(Shearon Harris Nuclear Power Plant, Unit 1)

Docket No. 50-400-LR

ASLBP No. 07-855-02-LR-BD01

June 27, 2007

PETITIONERS' MOTION TO STAY THE PROCEEDINGS

NOW COME the Petitioners, the North Carolina Waste Awareness and Reduction Network ("NC WARN") and the Nuclear Information and Resource Service ("NIRS"), following up on the motion to stay the proceedings made orally on-the-record to the ASLB during oral arguments on July 17, 2007. In support of the motion is the following:

1. Pursuant to 10 C.F.R. §2.321 (c) the Chair of the ASLB "has the duties and may exercise the powers of a presiding officer as granted by § 2.319." It is clear that the Chair has the power to stay the proceeding upon good cause. § 2.319(h) allows the presiding officer to "dispose of procedural requests or similar matters" and (r) allows the presiding officer to "take any other action consistent with the Act, this chapter, and 5 U.S.C. 551-558." Included in these action are the extension and reduction of time limits "for good cause" in § 2.307. §2.323 (g) specifically references the power of the presiding officer to stay the proceeding or extend the time for performance.

2. One of the contentions raised by the Petitioners, Contention TC-1 (Fire Protection), alleged that the Shearon Harris NPP was not in compliance with NRC fire protection regulations and was not likely to come into compliance. At oral argument, counsel for the Applicant,

Template = SECY-041

SECY-02

Carolina Power & Light (doing business as Progress Energy), stated that the Applicant intended to file a petition with the NRC in May, 2008, with a projected timetable for bringing the plant in compliance with the NFPA 805, as an alternative means of compliance with the fire protection regulations. It should be noted that counsel did not state that the Shearon Harris NPP would be in compliance in May, 2008, only that there would be a proposal to do this as a "pilot project."

3. This assertion by counsel does not satisfy the Petitioners' contention on fire protection. As evidenced in the Petitioners' Request for a Hearing and the record of Petitioners' §2.206 Petition on fire protection, the Applicant has made a series of commitments to come into compliance with the fire protection regulations and has not come into compliance. However if the Shearon Harris NPP is brought into compliance either with the existing regulations at 10 C.F.R. 50, Appendix R, III.G.2, or with the NFPA 805 alternative, then this contention can be resolved.

4. As discussed at length in the oral arguments, the strength of the commitment to bring the plant into compliance in a reasonable time period would be a necessary part of the evidence needed to prove or disprove the contention. Although it would be far better to have the plant currently in compliance, Petitioners believe that public health and safety would be better served if there were a clear, enforceable timetable for compliance.

5. Lastly, it should be noted that the current license does not expire until 2027 so there can be no argument that delay of the hearing on the relicensing for even a year or two would cause any harm to the Applicant.

THEREFORE, in light of the above, Petitioners pray that the relicensing hearing as it pertains to the contention on fire protection be stayed until the Applicant brings the Shearon Harris NPP into compliance with the fire safety rules.

This is the 27<sup>th</sup> day of July, 2007.

FOR THE PETITIONERS



---

John D. Runkle  
Attorney at Law  
P.O. Box 3793  
Chapel Hill, N.C. 27515  
919-942-0600 (o&f)  
[jrunkle@mindspring.com](mailto:jrunkle@mindspring.com)

CERTIFICATE OF SERVICE

I hereby certify that copies of this PETITIONERS' MOTION TO STAY THE PROCEEDINGS was served by electronic mail per the service list prepared by Debra Wolf, Law Clerk, ASLB Panel, and by deposit in the U.S. Postal Service, postage prepaid, on the following:

Ann Marshall Young  
Administrative Law Judge  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

Peter S. Lam  
Administrative Law Judge  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

Alice Mignerey  
Administrative Law Judge  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

John H. O'Neill, Jr  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037

David R. Roth  
Sherwin E. Turk  
Counsel for NRC Staff  
Mail Stop O-15 D21  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

Office of the Secretary  
Attn: Rulemaking and Adjudications Staff  
Mail Stop O-16 C1  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

This is the 27<sup>th</sup> day of July, 2007.



John D. Runkle, Attorney at Law