

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Michael C. Farrar



In the Matter of)

CAROLINA POWER AND LIGHT COMPANY)

(Shearon Harris Nuclear Power)
Plant, Units 1, 2, 3, and 4))

Docket Nos. 50-400
50-401
50-402
50-403

MEMORANDUM

October 12, 1979

In its supplemental initial decision issued on July 13, 1979,^{1/} the Licensing Board concluded that the construction permits previously issued for the four units of the Shearon Harris nuclear facility "should be conditioned to require that [the applicant Carolina Power and Light Company] demonstrate in a public hearing during the operating license proceeding that it is then or timely will be technically qualified to operate Shearon Harris safely". 10 NRC at ___ (slip opinion, p. 9). In other words, the Board determined that, with respect to the management capability or technical qualifications issue,

1/ LBP-79-19, 10 NRC ___.

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the public interest required a hearing at the operating license stage. Id. at ___ (slip opinion, p. 124); see 10 C.F.R. 2.104(a). It embodied its determination in the following condition (id. at ___ (slip opinion, p. 125)):

At an appropriate time during the review of the application for the operating license of the Shearon Harris Nuclear Power Plant, the Staff shall implement the necessary actions to enable the Secretary to issue a notice of hearing on said application to be published in the Federal Register required under 10 CFR §2.104. In addition to the other requirements of §2.104, the notice of hearing shall state that the presiding officer will consider (in addition to any other matter which may be in controversy) whether the Applicant has the management capability and is technically qualified to engage in the activities to be authorized by the operating license in accordance with the regulations of 10 CFR Chapter 1.

The NRC staff filed an exception to that condition on the ground that it was in excess of the Licensing Board's "jurisdiction and authority". The brief in support of that exception was filed and served on September 4, 1979.^{2/}

The time provided by 10 CFR 2.762(b) for the filing and service of responsive briefs has now expired. None of the

^{2/} In that brief, the staff also discussed (as requested by us in an August 2 order) its standing to complain of the condition in issue. We have now tentatively concluded that the staff does have such standing. We will address that point in our later opinion devoted to the merits of the appeal.

other parties to the proceeding chose to submit such a brief (although the applicant did advise us by letter, without elaboration, that it regards the staff's exception to be well-taken). Thus, the staff's attack upon the Licensing Board's action has gone unanswered.

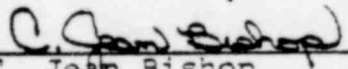
It does not necessarily follow, of course, that the staff is right in arguing that the Board below exceeded its authority. Contest or not, it remains our obligation to decide the question. In discharging this responsibility (and particularly in light of the absence of a contest), it would be helpful to have at hand the considerations which led the Licensing Board to conclude that it possessed the authority to impose the condition in issue. Although the Board did not explicitly so state in the supplemental initial decision, it obviously must have been satisfied that such authority existed. Indeed, it may reasonably be inferred from the Board's election not to address specifically the authority question that it thought the matter to be free of all doubt.

Accordingly, we now invite the Board to furnish us with its views. In recognition of the fact that its members may well have existing commitments of a pressing nature,^{3/} and

^{3/} Among other things, the Chairman of the Board below is also the Chairman of the Licensing Board recently convened in the new proceeding involving Unit No. 1 of the Three Mile Island facility.

the additional fact that the appeal before us seemingly need not receive urgent resolution,^{4/} we do not ask for those views by any particular date. We have no doubt that the Board will supply them as soon as practicable given the other matters which require the prompt attention of its members.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

^{4/} It likely will be some time before the Shearon Harris facility will be ready for consideration for an operating license.