

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



October 2, 1978



MEMORANDUM FOR: O. Gene Abston, Acting Director
Office of Inspector and Auditor

FROM: *cf* James L. Kelley, Acting General Counsel

SUBJECT: INQUIRY INTO STAFF TESTIMONY AT THE SHEARON
HARRIS CONSTRUCTION PERMIT HEARING

This is in response to your memorandum to me of September 28, 1978, on the above subject. I do not believe that the interviews with the Licensing Board members, as described in your memorandum, would violate the ex parte rule. For one thing, you are not a "party" to the proceeding within the meaning of the rule, since you are an office reporting directly to the Commission. Secondly, although it may be impossible to totally separate the subject of your inquiry from the merits issue remanded to the Board, I believe that the two subjects are sufficiently distinct that you can proceed without seriously compromising this aspect of the rule. Finally, the results of your interviews will ultimately be placed in the public record of the proceeding and the parties will have an opportunity to comment. That proposed procedure is fully inconsistent with the spirit of the ex parte rule. In view of the foregoing considerations, I believe that your proposed interviews of Board members will be consistent with the Commission rules, including the ex parte rules, and that, indeed, such interviews are necessary in order for you to carry out the Commission's directive.

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September 21, 1978

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Ivan W. Smith, Esq., Chairman
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Mr. Glen O. Bright
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In the Matter of
Carolina Power & Light Company
(Shearon Harris Plant, Units 1, 2, 3, 4)
Docket Nos. 50-400, 50-401, 50-402 and 50-403

Gentlemen:

By letter dated September 14, 1978, Staff counsel advises the Board that the Staff expected to be able to file written testimony by November 1, 1978, for the remanded hearing on the management capabilities of Carolina Power & Light Company to construct and operate the Shearon Harris facility. Staff counsel further suggested that the hearing could take place by the middle of November, barring unexpected scheduling problems.

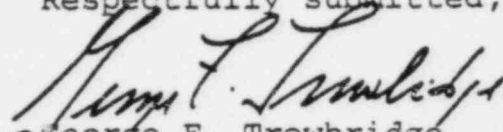
Carolina Power & Light Company will also be prepared to meet a mid-November hearing date and suggests that when a definite hearing date has been established, the filing date for prepared

SHAW, PITTMAN, POTTS & TROWBRIDGE

Ivan W. Smith, Esq.
Page Two
September 21, 1978

testimony should be set two weeks in advance of the hearing. We also respectfully request that the hearing date be established after a conference call with counsel for the parties to avoid schedule conflicts.

Respectfully submitted,


George F. Trowbridge

GFT/pan

cc: Charles A. Barth, Esq.
Thomas S. Erwin, Esq.
Jesse C. Brake, Esq.
Docketing and Service Section