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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket Nos. 50-400 OL
AND NORTH CAROLINA EASTERN	)	50-401 OL .
MUNICIPAL POWER AGENCY	)	
	)	
(Shearon Harris Nuclear Power	)	
Plant, Units 1 and 2)	)	

APPLICANTS' POSITION ON SERVICE OF DOCUMENTS TO INTERVENORS

The Atomic Safety and Licensing Board in Duke Power Company, et al. (Catawba Nuclear Station Units 1 and 2), Docket Nos. 50-413-OL and 50-414-OL, "Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference)," at 39 (March 5, 1982), ordered that applicants and NRC Staff serve intervenors with copies "of all relevant documents generated by the [a]pplicants and the Staff in connection with this operating license proceeding." The Board in Catawba explained that such documents would include, "most significantly, amendments to the FSAR, other formal technical exchanges between the

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[a]pplicants and Staff, emergency plans generated by state and local authorities, the draft and final environmental impact statements, and the Staff's Safety Evaluation Report, as supplemented." At the Prehearing Conference in the instant proceeding, Chairman Kelly requested that NRC Staff and Applicants advise the Board of any objections to the Order issued in Catawba. Tr. 351. Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency herein state their opposition to the issuance of a similar order by this Board in the Harris operating license proceeding.

The Catawba Board in a "Memorandum and Order (Overruling Objections Following Prehearing Conference, Denying Requests for Referral to the Appeal Board, and Addressing Certain Related Questions)," at 2 (July 8, 1982), rejected the applicants' objections to the Board's order requiring service on all parties of copies of relevant documents generated by the applicants or NRC Staff. In doing so, the Catawba Board adopted the legal arguments and reasoning of the "NRC Staff's Response to Applicants' Motion for Certification of Certain Rulings in Licensing Board's Prehearing Conference Order," at 17-19 (April 20, 1982). NRC Staff's position there, as adopted by the Catawba Board, was simply that the Board has authority pursuant to 10 C.F.R. § 2.718 to take action "necessary" to "avoid delay and to maintain order" and to "regulate the course

of the hearing and the conduct of the participants."<sup>1/</sup> Whether or not a licensing board has such authority, Applicants believe that there has been no demonstration that its exercise is necessary in this proceeding. Certainly, Intervenors here have not demonstrated that the due process requirements, which were the consideration in Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-184, 7 AEC 229, 237 (1974), cited by the NRC Staff in support of the Board's Catawba Order, are present here. Where the record in this proceeding indicates a willingness on the part of Applicants to cooperate with Intervenors' reasonable requests, the Board should not interject itself absent a persuasive showing that such an order is indeed necessary to ensure procedural fairness and due process.

The issues of procedural fairness and due process that are suggested to be involved in the Catawba Order are notice and access to relevant information. Intervenors have access to relevant information at the NRC public documents room located in the Wake County Public Library in Raleigh, North Carolina. In addition, a second public documents room, at the Public Library in Chapel Hill, North Carolina, was established

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<sup>1/</sup> NRC Staff did not take issue with the arguments of applicants in Catawba that service of all documents by applicants is neither required by Commission regulations nor general practice in Commission proceedings.

pursuant to a special Board Order of March 16, 1982 for the convenience of Petitioners in this proceeding. The second facility is limited to Applicants' FSAR, ER, and amendments thereto. Furthermore, in response to complaints from Petitioners that documents were not being provided to the public documents rooms by the NRC on a timely basis, Applicants have undertaken to provide copies of ER and FSAR amendments directly to the public documents rooms themselves. Applicants will commit to provide copies of these and other documents filed with the NRC Staff in support of their application for operating licenses directly to the public documents rooms.

The second suggested issue is notice to the Intervenors. Applicants believe that the availability of documents in the NRC public documents rooms provides adequate notice to Intervenors. In any case, it is not necessary to provide copies of all documents -- some of which may be particularly lengthy and certainly not necessarily of interest to all Intervenors -- in order to ensure notice of such documents. Applicants will commit to serve all Intervenors with the cover letters which forward to the NRC Staff amendments to the FSAR and ER, or responses to formal Staff questions on those documents. Thus Intervenors will be on notice of any and all amendments to the FSAR and ER or responses to NRC Staff questions.

The necessity for an Order would appear to depend, in part, on whether the parties are able to work out arrangements for obtaining documents without the intervention of the Presiding Officer. Applicants have already agreed to provide Intervenors with a copy of the draft emergency plans. Tr. 21-22. Since the Prehearing Conference, Applicants have agreed to provide Mr. Eddleman with a copy of Amendments 1, 2 and 3 to the FSAR and Amendment 1 to the ER, in return for reimbursement of Applicants' cost to print a copy of such amendments.<sup>2/</sup> The Prehearing Conference record contains mutual testimonials by Intervenors and Applicants regarding a spirit of cooperation. Tr. 28-29. While clearly opposed to the Intervenors' positions, Applicants will continue to cooperate with Intervenors to ensure procedural convenience, where possible.

The countervailing considerations which militate against the Catawba Board Order under the circumstances of this proceeding are ones of fairness, cost and burden to Applicants. For example, the cost to Mr. Eddleman in obtaining FSAR and ER Amendments in this instance was \$270. Not all submissions to the NRC Staff will be as expensive; others may well be more expensive.<sup>3/</sup> In any event, the cumulative cost to provide to a

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<sup>2/</sup> NRC Staff also argued that such an Order was unnecessary from its viewpoint since Staff has committed to serve copies of its licensing documents on Intervenors. Tr. 350.

<sup>3/</sup> The Catawba Board did provide an opportunity for the applicants or the NRC Staff, in the case of a particularly

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number of Intervenor copies of all submissions to the NRC Staff in support of this operating license application over a period of years will not be trivial. Applicants suggest that the cumulative cost could exceed the cost of providing a copy of the FSAR and ER to Intervenor, which the Board found to be unreasonably expensive. See "Order" at 2 (March 16, 1982). Thus, where Applicants are willing to make necessary private arrangements with the Intervenor for obtaining such documents -- even prior to initiation of formal discovery -- a Board Order requiring Applicants to provide all licensing documents to Intervenor at Applicants' expense would not appear justified. Applicants do not believe it unreasonable to require that the party with an interest in obtaining documents bear the expense of document production. Certainly discovery rules provide as much. See 10 C.F.R. § 2.741.

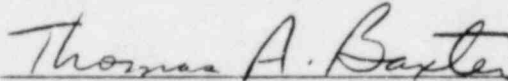
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bulky (and expensive) document, to seek permission of the Board Chairman to serve only one copy of the document on one lead intervenor. The test for seeking such permission appears to be whether "[a]pplicants or the Staff believe [it] will not be viewed as important by the [i]ntervenor." Setting aside the subjectiveness of such a test and the opportunity for arguments of the "importance" of a bulky document, this simply is not a matter which should be elevated to the level of Board attention. We suggest that the procedure that Applicants have outlined herein, with notice to the Intervenor of application amendments by serving their cover letters, an opportunity to view them at the public documents room, and an opportunity to obtain a copy from Applicants at the Intervenor's reimbursement of the cost of reproduction would avoid such an issue ever taking up the Board Chairman's time.

While Applicants are not aware of all of the considerations before the Catawba Board that led to its Order requiring the service of documents to intervenors, in the instant proceeding there has been no demonstration that the issuance of such an order is necessary or warranted.

Respectfully submitted,



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