

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

SERVED APR 20 1983

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGE

James L. Kelley, Chairman\*

DOCKETED  
USNRC

'83 APR 22 P3:39

In the Matter of

CAROLINA POWER & LIGHT COMPANY  
AND NORTH CAROLINA EASTERN  
MUNICIPAL POWER AGENCY

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

Docket Nos. 50-400  
50-401

OFFICE OF SECRETARY  
OF LICENSING & SERVICE  
BRANCH

ASLBP No. 82-468-01 OL

April 22, 1983

ORDER  
(Resolving a Discovery Dispute)

The Board has had telephone conversations with Ms. Greenblatt, Counsel for Mr. Eddleman, and Mr. Barth, Counsel for the NRC Staff, regarding a dispute that arose between them on April 18, 1983 concerning whether two of the Eddleman experts had been correctly proffered for depositions. They have submitted that dispute to the Board Chairman for resolution, and Mr. Barth has supplied me with the transcripts containing their arguments.

This is a trivial dispute that should have been worked out by counsel. I will not prolong this order unnecessarily with a recitation of background fact and argument. My determinations are as follows.

\*Acting pursuant to 10 CFR 2.721(d).

DSOZ

1. Messrs. Bleacher and Stevens were not properly proffered by Ms. Greenblatt. Following rather extended discussion at the last prehearing conference in which she participated, the Board ruled that a proper proffer means a resume plus "a brief statement of the area of expertise for which this expert is being offered." Tr. 518.

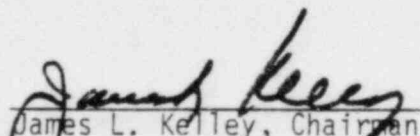
2. The "proffer" of these witnesses, such as it was, was made more than a month before the deposition date. We agree with Ms. Greenblatt that if her submission raised questions in Mr. Barth's mind, he should have contacted Ms. Greenblatt promptly and attempted to resolve any difficulties. Brady transcript at 7.

3. It now appears that Bleacher and Stevens are being put forward as "generalists and experts in all areas" of nuclear power plant security. Id. at 4. If they can qualify as experts in all of the relevant areas, that is an acceptable approach. Thus the defect in the original proffer has been belatedly cured.

4. We note that counsel for the Applicants were prepared to proceed with the depositions of Bleacher and Stevens, notwithstanding the defective proffer. Id. at 6. This reinforces the conclusion that the Staff should be able to proceed as well.

5. The depositions now scheduled for April 25, 1983 should go forward, including depositions of Bleacher and Stevens.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
James L. Kelley, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,  
this 22nd day of April, 1983