

278

June 19, 1984

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 JUN 21 P2:24

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' RESPONSE TO WELLS EDDLEMAN'S MOTION
TO REINSTATE CONTENTION 58(2d)(FINANCIAL QUALIFICATIONS)

Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency hereby reply to Intervenor Wells Eddleman's "Motion to Reinstate Contention 58(2d)(Financial Qualifications)," dated June 5, 1984.

The Board previously rejected Contention 58(2d)(regarding the financial qualification of small owners of the Harris Plant) as barred by 10 C.F.R. § 2.104, as amended, 47 Fed. Reg. 13,750 (1982). LBP-82-119A, 16 N.R.C. 2069, 2099 (1982). In March of this year, the Board rejected a motion by Mr. Eddleman for reconsideration of its earlier ruling. Tr. 776-77 (March 8, 1984 Conference Call). Mr. Eddleman now argues that "the D.C. Circuit Court of Appeals issued its mandate striking down the NRC's deletion of financial qualifications from NRC

8406220218 840619
PDR ADOCK 05000400
PDR

DS03

proceedings." Thus, Mr. Eddleman asserts "the Court's mandate invalidates the rule of 1982 by which the NRC removed the financial qualifications issue from consideration, and therefore, a motion to reinstate contention 58(2d) is in order."^{1/}

Subsequent to Mr. Eddleman's Motion, the Commission issued a Statement of Policy on Financial Qualifications. 49 Fed. Reg. 24,111 (June 12, 1984). The Commission has determined that the mandate of the U.S. Court of Appeals for the District of Columbia does not vacate the Commission's rule. Thus, the Commission stated:

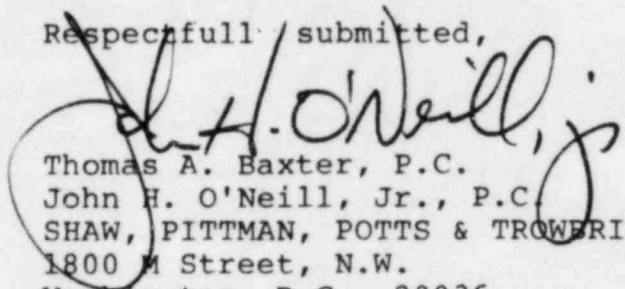
Accordingly, the March 31, 1982 rule will continue in effect until finalization of the Commission's response to the Court's remand. The Commission directs its Atomic Safety and Licensing Board Panel and Atomic Safety and Licensing Appeal Panel to proceed accordingly.

49 Fed. Reg. at 24,111. See Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), Memorandum and Order of the Atomic Safety and Licensing Appeal Board (June 13, 1984) (rejecting intervenor's claim that financial qualifications should be considered in the Byron remand).

^{1/} We treat this Motion as a second motion for reconsideration of Contention 58(2d), since a contention was never admitted and therefore never achieved a "status" to which it could be "reinstated".

Mr. Eddleman's Motion must thereby be denied.

Respectfully submitted,



Thomas A. Baxter, P.C.
John H. O'Neill, Jr., P.C.
SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Richard E. Jones
Samantha Francis Flynn
CAROLINA POWER & LIGHT COMPANY
P.O. BOX 1551
Raleigh, North Carolina 27602
(919) 836-6517

Dated: June 19, 1984

June 19, 1984

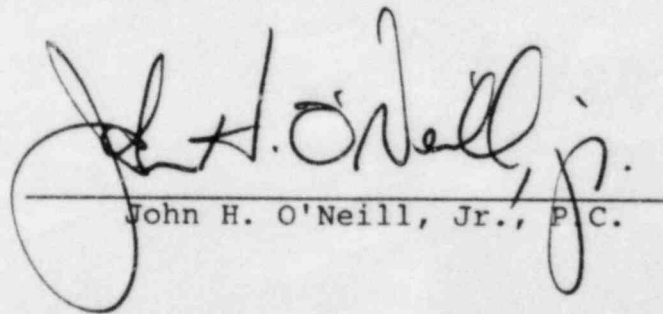
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Wells Eddleman's Motion to Reinstate Contention 58(2d) (Financial Qualifications)" were served this 19th day of June, 1984, by deposit in the U.S. mail, first class, postage prepaid, upon the parties on the attached Service List.



John H. O'Neill, Jr., P.C.

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))

SERVICE LIST

James L. Kelley, Esquire
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles A. Barth, Esquire
Janice E. Moore, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Daniel F. Read, President
CHANGE
P.O. Box 2151
Raleigh, North Carolina 27602

John D. Runkle, Esquire
Conservation Council of
North Carolina
307 Granville Road
Chapel Hill, North Carolina 27514

M. Travis Payne, Esquire
Edelstein and Payne
P.O. Box 12607
Raleigh, North Carolina 27605

Dr. Richard D. Wilson
729 Hunter Street
Apex, North Carolina 27502

Mr. Wells Eddleman
718-A Iredell Street
Durham, North Carolina 27705

Richard E. Jones, Esquire
Vice President and Senior Counsel
Carolina Power & Light Company
P.O. Box 1551
Raleigh, North Carolina 27602

Dr. Linda W. Little
Governor's Waste Management Board
513 Albemarle Building
325 North Salisbury Street
Raleigh, North Carolina 27611

Bradley W. Jones, Esquire
U.S. Nuclear Regulatory Commission
Region II
101 Marrietta Street
Atlanta, Georgia 30303

Steven F. Crockett, Esquire
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Robert P. Gruber
Executive Director
Public Staff - NCUC
P.O. Box 991
Raleigh, North Carolina 27602

Administrative Judge Harry Foreman
Box 395 Mayo
University of Minnesota
Minneapolis, Minnesota 55455