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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD '85 FEB 28 AIO:37

Before Administrative Judge  
James L. Kelley, Chairman

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

**SERVED FEB 28 1985**

In the Matter of  
CAROLINA POWER & LIGHT COMPANY  
and  
NORTH CAROLINA EASTERN MUNICIPAL  
POWER AGENCY  
(Shearon Harris Nuclear Plant)

Docket Nos. 50-400-0L

(ASLBP No. 82-472-03 0L)

February 27, 1985

MEMORANDUM AND ORDER  
(Ruling On Discovery Dispute Concerning  
Attendance at a Deposition)

Yesterday in Raleigh, North Carolina, Mr. O'Neill, Counsel for Applicants, began to depose Mr. Chan Van Vo concerning his charges against Carolina Power & Light Company, as set forth in his affidavit of October 6, 1984. The deposition was noticed under Mr. Eddleman's Contention 41-G, as recently modified and admitted by the Board. A dispute arose between Mr. O'Neill and Mr. Guild, Counsel for Mr. Van Vo, concerning whether two CP&L employees, Messrs. Fuller and Willett, could be present at the deposition primarily to suggest lines of questioning to Mr. O'Neill. The objection to their presence was based primarily on Mr. Van Vo's direct contacts in the past with Fuller and Willett. Mr. Guild contended that their presence would intimidate Mr. Van Vo and impair his ability to answer questions, and that relief was warranted

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under 10 CFR § 2.740(c) to prevent "annoyance, embarrassment [or] oppression."

I was contacted by telephone and counsel agreed that I could hear and resolve the dispute on the basis of oral presentations over the telephone, and to proceed without a court reporter. With that understanding, I heard the respective presentations of Mr. Guild and Mr. O'Neill at some length. Mr. Barth of the NRC Staff also spoke briefly, essentially in support of Mr. O'Neill's position.

I considered the parties arguments and called them back on the telephone to give the following ruling and reasons therefor:

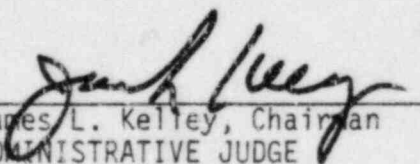
1. Mr. Guild's request for the exclusion of Messrs. Fuller and Willett was denied.
2. The pertinent rule, 10 CFR § 2.740a(d) provides that "examination and cross-examination shall proceed as at a hearing." The normal procedure at a hearing is for people having personal knowledge about the issues being addressed to be present to suggest questions and otherwise assist the cross-examiner. Fuller and Willett have such personal knowledge.
3. Two considerations that might otherwise support exclusion of persons in positions similar to Fuller and Willett are not present: (a) as a former employee, Mr. Van Vo's testimony would not be influenced by any fear of losing his job; (b) unlike a witness called fresh to the stand without prefiled testimony, it seems fair to assume that Mr. Van Vo has already expressed his basic concerns in his affidavit. Thus, even if the presence of Fuller and Willett might otherwise affect his

testimony, his prior affidavit would restrict his freedom to change positions.

A request for an exclusion order of this kind turns largely on the particular circumstances of the case and a weighing of conflicting interests. I assume that the deposition experience may be unpleasant for Mr. Van Vo and I am also willing to assume that the presence of Messrs. Fuller and Willett may increase the unpleasantness. Apart from that, however, I find no substantial justification for the relief sought, and the countervailing considerations presented by the Applicants -- chiefly the personal knowledge of Fuller and Willett -- are weighty. Furthermore, Mr. Van Vo knew (or should have known) when he came forward last October that he might well become involved in unpleasant situations in a formal NRC proceeding about his charges.

This Memorandum summarizes briefly my main reasons for denying the exclusion relief requested. As I made clear over the telephone, I am not purporting to set forth here all the various factual and legal contentions urged on me by various counsel in about twenty minutes of discussion, particularly since counsel had stipulated to proceed informally, off the record.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
James L. Kelley, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland