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In the Matter of
Carolina Power & Light Company and North
Carolina Eastern Municipal Power Agency
(Shearon Harris Nuclear Power Plant)
Docket No. 50-400 *OL*

Administrative Judges Kelley, Bright and Carpenter:

Please find enclosed, for your information, a copy of an unpublished per curiam Order of the U.S. Court of Appeals for the D.C. Circuit, issued on September 29, 1981, in Duke Power Company v. NRC, No. 80-2253. Applicants became aware of this decision for the first time late yesterday.

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Dr. James H. Carpenter
February 23, 1986
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It is our understanding that the court's reference to "standard of performance criteria promulgated in November 1980" is to NUREG-0654/FEMA-REP-1 (Rev. 1). It is also our understanding that the aspect of the rule challenged by Duke Power Company is the same as that discussed in Final Rule on Emergency Planning, CLI-80-40, 12 N.R.C. 636 (1980) -- a Commission decision which the Board and parties have addressed in connection with Eddleman Contention 57-C-3.

Applicants may wish to discuss this Order at the hearings scheduled for March 4 and 5, 1986.

Respectfully submitted,

Thomas A. Baxter

Thomas A. Baxter
Counsel for Applicants

TAB:jah
cc: Service List attached

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)
MUNICIPAL POWER AGENCY)
)
(Shearon Harris Nuclear Power)
Plant))

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-2253

September Term, 1980

Duke Power Company, Petitioner

United States Court of Appeals
for the District of Columbia Circuit

v.

FILED SEP 29 1981

United States Nuclear Regulatory Commission

and

GEORGE A. FISHER
CLERK

United States of America, Respondents

PETITION FOR REVIEW OF AN ORDER OF THE UNITED STATES NUCLEAR REGULATORY COMMISSION

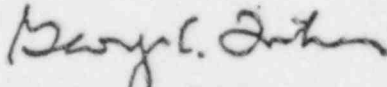
Before: TAPM and WILKEY, Circuit Judges; and FRIEDMAN*, Chief Judge, United States Court of Claims

ORDER

Upon consideration of Petitioner's request for review of the rule on emergency planning of the Respondent Nuclear Regulatory Commission (see 45 Fed. Reg. 55,402 (1980)), it is

ORDERED, by the Court, that the petition be dismissed, since there is no live controversy before the Court at this time. At oral argument Respondent's counsel gave unequivocal assurance that Respondent will judge Petitioner's compliance with the rule according to the standard of performance criteria promulgated in November 1980 jointly by Respondent and the Federal Emergency Management Agency, and Petitioner's counsel stated that this would be entirely satisfactory.

Per Curiam
For the Court


George A. Fisher
Clerk

*Sitting by designation pursuant to Title 28 U.S.C. §293(a).

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.