

126  
May 8, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE COMMISSION

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

APPLICANTS' COMMENTS ON  
IMMEDIATE EFFECTIVENESS

The Commission's Rules of Practice, at 10 C.F.R. § 2.764(f)(2)(ii), provide that "[f]or operating license decisions other than those authorizing only fuel loading and low power testing . . . , the parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue."<sup>1/</sup> Applicants Carolina Power & Light Company ("CP&L") and North Carolina Eastern Municipal Power Agency offer the following comments.

The Atomic Safety and Licensing Board's "Final Licensing Board Decision" resolves the remaining matters put into controversy by the parties to this operating license proceeding on the Shearon Harris Nuclear Power Plant ("SHNPP"). The

---

<sup>1/</sup> "To be considered, such comments must be received within 10 days of the Board decision." 10 C.F.R. § 2.764(f)(2)(ii).

DS03

Licensing Board has resolved all contested matters in favor of the Applicants, and has not determined that a serious safety, environmental, or common defense and security matter exists.

See 10 C.F.R. § 2.760a. The Licensing Board concluded

as to the contentions addressed herein, that there is reasonable assurance that, if an operating license is subsequently granted for the Harris facility, the activities authorized hereby can be conducted without endangering the health or safety of the public and that such activities will be conducted in compliance with applicable NRC regulations.

Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-86-11, 23 N.R.C. \_\_\_\_, slip op. at 186 (April 28, 1986). Consequently, the Licensing Board authorized the Director of Nuclear Reactor Regulation, upon making the other requisite findings, to issue to Applicants a license to operate the SHNPP at full power.<sup>2/</sup> Id. at 186-87.

---

<sup>2/</sup> On April 22, 1986 -- after the record in this case closed and only six days before the Final Licensing Board Decision issued -- two intervenors filed a late new contention based upon one former CP&L employee's allegation of inadequate worker radiological exposure record-keeping by CP&L. The Licensing Board has not yet ruled upon this proposed contention, but Applicants are confident that the Board will find the allegation to be without basis or safety significance, and to be inexcusably untimely.

In addition, the Licensing Board retained jurisdiction to entertain any future proposed contentions on employee harassment which might be filed following distribution of a yet unavailable Office of Investigations report. The report will document an investigation, requested by the Licensing Board on March 13, 1985, into letters received from two former employees. LBP-86-11, supra, slip op. at 185 n. 50. At the time the Board referred the letters to OI, a narrow contention alleging the harassment of one employee had been admitted for

(Continued next page)

In conducting its immediate effectiveness review, the Commission should be aware of significant aspects of the proceeding's history. The notice of opportunity for hearing on the application was issued on January 15, 1982, and this Licensing Board was empaneled on February 23, 1982. Intervenor parties who have participated under 10 C.F.R. § 2.714 are: (1) Conservation Council of North Carolina; (2) Chapel Hill Anti-Nuclear Group Effort; (3) Kudzu Alliance; (4) Mr. Wells Eddleman; and, (5) Dr. Richard Wilson. The Attorney General of North Carolina entered the proceeding in mid-1985, and has participated, under the provisions of 10 C.F.R. § 2.715(c), in the adjudication of two intervenor contentions.<sup>3/</sup>

In response to the original notice, the intervenors filed in 1982, according to the Licensing Board's count, 334 proposed contentions. See LBP-82-119A, 16 N.R.C. 2069, 2074 (1982). Well over 200 additional, untimely proposed contentions have been filed since that time. We are aware of no other NRC proceeding in which the intervenors have been so indiscriminating

---

(Continued)

adjudication. The admission of that contention subsequently was reconsidered, and the contention was dismissed. Memorandum and Order (Dismissing Contention Concerning Alleged Harassment of Former Employee . . .), June 12, 1985. Consequently, employee harassment has not become a contested issue in this lengthy proceeding.

<sup>3/</sup> Those are CCNC WB-3 (Drug Abuse During Construction) and Eddleman 57-C-3 (Nighttime Emergency Notification), both of which were resolved in the Final Licensing Board Decision.

and have attempted literally to overwhelm the NRC's hearing process.<sup>4/</sup> Nevertheless, over the past four years the Licensing Board has resourcefully and diligently resolved the issues raised, and has done so in a manner which has been fair to the intervenors,<sup>5/</sup> and yet consistent with the Commission's goal that operating license hearings be completed by the time a nuclear plant is ready to operate.<sup>6/</sup> See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452 (1981).

The Licensing Board decided roughly 50 admitted contentions in Applicants' favor, following discovery, on motions for summary disposition. Some 20 contentions were decided following evidentiary hearings -- the first of which was held on June 14, 1984; and the last of which was held on March 5, 1986. The Final Licensing Board Decision was preceded by three partial initial decisions: LBP-85-5, 21 N.R.C. 410 (1985); LBP-85-28, 22 N.R.C. 232 (1985); and LBP-85-49, 22 N.R.C. 899 (1985).<sup>7/</sup>

---

<sup>4/</sup> Roughly 1,300 documents (pleadings by the parties and issuances of the Board) have been filed in this case to date. The transcript of proceedings before the Licensing Board is nearly 11,000 pages in length (exclusive of 1,700 pages of inserted direct testimony), reflecting 22 prehearing and other conferences, and 39 days of evidentiary hearings. Over 200 exhibits have been marked for identification and/or received in evidence, and over 100 witnesses have testified under oath before the Licensing Board.

<sup>5/</sup> It is a tribute to the Licensing Board's fair management of this proceeding that no party has sought interlocutory appellate review of a single Board ruling.

<sup>6/</sup> CP&L estimates that it will be ready to load fuel at the SHNPP in late July, 1986.

<sup>7/</sup> Each of the three partial initial decisions presently is under review by the Atomic Safety and Licensing Appeal Board.

In sum, the issues which the intervenors placed in controversy in this proceeding have been carefully examined by the Licensing Board. The process has been fair, and the Board's decisions are of high quality. In conducting an immediate effectiveness review, the Commission applies the criteria in 10 C.F.R. § 2.764(f)(2)(i) to parties' comments to determine whether to stay the effectiveness of a licensing board's decision. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-85-13, 22 N.R.C. 1, 2 (1985).<sup>8/</sup> The application of none of those criteria warrants withholding immediate effectiveness of the Final Licensing Board Decision.<sup>9/</sup> If the

---

<sup>8/</sup> The criteria in section 2.764(f)(2)(i) are:

- a. the gravity of the substantive issue;
- b. the likelihood that it was decided incorrectly below;
- c. the degree to which correct resolution of the issue would be prejudiced by operation pending review; and
- d. other relevant public interest factors.

<sup>9/</sup> On April 30, 1986, the Secretary served a copy of an April 29, 1986 telegram to the Commissioners from William L. Cummings "for the Regional Steering Committee Coalition for Alternative to Shearon Harris." While the Coalition has not been a party to this proceeding, several of its members are intervenors here. The telegram, which asked the Commission to reconsider the Licensing Board decision, does not address any of the Board's decisions. The only reasonably identified issue asserted is that "local government [is] taking steps to withdraw from completely inadequate evacuation plans." This statement is not true. The State of North Carolina, and local governments in the plume exposure pathway Emergency Planning Zone for the SHNPP, have submitted emergency response plans to FEMA, which approved them in interim findings issued in August, 1985. These government agencies participated fully in the successful pre-licensing exercise last year for the SHNPP, and the counties plan to participate partially in the annual exercise next month. In addition, local officials cooperated with CP&L in presenting to the Licensing Board evidence in response to

(Continued next page)

Commission entertains the issuance of a stay, Applicants hereby request an opportunity to be heard, as provided in 10 C.F.R. § 2.764(f)(2)(ii).

Respectfully submitted,

*Thomas A. Baxter*

---

Thomas A. Baxter, P.C.  
SHAW, PITTMAN, POTTS & TROWBRIDGE  
1800 M Street, N.W.  
Washington, D.C. 20036  
(202) 822-1090

Richard E. Jones  
Dale E. Hollar  
CAROLINA POWER & LIGHT COMPANY  
P.O. Box 1551  
Raleigh, North Carolina 27602  
(919) 836-8161

Counsel for Applicants

Dated: May 8, 1986

---

(Continued)

intervenor contentions. The Licensing Board has resolved all off-site emergency preparedness issues against the intervenors. In sum, the plans have passed close scrutiny, and cooperation among CP&L, State, local and Federal agencies in off-site emergency planning for the SHNPP could hardly be better.

May 8, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	
and NORTH CAROLINA EASTERN	)	Docket No. 50-400 OL
MUNICIPAL POWER AGENCY	)	
	)	
(Shearon Harris Nuclear Power	)	
Plant)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Comments On Immediate Effectiveness" were served this 8th day of May, 1986, by deposit in the U.S. mail, first class, postage prepaid, and by hand delivery to the party identified with one asterisk on the attached Service List.

Thomas A. Baxter  
Thomas A. Baxter, P.C.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
CAROLINA POWER & LIGHT COMPANY )  
and NORTH CAROLINA EASTERN ) Docket No. 50-400 OL  
MUNICIPAL POWER AGENCY )  
 )  
(Shearon Harris Nuclear Power )  
Plant) )

SERVICE LIST

Nunzio J. Palladino  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Thomas M. Roberts  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner James K. Asselstine  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Frederick M. Bernthal  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Lando W. Zech, Jr.  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas S. Moore, Esquire  
Chairman  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Reginald L. Gotchy  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mr. Howard A. Wilber  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

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

Mr. Robert P. Gruber  
Executive Director  
Public Staff - NCUC  
P.O. Box 991  
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  
812 Yancey Street  
Durham, North Carolina 27701

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

H. A. Cole, Jr., Esquire  
Special Deputy Attorney General  
200 New Bern Avenue  
Raleigh, North Carolina 27601

Joseph Flynn, Esquire  
Federal Emergency Management Agency  
500 C Street, S.W., Suite 480  
Washington, D.C. 20740

Steven Rochlis, Esquire  
Regional Counsel  
Federal Emergency Management Agency  
1371 Peachtree Street, N.E.  
Atlanta, Georgia 30309