

CP&L

DOCKETED
USNRC

Carolina Power & Light Company

'86 AUG -4 P2 SERIAL: NLS-86-291

AUG 01 1986

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

E. E. UTLEY

Senior Executive Vice President
Power Supply and Engineering & Construction

Chairman Lando W. Zech, Jr.
Commissioner Thomas M. Roberts
Commissioner James K. Asselstine
Commissioner Frederick M. Bernthal
U. S. Nuclear Regulatory Commission
Washington, DC 20555

SHEARON HARRIS NUCLEAR POWER PLANT
UNIT NO. 1 - DOCKET NO. 50-400 OL
LETTER TO HAROLD R. DENTON FROM WELLS EDDLEMAN,
CONCERNING HEARING ON EXEMPTION REQUEST (APRIL 3, 1986).

Dear Mr. Chairman and Commissioners:

A full-participation emergency preparedness exercise was conducted for the Shearon Harris Nuclear Power Plant plume exposure pathway Emergency Planning Zone on May 17-18, 1985. The NRC inspection team reported no violations or deviations, and characterized the exercise as "fully successful" (Reference 1). Similarly, FEMA found that the exercise demonstrated that "the state and local emergency plans are adequate and capable of being implemented . . ." (Reference 2). The results of the exercise were litigated before the Atomic Safety and Licensing Board, which in March 1986 resolved the contentions in Carolina Power & Light Company's (CP&L) favor, finding no evidence of a fundamental flaw (Reference 3).

On March 4, 1986, because of a delay in the plant schedule, CP&L requested an exemption from the requirement in 10 CFR Part 50, Appendix E, §IV.F.1, to perform the full-participation emergency preparedness exercise "within one year prior to issuance of the first operating license for full power and prior to operation above five percent of rated power . . ." for the Harris plant (Reference 4). By letter dated April 3, 1986, Mr. Wells Eddleman sought a hearing on CP&L's exemption request (Reference 5). Carolina Power & Light Company and the NRC Staff have responded to the hearing request, both concluding that Mr. Eddleman is not entitled to a hearing on the exemption request (Reference 6 and 7).

Mr. Eddleman's request for a hearing is presently pending before the Commission (Reference 8 and 9). For the reasons discussed below, CP&L respectfully requests expedited Commission disposition of the hearing request.

While CP&L's exemption request is pending before the Staff and Mr. Eddleman's hearing request is pending before the Commission, it is presently uncertain whether a second full-participation exercise will be required as a precondition for licensing. Although the NRC Staff has taken a preliminary position that CP&L's request for an exemption should be granted (Reference 7, p. 7, note 5), the ultimate decision on the exemption would be

B608060212 B60801
PDR ADOCK 05000400
G PDR

116 Street • P. O. Box 1551 • Raleigh, N. C. 27602

D903

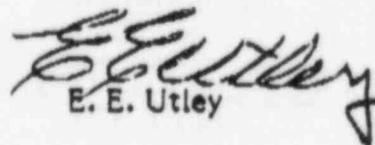
left to an NRC adjudicatory board if the Commission were to grant Mr. Eddleman's request for a hearing. The longer Commission action on the hearing request is deferred, the greater the potential impact on plant schedule.

Even if the Commission were to order a board empaneled as early as the beginning of September, it is unlikely that a board decision on the exemption could be issued before November, given the potential requirement to engage in discovery, prepare testimony, conduct an evidentiary hearing, file proposed findings of fact and conclusions of law, and render a decision. If the board were to deny the exemption, still more time would be required. Exercise objectives and scenarios must be submitted to FEMA well in advance of an exercise -- 75 days and 45 days, respectively. In addition, time would be required to coordinate the schedules of the various Federal, State, and local agencies that would have a role in a full-participation exercise. Finally, the FEMA exercise report typically does not issue for a matter of months after an exercise. For example, the FEMA report on the May 1985 Harris full-participation exercise was not released until more than three months after that exercise. Thus, with fuel load presently projected as early as September 1986, even prompt Commission action, if the hearing request is granted, would jeopardize full-power licensing and operation above five percent power.

Other equitable considerations also favor expeditious and definitive Commission action. When Section IV.F.1 was adopted, the NRC did not contemplate that the results of the pre-licensing exercise would be the subject of adjudication before a licensing board. Indeed, the Commission adopted a regulation in 1982 which expressly barred such litigation (Reference 10). However, in Union of Concerned Scientists vs. NRC, 735 F.2d 1437 (D. C. Circuit 1984), the U. S. Court of Appeals for the D. C. Circuit vacated the 1982 regulation. The UCS ruling, which was unanticipated when the one-year rule was promulgated, traps NRC applicants in a "Catch-22" situation. Applicants now must schedule full participation exercises sufficiently far in advance of the anticipated licensing date to accommodate evidentiary hearings on the results of the exercise (Reference 11). But, by scheduling exercises early enough to accommodate anticipated litigation, applicants run a considerable risk of falling outside the one-year window. Thus, the effect of the UCS decision is to make compliance with the one-year requirement -- which already necessitated foreknowledge in licensing predictions -- almost impossible if there are contested issues arising out of the exercise. The situation will be exacerbated if the applicants who need relief from this regulatory "Catch 22" will have their exemption requests subject to opportunity for hearing. Accordingly, fairness dictates that the Commission act promptly to prevent unnecessary delay in this case, and in the event hearings are required, to provide timely guidance to other applicants similarly situated.

Carolina Power & Light Company respectfully requests that the Commission act swiftly to deny Mr. Eddleman's hearing request.

Yours very truly,


E. E. Utley

EEU/crs (4035SRZ)

cc: Mr. C. E. Ader
Mr. J. Austin
Mr. D. F. Humenansky
Mr. J. F. Meyers

References:

- (1) NRC Inspection Report No. 50-400/85-20 (June 5, 1985).
- (2) Memorandum, for E. Jordan (NRC) from R. Krimm (FEMA) (August 7, 1985) (transmitting FEMA Exercise Report).
- (3) "Order (Concerning Emergency Planning Contentions)" (March 19, 1986); "Final Licensing Board Decision," LBP-86-11, 23 NRC (April 28, 1986) (slip op. at 168-83).
- (4) Letter, A. B. Cutter (CP&L) to H. R. Denton (NRC) (March 4, 1986).
- (5) Letter, W. Eddleman to H. R. Denton (NRC) (April 3, 1986).
- (6) "Response by Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency to Wells Eddleman's Request for Hearing on Emergency Preparedness Exercise Exemption Request" (April 22, 1986).
- (7) "NRC Staff Response To Wells Eddleman's Request for a Hearing on Applicants' Request for Exemption from the Requirement for an Emergency Preparedness Exercise" (July 24, 1986) ("Staff Response").
- (8) Memorandum for S. Chilk, through V. Stello, from E. Christenbury (May 15, 1986).
- (9) Memorandum for S. Chilk, from E. Christenbury (July 17, 1986).
- (10) 47 Federal Register 30232 (July 13, 1982).
- (11) NRC I&E Information Notice 85-41, Scheduling of Pre-Licensing Emergency Preparedness Exercises (May 24, 1984) (encouraging applicants to schedule early exercises in light of UCS case).