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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Thomas S. Moore, Chairman
Howard A. Wilber

February 9, 1987

SERVED FEB 10 1987

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

Docket No. 50-400 OL

ORDER

We have before us the motion of Wells Eddleman and the Conservation Council of North Carolina to stay "the final Licensing and Appeals Board decision issued in docket number 50-400 OL, on December 31, 1986."¹ As the applicants' response points out, however, the intervenors' motion is "a

¹ Conservation Council of North Carolina, Wells Eddleman, Pro Se, and Coalition for Alternatives to Shearon Harris' Motion To Stay Effectiveness of Licensing of Shearon Harris Nuclear Power Plant (January 12, 1987) at 1. As evident from the caption of their filing, the intervenors' stay motion also purports to be filed by the Coalition for Alternatives to Shearon Harris (CASH). CASH had never been a party in the operating license proceeding and cannot, therefore, seek a stay. Indeed, in similar circumstances, we denied CASH's intervention petition and refused to consider CASH's motion to stay the Licensing Board's initial decision in this same proceeding. See Memorandum and Order (July 11, 1986).

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model of confusion."² As best we can determine, it appears that the intervenors intend to seek a stay of our affirmance in ALAB-856, 24 NRC ____ (December 31, 1986), of the Licensing Board's authorization of an operating license contained in LBP-86-11, 23 NRC 294 (1986). For the reasons that follow, the stay motion is denied.

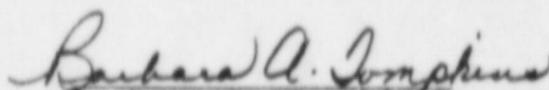
The intervenors' stay papers do not address any issue decided in ALAB-856 or even any matters adjudicated in the operating license proceeding. Rather, the intervenors' complaints are all aimed directly at Commission actions over which we are powerless to grant any relief, even if we assume that their stay papers otherwise meet the standards for granting a stay. See 10 C.F.R. § 2.788; Philadelphia Electric Co. (Limerick Generating Station, Unit 1), ALAB-835, 23 NRC 267, 270 (1986). First, the intervenors complain about the events surrounding the Commission's decision, CLI-86-24, 24 NRC ____ (December 5, 1986), denying their request for a hearing on the applicants' motion for an exemption from the requirements of 10 C.F.R. Part 50, Appendix E, IV, F.1 (concerning the timing of emergency planning exercises). Next, the intervenors claim that the Commission could not properly conduct its immediate

² Licensees' Answer to CCNC/Eddleman Motion for a Stay (January 27, 1987) at 2.

effectiveness review and permit the applicants' full power operating license to become effective while the NRC staff still had pending a petition filed by Wells Eddleman and CASH pursuant to 10 C.F.R. § 2.206. See CLJ-87-1, 25 NRC ____ (January 9, 1987). But these matters deal exclusively with Commission actions and not matters that are within our jurisdiction in the operating license proceeding. As we stated in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-610, 21 NRC 1616, 1619 (1985), "[i]t is not within our province to pass judgment, for stay purposes or otherwise, upon the correctness of Commission rulings." Accordingly, the intervenors have addressed their complaint to the wrong forum and the motion for a stay is denied.

It is so ORDERED.

FOR THE APPEAL BOARD


Barbara A. Tompkins
Secretary to the
Appeal Board