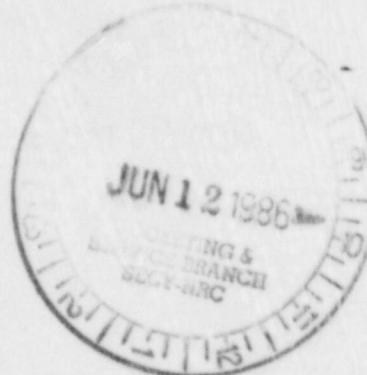


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9 June 1986



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY 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

BEFORE THE ATOMIC SAFETY AND LICENSING  
APPEALS BOARD

Now comes The Coalition for Alternatives to Shearon Harris (C.A.S.H.) and Wells Edelman, pro se, moving for a stay of the immediate effectiveness of the Final Licensing Board Decision (CBP 86-11).

The ASLAB has authority to review functions which otherwise would have been excrcised by the Commission 10 CFR 2.785(a). The Petitioners believe that the following questions present novel questions of law and policy. Due to the nature of these issues the Petitioners seek discretionary review of these issues with the Commissioners. 10 CFR 2.785(d). The proper initial forum for seeking a stay is with the ASLAB pursuant to the delegated authority manifest in 10 CFR 2.785(a).

## STANDARD FOR STAY OF IMMEDIATE EFFECTIVENESS

The operative regulation for a motion to stay immediate effectiveness of a licensing board decision is 10 CFR 2.788, and such a stay is evaluated on the basis of the following four factors:

1. Whether the moving party has made a strong showing that it is likely to prevail on the merits;

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2. Whether the party will be irreparably injured unless  
the stay is granted;
3. Whether the granting of the stay would harm the other  
parties; and
4. Where the public interest lies. 10 CFR 2,788(e)

The Board is expected to interpret regulations and policies in light of evidence on safety and environmental issues which present, "serious, close questions and which ... may be critical to whether, a license should become effective before full appellate review is completed" (10 CFR 2.764 (f)(1)(ii)).

In light of hereinafter stated arguments, it is clear that the Petitioners satisfy the conditions of 10 CFR 2.788. The Board is directed to give the Commission notice of issues which raise questions of policy and potential changes in the regulations pursuant to 10 CFR 764(2)(ii). In addition, the Board must consider 10 CFR 2,764(f)(2)(i) factors: a. the gravity of the substantive issues; b. the likelihood that the decision below was decided incorrectly; c. the degree to which the correct resolution of the issue would prejudice operation of pending review; and other relevant public interest factors.

#### CHATHAM EMP - FACTS SUMMARY AND ANALYSIS

On May 27, 1986, the County Commissioners of Chatham County, North Carolina passed a resolution that removed Chatham County from participation in the EMP. The operative language is as follows:

NOW, THEREFORE, BE IT RESOLVED That the Chatham County Board of Commissioners hereby rescinds all prior approvals of the Shearon Harris Emergency Response Plan pending further critical study of the unresolved issue. SEE: Appendix I

Prior to Chatham County's rescinding the agreement, Chatham County was responsible for emergency tasks in the event of radiological emergency. As a general proposition, local governmental entities are an integral part

of the Emergency Management Plan. SEE: 50 CFR 50.47. (local government participates in the notification process, population movement, control of exposure of emergency workers, provisions for medical care, et.al.). As stated in 50 CFR 50.47(c)(1), failure to comply with the applicable standards may result in the Commission declining to issue a license. In 50 CFR 47(a)(i), it is stated that no license will be issued unless there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

STAY OF IMMEDIATE EFFECTIVENESS:

The petition is likely to prevail on the merits of the Chatham County issue for the following reasons: 1. That the recission by Chatham from the EMP creates serious, close questions which implicate the effectiveness of the EMP. Since local governmental organizations are vested with multiple responsibilities pursuant to 50 CFR 50.47, et.seq. the fact of a recision by one of the counties within the EPZ runs to the issue of safety and the possibility of environmental damage due to inadequate planning and non-participation by Chatham. To our knowledge there is no other instance of a governmental organization recinding their agreement to participate in a EMP, there has been no case law ruling on the point, and there are no NRC regulations dealing with the possibility or provisions within the EMP to deal with such circumstances. The Chatham County recision raises a new, novel issue. 2. It is clear that there would be irreparable harm to the petitioner, in the absence of a stay, if an operation license was granted, and the proceeding followed their natural course, grave safety consequences would result where Chatham does not participate in the mandatory EMP. NOTE: That to function without an adequate plan is prohibited by NRC regulations, see, supra @2. 3. Whether the stay would harm other parties is clearly resolved in the favor of the petitioners. For the licensing process to proceed to fuel loading or partial power operation there must be in place, pursuant to 10 CFR 50.57(a)(3), LBP-86 p.186, a plan which gives reasonable

assurance that the activities of the applicants will be conducted without endangering the health and safety of the public and that such activities will be in compliance with all NRC regulations. Where a county recinds the agreement to participate in the EMP, there is no provision for the population of that county and the plan is not in compliance with NRC regulations. Because Chatham County is within the Zone and because no provisions are made for the safety of Chatham's residents and because the regulations require local govt/ organizations to assume responsibility for emergency activities, here the interest of the petitioners as against the interest of the applicants is squarely weighted on the petitioners. The interest of safety in the event of a radiological emergency, the lack of reasonable assurance of adequate protective measures being taken, and the plan as it exists now, excluding Chatham, is not in compliance with NRC regulations. 4. The public interest clearly lies with the petitioners, and will be analyzed in light of factors stated sup @ p.2.: a. The gravity of the substantive issues, the public interest will be served by a stay because of the inherent importance of the EMP and the position within the licensing process of the plan. There are multiple provisions within the CFR which address the requirement of a EMP. 10 CFR 50.47.

Reference to the requirement of adequate assurance that a plan can reasonably provide for the safety of those within the Zone is clearly a grave substantive issue. The possibility of a radiological emergency occurring should applicants receive their license to load fuel, and the lack of provision for the residents of Chatham County, leads to the conclusion that this is a grave, substantive, and timely issue. b. The likelihood that this decision was resolved Incorrectly Below, is an absolute certainty that it may not have been. At the time of the decision Chatham was part of the EMP . At this point in time Chatham is no longer a part of the plan which was approved by the FEMA and Licensing Board. Had there been a decision to approve the plan

in light of the recession then there would have to be a modified FEMA decision between the date of the recision and the present. No such action has been taken. The EMP is unacceptable without modification of the decision, and as such a stay should issue on the ground of improper decision below.

c. The Degree To Which The Correct Resolution Would Be Prejudiced By operation during Pending Review. Were the Harris Plant to operate without an adequate EMP, the health and safety of the population of Chatham County would be in grave jeopardy.

d. Other Public Interest Factors: It is important to note that as of three months ago, information concerning the plant at SH was not popularly known, and nuclear energy as a public policy issue was not a household topic. In light of Chernobyl and the world-wide release of radioactivity, and the expression of public outrage which has centered on the nuclear issue it is clear that modification of policy is at the very least a consideration for the NRC, and at the very most a complete moratorium would be in order. With respect to this particular issue, the Chatham EMP, there has been media coverage which tends to show that, at least by the volume of air and print time, that this is an issue worthy of close consideration by the Commissioners. In light of Chernobyl, TMI, and Chatham's recession, there is a showing that nuclear plants are unsafe and the public is unwilling to accept them.

The argument above clearly meets the requirement for a stay of the immediate effectiveness of the Licensing Board Decisions, as provided in 10 CFR 2.764, and therefore the petition moves for an immediate stay of the effectiveness of the Decision by the Licenscng Board of April 28, 1986, and of all the partial decisions.

Petitioner seeks further relief in the form of a remand of the ALB's decision for the resolution of the Chatham issue and other unresolved issues; closer scrutiny of the ALSB partial final decision by the Board; an AEC 189(a) hearing in front of the full Commission; and, a FEMA review of the existing plan approval.

#### Miriello Contentions

##### Analysis of petitioner's motion to stay

On January 1, 1986, Ms. Patty Miriello, a former CP&L worker at Shearon Harris and Brunswick nuclear reactors wrote to the presiding judge, James Kelley, Chairman of the ALSB panel in Docket 50-400 OL alleging falsification of radiation exposure records and questionable practices relating to health physics and requested that her identity remain confidential. The Chairman, however, ruled, pursuant to 10 CFR 2.780(b) that the allegations were to be treated as ex parte communications and disclosed the information to all parties in the case, including the Applicants. Although the NRC Office of INvestigations (OI) has had documented evidence of Ms. Miriello's contentions since September 1985, the OI has yet to do a personal interview with the alleger. Moreover, the NRC OI has yet to issue a report of its investigation, which goes to the heart of the question of the Applicant's competence and integrity in operating the proposed Shearon Harris Plant.

##### A. Application for a stay of immediate effectiveness 2.788

The petitioner is likely to prevail on the merits of the allegations and contentions being brought forward by Ms. Patty Miriello for the following reasons:

1. As a worker exposed to radiation of the Applicant's nuclear reactors, the facts which have been brought forward by Ms. Miriello create serious close questions which would implicate the effectiveness of the Applicant's proposed radiation protection program for its employees. Moreover, the assertions which Ms. Miriello make, if substantiated by the pendent Office of Investigation report which has yet to be completed, would result in a finding by the Commission that the Applicant's request for an operating license "may be revoked suspended or modified, in whole or part, for any material false statement in the application for license or in the supplemental or other statement of fact required of the Applicant." (10 CFR 50.100)

In addition, the Commission's finding that the disclosure of confidential information by the Chairman of a sitting ASLB Panel in the Harris case, would violate a basic AEC provision prohibiting the disclosure of confidential and information by any employee of the NRC (10 CFR 0.735039(c)), would substantially taint and fundamentally flaw the final decision of the ASLB in Docket 50-400 OL. There is a strong showing that the petitioners are likely to prevail on the merits, if the Appeals Board gives close scrutiny to the allegations of falsification of documents and inadequacy of Applicant's radiation protection program by Ms. Miriello.

2. Parties to the petition will be irreparably harmed or injured unless a stay is granted because Ms. Miriello has been unable to obtain her complete radiation protection record from the Applicant which has prevented her from receiving a full security clearance from the US Office of Personnel Management (OPM) which is a necessary condition for her employment in another job which may involve potential radiation exposure. Unless a stay is granted until the Office of Investigations issues its report, Ms. Miriello will be harmed irreparably from being able to gain employment in her chosen career of radiation and health physics.
3. Whether the stay would harm other parties is clearly resolved in favor of the petitioners. For the licensing process to proceed to fuel loading or partial

power testing, there must be in place a radiation protection plan for the Applicant's employees which gives reasonable assurance that the activities of the Applicant will be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the regulations of the Nuclear Regulatory Commission. (10 CFR 50.57, LBP-86-11 at 186) When a former employee of the Applicant brings forward credible evidence indicating falsification of NRC documents and fundamental inadequacies in the Applicant's radiation programs, the programs are not in compliance with NRC regulations. In balancing the interests of the petitioners and the applicants with respect to the pendent motion, it is clear that all parties will benefit from strengthening and improving programs for protection from radiation exposure.

4. The public interest lies with an effort by the Appeal Board to give particular attention to whether the issuance of the operating permit prior to full administrative review may create novel safety and environmental issues in light of the Three Mile Island accident or prejudice review of significant safety or environmental issues. The contentions which have been courageously brought before the Atomic Safety and Licensing Board by Ms. Miriello at great personal risk and without hope of reward, and which have thus far been ignored and left uninvestigated, clearly raise novel safety and environmental issues to which the Appeal Board must give particular attention in order that the public interest may be served.

CONCLUSION:

In light of the statement of the standard, as set out supra.Op.1, and with the change in factual circumstances from the time of the final decision of the Licensing Board (April 28, 1986), and the rescinding of the agreement to participate in the EMP by Chatham County (May 27, 1986); it is clear that the Licensing Board did not have the opportunity to consider all relevant facts. The void created by the Chatham's pull-out, without considerable remedial effort on the part of NRC staff and N.C. State officials, leaves the populace of Chatham County without any reasonable assurance that protective measures could be taken and if taken would adequately provide for the safety of the County's population..

Mirie llo, a former employee of C.P. & L., alleged in September of 1985 that documents were falsified by the applicant. The ~~or~~ has yet to complete this investigation. Among other allegationswhich have not been resolved, Miriello has been unable to obtain her complete record from the applicant and thus has been precluded from seeking positions within that field. Aside from the interest in freedom to pursue gainful employment, the applicant may be in violation of 10 CFR 50.100(material false statements of fact), 10 CFR 0.735039(c)(disclosure of confidential information by the applicant), and a substantial possibility that the applicant may not have an adequate radiation protection program. All these issues may in combination or in part, if proven would amount to a substantial fundamental flaw in the final decision of the Licensing Boards decision.

Finally, it is clear that the inferences which could reasonably be drawn from the fact of the Chatham pull-out, and the unresolved M iriello investigation, separately or in aggregate, would be sufficient to stay the immediate effectiveness of the Boards decision. Therefore, the petitioners move for the immediate effectiveness stay, and further moves for the consideration of all motions made within this and other pleadings by the petitioner.

Respectfully submitted,

/s/-----

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9 June 1986

June 9, 1986.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING APPEALS BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioners' Motion to Stay Immediate Effectiveness, and attachments were served this 9th day of June, 1986, by hand delivery to the parties marked with one asterisk, and by deposit in U.S. Mail, first class, postage pre-paid, to the other parties on the attached list.

/s/ 

Joseph T. Hughes Jr., MPH  
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to Shearon Harris (C.A.S.H.)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

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