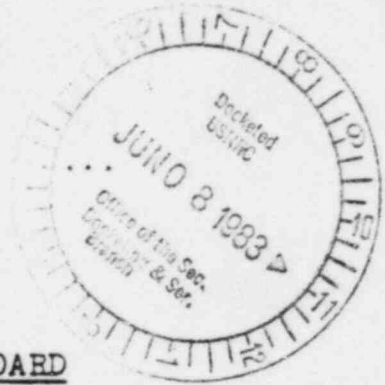


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Glenn O. Bright
Dr. James H. Carpenter
James L. Kelley, Chairman

In the Matter of

CAROLINA POWER AND LIGHT CO. et al.
(Shearon Harris Nuclear Power Plant,
Units 1 and 2)

Dockets 50-400 OL
50-401 OL

June 6, 1983

INTERVENORS' REPLY BRIEF ON QUALIFICATIONS OF
SECURITY EXPERTS

On March 21, 1983, Intervenor served Applicants and Staff with copies of resumes and other information pertaining to their proffer of experts to review the SHNPP security plan; supplemental information was provided on April 14, 1983. Pursuant to a Notice of Deposition and by agreement, deposition of the proffered experts took place at Fayetteville and Raleigh, North Carolina, on April 18 and 25, 1983, respectively. Applicants and Staff deposed Ernest Tabata, William A. Brady, III, Charles D. Crockett, and Bobby Tuggle in Fayetteville, and John Maples, James Mackie, Earl Roy Bleacher, and Lowell Stevens were deposed in Raleigh. On May 17, 1983, Applicants served their "Brief (As to Qualifications of Persons Proffered by Intervenor as Experts...)" (hereafter "Applicants' Brief" or "A.B."), in which they ask the Board to rule that none of the proffered experts qualify to review the SHNPP security plan. Also on May 17, 1983, the NRC Staff submitted its "Brief on

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Qualifications of Witnesses Proffered as Expert in Security Planning..." (hereafter "Staff Brief" or "S.B."), which recommended that four of the proffered experts were qualified to review the plan in part and should have relevant portions made available to them. Intervenor request not only that the Board accept the Staff's recommendations but that it go beyond them and qualify the witnesses as experts as outlined below.

LEGAL REQUIREMENTS

Security plans for nuclear power plants present a unique set of legal and practical problems; Diablo Canyon¹ is the only reported case to address them at length. Specifically, ALAB-410 set out the general requirements: (1) of relevancy of the requested portions of the plan to contentions, (2) that proper protective measures be taken, and (3) that the requisite expertise on the part of intervenors' witnesses be demonstrated, 5 N.R.C. at 1404-6. The third requirement is at issue here.

Unfortunately, exactly what is an expert is a difficult question: as the Appeal Board itself noted, the exact parameters of ALAB-410 are subject to disagreement and it may be in need of some "refinement."² Applicants propose a "high standard" which includes in addition to the above factors a requirement that the proffered expert also possess knowledge of reactor plant systems

1. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 N.R.C. 1398 (1977).

2. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plants, Units 1 and 2), ALAB-580, 11 N.R.C. 227, 231 (1980).

and layouts, based on a phrase in the ASLB's subsequent decision in Diablo Canyon³, A.B. at 10-11. The Board there wrote that such knowledge is "a necessary, but not sufficient condition to qualify," 8 N.R.C. at 573. Leaving aside the binding effect (or lack thereof) of that stare decisis on the decision of this Board, the cited language apparently poses more of a desideratum than an absolute necessity. Security systems at a commercial nuclear plant may vary in site-specific aspects from those used at other sensitive installations, but the critical factor in determining the expert's qualification must necessarily be his/her competence with respect to the system(s) itself. Presumably, the ability to design / system^{3A} "an overall" if demonstrated, includes the ability to take these additional site-specific factors into account. The Diablo Canyon ASLB's explication of technical competence, 8 N.R.C. at 569, does not mention technical understanding of nuclear steam systems operations or layouts, but concentrates on the "various components of the security system," Id.--and the Board qualified its requirements with the word "Ideally," Id. Experts' experience, wrote the Board, must go to the implementation of the "philosophy" of 10 C.F.R. Part 73, Id. at 572, which concentrates exclusively on security measures, not plant layout.⁴ As pointed out by the Staff, S.B. at 9-10, ALAB-410 offers further protection against unnecessary disclosure by allowing

3. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 N.R.C. 567 (1978).

4. See 10 C.F.R. 73.1 (purpose), 73.20 (general performance objectives). Note also that plant operations are not among the many items of knowledge listed in Appendix B to Part 73 for security personnel, although systems knowledge is required.

3A. See 8 N.R.C. at 569.

"sanitization" of the plan into discrete components for review by each expert with relation only to his/her area of competence.

ALAB-410 does not discuss the general qualifications of experts⁵ but instead relies on Rule 702 of the Federal Rules of Evidence and on Wigmore. Rule 702 tersely requires only qualification by "knowledge, skill, training, or education;" the comments do not elucidate, other than to state that "[t]he rule is broadly phrased,"⁶ suggesting that a liberal approach is to be taken in qualifying experts. Wigmore offers no more concrete guidelines;⁷ the only case cited in ALAB-410,⁸ Smith v. Hobart Manufacturing Co., 185 F.Supp. 751 (E.D.Pa. 1960) stands for little more than the proposition that an expert may not be qualified as such solely on his own/^{unreviewed} assertions, 185 F. Supp. at 756. The court there defined an expert along the same "general principles" outlined in ALAB-410,⁹ with the negative limitation that he/she "need not be infallible or possess the highest degree of skill," Id. at 754. The rejection of Mrs. Comey by the Diablo Canyon Board came as a result of intervenors' failure to satisfy even these minimum evidentiary requirements: (1) no mention was made of Comey's major in college, 8 N.R.C. 571, or (2) any relation of his course work to nuclear plant security, Id., (3) his actual work on security systems was limited to high-level policy recommendations, Id. at 572, and (4) no connection was made between his ACRS testimony and plant security at Diablo Canyon, Id. at 573. The general qualifica-

5. See 5 N.R.C. at 1404-5, 1406.

6. Advisory Committee's Note, F.R.Ev. 702.

7. See 2 Wigmore on Evidence §560-1 (Rev. Ed. 1979).

8. See 5 N.R.C. 1405 n. 17.

9. See 5 N.R.C. 1405 (fourth paragraph from top).

tions of Mr. Comey stand in sharp contrast to the experience and training of Intervenor's proffered experts, all of whom have extensive experience in actually protecting sensitive installations and in security systems.¹⁰ Applicants' "high standard" might apply to a "well-informed layman" like Mr. Comey, but the more liberal approach suggested by traditional rules of evidence ought to apply to experienced practitioners such as Intervenor's have proffered.

Considerations of public policy also support a more liberal approach, as the Additional Comments of Mr. Salzman in ALAB-410 indicate: he reviewed Commission practice and concluded that "considerable benefit can be derived from the independent scrutiny of [security plans]" 5 N.R.C. at 1410, and that the likelihood of industrial sabotage was not likely to increase as a result of such scrutiny, Id. at 1411. The strong public policy of allowing public participation in licensing hearings, embodied in Section 189 of the Atomic Energy Act and unchanged by Congress despite persistent pressure, further supports this position. Therefore the Intervenor's urge the Board to reject the Applicants' arguments and qualify the experts as requested below.

BOBBY TUGGLE

Applicants admit that Mr. Tuggle is "relatively well educated and experienced in the field of communications," A.B. at

10. As Dr. Quarles and Dr. Johnson pointed out in their Additional Comments to ALAB-410, the fact that Mr. Comey was rejected in LBP-78-36 after previously being allowed to review plant security plans is not relevant here, since that review was conducted prior to Diablo Canyon and prior to the imposition of detailed planning requirements. 5 N.R.C. at 1408.

23, but contest his qualification basically on the grounds that he has no actual knowledge of nuclear plant operations and layout, Id. The Staff indicates no objection to Mr. Tuggle's qualification, S.B. at 3, despite the "intrinsic appeal," S.B. at 9, of Applicants' argument. As discussed above,¹¹ Intervenor believe that the language Applicants rely on expresses a desideratum, not a necessity; Intervenor believe that Mr. Tuggle is more than adequately qualified to review the communications portion of the plan and apply his expertise to it, and that he should be allowed to do so.

JOHN R. MAPLES

Applicants contend that Mr. Maples is not qualified as an expert, A.B. at 11-17, while the Staff stipulates that Maples has sufficient qualifications to review guard training, intruder detection systems, and guards' recordkeeping, S.B. at 3-4. These are the areas in which Mr. Maples himself declared he felt qualified to review the SHNPP plan, Maples deposition (hereafter "M.") at 68.

Applicants challenge Mr. Maples expertise on surveillance systems because he said he was not at one time an expert in closed circuit TV (CCTV), A.B. at 13, M. at 20. Yet after that time he did supervise feasibility studies of a new security plan for a sensitive nuclear weapons installation which included CCTV, M. at 25, 18, see also M. at 50-1. Mr. Maples had supervisory and inspection duties for a sizeable force manning num-

11. See page 3, supra.

erous types of detection systems, including CCTV and ground sensors, M. at 18, 23, 34-5. It appears that he has since developed the requisite knowledge to evaluate the SHNPP systems.

Applicants attack Mr. Maples' expertise in records review; again, he had extensive daily supervisory experience at a nuclear weapons facility, M. at 34-5, with concomitant similar record-keeping requirements. He also was responsible for inspecting records and administering records on a daily basis, Exh. 2. Applicants apparently began to challenge this showing of experience, M. at 77, but stopped after two questions, for reasons unknown to Intervenors.

Applicants also attack Mr. Maples' qualifications to review guard training portions of the plan, because his activities at his military post in Europe and at Surry were limited to supervision and compliance inspection, A.B. at 15-6. Three years of such supervision--including feasibility studies, M. at 34--and inspection activities which have continued since Mr. Maples left the Army hardly seem to be "limited experience" which would make him only a "well-informed layman." Obviously, not all the many and overlapping factors listed in Part 73, Appendix B, which Applicants cite as the standard, will apply to each facet of the SHNPP plan. It is difficult to imagine even the best qualified expert having letter-perfect familiarity with this regulatory terminology, which Applicants seem to expect.¹² What Mr. Maples has demonstrated, and what is cru-

12. It should be borne in mind here that Mr. Maples, like the other proffered experts, is appearing in his first NRC proceeding. He is a practitioner, not a lawyer, so a certain degree of unfamiliarity with legal and regulatory terms of art must necessarily be expected.

cial here, is extensive experience in security testing and in checking guard training and readiness--exactly the sort of expertise needed to review and evaluate the SHNPP security plan.

Therefore the Applicants' arguments should be rejected, and Mr. Maples should be qualified as an expert in the areas of detection systems, recordkeeping, and guard training. Intervenor ask the Board to so rule.

LOWELL STEVENS

Mr. Stevens' qualifications are attacked rather generally by Applicants, A.B. at 21-3, while the Staff believes that he is qualified to review the guard training aspects of the SHNPP plan, S.B. at 8. Mr. Stevens claimed himself that his area of expertise was in "the training of the guards, operating with the human factor," Stevens deposition (hereafter "S.") at 53; his testimony provides ample support for this claim, see S. at 55 (scenario development), S. at 63 (counter-terrorism training), S. at 9 (working on guards and guard tactics in Sandia study), and S. at 23 (directing 24-man guard force at highly sensitive installation). Applicants attack these qualifications, not as being insufficient, but on the ground that they do not apply to nuclear power plants. Again, Intervenor disagree with Applicants' literal application of LEP-78-36, and ask that the Board rule that Mr. Stevens has qualified as an expert in the area of guard training.

EARL ROY BLEACHER

Applicants contend that Mr. Bleacher is not qualified as an expert in any area, A.B. at 17-21; the Staff feels that he is qualified to review portions of the plan dealing with weapons and repelling an intrusion, S.B. at 7.

Applicants claim that Mr. Bleacher has admitted that he does not have any "expertise" in weapons, A.B. at 18, Bleacher deposition (hereafter "B.") at 25. However, on the next page of his deposition, B. at 26, he indicated that his work with Sandia Laboratories involved guards using the three types of weapons specified in App. B.V.A. of Part 73, and also involved the same design basis threat weapons specified in 10 C.F.R. 73.1(a)(1). His response that he was not an expert in weapons was in response to a wide-ranging question that might implicate a whole universe of weaponry.¹³ Based on his Sandia experience alone he has demonstrated sufficient weapons expertise to review the relevant portions of the plan. In addition, he has actually trained guards at the Army's Seneca Depot, B. at 27, and assembled training materials for foreign government guard forces, B. at 5-6. Finally, he has received the extensive weapons training given members of the U.S. Special Forces.

Applicants characterize Mr. Bleacher's experience in repelling intrusion as "limited," A.B. at 19, despite the fact that he was intimately involved with guard training for response and intruder repulsion at Sandia, B. at 34, 11 ff., and also worked with sensitive Army counter-terrorist activities, B. at 56-7. He has also done computer modelling on greater-than-

design-basis threats, B. at 12. The fact that much of this work was generic in nature, B. at 17-8, is not dispositive--in fact, truly site-specific experience at this stage is impossible, since none of the proffered experts has yet seen the SHNPP plan or visited the Harris site. Mr. Bleacher's Blue Light and Seneca Depot work was certainly "on-site."

Intervenors have proffered Mr. Bleacher as a generalist to review the entire SHNPP plan, and believe that he has demonstrated sufficient competence to be qualified to do so. The Staff argues that he does not have a "background" in several key areas, S.B. at 7. The Staff states that he has no background in "security," despite his Defense Nuclear Agency assessment work, E. at 24, working on Blue Light security planning, B. at 19, penetrating security tests, B. at 16, in short an extensive career in security-related matters. Mr. Bleacher stated that he has no specialized training in communications or electronics, and the Staff accordingly believes him to be unqualified in these areas as well. However, his answers to specific technical questions demonstrate that he is familiar with the "fabrication and assembly" of electronics and communications components into an "overall system," see 8 N.R.C. at 569. His guard training experience covers many electronics and communications aspects. He has developed packets and programs for defense of foreign installations from military and terrorist attack, B. at 5-6, and helped design the Blue Light set up, both of which include electronic equipment. He is familiar with the set up and weaknesses of sensor systems, CCTV, infrared, microwave, E-fields, and G-phones, as well as physical barriers, and test-

ing the integrity of these systems, B. at 15-6. Applicants claim he does not know of the "closing in" of chain link fences, A.B. at 19, but the question on which this supposed lack of knowledge is based is vague and potentially misleading at the very least, B. at 38. The fact that he does not know what an H-field is, B. at 20, does not necessarily compromise his knowledge of other detection systems; and as noted above, the fact that he is not familiar with plant operations (such as spent fuel pool fault analysis or transmission line supervision) does not detract from his expertise in security systems or his ability to apply that expertise to the Harris plant. Intervenor believe that Mr. Bleacher has demonstrated sufficient expertise in the components and design of an "overall system" to qualify him to review the entire integrated security plan for SHNPP, and request that the Board so rule.

JAMES MACKIE

As the Staff indicates, Mr. Mackie's position appears to be in "some doubt," S.B. at 5. Applicants have moved that Mr. Mackie be ruled to have voluntarily withdrawn, A.B. at 5-6, 24, since Intervenor have "failed to reschedule the said deposition," A.B. at 24. Intervenor regret any inconvenience they have caused Applicants and apologize for same, but contrary to Applicants' contention Intervenor did in fact offer to reschedule Mr. Mackie's deposition, only to be informed by counsel that Applicants did not wish to do so and that they would take a position that Mr. Mackie had withdrawn. Applicants'

motion ought therefore to be denied, and Applicants should be given a chance to reconsider their position or be held to have waived their deposition (no substantial prejudice to Applicants is likely from such a ruling, since Mr. Mackie has been unavailable and would not be available for further deposition until June 13--the Board might wish to rule separately on his qualifications).

In any event, Intervenor^s believe that sufficient information has been established in the record during the Staff's examination to qualify Mr. Mackie as an expert in document security and in internal security measures. Both the Staff, S.B. at 6, and Applicants, A.B. at 25, argue that Mr. Mackie's expertise is irrelevant to the present proceedings. However, Intervenor^s believe that it is in fact ^erelevant to the adequacy of protection for the security plan itself and for the documents (log books, employee records, incident reports, etc.) generated pursuant to it. Mr. Mackie has expertise in developing and implementing security arrangements for defense and foreign service facilities and document protection areas, Mackie deposition (hereafter "MK.") at 21, 49. He has coordinated training for response to terrorist attacks, MK. at 45-6 and participated in studies of overall security systems, MK. at 47-8. Although the thrust of his experience is in document security, Mr. Mackie also (as necessary for a supervisor) worked with the other integrated components of security systems, MK. at 72, including detection system installation, MK. at 66, and communications, MK. at 67. Intervenor^s therefore ask that the Board

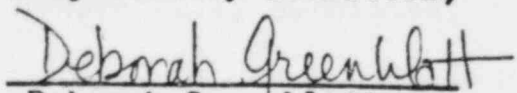
qualify Mr. Mackie in the areas of documents security and control and in internal security measures, and that he be allowed to review the appropriate portions of the SHNPP plan.

CONCLUSION

Intervenors believe that they have proffered a group of qualified experts, who can review individual portions of the plan pursuant to the separation-"sanitization" procedure contemplated by ALAE-410, or in the case of Mr. Bleacher, who can review the entire integrated plan. With respect to Messrs. Maples, Tuggle, Stevens, and Mackie, Intervenors agree with the Staff's position on allowing them to see the portions of the plan relevant to their area of expertise. With respect to Mr. Bleacher, Intervenors request that the Board rule that he is qualified to review the entire plan.

The Staff has recommended that only one expert be allowed to review the guard training portions of the plan, S.B. at 10. Since review of the plan will go only to formulation of contentions, Intervenors believe that it will not expedite matters or "combine testimony" to restrict review of the plan. Intervenors respectfully request that the Board allow all three to review the relevant portions, leaving the decision as to the presentation of evidence at trial (the real thrust of the Policy Statement, 46 FR 28533) to the sound discretion of Intervenor's counsel.

Respectfully submitted,


Deborah Greenblatt
Counsel for Intervenors

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of CAROLINA POWER & LIGHT CO. Et al.
Shearon Harris Nuclear Power Plant, Units 1 and 2
(Dockets 50-400)
(and 50-401 O.L.)

CERTIFICATE OF SERVICE

I hearby certify that copies of the foregoing Intervenors' Reply Brief
on Qualifications & Security Experts

HAVE been served this 4th day of June 1983, by deposit in the
US Mail, first-class postage prepaid, upon all parties whose names are
listed below.

Judges James Kelley, Glenn Bright and James Carpenter (1 copy each)
Atomic Safety and Licensing Board
US Nuclear Regulatory Commission
Washington, DC 20555

George F. Trowbridge (attorney for Applicants)
Shaw, Pittman, Potts & Trowbridge
1800 M St. NW
Washington, DC 20036

Ruthanne G. Miller
ASLB Panel
USNRC
Washington, DC 20555

Office of the Executive Legal Director
Attn: Dockets 50-400/401 O.L.
USNRC
Washington, DC 20555

Phyllis Lotchir, Ph.D.
108 Bridle Run
Chapel Hill, NC 27514

Docketing and Service Section
Attn: Dockets 50-400/401 O.L.
Office of the Secretary
USNRC
Washington, DC 20555

Pat & Slater Newman
CANP
2309 Weymouth Court
Raleigh, NC 27612

Travis Payne
Edelstein & Payne
Box 12643
Raleigh, NC 27605

Bradley W. Jones
USNRC Region II
101 Marietta St.
Atlanta, GA 30303

Richard Wilson, M.D.
729 Hunter St.
Apex, NC 27502

Hill Camrow
LP&L
P.O. Box 1551
Raleigh, N.C. 27602

Karen E. Long
Public Staff - NRC
P.O. Box 991
Raleigh, NC 27602

Certified by Deborah Bramblatt