April 20, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY AND	)	Docket Nos. 50-400 OL
NORTH CAROLINA EASTERN MUNICIPAL	)	50-401 OL
POWER AGENCY	)	
	)	
(Shearon Harris Nuclear Power	)	
Plant, Units 1 and 2)	)	

APPLICANTS' RESPONSE TO THE LICENSING BOARD'S MEMORANDUM AND ORDER DATED MARCH 25, 1983

By Memorandum and Order dated March 25, 1983, the Board invited the parties to address several questions relating to whether contentions based on comparative cost savings analyses in Applicants' Environmental Report are barred by the Commission's new rules concerning alternative energy sources and need for power. Applicants are responding only to Question 1 (whether such contentions are barred).

Clearly the Commission's new rules no longer require license applicants at the OL stage, as is required at the CP stage, to establish need for power or to justify the plant as superior to other generating capacity which the applicant might have built instead. Clearly also the new rules are based on a finding by the Commission from past experience that the benefits

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of operating a completed plant are sufficiently established by the operating cost savings, including fuel costs, compared to the operating costs of existing fossil-fuel generating capacity. Beyond these obvious conclusions, however, the new rules are susceptible to two different interpretations which we discuss below, followed by a request that the Board certify to the Appeal Board the question of their proper interpretation.

1. One interpretation of the new rules is that while the Commission no longer expects environmental reports and statements at the OL stage to address need for power or alternative energy sources, it does expect that such reports and statements will address operating cost savings in their cost/benefit analyses. If so, it is Applicants' view that the cost savings would be open to challenge and litigation.

This interpretation can be supported by the fact that the Commission did not expressly repeal the requirements in 10 CFR 51.23(c) and 51.26(a) that environmental statements contain a cost-benefit analysis at the OL as well as CP stage and that the cost-benefit analysis quantify, to the fullest extent practicable, the various factors considered. The logical way to quantify the benefits of a new plant (other than to show a need for power) is to show that its operation is preferable to other available capacity.

If this interpretation is adopted, it must be recognized that litigation of cost savings can involve exactly

the same kind of calculations as are involved in establishing need for power and in comparing alternate energy sources. A calculation of cost savings necessarily entails consideration of capacity factors, load projections, and fuel and O&M costs, and economic comparisons with fossil units. Having to go through litigation of those calculations may disappoint both the Commission and the nuclear industry in the expectations they may have had for simplifying licensing proceedings at the OL stage.

We do believe, however, that even under this interpretation there is guidance to be found by the Board in the new rules and in the underlying experience of the Commission that cost savings sufficiently establish the benefits of operation. The new rules and Commission findings would justify the Board, in our view, in applying a high threshold standard to the admission of contentions on the matter.*

2. The second possible interpretation of the new rules is that the Commission did not intend that licensing

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*Applicants have provided in their Environmental Report an analysis of the enormous cost savings compared to operation of other CP&L generating capacity and has shown the insensitivity of the benefit to changes in major assumptions underlying the savings calculations. It is not enough, as Mr. Eddleman has done, to question the accuracy of each assumption. What is required is a showing by Mr. Eddleman of the bases for applying different assumptions and that the differing assumptions collectively are sufficient to negate the benefits claimed by Applicants. This Mr. Eddleman has not done. (See Applicants' Reply to Intervenor Wells Eddleman's Revised, Amended and Additional Contentions Based on Eddleman 15 and ER Amendment 5, dated March 11, 1983.)

proceedings at the OL stage get bogged down in load projections and the comparative costs of operating nuclear versus fossil units, and that the Commission intended its finding of operating savings to be conclusive of the benefits of operating the nuclear plant in the absence of a showing of special circumstances. Under this interpretation calculations of cost savings would not be included in environmental reports or statements and would not be a proper subject for litigation.

Applicants understand that the Staff is taking this position and plans to delete from its Draft Environmental Statement all mention and computation of cost savings. We find, however, a potential inconsistency in the Staff's position. Assuming that portions of the DES which are left intact are open to litigation, little will be accomplished by the Staff approach. The DES will, as we understand the Staff's plans, express the benefit from the Harris plant both in terms of added generating capacity and expected generation of kilowatt hours. The latter, of course, depends on plant capacity factors which Mr. Eddleman seeks to litigate. The DES will also list as costs to be considered in the cost-benefit balance the costs of operating the Harris plant. These cost estimates also involve, in addition to projected capacity factors, fuel and O&M costs, all of which Mr. Eddleman also seeks to litigate. A more logical application of the Staff's view of the new rules would have been to eliminate not only cost savings but also energy projections and costs of operation from the DES.

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The question before the Board has not to Applicants' knowledge been raised in any other proceeding. It goes to the heart of the Commission's new rules and will certainly come up again in other OL proceedings. Further, if the Board rules in favor of the Staff approach, Applicants face the risk of appeal and possible delay in plant operation. We suggest that this question is precisely the kind of "significant legal or policy question" that the Commission's Statement of Policy on Conduct of Licensing Proceedings (CLI-81-8, 13 N.R.C. 452, 456 (1981)) exhorts the Licensing Boards to "promptly refer or certify to the Atomic Safety and Licensing Appeal Board or the Commission" for guidance. The questions presented are legal in character and have generic implications and they have not been previously addressed on an appellate level before the Commission. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC ___, ___ (August 19, 1982) (slip opinion at 6-7). Applicants urge accordingly that pursuant to 10 C.F.R. § 2.718(i) and 2.785(b)(1) the Board certify to the Appeal Board for prompt decision the proper interpretation of the Commission's new rules.

Respectfully submitted,

George F. Trowbridge, P.C.
Thomas A. Baxter, P.C.
John H. O'Neill, Jr.
SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Richard E. Jones, Esq.
Samantha Francis Flynn, Esq.
CAROLINA POWER & LIGHT COMPANY
P. O. Box 1551
Raleigh, North Carolina 27602

Dated: April 20, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to the Licensing Board's Memorandum and Order Dated March 25, 1983," dated April 20, 1983, were served upon those persons on the attached Service List by deposit in the United States mail postage prepaid, this 20th day of April, 1983.

George F. Trowbridge, P.C.

Dated: April 20, 1983

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SERVICE LIST

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
Myron Karman, 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
Chapel Hill Anti-Nuclear Group Effort
P.O. Box 524
Chapel Hill, North Carolina 27514

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 12643
Raleigh, North Carolina 27605

Dr. Richard D. Wilson
729 Hunter Street
Apex, North Carolina 27502

Mr. Wells Eddleman
718-A Iredell Street
Durham, North Carolina 27705

Ms. Patricia T. Newman
Mr. Slater E. Newman
Citizens Against Nuclear Power
2309 Weymouth Court
Raleigh, North Carolina 27612

Richard E. Jones, Esquire
Vice President & Senior Counsel
Carolina Power & Light Company
P.O. Box 1551
Raleigh, North Carolina 27602

Dr. Phyllis Lotchin
108 Bridle Run
Chapel Hill, North Carolina 27514

Deborah Greenblatt, Esquire
1634 Crest Road
Raleigh, North Carolina 27606

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

Ruthanne G. Miller, Esquire
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Karen E. Long, Esquire
Public Staff - NCUC
P.O. Box 991
Raleigh, North Carolina 27602