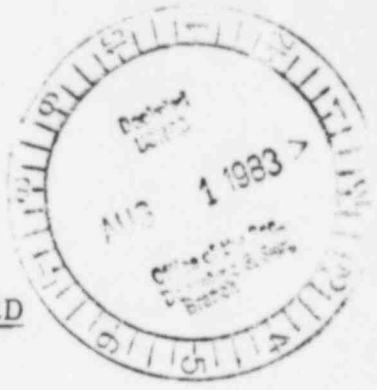
RELATED CORRESPONDENCE



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO INTERVENORS' OBJECTIONS TO APPLICANTS' PROTECTIVE ORDER AND AFFIDAVIT OF NON-DISCLOSURE[1]

In a conference call held among the Atomic Safety and Licensing Board and the parties to this proceeding July 14, 1983 and in its Memorandum and Order of July 15, 1983, the Board set forth the schedule for submission of objections and comments by the parties related to the Protective Order Governing Access to Security Plan Information and Affidavit of Non-Disclosure proposed by the Applicants, as filed with the Board July 15, 1983. At the time of filing their proposed Protective Order and Affidavit, Applicants informed the Board of points upon which attorneys for the parties could not reach agreement during negotiations. Those differences in large part are confirmed by

---

[1]Applicants object to Intervenors Eddleman, Kudzu, and CCNC entitling their pleading as "Joint Intervenors" and to Counsel Runkle representing himself as counsel for Joint Intervenors. Joint Intervenors in this proceeding as previously admitted by the Board in its Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference), dated September 22, 1982, consist of CHANGE, Kudzu, CCNC and Mr. Eddleman and are represented as such by Counsel Travis Payne. To refer to the three Intervenors in the Security Plan phase of these proceedings also as Joint Intervenors but represented by another attorney will inherently cause confusion and misunderstanding in this proceeding. Applicants request that the names of each intervenor in the Security Plan proceedings be set out separately each time the situation requires in order to avoid confusion, and that the appellation "Joint Intervenors" be reserved for the four intervenors whose contentions have heretofore been admitted jointly.

Intervenors Eddleman, Kudzu, and CCNC (hereinafter "Intervenors") in their Objections to Applicants' Protective Order and Affidavit of Non-Disclosure ("Objections"). Pursuant to the schedule for reply documents set forth by the Board, Applicants hereby respond to Intervenors' objections as follows:

1) Intervenors are in agreement with Applicants that all protected information, including notes and workpapers of counsel and experts, will be used and maintained at CP&L's offices in Raleigh. ("We are satisfied with the stricture on reviewing all protected materials at the offices of Applicants in Raleigh . . . ." Objections at 4.) However, Intervenors insist that a security lock which they would purchase and to which they would retain the combination is insufficient protection of these materials. Despite the fact that counsels are bound by Codes of Professional Responsibility and Disciplinary Rules thereunder, Intervenors insist that language be inserted in the Protective Order providing that "Applicants or Staff shall not review any work-product or other materials prepared by intervenor Experts or Counsel without prior approval by the Board or Intervenor Counsel." Objection at 7. Applicants do not object to the inclusion of such language, although Applicants contend it is both unnecessary and redundant as to the disciplinary and ethical requirements to which counsels are professionally bound, and in light of the security arrangements for the file cabinet where Intervenors' counsel and experts' work will be kept.

2) The Memorandum and Order (Ruling on Qualifications of Intervenors' Proffered Security Experts), dated June 17, 1983 ("Memorandum and Order"), requires that "where more than one proffered expert is found to be qualified in the same area, only one shall be permitted to review the relevant part of the plan." Memorandum and Order at 6. The Board cites for its authority 10 C.F.R. § 2.744(e) which provides that access to security plans is restricted to what is "necessary to a proper decision in the proceeding." Section 2.744(e) further provides that

> The presiding officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.

Id. Under the authority of § 2.744(e), the procedure as ordered by the Board which allows review of any aspect of the Security Plan by only one expert is reasonable and is designed to protect against disclosure of safeguards information by preventing that information from being handled by more persons than necessary. At the same time, Intervenors' procedural rights have not been impaired in that their experts, taken as a whole, are able to review every aspect of the plan. Such review is completely adequate to formulate and litigate a Security Plan contention.

The primary argument advanced by Intervenors in support of their position is that Earl Bleacher who has been qualified to review all parts of the plan needs to have an overview thereof — to see the whole as the sum of its parts — regardless of whether another expert qualified to look at only a restricted portion of the plan reviews that particular part. The assurance by Intervenors that Bleacher "will not review the communications section, for example, in as much detail as the sections where there is no other expert" (Objections at 3) is meaningless, impractical, and incapable of enforcement.

The Intervenors also state that Mr. Bleacher "needs to look at the entire plan to determine if the other experts are receiving all the material they need to assess their narrower field of review." Objections at 3. Such review is unnecessary and not contemplated in the Board's Memorandum and Order. Each expert, other than Bleacher, is limited to a discrete area of expertise. Likewise, the discrete portions of the plan which deal with that area will be provided to the respective reviewers. It is obvious that if an expert, for example, on communications, were not given all the portions of the plan related to communications, he would note that there was an inadequacy in the plan in that it failed to address questions related to whatever portion was missing.

In any event, Applicants are willing to have the Board approve the plan as sanitized for review by Intervenors' experts and counsel, as discussed below, and would at that time be willing to indicate to the Board which sections of the plan would be made available to each qualified expert. Applicants do not see this as necessary or called for but offer this as a means of making Intervenors more at ease with the review process.

3) Applicants here reiterate their statements made to the Board, upon filing their proposed Protective Order and Affidavit, that access for Intervenors' counsel to the Security Plan is on a "need to know" basis. 10 C.F.R. § 73.2. This concept requires that counsel be allowed to see the plan, limited to the part in question, only after one of Intervenors' experts has discovered an aspect of the plan which is inadequate in light of Commission regulations. At that point, counsel for Intervenors then has a need to know so that he can prepare a contention and be ready for litigation thereof if necessary.

Intervenors state that their counsel has technical competence to compare the plan to the regulations. This statement is undermined by Intervenors own statement that their counsel's initial review would be to determine if every regulation of 10 C.F.R. Part 73 is mentioned in the plan — there is no such requirement in the regulations. Counsel for Intervenors is not an expert and his prior review will serve no useful function. Experts will be able to determine for themselves whether they are receiving proper sections of the plan or whether the plan is "over-sanitized." It is certainly possible that the experts may find no fault with the plan and counsel's review thereof would be unnecessary.

4) There is no written legal authority (see Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2) ALAB-410, 5 N.R.C. 1398 (1977) and ALAB-592, 11 N.R.C. 744 (1980)) for permitting a "security-related walk-through at the Shearon Harris site for [Intervenors'] experts." Objections at 4. Intervenors are here for the first time raising an objection to the Security Plan review process which is

extraneous to, and not contemplated by, NRC regulations or this Board's Memorandum and Order. The Security Plan phase of the Harris proceedings centers around whether the written security plan meets the regulations in 10 C.F.R. Part 73 et seq. A review of that plan as written is all that is necessary and should be afforded.[2] In other phases of the Harris licensing proceeding, in no instance where an Intervenor desires to frame a contention is he afforded a tour of the plant construction site. The Security Plan aspect of these proceedings should not be given any different treatment.

5) As Intervenors admit, Donald Henke is "not qualified by the Board as having the technical competence to review the plan for the reason that [Intervenors] did not proffer him as an expert." Objections at 5. Yet Intervenors argue that Mr. Henke should be allowed to review the work product, including reports to counsel, of Messrs. Bleacher, Tuggle, and Stevens related to their review of Applicants' Security Plan.

Intervenors have had the opportunity for over nine months to proffer Mr. Henke as an expert to review Applicants' plan. He could have been deposed and possibly qualified as an expert. Instead, Intervenors have waited until the review process is about to begin, after extensive depositions and briefings before the Board, and are now trying to bootstrap yet another individual into a position to review Applicant's protected information. Mr. Henke's ability to keep secrets — an Affidavit of Non-Disclosure will be required of all those who review the plan anyway — as well as his concern for maintaining the professional integrity of his firm — the members of his firm qualified to review the plan were qualified as experts and as such, by definition, Henke's review of their work is unnecessary and superfluous — are irrelevant.

---

[2]Extensive detailed diagrams of the plant and site which are contained in Applicants' FSAR are adequate to provide the "reality check" which Intervenors seek. Use of these diagrams should be more desirable considering the confusion and lack of understanding which will no doubt result from a walk-through of a facility only 80% complete and with security measures in most instances not yet installed.

Review of the plan in Diablo Canyon was limited to experts and counsel for Intervenors. ALAB- 592, 11 N.R.C. at 749. No provision was made for experts' supervisors, and none should be made in this instance either. For Mr. Henke to have access to protected information related to the security plan, the procedures set down by this Board should be met. He should have been made available for deposition, arguments should have been made on his qualifications, and a ruling on his expertise should have been issued by the Board. On the other hand, if Messrs. Tuggle, Bleacher and Stevens must have their work reviewed by Mr. Henke, then all three should be prohibited from viewing Applicants' plan and should be disqualified from these proceedings.

6) Intervenors imply that the concept of a "sanitized" version of the Harris Security Plan being provided to them is a new and sudden development. However, sanitization of a security plan is an inherent part of the Diablo Canyon decision. There the Atomic Safety and Licensing Appeal Board set out the procedures for plan review:

> Review is to be limited to the plan as revised in accordance with the Commission's newly issued regulations. Only those portions of the plan which are both relevant to and necessary for the litigation of the intervenors' contention need be released to the intervenors' representative or representatives . . ., and then only under protective order. Consistent with this standard, as few of the "gory details" as possible are to be released. We understand that the applicant has offered to release a "sanitized" version of the plan . . ..

ALAB-410, 5 N.R.C. at 1405.

It appears from Intervenors' arguments (Objections at 6) that they do not take issue with the concept of sanitization itself as adopted by the Diablo Canyon Appeal Board, except to that extent that it may cause delay if the Licensing Board is required to rule on the appropriate amount of sanitization. Intervenors contend they are under time constraints imposed upon them by the schedules of their own experts. Objections at 7. Applicants do not believe that this is sufficient reason for making sensitive details of the plan which are not necessary to Intervenors' review available to them. Such details should be removed from the plan and for this proposition Applicants rely upon the weight

of authority of the Diablo Canyon decisions. ALAB-410, 5 N.R.C. at 1405; and ALAB-592, 11 N.R.C. at 752.

Applicants agree with Intervenors that expediency in these proceedings is desirable. Applicants do not want to foster delay in resolution of any Security Plan concern. Applicants envision sanitization similar in form to that suggested by Intervenors — removal of lock combinations, computer software and vulnerabilities, and similar extremely sensitive information.[3] Applicants are willing to provide a general description of the types of information omitted from each section of the plan as was suggested by the Appeal Board in Diablo Canyon. ALAB-410, 5 N.R.C. at 1405-06. Applicants do not foresee that such a system of sanitization would require any rulings by the Board or, even so, would cause any significant delay in the proceedings.

CONCLUSION

Applicants request that Intervenors' requests 1) to allow Mr. Bleacher to review the entire Secuirty Plan even where other experts are provided with discrete portions of the plan, 2) to permit counsel for Intervenors a review of the entire plan prior to experts' review, 3) to afford Intervenors' counsel and experts walk-through security tours of the construction site, 4) to enable the supervisor of Messrs. Tuggle, Bleacher and Stevens to review protected information, and 5) to omit any sanitization of the Security Plan, should all be rejected by the Board. Applicants do not disagree with Intervenors' request to include language in the Protective Order preventing Applicants' review of Intervenors' work product nor with the concept of sanitization suggested by the Intervenors whereby lock combinations and similar sensitive details which are unnecessary to Intervenors' review are removed from the plan as produced.

---

[3] Applicants believe sanitization also embodies the principle of providing to an expert only discrete portions of the plan related to his particular area of expertise. In other words, Mr. Tuggle, for example, would receive a version of the plan in which all items not within the area of communications were sanitized out (i.e., omitted).

This the 27th day of July, 1983.

CAROLINA POWER & LIGHT COMPANY

By Hill Carrow

Hill Carrow
Attorney
Post Office Box 1551
Raleigh, North Carolina 27602
Telephone: (919) 836-6839

Attorneys for Applicants:

Thomas A. Baxter, Esquire
John H. O'Neill, Jr., Esquire
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D. C. 20036

Richard E. Jones, Esquire
Samantha Francis Flynn, Esquire
Carolina Power & Light Company
Post Office Box 1551
Raleigh, North Carolina 27602

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Intervenors' Objections to Applicants' Protective Order and Affidavit of Non-Disclosure" were served this 27th day of July, 1983 by deposit in the United States mail, first class, postage prepaid, to the parties listed below.

James L. Kelley, Esquire
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ruthanne G. Miller, 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

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Thomas A. Baxter, Esquire
John H. O'Neill, Jr., Esquire
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

Charles A. Barth, Esquire
Myron Karman, Esquire
Office of Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

John D. Runkle, Esquire
Conservation Council of North Carolina
307 Granville Road
Chapel Hill, North Carolina 27514

Hill Carrow

Hill Carrow

Dated: July 27, 1983