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June 19, 1985

RELATED CORRESPONDENCE

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

Judge Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Judge James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
Carolina Power & Light Company, et al.
(Shearon Harris Nuclear Power Plant)
Docket No. 50-400 DL

Dear Judges:

Intervenor Wells Eddleman seeks production of certain documents which were identified in discovery on contention 41C- the harassment contention. These documents were submitted to the Board by CP&L for in camera, ex parte review over our objection. We request that you make these documents a part of the record in this proceeding for possible consideration on appeal and that copies of these documents be provided to us for our review and use. This is also a request for the production of these documents pursuant to the Freedom of Information Act, 5 U.S.C. 552, and the Commission's implementing regulations, 10 C.F.R. Part 9. These documents were described in our motion to compel of May 7, 1985, Tr. 7556-67, as follows: "documents related to (the) Inspector Review Panel, its final report, the audit or report of Mr. Parks Cobb with respect to that panel's work and the underlying documents behind that report," and "the report and associated documents with respect to the individual charge of harassment by a quality assurance or construction inspector at the Harris site." Tr. 7559; 7563.

We believe that these documents properly represent a part of the record of this proceeding upon which the decisions of this Board must be based. 10 C.F.R. Part 2, Appendix A, V(e). We reiterate our earlier objections to the in camera, ex parte consideration of these materials by the Licensing Board and state here our disagreement with the assertions by CP&L that the authority cited in its May 20, 1985, letter support use of such procedure here. A review of the cases relied upon by the company reveals that they neither individually nor collectively stand for the overbroad proposition of law asserted by CP&L.

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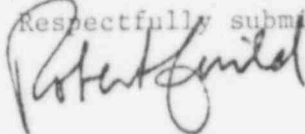
None of the cases cited considered a disputed use of an in camera review procedure, and each of the cases involved the resolution of something more than a mere relevance question, as here, such as more appropriate and sensitive questions of attorney-client and executive privilege. The Court in Wood v. Brier, 54 F.R.D. 7 at 9 (E.D. PA 1973), for example, notes that it undertook in camera review only upon stipulation of the parties and that it merely assumes the propriety of such a procedure. The Wood Court explicitly cites contrary authority (not identified by CP&L which claimed "(t)here is no question regarding the propriety of the procedure . . .") which we submit is applicable here. In the case cited, Natta v. Zletz, 405 F.2d 99 at 111 (1968), the Seventh Circuit noted and applied the Supreme Court's criticism of in camera, ex parte judicial review of documents:

Nor is it realistic to assume that the trial court's judgement as to the utility of material for impeachment or other legitimate purposes, however conscientiously made, would exhaust the possibilities. In our adversary system, it is enough for judges to judge. The determination of what may be useful to the defense can properly and effectively be made only by an advocate.

Dennis v. United States, 384 U.S. 855, 874-875, 86 S.Ct. 1840, 1851, 16 L.Ed.2d 973 (1966). We urge that the decisions on the relevance of the subject documents, here, should likewise have been made only after adversary review and effective opportunity to be heard. These documents should be made a part of the record and served on the parties in order that we may press our position on review of the Board's decision.

As noted above we independently seek production of these documents pursuant to the Freedom of Information Act. By copy of this letter we are also submitting this request to the Director of the Office of Administration, as provided in 10 C.F.R. 9.8. Since these documents may contain factual information bearing on the safety of the Harris facility which may form the basis for new contentions in this proceeding we seek expedited consideration of this FOIA request.

Respectfully submitted,



Robert Guild
Counsel for Mr. Eddleman

CC Director, Office of Administration
Service list