

20167

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

99 MAR 30 P5:13

In the Matter of)
)
CAROLINA POWER & LIGHT CO.)
(Shearon Harris Nuclear)
Power Plant))
_____)

Docket No. 50-400 -OLA
ASLBP No. 99-762-02-LA


OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

MOTION FOR APPROVAL OF PROTECTIVE ORDER

Orange County, with the support of Carolina Power & Light Co. ("CP&L") and the NRC Staff, hereby requests the Board's approval of the attached Protective Order. The parties have agreed that if it is approved by the Board, the Protective Order will govern the submittal of any confidential documents that the parties may rely on in this proceeding.

In anticipation that Orange County may need to rely on confidential documents in support of its forthcoming contentions, the County seeks approval of this Protective Order before April 5, 1999.

Respectfully submitted,



Diane Curran
Harmon, Curran, Spielberg, & Eisenberg
2001 "S" Street N.W., Suite 430
Washington, D.C. 20009
202/328-3500

March 26, 1999

9903310099 990326
PDR ADOCK 05000400
G PDR

D503

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Frederick J. Shon
Dr. Peter S. Lam

In the Matter of)	Docket No. 50-400-LA
)	
CAROLINA POWER & LIGHT COMPANY)	ASLBP No. 99-762-02-LA
)	
(Shearon Harris Nuclear)	March __, 1999
Power Plant))	

ORDER
(Protective Order)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Party to this proceeding as defined in Paragraph 3. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Licensing Board or the Nuclear Regulatory Commission ("Commission").

2. A Party may designate as protected materials information (a) that is of a type customarily held in confidence by its owner; (2) for which there is a rational basis for having customarily held it in confidence; (3) that has, in fact, been kept in confidence; and (4) that is not found in public sources. *See Kansas Gas and Electric Co. (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-327, 3 NRC 408, 416-17 (1976).*

3. Definitions -- For purposes of this Protective Order:

(a) The term "Party" shall mean the Carolina Power & Light Company ("CP&L") and, the Board of Commissioners of Orange County. For the purposes of this Order, the term "party" does not include the NRC Staff. The provisions of this Order, unless expressly stated, do not apply to NRC employees, contractors, or consultants. Disclosure of protected material by the NRC Staff, including Staff Counsel, is governed by 10 C.F.R. §§ 2.744, 2.790, 9.17, and 9.25.

(b) The term "Materials" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

(c) (1) The term "Protected Materials" means (A) the Holtec, Inc. proprietary technical report that is Enclosure 6 to CP&L's license amendment application; (B) materials (including depositions) provided by a Party in response to discovery requests and designated by such Party as protected; (C) any information contained in or obtained from such designated materials; (D) any other materials which are made subject to this Protective Order by the Licensing Board, by the Commission, by any court or other body having appropriate authority, or by agreement of the Parties; (E) notes of Protected Materials; and (F) copies of Protected Materials. The Party producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or "CONFIDENTIAL," or with words of similar

import as long as either the term "Protected materials" or "Confidential" is included in that designation to indicate that they are Protected Materials.

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.

(d) The term "Nondisclosure Declaration" shall mean the Declaration annexed hereto by which Parties who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Parties have read the Protective Order and agree to be bound by it. All Nondisclosure Declarations shall be served on counsel for the Parties listed in 3(a), as provided on the official service list in this proceeding.

(e) The term "Reviewing Representative" shall mean a person who has signed a Nondisclosure Declaration and who is:

- (1) an attorney who has made an appearance in this proceeding for a Party, except for NRC Staff counsel;
- (2) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (2);

- (3) an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;
- (4) a person designated as a Reviewing Representative by order of the Licensing Board or the Commission; or
- (5) court reporters engaged for depositions or record proceedings.

4. Protected Materials shall be made available under the terms of this Protective Order only to Parties and only through their Reviewing Representatives as provided in Paragraphs 7, 8, and 9.

5. Protected Materials shall remain available to Parties until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. The Parties shall, within fifteen (15) days of the later date described above, return the Protected Materials (excluding Notes of Protected Materials) to the Party that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Party shall also submit to the producing Party an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. Parties shall maintain all Protected Materials in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8 and 9.

For documents submitted to the NRC Staff, the Staff shall follow the notification procedures of 10 C.F.R. § 2.790 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Party and by the Reviewing Representative in accordance with the Declaration executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) Reviewing Representatives may not use information contained in any Protected Materials obtained through this proceeding to give any Party or any competitor of any Party a commercial advantage.

(b) In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraph 3(e) above, the Party shall seek agreement from the Party providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraph 3(e) above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the Licensing Board for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Nondisclosure

Declaration. A copy of each executed Nondisclosure Declaration shall be provided to counsel for the Party asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative have both executed a Nondisclosure Declaration. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraphs 3(e), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Nondisclosure Declaration shall continue to be bound by the provisions of this Protective Order and the Declaration.

11. Subject to Paragraph 17, the Licensing Board shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Licensing Board, the parties to the dispute shall use their best efforts to resolve it. Any Party that contests the designation of materials as protected shall notify the Party that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Protective Order shall automatically cease to apply to such materials ten (10) days after the notification is made unless the designator, within said 10-day period, files a motion with the Licensing Board, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof

shall be on the Party seeking protection. If the Licensing Board finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply. Production of NRC records and documents is governed by 10 C.F.R. § 2.744.

12. All copies of all documents reflecting Protected Materials that are filed by any Party or the NRC Staff, including the portion of the hearing testimony, exhibits, transcripts, pleadings and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS." Counsel for the producing Party shall provide to all Parties who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

If any Party desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Party shall first notify in writing both counsel for the disclosing Party and the Licensing Board of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Licensing Board.

13. Nothing in this Protective Order shall be construed as precluding any Party from objecting to the use of Protected Materials on any legal grounds.

14. Nothing in this Protective Order shall preclude any Party from requesting the Licensing Board, the Commission, or any other body having appropriate authority, to find that

this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Licensing Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

15. Each Party governed by this Protective Order has the right to seek changes in it appropriate from the Licensing Board or the Commission.

16. Nothing in this Order shall prevent any party from seeking public disclosure of information designated as Protected Materials, in accordance with NRC regulatory procedures.

17. If the Licensing Board finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for ten (10) days from the date of issuance of the Licensing Board's decision, and if the Party seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional ten (10) days. None of the Parties waives its rights to seek additional administrative or judicial remedies after the Licensing Board's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof.

18. Nothing in this Protective Order shall be deemed to preclude any Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

19. None of the Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

20. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with

this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and of any Nondisclosure Declaration executed hereunder shall constitute a violation of an order of the Commission. Any violation of this Protective Order may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Frederick J. Shon
ADMINISTRATIVE JUDGE

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

March __, 1999

ATTACHMENT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

NONDISCLOSURE DECLARATION

Under penalty of perjury, I, _____, hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this Declaration or the Licensing Board's March __, 1999 Protective Order, which incorporates the terms of this declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities.

WHEREFORE, I do solemnly agree to protect such Confidential Information as may be disclosed to me in this NRC Proceeding, in accordance with the terms of this declaration.

Name: _____

Title: _____

Representing: _____

Date: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'99 MAR 30 P5:13

In the Matter of)
)
CAROLINA POWER & LIGHT)
(Shearon Harris Nuclear)
Power Plant))
)

Docket No. 50-400 -OLA
ASLBP No. 99-762-02-LA

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I certify that on March 26, 1999, copies of the foregoing proposed Protective Order and Motion for Approval of Protective Order were served on the following by e-mail and/or first class mail as indicated below:

Secretary of the Commission
Attention: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: hearingdocket@nrc.gov

Steven Carr, Esq.
Carolina Power & Light Co.
411 Fayetteville Street Mall
Post Office Box 1551 - CPB 13A2
Raleigh, NC 27602-1551
E-mail: steven.carr@cplc.com

Marian L. Zobler, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: mlz@nrc.gov

Alice Gordon, Chair
Orange County Board of Commissioners
P.O. Box 8181
Hillsborough, NC 27278
E-mail: gordonam@mindspring.com

Paul Thames
County Engineer
Orange County Board of Commissioners
P.O. Box 8181
Hillsborough, NC 27278

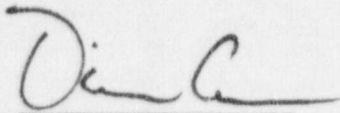
Adjudicatory File
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. Peter S. Lam
Atomic Safety and Licensing Board
Mail Stop T 3F-23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: psl@nrc.gov

Frederick J. Shon
Atomic Safety and Licensing Board
Mail Stop T 3F-23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: fjs@nrc.gov

John H. O'Neill, Jr., Esq.
William R. Hollaway, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street N.W.
Washington, D.C. 20037-1128
E-mail: john_o'neill@shawpittman.com,
william.hollaway@shawpittman.com

G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board
Mail Stop T 3F-23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: gpb@nrc.gov



Diane Curran