

RAS 2304

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

DOCKETED 10/19/00

SERVED 10/19/00

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Peter S. Lam  
Thomas D. Murphy

In the Matter of

CAROLINA POWER & LIGHT COMPANY

(Shearon Harris Nuclear Power Plant)

Docket No. 50-400-LA

ASLBP No. 99-762-02-LA

October 19, 2000

MEMORANDUM AND ORDER  
(Denying Discovery Deadline Extension Motion)

Pending before the Licensing Board is an October 13, 2000 motion of intervenor Board of Commissioners of Orange County, North Carolina (BCOC), requesting that the October 20, 2000 discovery deadline in this proceeding be extended two weeks, which would also require extensions of the respective November 20, 2000 and December 7, 2000 dates for filing the parties' written presentations and conducting an oral argument in accordance with 10 C.F.R. § 2.1113. In responses filed October 17, 2000, both applicant Carolina Power and Light Company (CP&L) and the NRC staff oppose the requested extension.<sup>1</sup> For the reasons set forth below, this discovery deadline extension request is denied.

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<sup>1</sup> By motion submitted October 18, 2000, BCOC has sought leave to file a reply in answer to the October 17, 2000 CP&L response to its discovery extension motion. In doing so, however, BCOC has failed to follow our directive to contact the other parties' and provide the Board with an indication of whether those participants support or oppose the request to file a reply. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Feb. 24, 1999) at 10. For that reason, we deny the request for leave to file a reply, albeit noting that even if we accepted the filing, it would not change our determination here.

We note initially that, notwithstanding assertions that suggest there has been some kind of “bad faith” or “unclean hands” on the part of one or another of the parties, we see no real evidence of that here. Instead, we see an wholly laudable process in which the parties, working among themselves, have sought to reach a reasonable accommodation about the temporal and substantive parameters of discovery that, unfortunately, has turned out not to meet the expectations of one of the participants. The question for this Board is whether, within the confines of the standard governing extensions of the discovery period for this proceeding, we need to provide an additional opportunity for that party’s expectations to be fulfilled.

In reviewing this extension request, we have at least three different sources that indicate that a relatively exacting standard should govern the exercise of our discretion here. One is section 2.1111, which indicates that a discovery period extension for 10 C.F.R. Subpart K proceedings should be granted “based on exceptional circumstances.”<sup>2</sup> There is also the Commission’s recent admonition that in 10 C.F.R. Part 2 proceedings, extension requests should be granted “only when warranted by unavoidable and extreme circumstances.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). Moreover, there is an October 3, 2000 agreement executed by CP&L and BCOC setting forth the parameters under which those parties would conduct discovery that indicates a discovery extension would not be sought absent “extraordinary, unforeseen circumstances.” [BCOC]

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<sup>2</sup> While section 2.1111 provides that “discovery shall begin and end at such times as the presiding officer shall order,” it also indicates that “all discovery shall be completed within 90 days.” Under the Board’s schedule for this portion of the proceeding, after a two-week period in which the parties’ could conduct informal discovery, the Board provided 60 days for formal discovery on the single admitted contention now at issue. See LBP-00-19, 52 NRC 85, 100 & n.4 (2000). As section 2.1111 is worded, however, it does not appear to make the application of the “exceptional circumstances” extension standard applicable only in instances when a 90-day discovery period was established initially.

Motion for Extension of Schedule for Discovery, Briefing and Oral Argument and Request for Expedited Consideration (Oct. 13, 2000) exh. 1, at 2.

Under any of these formulations, the BCOC motion fails. Although BCOC cites a number of different circumstances that it maintains warrants an extension, we are unable to conclude that, individually or in combination, they meet such an exceptional/extreme/extraordinary circumstances standard. For instance, BCOC cites the fact that during discovery period the agency's public document room was in the process of being moved, which it asserts caused some delay in obtaining readable agency documents. These delays appear in large part to have accrued in September; however, the agreement with CP&L not to seek an extension except in extraordinary circumstances was executed on October 3, at which time the scope of this problem should have been apparent. More troubling is the asserted CP&L delay in providing documents during the week of October 2 (which apparently were provided to BCOC's principal witness on October 7, October 10, and October 11). Even this, however, fails to provide a sufficiently compelling basis, particularly given that nothing in the October 3 agreement establishes that, as BCOC now declares, receipt of this information by October 4 was absolutely essential so as to permit it to file additional interrogatories.

In short, nothing put forward by BCOC establishes the kind of exceptional/extreme/extraordinary circumstances that are needed to grant a discovery deadline extension in this instance. Accordingly, we are unable to afford BCOC the relief it seeks.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>3</sup>

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G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 19, 2000

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<sup>3</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant CP&L; (2) intervenor BCOC; and (3) the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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CAROLINA POWER & LIGHT COMPANY ) Docket No. 50-400-LA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING DISCOVERY DEADLINE EXTENSION MOTION) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-400-LA  
LB MEMORANDUM AND ORDER  
(DENYING DISCOVERY DEADLINE  
EXTENSION MOTION)

[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 19<sup>th</sup> day of October 2000