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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Original  
ADJUTANT GENERAL

Before the Atomic Safety and Licensing Board

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

**ORANGE COUNTY'S REPLY TO APPLICANT'S RESPONSE TO ORANGE COUNTY'S MOTION FOR EXTENSION OF SCHEDULE FOR DISCOVERY, BRIEFING AND ORAL ARGUMENT**

Orange County hereby replies to Applicant's Response to Orange County's Motion for Extension of Schedule for Discovery, Briefing and Oral Argument and Request for Expedited Consideration (October 17, 2000) ("Applicant's Response"). The Applicant argues that the County's motion for an extension is in "bad faith," and that the County does not have "clean hands." Applicant's Response at 4, 5. These arguments are both offensive and unfounded.

The Applicant's Response suggests that Orange County somehow induced the Applicant to make major concessions in the October 3 discovery agreement, and then breached the agreement in bad faith. This is completely false. Orange County has conducted itself in good faith throughout this discovery process. The discovery agreement of October 3 involved concessions from both sides, including Orange County's major concession of agreeing not to seek to depose additional CP&L witnesses

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beyond the three permitted by the Board's order.<sup>1</sup> Moreover, contrary to the Applicant's argument, the County did not make an "unqualified agreement to hold to the schedule." The County agreed not to seek an extension of the discovery schedule absent "extraordinary and unforeseen circumstances."<sup>2</sup> The County could not have foreseen that CP&L would take ten days to provide even one installment of the copies that were requested September 27, or several additional days to provide the rest of the installments. If any "bad faith" has been demonstrated in this discovery process, it was in this unconscionable delay. There is simply no excuse for taking ten days to deliver even a single box of discovery documents, especially in a proceeding that has been expedited as this one has, and especially given CP&L's ample resources. Indeed, with a far smaller office staff, counsel for Orange County managed to assure that a foot-high stack of documents were copied and delivered to CP&L's counsel within one business day of their inspection.

In a remarkable display of hypocrisy, the Applicant also accuses Orange County of having "unclean hands" because it has not provided information in interrogatory answers, other than to refer the Applicant to the contents of Contention EC-6. Applicant's Response at 5. According to the Applicant, this answer shows "BCOC's panic that it would like more discovery and more time," which "may be due to its own

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<sup>1</sup> Altogether, CP&L has identified eight potential affiants. Thus, by agreeing not to seek leave to depose more than three, the County may be significantly handicapped.

<sup>2</sup> It should also be noted that Orange County's discovery agreement with CP&L did not cover the schedule for briefing and oral argument. Thus, nothing in the agreement could

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slow start.”<sup>3</sup> *Id.* What the Applicant fails to acknowledge is that not a single party has answered each other’s virtually identical sets of interrogatories regarding their positions on Contention EC-6, because none of them has completed enough work to take a position in the brief time that has elapsed since discovery began. Moreover, even if it could have answered the interrogatories, the Applicant did not make any attempt to do so or any excuse for not doing so; instead, it generally referred Orange County to documents it has produced or will produce.<sup>4</sup> A statement by counsel for the Applicant during a deposition on October 17, 2000, indicates that even the document production substituted by the Applicant for an actual interrogatory response will be incomplete: during the deposition of one of CP&L’s affiants, Robert J. Kunita, counsel for the Applicant refused to produce documents identified by Mr. Kunita during a literature survey on exothermic oxidation reaction, on the grounds that these documents were not in CP&L’s files when this

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even be argued to prevent Orange County from seeking a two-week extension of the schedule for briefing and oral argument.

<sup>3</sup> As discussed in the County’s Motion at 3, Orange County has made diligent and efficient use of the 60-day discovery period, sending out its first request on the opening day of discovery. Counsel for Orange County had other commitments that prevented her from traveling to North Carolina for the purpose of inspecting documents and touring the Harris reactor on the date that CP&L produced responsive documents, Wednesday September 20, or during the rest of that week. However, she tried to arrange to inspect documents and visit the plant early the following week of September 25. After being informed by counsel for CP&L that there was only one day that week when CP&L could accommodate a Harris site tour – Thursday, September 28 – counsel for Orange County arranged to inspect documents on September 27<sup>th</sup> and tour the site on September 28<sup>th</sup>. Thus, there is no merit to the Applicant’s claim of a “slow start.”

<sup>4</sup> *See* Applicant’s Response to the Board of Commissioners of Orange County’s First Set of Discovery Requests Regarding Contention EC-6 at 5-6 (September 5, 2000).

discovery process began, and that counsel considers all documents identified and obtained in the course of preparing the Subpart K presentation to be privileged because they were identified and obtained under his direction. Thus, it does not appear that the Applicant intends to produce any documents that have been identified as relevant in the course of preparing for the Subpart K proceeding, other than documents that were already in the files at CP&L. In contrast, in response to Applicant's document requests, Orange County has diligently produced every newly obtained report identified by its expert as relevant in the course of his preparations for the Subpart K proceeding. Given that discovery is due to expire on October 20, and given that there are two more full days of depositions scheduled before that date, there isn't time to chase after this evasive tactic by the Applicant with a motion to compel. However, at the very least, the Applicant should not be permitted to prevail against the County's motion with its disingenuous argument of "unclean hands."

Finally, there is no merit to the Applicant's argument that counsel reasonably should have anticipated the difficulties caused by the moving of the NRC's Public Document Room ("PDR"). Applicant's Response at 4. By itself, the moving of the PDR was not an insurmountable problem, although it did delay discovery by a few days. The major problem arose from a new policy connected with the PDR's move, which was to send most of the PDR's hard copies to storage and use only microfiche for making copies. The process of ordering documents from the PDR, receiving copies that were illegible because they did not reproduce well from microfiche, and then having to re-order them from hard copies or get them from the NRC Staff's counsel, was extremely

time-consuming and delayed Orange County by weeks. Under the tight discovery schedule imposed by the Board, this caused Orange County an extraordinary hardship.

Orange County has done its best to cooperate with the Applicant and the Staff on discovery in this proceeding. Given the extremely tight time-frames for discovery, it was incumbent upon all parties to carry out discovery production responsibly and in good faith. CP&L did not provide documents to Orange County on any reasonable or foreseeable schedule, with the result that Orange County lost an opportunity to conduct necessary written discovery. The County's request for an extension is reasonable and in good faith.

Respectfully submitted,



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October 18, 2000

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

In the Matter of ) ) CAROLINA POWER & LIGHT ) (Shearon Harris Nuclear ) Power Plant) )		Docket No. 50-400 -OLA ASLBP No. 99-762-02-LA
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**CERTIFICATE OF SERVICE**

I certify that on October 18, 2000, copies of Orange County's Motion for Leave to Reply to Applicant's Response to Orange County's Motion For Extension of Schedule For Discovery, Briefing And Oral Argument, and Orange County's Reply to Applicant's Response to Orange County's Motion for Extension of Schedule, etc. were served on the service list below by e-mail and/or first class mail as indicated below:

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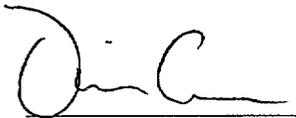
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