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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF THE
SECRETARY
ADJUTANT GENERAL

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

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

Pursuant to the Board's Order of October 16, 2000, Applicant Carolina Power & Light Company ("CP&L" or "Applicant") files this response to Orange County's Motion for Extension of Schedule for Discovery, Briefing and Oral Argument and Request for Expedited Consideration ("Motion"). CP&L opposes the requested extensions and, for the reasons discussed below, respectfully requests that the Board deny the motion.

The Motion breaches an unambiguous written agreement between counsel for Applicant and BCOC regarding the conduct of discovery. The Board should hold the Board of Commissioners of Orange County ("BCOC") to the schedule adopted by the Board in its Memorandum and Order of August 7, 2000, and to the commitments that counsel for BCOC made in return for significant accommodations by Applicant on discovery issues.

Template = SECY-041

SECY-02

BCOC, through counsel, entered into a clear and detailed agreement with counsel for Applicant regarding certain final aspects of discovery in this matter. Letter from John O'Neill to Diane Curran (October 3, 2000) (hereinafter "Agreement") (attached as Exhibit 1).¹ This Agreement identified a reasonable and mutually acceptable schedule for timely completion of discovery leading to briefing and oral argument pursuant to the Board's Memorandum and Order of August 7, 2000. Applicant made a number of significant concessions to BCOC to facilitate completion of discovery by the October 20, 2000, date established by the Board, including: (1) arranging for the CP&L employees selected by BCOC's counsel for deposition to travel to Washington for their depositions at CP&L's expense; (2) arranging for a CP&L expert, whose offices are located in California, to travel to Washington for his deposition at CP&L's expense; (3) limiting the deposition of Dr. Gordon Thompson to one day; and (4) producing certain documents requested by BCOC despite an untimely-filed supplemental document request. Further, CP&L agreed to provide, and did provide, all documents to be produced to BCOC before the week of depositions. Thus, all depositions have been scheduled and will be completed during the week of October 16, 2000, in Washington, DC and at the NRC's offices in White Flint.

As part of the *quid pro quo*, BCOC agreed "not to petition the Board to extend the discovery period absent *extraordinary, unforeseen circumstances.*" Agreement at 2 (emphasis added). Counsel for CP&L consistently took the position with BCOC that it

¹ This was the second such detailed agreement entered into between counsel to facilitate discovery in the Subpart K proceeding on Contention EC-6.

would not agree to any slippage in schedule, but would work to make the discovery effort move as smoothly as possible. The accommodations set forth in the Agreement were given in return for BCOC's unqualified agreement to hold to the schedule. The particulars of the Agreement were negotiated with counsel for BCOC at the Harris Plant on September 28, 2000, after providing an escorted site visit to Ms. Diane Curran and Dr. Gordon Thompson, during which CP&L's photographer took over 200 pictures at BCOC's request and provided the negatives to BCOC.

There have been no extraordinary or unforeseen circumstances. Discovery began on August 21, 2000. In response to BCOC's request for documents, CP&L established a room at its offices in Raleigh with responsive documents. The documents were available to BCOC on September 20, 2000. BCOC chose to review the documents on September 27, 2000, the day before the Harris Plant visit.² Counsel for BCOC returned during the afternoon of September 28th to look at additional documents made available that day. Counsel for BCOC requested nearly 10,000 pages of documents, including dozens of oversized drawings, be copied³ and transmitted. BCOC received the first three thousand plus pages within approximately 10 days and the remainder a few days later. The documents were shipped by overnight courier directly to Dr. Thompson, as requested by Ms. Curran.

² By electing to wait, BCOC lost more discovery time than they claim resulted from the document production delay.

³ In addition, BCOC requested double-sided copies. All pages of all documents produced were Bates stamped for proper identification. This process, of course, consumed additional time.

Likewise, BCOC's complaints regarding the Public Document Room ("PDR") are without merit. First, the move of this facility has been widely publicized for an extended period of time, and was known, or should have been known, to BCOC when they entered into the Agreement. Secondly, whatever difficulties exist in obtaining documents from the PDR are equally experienced by all parties. The move of the PDR provides no grounds for violating the Agreement. Nothing about delays in obtaining documents from the PDR are extraordinary or unforeseen, particularly in light of the move. Furthermore, counsel for the NRC has provided certain documents to BCOC that Ms. Curran could not obtain from the PDR.

BCOC's motion is simply in bad faith. This Board and the NRC encourage informal discovery and agreements among counsel to facilitate the discovery process. All parties in this proceeding have worked to avoid disputes that end up before the Board. If written agreements on discovery issues will not be enforced by the Board, there will be no incentive whatsoever to cooperate on discovery issues.

We note further that BCOC does not approach the Board on this Motion with clean hands. Discovery is a two way street. Six weeks after the Board's Memorandum and Order of August 7, 2000, BCOC responded to the NRC Staff's First Set of Discovery Requests regarding its position on the issues raised by contention EC-6 by responding for virtually every interrogatory: "Orange County has no responsive information other than the information provided in Contention EC-6."⁴ BCOC's panic that it would like more discovery and more time may be due in part to its own slow start. The other parties should not be penalized and inconvenienced under these circumstances.⁵

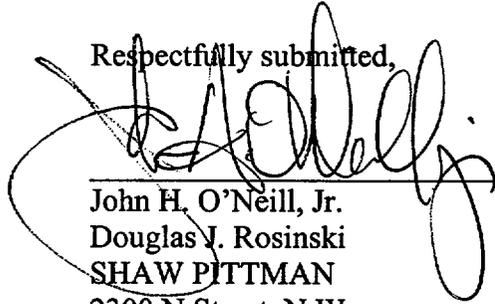
Finally, and most importantly, CP&L submitted the license amendment request at issue on December 23, 1998. CP&L has a statutory right to an expedited proceeding. The schedule delay requested by BCOC cannot be justified in light of the already lengthy proceeding.

⁴ BCOC's Response to Interrogatories Contained in NRC Staff's First Set of Discovery Requests Regarding Contention EC-6, dated September 21, 2000. Dr. Thompson, in his deposition on October 16, 2000, had little more to add other than to say the work required to answer the Board's three questions would take a team of various experts two years to accomplish. An additional two weeks, therefore, would appear to provide little meaningful relief to BCOC's expert.

⁵ Early during the discovery period, counsel for Applicant advised counsel for BCOC of his plans to attend a family wedding in Europe between October 26 and November 3. This schedule and plane reservations were made prior to the admission of contention EC-6. This is one of the reasons counsel for Applicant sought and obtained an Agreement in writing not to extend the discovery schedule. All parties (and their experts and employees) have made plans for upcoming holidays in light of the firm schedule established by the Board.

For these reasons, CP&L requests that the Board deny BCOC's Motion and maintain the schedule for the end of discovery, briefing and oral argument as established in the Board's Memorandum and Order of August 7, 2000.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "John H. O'Neill, Jr.", is written over a horizontal line. The signature is stylized and cursive.

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Dated: October 17, 2000

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Response to Orange County's Motion for Extension of Schedule for Discovery, Briefing and Oral Argument and Request for Expedited Consideration," dated October 17, 2000, was served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail transmission, this 17th day of October, 2000.

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