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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)

CAROLINA POWER & LIGHT)
COMPANY)

(Shearon Harris Nuclear Power Plant))

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

**CAROLINA POWER & LIGHT COMPANY'S BRIEF IN SUPPORT
OF NRC STAFF'S MOTION TO SET A DATE FOR FILING OF
RESPONSES AND REQUEST FOR CLARIFICATION
REGARDING ORANGE COUNTY'S DECEMBER 22, 2000, FILING**

Carolina Power & Light Company ("CP&L") hereby submits its brief in support of the NRC Staff's Motion to Set Date For Filing of Responses dated December 28, 2000 ("Staff Motion"), and requests clarification regarding the Board of Commissioners of Orange County's ("BCOC") December 22, 2000, filing.¹ CP&L respectfully submits that the Commission should reject the BCOC Filing outright as inconsistent with controlling regulations, as BCOC lacks any legal basis for its action. However, should the Commission decide in its discretion to entertain the matter further, CP&L requests clarification of the applicable procedural rules, identification of the issues to be briefed, and a briefing schedule providing sufficient time for an adequate response.

¹ "Orange County's Petition for Review and Request for Immediate Suspension and Stay of the NRC Staff's No Significant Hazards Determination and Issuance of License Amendment for Harris Spent Fuel Pool Expansion" ("BCOC Filing").

CP&L submitted a spent fuel pool expansion license amendment request on December 28, 1998. The background of this proceeding is succinctly set forth in the Staff Motion. CP&L is confident that the Licensing Board will “promptly by written order” dispose of this case early in 2001.² See 10 C.F.R. § 2.1115.

The BCOC Filing is confusing, internally inconsistent, and does not identify which regulatory provisions authorizes it to seek Commission intervention in this matter at this time. After reviewing the document, CP&L is unable to identify the legal basis for the BCOC Filing, whether and when a response is required, and the scope of any required response.

CP&L fully supports the Staff Motion. CP&L joins with the Staff in questioning whether the BCOC Filing is permitted by the Commission’s regulations and requests that the Commission make an initial threshold determination as to whether the BCOC Filing constitutes a legitimate petition. BCOC is attempting to contest the Staff’s No Significant Hazards Determination (“NSHD”) and issuance of a license amendment. These are both appropriate Staff actions, clearly authorized by regulation. See 10 C.F.R. §§ 50.91(a)(4), 50.92(c). In submitting its filing, BCOC conspicuously ignores the explicit regulatory bar to its challenge to the Staff’s NSHD in that “no petition or other request for review” of significant hazards consideration determinations “will be entertained by the Commission.” 10 C.F.R. § 50.58(b)(6). BCOC cites both 10 C.F.R. § 2.786, “Review of decisions and actions of a presiding officer,” BCOC Filing at 8, and 10 C.F.R. § 2.788, “Stays of decisions of presiding officers pending review,” BCOC Filing at 17, as controlling legal standards. Yet BCOC identifies *no* decision to review or order to stay within the scope of these regulations.

² Of course, a Board decision on the merits would render this BCOC filing moot.

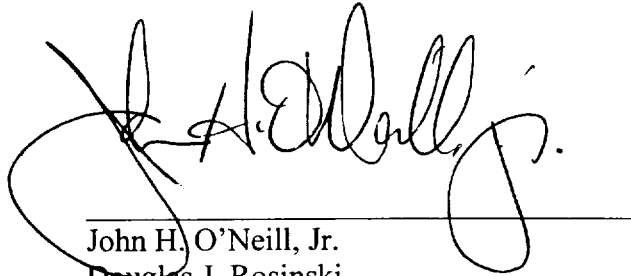
CP&L contends that there is, therefore, no legal basis supporting any aspect of the BCOC Filing and the Commission should reject it on its face as an attempt by BCOC to evade well-established appellate process and long-standing Commission policy disfavoring interlocutory appeals. See also Carolina Power & Light (Shearon Harris Nuclear Power Plant) CLI-00-11, 51 NRC 297 (2000) (dismissing an earlier BCOC interlocutory appeal as premature and contrary to Commission policy).

Should the Commission determine that a legal basis for the BCOC Filing exists, CP&L requests guidance on the applicable adjudicatory procedures. It is not clear to us which, if any, regulations apply to this situation. To enable a meaningful response, CP&L requests that the Commission issue a briefing schedule, identify which of the myriad issues touched upon in the BCOC Filing should be addressed in opposing briefs, and indicate whether oral argument is contemplated. It is CP&L's view that a full response to all of the issues raised in the BCOC Filing would require an extensive discussion of the record below and a substantial brief.³ An appropriate amount of time should be allowed to prepare such a brief.

³ BCOC has attempted to recycle its arguments below in advance of a Licensing Board decision. Normal Commission practice would require BCOC to await a final disposition of the matters raised before the Licensing prior to an appeal to the Commission, thereby avoiding such repetitive briefing.

In summary, BCOC lacks any legal basis for its December 22, 2000, filing and the Commission should reject it outright as inconsistent with controlling regulations. However, should the Commission decide to entertain the matter further, CP&L requests clarification of the applicable procedural rules, identification of the issues to be briefed, and a reasonable briefing schedule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. H. O'Neill, Jr.", written over a horizontal line.

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Dated: December 28, 2000

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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

I hereby certify that copies of the foregoing "Carolina Power & Light Company's Brief in Support of NRC Staff's Motion to Set Date For Filing of Responses and Request for Clarification Regarding Orange County's December 22, 2000, Filing" dated December 28, 2000, was served by electronic mail transmission and first class mail on this 28th day of December, 2000, on the persons listed below.

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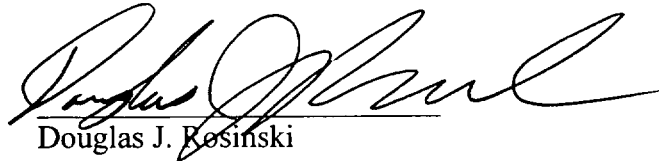
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