

DOCKETED
USNRC
April 3, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

01 APR -5 P3:14

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

**ORANGE COUNTY'S MOTION FOR LEAVE TO REPLY TO
NRC STAFF'S AND CP&L'S
OPPOSITIONS TO PETITION FOR REVIEW
AND TO EMERGENCY REQUEST FOR STAY**

Pursuant to 10 C.F.R. § 2.786(b)(3), the Board of Commissioners of Orange County, North Carolina ("Orange County") hereby moves the NRC Commissioners for leave to reply to the responses filed by Carolina Power & Light Company ("CP&L") and the Nuclear Regulatory Commission ("NRC" or "Commission") Staff to Orange County's Petition for Review of LBP-00-12, LBP-00-19, and LBP-01-09 (March 16, 2001).¹

Pursuant to the Commission's inherent supervisory jurisdiction and its powers to conduct this proceeding in a manner that assures fairness and completeness of the record, Orange County also moves the Commission for leave to reply to the responses filed by CP&L and the NRC Staff to Orange County's Request for Emergency Stay of LBP-09-10 (March 16, 2001).²

1 Carolina Power & Light Company's Answer Opposing Commission Review of LBP-00-12, LBP-00-19, and LBP-01-09 (April 2, 2001) ("CP&L's Response to Petition for Review"); NRC Staff Opposition to Orange County's Petition for Review of LBP-00-12, LBP-00-19, and LBP-01-09 (April 2, 2001) ("NRC Staff Response to Petition for Review").

2 Carolina Power & Light Company's Answer Opposing Orange County's Request for Emergency Stay of

The Commission's regulations in 10 C.F.R. § 2.786(b)(3) do not permit the filing of replies to responses to petitions for review, absent permission from the Commission. The regulations in 10 C.F.R. § 2.788 state that replies to answers to stay motions will not be entertained. Orange County submits that an exception should be made in this case, in order to give the County an opportunity to complete the record and correct several egregious factual misrepresentations made by CP&L and the Staff. These distortions of the record and misrepresentations may be relied on to Orange County's detriment unless they are corrected.

First, Orange County seeks to reply to unwarranted attacks on the qualifications of the County's expert witness, Dr. Gordon Thompson. The County seeks an opportunity to show that the NRC Staff has contradicted itself by attacking Dr. Thompson's qualifications, and that CP&L relies on mischaracterizations and distortions of the record in order to attack Dr. Thompson's expertise. These mischaracterizations and distortions regarding Dr. Thompson's qualifications may improperly affect the Commission's consideration of the probity of Dr. Thompson's Declaration of March 16 regarding irreparable harm, or whether it should take review.

In addition, Orange County seeks to correct misrepresentations by CP&L in its response to Orange County's Stay Motion, regarding the relevance of a previous Commission decision, *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-86-12, 24 NRC 1, 7 (1986). Orange County seeks to correct

the false impression given by CP&L that the NRC Commissioners themselves have approved a hundred spent fuel pool expansion proposals without an EIS; and moreover, that this case is no different from any previous application that was approved. This misrepresentation may improperly affect the Commission's determination regarding Orange County's likelihood of success on the merits.

Finally, Orange County seeks to correct a misrepresentation by CP&L regarding the question of whether Orange County has addressed the effect of the addition of cooling systems for pools C and D on the likelihood of an accident. This misrepresentation may affect the Commission's determination of the likelihood of irreparable harm.

Respectfully submitted,



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April 3, 2000