

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF OPPOSITION TO 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

Susan L. Uttal
Counsel for NRC Staff

April 5, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF OPPOSITION TO 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

INTRODUCTION

On April 3, 2001, the Board of Commissioners of Orange County (BCOC) filed a "Motion for Leave to Reply to NRC Staff's and CP&L's Oppositions to Petition for Review [of LBP-00-12, LBP-00-19 and LBP-01-09] and to Emergency Request for Stay [of LBP-01-09]" (Motion to Reply). For the reasons discussed below, the NRC staff (Staff) opposes the Motion to Reply.

DISCUSSION

BCOC is requesting that the Commission grant it leave to reply based upon alleged "unwarranted attacks on the qualifications" of Gordon Thompson and alleged misrepresentations made by CP&L in its response to BCOC's Petition for Review. Motion to Reply at 2-3. The Commission's regulations are clear - they specifically prohibit replies to answers to applications for stays; as provided by 10 C.F.R. § 2.788(d), "no further replies to answers will be entertained." The regulations also prohibit replies to answers to petitions for review. 10 C.F.R. § 2.786(b)(3). As basis for its motion, BCOC alleges misrepresentations, yet the reply¹ filed by BCOC with its Motion to Reply is rife with misrepresentations and mischaracterizations. For every assertion made in

¹"Orange County's Reply to NRC Staff's and CP&L's Oppositions to Petition for Review and Emergency Stay Request," (April 3, 2001) (BCOC Reply).

BCOC's reply, there is a further reply that may be made.² Such assertion and reply could go on *ad infinitum*. But the regulations rightly put a limit on the ability to reply, that is, it is precluded by regulation (10 C.F.R. § 2.788(d)), or precluded absent authorization from the Commission (10 C.F.R. § 2.786(b)(3)). To grant this motion would give BCOC an additional opportunity to argue points that were previously made or should have been made. BCOC has not provided good cause to justify the Commission departing from explicit regulations. Considering the liberties BCOC has previously taken with the page limitations in its Petition for Review and Motion for Emergency Stay, the Staff respectfully submits that the Commission should not afford BCOC further opportunity to supplement the record.

CONCLUSION

Based on the foregoing, the Staff respectfully requests that the Motion to Reply be denied.

Respectfully submitted,



Susan L. Uttal
Counsel for NRC staff

Dated at Rockville, Maryland
this 5th day of April, 2001.

² Because the replies are prohibited, as discussed above, and BCOC has not made a showing that a departure from the regulations is warranted, the Staff has not addressed the substance of the Proposed Reply.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OPPOSITION TO 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" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, or by deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in U.S. Postal Service as indicated by double asterisk, with copies by electronic mail as indicated this 5th day of April, 2001:

G. Paul Bollwerk, III, Chairman*
Administrative Judge
Atomic Safety and Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Thomas D Murphy*
Administrative Judge
Atomic Safety and Board
Mail Stop: T-3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dr. Peter Lam*
Administrative Judge
Atomic Safety and Board
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary*
ATTN: Rulemaking and Adjudications
Staff
Mail Stop: O 16-C-1
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Commission Appellate
Adjudication
Mail Stop: O 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

James M. Cutchin, Jr.*
Mail Stop: T 3F-23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Diane Curran, Esq.**
Harmon, Curran, Spielberg
& Eisenberg, L.L. P.
1726 M. Street, N.W., Suite 600
Washington, DC 20025

John H. O'Neill, Jr.**
Douglas Rosinski**
Counsel for Licensee
Shaw Pittman Potts & Trowbridge
2300 "N" Street, N.W.
Washington, DC 20037-1128

Steven Carr**
Legal Department
Carolina Power and Light Co.
411 Fayetteville Street Mall
P.O. Box 1551 - CPB 13A2
Raleigh, North Carolina 27602

Atomic Safety and Board Panel
U.S. Nuclear Regulatory Commission
T-3F23
Washington, DC 20555



Susan L. Uttal
Counsel for NRC Staff