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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE
RULEMAKING
ADJUDICATIVE

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

**APPLICANT'S RESPONSE TO SPECIFIC DOCUMENT REQUESTS
IN THE BOARD OF COMMISSIONERS OF ORANGE COUNTY'S
FIRST SET OF DISCOVERY REQUESTS**

Applicant Carolina Power & Light Company ("CP&L") files the following objections and responses to the "Orange County's First Set of Discovery Requests Directed to the Applicant" ("BCOC's First Discovery Requests"), an electronic copy of which was served on the Applicant on Friday, August 6, 1999. The Applicant is filing responses to BCOC's specific document production requests in accordance with BCOC's request for a response 30 days after filing of the request, which is Tuesday, September 7, 1999. See 10 C.F.R. § 2.710; 10 C.F.R. § 2.741.

I. GENERAL INTERROGATORY

GENERAL INTERROGATORY NO. 1. State the name, business address, and job title of each person who supplied information for responding to these interrogatories, requests for admission, and requests for the production of documents. Specifically note for which interrogatories and requests for admissions each such person supplied information. For requests for production, note for which contention each such person supplied information.

APPLICANT'S RESPONSE: The response to this interrogatory is identical to that provided in CP&L's August 23, 1999 response to BCOC's First Discovery Request.

II. SPECIFIC DOCUMENT REQUESTS

A. TECHNICAL CONTENTION 2 – Criticality Prevention

REQUEST NO. 1. All documents relating to criticality safety at Harris and/or any other nuclear power plant.

APPLICANT'S RESPONSE: The Applicant objects to this request as overbroad and beyond the scope of the contention as admitted by the Board. See 10 C.F.R. § 2.740(b)(1). The request for documents relating to "criticality safety at Harris and/or any other nuclear power plant" (emphasis added) could encompass criticality for: reactor cores, storage and transportation casks, as well as spent fuel pools; storage racks with radically different designs than that for Harris pools C & D; and light water reactors and non-light water reactors of all varieties and fuel types all over the world. As stated, this request seeks the production of documents far outside the scope of the two admitted BCOC contentions that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. See Response to Contention 2, Request No. 2 (addressing scope of Contention TC-2, as admitted by the Board). Nonetheless, without waiving its objections, the Applicant will produce documents regarding criticality safety at Harris spent fuel pools C and D that are relevant or reasonably calculated to lead to the discovery of admissible evidence with respect to the two Bases of Contention TC-2, as admitted by the Board, at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been

available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 2. All documents addressing planning, analysis, procedures and training relating to movement of fuel (fresh and spent) in and out of Harris pools.

APPLICANT'S RESPONSE: The Applicant objects to this request as outside the scope of the contention as admitted by the Board and is, thus, neither relevant nor “reasonably calculated to lead to the discovery of admissible evidence.” See 10 C.F.R. § 2.740(b)(1). BCOC attempts impermissibly to expand the scope of the contention by seeking information which is outside the scope of the two bases for Contention TC-2, as admitted by the Board.

Pursuant to 10 C.F.R. § 2.740(b)(1), discovery is allowed into “any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” The scope of discovery is not, however, infinite. See, e.g., Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977) (“practical consideration[s] dictate that the parties should not be permitted to roam in shadow zones of relevancy and to explore [a] matter which does not presently appear germane on the theory that it might conceivably become so[.]” quoting Broadway & Ninety-Sixth St. Realty Co. v. Loew’s Inc., 21 F.R.D. 347, 352 (S.D.N.Y. 1958)). It is well established that “the NRC Rules of Practice limit discovery to the boundaries of admitted contentions.” Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-88-25, 28 NRC 394, 396 (1988). These boundaries are defined by

“the scope of a contention [which] is determined by the ‘literal terms’ of the contention, coupled with its stated bases.” Id. (citing Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988)).

In its Memorandum and Order ruling on standing and contentions, the Board clearly defined Contention TC-2 as including two specific bases, Basis 1 and Basis 2. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC __, __ (slip op. at 18, 19) (July 12, 1999). The Board defined Basis 1 as:

the litigable issue essentially is a question of law: Does GDC 62 permit an applicant to take credit in criticality calculations for enrichment and burnup limits in fuel, limits that will ultimately be enforced by administrative controls?

Id. (slip op. at 18). BCOC’s request for documents addressing the “movement of fuel . . . in and out of Harris pools” is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, the question of law posed in Basis 1.

The Board defined Basis 2 as:

a question of fact: Will a single fuel assembly misplacement, involving a fuel element of the wrong burnup or enrichment, cause criticality in the fuel pool, or would more than one such misplacement or a misplacement couple with some other error be needed to cause such criticality? . . . [F]urther inquiry on the validity of any calculations involved is warranted in determining whether the required single failure criterion is met.

Id. (slip op. at 19-20). Thus, in Basis 2, the “single failure” of “single fuel assembly misplacement” is assumed to occur in the required single failure criterion analysis. The mechanism, if any, through which such misplacement could occur is entirely outside the

scope of the analysis and irrelevant because the analysis is required to assume the “single fuel assembly misplacement” does, in fact, occur. Therefore, BCOC’s document request regarding the “movement of fuel . . . in and out of Harris pools,” which is related to the potential for such a misplacement to occur, is not relevant because the admitted contention begins with the assumption that a misplacement has, in fact, already occurred.

The Applicant therefore objects to BCOC’s document Request No. 2 because it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence regarding Contention TC-2, as admitted by the Board.

REQUEST NO. 3. All documents addressing the record of experience with movement of fuel (fresh and spent) at CP&L plants and other plants.

APPLICANT'S RESPONSE: The Applicant objects to this request as outside the scope of the contention as admitted by the Board and is thus neither relevant nor “reasonably calculated to lead to the discovery of admissible evidence.” See 10 C.F.R. § 2.740(b)(1). BCOC’s request for documents addressing the “movement of fuel . . . at CP&L plants and other plants” is related to the potential for misplacement of a fuel assembly to occur, and is therefore not relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding Contention TC-2, as admitted by the Board. See Response to Contention TC-2, Document Request No. 2.

REQUEST NO. 4. All documents addressing the administrative controls that are intended to prevent misplacement or inappropriate placement of fuel in Harris pools C and D.

APPLICANT'S RESPONSE: The Applicant objects to this request as outside the scope of the contention as admitted by the Board and is thus neither relevant nor

“reasonably calculated to lead to the discovery of admissible evidence.” See 10 C.F.R. § 2.740(b)(1). BCOC’s request for documents addressing the “administrative controls intended to prevent misplacement or inappropriate placement of fuel in Harris pools C and D” is related to the potential for misplacement of a fuel assembly to occur, and is therefore not relevant to, nor reasonably calculated to lead to, the discovery of admissible evidence regarding Contention TC-2, as admitted by the Board. See Response to Contention TC-2, Document Request No. 2.

REQUEST NO. 5. All documents addressing the record of experience with similar administrative controls at CP&L plants and other nuclear power plants.

APPLICANT'S RESPONSE: The Applicant objects to this request as outside the scope of the contention as admitted by the Board and is thus neither relevant nor “reasonably calculated to lead to the discovery of admissible evidence.” See 10 C.F.R. § 2.740(b)(1). BCOC’s request for documents addressing “similar [to Request No. 4] administrative controls at CP&L plants and other nuclear power plants” is related to the potential for misplacement of a fuel assembly to occur, and is therefore not relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding Contention TC-2, as admitted by the Board. See Response to Contention TC-2, Document Request No. 2.

REQUEST NO. 6. All documents addressing planning, analysis, procedures and training for control of boron content in Harris pools.

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request at CP&L’s repository of documents for this proceeding maintained at CP&L’s offices in Raleigh, North Carolina. These documents have been

available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 7. All documents addressing the record of experience with control of boron content in pools at CP&L plants and other nuclear power plants.

APPLICANT'S RESPONSE: The Applicant objects to BCOC's request for documents addressing records on experience with control of boron content at CP&L plants other than Harris and "other nuclear power plants" as beyond the scope of the contention as admitted by the Board. See Response to Contention TC-2, Document Request No. 2. Nonetheless, without waiving its objection, the Applicant will produce documents on the record of experience with control of boron content in the Harris spent fuel pools at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 8. Documents addressing the probability and/or consequences of criticality in a fuel pool.

APPLICANT'S RESPONSE: The Applicant will produce any documents responsive to this request regarding the probability and consequences of criticality in Harris spent fuel pools C and D at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. Any responsive documents have been available for inspection beginning on Friday, September 3, 1999. The

Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 9. The documents addressed in footnotes 29 and 30 of Applicant's Answer to Petitioner Board of Commissioner's of Orange County's Contentions (May 5, 1999) ("Applicant's Answer").

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request and relevant or reasonably calculated to lead to the discovery of admissible evidence at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 10. Documents addressing the interpretation by CP&L and/or other entities of NRC Draft Regulatory Guide 1.13.

APPLICANT'S RESPONSE: The Applicant is not aware of any documents to produce that are responsive to this request.

REQUEST NO. 11. All calculations and analyses done in support of CP&L's June 14, 1999, response to the NRC's April 29, 1999, Request for Additional Information, which was enclosed in a letter from Donna B. Alexander to NRC Document Control Desk. This request includes but is not limited to the Holtec International calculations referred to on page 1, and the Criticality Safety Calculations referred to on page 3.

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves

its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 12. All procedures referred to in CP&L's June 14, 1999, RAI Response, including but not limited to HNP chemistry procedure CRC-001, NFP-NGGC-0003, "Procedure for Selection of Irradiated Fuel for Shipment in the IF-300 Spent Fuel Cask.

APPLICANT'S RESPONSE: The Applicant objects to BCOC's request for procedures for selection of spent fuel for shipment in transportation casks as outside the scope of the contention as admitted by the Board. BCOC's requests for documents concerning selection of fuel for spent fuel transportation is related to, if anything, the potential for misplacement of a fuel assembly to occur, and is therefore not relevant to, nor reasonably calculated to lead to, the discovery of admissible evidence regarding Contention TC-2, as admitted by the Board. See Response to Contention TC-2, Document Request No. 2. Nonetheless, the Applicant will produce documents responsive to this request that are relevant or reasonably calculated to lead to the discovery of admissible evidence regarding Contention TC-2, as admitted by the Board, at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

B. TECHNICAL CONTENTION 3 – Quality Assurance

REQUEST NO. 1. All drafts and versions of the 10CFR50.55a Alternative Plan that was submitted with CP&L's License Amendment Application. (Enclosure 8 of the license amendment application says, at page 1, that it provides an outline of this Alternative Plan.)

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 2. The Equipment Commissioning Plan that is mentioned on page 42 of the Applicant's Answer.

APPLICANT'S RESPONSE: The Equipment Commissioning Plan is part of CP&L's April 30, 1999 response to a Request for Additional Information from the Nuclear Regulatory Commission staff, and was provided to BCOC by letter dated May 3, 1999 from counsel for CP&L to Diane Curran, counsel for BCOC.

REQUEST NO. 3. All documents addressing the history of layup and storage of all piping and equipment (including pumps and heat exchangers) that was intended for Harris Unit 2 and will be used for pools C and D. This request included but is not limited to documents relating to inspection and testing of the piping and equipment

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 4. All documents addressing the testing of water that has been present in stored piping and equipment.

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request regarding stored piping and equipment for spent fuel pools C and D at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 5. Documents addressing the nature and findings of remote camera inspections and other inspections that have been carried out to date as part of preparations for activating pools C and D.

APPLICANT'S RESPONSE: The Applicant will produce documents responsive to this request regarding inspections carried out to date for activating the piping and equipment for spent fuel pools C and D at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 6. All documents addressing the potential risks or adverse health or economic effects of deficiencies in existing piping and equipment.

APPLICANT'S RESPONSE: The Applicant will produce any documents responsive to this request regarding existing piping and equipment for spent fuel pools C and D at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. Any responsive documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to

assert any privilege applicable to any document that is otherwise responsive to this request.

REQUEST NO. 7. All documents addressing the schedule of activities that are planned for activating pools C and D. This request includes but is not limited to activities that relate to piping and equipment for pools C and D.

APPLICANT'S RESPONSE: The Applicant objects to BCOC's request for documents addressing the schedules of activities that are not related to either of BCOC's two admitted contentions. Such information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and therefore need not be produced. See 10 C.F.R. § 2.740(b)(1). Nonetheless, without waiving its objection, the Applicant will produce documents responsive to this request with respect to activities related to the two admitted BCOC contentions at CP&L's repository of documents for this proceeding maintained at CP&L's offices in Raleigh, North Carolina. These documents have been available for inspection beginning on Friday, September 3, 1999. The Applicant reserves its right to assert any privilege applicable to any document that is otherwise responsive to this request.

Respectfully submitted,



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Dated: September 7, 1999

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF THE SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Response to Specific Document Requests in the Board of Commissioners of Orange County's First Set of Discovery Requests," dated September 7, 1999, was served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail transmission, this 7th day of September, 1999.

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