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June 13, 1990

Martin J. Virgilio, Chief
Policy Development and Technical
Support Branch
Program Management, Policy
Development and Analysis Staff
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Shearon Harris Nuclear Power Plant, Unit 1 - Informal Complaint Filed by the North Carolina Eastern Municipal Power Agency: Progress Reports Pursuant to Ongoing Arbitration

Dear Mr. Virgilio:

In your letter of March 28, 1990, you asked for periodic reports as to the status of the arbitration between Carolina Power & Light Company (CP&L) and North Carolina Eastern Municipal Power Agency (Power Agency) concerning our 1981 Power Coordination Agreement.

On June 9, 1990, the arbitrator issued his ruling in that matter, a copy of which is enclosed herewith. In that ruling, he sustained CP&L's position on each of the significant disputed issues of contract interpretation. Thus, he has ruled that each New Resource used by Power Agency must be a firm power supply. Further, he has ruled that Power Agency does not have the right to use New Resources to displace Power Agency's entitlements to output of the units which it jointly owns with CP&L, including the backstand services for such output which it contracted to purchase from CP&L. With respect to notice, the

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arbitrator has ruled that Power Agency is bound by its statement as to the reduction in Supplemental Capacity it sets forth in the eight-year notice it provides with respect to a New Resource. The arbitrator ruled that Power Agency is entitled to reasonable flexibility in the other elements of its notice.

These rulings clearly establish that CP&L acted in good faith in opposing Power Agency's attempts to utilize non-firm power from Santee Cooper to displace any or all of the services provided by CP&L under the 1981 PCA.

We believe that the result of the arbitration conclusively shows that the allegations made in Power Agency's original informal complaint, dated May 5, 1989, were entirely lacking in merit. I would refer you, in this regard, to the discussion in my prior letters of June 15, 1989; April 4, 1989; and April 17, 1990. Again, CP&L requests that you dismiss that complaint. If you have any questions concerning this matter, please let us know.

Sincerely yours,

George A. Avery

Enclosure

cc: Mr. William C. Wemhoff (w/o encl.)
Michael S. Colo, Esq. (w/o encl.)
Mr. Bobby Montague (w/o encl.)
Gary J. Newell, Esq. (w/o encl.)
Mark S. Calvert, Esq. (w/o encl.)

PROCEEDING IN ARBITRATION

NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY, Initiating Party v. CAROLINA POWER & LIGHT COMPANY, Other Party.	The Honorable Sidney O. Smith, Jr., Arbitrator

ARBITRATION AWARD

Upon consideration of pleadings and other filings and, the testimony and other evidence presented at the hearings of this Arbitration between North Carolina Eastern Municipal Power Agency ("Power Agency") and Carolina Power & Light Company ("CP&L"), it is hereby ordered and adjudged as follows:

1. Each New Resource must be a firm power supply through provision of backstand for such New Resource which meets the standard set forth in Section 6.1(C)(1) of the 1981 Power Coordination Agreement (the "1981 PCA"). Therefore, Power Agency does not have the right to use energy from a resource other than the energy associated with the capacity of a New Resource to meet any portion of its Hourly Resource Demand unless (i) such supply of energy is no more than the capacity of the New Resource; and (ii) the energy associated with the capacity of the New Resource can be provided in place of such

other energy without any interruption. "Without any interruption," as used herein, shall mean the degree of assurance as to firm power supply as CP&L and Power Agency may agree upon in negotiations with respect to a power coordination agreement for a particular New Resource for which an energy source other than energy associated with the capacity of such New Resource is being supplied.

The degree of assurance applicable to the Santee Cooper New Resource as identified herein, including any substitute source of energy as described in the foregoing paragraph, must be that Santee Cooper will supply energy with the same degree of assurance that it supplies its own firm retail or other wholesale customers.

2. The amount of noticed firm capacity that Power Agency has contracted to purchase from Santee Cooper in the years 1994-1998 pursuant to Service Schedule D of the draft Inter-Utility Exchange Contract ("Exchange Contract") dated March 2, 1990, and the Commitment for Long Term Firm Power between Santee Cooper and Power Agency (the "Commitment") (included in Power Agency Exhibit 2) and deliveries of Firm Power scheduled pursuant to Section D.3.1 of such Service Schedule D qualify as a New Resource under Section 6.1(E) of the 1981 PCA. The services provided for under Service Schedules B and C as reflected in the March 2, 1990 draft of the Exchange Contract (Power Agency Exhibit 2) do not qualify

as New Resources under the 1981 PCA; provided, however, that this ruling shall not preclude the use of energy by Power Agency under such Service Schedules B and C, or revisions thereto, or the use of other services that may be provided under the Exchange Contract, when such use takes place under terms and conditions which meet the standards of Paragraph 1 hereof.

3. (a) Subject to the notice provisions of Section 6.1(D) and 6.1(E) as interpreted in paragraphs 6 and 7 herein, Power Agency has the right, under the 1981 PCA, to use New Resource capacity to reduce Power Agency's purchases of Supplemental Capacity. (b) Subject to the notice provisions of Sections 6.1(D) and 6.1(E) as interpreted in paragraphs 6 and 7 herein, Power Agency has the right, under the 1981 PCA, to use the energy associated with the noticed firm capacity of the New Resource to reduce Power Agency's purchases of Supplemental Energy.

4. With respect to energy from a New Resource dispatched by Power Agency, Power Agency shall have the right to schedule deliveries from such New Resources when, in Power Agency's judgment, such deliveries are economically advantageous to Power Agency and CP&L shall credit such deliveries pursuant to Section 8.3 to reduce Power Agency's purchases of Supplemental Energy. Other aspects of after the fact accounting shall be negotiated as part of the power coordination agreement

applicable to such New Resource. When Power Agency has more than one New Resource, the foregoing principles shall be applied in a manner which recognizes, for Power Agency's benefit, the differences in energy cost between such New Resources.

5. Power Agency does not have the right, under the 1981 PCA, to use the energy associated with the capacity of a New Resource to displace Hourly Resource Demand up to the level of total Retained Capacity, i.e., its Actual Entitlements as such Actual Entitlements are determined in accordance with Section 7.1 of the 1981 PCA, or to displace Replacement Energy supplied by CP&L pursuant to Section 7.2 of the 1981 PCA, or to displace its use of energy from Unused Supplemental Capacity in accordance with Sections 7.5 and 8.2 of the 1981 PCA, or to displace its purchases of Reserve Energy or Deficiency Energy in accordance with Sections 7.4, 7.6 and 8.2 of the 1981 PCA. Nor does it have the right to use the capacity of a New Resource to displace Reserve Capacity supplied by CP&L pursuant to Section 7.4 of the 1981 PCA.

6. Power Agency's statement of the amount of capacity of a New Resource it intends to declare for the purpose of reducing Supplemental Capacity in a notice provided pursuant to Section 6.1(D) or 6.1(E), as applicable, is binding upon Power Agency and such statement may not be changed; provided, however, that this determination shall not diminish Power

Agency's rights to schedule a New Resource to serve Hourly Resource Demand in less than eight years, upon eighteen months written notice.

7. In any notice provided by Power Agency pursuant to Sections 6.1(D) and 6.1(E) of the 1981 PCA, Power Agency's statement of the expected dependable capacity, source, means proposed for backstand, period of expected availability of the New Resource and the further information required by Section 13.1(C) of the 1981 PCA need not be stated precisely; provided, however, that Power Agency is obligated to state, at the time such notice is given, a substantially correct expectation with respect to each of these items. The aforesaid information concerning a New Resource (other than the declared amount of Supplemental Capacity reduction) may be modified by Power Agency following the provision of the original notice provided, however, that if CP&L believes that such modification has a materially adverse impact upon the power supply planning activities of CP&L, considering the nature, timing and magnitude of the modifications, the relative size of the CP&L and Power Agency systems, the risks properly to be borne by utilities because they undertake to provide new generation, and the parties' respective planning period for significant generation and transmission resource additions, the effect of such modification shall be a subject of the negotiations of the terms and conditions of the power coordination agreement for

such New Resource. At any time that it appears to either party that negotiations will not produce an agreement on such modification, such party may make appropriate application to FERC for a determination of (1) whether the modification results in an impact on CP&L's planning activities that is materially adverse in light of the foregoing considerations and, (2) if so, the appropriate terms and conditions of the power coordination agreement for such New Resource to address such adverse impact.

8. When Power Agency provides advice to CP&L pursuant to Section 6.1(C)(5) of the 1981 PCA, such advice shall include, to the extent known to Power Agency at the time such advice is provided, the type and approximate size of the resource being considered and the approximate time frame when the resource is expected to be available; provided, however, that Power Agency shall not be required to include in any such advice information that Power Agency reasonably deems to be proprietary or commercially sensitive. Power Agency shall provide such advice in good faith at the times indicated in Section 6.1(C)(5), but such advice shall not be binding on Power Agency.

9. This arbitration has resolved the issues of contract interpretation arising under the 1981 PCA which are set forth in the Stipulation of Parties dated March 12, 1990. Any further disputes which related solely to the terms and conditions of a power coordination agreement for Power Agency's

use of the New Resource obtained from Santee Cooper under the draft Exchange Contract, as such New Resource is identified in paragraphs 1 and 2 above, or which (a) relate solely to the terms and conditions of a power coordination agreement for any other New Resource obtained by Power Agency and (b) do not require interpretation of provisions of the 1981 PCA, are to be decided by the Federal Energy Regulatory Commission in the first instance.

10. Each party shall bear its own attorneys' fees and other expenses incurred in preparing and presenting its case. CP&L and Power Agency shall pay equally the costs of conducting this arbitration proceeding, including the Arbitrator's fee and expenses, the costs associated with providing the hearing room and related equipment, court reporting costs, and the costs of deposition transcripts.

Dated this 6th day of June, 1990.

Sidney O. Smith, Jr.
Arbitrator