

July 12, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
CAROLINA POWER & LIGHT COMPANY)
AND NORTH CAROLINA EASTERN)
MUNICIPAL POWER AGENCY)
)
(Shearon Harris Nuclear Power)
Plant, Units 1 and 2))

Docket Nos. 50-400 OL
50-401 OL

APPLICANTS' ANSWER TO WELLS EDDLEMAN'S
MOTION FOR EXTENSION OF TIME RE SECOND ROUND
OF INTERROGATORIES ON ENVIRONMENTAL CONTENTIONS

In a motion dated June 26, 1983,^{1/} Mr. Eddleman requests,
inter alia, an extension of time:

1. [presumably to file second-round inter-rogatories] Until 15 days after the receipt of answers pursuant to motions to compel to his previous interrogatories on Contentions 29, 37B, 67, 75, 80, 83/84 and other contentions classified as environmental in the Board's Memorandum and Order of March 10, 1983;^{2/}
2. Until July 20, 1983 to file a second round of interrogatories to Applicants on Contentions 29 and 37B.

"Motion for Extension of Time re second round of interrogatories on environmental contentions, by Wells Eddleman," at 1.

Addressing first the second request for relief, set forth above, Applicants already have agreed to Mr. Eddleman's

1/ Since June 26, 1983 was a Sunday, Applicants have treated the motion as having been served on Monday, June 27, 1983.

2/ Contrary to the implication of Mr. Eddleman's motion, the Board classified Eddleman Contention 67 as a safety contention. See Memorandum and Order (Reflecting Decisions Made Following Second Prehearing Conference), March 10, 1983, at 7.

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requested extension of time, as he notes later in his pleading. Eddleman Motion at 4.

Applicants oppose the first request for additional time, set forth above, as premature, unsupported, and potentially detrimental to the Board's schedule for adjudicating environmental matters. A brief review of the progress of discovery between Applicants and Mr. Eddleman on admitted environmental contentions serves to illustrate why unwarranted delay may result from granting the motion.

I. Background

With respect to Eddleman environmental contentions other than 29/30 and 37B, Applicants posed their first-round requests on January 31, 1983, and Mr. Eddleman responded on March 21. Applicants filed their second-round requests on June 30, 1983.

On these same contentions (i.e., admitted environmental other than 29/30 and 37B), Mr. Eddleman posed his first-round discovery requests to Applicants on March 21, 1983, and Applicants responded on April 28. Mr. Eddleman filed second-round requests on July 2, 1983.

In a postcard dated May 26, 1983, Mr. Eddleman notified the Board that negotiations with CP&L on Applicants' responses to his first-round requests "have been in progress and will continue June 1 and possibly thereafter." Applicants' counsel do not agree that negotiations were in progress at that time, but nevertheless later discussed the responses with Mr. Eddleman

and, on June 30, 1983, briefly supplemented a few interrogatory answers on Contentions 75 and 83/84.

With respect to Eddleman environmental contentions 29/30 and 37B, Applicants filed first-round discovery requests of Mr. Eddleman on March 9, 1983, and he responded on April 22.

Mr. Eddleman posed his first-round requests on these contentions on April 22, 1983, and Applicants responded on June 17.^{3/} Discussions were held between Applicants' counsel and Mr. Eddleman on July 1 to explore his dissatisfaction with the responses. The negotiations were unsuccessful.

As noted above, Applicants and Mr. Eddleman agreed to defer filing second-round requests on Contentions 29/30 and 37B until on or before July 20, 1983.

II. The Eddleman Motion is Premature

As we understand the motion, Mr. Eddleman is anticipating that: (1) he will file motions to compel with respect to answers Applicants have provided to his interrogatories on environmental contentions; (2) that the Board will grant such

3/ In exchange for Mr. Eddleman's agreement to this extension, the undersigned counsel for Applicants agreed to consider with favor a reasonable extension past the June 30 deadline for Mr. Eddleman's second-round requests, even though the first round should have been filed earlier. Applicants subsequently agreed to an extension. It is not correct, as Mr. Eddleman states, that I agreed "not to oppose" an extension, or that the discussion included any environmental contentions other than 29/30 and 37B. Cf. Eddleman Motion at 1.

motions; and (3) that the additional responses filed by Applicants in response to the Board's order will give rise to the need for further discovery. Applicants understand the extension request to go to the potential additional discovery following Applicants' response to a Board order granting an Eddleman motion to compel.

The Board should not entertain this kind of abstract and academic request for relief. None of the cascading series of events anticipated by Mr. Eddleman have occurred. Even if a motion to compel is filed in the near future, it is at best speculative that the Board would grant such a motion and that Applicants' response would give rise to the necessity for additional discovery. The Board should only consider a request for further discovery which is based upon a good cause showing in the context of actual facts and circumstances -- e.g., need for the information, whether it could have been sought earlier, effect on the hearing schedule.

III. Parties Should be Diligent
in Pursuing Discovery

The Board set June 30, 1983 as the last day for filing discovery requests on currently admitted environmental contentions. Memorandum and Order . . . , March 10, 1983, at 6. This deadline is important to the preservation of the remainder of the schedule. Further, since discovery has been open on these contentions since September, 1982, Applicants submit that there has been adequate time to pursue discovery, and that any party which started late assumed the risk that dispute

complications might accumulate near the end.^{4/}

There are at least two respects (beyond delay in the initiation of discovery) in which diligence in the discovery process is not recognized by Mr. Eddleman's motion. First, Mr. Eddleman appears to believe that all second-round requests may await the final resolution of any disputes from the first round.^{5/} The trail for such resolution could involve:

- a. Negotiations on Applicants' interrogatory answers.
- b. Motion to compel by Mr. Eddleman.
- c. Negotiations on Mr. Eddleman's motion.
- d. Applicants' answer to the motion.
- e. Board ruling.
- f. Further response by Applicants if motion granted.
- g. Attempts at follow-up discovery by Mr. Eddleman.
- h. Argument over whether "good cause" has been shown.
- i. Repeat steps a through f indefinitely.

Applicants submit that if Mr. Eddleman wished to pursue such an extended course under the umbrella of a single round of discovery, before posing a second round, he should have started months earlier.

In any case, parties should only pursue discovery disputes which are material. If there has been a reasonably responsive answer, the requesting party should move on to follow-up

^{4/} The fact that Mr. Eddleman elects to pursue new contentions, to file a 2.758 petition, to review extensive numbers of documents produced, and to participate in rate cases is irrelevant to his obligation to proceed diligently with discovery.

^{5/} For example, Mr. Eddleman indicates that he filed some second-round requests on July 2, 1983, only to cover the possibility that his motion is denied. Eddleman Motion at 3. (At the same time, Applicants note that the motion does not appear to apply to the timing of those requests.)

questions with a second round.^{6/} Otherwise, discovery may become interminable.

Second, the consultation process required by the Board prior to filing any motion to compel^{7/} must be pursued diligently, especially when the deadline for termination of discovery is near. The Board has been clear that in order to toll the time for filing a motion to compel, negotiations must be ongoing. See Memorandum and Order . . ., March 10, 1983, at 12. Unilateral notice to the Board of intent to negotiate is not sufficient to toll the time for filing a motion to compel. Negotiations require two-way communication between the parties. If the requesting party cannot review the answers to its own questions in a timely fashion, the appropriate course is to proceed to the second round of discovery after the review is completed, assuming that the termination deadline has not passed. Applicants advise the Board of these matters now to illustrate the potential pitfalls of granting the relief requested in the Eddleman Motion.

IV. Conclusion

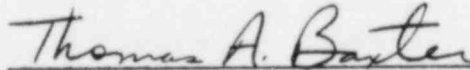
Applicants have agreed to an extension (beyond the June 30 deadline) for filing second-round discovery requests on Eddleman Contentions 29/30 and 37B. The blanket request for additional

^{6/} At the very least, second-round discovery should proceed as to those first-round responses which are not in dispute.

^{7/} See Memorandum and Order . . ., March 10, 1983, at 11.

discovery at some hypothetical point in the future should be denied as premature, unsupported, and in conflict with the orderly conduct of the proceeding.

Respectfully submitted,



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Dated: July 12, 1983

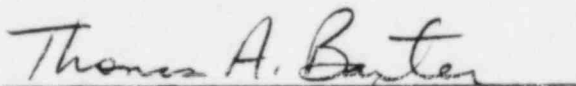
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer to Wells Eddleman's Motion for Extension of Time re Second Round of Interrogatories on Environmental Contentions" were served this 12th day of July, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties on the attached Service List.



Thomas A. Baxter, P.C.

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