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June 5, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket Nos. 50-400 OL
and NORTH CAROLINA EASTERN	)	50-401 OL
MUNICIPAL POWER AGENCY	)	
	)	
(Shearon Harris Nuclear Power	)	
Plant, Units 1 and 2)	)	

APPLICANTS' MOTION FOR EXPEDITED RULING ON APPLICANTS' MOTION FOR A DETERMINATION THAT JOINT INTERVENORS' PROPOSED TESTIMONY OF DR. CARL J. JOHNSON IS INADMISSIBLE

Applicants today filed with the Board "Applicants' Motion for a Determination that Joint Intervenors' Proposed Testimony of Dr. Carl J. Johnson is Inadmissible."1/ The principal basis for the motion is that Dr. Johnson's proposed testimony is not relevant to the issues specified by the Board for the hearing on environmental matters to begin on June 14, 1964.2/ Applicants hereby move that the motion on admissibility be given expedited treatment and decided in advance of the hearing.

1/ Both motions are being hand-delivered today to the Board, counsel for the NRC Staff, Mr. Payne and Mr. Read (counsel for Joint Intervenors) and Mr. Eddleman (lead intervenor on these issues).

2/ Applicants also argue that the proposed testimony lacks probative value because it is incomplete and because the witness lacks credibility.

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Particularly, Applicants request that Joint Intervenors be directed to file any written answer to the admissibility motion by Monday, June 11, 1984. The Staff has agreed to file its answer by that date.3/ If Joint Intervenors make available copies of their answer to Applicants in Raleigh or Durham prior to 11:00 a.m. on June 11, Applicants will undertake to deliver copies to the Board and Staff counsel on June 11. Similarly, Applicants will attempt to deliver a copy of the Staff's answer to Mr. Eddleman (or another designated intervenor) on June 11. Applicants then propose a telephone conference be conducted by the Board on June 12 to announce its ruling.

This motion for expedition seeks to avoid unnecessary effort and expense for the parties, without sacrifice to the full presentation of the parties' views to the Board on the admissibility motion.

Applicants could have reserved their objections to admission of the Johnson testimony until it is offered at the hearing. By then, however, Applicants will have expended potentially needless effort preparing cross-examination and/or rebuttal testimony to cover the eventuality that their objections are overruled and the testimony is received. The Staff no doubt would have incurred a similar expenditure of effort. From their standpoint, Joint Intervenors would have sustained the needless expense of bringing Dr. Johnson from Colorado to

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3/ At the time this motion was filed, Joint Intervenors were in the process of considering whether or not to agree to this request for expedition.

North Carolina if his testimony is ruled inadmissible at the hearing itself.4/

Further, there is no reason to delay, until hearing, a decision on the admissibility of the proposed Johnson testimony. Written direct testimony filed in advance was required by the Board. Dr. Johnson cannot cure the defects in his direct by oral expansion, and the presence of the witness is not needed for the Board to rule upon the relevance and/or probative value of the written testimony.

Finally, Applicants have lodged their admissibilty motion without delay. While the motion sets forth the background of the situation with some care and is therefore not brief, the fundamental argument on relevance is a simple one which Joint Intervenors should be able to address in the time period proposed.5/

Respectfully submitted,

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4/ While these contingencies always exist, Applicants submit that their objections to the proposed testimony are so compelling that a prompt ruling is warranted in this instance to avoid needless effort.

5/ If Applicants had raised their objections at hearing for the first time, Joint Intervenors would have been required to answer the objections "on the spot."

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