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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

**CAROLINA POWER & LIGHT COMPANY'S  
MOTION TO EXTEND PAGE LIMITATION  
AND FOR CLARIFICATION**

Carolina Power & Light Company ("CP&L") moves the Commission to extend the page limitation for CP&L's Answers to the Board of Commissioners of Orange County's ("BCOC") Petition for Review<sup>1</sup> and Request for Emergency Stay<sup>2</sup> dated March 16, 2001. CP&L respectfully submits that because BCOC's submissions (1) exceed the applicable page limit, (2) violate the required minimum margins, (3) use excessive single-spaced footnotes containing substantive arguments, and (4) employ an affidavit attached to the Stay Request to improperly argue issues relevant only to the Petition, it is unfair and prejudicial to CP&L to require its Answers be limited to the ten (10) pages allowed by the rules. In the alternative, CP&L respectfully requests that the Commission dismiss

<sup>1</sup> "Orange County's Petition for Review of LBP-00-12, LBP-00-19, and LBP-01-09" (Mar. 16, 2001) ("Petition").

<sup>2</sup> "Orange County's Request for Emergency Stay of LBP-01-09" (Mar. 16, 2001) ("Stay Request").

BCOC's Petition for Review and Request for Emergency Stay, without prejudice to refile pleadings that conform to the Commission's regulations.

CP&L also moves the Commission to clarify its rules on service and computation of time to establish: (1) whether BCOC's Stay Request is late-filed without good cause shown and (2) the proper time to answer where, as in this case, a party files with the Commission a petition for review and stay request electronically and provides service by first class mail. CP&L submits that the date for CP&L and the NRC Staff to file their Answers to BCOC is on or before April 2, 2001.

## **I. BACKGROUND**

This proceeding relates to CP&L's December 23, 1998, application for a license amendment to place spent fuel pools C and D in service at CP&L's Harris Nuclear Plant ("Harris Plant," or "Harris").<sup>3</sup> On March 1, 2001, the Licensing Board issued its decision on the one remaining issue before it, authorized the requested license amendment and dismissed the proceeding "because all matters before the Board in connection with the requested amendment have been resolved in favor of amendment issuance without the need for further evidentiary presentations."<sup>4</sup> On March 16, 2001, BCOC filed the instant petition and request for emergency stay.

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<sup>3</sup> Shearon Harris Nuclear Power Plant Docket No. 50-400/License No. NPF-63 Request For License Amendment Spent Fuel Storage (Dec. 23, 1998).

<sup>4</sup> Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-01-09, 53 NRC \_\_\_\_, slip op. at 2 (2001).

## II. ARGUMENT

### A. BCOC's Petition Does Not Comply With Commission Regulations for the Filing of Documents

BCOC flouts Commission regulations regarding length, style and format of documents.<sup>5</sup> Commission rules require that a “petition for review . . . must be no longer than ten (10) pages.” 10 C.F.R. §§ 2.786(b)(2). Further, each “page shall begin not less than one and one-quarter inches from the top, with side and bottom margins of not less than one and one-quarter inches.” *Id.* § 2.708(b). BCOC acknowledges that “space constraints” apply,<sup>6</sup> but chose to ignore them. In an obvious and unsuccessful attempt to subvert the page limitation,<sup>7</sup> BCOC improperly narrowed the document’s margins<sup>8</sup> and inserted excessive, almost comically-contrived, footnotes. For example, on page 9 of BCOC’s Petition, footnotes comprise approximately six inches of the eight and one-half inches of text allowed pursuant to the rules.<sup>9</sup> Footnote 17 alone, when properly spaced,

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<sup>5</sup> BCOC’s Petition and Stay Request employ similar tactics to avoid the Commission’s page restrictions. In the interest of brevity, however, we discuss in detail only the BCOC Petition here.

<sup>6</sup> Stay Request at 5.

<sup>7</sup> Both of BCOC’s filings extend onto page eleven.

<sup>8</sup> BCOC’s Petition, as received electronically by CP&L’s counsel, was formatted with a top margin of one-half inch, a bottom margin of one inch and side margins of one and one-quarter inches.

<sup>9</sup> Page 7 of BCOC’s Stay Request contains nearly seven inches of footnotes, leaving slightly over one and one-half inches (or four lines) of text, if properly margined. In both cases, however, BCOC, by improperly expanding the margins, has managed an additional one and one-quarter inches of text.

covers over one and one-half pages of text even with BCOC's improperly narrowed margins.<sup>10</sup>

BCOC also improperly places substantive arguments in footnotes in an obvious and clumsy attempt to avoid the Commission's page limitations. Although there is no specific requirement for use of footnotes in the Commission's rules, it is clear that some measure of reasonableness must apply to provide any substance to the requirement that "[t]ext shall be double-spaced." 10 C.F.R. § 2.708(b). BCOC flouts this rule in several footnotes,<sup>11</sup> thus enabling it to include several pages of additional argument. For example, BCOC argues in footnotes that "the Board's dismissal" of a BCOC argument "constitutes an unlawful and unacceptable relaxing of NRC quality assurance standards,"<sup>12</sup> a Board "ruling erroneously sidestepped [a] critical issue by characterizing it as a late-filed contention,"<sup>13</sup> the Board has made "an important omission" in its ruling,<sup>14</sup> and "the Board arbitrarily resolved a genuine and substantial factual dispute between the parties based on its own arbitrary and ill-informed weighing of the merits."<sup>15</sup>

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<sup>10</sup> Footnote 17 also contains five citations to supporting references.

<sup>11</sup> See, e.g., BCOC's Petition n.8, 9, 10, 14, 16, 17, 18, and 19.

<sup>12</sup> Id. n.8.

<sup>13</sup> Id. n.9.

<sup>14</sup> Id. n.10.

<sup>15</sup> Id. n.17.

Such substantive arguments are not reasonably relegated to footnotes absent a need to avoid page limitations.<sup>16</sup>

**B. The Thompson Declaration Contains Improper, Irrelevant, and Immaterial Statements and is an Improper Attempt to Avoid Commission Page Limitations Applicable to BCOC Submittals**

The “Declaration” of Dr. Gordon Thompson submitted with BCOC’s Stay Request is yet another ploy to circumvent the Commission’s page limitations on petitions for review. Aside from Dr. Thompson’s unsupported self-aggrandizing statements, his “Declaration” is largely a repetition of BCOC’s discredited arguments. The material is irrelevant to the stay criteria and can only be intended to supplement BCOC’s Petition.

Of the 26 pages of the Thompson Declaration, only slightly more than five pages address material arguably relevant to BCOC’s Stay Petition. A proper application for stay contains: (1) a summary of the decision; (2) the grounds for a stay; and (3) appropriate references to the record or affidavits in support of (1) and (2). See 10 C.F.R. § 2.788(b). Dr. Thompson, however, devotes fully 20 pages of his affidavit discussing “Spent Fuel Fires,” “Proposed Spent Fuel Pool Expansion at Harris,” “Consideration of Pool Fires in the Harris License Amendment Proceeding,” “Structure of the ASLB Order,” “Deficiencies in the ASLB Order,” and “Deficiencies in the Pool Fire Analyses

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<sup>16</sup> See Toledo Edison Company (Davis Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-430, 6 NRC 457, 458 (1977) (striking extensive footnotes containing “plainly legal argument” that “should have been in the body of the brief” as “an attempt by the applicants to exceed the page limitations”).

Proffered by CP&L and the Staff.”<sup>17</sup> There is, however, clearly no connection between this information and BCOC’s Stay Request.

BCOC improperly attempts to use the Thompson Declaration to avoid page limitations and bolster its arguments in its Petition. CP&L submits that it is not a coincidence that “Deficiencies in the ASLB Order,” which reasonably should require significant discussion in a petition for review, is not addressed in BCOC’s Petition. The topic is, however, extensively discussed in the Thompson Declaration. This is plainly another example of BCOC’s calculated effort to cram more argument into its Petition.

**C. BCOC’s Numerous Violations Unfairly Prejudice CP&L’s Ability to Properly Respond**

BCOC’s actions prejudice CP&L. Formatted in accordance with the Commission’s rules (e.g., proper margins, reasonable footnotes, incorporation of substantive argument in the text), BCOC’s Petition extends to over fifteen pages. Page limit adjustments are lawful exercises of the Commission’s plenary supervisory authority. Hydro Resources, Inc. (2929 Coors Road), CLI-99-18, 49 NRC 411, 412 (1999). BCOC’s improperly formatted submittal, along with 20 additional pages of substantive arguments does not afford CP&L and the NRC Staff an opportunity to adequately respond. BCOC’s actions are not errors or oversights. BCOC is represented by experienced counsel familiar with the Commission’s proceedings and rules. CP&L

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<sup>17</sup> Declaration of 16 March 2001 By Dr. Gordon Thompson in Support of Orange County’s Stay Motion of 16 March 2001 ¶¶ 15 – 76. The discussion of “Deficiencies in the ASLB Order” alone consists of 32 paragraphs over 11 pages of single spaced text. Id. ¶¶ 41 – 72.

respectfully submits that in the interest of fairness, the Commission authorize fifteen (15) page limits for CP&L's and the NRC Staff's Answers to BCOC's non-conforming submissions. In the alternative, the Commission should dismiss BCOC's Petition for Review and Request for Emergency Stay, without prejudice to refile pleadings that conform to the Commission's regulations.

**D. The Commission's Rules Regarding Electronic Service and Related Computation of Time Are Unclear**

The Commission's rules do not explicitly address electronic service (i.e., electronic mail delivery) of documents. The rules state that service "may be made by personal delivery, by first class, certified or registered mail including air mail, by telegraph, or as otherwise authorized by law." 10 C.F.R. § 2.712(c). Electronic mail is not listed, nor do the rules specify when service is complete for such a method, see id. § 2.712(e), although the Commission encourages Licensing Boards to order service by electronic mail.<sup>18</sup> As a result, when a filing is made with the Commission from a proceeding allowing electronic service, it is unclear which rules apply.

The Commission should clarify the rules. In particular, the ambiguity in establishing completion of service and the computation of time creates significant confusion in what should be a straightforward calculation. The rules are particularly opaque when, as here, electronic "courtesy" or "information" copies of pleadings or filings are electronically transmitted coincident with posting by first class mail. In such

cases it is not clear when service was complete, especially when the Certificate of Service indicates service by both methods.

Although CP&L submits that it is clear from the BCOC Certificate of Service that service of the Petition and Stay Request was “by first-class mail,”<sup>19</sup> ambiguous language in similar situations could result in unnecessary litigation over service-related issues. CP&L requests that the Commission clarify the rules and establish a due date of April 2, 2001, for Answers in this matter. CP&L also suggests that this issue will continue to arise and that the Commission should take this opportunity to generally clarify its policy on completion of, and computing time for responses to, electronic service.

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Footnote continued from previous page

<sup>18</sup> See 63 Fed. Reg. 41, 873; see also, e.g., Turkey Point, CLI-00-23, 52 NRC at 332 (directing the participants to “serve all filings by electronic mail”); Oconee, CLI-98-17, 48 NRC at 127 (same); Calvert Cliffs, CLI-98-14, 48 NRC at 43 (same).

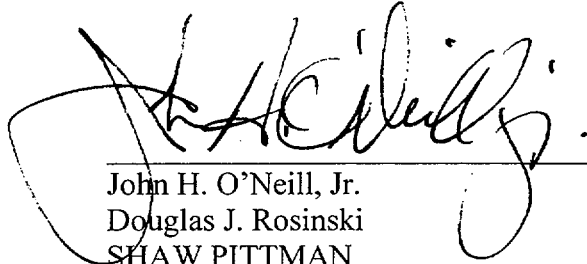
<sup>19</sup> CP&L and the NRC Staff are, therefore, provided an additional five days to respond pursuant to 10 C.F.R. § 2.710.



### III. CONCLUSION

For the reasons discussed above, the Commission should authorize CP&L and the NRC Staff to submit fifteen (15) page Answers to BCOC's Petition and Stay Request and clarify that these documents are due by April 2, 2001. In the alternative, the Commission should dismiss BCOC's Petition for Review and Request for Emergency Stay, without prejudice to refile pleadings that conform to the Commission's regulations.

Respectfully submitted,



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Dated: March 20, 2001

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing "Carolina Power & Light Company's Motion to Extend Page Limitations and For Clarification" dated March 20, 2001, was served by electronic mail transmission and first class mail on this 20th day of March, 2001, on the persons listed below.

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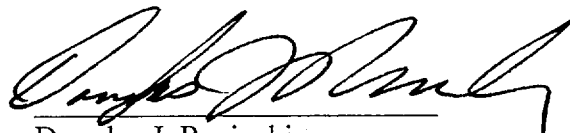
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