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May 18, 1983

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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)	Docket Nos. 50-400 OL
MUNICIPAL POWER AGENCY)	50-401 OL
)	
(Shearon Harris Nuclear Power)	
Plant, Units 1 and 2))	

APPLICANTS' RESPONSE TO CCNC'S
MOTION TO COMPEL APPLICANTS
TO RESPOND TO DISCOVERY

Pursuant to 10 C.F.R. § 2.730(h), Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency hereby respond to "CCNC Motion to Compel Applicants to Respond to Discovery" dated May 3, 1983.^{1/}

On March 18, 1983, CCNC served interrogatories on Applicants regarding, inter alia, CCNC Contention 4, which concerns environmental effects of transshipment of spent fuel

^{1/} Counsel advised Ms. Ruthanne Miller, clerk to the Board, of Applicants' intention to file a response to CCNC's Motion, by telephone on May 9, 1983.

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from Carolina Power & Light Company's Robinson and Brunswick Plants to the Harris Plant.^{2/} In answers to CCNC's interrogatories filed on April 20, 1983 (at 4-5), Applicants objected to answering Interrogatories 4-1 through 4-5 and 4-14. CCNC admits that the first five interrogatories deal with "the environmental impacts of transshipping irradiated (fresh) fuel to the SHNPP site." CCNC Motion at 1. CCNC also admits that Interrogatory 4-14 relates to "Applicants' plans to dispose of radioactive wastes and spent fuel produced by operation of the SHNPP." Id. CCNC argues in its Motion that "the interrogatories asked by CCNC to the Applicants all seek information

2/ Contention 4 reads as follows:

The Applicants' request for authorization to store source, special nuclear and by-product material irradiated in nuclear reactors licensed under DPR-23, DPR-66, and DPR-71, should be denied as there has been no analysis in the ER of the environmental effects of transportation of radioactive wastes and other material from the other reactors to SHNPP. The Applicants' reliance on 10 C.F.R. 51.20(g), including the table of Environmental Impact of Transportation of Fuel and Waste To and From One Light-Water-Cooled Nuclear Power Reactor (taken from WASH-1238), is inappropriate as the 10 C.F.R. 51.20(g) exemption only applies to the transportation of radioactive material to and from one reactor only, not from several reactors as in this instance. There needs to be a full description and detailed analysis in the ER under 10 C.F.R. 51.20(g)(1)(a)(ii), to include the contribution of such effects to the environmental costs of licensing the reactor, and the environmental impact under normal conditions and the risk from accidents.

relevant to our Contention 4 relating to the cumulative effects of transshipments to and from the SHNPP, and from other CP&L reactors to the SHNPP site." Id. at 5 (emphasis supplied). Contention 4 does not, however, encompass the cumulative effects of shipments of unirradiated fuel to and spent fuel from the Harris Plant. As is clear from CCNC's argument, Interrogatories 4-1 through 4-5 and 4-14 are only relevant to issues CCNC seeks to litigate but not to Contention 4 as presently admitted. Applicants' objections must be sustained.

Applicants objected to answering Interrogatories 4-1 through 4-5 and 4-14 because they do not pose questions that are relevant to the issue admitted in this proceeding or that are reasonably calculated to lead to the discovery of admissible evidence. Contention 4 is limited to "environmental effects associated with transportation of spent fuel from other CP&L reactors to Shearon Harris." "Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference)" at 19 (September 22, 1983). The Board clarified its ruling in admitting Contention 4, stating that the issue admitted was the failure of the Environmental Report "to include an assessment of the environmental effects of the transportation of spent fuel to Harris from other CP&L plants." "Memorandum and Order (Addressing Motions for Reconsideration and Clarification of the Board's Prehearing Conference Order)" at 5 (January 11, 1983). Interrogatories 4-1 through 4-5 and 4-14 have nothing

to do with the issue admitted as Contention 4 but rather focus exclusively on the environmental impacts of the transportation of unirradiated fuel to the Harris Plant and the environmental impacts of the transportation of spent fuel from the Harris Plant. The issues raised by these Interrogatories are specifically excluded from litigation in an operating license proceeding by the Commission's rules at 10 C.F.R. § 51.20(g).3/

Applicants chose to respond to CCNC's Motion because CCNC has not directly addressed Applicants' objections but rather now seeks to expand the scope of Contention 4, and asks the Board to reconsider whether the environmental effects of all fuel shipments will be considered in this proceeding. In doing so, CCNC is effectively conceding that the subject Interrogatories are not relevant to Contention 4 as presently drafted. Applicants believe that a motion to compel is procedurally inappropriate as a vehicle for a motion for reconsideration of the scope of an admitted contention.4/

3/ By rule the environmental impacts of transportation of unirradiated nuclear fuel to the Harris Plant and of spent fuel from the Harris Plant are established in Summary Table S-4 to 10 C.F.R. § 51.20(g), which is reprinted in its entirety in the Draft Environmental Statement related to the operation of Shearon Harris Nuclear Power Plant, Units 1 and 2 (NUREG-0972), at 5-30 (April 1983).

4/ This is especially true in light of the Board's disfavor of answers to motions to compel. See "Memorandum and Order (Reflecting Decisions Made Following Second Prehearing Conference)" at 12-13 (March 10, 1983). Nevertheless, Applicants do agree with CCNC's view that the Board should reconsider its decision to admit CCNC Contention 4 (and simi-

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CCNC points to the Board's statement in its September 22 Memorandum and Order (at 20): "We will reconsider this question in light of that [the Staff's] analysis." CCNC interprets the "question" for reconsideration as "whether the environmental effects of transshipments will be considered in this proceeding." CCNC Motion at 4. It is clear from the context of the Board's ruling on CCNC Contention 4 that the "question" the Board planned to "reconsider" was its "tentative view" that Table S-4, "or some multiple thereof, can be applied to this [transshipment] situation." September 22 Memorandum and Order at 20. Thus the Board opined:

For example, it would appear that one might reasonably double some S-4 values on the theory that the fuel from Robinson and Brunswick is spent fuel in both legs of the trip, not just one. Even under that approach, however, the resulting impact would be small. In any event the Staff will be producing its analysis based on the facts of this case. We will reconsider this question in the light of that analysis. (emphasis supplied).

The question that CCNC would have the Board reconsider instead is set out in its Motion (at 2-3):

(Continued)

larly CHANGE Contention 9) in light of the Staff's decision not to analyze the environmental impacts of spent fuel transportation from CP&L's Robinson and Brunswick Plants to the Harris Plant. Applicants plan to petition the Board for reconsideration of CCNC Contention 4 and CHANGE Contention 9 in the near future, now that the Staff has published the Draft Environmental Statement. Applicants do not believe it would be appropriate for the Board to rule on this issue until Applicants, the Staff and CHANGE have an opportunity to brief this matter fully.

May the Applicants rely on Table S-4 for the effects of transshipment of fuel to or wastes from the SHNPP or need they do the equivalent of an environmental impact analysis to assess all the impacts of transshipment, including the spent fuel from the other reactors?

The answer to this question is found in the Commission's rules; Applicants may, indeed, rely on summary table S-4 to 10 C.F.R. § 51.20(g) and the issue of the transportation of unirradiated fuel to a reactor of spent fuel from a reactor may not be litigated in the operating license proceeding absent a waiver from the Commission. See 10 C.F.R. § 2.758. CCNC's Motion does not constitute a petition for waiver of the Commission's rules, accompanied by the required affidavit, demonstrating special circumstances. Id.

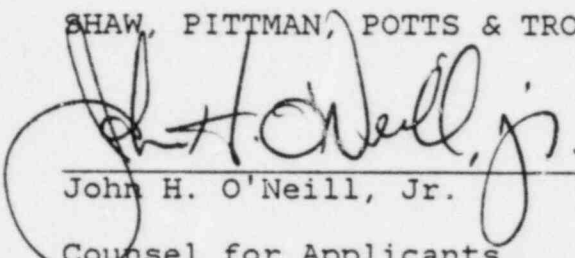
The Staff's judgment that the environmental effects of transshipment of spent fuel from Robinson and Brunswick to the Harris Plant need not be analyzed in the Draft Environmental Statement validates Applicants' decision not to include such an analysis in the Environmental Report. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), Memorandum and Order (Ruling on Spent Fuel Contentions) (February 25, 1983). As stated above, Applicants intend to raise this issue in a petition to the Board in the near future.

In the meantime, CCNC simply has ignored Applicants' objections to Interrogatories 4-1 through 4-5 and 4-14. CCNC all but admits that those interrogatories are outside the scope

of Contention 4 as presently admitted. Applicants' objections must be sustained. Furthermore, CCNC's petition for reconsideration is inappropriate here. CCNC asks that the Board ignore the Commission's rules at 10 C.F.R. § 51.20(g), for which a waiver must be obtained pursuant to 10 C.F.R. § 2.758. CCNC's Motion is not adequate as a petition for a waiver and must be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



John H. O'Neill, Jr.

Counsel for Applicants

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Dated: May 18, 1983

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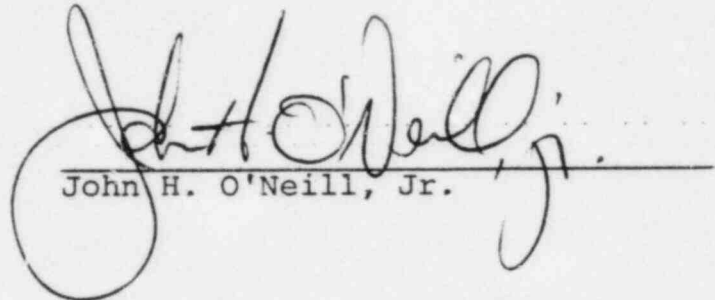
CERTIFICATION OF COUNSEL

I, John H. O'Neill, Jr., counsel for Applicants in the above referenced proceeding, certify that I have made the following efforts to resolve Applicants' objections to certain interrogatories set forth in "Conservation Council's Interrogatories to Applicants (First Set)."

1. As set forth in "CCNC Motion to Compel Applicants to Respond to Discovery", dated May 3, 1983 at 2, H. Hill Carrow, counsel to Carolina Power & Light Company, discussed Applicants' objections with counsel to CCNC on April 6, 1983 and on May 3, 1983.

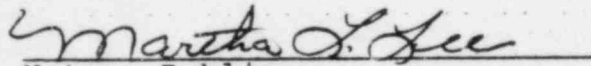
2. On May 9, 1983, I spoke with counsel to CCNC by telephone. Applicants and CCNC differ with respect to the scope of Contention 4 and found no grounds for agreement which might resolve Applicants' objections to Interrogatories 4-1 through

4-5 and 4-14. Both parties agreed that further discussions on this matter would not be fruitful.


John H. O'Neill, Jr.

Dated: May 18, 1983

District of Columbia:
Subscribed and sworn to
before me this 18th day of
May, 1983


Notary Public

My Commission Expires: 10/14/85

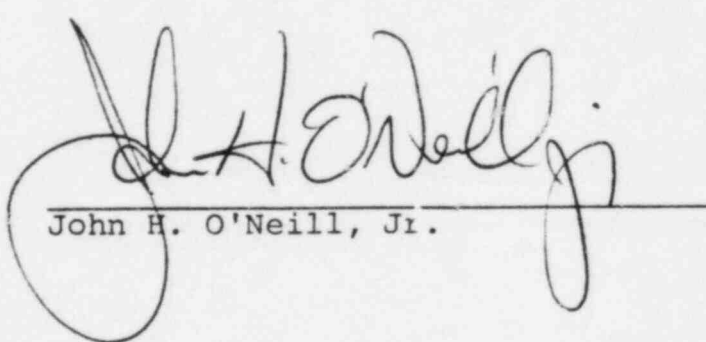
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to CCNC's Motion to Compel Applicants to Respond to Discovery" and "Certification of Counsel" were served this 18th day of May, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties on the attached Service List.



John H. O'Neill, Jr.

Dated: May 18, 1983

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