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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	)	50-400 OL
	)	50-401 OL
(Shearon Harris Nuclear Power	)	
Plant, Units 1 and 2)	)	

APPLICANTS' MOTION  
(REQUESTING THAT JAMES MACKIE BE WITHDRAWN AS A PROPOSED EXPERT)

On March 21, 1983, Intervenors Kudzu Alliance, Conservation Council of North Carolina and Wells Eddleman ("Intervenors") jointly filed and served information regarding all proposed experts which they were proffering to review Applicants' security plan. On April 6, 1983, Applicants accordingly filed appropriate Notices to Take Depositions of all nine proposed experts proffered by the Intervenors. Those notices called for the depositions of Messrs. Tabata, Crockett, Blair, Brady, Tuggle, Stevens, and Bleacher to be taken on April 18, 1983 and Messrs. Maples and MacKie to be conducted on April 25, 1983. Pursuant to the Board's April 22, 1983 Order (Resolving a Discovery Dispute), the depositions of Messrs. Bleacher and Stevens were rescheduled for April 25, 1983.

Applicants and NRC Staff deposed Messrs. Maples, Bleacher, and Stevens on April 25, 1983 in Raleigh, North Carolina. Counsel for Staff also deposed Mr. MacKie. Over Applicants' objection, however, Mr. MacKie left the deposition before

Applicants had had an opportunity to depose him. Counsel for Intervenor had failed to inform counsel for Applicants and Staff in a timely manner that proposed expert MacKie had a schedule conflict and that he intended to leave shortly after 2:00 p.m. that day. Applicants' counsel, Mr. Carrow, pointed out that the April 6, 1983 Notice of Deposition had provided ample notice to Mr. MacKie and Ms. Greenblatt that the deposition was to be conducted throughout the day of April 25, 1983. Mr. Carrow expressed Applicants' willingness to attempt to accommodate Mr. MacKie's schedule and to continue the deposition, preferably to be conducted later that same week. Ms. Greenblatt made no effort at that time, while Mr. MacKie was still present, to reschedule the deposition but did twice acknowledge that consequences could arise from Mr. MacKie's leaving which would have to be faced.

Counsel for the Applicants informed the Board of this matter in a letter to the Board dated April 28, 1983 requesting an extension of the deadline for filing briefs on the issue of the qualifications of the proposed experts. In that letter, Applicants stated that they would try to resolve this issue informally with the other parties, but that it might become necessary to seek Board resolution of the matter.

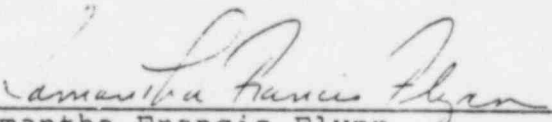
In a telephone conversation between Ms. Greenblatt and Mr. Carrow on May 6, 1983, Ms. Greenblatt indicated that the Intervenor wanted to proceed with Applicants' deposition of Mr. MacKie. Mr. Carrow replied that if that were the case, it would be necessary for Mr. MacKie to return to Raleigh as soon as


possible, preferably by May 9 or soon thereafter, in order that the deposition could be completed within sufficient time to enable Applicants to receive a transcript and meet the already extended briefing schedule. Attorney Greenblatt stated that she would have to confer with Mr. MacKie about this and would advise Applicants' counsel of their decisions and schedules. Having received no further word from Ms. Greenblatt since that date, Mr. Carrow initiated a telephone call to her on May 17, 1983 and was told by Ms. Greenblatt that the earliest Mr. MacKie would be available for a deposition is June 13, 1983.

While Applicants have made every effort to accommodate Mr. MacKie and to cooperate with Ms. Greenblatt in proceeding with respect to his possible qualification as an expert, Applicants have been put to substantial inconvenience by Mr. MacKie's departure from the deposition on April 25 and have been seriously disadvantaged by Ms. Greenblatt's failure to proceed in a diligent fashion to accept Applicants' offer to reschedule the deposition. The very purpose of the brief which Applicants are to file on this date is to present Applicants' assessment of the qualifications of each of the individuals proffered as experts based upon the deposition testimony of such individual. Applicants, however, have been deprived of their right to depose Mr. MacKie and have had to proceed with the preparation of their brief without the benefit of having conducted cross-examination.

Under all of the circumstances, therefore, Applicants believe that Mr. MacKie's name should be deemed to be withdrawn

from consideration as a possible expert in this matter. Because Applicants and Intervenor have been unable to resolve this matter informally, Applicants have no alternative but to file this motion requesting the Board to rule that Mr. MacKie be deemed to be withdrawn from consideration.

  
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CERTIFICATE OF SERVICE

DOCKETED  
MAY 1983

I hereby certify that a copy of the Applicants' Motion (Requesting That James MacKie Be Withdrawn As A Proposed Expert) has been served by deposit in the United States Mail, first class prepaid, addressed to the parties listed below this the 17th day of May, 1983.

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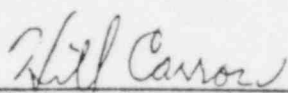
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