August 15, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket No. 50-261-OLA
	)	
(H. B. Robinson Steam Electric Plant, Unit 2)	)	ASLBP No. 83-484-03LA

APPLICANT'S ANSWER TO HARTSVILLE GROUP'S MOTION TO COMPEL

I. Introduction

"The Hartsville Group First Set of Interrogatories and Requests to Produce" were served May 14, 1983. "Applicant's Answers to the Hartsville Group First Set of Interrogatories and Requests to Produce" ("Answers") and "Applicant's Objections to Hartsville Group's First Set of Interrogatories and Requests to Produce" ("Objections") were filed June 30, 1983. Applicant responds herein to "The Hartsville Group Motion to Compel Applicant Responses to Interrogatories and Requests to Produce Documents" ("Motion"), dated July 11, 1983.

Hartsville Group's motion sought to compel responses to General Interrogatories 1 through 4; Interrogatories 1-31, 1-34 through 1-36, 1-38 and 1-39; Interrogatories 2-1 through 2-114; Interrogatories 3-5, 3-42 through 3-53, 3-76, 3-89 through

3-94, 3-96 through 3-103 and 3-104(b), 3-104 and 3-105, 3-107 through 3-110, 3-118 through 3-122, 3-126 and 3-127, and 3-130 through 3-167; and Interrogatories 8-27 and 8-28, as well as 8-41 through 8-43. However, based on agreements between counsel for Applicant and Hartsville Group's representative, the motion has been withdrawn with respect to most of the subject interrogatories. See Letter, Counsel for Applicant to Representative of Hartsville Group, dated August 1, 1983. Further, Applicant will provide substantive responses to Interrogatories 3-42 through 3-53, in addition to its commitments in the August 1 letter. See Letter, Counsel for Applicant to Licensing Board, dated August 15, 1983. Accordingly, the only differences remaining for Board resolution are raised by Interrogatories 1-34, 1-36, 1-38 and 1-39, 3-96 through 3-103 and 3-104(b), 3-121 and 3-122, and 8-27 and 8-28, as well as 8-41 through 8-43. Applicant addresses the merits of Hartsville's arguments on these interrogatories below.

Citing 10 C.F.R. § 2.740(f)(1), Hartsville Group initially posits that Applicant has defaulted with respect to each of the interrogatories to which Applicant objected, by failing to move for a protective order at the time it filed its objections. Hartsville Group's argument is based on an understandable misinterpretation of the referenced regulation. It is established law that objections are considered discovery responses, as that term is used in 10 C.F.R. § 2.740(f)(1); thus, Applicant is not guilty of a "[f]ailure to answer or respond" to Hartsville Group's

interrogatories. While a motion for a protective order may be filed in lieu of answers or objections to interrogatories, the customary practice -- designed to minimize the need for judicial intervention -- is to file objections and answers as indicated, and address the need for a protective order in the context of resolving the discovery party's motion to compel, should one be filed. There simply is no obligation on a party objecting to discovery requests to simultaneously seek a protective order to ensure that its rights are protected. See generally 4 Moore's Federal Practice ¶ 26.28, at p. 26-492. Indeed, in the face of a motion to compel, a cross-motion for a protective order may be unnecessary. See 4A Moore's Federal Practice ¶ 37.02[8], at p. 37-46.

II. Argument

Interrogatories 1-34, 1-36 and 1-38:

These interrogatories read as follows:

> Interrogatory No. 1-34. Have any CP&L employees or contractor or subcontractor employees been warned, counseled, disciplined, transferred, demoted, penalized, suspended or terminated as a result of non-compliance with NRC operating and administrative procedures, rules or regulations at any licensed facility or for actions under any NRC license since January 1, 1978? Identify the name, title, dates of employment, address and telephone number of each such employee; describe in detail the action taken, the reason for each such action, the procedures, rules or regulations not complied with, and the safety significance of such non-compliance.
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> Interrogatory No. 1-36. What are the bases for your responses to Interrogatories 34 and 35? Identify all documents, testimony or oral statements by any person and legal requirements on which you rely in support of your position.
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> Interrogatory No. 1-38. Identify in detail any instances in which allegations have been made of pressure, intimidation, harrassment, encouragement, direct orders, suggestions, or inducement of any sort of employees of CP&L or its contractors or subcontractors intended to result in the violation of or non-compliance with NRC operating and administrative procedures, rules or regulations. For each such instance, set forth the name, address and telephone numbers of the person(s) making the allegation or involved in the matter alleged, describe fully any investigations made by CP&L or the NRC Staff, and describe in detail any actions taken.

Applicant objected to these interrogatories to the extent they would require unreasonably burdensome searches of massive numbers of files with respect to all three of Applicant's

nuclear plants, without limitation on time (except that Interrogatory 1-34 is limited to action taken since January 1, 1978). The logical place to search for the type of information sought would be the personnel files of CP&L, its contractors and subcontractors. Applicant presently employs approximately 3,000 individuals in some nuclear-related capacity (not including present or past employed contractor and subcontractor personnel), and the individuals historically employed by CP&L in such a capacity would increase this number at a rough estimate by approximately 1,000 individuals. An initial screening of these files alone would entail an estimated 340 manhours of effort after assembly of personnel files presently stored in many locations. Contractor and subcontractor personnel number several thousand for each of the CP&L nuclear units. The interrogatories are thus oppressively burdensome and expensive. See, e.g., Marshall v. Westinghouse Electric Corp., 576 F.2d 588 (5th Cir. 1978) (holding that district court properly denied motion to compel discovery, affirming district court's finding that interrogatories -- which sought information regarding all persons whose employment with elevator division had been terminated in previous six years -- were too oppressive and burdensome, where request encompassed some 7500 employees at various facilities); Riss & Co. v. Association of American Railroads, 23 F.R.D. 211 (D.D.C. 1959) (where party objected that -- given manner in which its records were kept -- only way to supply requested data would be to analyze each and every bill it had ever

produced, court sustained objection, noting that discovery process did not contemplate compelling party to search and analyze such voluminous records in order to furnish answers).

The burden of the requested analysis of voluminous personnel files is particularly excessive given the (at best) marginal relevance of the information sought. It is well established that, "when relevancy is borderline and the burden of complying great, these factors may act in combination" to support an objection. 4 Moore's Federal Practice ¶ 26.56 [1], at p. 26-135, citing, inter alia, Burroughts v. Warner Bros. Pictures, 14 F.R.D. 165 (D. Mass. 1953).*/ See also Kolta v. Tuck Industries, Inc., 20 F.R. Serv.2d 1049 (S.D.N.Y. 1975) (protective order entered against interrogatories which would have required 250 separate responses and countless hours of searching through corporate records, where many were only marginally relevant to subject matter of litigation).

Moreover, where discovery is contested, the discovering party has the burden of demonstrating that the information sought is relevant to the subject matter of the proceeding.

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*/The Burroughs court observed:

The task of answering these interrogatories would apparently be a burdensome one, involving an extensive search through [defendant's] records, and compilation of a voluminous amount of data. More important, however, is the fact that in the light of the allegations of the complaint, the information requested seems to have little relevance * * * The interrogatories * * * are too sweeping in their scope to be justifiable on the basis of [the allegations], and defendant should not be required to assume the burden of answering them. 14 F.R.D. at 166.

See, e.g., United States v. I.B.M. Corp., 66 F.R.D. 215, 218 (S.D.N.Y. 1974); McClain v. Mack Trucks, Inc., 85 F.R.D. 53, 57 (E.D. Pa. 1979). In the instant case, Hartsville Group has not even attempted to demonstrate the relevance of the interrogatories; indeed, Hartsville Group cannot do so. As admitted to this proceeding, Contention 1 clearly contemplated a focus on Applicant's upper management, alleging "poor corporate and facility management controls." See, e.g., "Memorandum and Order (Report on Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.751a)" (April 12, 1983), ("April 12 Order"), at 4-6. Hartsville Group never alleged the existence of harassment as a basis for its Contention 1; nor did it indicate an interest in litigating the minutiae of disciplinary measures against individual rank-and-file workers. Any relationship (yet to be articulated) between the subject matter of the interrogatories and the issue in Contention 1 -- management capability -- is so tenuous that it cannot justify the burden and expense attendant to answering the interrogatories. The analyses which Hartsville Group seeks to compel here are simply burdensome out of all proportion relative to the materiality and relevance of the information sought.

Hartsville Group's wholesale failure to address the relevance of the subject interrogatories is expecially egregious given the information which Applicant did supply in response to the interrogatories. In response to Interrogatory 1-34, Applicant described its reasonable inquiries on the subject of the

interrogatory,*/ then described 38 distinct disciplinary actions, including descriptions and dates of the incidents occasioning the disciplinary measures and a specification of the disciplinary action taken in each instance. Particularly given such detailed information, Hartsville Group was obligated to affirmatively articulate for the Board and the other parties the precise nexus between the information sought and Contention 1.

Applicant further objected to Interrogatories 34 and 38 to the extent they seek, respectively, "the name, title, dates of employment, address and telephone number" of disciplined personnel and "the name, address and telephone numbers" of persons alleging harassment. Applicant premised this objection on the undue invasion of personal privacy associated with the public disclosure of such identifying information, and the possibility that the disclosure itself could subject the named individuals to public harassment and intimidation.**/

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*/Hartsville Group impugns Applicant's efforts to provide a reasonably bounded response to the Group's largely unbounded discovery requests, characterizing Applicant's inquiries as "little more than phone calls to one or two individuals at each nuclear facility for their personal recollections." Motion to Compel, at 7. However, the individuals which Applicant contacted are those CP&L officials charged with line responsibility for such matters; accordingly, there is strong basis to credit their recollection. Moreover, inquiry as to the recollections of the responsible officials was the only way in which to elicit information responsive to the interrogatories -- short of the exhaustive search of personnel files which Hartsville Group here seeks to compel. Applicant's inquiries, concededly limited, were thus adequate, particularly considering the marginal relevance of the information sought.

**/Contrary to Hartsville Group's assumption, see Motion to Compel at 8, Applicant has not even suggested that the Group would subject individual workers to harassment or intimidation; rather, Applicant took great pains to emphasize that its direct concerns with respect

(fn. continued next page)

The law recognizes that the public interest may militate against permitting inquiry into particular matters by discovery. See 4 Moore's Federal Practice ¶ 26.60[3], at p. 26-241, citing, inter alia, Richards v. Maine Central R.R., 21 F.R.D. 590 (D.Me. 1957) (finding interrogatory posed to defendant in negligence suit which sought disclosure of disciplinary action taken after subject accident against defendant's employee to be "violative of public policy"). Thus, contrary to Hartsville Group's assertions, (even assuming, arguendo, that disciplinary actions and allegations of harassment are within the scope of Contention 1), the Group has no absolute entitlement to the personal identifying information which it here seeks. See Motion to Compel, at 8. Indeed, it is well established that "[d]iscovery [of the identities of persons having knowledge of discoverable matters] will * * * be denied where the advantages that the information will give to the examining party are outweighed by the harsh consequences that disclosure might bring to the witness or the informant." 4 Moore's Federal Practice ¶ 26.57[3], at p. 26-204.

Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-639, 13 N.R.C. 469 (1981), involved issues

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(fn. continued)

to harassment were associated with the disclosure of the names of individual workers on the public record, via discovery. See Objections, at 3. Nevertheless, the Appeal Board has recognized that even a protective order may not afford sufficient protection to workers to ensure the future willingness of informants to come forward. See Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-639, 13 N.R.C. 469, 477 (1981), discussed infra. Further, the vice in the disclosure of the identities of select individuals such as those here at issue is not limited to the potential for physical reprisal. As the South Texas Appeal Board noted, "[o]ften, retaliation may be expected to take more subtle forms such as economic duress, blacklisting or social ostracism." 13 N.R.C. at 474 (reference to case being quoted omitted).

analogous to those presented by Interrogatory 1-38. In that case, the Appeal Board recognized the so-called "informer's privilege," reversing the licensing board's order directing the Staff to disclose to intervenors under protective order the names of individuals who reported questionable construction practices to the NRC. Citing the potential for reprisal against such informers and the acknowledged need for confidentiality, the Appeal Board noted that the intervenors were obligated to demonstrate a strong countervailing need for the disclosure of the identifies of the individuals. But intervenors' sole justification for the disclosure sought was that, without the names, the intervenors would have no way to independently assess the accuracy of the Staff's reports of the informers' statements (which the Staff did provide to intervenors). The Appeal Board did not find intervenors' argument compelling and concluded:

> "The Board's action is no less abusive of its discretion because it directed the informants' identities disclosed subject to a protective order. Such an order does not cure the vice in releasing their names. The intervenors' stated purpose is to interview as many of the informants as possible. Their doing so would make it immediately obvious that the NRC's pledge of anonymity had been broken. The intervenors' well-meant actions would nevertheless be instrumental in undoing the reason for recognizing the informer's privilege in the first place. Clairvoyance is not needed to appreciate that word of the breach of confidentiality would spread and the likelihood of informants coming forward with safety-related information in future cases be diminished.

13 N.R.C. at 477.

Though South Texas focuses on the Staff's need for information supplied by informants, the rationale of the case applies with equal force where a worker provides information about safety concerns to a licensee. The Appeal Board in South Texas emphasized the importance to the Staff of worker-informants, given the inability of the Commission's safety inspectors to be everywhere at once. 13 N.R.C. at 474-75. Similarly, since the Staff cannot be represented everywhere, at all times, in any capacity, the Commission has historically acknowledged the importance of a licensee's role in policing its own operations. Thus, the interests of public health and safety are best served where worker-informants with safety concerns feel free to approach both licensee and the Staff.

Here, Applicant's reasonable inquiries of its officials with respect to any allegations of harassment (discussed above) have revealed no instances of such allegations. See Answers, at 38-39. But, even assuming arguendo that the relevance of such allegations to Contention 1 were sufficient to justify the burdensome record search Hartsville Group here seeks to compel, and assuming that an exhaustive search of all specified personnel files did identify an instance where a worker alleged harassment, Hartsville Group -- having completely failed to demonstrate the requisite compelling need for the identities of informers -- should nevertheless be required to content itself with information about the allegations with personal identifiers redacted.

The public interest in encouraging informants to come forward is similar to other policies which are recognized in the law to weigh against the disclosure of information that would otherwise be discoverable. See, e.g., United Air Lines, Inc. v. United States, 26 F.R.D. 213 (D. Del. 1960) (in action by airline for damages allegedly resulting from midair collision between parties' planes, court declines to compel production to the airline of an internal Air Force investigatory board's report on the accident, where purpose of investigation is limited to improving flight safety; court weighs public interest in encouraging accident investigators to speak fully and assess blame freely against airline's showing of mere general relevance); McClain v. Mack Trucks, Inc., 85 F.R.D. 53 (E.D.Pa. 1979) (on motion to compel answers of defendant in employment discrimination action, court holds affirmative action plans not discoverable; permitting discovery of plans would contravene public interest by discouraging frank self-criticism in affirmative action, an area where success of effort depends largely on voluntary efforts of industry); Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249 (D.D.C. 1970) (in malpractice suit, court declines to compel production of minutes of hospital review committee's discussion of death of plaintiff's decedent, where sole purpose of committee is improvement in available care and treatment; since "[c]onstructive professional criticism cannot occur in an atmosphere of apprehension that one doctor's suggestion will be used as a denunciation of a colleague's conduct in a malpractice suit," deliberations of such bodies are discoverable only where "extraordinary circumstances" are demonstrated).

In the instant case, public policy similarly weighs heavily against the disclosure of the identities of informants and of disciplined personnel. The disclosure of such information, including personal identifiers, would plainly discourage informants from expressing concerns about safety. In addition, such disclosure would chill the cooperative atmosphere licensees seek to foster in disciplinary proceedings, where licensees typically seek not only to emphasize to employees the importance of compliance with procedures and regulatory requirements, but also to encourage the employees' candid reflections on their conduct and suggestions for improvement, as well as to enlist the employees' cooperation in the safe operation of the facility. Thus, in both instances, the interests of the public health and safety militate against disclosure of the requested identities absent a demonstration of compelling need (which Hartsville Group has not even attempted), particularly where -- as here -- the information sought bears only marginal relevance to the matters at issue in the proceeding.

Interrogatory 1-39

This interrogatory reads as follows:

> Interrogatory No. 39. Identify in detail all documents reflecting disagreements, disputes or differences of opinion between employees of CP&L and their supervisors or CP&L management regarding compliance or sufficiency of compliance with NRC operating and administrative procedures, rules or regulations. Include the subject, date, names of persons involved and resolution for each such instance.

The inquiries of Applicant's officials made by Applicant in response to this interrogatory did not uncover any documents of the type requested. Applicant does not claim that there have never been disagreements between its employees and their supervisors or Applicant's management regarding compliance with NRC procedures, rules or regulations, or that such disagreements may not be reflected somewhere in documents. The responses to Applicant's inquiries do suggest, however, that few, if any, major disagreements have occurred. Given the breadth of the interrogatory, the fact that a document search through Applicant's voluminous files would be extremely burdensome (even assuming that it is practicable to organize such a search) and particularly the marginal relevance, if any, of the information sought to Hartsville Group's Contention 1, Applicant submits that the inquiries made by Applicant in response to this interrogatory were entirely reasonable and that further document searches should not be required. Applicant reminds the Board that Contention No. 1 is directed at CP&L's management and has solely to do with Hartsville Group's allegation that because of a history of non-compliance with NRC regulations and QA requirements, there is no reasonable assurance that Applicant can carry out the steam generator repairs safely. Hartsville Group's motion to compel does not even attempt to explain the relevance and materiality of a request for documented disagreements, at all levels within the Company and regardless of the significance or resolution of the disagreement, to the contention as allowed by the Board.

Interrogatories 3-96 through 3-103 and 3-104(b):

These interrogatories read as follows:

Interrogatory No. 3-96. If CP&L were to choose the option of sleeving the tubes at Robinson 2, what would be the period during which the work would be carried out?

Interrogatory No. 3-97. Please provide your estimates of monthly construction expenditures disaggregated into direct expenditures, AFUDC, and other overheads for replacing the steam generators.

Interrogatory No. 3-98. What are your estimates of a) annual tax credits and b) normalized taxes associated with overheads during the construction period of sleeving the steam generator tubes?

Interrogatory 3-99. Please provide a schedule and associated workpapers showing the annual required revenue impact of steam generator tube sleeving disaggregated into the following items:

a) depreciation,
b) income tax,
c) deferred tax,
d) amortization of investment tax credits,
e) amortization of normalized tax credits
f) returns to bond holders,
g) returns to preferred stockholders,
h) returns to common stockholders,
i) other taxes, and
j) other non-tax items.

Interrogatory No. 3-100. For the items described in Interrogatory 99, please either furnish a separate workpaper on each item or make such workpapers available to Hartsville for copying.

Interrogatory No. 3-101. If the tubes at Robinson 2 were to be sleeved, please indicate whether further sleeving, resleeving and/or steam generator lower assembly replacement would be necessary at some future date.

Interrogatory No. 3-102. If the answer to Interrogatory 101 is affirmative:

a) What further modifications or repairs are expected?
b) How much would those modifications or repairs cost?
c) What is the construction period during which those modifications or repairs would take place?

Interrogatory No. 3-103. What are the bases for your responses to Interrogatories 96-102? Identify all documents, testimony or oral statements by any person upon which you rely for support of your position.

Interrogatory No. 3-104. Please provide a schedule which shows expected annual plant output (in GWH) in each year at its remaining life assuming:

* * *

b) sleeving of the tubes;

* * *

These interrogatories relate to an alternative method of repairing the steam generators by sleeving, a method which is neither encompassed by Applicant's application for a license amendment nor put into issue as an alternative by Hartsville Group's Contention 3. Accordingly, the sleeving interrogatories are wholly irrelevant to Contention 3. It is no answer to argue, as Hartsville Group does, that Applicant "opened the door" to discussion of sleeving by addressing the method in the Final Steam Generator Repair Report (Re. 1). Motion, at 13. While the economics of sleeving as an alternative to steam generator replacement may be a proper subject for consideration under NEPA and might have been the subject of a litigable contention in this proceeding, Hartsville Group never proposed such a contention. Contention 3 is limited to retirement of Robinson as an alternative to steam generator replacement, and discovery is limited to

matters properly put into issue in the proceeding. See 10 C.F.R. § 2.740(b)(1). Hartsville Group is not entitled to discovery to "fish" for new contentions. Accordingly, its motion to compel responses to interrogatories about sleeving must be denied.*/

Interrogatories 3-121 and 3-122:

These interrogatories read as follows:

> Interrogatory No. 3-121. Please provide or make available to Hartsville for copying any long range financial forecasts of CP&L financial statements, such as the output of the Company's computerized financial forecasting model.
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> Interrogatory No. 3-122. For the forecasts provided in response to Interrogatory 121, please supply the input data employed in developing the forecast, all available support for the data values chosen, a description of the input data format sufficient to allow complete understanding of the input data file, and a description of the program employed to make the forecast.

We explain below the reasons why in Applicant's view the Board should deny the motion to compel with respect to these interrogatories. We first preface our arguments, however, with an explanation of the nature of financial projections which Applicant has made.

The term "financial forecast" normally connotes a projection over a future period of time made for the purpose of projecting financial results and the financial condition of the

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*/In any event, Hartsville Group's motion is in large part academic given Applicant's commitment to provide to the Group all data relating to sleeving which is provided to the Staff. See Objections, at 5.

Company. Applicant has made such forecasts, but only for a limited period of years. Such forecasts beyond three to five years are simply too speculative to produce meaningful results.

Applicant has on occasion made longer term financial analyses (sometimes loosely referred to as financial forecasts) with special purposes in mind. Such analyses involve base-case assumptions which produce a set of financial results to be used for comparison with other contemporaneous analyses to test the sensitivity of one or more variables such as, for example, the accounting and rate-making treatment of Construction Work in Progress. Such base-case analyses could, and very likely would, be misinterpreted publicly as Applicant's future projections of financial results. This is not their purpose. If it were, it would be necessary to consider a number of factors not included in the analyses, e.g.:

(1) Known or expected major accounting changes (i.e., accounting for leases, pensions, etc.)

(2) Known or expected regulatory changes (i.e., FERC CWIP rule, fuel costs, etc.)

(3) Changes to corporate strategy with respect to construction (i.e., plant size, type, etc.)

(4) Probable legislation (i.e., environmental, tax, regulatory, etc.).

These factors affect a stand-alone forecast of financial results but "wash out" of a comparative type study.

Applicant submits that the following considerations balanced against a speculative and doubtful usefulness of the forecasts to the Hartsville Group, fully support a denial of the

motion to compel the production of Applicant's long-range financial projections:

(1) Financial projections, including Applicant's long range analyses described above, contain sensitive data which Applicant treats as confidential and has not disclosed outside the Company. This data includes assumptions as to future earnings per share, return on equity, fixed charge coverage, common stock dividend rates, and rate increases allowed. This information is speculative and could easily be misinterpreted by those who see it. In particular, Applicant is concerned with investors who might buy or sell Company stock in reliance on such projections supplied by the Company.

(2) Applicant has committed to supply to the NRC and to Hartsville Group other projections which should be adequate for Hartsville Group's purposes. Applicant has already supplied to the NRC Staff and Hartsville Group a 15-year cost projection comparing the steam generator replacement alternative with the alternative of retiring the Robinson 2 Unit -- the precise subject of Hartsville Group Contention No. 3. Applicant is preparing answers to Hartsville Group's second set of interrogatories with respect to this comparison and, in addition, is compiling a more detailed supplemental report on the comparison which will be made available to both the NRC Staff and Hartsville Group. The comparison projects the system production costs and the revenue requirements associated with each alternative. The interrogatory answers and the supplemental report will include the

assumptions on which the projection of production costs and revenue requirements are based. The revenue requirements are based on a fixed typical capital structure and assume accounting practices and rates of return consistent with current treatment of such items in rate making proceedings before the utility commissions of North and South Carolina. Hartsville Group is free to present and argue for different assumptions in support of its Contention No. 3 without requiring Applicant to disclose speculative and confidential assumptions which Applicant may have made for purposes of its limited-purpose long-range analyses.

(3) Release of Applicant's financial projections would raise serious legal and practical problems for CP&L under SEC regulations.

Applicant is continuously offering its common stock for sale under its Automatic Dividend Reinvestment Plan, Customer Stock Ownership Plan and various employee plans. In addition, the Company is currently in registration under Securities and Exchange Commission's (SEC) Rule 415 with respect to public offerings of its First Mortgage Bonds. In order for such offers to be legal, they must be made in compliance with the provisions of the Securities Act of 1933 (1933 Act). Section 5 of the 1933 Act requires that a prospectus which meets the standards of the 1933 Act be delivered in connection with an offer. The 1933 Act's definition of a prospectus has been interpreted broadly. Financial projections filed in connection with a public proceeding

before a regulatory agency could be deemed to be a prospectus which is not in compliance with the requirements of Section 5 of the 1933 Act. As a result, the dissemination of such projections during a time when the Company is making offers to sell its securities subjects the Company to possible liability under the 1933 Act.

If the Company is required to furnish financial projections to the Hartsville Group, the Company may find itself in the position of having to make other public disclosure of the projections as a result of the SEC's warnings that projection information should not be made available on a selective basis (Securities Act of 1933 Release No. 5992, November 7, 1978). To release projections selectively could subject the Company to liability for violations of Section 10 of the Securities Exchange Act of 1934 (1934 Act) and Rule 10b-5 thereunder.

Once the Company is compelled to release projections in a public forum, the Company may have a duty to correct those projections if they no longer have a reasonable basis. The SEC has stated in the release cited above that "Issuers have a further responsibility to make full and prompt disclosure of material facts regarding their financial condition and this responsibility extends to situations where previously disclosed projections no longer have a reasonable basis." The requirement of constant vigilance is an aggravating, expensive and time-consuming burden for the Company to bear.

The Company has a long-standing policy of not making such

forward-looking information available to the public because in its judgment such information is subject to misuse and can easily become misleading if the underlying assumptions change. To make such disclosure now would be a major departure from the Company's conservative disclosure policies. The Company believes that its credibility with the SEC and the investment community, as well as its ability to sell securities to the public, have been greatly enhanced by its conservative approach to disclosure. It is unreasonable to cause the Company to jeopardize its position and reputation by forcing the dissemination of speculative information in the form of financial projections.

In support of its position Hartsville Group alleges, without factual basis or experience, that investors do not go to discovery responses to uncover information about the Company. Hartsville Group further alleges that, because its members are not planning to invest in the Company, the Company has nothing to worry about. These two allegations indicate a total lack of understanding of the securities laws and securities markets in the United States. First of all, securities analysts often look to regulatory proceedings for information about companies. They may go directly to the record in the proceeding or they may ask the Company to furnish a copy of what has been filed in the proceeding. In the real world of investor relations, companies are expected to honor requests for information which is a matter of public record. It is a virtual certainty that, once

the projections were disclosed, analysts would deluge the Company with requests not only for the data as filed, but also the Company's updates. Secondly, the investment intentions of Hartsville Group's members are completely irrelevant. The Company must comply with the 1933 Act and the 1934 Act, both of which are designed to protect those persons who do invest in the Company's securities.

The Company believes that the public good is not served by the disclosure of speculative financial projections. Further, when the harm and burden to the Company of requiring disclosure is weighed against the questionable benefit or usefulness of such information to the Hartsville Group, the balance weighs in favor of nondisclosure.

(4) Disclosure of financial projections would be prejudicial to Applicant in its dealings with regulatory commissions, in connection with negotiations for the purchase or sale of power, and in relation to its suppliers. For example, the commissions may interpret a conservative estimate of a rate increase as the Company's estimate of the rate increase really needed. The result could very likely be a decrease in the rate increase allowed. Similarly, assumptions which anticipate the results of sensitive negotiations with major customers, prospective business partners or suppliers could adversely affect the Company's bargaining position. In addition, knowledge as to the Company's financial projections would give its major suppliers an unfair competitive advantage to the detriment of

the Company's stockholders and customers.

(5) Applicant does not propose to use either its short-term financial forecasts or longer term analyses in support of its own case in this proceeding. This is not, of course, dispositive of the relevance of this data but it does remove one ground on which Hartsville Group would otherwise have been entitled to disclosure of the data. For its part, Hartsville Group has not indicated in its motion to compel why it needs financial forecasts, how it would make use of them or why the information furnished and to be furnished by Applicant will not be sufficient.

Interrogatories 8-27 and 8-28 and 8-41 through 8-43:

These interrogatories read as follows:

> Interrogatory No. 8-27. Is the on-site storage of the SGLAs the preferable option for disposal of the SGLAs?
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> Interrogatory No. 8-28. What are the bases for your response to Interrogatory 27? Describe in detail the methodologies, assumptions and data employed to make comparisons among the available options with sufficient specificity to permit replication of the results and identify all documents, testimony or oral statements by any person upon which you rely for support of your position.
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> Interrogatory No. 8-41. What is the basis for the determination that no cask is needed for transporting the SGLAs from the Reactor Containment Building (RCB) to the SGLA vault?
>
> Interrogatory No. 8-42. What route will the truck take to haul the SGLAs from the RCB to the SGLA vault?

> Interrogatory No. 8-43. Describe in detail the design and construction of the special tractor trailer arrangement to be used to haul the SGLAs from the RCB to the SGLA vault?

These interrogatories are outside the scope of Contention 8 and its basis. As a basis for its contention, Hartsville Group asserted that more information was necessary "about the on site storage building particularly with reference to its construction and its ability to safely contain steam generators for an extensive period of time. (Tr. 61-62)." April 12 Order, at 21. Further, in admitting the contention, the Board expressly ruled that "[t]he scope of Contention 8 as now specified extends only to the Applicant's plans for safe storage of the old steam generators on site including the adequacy of plans for the storage building." Id. But Interrogatories 27 and 28, and 41 and 42, seek to explore -- respectively -- alternatives to on site storage, and the transportation of the steam generator lower assemblies ("SGLAs") from the Reactor Containment Building to the storage vault. Again, while concerns about other alternatives to on site storage and about the transportation of the SGLAs might have been the subjects of cognizable contentions in this proceeding, Hartsville Group neither proposed such additional contentions, nor even suggested concerns about on site transportation and alternatives to on site storage as bases for its Contention 8. Accordingly, Hartsville Group's motion to compel responses to these interrogatories must be denied.

III. Conclusion

Accordingly, for all the foregoing reasons, Hartsville Group's motion to compel Applicant's responses to Interrogatories 1-34, 1-36, 1-38 and 1-39, 3-96 through 3-103 and 3-104(b), 3-121 and 3-122, and 8-27 and 8-28, as well as 8-41 through 8-43 should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

George F. Trowbridge, P.C.
Delissa A. Ridgway

Counsel for Applicant

Dated: August 15, 1983

August 15, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	Docket No. 50-261-OLA
	)	
(H. B. Robinson Steam Electric Plant, Unit 2)	)	ASLBP No. 83-484-03LA
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Hartsville Group's Motion to Compel" dated August 15, 1983, were served this 15th day of August, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties on the attached Service List.

George F. Trowbridge, P.C.

Dated: August 15, 1983

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