

August 19, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

<sup>83 AUG 23</sup>  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 44

In the Matter of )

CAROLINA POWER & LIGHT COMPANY )  
and NORTH CAROLINA EASTERN )  
MUNICIPAL POWER AGENCY )

(Shearon Harris Nuclear Power )  
Plant, Units 1 & 2) )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
Locket Nos. 50-400 OL  
50-401 OL

APPLICANTS' ANSWER TO INTERVENOR  
EDDLEMAN'S MOTION TO COMPEL DISCOVERY  
RE EDDLEMAN 41 & 65

I. INTRODUCTION

In a "Motion to Compel Discovery re Eddleman 41 & 65," dated August 4, 1983, intervenor Eddleman seeks an order from the Licensing Board directing Applicants to provide additional answers to interrogatories and access to documents beyond "Applicants' Responses to Wells Eddleman's General Interrogatories and Interrogatories on Contentions 41 and 65 to Applicants Carolina Power & Light Company, et al. (First Set)," May 12, 1983 (served on May 13, 1983) (hereafter "Applicants' Responses"). Applicants oppose Mr. Eddleman's motion.

As indicated below, Applicants urge that the Motion to Compel be denied as untimely. The remainder of Applicants' argument in opposition to the motion is presented for consideration only if the Board determines the Motion to Compel to be timely. Recognizing the Board's preference that parties not file answers to motions to compel,

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Applicants have chosen not to respond to Mr. Eddleman's arguments except where they raise new matters of fact and/or law not previously addressed in Applicants' Responses.

As stated in response to a previous motion to compel by Mr. Eddleman, Applicants recognize the liberal nature of pretrial discovery and provided a considerable amount of information to Mr. Eddleman on Contentions 41 and 65, in spite of frequent doubts about the relevancy of the information sought and the considerable burden of supplying responses. See Applicants' Answer to Intervenor Eddleman's Motion to Compel Discovery re Eddleman 29 and 37B, July 26, 1983. The reasonableness of Applicants' Responses is especially illuminated by a review of Mr. Eddleman's discovery requests of March 21, 1983, which are remarkable in their complexity, breadth and comprehensiveness. On their face these requests reflect not a directed inquiry aimed at any particular arguments in support of the contentions, but a broad brush effort to verify first hand every element of Applicants' documentation and to search far and wide for a wealth of tangential and unrelated information in the mere hope of uncovering something useful.

In the case of Contention 41, which goes to the inspection of pipe hanger welds, Mr. Eddleman acknowledges that Applicants already have produced 15,000 pages of documentary information. Motion to Compel at 1. This must be viewed in the context of the other substantial information available to Mr. Eddleman in the form of reports by Applicants and the NRC Staff which document the inspection deficiencies. See Attachment 1 hereto for a listing of such reports.

The raw documentation produced by Applicants to date, especially in view of the burden of producing more, is more than adequate for Mr. Eddleman to confirm the deficiencies already documented in Applicants' reports.

## II. TIMELINESS

The Motion to Compel is substantially untimely and should be denied on that ground alone. See 10 C.F.R. §2.730(f). While the Board has allowed the deadline for a motion to compel to be tolled where the parties are engaged in good faith negotiations which may lead to a resolution of disputes, the Board did not rule that a party could unilaterally preserve its right to file a motion to compel by filing notice of a future intent to negotiate, as Mr. Eddleman claims to have done in a postcard on May 26, 1983.

Mr. Eddleman indicates, in his "Certificate of Negotiations re Eddleman 41 & 65 Interrogatories," August 4, 1983, that he had understood the undersigned would be unavailable for such negotiations until approximately mid-June. This was not the case, but the genuineness of this misunderstanding by Mr. Eddleman proves to be irrelevant.

Mr. Eddleman was not prepared to discuss Applicants' Responses until July 25, 1983, when the only substantive negotiation discussion was held, because apparently he had not been able previously to review and assimilate the information already provided.<sup>1/</sup> It is misleading to state, as does the Certificate, that "we set"

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<sup>1/</sup> While Applicants viewed the negotiations as untimely, and so informed Mr. Eddleman, we participated in discussions nevertheless in the hope that some accommodations might be reached which would obviate further dispute.

negotiating sessions for July 1 and, after several phone calls, "set our last" negotiating session for July 25. July 25 was the only negotiating session, and Mr. Eddleman was unable to discuss Applicants' Responses previously -- and not because of difficulties in reaching Applicants' counsel by telephone. Applicants' Responses were served on May 13, and the documents produced were available for inspection on a week's notice.

Applicants do not raise this timeliness objection lightly. The imposition of a requirement for parties to attempt to negotiate their discovery disputes was a prudent action by the Board which has proved useful in discovery with the other parties. It is an abuse of the Commission's Rules of Practice, however, to claim that regulatory deadlines should remain tolled for two months when no negotiations in fact are taking place. Parties are obligated to review discovery responses promptly and either negotiate disputes or file a motion to compel. If a party has asked for and received too much, the result must be to move to follow-up discovery requests in the next round -- not to delay the orderly progress of the proceeding.

Applicants respectfully submit that the integrity of the proceeding calls for the Board to deny the Motion to Compel as untimely.

### III. GENERAL INTERROGATORY 8

Applicants do not recognize an ongoing obligation to supplement their answer to General Interrogatory 8, to which Applicants have objected. Compare Motion to Compel at 2 with Applicants' Responses

at 6-7. This interrogatory seeks literally "everything else" Applicants will use in the adjudication of the contentions at issue. This is a classic "catch all" interrogatory which is not appropriate discovery.

#### IV. CONTENTION 41 REQUESTS

##### A. Interrogatory 41-1(b)

Mr. Eddleman apparently overlooks the fact that Exhibit 1 to Applicants' Responses provides the results of qualifications tests, which are pass/fail. The documents produced in response to Interrogatories 41-1(b) and 41-7 describe the content and scope of the retraining, as well as the minimum qualification requirements. The actual test questions are not relevant and are kept secret to maintain the integrity of the testing program. The rephrased, new and different interrogatory suggested by Mr. Eddleman may be posed in his second-round requests. See Motion to Compel at 3.

##### B. Interrogatories 41-1(d), (e), (h) to (k) and (y); 41-5(i) to (k)

Mr. Eddleman admits that he probably does not have time to review 50,000 drawings, but claims that he reviewed 5,000 pages of weld data reports in three working days. See Motion to Compel at 4. Not that Mr. Eddleman's speed is the controlling issue, but Applicants seriously question the utility of any review being conducted with the haste apparently attendant to Mr. Eddleman's review of the documents already produced. In addition to the number of documents noted in Applicants' objection, the burden is enhanced by the fact that some of the drawings and work packages are in use at various

locations throughout the site.<sup>2/</sup>

In addition, the documentation already provided to Mr. Eddleman should be adequate for him to conduct a sampling of the data which underlies the reports listed in Attachment 1. Mr. Eddleman's concern that Applicants may have been selective in producing 12,000 pages of weld data reports is incredible. Applicants have already documented these deficiencies. The pages provided to Mr. Eddleman were all of those copies (not originals from active files) which to date have been assembled by the Carolina Power & Light QA department for its own use. Consequently, they were readily available, organized, and could be spared for the inspection process. There was no selectivity. Cf. Motion to Compel at 5.

C. Interrogatory 41-1(z)

Applicants interpreted this interrogatory as limited to the period of time prior to submission of the June 11, 1981 report. Otherwise, this interrogatory would be repetitious of Interrogatory 41-11. In response to Interrogatory 41-11, Applicants produced documents available at the time of Applicants' Responses. That response was complete.

Mr. Eddleman now argues that Applicants "refuse" to supply later information. Motion to Compel at 8-9. That is not true. In a supplement filed on August 17, 1983, Applicants identified the July reports. This is timely supplementation, which was under

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<sup>2/</sup> The 55 file drawers contain work packages with such documents as drawings, revisions to drawings and craft instructions, along with the WDR's. Cf. Motion to Compel at 5.



counsel's review at the time the Motion to Compel was filed.

D. Interrogatory 41-3(e)

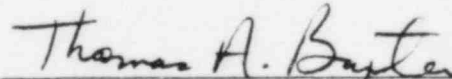
Applicants stand on their previous partial objection to this interrogatory, but note that Mr. Eddleman is mistaken when he states that some of the documentation for pipe hangers was produced. Only HVAC and conduit hanger documentation was produced.

V. CONTENTION 65 REQUESTS

A. Interrogatory 65-4(a)

Mr. Eddleman argues that no masonry drawings were produced. Motion to Compel at 14. This is incorrect. Masonry drawings were produced and copied at Mr. Eddleman's request.

Respectfully submitted,



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Counsel for Applicants

Dated: August 19, 1983

ATTACHMENT 1

1. CP&L "Final Report, Weld Symbol Errors and Misapplication of Weld on Bergen-Patterson Pipe Hangers," Rev. 1, June 11, 1981
2. NRC IE Inspection Report 50-400/401/402/403-81-12, dated July 2, 1981
3. CP&L letter dated March 24, 1982 (CQAD 82-519)
4. NRC IE Inspection Report 50-400/82-03, dated April 28, 1982
5. CP&L letter dated September 13, 1982 (CQAD 82-1560)
6. NRC IE Inspection Report 50-400/83-05, dated February 23, 1983
7. CP&L letter dated March 31, 1983 (NRC-52)
8. NRC IE Inspection Report 83-20, dated June 30, 1983
9. CP&L letter dated July 1, 1983 (NRC-94)
10. CP&L letter dated July 1, 1983 (NRC-95)



August 19, 1983

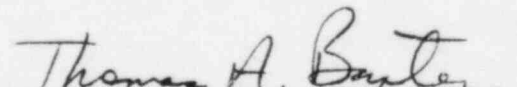
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POWER AGENCY	)	
	)	
(Shearon Harris Nuclear Power Plant,	)	
Units 1 & 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer to Intervenor Eddleman's Motion To Compel Discovery Re Eddleman 41 & 65" were served this 19th day of August, 1983 by deposit in the United States mail, first class, postage prepaid, to the parties on the attached Service List.

  
Thomas A. Baxter, P.C.

Dated: August 19, 1983

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