

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

1200 M STREET, N. W.
WASHINGTON, D. C. 20036

(202) 822-1000

TELECOPIER

(202) 822-1099 & 822-1199

RAPIFAX 100

(202) 822-1072

TELEX

89-2693 (SHAWLAW WSH)

CABLE "SHAWLAW"

JOHN F. DEALY*

COUNSEL

RAMSAY D. POTTS, P.C.
STUART L. PITTMAN, P.C.
GEORGE F. TROWBRIDGE, P.C.
STEPHEN D. POTTS, P.C.
GERALD CHARNOFF, P.C.
PHILLIP D. BOSTWICK, P.C.
R. TIMOTHY HANLON, P.C.
GEORGE M. ROGERS, JR., P.C.
FRED A. LITTLE, P.C.
JOHN B. RHINELANDER, P.C.
BRUCE W. CHURCHILL, P.C.
LESLIE A. NICHOLSON, JR., P.C.
MARTIN D. KRALI, P.C.
RICHARD J. KENDALL, P.C.
JAYE SILBERG, P.C.
BARBARA M. ROSSOTTI, P.C.
GEORGE V. ALLEN, JR., P.C.
FRED DRASNER, P.C.
R. KENLY WEBSTER, P.C.
NATHANIEL P. BREED, JR., P.C.
MARK AUGENBLICK, P.C.
ERNEST L. BLAKE, JR., P.C.
CARLETON J. JONES, P.C.
THOMAS A. BAXTER, P.C.
JAMES M. BURGER, P.C.
SHELDON J. WEISEL, P.C.

JOHN A. McCULLOUGH, P.C.
J. PATRICK HICKEY, P.C.
GEORGE P. MICHAELY, JR., P.C.
J. THOMAS LENHART, P.C.
STEVEN L. MELTZER, P.C.
DEAN D. AULICK, P.C.
JOHN ENGEL, P.C.
CHARLES B. TEMKIN, P.C.
STEPHEN B. HUTTLER, P.C.
WINTHROP N. BROWN, P.C.
JAMES B. HAMLIN, P.C.
RANDAL B. KELL, P.C.
ROBERT E. ZAMLER, P.C.
ROBERT B. ROBBINS, P.C.
STEVEN M. LUCAS, P.C.
DAVID M. RUBENSTEIN, P.C.
RICHARD E. GALEN
LYNN WHITTLESEY WILSON
MATIAS F. TRAVIESO DIAZ
VICTORIA J. PERKINS
JOHN H. O'NEILL, JR.
JAY A. ERSTIEN
RAND L. ALLEN
TIMOTHY B. McBRIDE
ELISABETH M. PENDLETON
HARRY H. GLASSPIEGEL

JEFFERY L. VASLON
JACK MCKAY
THOMAS R. MCCORMICK
JOHN L. CARR, JR.
PHILIP J. HARVEY
ROBERT M. GORDON
BARBARA J. MORGAN
BONNIE S. GOTTLIEB
HOWARD H. SHAFFERMAN
DEBORAH B. BAUSER
SCOTT A. ANENBERG
CAMPBELL KILLEFER
SETH H. HOOGASIAN
SHEILA MCC. HARVEY
DELISSA A. RIDGWAY
KENNETH J. HAUTMAN
DAVID LAWRENCE MILLER
FREDERICK L. KLEIN
STEVEN P. PITLER*
RICHARD J. PARRINO
ELLEN A. FREDL*
HANNAH E. M. LIEBERMAN
SANDRA E. FOLSOM
JUDITH A. SANDLER
EDWARD D. YOUNG, III

ANDREW D. ELLIS
RICHARD A. SAMP
THOMAS E. CROCKER, JR.
WENDELIN A. WHITE
STANLEY M. BARG
KRISTI L. LIMBO
LESLIE K. SMITH
VIRGINIA S. RUTLEDGE
KATHERINE P. CHEEK
JANICE LEHRER-STEIN
TRAVIS T. BROWN, JR.
RICHARD H. KRONTHAL
STEPHEN B. HEIMANN
SANDRA E. BRUSCA*
EILEEN L. BROWNELL
PAMELA H. ANDERSON
ALEXANDER D. TOMASZCZUK
PHILIP D. PORTER
MICHAEL A. SWIGER
ELLEN SHERIFF
ANITA J. FABIAN
EILEEN M. GLEIMER
DAVID R. SAHR
C. BOWDOIN TRAIN
* NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER

July 22, 1983

822-1090

James L. Kelley, Esquire
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
Carolina Power & Light Company and North
Carolina Eastern Municipal Power Agency
(Shearon Harris Nuclear Power Plant, Units 1 and 2)
Docket Nos. 50-400 and 50-401 OL

Administrative Judges Kelley, Bright and Carpenter:

On April 18, 1983, Applicants filed a motion to compel discovery of intervenor Wells Eddleman, which sought an order directing Mr. Eddleman to respond in full to Applicants' General Interrogatory No. 2. That interrogatory, which has been included in each of Applicants' discovery requests to Mr. Eddleman and other parties, states:

2(a). State the name, present or last known address, and present or last employer of each person, other than affiant, who provided information upon which you relied in answering each interrogatory herein.

DS03

8307260360 830722
PDR ADOCK 05000400
PDR

James L. Kelley, Esquire
Mr. Glenn O. Bright
Dr. James H. Carpenter
July 22 1983
Page Two

(b). Identify all such information which was provided by each such person and the specific interrogatory response in which such information is contained.

In its Memorandum and Order (Ruling on Cost Savings Contentions, Discovery Disputes, and Scheduling Matters), May 27, 1983, the Licensing Board granted in part and denied in part Applicants' motion to compel. The Board ruled that the identity of non-witness experts who assist Mr. Eddleman in preparation for hearing, whether informally consulted, retained, or specially employed, is not subject to discovery except upon a showing of exceptional circumstances. The Board also held that the protection afforded by Rule 26(b)(4)(B), Fed. R. Civ. P., extends only to "experts" and not to all persons, that Mr. Eddleman's objections to General Interrogatory No. 2 are overly broad, and that he must either disclose the identity of any person he consulted who is not an expert, or demonstrate the applicability of another privilege. Memorandum and Order . . . , at 15-16 (May 27, 1983).

Since Mr. Eddleman's previous pleadings did not include sufficient information from which to confirm that Mr. Eddleman qualified for the protection provided in the Board's Memorandum and Order of May 27, 1983, Applicants wrote to Mr. Eddleman on June 16, 1983, seeking the identity of any person not an expert with whom Mr. Eddleman consulted, and requesting that Mr. Eddleman demonstrate the expertise of the persons whose identities are being withheld, the need to withhold each person's identity, and the applicability of any other privilege.

In his reply of June 25, 1983, Mr. Eddleman refused to demonstrate the expertise of any person identified by him as an expert, summarily classified as experts all but one of the persons who assisted him, and refused to identify anyone. The situation in which Applicants are placed as a result of this obstructive response to discovery presents two alternatives: (1) the filing of a second motion to compel seeking, among other things, in camera Board assessment of the "expertise" claimed; or (2) acceptance of Mr. Eddleman's unilateral determination of expertise and relinquishment of any capability to confirm that the twenty-one experts^{1/} hidden now as non-witnesses

^{1/} In the attachment to his June 25, 1983 letter, Mr. Eddleman identifies by pseudonym twenty-one experts who provided information on which he relied in answering interrogatories. Cf. Memorandum and Order, May 27, 1983, at 12 (Eddleman argument that intervenors "have access to a very limited pool of experts").

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

James L. Kelley, Esquire
Mr. Glenn O. Bright
Dr. James H. Carpenter
July 22, 1983
Page Three

later become witnesses on Mr. Eddleman's behalf.^{2/}

Based upon a time-consuming and difficult assessment of the cryptic supplement Mr. Eddleman provided to previous interrogatory answers (see attachment to Mr. Eddleman's letter of June 25, 1983), Applicants have decided that the effort required by the Board to resolve Applicants' disagreements with Mr. Eddleman may not be warranted at this time. General Interrogatory No. 2 continues to be posed in Applicants' discovery requests to Mr. Eddleman, however, and a future pseudonym response may yet justify a motion to compel discovery. For this reason, Applicants wish to make it clear that they do not accept Mr. Eddleman's reply of June 25, 1983 as conforming to the Board's holdings on General Interrogatory No. 2.

Respectfully submitted,

Thomas A. Baxter

Thomas A. Baxter
Counsel for Applicants

TAB:jah

cc: Service List attached

^{2/} It is assumed here (and apparently by the Board) that since Mr. Eddleman argued the law applicable to non-witness experts, he is declaring that he does not expect to call any of these experts as a witness.

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket Nos. 50-400 OL
50-401 OL

Dr. Phyllis Lotchin
108 Bridle Run
Chapel Hill, North Carolina 27514

Service List
Page Two

Bradley W. Jones, Esquire
U.S. Nuclear Regulatory Commission
Region II
101 Marrietta Street
Atlanta, Georgia 30303

Ruthanne G. Miller, Esquire
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Karen E. Long, Esquire
Public Staff - NCUC
Post Office Box 991
Raleigh, North Carolina 27602