

August 11, 1983

UNITED STATES OF AMERICA DOCKETED
NUCLEAR REGULATORY COMMISSION USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ⁸³ AUG 15 11:12

In the Matter of

CAROLINA POWER & LIGHT COMPANY
AND NORTH CAROLINA EASTERN
MUNICIPAL POWER AGENCY

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

) OFFICE OF SECRETARY
) DOCKETING & SERVICE
) BRANCH

) Docket Nos. 50-400 OL
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APPLICANTS' MOTION TO COMPEL
DISCOVERY OF JOINT INTERVENORS

Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency, pursuant to 10 C.F.R. §2.740(f), move the Atomic Safety and Licensing Board to issue an order compelling a response to "Applicants' Interrogatories and Request for Production of Documents to Joint Intervenor (Third Set)," dated June 30, 1983. As grounds for the motion, Applicants state that answers to the subject interrogatories were due on July 19, 1983;^{1/} a response to the document production request was due on July 29, 1983;^{2/} no response has been filed to date by Joint Intervenor (i.e., CHANGE/ELP, CCNC, Kudzu Alliance and Wells Eddleman).

The subject discovery requests go to Joint Contention II, on the health effects of radiological releases during normal operation of the Harris plant, which properly is categorized as an environmental contention. The subject discovery requests by Applicants

1/ 10 C.F.R. §2.740b(b).

2/ Atomic Safety and Licensing Board Memorandum and Order (Reflecting Decisions Made Following Second Prehearing Conference), at 6 (March 10, 1983)

were timely filed pursuant to the schedule established by the Board (and agreed to by the parties) for the adjudication of admitted environmental contentions. Memorandum and Order..., at 6 (March 10, 1983).

In the absence of any communication from a representative of Joint Intervenors with respect to these discovery requests, on July 25, 1983 the undersigned wrote to Mr. Payne, who has represented the Joint Intervenors on Contention II, inquiring about the status of the responses, and emphasizing "...the importance of an early response because of the September 1, 1983 deadline for any motion for summary disposition which we may wish to file on this contention."

Following one unsuccessful attempt to discuss the matter with me by phone, Mr. Payne wrote on August 5, 1983, stating that Mr. Eddleman has the information sought, that only Mr. Eddleman can retrieve the information from his files, and that because of other work in this proceeding, Mr. Eddleman will not be able to get to our discovery request until sometime in September. Mr. Payne comments that Applicants' concern with the schedule for filing a summary disposition motion on Joint Contention II is of no moment because Joint Intervenors are willing to agree to extend the schedule.

Applicants diligently are attempting to cooperate with the intervenors on discovery matters and to avoid bringing discovery disputes to the Board for resolution.^{3/} We have reached the point, however, at which the orderly progress of the proceeding is at issue.

^{3/} For example, Applicants' first set of discovery requests on Joint Contention II were filed on March 9, 1983. Applicants agreed to repeated requests for extensions of time, and the responses were filed on May 16, 1983.

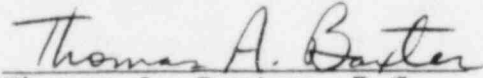
The interrogatories filed by Applicants on June 30 are straightforward and merely seek, in most instances, more precise citation to the health effects literature on which Joint Intervenors rely and which they cited inartfully in their first discovery response. These answers are essential to the preparation of affidavits in support of a motion for summary disposition, since Applicants' experts must be able to focus with some degree of precision on the purported support for Joint Intervenors' contentions.

It is at best facetious to argue that Applicants are not prejudiced by this inexcusable delay in responding to discovery^{4/} because Joint Intervenors are willing to delay the schedule for summary disposition. Applicants have a clear and compelling interest in the maintenance of the schedule established in the Board's Memorandum and Order of March 10, 1983. A delay in the schedule for filing summary disposition motions on environmental contentions likely would lead to a cascading delay in subsequent events necessary to commence the hearing. Similarly, if the environmental hearing is delayed, intervenors no doubt will loudly complain that overlapping demands suggest delays in the management/safety and emergency planning hearings. In short, Applicants are not interested in, and in fact are seriously harmed by, a delay in the summary disposition schedule.

^{4/} Mr. Eddleman's self-created demands in this proceeding are no excuse. Further, it appears from Mr. Payne's August 5 letter that the Joint Intervenors have not even initiated an effort to respond to the subject discovery requests.

For all of the foregoing reasons, Applicants request that the Board issue an order directing Joint Intervenors to deliver responses to the subject interrogatories to Applicants' counsel Mrs. Flynn or Mr. Carrow at Carolina Power & Light offices in Raleigh no later than Friday, August 19, 1983.

Respectfully submitted,



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Dated: August 11, 1983

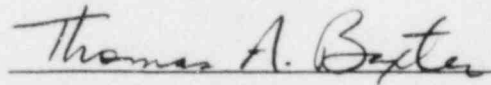
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion To Compel Discovery Of Joint Intervenors" were served this 11th day of August, 1983 by deposit in the U.S. mail, first class, postage prepaid, to the parties on the attached Service List.


Thomas A. Baxter

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NUCLEAR REGULATORY COMMISSION

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and NORTH CAROLINA EASTERN)	50-401 OL
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