February 1, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CAROLINA POWER & LIGHT COMPANY	)	
AND NORTH CAROLINA EASTERN	)	Docket No. 50-400 OL
MUNICIPAL POWER AGENCY	)	50-401 OL
	)	
(Shearon Harris Nuclear Power	)	
Plant, Units 1 and 2)	)	

APPLICANTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO WELLS EDDLEMAN'S INITIAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS RELATING TO EDDLEMAN CONTENTION 15

In its Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference) dated September 22, 1982, the Board rejected every subpart of Eddleman Contention 15 other than the subpart dealing with capacity factors. Although it tentatively accepted that portion of Eddleman 15, the Board noted that the Contention could be mooted when Applicants filed an amended Environmental Report (hereinafter ER).

On October 15, 1982, Applicants filed Objections and Requests for Clarification Relating to the Board's Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference) requesting that the Board modify its September 22 order to defer ruling on Eddleman 15 until after the ER was amended.

Applicants amended the ER on December 21, 1982. On January 11, 1983, the Board issued a Memorandum and Order (Addressing Motions

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for Reconsideration and Clarification of the Board's Prehearing Conference Order) (hereinafter January 11 Order) in which it advised Intervenors Eddleman and CHANGE that they had 30 days in which to file revised contentions addressing Applicants' amended ER. Applicants and Staff will have 10 days to respond to any amended contentions. At the end of that time "The Board will then reconsider and rule upon the original contentions or any timely revisions thereof." January 11 Order at 3.

On January 15, 1983, Mr. Eddleman served Applicants with 42 interrogatories and an extensive request for production of documents. Under 10 C.F.R. § 2.740(b) and 10 C.F.R. § 2.710, Applicants must respond to Mr. Eddleman's interrogatories by February 3, 1983. For the reasons discussed below, Applicants move the Board to extend the time in which they may respond to the interrogatories until 14 days after the Board issues an order on reconsideration of Eddleman 15.

APPLICANTS SHOULD NOT BE REQUIRED TO RESPOND TO MR. EDDLEMAN'S INTERROGATORIES UNTIL AFTER THE BOARD RECONSIDERS CONTENTION 15.

In its Order of January 11, 1983, the Board allowed Mr. Eddleman to choose between two courses: 1) he may rest on Eddleman 15 as it was originally stated or 2) he may revise Contention 15 to address Applicants' amended ER. Regardless of which option the intervenor elects, discovery on Eddleman 15 is inappropriate at this time and Applicants' motion for an extension should be granted.

If Mr. Eddleman chooses not to revise Eddleman 15, the Board may well find that the Contention was mooted by the amendment of

Applicants' ER. This possibility was recognized in the original Memorandum and Order dated September 22, 1982. In light of this uncertainty Applicants should not be required to undertake the considerable burden of responding to over 40 detailed interrogatories and additional requests for production of documents.

Mr. Eddleman may elect to revise Eddleman 15 in order to forestall a ruling of mootness. In this case, forcing Applicants to proceed with discovery will lead to an even more egregious result. The 42 interrogatories propounded by Mr. Eddleman obviously will have very limited relevance to a revised Contention 15. Mr. Eddleman will certainly reframe his questions to focus on the issues raised in this revised contention. Much of the information sought may be entirely unrelated to that requested in his first set of interrogatories. Yet absent an extension of time, Applicants already will have undergone the burden of responding to discovery requests. In the interests of justice and economy, Applicants should not be required to comply with a discovery request that will result in such duplicative and wasteful effort.

Insofar as the interrogatories propounded are relevant to the amended contention, discovery is clearly inappropriate at this time. Discovery on the subject matter of a contention can be obtained only after the contention has been admitted to the proceeding. 10 C.F.R. § 2.740(b)(1); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit No. 2), ALAB-31, 4 A.E.C. 689, 690-91 (1971). The Board has not reviewed or admitted any revised version of Contention 15. An intervenor may not use discovery as a tool to develop the

specificity required for admission of a contention. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. ____ (August 19, 1982); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 A.E.C. 188 (1973), aff'd. CLI-73-12, 6 A.E.C. 241 (1973), aff'd. sub. nom. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974).

Clearly discovery will serve no legitimate interest at this stage of the proceedings. Since Mr. Eddleman has been allowed to reformulate Eddleman 15, it is logical to postpone discovery until the Board has addressed the status of original Eddleman 15 or the revised contention. At that time Mr. Eddleman may serve proper discovery focused on the contentions that are actually at issue. Because the schedule for discovery on environmental contentions previously discussed by the parties provides ample time for discovery on the amended Eddleman 15, Mr. Eddleman will not be prejudiced by the brief extension requested. A limited extension merely will relieve applicants of the burden of participating in a wasteful and irrelevant discovery process.

CONCLUSION

For all of the reasons stated above, Applicants' Motion for Extension of Time until 14 days after the Board issues an order on the admissibility of Eddleman 15 should be granted.

Applicants have discussed the instant motion with Mr. Eddleman to determine whether agreement could be reached on the relief Applicants seek. Mr. Eddleman, however, will oppose this motion.

Respectfully submitted,

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Dated: February 1, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Motion for Extension of Time to Respond to Wells Eddleman's Initial Interrogatories and Request for Production of Documents Relating to Eddleman Contention 15" were served this 1st day of February, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties identified on the attached Service List.

Thomas A. Baxter

Thomas A. Baxter, P.C.

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