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RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO  
WELLS EDDLEMAN'S MOTION TO COMPEL DISCOVERY  
ON EDDLEMAN CONTENTION 65

I. Introduction

On April 16, 1984, intervenor Eddleman filed a "Motion to Compel Discovery on Eddleman Contention 65" which seeks an order from the Board requiring Applicants to provide further information and documents<sup>1/</sup> beyond that provided in Applicants' responses of March 23, 1984 to Mr. Eddleman's interrogatories and document requests. As discussed in further detail below, Applicants generally object to the Eddleman Motion, but in the interest of time, are acceding to certain of Mr. Eddleman's requests.

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<sup>1/</sup> Certain of Mr. Eddleman's statements in his Motion do not rise to the level of a request for additional information, but are merely a commentary on Applicants' answers. See, e.g., Motion at 2 ("Applicants have clarified that the answers to 65-15(f)(i) and (ii) are both yes.").

Prior to responding to the details of Mr. Eddleman's Motion, however, Applicants believe that a brief review of the history of Contention 65 is required in order for the Board to appreciate the "fishing expedition" nature of Mr. Eddleman's requests. Contention 65 was admitted by the Board (over Applicants' and Staff's objections) in its September 22, 1982 Memorandum and Order (Reflecting Decisions Made Following Prehearing Conference), LBP-82-119A, 16 N.R.C. 2069, 2101 (1982). However, in apparent recognition of the tenuous basis of this contention,<sup>2/</sup> the Board noted that "[i]f it develops that Mr. Eddleman has little or no evidence to back up this contention, it may be amenable to summary disposition." Id. Applicants put Mr. Eddleman on notice in January 1983 that early summary disposition of this contention was contemplated. See Applicants' Answer to Wells Eddleman's Motion for Extension of Time to Respond to Summary Disposition on Eddleman 65 ... (February 14, 1984), at 4-5.

Applicants attempted to determine if Mr. Eddleman had any factual bases for his allegations of concrete construction deficiencies at the Harris Plant by filing two sets of discovery requests to Mr. Eddleman on January 31, 1983 and September

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<sup>2/</sup> The sole asserted basis for this contention was Mr. Eddleman's belief that Applicants' construction contractor had built "defective base mats and containments" at other nuclear power plants and therefore the quality of the concrete construction at the Harris Plant was also suspect. See Supplement to Petition to Intervene by Wells Eddleman, at 171 (May 14, 1982).

2, 1983. Mr. Eddleman's responses failed to identify any specific deficiencies at the Harris Plant and, therefore, Applicants moved for summary disposition of Contention 65 on January 18, 1984. Mr. Eddleman, on the other hand, did not file a second round of discovery -- the discovery requests at issue here -- until January 30, 1984, after Applicants' Motion for Summary Disposition had been filed. The date on which Mr. Eddleman must respond to Applicants' Summary Disposition Motion has been deferred by the Board until 15 days after discovery on this contention is completed. Completion of discovery, however, is now arguably forestalled by the subject Motion to Compel.<sup>3/</sup> See Tr. 792 (Telephone Conference Call (March 8, 1984)).

It has now become apparent, however, that Mr. Eddleman is unwilling to conclude discovery on Contention 65, and that the Board will have to intervene to end discovery and direct that Mr. Eddleman answer Applicants' summary disposition motion. While the Board granted Mr. Eddleman's motion to defer that answer until after Applicants' responded to the second-round discovery requests of January 30, 1984, Mr. Eddleman is now going for round three without leave of the Board. See Notice of Depositions (by Mr. Eddleman), April 10, 1984, objecting to the depositions; Wells Eddleman's ... Motion for Leave to Take Deposition, April 24, 1984. Soon Mr. Eddleman will raise the

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<sup>3/</sup> Had Mr. Eddleman not filed the instant Motion, his response to Applicants' Motion for Summary Disposition would have been due on April 12, 1984.

environmental hearing as a reason not to answer Applicants' summary disposition motion.

Mr. Eddleman's second round discovery requests on Contention 65, on which the pending Motion is based, reflect no attempt whatsoever by Mr. Eddleman to focus or refine his review of this issue. Indeed, this second round of discovery shows little or no effort on Mr. Eddleman's part to follow-up on previously provided information, in that many of the requests merely repeat questions propounded by Mr. Eddleman in his first round of discovery or seek information which had been provided in support of Applicants' Motion for Summary Disposition. See, e.g., Applicants' answers to Interrogatories 65-9(a), 65-9(b), 65-10(d), 65-10(e), 65-14(d), 65-14(e), 65-14(f), 65-14(g), etc. Applicants view the subject Motion to Compel as nothing more than a further attempt to uncover some minor discrepancy, even though Mr. Eddleman has to date -- after 19 months for discovery -- indicated absolutely no basis for any specific concern.

## II. Contention 65 Requests

Mr. Eddleman's first complaint is that Applicants have provided only a business address for two concrete pour supervisors who were previously identified in Applicants' November 11, 1983 supplemental responses to Interrogatories on Contention 65. First, it should be noted that Mr. Eddleman's basis for requesting these individuals' addresses, as stated in Interrogatory 65-13(k), is to contact them for "possible

deposition." As Mr. Eddleman well knows, any such depositions must be noticed to the parties, 10 C.F.R. § 2.740a, and, therefore, the identity of the deponents could not be kept secret. Secondly, Mr. Eddleman's asserted reason (so as not to tip-off CP&L or Daniel to the identity of potential "whistleblowers") for now wanting these individuals' home addresses is inapposite here, however. Only two individuals are named and therefore Applicants could easily surmise who Mr. Eddleman has contacted.<sup>4/</sup>

One of Mr. Eddleman's major concerns enunciated in several places in his Motion deals with the fact that, in response to his interrogatories, Applicants produced only the current revision of various procedures, specifications and Quality Control instructions referenced in Applicants' answers. See discussions of Interrogatories 65-16(b), 16(v) and 17(c), Motion at 3-5. Mr. Eddleman here asks for copies of the procedures that were in effect at the time that certain identified concrete placements were made, or alternatively, that the entire history file on each procedure, etc., be produced for his review. Applicants object to this request as irrelevant and burdensome. Mr. Eddleman asserts that these earlier revisions are required in order that he and/or his unidentified "expert"<sup>5/</sup> can review

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<sup>4/</sup> The unstated, but implied, allegation that these individuals would be subjected to harassment or intimidation is totally unfounded and inappropriate. See Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-764, 19 N.R.C. \_\_\_\_\_ (March 30, 1984), slip op. at 3-4, 17-18.

<sup>5/</sup> Mr. Eddleman has consistently refused to provide Applicants with the identification of, or the qualifications

(Continued next page)

the concrete pour packages produced by Applicants against the procedural requirements in effect at the time of the placement. See Motion at 2, 3. Mr. Eddleman provides no factual basis for his supposition that such procedural irregularities occurred or indeed, even if they did, what relevance such irregularities would have to Contention 65. Further, Applicants contend that it is not Mr. Eddleman's job to police Applicants' compliance with its own procedures;<sup>6/</sup> this is the responsibility of the NRC Staff -- which has found no regulatory violations or significant items of noncompliance with regard to containment concrete placements. See Applicants' answer to Interrogatory 65-16(z); Affidavit of Roland M. Parsons in Support of Applicants' Motion for Summary Disposition of Eddleman Contention 65, at 8.

Finally, Applicants contend that responding to this request would be burdensome. Applicants do maintain a "history file" of the procedures and specifications at issue. However, this file contains only the changes made in each particular revision<sup>7/</sup> but does not contain a full copy of the procedure then

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(Continued)

of, any "expert" who may be assisting him. See, e.g., Eddleman's Responses to General Interrogatories 1(a), (b) and (c) (October 21, 1983).

<sup>6/</sup> Mr. Eddleman states at page 3 of his Motion, regarding compliance with procedures, that "Daniel might think this is funny ...." Applicants do not understand the reasons for, or basis of, this gratuitous comment. Such remarks, however, have no place in pleadings filed with the Board.

<sup>7/</sup> The various procedures have undergone a number of revisions. For example, TP-15 is in its eleventh revision and WP-05 has been revised on twenty-one occasions.



in effect. To require Applicants to expend the effort necessary to compile these documents would be wasteful -- and time-consuming -- in light of the potential benefits which might be gained by Mr. Eddleman.<sup>8/</sup>

With respect to the Cure Logs referenced in Applicants' answer to Interrogatory 65-16(h), see Motion at 3, Applicants agree to produce excerpts from that Log pertaining to the placements identified in Exhibits 1 and 2 of Applicants' November 11, 1983 Supplemental Response to Interrogatories on Contention 65.

Mr. Eddleman next complains about Applicants' answer to Interrogatory 65-17(b), dealing with rebar spacing criteria. Here it is obvious that Mr. Eddleman has failed to refer to Applicants' earlier responses to Interrogatories 65-4(e) and (f) -- referenced in answer to 65-17(b) -- which identified the requested criteria and permitted tolerances. (These criteria and tolerances are standard and do not vary from pour to pour.) Mr. Eddleman then combines this complaint with a rather long-winded, generalized complaint that Applicants have failed to produce certain documents (Field Change Requests and Permanent Waivers on not only rebar spacing criteria, but on concrete slump and air content) referenced in other documents produced by Applicants. Applicants contend that they have

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<sup>8/</sup> Applicants also question the depth of the review which Mr. Eddleman could conduct in view of the Board-ordered 15-day period in which Mr. Eddleman is to respond to Applicants' Motion for Summary Disposition.

responded fully to Mr. Eddleman's request for production of documents and are under no duty to produce ancillary documents referenced in the specific documents requested by an interrogatory.<sup>9/</sup>

Mr. Eddleman contends that Applicants' answers to Interrogatories 65-18(c) through (f) "appear somewhat evasive" and that records of pre-placement meetings "may" exist. Any such records are informal in nature and, if they did exist, would be appended to the Inspection Reports included in the pour packages which have been produced to Mr. Eddleman.

With respect to Mr. Eddleman's request for a "legible version" of the names of persons identified in the pour packages, Applicants merely note that the documents speak for themselves and that this request would have been a legitimate followup had the pour packages been requested earlier. See n. 9, supra.

Mr. Eddleman next claims that Applicants' answer to Interrogatory 65-18(h) "is false and misleading." Motion at 5. Applicants deny this charge. In answering this Interrogatory, Applicants viewed a pour to be difficult if unexpected problems were encountered during the placement. None of the subject

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<sup>9/</sup> As Applicants have previously noted, Mr. Eddleman did not request copies of the containment concrete pour packages in his first round of discovery. See Applicants' Answer to Wells Eddleman's Motion for Extension of Time ... (February 14, 1984) at 6 n. 5. Had Mr. Eddleman done so, a request to produce the specific documents identified at page 4 of the instant Motion would have been a proper followup request. Such a request, however, does not form a proper basis for a Motion to Compel.



pours met this criterion.<sup>10/</sup>

Mr. Eddleman again claims that Applicants have been "evasive" in answering Interrogatory 65-18(o). Applicants stand by their answer and further note that this issue is addressed in the Affidavit of Roland M. Parsons in support of Applicants' Motion for Summary Disposition of Eddleman Contention 65.

Mr. Eddleman is incorrect in stating that the answer to Interrogatory 65-21 refers to documents, but fails to identify any. Motion at 5. The subject interrogatory did not call for the identification of any documents and none were identified or referenced. Similarly, Applicants' answer to Interrogatory 65-22 noted that drawings may or may not be made of concrete areas requiring repairs. This is determined on a case-by-case basis and, if any such drawings were made, they would be included in the pour packages.

Finally, Mr. Eddleman claims that certain documents called for by Interrogatories 65-23(a) and (b) were not specifically identified in Applicants' answers. Motion at 6. As explained in Applicants' answers, if deviations from rebar clearance and spacing criteria were involved in the concrete placements identified in Exhibits 1 and 2 to Applicants' November 11, 1983 Supplemental Responses, these deviations and approval of their resolution would be documented in the pour packages which have

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<sup>10/</sup> The statement quoted by Mr. Eddleman regarding pour ICBXW256004 as being "most difficult" is contained on a placement checklist and amounts to no more than an inspector's personal opinion, which was not the opinion of the personnel responsible for making the placement itself.

been produced to Mr. Eddleman. Mr. Eddleman is capable of reviewing these documents to determine the requested information.

### III. Conclusion

For all the foregoing reasons, Applicants respectfully request the Board to deny intervenor Eddleman's Motion to Compel Discovery on Eddleman Contention 65 and, further, request the Board to order that Mr. Eddleman expeditiously respond to Applicants' Motion for Summary Disposition of Eddleman Contention 65.

Respectfully submitted,

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DATED: May 1, 1984

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| Plant, Units 1 and 2)            | ) |                      |

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Wells Eddleman's Motion to Compel Discovery on Eddleman Contention 65" was served this 1st day of May, 1984, by deposit in the U.S. mail, first class, postage prepaid, upon the parties on the attached Service List.

Deborah B. Bauser  
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