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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
CAROLINA POWER & LIGHT COMPANY)	
and NORTH CAROLINA EASTERN)	Docket Nos. 50-400 OL
MUNICIPAL POWER AGENCY)	50-401 OL
)	
(Shearon Harris Nuclear Power)	
Plant, Units 1 and 2))	

APPLICANTS' RESPONSE TO
WELLS EDDLEMAN'S MOTION TO
DECLARE APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION 15AA UNTIMELY

Applicants Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency hereby respond to Wells Eddleman's "Motion to Declare Applicants' 2-28-84 Motion Untimely (Summary Disposition of Contention 15-AA)," dated March 7, 1984. Mr. Eddleman petitions the Board to find Applicants' Motion for Summary Disposition of Contention 15AA as untimely filed, or, in the alternative, to grant him a twenty-day extension of time to respond to said motion.

Mr. Eddleman's Motion is both frivolous (asserting Applicants are bound by a schedule established in anticipation of a January hearing, even though the hearing is now scheduled for June) and insulting (accusing Applicants and their attorneys of deception if not ignorance). See Motion at ¶8. Mr. Eddleman's Motion is no more

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than a transparent attempt to toll the time for responding to Applicants' Motion for Summary Disposition by filing a motion which seeks a declaratory ruling on timeliness. This is his second such attempt,^{1/} and it follows the Board's oral ruling by telephone on February 27, 1983, denying the first motion. Mr. Eddleman's instant Motion should be denied and the Board should inform Mr. Eddleman by telephone that his deadline for filing a response is March 29, 1984 (twenty-five days, plus five days for service by mail, from the date of filing).^{2/}

The previously established schedule calling for summary disposition motions on admitted environmental contentions clearly did not encompass late contentions such as 15AA, which was admitted in August, 1983. Furthermore, Applicants' decision in December, due to time constraints, not to file a Motion for Summary Disposition on Contention 15AA certainly was no bar to filing a motion once the schedule was extended. Indeed, as the Board Chairman stated in the March 8, 1984 conference call, the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981), encourages the use of the summary disposition process where the proponent of a contention has failed to establish that a genuine issue exists, so that evidentiary hearing time is

1/ See "Request for Expedited Ruling on Timeliness of Applicants' 2-7-84 'Motion for Summary Disposition of Eddleman 83/84B'," dated February 8, 1984.

2/ Pursuant to the Board's ruling in the March 8, 1984 conference call, on Mr. Eddleman's "Motion to Require Service of Staff Summary Disposition Responses ...," dated January 28, 1984.

not unnecessarily devoted to such issues. Clearly, Applicants' Motion for Summary Disposition of Contention 15AA is consistent with that policy and was filed so as not to interfere with, but to advance, the orderly conduct of the proceeding.

Applicants request that this Board make very clear to Mr. Eddleman that he may not receive a Motion for Summary Disposition, wait a week,^{3/} then file a Motion for a ruling on timeliness, and expect to toll the time within which he must respond to the merits of the motion. Applicants sought to file their Motion for Summary Disposition of Contention 15AA on a schedule that would permit the orderly filing of responses prior to the end of March, with ample time for the Board to consider the pleadings and rule prior to or at the Prehearing Conference scheduled for May 1, 1984.^{4/} As we have pointed out previously,^{5/} the practice which Mr. Eddleman seeks to employ would put a halt to the orderly process of these proceedings and would be an imposition on both the other parties and the Board.

Mr. Eddleman has asked for a twenty-day extension due to his "heavy workload" including, inter alia, teaching, consulting and

^{3/} Mr. Eddleman telephoned Applicants' counsel Thomas A. Baxter and Dale Hollar on Feb. 29, 1984 and indicated his receipt of the Motion for Summary Disposition of Contention 15AA on that date.

^{4/} Although the Board could certainly rule on Applicants' Motion at any time up to the commencement of the hearing, or indeed, at the hearing itself, Applicants would, under those circumstances, be required to prepare and prefile testimony unnecessarily.

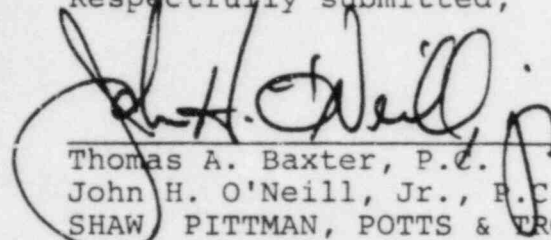
^{5/} See "Applicants' Response to Wells Eddleman's Request for Expedited Ruling on Timeliness of Applicants' 2-7-84 Motion for Summary Disposition of Eddleman 83/84B" dated February 22, 1984.

"utility cases." Applicants are very much aware of Mr. Eddleman's "heavy workload" and, in particular, of the considerable time he is spending in preparing for a North Carolina Utilities Commission case in May.^{6/} However, this does not in any way excuse Mr. Eddleman's obligations in the instant proceeding. The Appeal Board has explicitly ruled that an intervenor is not excused from meeting his obligations if he attempts to participate in more proceedings than he can reasonably handle. Pennsylvania Power and Light Company, et al (Susquehanna Steam Electric Station, Units 1 and 2) ALAB-613, 12 N.R.C. 317, 339-40 (1980). Mr. Eddleman's decision to attempt to participate in almost every conceivable aspect of this and other proceedings is one of his own choosing. However, that does not excuse meeting his obligations to keep this proceeding on a reasonable schedule.

^{6/} Applicants have in the past attempted, and will continue to attempt, to accommodate Mr. Eddleman's schedule conflicts, as long as such accommodations do not impact adversely on the schedule for these proceedings.

Mr. Eddleman's Motion must be denied. Applicants urge the Board to notify Mr. Eddleman expeditiously that his response to Applicants Motion for Summary Disposition of Contention 15AA is due March 29, 1984.

Respectfully submitted,



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Dated: March 9, 1984