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January 19, 2000

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Administrative Judge G. Paul Bollwerk, Chairman  
Administrative Judge Frederick J. Shon  
Administrative Judge Dr. Peter S. Lam  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of Carolina Power & Light Company  
(Shearon Harris Nuclear Power Plant),  
Docket No. 50-400-LA, ASLBP No. 99-762-02-LA

**Re: Joint Report on Parties' Positions Regarding Use of Proprietary Information at the Oral Argument Scheduled for January 21, 2000**

Dear Chairman Bollwerk, Judge Shon and Judge Lam:

In its January 13, 2000 Memorandum and Order (Subpart K Oral Argument Procedures), the Board directed Applicant's counsel to provide the Board Chairman with a joint report outlining the parties' positions/suggestions regarding the use of proprietary information at the oral argument.

We have conferred with the parties in this proceeding and make the following joint report. The parties have determined that the only proprietary information potentially at issue in this proceeding concerns Contention 2, and in particular Basis 2 of Contention 2. The proprietary information at issue is found in the two Holtec International reports providing criticality analyses for Applicant. None of the parties intend to disclose proprietary information at the oral argument, nor do they believe that disclosure of proprietary information is necessary to the Board's determination regarding Contention 2.

Applicant intends to discuss only the fact that the criticality analyses were performed, the codes used therein, the primary assumptions, and the results reached regarding subcriticality. Applicant has confirmed with its vendor Holtec that none of this is proprietary information. Applicant does not intend to introduce the reports themselves in the argument (the reports have already been provided in Applicant's Subpart K filing), show pages out of the report, or discuss the proprietary details of the methodology used in the analyses.

Counsel for Board of Commissioners of Orange County ("BCOC"), Ms. Diane Curran, has informed Applicant that she intends to avoid any reference to the proprietary

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Atomic Safety and Licensing Board

January 19, 2000

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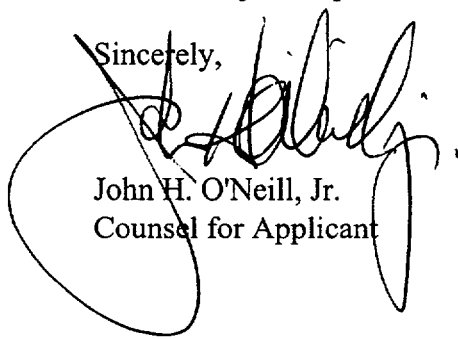
Holtec reports as they are not the subject of BCOC's case. BCOC believes that Contention 2 can be decided without resort to information in these reports. Therefore, BCOC does not intend to discuss any proprietary information during the oral argument.

Counsel for the NRC Staff, Mr. Robert Weisman, has informed Applicant that the Staff has no intention of using proprietary information in the oral argument.

Applicant notes that it is conceivable that the Board could elicit the disclosure of proprietary information through questions it asks during the oral argument. In such event, BCOC's counsel and Dr. Thompson (BCOC's sole expert on Contention 2) have signed proprietary agreements. Counsel and other representatives of the NRC are bound by 10 C.F.R. § 2.790. Therefore, should a Board question require the discussion of proprietary information, the oral argument could continue by temporarily clearing the room of those who are not to permitted access to the proprietary information. On the other hand, it is more likely that such a question could be answered by reference to a page and section of the proprietary Holtec report.

All parties concur with the positions and suggestions regarding the use of proprietary information at the oral argument as stated in this joint report.

Sincerely,



John H. O'Neill, Jr.  
Counsel for Applicant

cc: Service List

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'00 JAN 24 P 4:40

Before the Atomic Safety and Licensing Board

OFFICE OF THE SECRETARY  
RULEMAKING AND ADJUDICATIONS  
STAFF

In the Matter of )  
)  
CAROLINA POWER & LIGHT ) Docket No. 50-400-LA  
COMPANY )  
(Shearon Harris Nuclear Power Plant) ) ASLBP No. 99-762-02-LA

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing letter dated January 19, 2000 providing the "Joint Report on Parties' Positions Regarding Use of Proprietary Information at the Oral Argument Scheduled for January 21, 2000," were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail transmission, this 19th day of January, 2000.

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e-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
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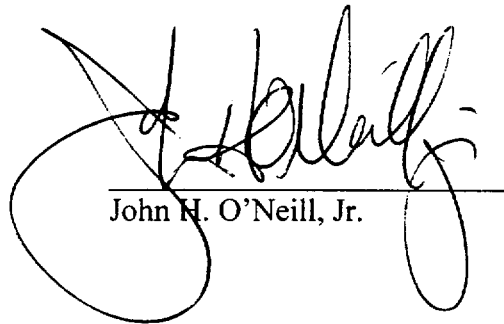
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