

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title:                      Petition Review Board

Docket Number:      (not applicable)

Location:              Rockville, Maryland

Date:                      Monday, November 13, 2006

Work Order No.:      NRC-1334

Pages 1-56

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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PETITION REVIEW BOARD

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MONDAY,

NOVEMBER 13, 2006

The proceeding was conducted at NRC  
headquarters, Room 05B4, 11545 Rockville Pike,  
Rockville, MD, at 1:15 p.m., Ho Nieh, Chairman,  
presiding.

NRC HEADQUARTERS STAFF:

DANIEL FRUMKIN           AFPB/NRR, Fire Protection  
Engineer

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ALEXANDER KLEIN           NRR, Senior Fire Protection  
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TANYA MENSAH            NRR/DPR, 2.206 Coordinate

SUNIL WEERAKKODY        NRR/DRA, Branch Chief

MARIA SCHWARTZ           OE, Senior Enforcement  
Specialist

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## 1 NRC HEADQUARTERS STAFF:

2 HO K. NIEH, JR. Division of Policy and  
3 Rulemaking, Deputy Director  
4 DAVID L. DECKER Office of Congressional  
5 Affairs, Senior Congressional  
6 Affairs Officer  
7 LISA M. REGNER Office of Nuclear Reactor  
8 Regulation, Project Manager  
9 JASON PAIGE DORL, Training Project Manager  
10 CHANDU PATEL DORL, Harris Project Manager  
11

## 12 NUCLEAR INFORMATION AND RESOURCE SERVICE:

13 PAUL GUNTER Reactor Watchdog Project  
14

## 15 UNION OF CONCERNED SCIENTISTS:

16 DAVID LOCHBAUM Director, Nuclear Safety,  
17 Global Security Program  
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## 19 NC WASTE AWARENESS &amp; REDUCTION NETWORK:

20 JIM WARREN Executive Director  
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C-O-N-T-E-N-T-S

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P-R-O-C-E-E-D-I-N-G-S

(12:14 p.m.)

MS. REGNER: Once again, we do have the court stenographer - thank you.

I'd like to welcome everyone again to the NRC concerning the Sharon Harris Fire protection issues, 2.206 Petition.

My name is Lisa Regner. And I would like for us to go around the room, please.

Dan, do you want to start us off?

MR. FRUMKIN: Dan Frumkin, NRC Fire Protection staff.

MS. LONGO: Giovanna Longo, office of general counsel.

MR. HO NIEH: Ho Nieh, division of policy and rulemaking.

MS. REGNER: Lisa Regner, petition manager.

MR. KLEIN: Alexander Klein, NRC fire protection.

MR. RUNKLE: John Runkle, attorney for the petitioners.

MR. WARREN: Jim Warren, executive director of NC Warren.

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1 MR. GUNTER: Paul Gunter, Nuclear  
2 information and resource service.

3 MR. LOCHBAUM: David Lochbaum, director of  
4 the nuclear safety project for the Union of Concerned  
5 Scientists.

6 MR. PAIGE: Jason Paige, DORL.

7 MR. BURNELL: Scott Burnell, office of  
8 public affairs.

9 MR. DECKER: David Decker, NRC, office of  
10 congressional affairs.

11 MS. ROSENBERG: Stacey Rosenberg, branch  
12 two, special projects branch.

13 MS. MENSAH: Tanya Mensah.

14 MR. WEERAKKODY: Suni Weerakkody, NRC, FIRE  
15 PROTECTION BRANCH CHIEF.

16 MS. SCHWARTZ: Maria Schwartz, office of  
17 enforcement.

18 MS. REGNER: Thank you.

19 I would like to stress once again, we need  
20 to speak clearly and loudly. If you do have something  
21 you would like to say, there are microphones here in  
22 headquarters for those of you in the meeting room.

23 Please make sure you station yourselves  
24 somewhere near a microphone as this is being recorded  
25 as well.

1 Again, my name is Lisa Regner, welcome.

2 I've been assigned as the petition  
3 manager. The Petition Review Board chairman is Ho  
4 Nieh.

5 This meeting is being transcribed. It  
6 will become a supplement to the petition that was  
7 submitted on September 20<sup>th</sup>, 2006. It will be made  
8 publicly available.

9 Representatives from NRC's Region Two are  
10 participating. Also the licensee is participating.

11 Anyone making a statement, once again  
12 please state your name first.

13 And now I'll turn it over to the chairman.

14 INTRODUCTION BY THE CHAIRMAN

15 MR. NIEH: Thanks, Lisa.

16 Thank you all for coming to us for this  
17 public meeting, the second attempt. We tried one  
18 earlier on last month.

19 And thank you those of you on the phone  
20 for bearing with us while we were trying to get your  
21 name and organizational information correct.

22 We do want to make sure that the  
23 information we are transcribing here today is indeed  
24 accurate so that the public can have that information  
25 available to them after this meeting. So thank you

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1 for bearing with us on that.

2 Again, good afternoon, and welcome to the  
3 NRC public meeting regarding the 2.206 petition  
4 submitted on fire protection issues at the Shearon  
5 Harris Nuclear Power Plant.

6 Under Title 10 of the Code of Federal  
7 Regulations, Section 2.206, as you know, any person  
8 may raise safety issues or concerns in a petition to  
9 the NRC requesting an enforcement action.

10 On September 20<sup>th</sup>, 2006, the North  
11 Carolina Waste Awareness and Reduction Network, the  
12 Nuclear Information and Resource Services, the Union  
13 of Concerned Scientists, NC Fair Share, and Students  
14 United for a Responsible Global Environment submitted  
15 to the NRC a petition under 2.206 regarding fire  
16 protection issues at the Sharon Harris Nuclear Power  
17 Plant.

18 I will note that subsequent to that  
19 petition the NRC has received additional  
20 correspondence from other organizations related to  
21 that issue, and we have contacted those organizations  
22 who have corresponded with us, and informed them that  
23 we will make them aware of the Petition Review Board's  
24 decision on this 2.206 petition.

25 In the September 20, 2.206 submission, the



1 petitioners requested that the NRC take enforcement  
2 action against the Shearon Harris licensee to  
3 immediately, and I will quote from the petition, issue  
4 an order requiring the immediate suspension of the  
5 operating license for the Shearon Harris Nuclear Power  
6 Plant until such time that all fire safety violations  
7 affecting safe shutdown functions as designated under  
8 current law are brought into compliance.

9 The petitioners also requested as an  
10 alternative enforcement action that the NRC issue  
11 penalties for the maximum allowable amount of \$130,000  
12 for each fire protection violation for each day the  
13 plant operates under compliance is achieved and  
14 verified.

15 I will point out that the NRC staff did  
16 review the immediate aspects of the submitted  
17 petition, and determined that there is no need for  
18 immediate action.

19 So why are we here, and where are we in  
20 the 2.206 process? At this time the NRC staff has  
21 received the aforementioned petition for review, and  
22 as described in our 2.206 process document, Management  
23 Directive 8.11, which is publicly available, the  
24 petitioners have requested to meet with the Petition  
25 Review Board prior to the board's internal meeting to

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1 decide whether to accept the petition for review under  
2 the 2.206 process.

3 I will again note that back on October  
4 23<sup>rd</sup> of this year we attempted to have this meeting,  
5 but due to technical difficulties, we had to secure  
6 (phonetic) from that meeting.

7 The purpose of today's meeting is to  
8 provide the petitioners an opportunity to provide any  
9 relevant additional explanation and support for the  
10 petition in advance of the Petition Review Board's  
11 internal meeting.

12 As described in our process the NRC staff  
13 and the licensee, who has also been invited to this  
14 meeting, will have the opportunity to ask clarifying  
15 questions of the petitioners.

16 Also, many members of the public may  
17 observe or listen to this meeting between the  
18 petitioners, the licensee, and the NRC, and the NRC  
19 will be available after the meeting to answer any  
20 questions from members of the public that are here.

21 I want to emphasize that the purpose of  
22 this meeting is not to determine whether the NRC  
23 agrees or disagrees with the contents of the petition.  
24 Rather it is to clarify the issues in the petition for  
25 understanding, so that the NRC can decide whether or

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1 not to accept the petition for review.

2 After the Petition Review Board's internal  
3 meeting, we will inform the petitioners of our  
4 decision shortly after that.

5 At this time I'd like to introduce the  
6 board, and then turn the meeting over to the  
7 petitioners.

8 The NRC's Petition Review Board is  
9 comprised pretty much of all the people you see here,  
10 at the table, and are representative from the Office  
11 of Enforcement, Maria Schwartz.

12 So with that if there are any questions,  
13 I'll point out we have fire protection staff on the  
14 Petition Review Board. We have advice from our office  
15 of general counsel. And Lisa Regner is our petition  
16 manager.

17 Are there any questions from the  
18 petitioners before I turn it over to you?

19 MR. RUNKLE: I will ask questions as we go  
20 along. We started off that way last time asking a  
21 couple of questions just for clarification.

22 MR. NIEH: Any questions for those  
23 participating over the phone on where we are in the  
24 process and the purpose of this meeting?

25 VOICE: There are no questions in Region

1 Two.

2 MR. NIEH: Thank you.

3 Again, on the phone could you identify  
4 yourself if you make any remarks, please?

5 VOICE: Region Two, there are no questions  
6 here.

7 MR. NIEH: Thank you.

8 With that, I'd like to turn it over to the  
9 petitioners.

10 PETITIONERS PRESENTATION

11 MR. RUNKLE: Thank you, Mr. Nieh.

12 We started off when we met a couple of  
13 weeks ago, and I had some clarifying questions. And  
14 I think we probably need to go through those again,  
15 just to make sure on the record.

16 My name is John Runkle. I'm representing  
17 the petitioners. And with me today are Jim Warren,  
18 the executive director of NC Waste Awareness &  
19 Reduction Network; Paul Gunter with the Nuclear  
20 Information and Resource Service and David Lochbaum  
21 with the Union of Concerned Scientists.

22 I am probably the least technical person  
23 in this room, so you all know more about the fire  
24 protection and what it means to a safe shutdown of a  
25 nuclear power plant than I do.

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1 I am going to leave to these gentlemen to  
2 really talk about some of the technical information  
3 that we have in addition to the petition.

4 Now, Mr. Nieh, you said that the members  
5 of the Petition Review Board were the people in this  
6 room?

7 MR. NIEH: At the table here, and our  
8 representative from the Office of Enforcement.

9 MR. RUNKLE: Is that a standing review  
10 board, or is it representatives from the different  
11 divisions and agencies within the NRC?

12 MR. NIEH: It is representative of  
13 different divisions in the NRC, and that is basically  
14 determined based on the information that is in the  
15 petition.

16 Typically for our process and our  
17 procedure, Management Directive 8.11, the board  
18 consists of a chairman, usually an SES level manager  
19 at the agency. It has a petition manager, which for  
20 a plant specific petition, it's usually the licensing  
21 project manager from our division of operator reactor  
22 licensing.

23 And then other members would be determined  
24 by the NRC staff as appropriate based on the content  
25 of the information in the petition.

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1                   We do have regional support on the  
2                   Petition Review Board as well.

3                   MR. RUNKLE: But it's the people around the  
4                   table that are actually making the decision whether to  
5                   accept the petition for further review, or to deny the  
6                   petition for further review?

7                   MR. NIEH: Yes, sir.

8                   MS. LONGO: OGC is an adviser. I don't  
9                   actually get a vote.

10                  MR. RUNKLE: And OGC being the Office of  
11                  General Counsel?

12                  MS. LONGO: So I provide advice but I don't  
13                  vote.

14                  MR. NIEH: And we do receive input from -  
15                  we have regional representation on the board as well.

16                  MR. NIEH: And who are those regional  
17                  representatives?

18                  MR. NIEH: I thought it was supposed to be  
19                  Randy Musser (phonetic), but I did not hear him come  
20                  on the line, and I heard that there are several other  
21                  regional folks that are on the line. So we will get  
22                  the information from the region based on the people  
23                  that are attending.

24                  MR. WARREN: Are they voting members?

25                  MR. NIEH: I would not say all of them are.

1 We would typically have one representative from the  
2 region supporting a plant specific issue.

3 Our process folks, can you check me on  
4 that please?

5 MS. ROSENBERG: This is Stacey Rosenberg.

6 According to the process it's one regional  
7 representative.

8 MR. RUNKLE: I just needed to clarify that  
9 on the record so when the transcript that comes out,  
10 we'll have a better understanding of actually this  
11 process.

12 I'm new to the process of the Petition  
13 Review Board. I haven't appeared in front of the NRC  
14 since licensing Sharon Harris in the early '80s, so  
15 things have changed considerably since that. And I  
16 just need to understand where things are going from  
17 this.

18 So we filed a petition under the 2.206,  
19 and with the petition we did have a report dealing  
20 with fire, that was part of it, and attached to that  
21 report were various attachments.

22 One was, attachment one was the Sharon  
23 Harris fire protection abridged chronology going back  
24 to 1980, referencing a lot of NRC documents and  
25 generic letters, regs, those kind fo things.

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1           We do have - there was a 1992 article in  
2           the Raleigh News & Observer talking about the need for  
3           the nuclear plant to keep watch on the fire retardant  
4           materials; discussion of a couple of fires at the  
5           Sharon Harris Nuclear Power Plant; and a follow up,  
6           the NRC still assessing safety significance of major  
7           fire at Sharon Harris. This is an Inside NRC article  
8           that describes in I think, not in complete details,  
9           but gives an overview of that fire in 1989.

10           Also looking at licensee events report in  
11           2002 where there was a fairly significant inspection  
12           review of the fire protection strategy at the Sharon  
13           Harris plant.

14           And included in there are some various  
15           operator manual actions that have been proposed.  
16           That's under attachment six.

17           This is just - there are a whole series of  
18           these operator manual actions, and these are just some  
19           of them as an example.

20           And then looking at 2003, when the NRC  
21           ponders its rule change.

22           So that was the initial petition.

23           So I guess my first question was to the  
24           review board, in making your assessment whether to  
25           accept the petition for further review or denying the



1 petition, whether there is a citation to an NRC  
2 document, a reg or a generic letter or something like;  
3 if those are documents that you would review as part  
4 of either the Petition Review Board findings or later  
5 on in the investigation; is that correct?

6 MR. NIEH: There are relevant documents -  
7 this is Ho Nieh, the Petition Review Board chair - if  
8 there are relevant documents or citations of other  
9 documents or references that we would need to consider  
10 we would look at them.

11 MR. RUNKLE: So as part of the record and  
12 part of the petition, we do not need to have to file  
13 all these documents? There are probably a  
14 considerable amount of documents that are cited, and  
15 some are summarized, others are not. We don't have to  
16 submit all those to you as part of this petition?

17 MS. LONGO: I believe that everything that  
18 you cited was publicly available.

19 MR. RUNKLE: Yes.

20 MS. LONGO: And that's - it's going to be  
21 in our system and we can retrieve it.

22 MR. RUNKLE: Just to have that on record.

23 Now, Mr. Nieh, you said earlier that you  
24 had reviewed the immediate action part of the petition  
25 and decided not to recommend immediate action; is that

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1 correct?

2 MR. NIEH: Yes, sir.

3 MR. RUNKLE: Now in making that decision  
4 what documents did you review?

5 MR. NIEH: We reviewed your incoming  
6 petition. We also reviewed - and I'm going to ask our  
7 technical staff and our regional staff to chime in as  
8 well - we reviewed a previous petition that was  
9 submitted I believe a few years ago, in 2005.

10 We also reviewed that particular petition  
11 in the NRC, the decision that was made on that one.

12 Either Alex, Dan, or the region, do you  
13 want to add any other information that we reviewed?

14 MR. KLEIN: I think you accurately  
15 described the information that we reviewed. I think  
16 that we had sufficient information as far as I  
17 understand it to make that decision.

18 MR. FRUMKIN: We also considered the status  
19 from a fire protection standpoint the transition to 10  
20 CFR 50.48(c) and NFPA 805. You pointed out the  
21 license amendments - or license event reports. And  
22 we're involved in the pilot and transition, so we were  
23 involved in that transition, their letter of intent,  
24 and the enforcement discretion and that type of thing.

25 MR. RUNKLE: And your 2005 petition, could

1 you cite that since we're on the record?

2 MR. FRUMKIN: Sure. It's the May 12<sup>th</sup>,  
3 2005.

4 MR. RUNKLE: And it's a 2206 petition?

5 MR. FRUMKIN: Yes.

6 MR. RUNKLE: And who is it from?

7 MR. FRUMKIN: Mr. Gunter, Mark Jacobs,  
8 Debbie Katz, Jim Warren, Mark - or Karen Wimpelberg,  
9 Janet Zeller.

10 MR. RUNKLE: And that was not on the fire  
11 protection; is that correct?

12 MR. FRUMKIN: This is a request for  
13 emergency enforcement action under 10 CFR 2.206 to  
14 address inoperable Hemyc slash MT fire protection  
15 systems at Sharon Harris and other plants.

16 MR. RUNKLE: Okay.

17 MR. McDOWELL?: This is Pete McDowell.  
18 Your voices are breaking up, and they are very soft.  
19 Is there a way to turn up the microphones or move more  
20 closely to them?

21 MS. REGNER: Those of you that are on the  
22 phones, it would help if you have muting capability,  
23 if you could mute while you are listening. Because we  
24 are getting interference as well.

25 So I realize some of you may not have that

1 capability, but if you do, please mute your phones.

2 And on our end we will try to speak up.

3 MR. RUNKLE: This is John Runkle  
4 continuing. Since the submittal of the petition and  
5 your subsequent review, have you had any contacts with  
6 the licensee, Progress Energy?

7 MS. REGNER: Other than relaying  
8 information for the meetings that we're having here?

9 MR. RUNKLE: Yes. Not the procedural  
10 matters, but if there was any subsequent significant  
11 discussion of any of the substantive issues related to  
12 the petition?

13 MS. REGNER: I have not, sir, no.

14 MR. NIEH: Sir, if the licensee is not part  
15 of the decision-making process for the NRC's 2.206  
16 review process.

17 It's an NRC staff decision. We invite the  
18 licensee to the meeting so that they are aware of an  
19 ongoing request for action against their facility, and  
20 we also give them the opportunity to ask any questions  
21 of the petitioners as well, to clarify anything that  
22 you have submitted to us.

23 But as far as deliberations about the  
24 petition that's all internal at the NRC.

25 MR. RUNKLE: Thank you just in order to

1 clarify that for the record.

2 MS. GORDON?: This is Alice Gordon. If  
3 anything has happened the reception is getting worse.  
4 It's softer.

5 MR. RUNKLE: Alice, we'll try to speak up.  
6 This is John Runkle. Can you hear me?

7 MS. GORDON: Yes, but after the request by  
8 Pete McGow (phonetic) I did not notice an improvement.  
9 So just do the best you can.

10 MR. RUNKLE: I would like to distribute  
11 additional information since the time of the petition.

12 MS. REGNER: I have additional copies as  
13 well.

14 MR. NIEH: This is Ho Nieh, the Petition  
15 Review Board chair.

16 Is the same package of information you  
17 provided to us in October?

18 MR. RUNKLE: There are -

19 MS. REGNER: They said there are additions.

20 MR. NIEH: There are additions?

21 MS. REGNER: Yes.

22 MR. RUNKLE: There are three additional  
23 documents. And I gave them as a review before, and I  
24 can just do that fairly quickly.

25 Most of them deal with the attention that

1 is given to the petition in the local media, that  
2 there were various articles by the Raleigh News &  
3 Observer and the Durham Herald Sun which are major  
4 newspapers in the area.

5 And since that time the town of Chapel  
6 Hill has passed a resolution in support of the 2.206  
7 petition. The town of Carrboro, also North Carolina,  
8 and Orange county in North Carolina, and - as I  
9 understand after the first of the year Chatham County  
10 is also considering supporting the resolution.

11 So this is really correspondence and the  
12 various resolutions from the local governments, some  
13 that they sent you directly, and others just to make  
14 sure that you have copies in the record.

15 Also a correspondence from Jim Warren of  
16 NC Warren with Robert McGehee. He's chief executive  
17 officer with Progress Energy, and Progress Energy's  
18 response outlining the - what was in the petition, the  
19 2.206 petition, and trying to get an understanding of  
20 what Progress Energy's position on it.

21 We went over that at our meeting a couple  
22 of weeks ago, so really we don't need to go over them  
23 again.

24 I think the three new documents that we  
25 did not have last time we were here I think are

1 significant because it really goes to the heart of the  
2 project - the heart of the problem here.

3 One is Progress Energy's website, which is  
4 their official position, their response to the 2.206  
5 petition, this was on their website as late as  
6 October. It describes what the petition is about, and  
7 what gives their response to how they view fire  
8 protection.

9 It's - their position is troublesome.  
10 Harris plant operates its fire safety program as the  
11 NRC regulations require under a multilayered fire  
12 safety philosophy. The fire safety program is three-  
13 tiered: fire prevention, fire detection and  
14 suppression, and fire barriers.

15 When one aspect of the three-tiered  
16 program has a deficiency, the NRC requires us to  
17 strengthen the other aspects of the program.

18 The NRC has identified a deficiency with  
19 the fire barrier tier, so we strengthened the fire  
20 prevention and fire protection tiers through the fire  
21 watch program.

22 Now looking at the prescriptive rules  
23 under 3(g)(2), there are the three aspects of fire  
24 protection, and looking at those a little closer,  
25 these are - I mean I'm sure everybody in the room is

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1 aware of those - there's a qualified three-hour fire  
2 barrier system; a qualified one-hour fire barrier  
3 system in conjunction with smoke detectors and  
4 automatic sprinkler systems; or a minimum distance of  
5 20 feet or separation between the electrical cable  
6 trays or conduits with no intervening combustibles, in  
7 conjunction with the placement of detection and  
8 automated suppression between the electrical systems.

9 Now if there are alternatives to this,  
10 they have to go through a certain process. And as the  
11 official position of the licensee in response, as  
12 they've reported to the local governments, to Mr.  
13 Warren, and on the website, if they don't meet the  
14 prescriptive standards of III.G.2, they can take other  
15 kind of operator manual actions, and that would  
16 somehow put them in compliance.

17 Now their public position is, and it  
18 states in here that their public position is that they  
19 are not out of compliance.

20 I recently got a copy of the  
21 correspondence, it's also in this packet that I handed  
22 out, from October 20<sup>th</sup>, 2006. There had been  
23 correspondence back and forth between Nuclear  
24 Regulatory Commission and the Sharon Harris plant on  
25 how to get them in compliance with the fire

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1 regulations.

2 And I don't know if this is a legal nicety  
3 or not. They are not in compliance with the rules and  
4 regulations as they're required to, but they seem - it  
5 seems that their public position is that they are not  
6 out of compliance.

7 So that is something that the 2.206  
8 petition needs to get to the bottom of. Are they in  
9 compliance? Are they out of compliance? If they are  
10 out of compliance, how do they get into compliance in  
11 a timely manner.

12 As stated in the petition this has been  
13 going on since 1992, and there's been a series of  
14 letters, directives, inspections, enforcement actions.  
15 And at the latest count the Shearon Harris plant has  
16 said that it would be in compliance and replace some  
17 of the fire barriers by the year 2015, so we're going  
18 on for another eight or nine years.

19 So over a 24 year period, the plant has  
20 been out of compliance, and even as they're saying  
21 will be out of compliance.

22 And lastly wanted to draw your attention,  
23 I'm sure you are all aware of the draft report for  
24 NUREG 1852 demonstrating the feasibility and  
25 reliability of operator manual actions in response to

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1 a fire.

2 Understand that this is out there for  
3 comments, but I think it's a very important document,  
4 because it tells me as a nontechnical person that  
5 there is a process here that must be followed before  
6 you do operator manual actions.

7 First, at the nuclear plant itself you  
8 have to describe the operator manual actions, and you  
9 have to assess and see if they work.

10 Then you have to submit them to the NRC as  
11 a license amendment as to somehow - then you are in  
12 compliance with fire safety so that your operator  
13 manual actions somehow substitute for your fire  
14 barriers and your suppression that you should have  
15 under III.G.2.

16 Now granted it's up to the NRC to review  
17 that submittal, analyze the operator manual actions in  
18 light of what the actual conditions at the nuclear  
19 power plant, and modify them as needed and go back and  
20 forth with the nuclear plant to make sure that the  
21 operator manual actions at least work as they said  
22 they were going to work, and that their safety meets  
23 all the requirements for a safe shutdown.

24 And in that period the operator manual  
25 actions must be accepted as a license amendment or

1 denied. And this is what hasn't happened since 1992,  
2 these operator manual actions, we know that the fire  
3 suppression and the different barriers are not  
4 working. There's been a long history of that since  
5 1992. We know those don't work.

6 If you are going to rely on operator  
7 manual actions, what you have to do is describe and  
8 assess them, and submit them to the NRC as a licensing  
9 amendment, and have the NRC staff review, analyze or  
10 modify them, and then accept or deny them.

11 And none of that has gone on in this  
12 instance, and that is probably the most troublesome in  
13 really going on to what the 2.206 petition is about.

14 We need to have - we need to put some kind  
15 of end to this. That's why we asked for emergency  
16 action. We think that 15 years is certainly too long  
17 a time to allow something like this to go on, and  
18 another eight or nine until barriers are replaced, or  
19 operator manual actions are approved as alternatives,  
20 the fire protection at the Sharon Harris plant is not  
21 adequate.

22 Before I let my colleagues speak, I've  
23 looked at the 2.206 petition requirements. This  
24 obviously meets all the requirements: it's a serious  
25 problem that has not been resolved; the enforcement

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1 actions, if any, by the NRC in this area have been  
2 inadequate; looking at the management directive 8.11,  
3 the basic criteria for a 2.206 petition have been met.

4 So we would urge you to accept it for  
5 further review. There is something here that needs to  
6 be resolved.

7 Mr. Warren, I asked you to talk a little  
8 bit about the local response to this.

9 Why don't you go ahead?

10 MR. WARREN: Well, briefly, I'd just say  
11 that as evidenced by some of the interest in the  
12 telephone participation today you can see that this is  
13 a very important issue to local and state officials  
14 and the public in our region.

15 It gets pretty easy to understand that  
16 federal safety regulations are in place for a reason,  
17 and despite the various types of statements,  
18 explaining that Progress Energy, claiming that they  
19 are in compliance, or they are in compliance if you  
20 count the interim comp measures, or they are sort of  
21 in compliance.

22 Elected officials and others are very  
23 intent on seeing this get resolved. And one of the  
24 things I think you'll hear more about today, we want  
25 to have a field hearing in our region where these

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1 folks that are participating by telephone can hear  
2 these issues fleshed out, and let's hear Progress  
3 Energy's position of where they are, and what they  
4 plan to do.

5 The question as I understand additionally  
6 NRC's position is that they have been allowing this  
7 plant to continue operating under enforcement  
8 discretion. If that's correct - but I understand  
9 Progress Energy hasn't asked for that courtesy to be  
10 extended. And certainly the enforcement discretion is  
11 something that can't just go on indefinitely.

12 So we want to have this issue resolved,  
13 and we want to have NRC to come to North Carolina  
14 and let's have this resolved in front of the public.

15 MR. RUNKLE: David, why don't you go ahead  
16 with your comments?

17 MR. LOCHBAUM: This is David Lochbaum with  
18 the Union of Concerned Scientists.

19 I have a short three-page amplification or  
20 crystallization of the petition in my comments today,  
21 and I'd like that to be added to the petition review  
22 record if I could.

23 It's also the same thing I handed out at  
24 the October 23<sup>rd</sup> meeting with no changes.

25 Basically what concerned us, and the

1 reason we signed on to the petition, were four areas  
2 that as we understand exist at Harris that shouldn't  
3 exist at Harris.

4 As we understand the fire protection  
5 regulations, there were the existing regulations that  
6 I call 10 CFR 50.48. And then there was the more  
7 recent revision, 50.48, paragraph C, that allowed  
8 plant owners to opt for an NFPA 805 way of meeting  
9 fire protection regulations.

10 As we understand the original and this  
11 option, they essentially provide equivalent  
12 protection; neither one of them is higher or lower  
13 than the other. They are just two different ways of  
14 getting to the same place, and that is, adequate  
15 protection of public health in the event of a fire.

16 It's also our understanding that Harris  
17 does not meet either one of them and has elected to  
18 pursue the NFPA 805 pathway as the quickest way to  
19 restore compliance.

20 Our four concerns about that are, from the  
21 record we've reviewed, and we spent some time going  
22 through Adams looking at every document between the  
23 company and the NRC over the last decade, we don't  
24 find any evidence that either the company or the NRC  
25 have evaluated the risk impact of the collective

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1 noncompliances.

2 We've seen documents where the company has  
3 indicated that they need to make nearly a dozen  
4 physical modifications to the plant as part of their  
5 efforts to restore compliance with NFPA 805, so it's  
6 not just the paperwork exercise they are embarking on.  
7 The plant itself has to be modified to bring it back  
8 into compliance with fire protection regulations.

9 Yet we don't see any indication that the  
10 company or the NRC looked at the collective impact of  
11 all of these deltas, and evaluated that it was okay,  
12 and it was - adequate protection of public health was  
13 assured despite the many noncompliances.

14 Second concern was that the current  
15 reliance or the continued reliance on interim  
16 compensatory measures at Harris contradicts actions of  
17 the NRC in the past which are prudent regulatory  
18 practice.

19 In the early 1990s, the then-chairman of  
20 the NRC, Dr. Ivan Selin, responded to the Congress  
21 when asked how long can interim fire watches be used,  
22 his answer was six months. I know it wasn't an exact,  
23 precise, carved in stone feeling, but that was an  
24 indication fo what the agency deemed to be an  
25 appropriate length for interim compensatory measures.

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1           That has been used far longer than six  
2 months at Sharon Harris, and will continue to be used  
3 on the present path for - for years into the future,  
4 not just six months into the future.

5           The problem we have with that is that the  
6 public was provided with an opportunity to review and  
7 comment on the regulations that now exist in 50.48, as  
8 well as the recent revision, the NFPA 805 option that  
9 was added. We were allowed to review and comment on  
10 whether that constituted adequate public health  
11 protection or not.

12           But the company is not meeting either one  
13 of them. We were not allowed an opportunity to  
14 comment on indefinite prolonged who knows how many  
15 years reliance in interim compensatory measures. That  
16 was not something the public was allowed to comment on  
17 and chip in on whether that seemed to be a good idea  
18 or not. It's something - wink wink nudge nudge - it's  
19 a deal that's been struck behind closed doors between  
20 the agency and a wayward licensee that leaves the  
21 public in harm's way with no opportunity short of this  
22 petition to protect themselves. So that's why we  
23 think the petition is necessary, one of the reasons we  
24 think the petition is necessary.

25           Thirdly, the whole concept of the current



1 process has Progress Energy running the show and NRC  
2 on the wrong end of the puppet strings. There are no  
3 regulatory requirements that this company is meeting.  
4 These interim compensatory measures aren't codified by  
5 regulation, order, or any other regulatory tool  
6 available to the NRC.

7 So it's up to the company to decide what  
8 they do and when they do it. That's absolutely wrong.  
9 This agency is supposed to be a regulatory body. It's  
10 supposed to set the standards that the Harris plant  
11 meets; not the other way around.

12 The - if this company chooses to take 10  
13 years instead of five years to restore compliance with  
14 fire protection regulations, as it presently stands,  
15 you would just sit there and watch. That is wrong.

16 This agency should determine when Progress  
17 Energy finally stops being a nuclear outlaw and starts  
18 complying with federal regulations.

19 We were given an opportunity to comment on  
20 the rulemaking. We weren't given a chance to comment  
21 on the rule breaking, so we created this opportunity  
22 to do that. It's wrong, and it should stop.

23 Fourth, we compare what the NRC is not  
24 doing here to what the NRC did do in the security  
25 arena after 9/11. After 9/11 the NRC looked at the

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1 security regulations to determine that upgrades were  
2 necessary because of what happened on 9/11. Those  
3 post-9/11 security regulations were a heightened level  
4 of protection on the security front, and because it  
5 was a different - it was an increase, the plant  
6 owners, were, at the time of the NRC's decision, they  
7 were in noncompliance with what the NRC wanted these  
8 companies to go to.

9 So the NRC gave the companies a period of  
10 time to get to that heightened level, and they did  
11 that through the issuance of orders that prescribed  
12 what they will do and when they will do it.

13 And if anybody, any licensee chose not to  
14 do that, or was unable to do that, it left the NRC  
15 with the regulatory tools to compel compliance with  
16 where they were supposed to be.

17 If you contrast that situation with the  
18 one that existed at Shearon Harris, if 10 years from  
19 now if Shearon Harris was still promising this agency  
20 that it would restore compliance, instead of actually  
21 having done it, you'd have essentially no regulatory  
22 tool to do anything about it.

23 This petition provides the regulatory tool  
24 that's needed to bring Progress Energy, to hold  
25 Progress Energy accountable, and stop the rule

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1 breaking that is occurring at Shearon Harris.

2 That's why we think the petition should be  
3 granted, and actually the actions sought in the  
4 petition should be taken.

5 Thanks.

6 MR. RUNKLE: Go ahead.

7 MR. GUNTER: My name is Paul Gunter. I am  
8 director of the reactor watchdog project for Nuclear  
9 Information and Resource Service.

10 I'd like to say at the outset that the  
11 operator manual actions that have been substituted for  
12 physical passive fire protection features per the - as  
13 prescribed per the license condition have in fact  
14 diminished fire protection at Shearon Harris.

15 Neither fire watch nor operator manual  
16 action represent an equivalent to rated fire barriers  
17 - suppression, detection, and minimum cable  
18 separation.

19 There is no relationship between - I mean  
20 these are all very different features that have - that  
21 are being substituted by at best defined dubious  
22 actions.

23 Moreover there is a history here that has  
24 to be put into context. The petitioners have  
25 contended that in 1997, after nearly five years of

1 meetings between the operators of Shearon Harris and  
2 the Nuclear Regulatory Commission's fire protection  
3 staff, this operator made fire safety commitments that  
4 were approved by NRC to be implemented as a specified  
5 set of Thermo-Lag corrective action programs, the  
6 inoperable fire barrier that was declared in 1992.

7 Now Shearon Harris, the owner and  
8 operator, specified that they would remove Thermo-Lag  
9 fire barriers, and that they would upgrade fire  
10 barrier systems for safe shutdown of the reactor, with  
11 approved operable fire barrier systems, and by  
12 rerouting redundant electrical cables, vital to safe  
13 shutdown, to separate fire areas so that no single  
14 fire could completely disable the safe shutdown  
15 capability of the reactor from the main control room  
16 in the event of fire.

17 It is no less true today that in the event  
18 of a significant fire every nuclear power plant,  
19 including Sharon Harris, is much safer shutting down  
20 and controlling the reactor from the main control room  
21 through electrical systems preserved to be free from  
22 fire damaged by passive physical fire protection  
23 features.

24 These fire protection features for safe  
25 shutdown circuits are specified in Shearon Harris

1 license condition, and they are specified only to be,  
2 as I already identified, three-hour rated barriers;  
3 one hour used in conjunction with detection and  
4 automated suppression, or cable separation by a  
5 minimum distance of 20 feet with no intervening  
6 combustibles in association with detection and  
7 automated suppression.

8 During subsequent NRC inspections in 1998,  
9 1999 and 2000, NRC inspectors found that Harris  
10 operators failed to implement the agreed upon Thermo-  
11 Lag corrective action program.

12 The Shearon Harris safe shutdown analysis,  
13 contract to its earlier commitments made by Sharon  
14 Harris in 1997, as a common course of business  
15 instead, substituted without NRC approval unapproved  
16 operator manual actions that were largely unanalyzed  
17 for their reliability to protect the reactor safe  
18 shutdown functions, and therefore, failed to provide  
19 any reasonable assurance to protect the public safety.

20 Now we are here today with even an  
21 uncertain criteria as being developed through NUREG  
22 1852, but no recognized and feasible and reliable  
23 criteria for operator manual action.

24 In fact Progress Energy was found by NRC  
25 inspectors to have instead abandoned required physical

1 fire protection feature of electrical circuits for  
2 safe shutdown per 10 CFR 5048, and the Shearon Harris  
3 license condition, again, without seeking prior NRC  
4 safety analysis or approval for the illegally  
5 substituted actions.

6 PARTICIPANT: I can hear stuff, I can't  
7 make out any words. It sounds like it's coming more  
8 from the base of -

9 MR. GUNTER: Without knowing the current  
10 total, it is further documented that a number of these  
11 illegal operator manual actions cannot be reliably  
12 completed in time to protect safe shutdown functions  
13 by the admission of NRC inspectors.

14 As documented by NRC, the Shearon Harris  
15 plant was found that only if no such operator manual  
16 actions could be found would the Harris owner and  
17 operator physically protect these safety significant  
18 electrical cables by the only three approved methods  
19 under the code of federal regulations.

20 Consequently Shearon Harris has at least  
21 100 known operator manual actions that they are  
22 currently relying on for hot shutdown in the event of  
23 a significant fire.

24 It is further documented that Progress  
25 Energy did not, as required, request deviations or

1 exemptions from NRC for alternate fire protection  
2 actions to protect safe shutdown components. Instead  
3 it illegally substituted these operator manual  
4 actions.

5 And according to the NRC documentation  
6 very likely none of them were in license submittals  
7 upon which the NRC safety evaluation reports are  
8 based.

9 Clearly these actions taken as a common  
10 course of business by Progress Energy represent  
11 longstanding violations of 10 CFR 5048, the Sharon  
12 Harris license condition, and the incorporated safety  
13 evaluation reports as well as the updated final safety  
14 analysis report and Branch Technical Position 9.51.

15 NRC has stated that its Thermo-Lag action  
16 plan, confirmatory action orders, are still in effect  
17 and enforceable, and have not been rescinded.

18 Nuclear Information and Resource Service,  
19 as a petitioner, contends that Progress Energy  
20 wilfully violated safety related commitments made  
21 under its Thermo-Lag action plan to avoid being issued  
22 orders then illegally substituted broad applications  
23 of inferior and unreliable operator manual actions  
24 rather than pursue these commitments where the safety  
25 analysis had been review and approved by NRC per

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1 federal law.

2 This willful violation must be redressed  
3 by the requested emergency enforcement action.

4 The petitioners further contend that to  
5 continue to ignore longstanding fire protection  
6 violations comes at significant and unreasonable risk  
7 to the security infrastructure of the Sharon Harris  
8 Nuclear Power Station and public safety.

9 Inspectable and operable fire protection  
10 systems for the safe shutdown and control of the  
11 reactor are critical security infrastructure at the  
12 nuclear power station in a post-9/11 world.

13 We urge you to take your enforcement  
14 responsibilities seriously rather than subordinate  
15 them to the financial interest of the nuclear  
16 industry.

17 Thank you.

18 MR. RUNKLE: Anybody have anything to add  
19 on to that?

20 As Mr. Warren said, as part of the review  
21 of the 2.206 petition there is a request for a field  
22 hearing the Triangle Area of North Carolina, which is  
23 where the plant is located.

24 And we feel that there are several local  
25 governments that have expertise, and certainly have an



1 interest in it, but have expertise in fire protection  
2 and would like to have expanded comments on that, and  
3 would like to hear from Progress Energy on what their  
4 response and what their plans are.

5 If that's part of a 2.206 petition review  
6 we would like to see that making that request on the  
7 record. We have made it in the petition, feel that's  
8 very important.

9 The local governments are considering  
10 having their own session and doing their own field,  
11 but I think having the NRC participate as a party in  
12 that would make it a better hearing and would really  
13 bring up more on this issue, and I think would help  
14 the NRC to resolve this issue and to stop this  
15 problem.

16 So there is a lot of interest in it back  
17 home, and we want you all to come down and talk to the  
18 people about what your review is, and try to find an  
19 answer to it.

20 We are hear for questions and answers,  
21 from the staff or from the licensee, or any members  
22 on the phone, we'd be glad to do that.

23 MR. NIEH: Thank you.

24 At this time I'd like to turn it over to  
25 any of the NRC staff in the room here at headquarters.

1 Questions for the petitioners?

2 MR. KLEIN: I think speaking from my  
3 viewpoint that, I've read the petition over, and I  
4 don't have any technical questions.

5 I do have one question with respect to the  
6 2015 date. I just - I'm unsure of how that date was  
7 arrived at by the petitioners with respect to the  
8 Harris plant.

9 I don't know if the petitioners were  
10 referring perhaps to the overall transition of the  
11 entire fleet by Progress Energy when you refer to the  
12 2015 date?

13 I just wanted to clarify that.

14 MR. RUNKLE: If you will look at on page 11  
15 of the fire protection abridged chronology, which is  
16 attachment one to the report.

17 MR. KLEIN: Page 11?

18 MR. RUNKLE: Yes. And down at the bottom,  
19 in March of 2006, different modifications necessary  
20 for the NFPA during the cycle twelfth, in looking at  
21 the different refueling cycles and trying to keep  
22 track when they were actually scheduled or probably  
23 likely to be scheduled, that's how we came up with the  
24 data of 2015.

25 MR. KLEIN: I see, it was physically for

1 the Harris plant?

2 MR. RUNKLE: Yes.

3 MR. KLEIN: It's my understanding that the  
4 Harris plant, cycle 15 and 16, are in the time frame  
5 of I believe 2010 or so. And maybe a licensee can  
6 clarify that for us in terms of the exact date of the  
7 cycles for 15 and 16.

8 Again, my understanding was it was around  
9 the time frame of 2010; not 2015.

10 MR. RUNKLE: We were looking at cycle 12  
11 being next year, and then trying to find out an annual  
12 refueling cycle going from there. So I'm sure if the  
13 licensee could clarify when the cycle 15 and 16, that  
14 would be great.

15 MR. LOCHBAUM: And this is Dave Lochbaum.  
16 Even if it is 2010, that just gives them less time to  
17 pay that \$130,000 fine, so that would be fine with us,  
18 if that turned out to be the correct one.

19 MR. CORLETT: This is Dave Corlett. I  
20 think the question is, when is refueling outage 16?  
21 Is that the question?

22 MS. REGNER: Yes, sir.

23 MR. CORLETT: It's fall of 2010.

24 MS. REGNER: Thank you.

25 MS. LONGO: I had a question for MR.

1 Runkel. Petitionerws request a field hearing in the  
2 vicinity of Chapel Hill, and I just wanted to ask, are  
3 you talking about a public meeting in which people can  
4 exchange information, or are you talking about an  
5 evidentiary hearing? What are you talking about?

6 MR. RUNKLE: At this point I would envision  
7 having three or four of the parties - maybe the NRC,  
8 the licensee, the representative of the local  
9 government and the petitioners just to give their  
10 petition some dialogue back and forth.

11 Problem in your parlance, it's probably a  
12 public meeting.

13 MR. NIEH: And I will point out that our  
14 process goes to acknowledgment of times and with the  
15 NRC decision-making process that we would consider  
16 having such public meeting.

17 MR. WARREN: Jim Warren. Going back to  
18 that previous point, I don't have the document in  
19 front of me. But the question of, 2015 or 2013 or  
20 2010, my understanding is that Progress Energy, our  
21 understanding is that we're looking for Harris to be  
22 in compliance by 2015, they responded that that would  
23 be their entire fleet, and that they intended to have  
24 Harris at the front end so they would be under 805 by  
25 2013 and they intend to apply for 805 in 2008.

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1                   So we're again, just as David said,  
2                   they're in violation now, and they need to be in  
3                   compliance ASAP and not 2008 or 2010 or 2013 or 2015.

4                   MR. NIEH: Are there any other questions  
5                   from the NRC staff?

6                   How about the NRC staff from Region Two?

7                   MR. STAPLES: This is Nakota Staples,  
8                   Region Two. We have no questions from Region Two.

9                   MR. NIEH: How about the Shearon Harris  
10                  licensee? Do you have any questions for the  
11                  petitioners?

12                  MR. CORLETT: This is Dave Corlett. We  
13                  have no questions.

14                  MS. LONGO: A clarifying question for Mr.  
15                  Gunther. Mr. Gunther, you stated in your comments  
16                  that Shearon Harris I current in violation of the FSAR  
17                  in its license.

18                  Could you identify the provisions of the  
19                  FSAR or the license that are being violated, if it's  
20                  already in the package. I'm sorry, but I don't recall  
21                  seeing -

22                  MR. GUNTER: I can provide that to you.

23                  MS. LONGO: Would you please? Just so we  
24                  can see specifically what you are talking about?

25                  Okay, thank you.

26                  MR. NIEH: And there was another statement

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1 you made that I wanted to ask you about, is that what  
2 you were referring to?

3 MS. LONGO: No, I just wanted to know what  
4 it is they violated, the specific provisions. Those  
5 are big documents.

6 MR. NIEH: Certainly the items that you  
7 specified that Shearon Harris willfully violated, if  
8 you can provide us with -

9 MR. GUNTER: Well, I will supplement right  
10 now. The issue is that Shearon Harris provided NRC  
11 staff in 1997 a set of commitments to bring Shearon  
12 Harris into compliance with its license condition for  
13 three G2 (phonetic) areas. And subsequent to that the  
14 agency discovered that practically wholesale fire  
15 barrier systems were abandoned, which includes these  
16 areas of concerns that were subject to the Thermo-Lag  
17 corrective action program.

18 Now the fact that the NRC's own documents  
19 indicate that the licensee essentially used the  
20 operator manual actions in every application that it  
21 could find, and on the exception provide a physical  
22 fire barrier, that I believe isn't done by mistake,  
23 and raises our concern that these actions were  
24 willful.

25 MR. NIEH: And that statement was based on  
26 the subsequent inspections that the NRC had performed?

27 MR. GUNTER: Yes, sir, and I can provide  
28 you with documentation where the NRC statement that  
29 the licensee has provided - the licensee has  
30 substituted operator manual action for III.2.G fire  
31 areas as a general rule with the exception being where  
32 they could not find an operator manual action they  
33 used a fire barrier.

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1 And that's also documented in our  
2 petition.

3 MR. NIEH: Thank you.

4 MR. FRUMKIN: You said in 1977 they made  
5 commitments, and I'm assuming that's the Thermo-Lag  
6 close out commitments, is that correct?

7 MR. GUNTER: Yes, sir.

8 MR. FRUMKIN: Is that chronology of their  
9 commitments and our response in your short abridged  
10 chronology?

11 MR. GUNTER: I will have to check that.  
12 I'm not sure.

13 MR. FRUMKIN: There are only two bullets.

14 MR. GUNTER: I mean you are certainly aware  
15 that 1997 prior to the issuance of confirmatory action  
16 orders by NRC on Thermo-Lag, Shearon Harris entered  
17 into agreements with staff that have been reviewed  
18 through safety analysis, by staff, for a set of  
19 actions, to bring these III.2.G fire areas into  
20 compliance. And that was their Thermo-Lag corrective  
21 action program.

22 MR. NIEH: Okay, are there any other  
23 questions from staff here at headquarters?

24 Are there any other questions for the  
25 other participants on the phone line for the NRC at  
26 this time?

27 (No response)

28 John, did you have something else?

29 MR. RUNKLE: Just in response to, there was  
30 a question about what was in the final safety analysis  
31 report, and the supplement was - I'm looking at a  
32 document, August 1<sup>st</sup>, 2000, which was referenced in  
33 the abridged chronology. It's a memorandum from Susan

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1 Black with the Division of Licensing Project  
2 Management, Office of Nuclear Reactor Regulation, and  
3 it does describe sort of the process and what of the  
4 parts of the SR and the SER are in play with these  
5 prior protection rules.

6 And it's the Shearon Harris Nuclear Power  
7 Plant operating license condition 2.F, which states,  
8 Caroline Power & Light Company, now Progress Energy,  
9 shall maintain in effect all provisions of the  
10 approved fire protection program as described in the  
11 final safety analysis report for the facility as  
12 amended in the SER safety evaluation report dated  
13 November 1983, and supplements one through four, and  
14 the safety evaluation dated January 12<sup>th</sup>, 1987,  
15 subject to the following conclusions, and it goes  
16 through several other parts of the fire protection  
17 under the SAR, but the condition 2F is the one in the  
18 license that the client has been out of compliance  
19 with.

20 MS. LONGO: I'm sorry, section 2F of the  
21 license, or of the -

22 MR. RUNKLE: Of the operating license  
23 condition. It - as described in the final safety  
24 analysis report.

25 And it does reference the safety  
26 evaluation report in some other documents.

27 MR. LOCHBAUM: Thank you, John.

28 You just have one other small thing to  
29 add. Based on the long time frame, 2010, 2015, pick  
30 a date, for progress to become - to get Harris into  
31 compliance, we are not sure how NRC inspectors are  
32 doing fire protection inspection at Harris.

33 What criteria are they evaluating against?

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1 Are they ensuring that the plant is not in compliance  
2 with the original regulations, or NFPA 805, since the  
3 company has already confessed to that?

4 I would hate to be in the shoes of a fire  
5 inspector going into this facility, when you arrive  
6 you know they are not in compliance. I don't know  
7 what you are evaluating against since you know they  
8 are not in compliance.

9 I'm not saying those inspections are a  
10 fraud, but they just don't seem to have a lot of value  
11 to hold the plant to. And I don't think the public  
12 living around that facility are getting good service  
13 and respect and these other things on this back wall  
14 when that's the situation.

15 MR. NIEH: Regional inspection staff, would  
16 you like to address that comment?

17 MR. PAIGE: Could you repeat it please?

18 MR. NIEH: I could try to summarize. Mr.  
19 David Lochbaum, his question was, if I could just  
20 paraphrase, what guidance the fire protection  
21 inspectors are using when they are going out to the  
22 facilities to do the periodic fire protection  
23 inspections, at Sharon Harris specifically.

24 MR. PAYNE: Yes, this is Charley Payne. We  
25 use the inspection procedure that is prescribed in our  
26 procedures here for doing triennial fire protection  
27 inspections, and while Harris is in their transition  
28 to NFPA 805 we use a modified version of that  
29 inspection procedure, and that's inspection procedure  
30 71111.05T, and have we done a -

31 MR. FRUMKIN: TTP.

32 MR. PAYNE: Yes, I realize that, but we  
33 haven't done a TTP inspection yet at Harris. We

1 haven't gone back to them since they've actually  
2 started their transition. We did a draft version of  
3 what became TTP, but at the time it was just the 05T  
4 procedures modified.

5 MR. WEERRAKKODY: This is Suni Weerrakkody.  
6 For Sharon Harris and all other plants that are  
7 transitioning to 805, we have a revised inspection  
8 procedure. And at a high level what I can say is, we  
9 have told inspectors to focus on the fire inspection  
10 infrastructure, like for example when inspectors go,  
11 you have the fire brigade, you have the suppression  
12 systems you know, and if the plant is transitioning to  
13 805, in areas where we have basically said, our  
14 position is that they are not in compliance, we enable  
15 them to transition. In other words, that is no reason  
16 to go and reinspect things like operator manual  
17 actions where we believe that the licensee is not in  
18 compliance.

19 So the inspector, we want to make sure  
20 that they spend their time on things that - where they  
21 can make a difference in the transition.

22 MR. NIEH: All right, hearing no other  
23 questions and no other comments from the petitioners  
24 and the NRC staff and those folks on the phone - I'm  
25 sorry, Paul?

26 MR. GUNTER: I'm sorry, not to prolong this  
27 too much further, but I did have one question. If you  
28 could give us some insight on how the NFP 805 in the  
29 Shearon Harris plants to transition to treats fire  
30 protection in the context of security infrastructure,  
31 where fire modeling, traditionally used to address  
32 fire loads in certain fire areas that can be projected  
33 or can be assessed, can't possibly be modeled in a

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1 security scenario.

2 So we continue to have concern that there  
3 is this gap that is by our assessment not being  
4 addressed by NFP 805, in context of, as you could  
5 provide through physical fire protection features that  
6 are rates, that are tested, that are inspectable, that  
7 are then maintained. I think that that's the kind of  
8 proof that the public is looking for to address in a  
9 9/11 world.

10 Now where is that addressed in NFP 805?

11 MR. WEERRAKKODY: I was just going to say,  
12 I don't know how to answer your question without  
13 getting into some of the safeguard information, but I  
14 am cognizant of the relationship, because of a couple  
15 of people in my branch who are participating in that  
16 kind of work, I just don't know whether this is the  
17 right forum or how to answer your question.

18 MR. FRUMKIN: Well, neither NFPA 805 nor  
19 Appendix R or the other fire protection guidance was  
20 designed with post-9/11 specifically in mind.

21 MR. NIEH: Let me supplement that. I think  
22 that is the right answer to your question from my  
23 understanding. I think that folks may be aware that  
24 the NRC staff has been working on a mitigating  
25 strategy and effort that deals with events in a post-  
26 9/11 environment.

27 And in those discussions, without getting  
28 into safeguards information, we have been looking at  
29 impacts to the plant due to fire, and means to protect  
30 the core and protect the public under those  
31 circumstances.

32 So although not inextricably lined to one  
33 another, NFPA 805, and what we are doing with

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1 mitigating strategies, it is something that the NRC is  
2 also concerned about and working toward.

3 MR. WARREN: I had just one more thing to  
4 come back to. I just want to get clear on the record  
5 here what I understood this gentleman to say, and what  
6 I heard David Lochbaum saying earlier.

7 To clarify for Progress Energy's people  
8 and elected officials and others, the plant is not in  
9 compliance with 5048, nor is the plant in compliance  
10 with 805.

11 Is that agreed on at this point? That's  
12 what I understood you to say?

13 MR. WEERRAKKODY: This is Sunil Weerakkody  
14 again. I think what I would say is, until the plant  
15 gets a license to 805, our regulatory standard for  
16 them is their current requirement which is 5048.  
17 That's what we hold them to. And in our view, the  
18 operator manual actions need prior NRC approval. And  
19 we believe that the licensee needs to keep  
20 compensatory measures in place until such time as they  
21 have fully transitioned to 805 and gotten their  
22 license - getting to that license.

23 MR. KLEIN: Sunil, just to clarify if I  
24 may, with respect to the application of Appendix R to  
25 the Harris plant, because the Harris plant was  
26 licensed post-'79, so in terms of the application of  
27 the regulations specifically to the Harris plant, it  
28 is with respect to the fire protection requirement,  
29 and their approved fire protection program.

30 MR. GUNTER: Which is Branch Technical  
31 Position 925.1, correct?

32 MR. KLEIN: Yes.

33 MR. WARREN: So to try to summarize, if I'm

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1 correct, if they are not in compliance with 50.48, but  
2 they are basically operating under NRC's enforcement  
3 discretionary authority. Everybody nods their heads -  
4 okay, I'm just trying to get clear on that, because  
5 it's been a very important of contention in our area,  
6 when the licensee is going out in the region  
7 aggressively telling elected officials and others that  
8 they are in compliance with the regulations, I just  
9 want to get clear here that that is not accurate.

10 MS. LONGO: Alex, could you provide just a  
11 further clarification. You made the point that Harris  
12 was licensed, I can't remember whether you said before  
13 or after -

14 MR. KLEIN: Post 1979.

15 MS. LONGO: Which means that?

16 MR. KLEIN: Which means that the  
17 regulations in the 10 CFR 50.48(b) which invokes  
18 appendix R on plants that were licensed to operate  
19 prior to 1979, it's not the case for the Harris plant  
20 because they were licensed to operate after 1979, so  
21 therefore their fire protection requirements would  
22 fall under, as Paul had indicated, or someone else had  
23 indicated, the branch technical position.

24 Under NUREG 0800 which is our review  
25 guidance for fire protection, that is the standard  
26 that we use when we license the Harris plant, and not  
27 to Appendix R.

28 MR. GUNTER: But just again for  
29 clarification, that represents the equivalent of three  
30 hour rated barrier, one hour with suppression and  
31 detection, minimum cable separation. And if they  
32 don't meet that then they have to go through an  
33 exemption process.

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1 MR. KLEIN: The requirements that are  
2 listed in appendix R for the most part were subsumed  
3 into NUREG 800. So you correct in stating that the  
4 three options, the three hours, the one hour, the 20  
5 feet and so forth, are part of that review guidance.

6 MR. GUNTER: And if they choose not to use  
7 those three only requirements then they have to submit  
8 to you, as the agency, for a safety analysis and an  
9 exemption process.

10 MR. KLEIN: The licensee's license  
11 condition states something to the effect that they may  
12 make changes to their fire protection program provided  
13 it does not adversely affect their ability to achieve  
14 and maintain safe shutdown.

15 It is up to them, if they make a change to  
16 their fire protection program, to make that  
17 evaluation, to have that documentation on file at the  
18 plant, and our inspectors have the ability to go in  
19 and make a determination as to whether or not they  
20 agree with the licensee.

21 If they determine that it does not  
22 adversely affect their ability to achieve and maintain  
23 safe shutdown.

24 If they conclude that it does not, that it  
25 does affect their ability to achieve and maintain safe  
26 shutdown, the licensee is required to come in for a  
27 license amendment.

28 MR. GUNTER: Do you - this is Paul Gunter  
29 again - do you know if Shearon Harris has provided  
30 submittals under 10 CFR 50.59 with this regard?

31 MR. WEERAKKODY: You said 50.59?

32 MR. GUNTER: Yeah, 50.59. Is that the  
33 wrong CFR?

1 MR. WEERAKKODY: 50.90.

2 MR. GUNTER: For changes without prior NRC  
3 approval. So have they made any submittals to you  
4 under 50.59, for fire protection changes without NRC  
5 review?

6 MR. KLEIN: They wouldn't normally submit -  
7 if they conclude that it does not adversely affect  
8 their ability to achieve and maintain shutdown, the  
9 licensee would not normally submit that 50.59  
10 evaluation into us for approval.

11 MR. FRUMKIN: Right, the NRC has issued  
12 generic letter 8610, which in many many places  
13 describes where a license amendment is required, what  
14 the staff - staff set a line in the sand basically in  
15 1986 which said, this is what we believe is an adverse  
16 effect; this is not an adverse effect. This is what  
17 you need to submit. This is what you can do on your  
18 own. And it's an exhaustive document that covers a  
19 lot of these issues in depth.

20 So I believe that Harris has submitted  
21 some amendments under 50.90 where they do not meet the  
22 adverse effect, and that they've also done some  
23 analysis that meet the adverse effect, and submitted  
24 it, or kept it in house, subject to inspection.

25 MR. WEERKODDY: This is Sunil Weerkoddy.  
26 Are you using the exemption request and amendment  
27 request interchangeably? Because in our job in here,  
28 we make a clear distinction between the two, because  
29 as Alex said, for pre-`79 plants, if they are using  
30 operator manual actions, they would be requesting an  
31 exemption from the regulations under 50.12, okay,  
32 whereas for Shearon Harris, if they believe that they  
33 are not complying with their licensing bases, not

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1 regulations, they would be coming under 50.90?  
2 Technically maybe the same thing but the legal process  
3 is different.

4 MR. NIEH: Well, I think we've had some  
5 additional questions and dialogue. And with that I'd  
6 like to thank you, the petitioner s-

7 MR. VANDERBECK: May I make a comment?

8 MR. NIEH: Yes.

9 MR. VANDERBECK: My name is Tom Vanderbeck,  
10 and I just want to say that I am very confused and  
11 uncomfortable with this regulatory semantics. And I  
12 hope for all of us that live in the shadow of Shearon  
13 Harris that this approach to faith-based fire  
14 protection works. And that's all I have to say.  
15 Thank you.

16 MS. GREENE?: This is Sally Greene. And  
17 I'd like to ask, when will the transcript of this  
18 hearing be available, and how can we get it?

19 MS. REGNER: I have been told - can you  
20 hear me okay? - I am hoping that before Thanksgiving  
21 we will have it in Adams, but it will depend on how  
22 quickly we get the transcript back from the court  
23 report. Does that sound reasonable?

24 MS. GREENE: How will we know when it's  
25 available and how to get it?

26 MS. REGNER: I will notify Mr. Runkle.

27 MR. RUNKLE: Yes, and we will notify the  
28 various local governments and people that we know of.

29 MR. COLEMAN?: This is Dan Coleman. I  
30 wanted to go back to the point about the possibility  
31 of a public meeting. We have been discussing among  
32 local government officials having a public what we've  
33 been calling a forum sometime after an expected

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1 Chatham County action in January. And I think it  
2 would be very important for the NRC in your public  
3 meeting format at that event or some other event that  
4 you all might organize, there is a lot of concern  
5 among elected officials and among the general public  
6 about this, something here in the field that people in  
7 the community could attend would be very very helpful.

8 MR. NIEH: Okay, thank you for that  
9 feedback. And this is Ho Nieh, the PRB chairman.

10 As I mentioned before our process does ask  
11 the staff to consider the extent to which further  
12 public meetings with the petitioners would benefit the  
13 process, and we will of course consider that as we  
14 carry out the process in this petition that you've  
15 submitted.

16 Any seconds on any questions, any further  
17 comments, before we conclude?

18 Okay, hearing none I want to thank the  
19 petitioners for taking the second time again to come  
20 to NRC headquarters to provide us with the clarifying  
21 information on the petition you've submitted.

22 With that, I'd like to conclude the  
23 meeting. And we are going to secure the telephone  
24 connection.

25 Thank you.

26 (Whereupon the proceeding in  
27 the above-entitled matter was  
28 adjourned)

