UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION

J. E. Dyer, Director

In the Matter of	)	Docket No. 50-400
	)	
CAROLINA POWER & LIGHT COMPANY	)	License No. NPF-63
	)	
	)	
Shearon Harris Nuclear Power Plant, Unit 1	)	

PROPOSED DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

I. Introduction

By letter dated September 20, 2006, as supplemented by the letters dated October 23, October 30, November 29, 2006, and February 8, 2007, John D. Runkle, on behalf of the North Carolina Waste Awareness and Reduction Network, the Nuclear Information and Resource Services, the Union of Concerned Scientists, NC Fair Share, and Students United for a Responsible Global Environment (the Petitioners) filed a Petition pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206. The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC):

1) Take an immediate enforcement action in the form of an order revoking the operating license for the Shearon Harris Nuclear Power Plant (SHNPP) Unit 1, Docket No. 50-400, License No. NPF-63, or impose maximum fines for each violation for each day the plant has been in violation of fire protection regulations.

2) Participate in open and public proceedings with the petitioners; the licensee, Carolina Power & Light; and other external stakeholders in the vicinity of the SHNPP during deliberations on the petition.

3) Resolve all violations of federal regulations before accepting a license renewal application from Carolina Power & Light for the SHNPP.

As the basis for this request, the Petitioners discussed several fire safety violations at SHNPP which they believe could affect the safe operation of the plant and safe shutdown of the plant in emergency situations. The Petitioners' concerns primarily focused on noncompliances, the risk associated with the noncompliances, reliance on compensatory measures, the NRC's policy on the use of enforcement discretion regarding certain fire protection issues, and intentional acts of sabotage or terrorism.

On October 10, 2006, the NRC's Petition Review Board (PRB) met to discuss the Petitioners' request for immediate action to revoke SHNPP's Operating License. The PRB denied the Petitioners' request for immediate action based on the staff's determination that there was no immediate threat to public health and safety. The NRC advised the Petitioners of this decision in a letter dated December 4, 2006.

During a public meeting at NRC Headquarters on November 13, 2006, the Petitioners further explained and supported their Petition by providing additional information to the PRB. The transcript of this meeting was treated as a supplement to the Petition. The Petition, transcript and all supplements are available in the Agencywide Documents Access and Management System (ADAMS). The Petition is under Accession Numbers ML062640550 and ML062830089, the transcript is under ML063210488, and the supplements are under ML062980107, ML063200168, ML063450098, and ML070510497. These documents are also available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the ADAMS Public Electronic Reading Room on the NRC Web site http://www.nrc.gov/reading-rm/adams.html. Persons who do not have access to

ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by email to pdr@nrc.gov.

Also, in the letter dated December 4, 2006, the NRC informed the Petitioners that their request was received and that the issues in the Petition were being referred to the Office of Nuclear Reactor Regulation (NRR) for appropriate action, and to the Office of the Inspector General to consider the allegations of NRC wrongdoing.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202.[1]

The administrative procedure used in assessing civil penalties is set forth in 10 CFR 2.205.[2]

The procedure used by the NRC to process petitions filed under 10 CFR 2.206 is outlined in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," which is accessible under ADAMS No. ML041770328. This procedure aims to provide appropriate participation by petitioners in, and opportunities for the public to observe, NRC's decisionmaking activities related to a 10 CFR 2.206 petition.

This proposed Director's Decision (DD) is being issued to solicit comments on the NRC's disposition of the Petition.

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[1] The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful.

[2] This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest the proposed imposition of a civil penalty in writing. After evaluation of the response, The NRC may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed. The maximum civil penalty amount is $130,000 per violation per day, adjusted for inflation by the Debt Collection Act of 1996.

II. Discussion

The Petitioners raised several concerns in support of their request for enforcement action. The NRC staff placed these concerns into five categories and addressed each in this section. These categories are Noncompliances, Risk from Noncompliances, Compensatory Measures, Enforcement Discretion, and Intentional Acts. The staff also addressed in this section the Petitioners request for NRC staff participation in open proceedings in the vicinity of the SHNPP and the request for the NRC to deny the licensee's license renewal application for SHNPP.

A. Noncompliances

The Petitioners provided a detailed historical perspective of the fire protection chronology at SHNPP. The Petitioners are primarily concerned with noncompliances associated with fire barriers, use of operator manual actions, and unanalyzed separation of circuits.

Fire Barriers

The NRC's concern with the performance of fire barriers at nuclear power plants (NPPs) began with the failure of Thermo-Lag to pass performance tests conducted by a NPP licensee in October, 1989. The NRC addressed this concern by conducting additional fire testing of Thermo-Lag, and issuing a series of generic communications to NPP licensees, including SHNPP. The generic communications included Information Notice (IN) 91-47, "Failure of Thermo-Lag Fire Barrier Material to Pass Fire Endurance Test," August 6, 1991, as the first in a series of INs issued between 1991 and 1995 on performance test failures and installation deficiencies related to Thermo-Lag fire barrier systems; Bulletin 92-01, "Failure of Thermo-Lag 330 Fire Barrier System To Maintain Cabling in Wide Cable Trays and Small Conduits Free From Fire Damage," June 24, 1992, supplemented on August 28, 1992; Generic

Letter (GL) 92-08, “Thermo-Lag 330-1 Fire Barriers,” December 17, 1992, requesting that NPP licensees provide information regarding the use of Thermo-Lag fire barriers; and Supplement 1 to GL 86-10, “Fire Endurance Test Acceptance Criteria for Fire Barrier Systems Used To Separate Redundant Safe Shutdown Trains Within the Same Fire Area,” March 25, 1994.

Based on NRC’s generic communications, licensees reviewed their fire protection safe shutdown plans to determine whether corrective actions were needed. By letter dated August 29, 1997, the SHNPP licensee notified the NRC that it had completed Thermo-Lag resolution activities (corrective actions) for SHNPP.

Subsequently, NRC inspection report 50-400/99-13 (ML003685341), dated February 3, 2000, identified issues at SHNPP associated with engineering evaluations for some of the Thermo-Lag fire barriers. In addition to the Thermo-Lag issues, the inspection report included an unresolved item to track questions regarding Hemyc and MT fire barriers installed at SHNPP. By letter dated April 16, 2002, (ML021060517), the NRC issued a violation to SHNPP for the Thermo-Lag issues. The Hemyc and MT fire barriers issues are addressed later in this section.

In response to the Thermo-Lag fire barrier issues, the licensee implemented further corrective actions at SHNPP. The licensee completed major modifications for many of the corrective actions. For example, the licensee conducted fire testing, performed engineering evaluations, rerouted safe shutdown cables to eliminate reliance on some Thermo-Lag fire barriers, installed fire detection in a fire area, and modified an existing wall to a three hour rated fire barrier. NRC regulations provide for the acceptable use of fire detection and suppression to supplement one hour rated fire barriers as one means to minimize the potential for fire damage in the unlikely event of a fire.

NRC Resident Inspectors assigned to NPPs perform several baseline level, on-site

inspections each quarter as part of the reactor oversight process. The Resident Inspectors assigned to the SHNPP perform at least 6 inspections every quarter and spot-check fire protection systems and compensatory measures during routine plant status checks.

The SHNPP Resident Inspectors, regional inspectors, and regional specialists performed supplemental inspections as part of the reactor oversight process to ensure that identified issues were being dealt with appropriately by the licensee. As part of these supplemental inspections, the NRC reviewed the licensee's corrective actions to address Thermo-Lag fire barriers at SHNPP. In a series of inspections documented in inspection reports dated August 12, 2002, (ML022250189), September 9, 2002, (ML022530113), October 4, 2002, (ML022800665), and January 31, 2003, (ML030350561), and November 18, 2003, (ML033380523), the NRC determined that the corrective actions were appropriate except for one action that resulted in a non-cited violation (NCV), as documented in the inspection report dated November 18, 2003. The NCV related to the use of inadequate operator manual actions to correct some of the Thermo-Lag fire barrier issues. The NCV was determined to be of very low safety significance and the licensee implemented corrective actions by assigning an additional operator to be available to perform safe shutdown actions. Operator manual actions are discussed further in the Use of Operator Manual Actions section of this proposed DD.

In 2004, the NRC amended its fire protection rule in 10 CFR 50.48(c) to allow NPP licensees to voluntarily adopt a risk-informed and performance-based fire protection program. In a risk-informed approach, risk insights are considered along with other factors, such as defense-in-depth (DID), to better focus licensee and regulatory attention on design and operational issues commensurate with their importance. To accomplish this, the rule provides for use of fire probabilistic risk assessments (PRAs) to identify risk-significant fire protection issues.

By letter dated June 10, 2005, (ML051720404), the licensee informed the NRC that they intend to transition SHNPP to 10 CFR 50.48(c). By letter dated September 19, 2005, (ML052140391), the NRC designated SHNPP as a transition pilot plant. During SHNPP's transition to 10 CFR 50.48(c), the licensee is re-analyzing its fire protection program and is developing a fire PRA. In recognition that this voluntary program would necessitate the re-analysis and the development of a plant specific fire PRA, the NRC determined that an extended period of time to implement 10 CFR 50.48(c) was appropriate. As discussed in the Enforcement Discretion section of this proposed DD, the NRC adopted an enforcement discretion policy for licensees voluntarily adopting 10 CFR 50.48(c).

On May 12, 2005, Nuclear Information and Resource Service, et al., submitted a 10 CFR 2.206 petition requesting the NRC take enforcement actions that included the collection of information from NPPs to determine the extent of inoperable fire barriers. On January 20, 2006, the NRC issued DD-06-01, "Director's Decision under 10 CFR 2.206," granting, in part, that the NRC determine the extent of condition of inoperable fire barriers through the use generic communications. Accordingly, on April 10, 2006, the NRC issued GL 2006-03, "Potentially Nonconforming Hemyc and MT Fire Barrier Configurations," to address, among other things, the performance of Hemyc and MT fire barriers at a number of NPPs, including SHNPP.

The licensee provided the responses to GL 2006-03 for SHNPP by letters dated April 28 and June 9, 2006. In those letters, the licensee stated that it relies on Hemyc and MT fire barriers and that they plan to disposition any nonconforming conditions in accordance with 10 CFR 50.48(c). The licensee also stated that compensatory measures will remain in place until it resolves nonconforming conditions. Licensees may implement compensatory measures

in accordance with their technical specifications, license conditions, and approved fire protection program to enable continued plant operations while corrective actions are completed.

In summary, the licensee is taking action through 10 CFR 50.48(c) to address fire barrier nonconforming conditions at SHNPP. In the interim, the licensee will maintain compensatory measures until nonconforming conditions are resolved. The NRC verifies fire barrier compliance and the adequacy of compensatory measures through its reactor oversight process.

Use of Operator Manual Actions

In 2003, the NRC initiated rulemaking that would have amended Appendix R to 10 CFR Part 50 to allow licensees to use acceptable operator manual actions in lieu of the separation or fire barrier requirements in Paragraph III.G.2 of Appendix R. In 2005, the NRC published a proposed rule for comment that would allow the use of feasible and reliable operator manual actions in conjunction with fire detection and automatic fire suppression systems. In 2006, following public comments on the proposed rule, the NRC determined that the rule would not meet an agency rulemaking goal of increased effectiveness and efficiency. On March 6, 2006, the NRC published a notice in the *Federal Register* (71 FR 11196) withdrawing the proposed rule and addressed the use of operator manual actions.

On June 30, 2006, following withdrawal of the proposed rule, the NRC issued Regulatory Issue Summary (RIS) 2006-10, “Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions,” providing the staff’s expectations on the use of operator manual actions. In RIS 2006-10, the NRC reiterated the regulatory requirements for the use of operator manual actions in Paragraph III.G.2 of Appendix R, exemptions from Paragraph III.G.2, compensatory measures, and corrective actions. Because some NPP licensees used operator manual actions in lieu of required fire barriers, RIS 2006-10 stated that compensatory measures

should be implemented and corrective actions should be completed for missing or degraded fire barriers as required by regulations.

In Revision 9 to Licensee Event Report (LER) 2002-004, “Unanalyzed Condition Due to Inadequate Separation of Associated Circuits,” dated October 10, 2005, which was submitted before RIS 2006-10, the licensee reported the use of operator manual actions in lieu of separation (fire barriers) for some control cabling at SHNPP. The licensee stated that it has initiated corrective actions such as a complete validation of the safe shutdown analysis to restore the conditions to compliance in accordance with the regulations. The licensee implemented compensatory measures in the interim while performing corrective actions. Licensees may implement compensatory measures in accordance with their technical specifications, license conditions, and approved fire protection program to enable continued plant operations while corrective actions are completed.

In summary, consistent with NRC expectations for the use of operator manual actions, the licensee initiated corrective actions for the use of manual actions credited in lieu of fire barriers, and has indicated it will maintain compensatory measures until compliance is restored at SHNPP. The NRC verifies compliance with the regulations and adequacy of compensatory measures through its reactor oversight process.

Unanalyzed Separation of Circuits

Beginning in 1997, the NRC staff noticed that a series of industry-wide LERs were identifying plant-specific problems related to potential fire-induced electrical circuit failures. The NRC treated the issue generically and, in 1998, initiated interaction with stakeholders to understand the issue and to develop a solution. The NRC documented these issues in IN 99-17, “Problems Associated with Post-Fire Safe-Shutdown Circuit Analyses,” dated June 3, 1999. In 2001, the Electric Power Research Institute and the Nuclear Energy Institute

performed a series of cable functionality tests to further the understanding of fire-induced circuit failures.

The NRC and interested stakeholders worked together to get a better understanding of possible and probable modes of circuit failures. The NRC issued RIS 2004-03, Rev. 1, “Risk-Informed Approach for Post-Fire Safe-Shutdown Associated Circuit Inspections,” which provided guidance to NRC inspectors on circuit configurations that are likely to fail in a fire and circuit configurations that have little or no likelihood of failing. The NRC also issued RIS 2005-30, “Clarification of Post-Fire Safe-Shutdown Circuit Regulatory Requirements,” which clarified regulatory expectations for post-fire safe-shutdown circuits. The NRC completed cable fire testing in 2006 to further understand fire-induced circuit failures.

The NRC staff is also currently working with external stakeholders to address the potential for fire-induced circuit failures to cause multiple spurious actuations. As directed by the Commission in SRM-SECY-06-0196 (ML063490140), the NRC staff is working to develop or endorse guidelines that address multiple spurious actuations. The Commission stated that immediate regulatory action is not needed due to the availability of several levels of DID in fire protection.

When the licensee reported circuit issues in Revision 0 to LER 2002-004, the licensee placed these issues into its corrective action program and implemented compensatory measures. Completion of some corrective actions is pending the transition to a performance-based, risk-informed fire protection licensing basis at SHNPP, pursuant to 10 CFR 50.48(c). During the transition, the licensee is re-analyzing fire-induced circuit failures and developing a fire PRA that can evaluate these failures in an integrated fashion. The NRC considers a fire PRA to be an effective tool for identifying risk-significant circuit configurations and prioritizing corrective actions.

In summary, the NRC is working to generically resolve the issue of fire-induced circuit failures causing multiple spurious actuations. The licensee has taken some corrective actions to address fire-induced circuit failures at SHNPP, and has indicated it will maintain compensatory measures while corrective actions are completed.

B. Risk from Noncompliances

The Petitioners are concerned with the risk resulting from noncompliances at SHNPP, and point out that the cumulative risk is not known. The Petitioners' supplemental letter dated February 8, 2007, stated that the licensee erroneously assumed that its fire barriers were 100 percent effective in SHNPP's Individual Plant Examination for External Events (IPEEE) results.

NRC inspectors and staff have two tools available for performing risk assessments of operating conditions at NPPs. The Significance Determination Process (SDP) or the Accident Sequence Precursor (ASP) analysis can be used to determine the safety significance of noncompliances associated with inspection findings. Either method can be used to determine the risk significance of individual inspection findings.

NRC inspectors used the SDP to determine the risk significance associated with the Thermo-Lag fire barrier inspection finding. The risk assessment was documented in NRC letter dated April 16, 2002 (ML021060517). In that letter the NRC characterized the finding as White (e.g., an issue with low to moderate increased importance to safety, which may require additional NRC inspections). By letter dated October 4, 2002 (ML022800665), the NRC reevaluated the Thermo-Lag inspection finding by considering some of the completed corrective actions. In that letter, the NRC determined that the risk significance of the inspection finding was reduced to that of a Green finding (e.g., very low safety significance). The licensee's actions to disposition fire barriers are discussed in the Fire Barriers section of this proposed DD.

The NRC staff used an ASP analysis to determine the risk-significance associated with the unanalyzed plant conditions identified in Revision 9 to LER 2002-004. The ASP analysis resulted in a low to moderate significance and is summarized in an NRC memorandum dated January 27, 2006 (ML060240525). To address some of the unanalyzed conditions due to inadequate separation of associated circuits, the licensee proposed, and the NRC staff approved by letter dated May 1, 2006 (ML061140227), the use of fire-resistive electrical cables in some fire areas. The licensee's actions to disposition fire-induced circuit failures are discussed in the Unanalyzed Separation of Circuits section of this proposed DD.

As discussed in the Fire Barriers section of this proposed DD, the licensee is transitioning SHNPP to 10 CFR 50.48(c). As part of the transition process, the licensee is developing a state of the art fire PRA. The fire PRA is an analytical tool that will enable the licensee to determine the cumulative risk of fire protection noncompliances, enable a more accurate fire risk assessment than that provided by the IPEEE, and prioritize resources to address risk-significant fire protection issues.

Since SHNPP is part of the pilot plant effort, the NRC is observing the licensee's progress and efforts in developing the plant-specific fire PRA. The NRC staff documented these observations in trip report summaries available to the public in ADAMS (ML060240605, ML061530462, ML070920043, ML070330336).

In summary, NRC has determined that the risk significance associated with the Thermo-Lag fire barrier inspection finding and with the unanalyzed conditions due to inadequate separation of associated circuits are low to moderate. The licensee is developing a fire PRA as part of the SHNPP transition to 10 CFR 50.48(c). The licensee has completed corrective action to address some of the fire barrier issues and fire-induced circuit failures and will maintain compensatory measures at SHNPP until all remaining issues are resolved.

C. Compensatory Measures

The Petitioners are concerned that the licensee's reliance on compensatory measures at SHNPP contradicts prudent regulatory practices, is not equivalent to compliance, cannot have an indefinite time frame, and in some cases is unapproved.

The NRC staff agrees that compensatory measures are not a substitute for demonstrating permanent compliance with the regulations. When a noncompliance or other condition is identified by a licensee or NRC inspector, licensees are given the flexibility to implement a compensatory measure in accordance with their technical specifications, license conditions, and approved fire protection program to enable continued plant operations while corrective actions are completed. Fire protection at NPPs uses the concept of DID to achieve the required degree of reactor safety by using echelons of administrative controls, fire protection systems, design features, and safe shutdown capability. When one echelon is degraded or weakened due to a noncompliance or plant condition, the use of an adequate compensatory measure can act as a temporary substitute. The NRC has existing policies (e.g., enforcement discretion) and guidance (e.g., Inspection Manual Part 9900) that address the time frame for compensatory measures as an interim action until final corrective action is completed to resolve the condition or noncompliance.

The licensee has implemented compensatory measures, as required by its approved fire protection program, to address the noncompliances and conditions (e.g., unanalyzed circuits condition, and Hemyc and MT fire barriers). The licensee implemented compensatory measures upon discovery of the initial unanalyzed circuit conditions in 2002. These compensatory measures were in place prior to the licensee transitioning SHNPP to 10 CFR 50.48(c). Because of this transition, the time frame for compensatory measures as an interim action is detailed in the interim enforcement discretion policy for plants transitioning to

10 CFR 50.48(c) discussed in *Federal Register* notices dated June 16, 2004, January 14, 2005, and April 18, 2006. During SHNPP's transition process to 10 CFR 50.48(c), the NRC is verifying the licensee's implementation of the fire protection program, including compensatory measures, through the reactor oversight process.

In summary, licensees have the flexibility to implement compensatory measures in accordance with their technical specifications, license conditions, and an approved fire protection program. The licensee implemented compensatory measures at SHNPP before transition and will continue these compensatory measures while it transitions to 10 CFR 50.48(c). The NRC is verifying implementation of the fire protection program through the reactor oversight process.

D. Enforcement Discretion

The Petitioners are concerned that the NRC's enforcement policy, which allows the NRC to exercise enforcement discretion for certain violations of the requirements in 10 CFR 50.48, results in a delay to correct noncompliances at SHNPP. The Petitioners also state that they were not given an opportunity to comment on the licensee's reliance on compensatory measures.

The licensee has voluntarily initiated adoption of 10 CFR 50.48(c) at SHNPP and is currently transitioning to this new rule. During the transition process, licensees actively re-evaluate their fire protection programs and develop fire PRAs. As such, the transition encourages licensees to identify fire protection issues and determine their risk significance. In this way, licensees can focus their resources on risk-significant issues and resolve those that are low significance under the 10 CFR 50.48(c) approach.

Under the NRC's "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues 10 CFR 50.48(c)," which is available from the NRC public website

at: http://www.nrc.gov/about-nrc/regulatory/enforcement/enforc-pol.pdf, enforcement action normally will not be taken for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets certain criteria including the licensee's voluntary initiative to adopt the risk-informed performance-based fire protection program included under 10 CFR 50.48(c). During the reanalysis that is part of the transition process, the NRC staff anticipates that licensees may identify noncompliances of NRC requirements; however, if licensees meet the conditions outlined in the enforcement discretion policy, the NRC may give discretion to these licensees.

In summary, the NRC has an enforcement discretion policy applicable to licensees that are transitioning NPPs to 10 CFR 50.48(c). The NRC published the original policy and subsequent revisions in the *Federal Register* for public comment. The SHNPP licensee has initiated, and in some cases completed, corrective actions for noncompliances during its transition to 10 CFR 50.48(c).

E. Intentional Acts

The Petitioners are concerned with the challenge to fire safety at SHNPP due to acts of sabotage or terrorism. The Petitioners state that it is reasonable now for the NRC to consider terrorist acts.

The NRC has indicated in public statements that subsequent classified studies have confirmed that commercial nuclear power plants are robust and the likelihood of a radioactive release affecting public health and safety is low. Such studies include analyses of nuclear power plants' ability to withstand damage to, or loss of, large areas of the plant caused by a range of postulated attacks that could result in large fires and explosions. After examining a number of emergency scenarios involving operating reactors, spent fuel pools, and dry-cask

storage installations, the NRC has concluded that the existing planning basis used to develop nuclear power plant emergency plans remains valid and is confident that the public near those facilities can be adequately protected should an attack occur.

Further, the NRC staff is addressing terrorist acts and other security issues industrywide in a proposed rulemaking entitled Power Reactor Security Requirements (RIN 3150–AG63; 71 FR 62644). The staff is also addressing these issues on a plant-specific basis. The NRC is performing a detailed review of the specific plans and strategies each plant has in place to respond to a wide range of events (including the impact of an aircraft) which were required by an NRC order issued in February 2002.

F. Open Proceedings

The Petitioners requested open and public proceedings, including hearings in the vicinity of SHNPP, during NRC's deliberations on this Petition.

NRC Management Directive (MD) 8.11 provides the review process used by NRC staff for petitions filed pursuant to 10 CFR 2.206. MD 8.11 provides the NRC staff with directions concerning the processing of 10 CFR 2.206 petitions, including meetings between a petitioner and the PRB. MD 8.11, Part IV(3), states that a technical review meeting will be held whenever the staff believes that such a meeting would be beneficial to the staff's review of a petition. As part of the Section 2.206 process, the NRC staff conducted a public meeting at NRC headquarters on November 13, 2006, with the Petitioners, the licensee, and the external stakeholders. The meeting summary and transcript are available in ADAMS (ML063380323 and ML063210488, respectively).

Letters requesting NRC participation in a public meeting on March 22, 2007, in the vicinity of the SHNPP were received from North Carolina State Senator, Mrs. Ellie Kinnaird; Mayor of the Town of Carborro, Mr. Mark Chilton; Mayor of the Town of Chapel Hill, Mr. Kevin

Foy; and the Chairman of the Board of Orange County Commissioners, Mr. Moses Carey, Jr. The Chairman of the NRC responded to these requests in letters dated March 19, 2007 (ML070660213, ML070660649, ML070740287, and ML070660634, respectively). In those responses, he conveyed information on the NRC's 2.206 process including a discussion of the November 13, 2006, public meeting. Additionally, in accordance with the 2.206 process, the staff provides an opportunity to the Petitioners, the licensee, and other members of the public to comment on the NRC's proposed DD. The NRC staff considers all comments received during the 30 day comment period prior to making its final decision and issuing a final DD.

In summary, the NRC follows MD 8.11 for processing 10 CFR 2.206 petitions. The NRC will accept any additional information that the Petitioners or other members of the public submit in accordance with 10 CFR 2.206.

G. License Renewal

The Petitioners requested that the NRC not accept the licensee's application to extend the SHNPP operating license for an additional 20 years.

A petition filed pursuant to 10 CFR 2.206 provides members of the public with the means to request NRC enforcement-related action (i.e., to modify, suspend, or revoke a license, or other appropriate enforcement-related action), as distinguished from licensing or rulemaking actions. Because a licensee applying to extend its operating license is submitting a licensing action, the Petitioner's request can not be addressed under 10 CFR 2.206. The Petitioners, if they meet hearing request and intervention criteria, will have an opportunity in proceedings pursuant to 10 CFR 2.309 to raise issues and concerns relevant to license renewal for SHNPP.

III. Conclusion

The NRC denies the portion of the Petition related to enforcement action in the form of an order that would revoke the SHNPP operating license or impose maximum fines for each

violation for each day the plant has been in violation of fire protection regulations. The licensee is actively identifying and completing corrective actions, including plant modifications and re-analysis efforts associated with its transition to the 10 CFR 50.48(c) licensing basis.[3] The licensee has been granted enforcement discretion under the NRC's "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues 10 CFR 50.48(c)." The NRC follows existing regulatory processes, policies and programs (e.g., reactor oversight process) to verify that the licensee is properly implementing its fire protection program at SHNPP in accordance with the regulations.

The NRC denies the portion of the Petition related to the request to conduct public meetings in the vicinity of SHNPP. As part of the 10 CFR 2.206 petition process, a public meeting may be held to give an opportunity to petitioners to further explain and provide additional information to the PRB. The Petitioners and the NRC staff conducted one such public meeting on November 13, 2006, at NRC headquarters, and the NRC staff does not plan further public meetings. Under the 10 CFR 2.206 petition process, the public can submit supplemental information, without a public meeting, prior to a final decision. The NRC staff considers these comments prior to making its final decision and issuing a final DD. Based on the above, the staff determined that an additional public meeting is not necessary for the staff's review.

The NRC staff denies the portion of the Petition related to the request to not accept the licensee's application for license renewal at SHNPP. A petition filed pursuant to 10 CFR 2.206 provides members of the public with the means to request NRC enforcement-related action (i.e.,

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[3] SHNPP has completed plant modifications to correct some of its fire protection noncompliances and has implemented corrective actions for the remainder. For example, SHNPP has replaced some of its plant cables with new cables that are highly resistant to fire-induced damage. SHNPP has rerouted cables or changed power supplies for equipment needed in the event of certain fire situations.

to modify, suspend, or revoke a license, or other appropriate enforcement-related action), as distinguished from licensing or rulemaking. The licensee's license renewal application is a licensing action and is not addressed under 10 CFR 2.206. The Petitioners, if they meet hearing request and intervention criteria, will have an opportunity in proceedings pursuant to 10 CFR 2.309 to raise issues and concerns relevant to license renewal at SHNPP.[4]

As provided in 10 CFR 2.206(c), a copy of the final DD will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this day of 2007.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

[4] The NRC's license renewal process relies on two key principles. The first principle is that NRC's existing regulatory processes are adequate to ensure the safety of operating plants. The second principle is that the current licensing basis is adequate and carries forward into the period of extended operation. NRC relies on current regulatory processes to handle any issues that impact current operation of plants (e.g., the fire protection requirements contained in 10 CFR 50.48), and those regulatory processes carry forward into the renewal term.