

**OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET**

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November 2, 2007

Commissioner Gregory B. Jaczko  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: Shearon Harris NPP – Fire protection

Dear Commissioner:

I am writing you on behalf of David Lochbaum of the Union of Concerned Scientists, Paul Gunter of Beyond Nuclear, Jim Warren of the N.C. Waste Awareness and Reduction Network and myself to express our appreciation for the opportunity to meet with you in Raleigh on October 16. We believe that discussions such as this one with stakeholders and members of the public are excellent ways for the Commissioners to get input from the public on how to make the nuclear plants safer. At the same time, stakeholders and the public benefit from receiving the unfiltered, direct perspectives from the Commissioners.

Rather than repeat our fundamental position in detail, we continue to be extremely concerned about the continuing violations of the prescriptive Appendix R standards for fire protection at the Harris NPP since 1989. One of the principal problems is the inability, or even unwillingness, of the NRC staff to demand compliance with these regulations even after notices of violations, noncompliance reports, investigations and unfilled promises by Progress Energy that it will comply. After spending considerable time investigating this issue and going through the 2.206 petition process, our conclusion is that the enforcement procedures are not working in this instance.

NRC documents show that the licensee is in violation of its Updated Final Safety Analysis Report for fire protection of safe shutdown systems required of reactor operators to protect the public health and safety in the event of fire. (See 10 CFR 50.48 and Appendix R). The licensee instead relies upon hundreds of operator manual actions that remain unanalyzed and unapproved, and therefore unlawful substitutes for the safety approved and legally required physical protection of vital electrical circuits from the reactor control room.

NRC regulations are only promulgated after often voluminous comments from the public, the industry and the NRC staff. Their fundamental function is to protect public health and safety; this has been the long-standing policy of the NRC going back to its inception. In 1973, the Atomic Safety and Licensing Appeal Board stated in the *Vermont Yankee* proceeding:

Nor can [the applicant or the NRC staff] avoid compliance by arguing that, although an applicable regulation is not met, the public health and safety will still be protected. For, once a regulation is adopted, the standards it embodies represent the Commission's definition of what is required to protect the public health and safety.

While we agree with you that not every violation of an NRC rule requires the shut down of the nuclear plant until the violation is corrected, we are concerned that in the present matter, the decision to not shut down the plant has become instead a decision to allow the violations to continue unabated.

The shift to a risk assessment under NFPA 805 may be justified, but it should include suitable analysis of the "fault tree" of circuit failures as the result of fire destroying unprotected electrical circuits that are bundled in cable trays and conduits. The NFPA 805 would then lead to modifications that provide acceptable protection from the impacts from fires. We certainly do not oppose additional analysis of risks but again remain concerned that the process to come into compliance under NFPA 805 will be used as just another excuse to delay "real world" safety modifications necessary for a safe shut down.

NRC staff may not require an expedited schedule of compliance from Harris without clear leadership from you and the other Commissioners. As recommended in our meeting, one enforcement tool that could be used is a Confirmatory Action Letter. This could help answer the questions we had about "when" the plant will come into safe compliance.

In North Carolina environmental statutes, we have an enforcement tool called a "special order of consent" that is used when routine enforcement measures do not work. An industry that is not in compliance with a rule is required to present to the agency with a clear timetable for getting into compliance, with penalties for not meeting any of the benchmarks on time. This is negotiated with the agency but not finalized until there is a public hearing. It is then clear to everyone what is expected from the industry, and more important when it will be in compliance. The agency then follows up with regular inspections to make sure the order is being followed.

We would then urge you to make certain that any process to come into compliance with NFPA 805 standards includes a timetable with detailed tasks to be undertaken at each refueling outage and penalties if the benchmarks are not met. The schedule should be reasonably short-term and any delays should require public notice and NRC approval.

Without the NRC taking charge of the process, we believe that the Harris NPP will remain out of compliance with fire protection regulations, and continue to be at risk from fires and unable to safely shut down when needed.

Please let us know what we can do to assist you and the NRC staff in this matter. We will be glad to meet again with you the next time you are in Raleigh or at your offices to expedite the resolution of this matter.

Sincerely,

A handwritten signature in cursive script that reads "John D. Runkle".

John D. Runkle  
Counsel for NC WARN

cc. Commission Chair Dale E. Klein  
Commissioner Peter B. Lyons