

August 1, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

_____)	
In the Matter of)	
)	
PROGRESS ENERGY CAROLINAS, INC.)	Docket Nos. 52-022, 52-023
(Shearon Harris Nuclear)	
Power Plant, Units 2 and 3))	
_____)	

**ORANGE COUNTY'S MOTION FOR 60-DAY EXTENSION
OF DEADLINE FOR FILING PETITION FOR LEAVE TO INTERVENE**

Pursuant to 10 C.F.R. § 2.323(a), the Board of Commissioners of Orange County, North Carolina ("Orange County" or "the County") hereby moves the Commissioners of the U.S. Nuclear Regulatory Commission ("NRC") for a 60-day extension of the August 4, 2008, deadline for submitting petitions to intervene in the licensing proceeding regarding Progress Energy Carolinas, Inc.'s ("Progress Energy's") application to build and operate two new nuclear reactors on the site of the Shearon Harris nuclear power plant. If this motion is granted, the County's petition to intervene will be due on October 3, 2008.¹

This motion is supported by the attached Declaration of Barry Jacobs in Support

¹ Orange County notes that the relief sought in this motion is distinct from the relief sought by NC WARN in the motion that was denied by the Commission on July 23, 2008. NC WARN asked the Commission to immediately suspend the hearing notice in this proceeding, pending (a) the provision of additional information by Progress Energy and (b) the completion by the NRC of the design certification review for the AP 10000 standardized reactor design, on which Progress Energy relies for its application. In contrast, Orange County seeks a 60-day extension of the deadline for submitting a petition to intervene.

of Orange County's Motion for 60-Day Extension of Deadline for Filing Petition to Intervene (August 1, 2008) (Exhibit 1).

Undersigned counsel for Orange County has contacted counsel for Progress Energy and the NRC Staff, who stated that they intend to oppose this motion. A certificate of counsel pursuant to 10 C.F.R. § 2.332(b) is attached.

In support of this motion, Orange County states the following:

1. The NRC issued a Notice of Hearing and Opportunity to Petition for Leave to Intervene on June 4, 2008, at 73 Fed. Reg. 31,899 ("Hearing Notice"). Since receiving the NRC's Hearing Notice, Orange County has diligently pursued its interest in submitting a timely petition. The NRC's 60-day schedule for submitting petitions to intervene, however, has not allowed sufficient time for the County to discuss the petition, evaluate it, and make decisions regarding whether to proceed.

- a. The first regular Orange County Commission meeting held after the issuance of the NRC's Notice of Hearing was on June 24, 2008. At that meeting, the Commissioners approved a letter to the North Carolina Utilities Commission, stating its strong opposition to the issuance of a permit by the NRC or a Certificate of Convenience by the North Carolina Utilities Commission for the proposed new reactors. A copy of the letter is attached as Exhibit 2.

- b. The Commission also voted to contact undersigned counsel, Diane Curran, who had previously represented the County in an NRC license amendment proceeding regarding the currently-operating Shearon Harris nuclear power plant, to ask whether she and the County's expert witness in that previous license amendment

proceeding, Dr. Gordon Thompson, would be available to assist the County in evaluating the license application and participating in the NRC's licensing proceeding for the proposed new reactors. Ms. Curran subsequently responded that both she and Dr. Thompson were available, although Dr. Thompson was not available until after the month of July.

c. While the Orange County Commissioners usually hold two general meetings each month, only one special meeting was held in July, on July 31, 2008 (yesterday). The reason the Commissioners did not hold an earlier meeting in July was that several of the Commissioners attended the annual conference of the National Association of Counties July 11-15, 2008, in Kansas City, Missouri.

d. At the July 31, 2008, meeting, the Commissioners passed a resolution in opposition to Progress Energy's license application on various grounds, including the high concentration of spent fuel that would accumulate on the site if a new plant were licensed, the lack of adequate measures to protect the fuel from attack, Progress Energy's current noncompliance with safety standards, the lack of permanent waste disposal capacity, and the serious concerns raised by persistent drought conditions and demand for water. A copy of the resolution is attached as Exhibit 3.

In addition, acknowledging that Orange County is having a very difficult year financially, the Commissioners voted to hold a public hearing on September 2, 2008, in order to (a) assess the level of public support for participation in the proceeding among County residents and (b) seek financial support from other affected local governments in the event Orange County decided to go forward with a petition to intervene. The sense of

the Commission was that if there were sufficient support among Orange County residents and other local governments in the area, the County would commission a review of the application by Ms. Curran and Dr. Thompson in September, and the filing of a petition to intervene in early October.

e. The Orange County Commission is in recess until August 19, 2008, when the Commissioners are schedule to discuss a backlog of pending agenda items.

f. The 60-day extension requested by Orange County is necessary to allow the Commissioners to hold a hearing to get the views of County voters, to solicit contributions from other counties, cities and towns, and if appropriate to hire counsel and experts to prepare a hearing request.

2. The requested extension is unlikely to cause any delay in the licensing of the proposed Shearon Harris nuclear power plant, because the County seeks a relatively brief extension of time in a review process that is already predicted to take more than three years. The key NRC licensing documents are not scheduled to be issued until 2010 and 2011. For example, the schedule for the Safety Evaluation Report (“SER”) and Environmental Impact Statement (“EIS”) for the Shearon Harris combined construction permit/operating license (“COL”) application, posted on the NRC’s website, gives an estimate issuance date of April 30, 2011, for the SER and May 5, 2010, for the EIS. See <http://www.nrc.gov/reactors/new-licensing/col/harris.html>. The NRC’s schedule for Revision 16 of the AP 1000 standardized design, on which Progress Energy relies for its individual COL application, gives an estimated date of March 2010 for the SER.

<http://www.nrc.gov/reactors/new-licensing/design-cert/amended-ap1000.html>.

Moreover, the NRC recently announced there is “uncertainty” about the schedule for approval of the AP1000 application, due to “changes in the scope of the review requested by Westinghouse since the development of that schedule, and delayed submittals.” Letter from Thomas Bergman, NRC to Robert Sisk, Westinghouse Electric Company (June 27, 2008) (attached as Exhibit 4).

3. Finally, as recently stated by a member of the Atomic Safety and Licensing Board, the NRC’s “adjudicatory system – and its impact on public safety and environmental protection – benefits both from robust Staff performance and from meaningful intervenor participation.” *Shaw Areva MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-10, Memorandum and Order (Ruling on Contentions and All Other Pending Matters), slip op. at 59 (June 27, 2008) (concurring opinion of Judge Michael C. Farrar). The Commission therefore has a strong interest in providing Orange County with an adequate opportunity to raise its concerns in this proceeding.

Accordingly, the Commission should grant the County an extension of 60 days in which to submit a petition to intervene in this proceeding.

Respectfully submitted,



Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
202/328-3500
e-mail: Dcurran@harmoncurran.com

August 1, 2008

**CERTIFICATE OF COUNSEL
PURSUANT TO 10 C.F.R. § 2.323(b)**

Pursuant to 10 C.F.R. § 2.323(b), I certify that on August 1, 2008, I contacted counsel for Progress Energy and the NRC Staff by telephone and made a sincere attempt to obtain their consent to the attached motion for an extension of time, but was unsuccessful.


Diane Curran

August 1, 2008

August 1, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of)
)
PROGRESS ENERGY CAROLINAS, INC.)
(Shearon Harris Nuclear)
Power Plant, Units 2 and 3))

Docket Nos. 52-022, 52-023

**DECLARATION OF BARRY JACOBS IN SUPPORT OF
ORANGE COUNTY'S MOTION FOR 60-DAY EXTENSION
OF DEADLINE FOR FILING PETITION FOR LEAVE TO INTERVENE**

Under penalty of perjury, I, Barry Jacobs, declare as follows:

1. I am Chairman of the Orange County Board of Commissioners. I was elected to the Board in 2006, and my term expires in 2010.
2. The factual assertions in par. 1 of the attached Orange County's Motion For 60-Day Extension Of Deadline For Filing Petition For Leave To Intervene (August 1, 2008), regarding the operations of the Orange County Board of Commissioners, are true and correct to the best of my knowledge.



Barry Jacobs

ARRY JACOBS, CHAIR
 /ALERIE P. FOUSHEE, VICE CHAIR
 MOSES CAREY, JR
 ALICE M. GORDON
 MIKE NELSON

ORANGE COUNTY BOARD OF COMMISSIONERS
 POST OFFICE BOX 8181
 200 SOUTH CAMERON STREET
 HILLSBOROUGH, NORTH CAROLINA 27278



July 7, 2008

Mr. Edward Finley, Chair
 NC Utilities Commission
 4325 Mail Service Center
 Raleigh, NC 27699-4325
 Re: Docket number E-100, Sub 114

Dear Chair Finley:

I write on behalf of the Orange County Board of Commissioners and the citizens of Orange County, all of whom reside within the fifty-mile radius impact zone for accidental release of airborne hazardous nuclear material from Progress Energy's Shearon Harris nuclear power plant. I write now because it is the Board's understanding that the Utilities Commission will shortly begin hearings on the long-term planning and demand forecasts for electrical power generation and generation infrastructure for both Progress Energy and Duke Energy.

For nearly a decade, Orange County has opposed long-term, high-density storage of spent fuel rods in Shearon Harris' existing and proposed spent fuel rod storage pools. The County spent approximately three hundred thousand dollars in an intervention process with the US Nuclear Regulatory Commission (NRC) opposing Progress Energy's plans to activate its existing but – at the time – incomplete storage pools, accompanied by re-racking of the spent fuel rods in an even more dense configuration.

We recognize that a favorable ruling by the Utilities Commission on a Progress Energy forecast of vastly increasing power demand is a precursor to an eventual application for, and granting of, a Certificate of Convenience and Necessity allowing Progress to add as many as two nuclear reactors to the Shearon Harris facility, with an associated increase in high-density pool storage of spent fuel rods.

Therefore, the Orange County Board of Commissioners opposes in the strongest possible terms the issuance of a permit by the NRC or a Certificate of Convenience and Necessity by the NC Utilities for the Progress Energy plan to permit, design and construct one or more reactors at the Shearon Harris nuclear power plant.

WWW.CO.ORANGE.NC.US

PROTECTING AND PRESERVING – PEOPLE, RESOURCES, QUALITY OF LIFE
 ORANGE COUNTY, NORTH CAROLINA – YOU COUNT!
 (919) 245-2130 • FAX (919) 644-0246

Orange County instead seeks the assistance of the Utilities Commission in eliminating this unnecessary exacerbation of a hazardous situation. Further, we request that greater attention be paid to the inadequacy of emergency evacuation procedures in the event of an accident at Shearon Harris, even in its current configuration, given that the fifty-mile area potentially affected includes some two million residents.

Orange County's specific concerns and objections regarding licensure of additional reactors at the Shearon Harris nuclear power plant include:

- Data from the Southeastern Electric Reliability Council shows that Progress Energy and other regional utilities will potentially overbuild by more than sixty large power plants in order to increase sales to other regions where higher electricity rates prevail.
- A 2007 electrical industry study indicates that Progress Energy could reduce nearly one-fifth of its electricity demand through cost-effective efficiency programs phased over eighteen years.
- A 2007 state-commissioned study found that across North Carolina, fourteen percent in energy-saving is achievable, even without key technologies such as solar water heating.
- A study by Duke University economist John Blackburn further refutes the necessity for Progress Energy to gamble billions of public dollars on nuclear power generation infrastructure. Blackburn found that a ten percent increase in energy efficiency, along with minimal renewable energy and cogeneration, could entirely obviate the need to build new nuclear power generators.
- Progress Energy proposes to utilize nuclear power facilities designed by Westinghouse (Model AP4100) that would store highly radioactive waste fuel by means of a controversial method that heightens the risk of catastrophic radiation releases due to accident or terrorism.
- In 2005, the National Academy of Science (NAS) – the nation's preeminent scientific body – confirmed that the safest long-term spent fuel storage is achieved by dry cask methodology; terrorists might find waste pools desirable targets due both to their size and location in non-fortified buildings. Existing pools often contain ten times the amount of radiation released in the 1986 Chernobyl accident. The NAS study noted, "Less spent fuel is at risk in an accident or attack on a dry-storage cask than a spent fuel pool ... an accident or attack on a spent fuel pool puts the entire inventory of the pool, potentially hundreds of metric tons of spent fuel, at risk."
- Progress Energy's application for the new reactors filed with the NRC shows it intends to defy the 2005 NAS warning of "enormous potential consequences" associated with high density, water-filled storage-cooling pools.

- Absent terrorist attack, approximately fifty percent of the risks of catastrophic nuclear plant failure (as calculated by the NRC) are associated with fire-related accidents. Readily available Information, including a study by the Government Accountability Office released in June 2008, indicates ongoing problems with fire safety problems and practices, including at the Shearon Harris plant. However, Progress Energy has indicated that it will take another seven to ten years to bring Shearon Harris into compliance with the NRC's adopted fire safety standards and regulations.
- Progress Energy has indicated that it has or will apply to the NRC for a twenty-year extension of its operating license for the Shearon Harris plant, even though the plant is not in compliance with existing fire safety standards and regulations.
- The permanent storage facility for spent nuclear fuel rods and other high level radioactive waste at the proposed Federal Yucca Mountain facility in Nevada appears to be no closer to fruition now than it was twenty years ago, and will probably not be available for another twenty years, if then.

Thank you for taking time to review this brief outline of Orange County's concerns related to the construction of new reactors at the Shearon Harris nuclear power plant. If we may provide any additional information or clarify the information we have provided, please call upon me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barry Jacobs', written over a horizontal line.

Barry Jacobs, Chair
Orange County Board of Commissioners

CC: Board of Commissioners
Laura Blackmon, County Manager
Diane Curran
Jim Warren, NC Warn

**ORANGE COUNTY BOARD OF COMMISSIONERS
A Resolution**

**In Opposition to the Progress Energy Plan and Permit Application to
US Nuclear Regulatory Commission and Opposition to any
Application for a Certificate of Convenience and Necessity to the NC
Utilities Commission for the Expansion of the Shearon Harris Nuclear
Power Plant by the Construction of One or More Additional Nuclear
Reactors and Associated Storage Pools for Spent Fuel Rods**

WHEREAS, the Orange County Board of Commissioners has a long and well-established practice of opposing activities that could prove harmful to the public health, safety and welfare, particularly in regard to feasible threats to that health, safety and welfare; and

WHEREAS, the Orange County Board of Commissioners has a long and well-established record of concern regarding security and safety issues at the Shearon Harris nuclear power plant and the potential magnitude and catastrophic consequences of a nuclear power plant fire leading to an airborne release of nuclear waste materials; and

WHEREAS, the Orange County Board of Commissioners, through the work of Dr. Gordon Thompson and Diane Curran, Esq., has established to the satisfaction of the scientific community the potential for combustion of spent nuclear fuel rods during low water conditions in the spent fuel rod storage pools; and

WHEREAS, the Shearon Harris nuclear power plant already has the largest quantity of pool-stored spent nuclear fuel rods in the United States; and

WHEREAS, the expansion of the pool storage of fuel rods at Shearon Harris nuclear power plant would be vastly increased by the addition of one or two new reactors, and associated fuel rod storage pools at the facility would only exacerbate the consequences of a fuel rod fire; and

WHEREAS, the vastly increased quantity of pool-stored spent fuel rods at Shearon Harris nuclear power plant will serve to enhance the attraction of this facility for terrorist attack; and

WHEREAS, regardless of the safety and security findings made by NRC inspections of the plant, NRC and Progress Energy policies and procedures promote inadequate security measures to protect the plant and spent fuel pool storage area from terrorist activities culminating in fire and airborne release of toxic nuclear waste materials; and

WHEREAS, absent terrorist attack, approximately 50 percent of the risks of catastrophic nuclear plant failure (as calculated by the NRC) are associated with fire-related accidents; and

WHEREAS, information has been presented to the community at large and the Orange County Board of Commissioners as to ongoing problems with fire safety practices at the Shearon Harris nuclear power plant; and

WHEREAS, Progress Energy has indicated that it will take seven to ten more years to bring the Shearon Harris nuclear power plant into compliance with the NRC's adopted fire safety standards and regulations; and

WHEREAS, Progress Energy has indicated that it has or will apply to the NRC for a twenty year extension of its operating license for the Shearon Harris plant while the plant is not in compliance with existing fire safety standards and regulations; and

WHEREAS, Progress Energy is in the process of evaluating, permitting, designing and constructing two nuclear power reactors at the Shearon Harris nuclear power plant while the existing plant is not in compliance with existing fire safety standards and regulations; and

WHEREAS, The permanent storage facility for spent nuclear fuel rods and other high level radioactive waste at the proposed federal Yucca Mountain facility in Nevada appears to be no closer to fruition than it was twenty years ago and will probably not be available for another twenty years, if ever; and

WHEREAS, the Orange County Board of Commissioners and the community have grave concerns about the NRC's objectivity in evaluating the nuclear power industry's proposals and programs related to the concerns outlined above; and

WHEREAS, numerous technical reports and papers by environmental groups, the utilities themselves and the NRC have shown that additional power generation capacity in this region may be unnecessary for the foreseeable future; and

WHEREAS, the US Nuclear Regulatory Commission has set a deadline of August 4, 2008 for submitting objections to the issuance of a permit for the construction of two new reactors at the Shearon Harris plant, even though

the Westinghouse Model AP4100 reactor technology proposed for use is not expected to be designed, reviewed and permitted by the NRC before 2011; and

WHEREAS, in the light of persistent drought conditions and demands for water, there are serious concerns about the adequacy of cooling water available for additional reactors at Shearon Harris.

NOW, THEREFORE, do we, that the Orange County Board of Commissioners, hereby resolve to:

- Oppose in the strongest terms possible the issuance of a permit by the NRC or of a Certificate of Convenience and Necessity by the NC Utilities for the Progress Energy plan to permit, design and construct one or more nuclear power reactors at the Shearon Harris nuclear power plant.

This is the 31 day of July, 2008.

A handwritten signature in black ink, appearing to read "Barry Jacobs", written over a horizontal line.

Barry Jacobs, Chair
Orange County Board of Commissioners

June 27, 2008

Mr. Robert Sisk, Manager
Licensing and Customer Interface
Regulatory Affairs and Standardization
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: REVIEW SCHEDULE FOR AP1000 REVISION 16 (DOCKET 52-006)

Dear Mr. Sisk:

Your letter of May 20, 2008, requested the U.S. Nuclear Regulatory Commission (NRC) to confirm that uncertainty in the review schedule for the AP1000 design certification amendment has been removed as a result of Westinghouse submittals on screen design/analysis and on bracketed Technical Specification items. These items were referred to in our February 15, 2008, letter establishing the review schedule. NRC agrees that the submittals identified in that letter were completed and submitted by Westinghouse on schedule. However, on June 3, 2008, you withdrew information that was necessary to address down-stream effects in the core. The information addressing down-stream effects in the core is an important consideration in addressing the overall debris generation and long-term recirculation cooling. The June 3, 2008, submittal withdrew design basis information and did not provide new supporting information to replace the withdrawn information. As the staff discussed with you, the information provided in your June 3, 2008, letter is insufficient. It is our understanding that you wish that we identify necessary additional information in the form of requests for additional information (RAIs). The staff is proceeding with that approach. Therefore, although the submittals have allowed the staff to begin review of these issues, uncertainty remains with respect to completion of the long-term cooling review.

In addition, there remains uncertainty about the schedule outlined in the February 15, 2008, letter in light of changes. This uncertainty is created as a result of changes in the scope of work of the review requested by Westinghouse since developing that schedule, and delayed submittals. The scope changes include:

- Change to Integrated Head Package design (to be submitted in June)
- Revision to 50.46 analyses (see February 15, 2008, letter from Westinghouse) (to be submitted in June)
- Revised analysis for containment external pressure (submitted on May 12, 2008 as RAI-TR9-08)
- Revised seismic analyses for rack design (TR44 and 54), and for critical sections (TR57) (to be submitted in June)
- Various impact reports (GLE series)

The delayed submittals include some revised Technical Reports or Request for Additional Information (RAI) responses that have been or are projected to be submitted later than originally planned. These changes alter the basis for the review schedule we originally formulated.

The staff understands that some changes in scope are necessary and may improve the design, and it is not our intent to discourage improvement in the design or analytical methods. We also understand that some submittals may need to be delayed for a variety of causes. Regardless, changes such as these do impact our planned reviews and affect ongoing reviews or require re-review of completed reviews. Given the current workload for all application reviews in the Office of New Reactors, introducing new work or delays in providing information as expected creates planning, scheduling and resource availability issues. As a consequence, the duration of your review may have to be extended in order to integrate new or delayed work into our work planning system. Assuming you provide the above information as committed, our goal is to inform you of changes to the schedule by August 30, 2008.

Sincerely,

/RA/

Thomas Bergman, Deputy Director
Division of New Reactor Licensing
Office of New Reactors

CERTIFICATE OF SERVICE

I certify that on August 1, 2008, I served Orange County's Motion for 60-Day Extension of Deadline for Filing Petition for Leave to Intervene on the following individuals, by posting the motion on the NRC's Electronic Information Exchange system:

John O'Neill, Esq.
Pillsbury Winthrop Shaw Pittman, L.L.P.
2300 N Street N.W.
Washington, D.C. 20037-1122
JohnOneill@PillsburyLaw.com

Sara Brock, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Sara.Brock@nrc.gov


Diane Curran