

JOHN D. RUNKLE
ATTORNEY AT LAW
POST OFFICE BOX 3793
CHAPEL HILL, N.C. 27515-3793

919-942-0600 (o&f)
jrunkle@pricecreek.com

VIA EMAIL TRANSMISSION

October 13, 2008

Dr. Paul B. Abramson, Chair
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. Michael F. Kennedy
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. William E. Kastenberg
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Progress Energy Carolinas, Inc.
Shearon Harris NPP, Units 2 and 3
Docket Nos. 52-022 and 52-023 COL
ASLBP No. 08-868-04-COL

Gentlemen:

This is the response by the Petitioner, the North Carolina Waste Awareness and Reduction Network (“NC WARN”), to the letter to the Board by Mr. O’Neill on behalf of Progress Energy, dated October 6, 2008. This Board Notification included three documents that Progress Energy believed were potentially relevant and material to issues raised in NC WARN’s contentions. Progress Energy acknowledges that it, and other parties, have an obligation to advise the Board of new documents that are relevant and material to the proceeding, and then submits three documents, but fails to provide at least one other document that is relevant. This response then addresses two

of the documents in the Board Notification and the additional document that is relevant and material to issues raised in NC WARN's contentions. To the extent the documents provide material support for any of NC WARN's contentions, they are adopted in NC WARN's Petition for Intervention.

I. Response to the items in the Board Notification.

1. In Enclosure 2 in its Board Notification, Progress Energy presents the application amendments it submitted to the NRC on or about October 3, 2008 amending Section 10.4 of the Environmental Report ("ER") in the COLA. The amendment in effect adopts Progress Energy's estimates for similar AP1000 reactors in Levy County, Florida, as the estimated costs of the proposed Harris reactors. Although NC WARN understands that the Levy County reactors are "greenfield" reactors, the cost estimates provided in the amendment are reasonable in light of other published estimates at this date (although the cost estimates for all reactors have increased significantly over the past three years).

After discussion with Mr. O'Neill, NC WARN believes that the cost figures in the amendment render the part of NC WARN's contention EC-1 moot that alleges that the estimate in the ER is understated. However, NC WARN also requests that the Board take notice that the amendment limits itself to the "expected overnight capital cost" for the proposed Harris reactors. This ignores two important additional costs, the financing charges that would add an additional 30 - 40% to the total cost, and the project escalation increases of 3%/year. Both of these are presented on page 40 of NC WARN's Petition for Intervention and together may double the expected overnight capital cost to yield the total cost. The estimate of total cost in the contention is required to conduct a reliable cost-benefit analysis on alternative sites and technologies. The remainder of the contention regarding the cost-benefit analysis requirements stands.

2. In Enclosure 1 of its Board Notification, Progress Energy submits the cover letter by Westinghouse to the NRC of September 22, 2008 for the AP1000 Design Control Document ("DCD"), Revision 17. The submittal does not include either the Sensitive or the Public Version of the document, but at this point, it is NC WARN's understanding that these are just a proffer of what may be included in the application for Revision 17, rather than the application amendments for Revision 17 itself. NC WARN has not had the opportunity to review these documents in detail because the document is currently not available on the NRC website or in the ADAMS system. Without access to the submittals, it is impossible for NC WARN to determine if the new Revision 17 changes are relevant to its contention TC-1.

NC WARN believes that the deficiencies in Revision 16, as alleged in NC WARN's contention TC-1 (page 13 of NC WARN's Petition to Intervene), are evidenced by the

necessity of submitting a new revision. Enclosure 1, on pages 2 and 3, lists a number of significant safety-related items that have not been resolved in Revision 16, even though the COLA is not complete without their resolution.

Of more importance, the COLA for the proposed Harris reactors references the AP1000 DCD, Revision 16, now apparently to be superseded by the significant changes in Revision 17. NC WARN believes that once the application for Revision 17 is submitted, it may be grounds for filing a late-filed contention. The current review schedule for certifying Revision 16 has been superseded by the need for a new schedule to review the changes in the DCD to include resolution of the currently unresolved issues in both Revisions 16 and 17.

II. Additional items for Board notice.

1. The NRC's response to Progress Energy, dated September 26, 2008, "Shearon Harris Nuclear Power Plant, Unit 1 - Acceptance Review NFPA-805 License Amendment Request," ADAMS Accession No. ML082701158, provides the results of the NRC Staff acceptance review of Progress Energy's license amendment regarding fire protection. Attached herein as Enclosure P-1. The Staff uses the "rare exception provision of LIC-109" to accept the license amendment even though it is demonstrably flawed. The document is relevant to NC WARN's contention TC-2, on page 198 of NC WARN's Petition to Intervene, describing the ongoing track record of non-compliance at Harris 1. This document lists eight significant deficiencies in Progress Energy's unsuccessful efforts to conduct a probabilistic risk assessment in its proposed transition to NFPA 805 at Harris Unit 1. It should be noted that there is currently no timetable for resolution of this more than 20-year non-compliance with fire protection standards.

Please advise if the Board requires any additional actions or filings to incorporate the newly filed documents as support for NC WARN's contentions.

Sincerely,

/s/jr

John D. Runkle

cc. EIE service list

Enclosure P-1 – "Shearon Harris Nuclear Power Plant, Unit 1 - Acceptance Review NFPA-805 License Amendment Request," September 26, 2008.