

November 13, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION BY NC WARN TO ALLOW NEW CONTENTION

NOW COMES the North Carolina Waste Awareness and Reduction Network, Inc. (“NC WARN”), by and through the undersigned counsel, with a motion to allow a new contention related to the new revision certification process for the AP1000 reactor design. NC WARN alleges in this new contention that the Combined Operating License Application (“COLA”) for the proposed Harris reactors does not contain the necessary information on major design and operational components, nor is there any timetable for when these components may be certified or even known.

In support of the motion is the following:

LEGAL CONSIDERATIONS

In this motion, NC WARN adopts by reference the allegations and arguments in the Petition for Intervention and Request for Hearing (“Petition for Intervention”), filed in

the above-captioned matter on August 4, 2008, and its Reply to Staff and Progress Energy Answers to Petition for Intervention and Request for Hearing filed on September 5, 2008. As demonstrated in the Petition for Intervention, NC WARN has representational standing through its members to make this motion. Neither the applicant nor the NRC staff contested the standing of NC WARN in their responsive pleadings.

In making a new contention, NC WARN adopts herein the arguments in its Petition for Intervention on the necessity to protect public safety under the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*, and the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.* It is evident that a COLA must include:

a preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

10 C.F.R. § 50.34(a)(4). The applicant for a license and the resulting Environmental Impact Statement (“EIS”) prepared by the NRC must analyze and evaluate the adequacy of the plant to protect the public health and safety from accidents.

In its Petition for Intervention, NC WARN further presents the legal standard used by the Atomic Safety and Licensing Board (“ASLB”) to decide on the validity of proffered contentions. As demonstrated below, this new contention meets all of the requirements for admission of contentions pursuant to 10 C.F.R. § 2.309(f)(1). As this is a new contention that is filed after the initial filing, there are three additional factors that need

to be shown:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2).

The information that provides the bases for the new contention was not filed by Westinghouse until September 22, 2008. In its Board Notification dated October 6, 2008, Progress Energy filed a copy of the cover letter to Revision 17 but did not submit either the sensitive version or the public version. The Westinghouse document was not entered into the ADAMS system until approximately October 17, 2008,¹ and to date, the entire application apparently has not been entered into the ADAMS system. Rather than wait until the entire application for Revision 17 was submitted, the new contention was filed promptly after NC WARN had the opportunity to at least nominally review what would be included in it. This is new information that is materially different from earlier submittals by Westinghouse as those relate to the AP1000 DCD Revision 16 that has been adopted as part of the Harris COLA. The basis for the new contention clearly addresses the deficiencies in the AP1000 Revision 17 as well as the deficiencies in the COLA.

In its Memorandum and Order (Ruling on Standing and Contention Admissibility), LBP-08-21, dated October 30, 2008, the Atomic Safety and Licensing Board held that

¹ ADAMS Accession No. ML082380866.

NC WARN had one admissible contention, designated as TC-1. This contention addressed the deficiencies in the COLA because of inadequacies in Revision 16, stating:

Contention TC-1 (AP1000 Certification). The COLA is incomplete because many of the major safety components and procedures at proposed Harris reactors are only conditional at this time. The COLA adopts by reference a design and operational procedures that have not been certified by the NRC or accepted by the applicant. Modifications to the design or operational procedures for the AP1000 Revision 16 would require changes in Progress Energy's application, the final design and operational procedures. Regardless whether the components are certified or not, the COLA cannot be reviewed without the full disclosure of all designs and operational procedures.

Petition for Intervention, page 13. The new contention, designated as TC-7, adopts the arguments of the admitted contention but it should be noted that the new contention, although similar, covers new ground.

NEW CONTENTION

Contention TC-7 (AP1000 Certification Revision 17).

The COLA is incomplete because many of the major safety components and procedures at proposed Harris reactors are only conditional at this time and will be for the indefinite future. In its COLA, Progress Energy has adopted the AP1000 Revision 16 which has not been certified by the NRC and with the filing of Revision 17 by Westinghouse, Revision 16 will no longer be reviewed by the NRC Staff. Progress Energy is now required to resubmit its COLA as a plant-specific design or to adopt Revision 17 by reference and provide a timetable when its safety components will be certified. The COLA cannot be reviewed at this time without the full disclosure of all

designs and operational procedures. Either plant-specific design or adoption of AP1000 Revision 17 would require changes in Progress Energy's application, the final design and operational procedures.

Support for contention. The most significant elements of the proposed reactors, i.e., the design and operational practices, are lacking in the COLA. Westinghouse submitted its AP1000 DCD Revision 15 to the NRC in March 2002, and although the NRC issued a final rule certifying the design in January 2006, Westinghouse then submitted Revision 16 in 2007, with an estimated completion date for certification that was extended until at least mid-2011.² The DCD for the AP1000 Revision 16 has been adopted by reference for the proposed Harris reactors and is, as such, part of the application.³ With the submittal of Revision 17, there is now no estimated completion date for the certification of the AP1000 reactors and the proposed Harris reactors remain tied to Revision 16.

On September 22, 2008, Westinghouse submitted its AP1000 Revision 17, and as a result, the certification of components in Revision 16 will no longer be reviewed by the NRC Staff in Docket No. 52-006. Surprisingly, the Revision 17 has not been available on the NRC website to date, even though the NRC website states that it is expected to be available for public access thru the NRC's ADAMS in "the very near future." Revision 17 contains the changes from Revision 16, the Westinghouse

² www.nrc.gov/reactors/new-reactors/new-licensing-files/new-rx-licensing-app-legend.pdf (October 22, 2008). For discussion of AP1000 DCD Revision 16 process, see www.nrc.gov/reactors/new-reactors/design-cert/amended-ap1000.html.

³ Appendix D to 10 C.F.R. Part 52 and the AP1000 DCD Revision 16.

Technical Report 134 and new changes, but until it is readily available, the specifics that provide the basis for this contention will need to be supplemented after full review of that document.

As NC WARN stated in its Petition for Intervention, pages 13 -18, regarding Contention T-1, it remains impossible to conduct a meaningful technical and safety review of the COLA without knowing the final design of the reactors as they would be constructed by Progress Energy or the operational practices that Progress Energy expects to use at those reactors. It is impossible to conduct or review the probabilistic risk assessment (“PRA”) for the proposed Harris reactors without a final design and operations procedures.

On its face, Revision 17 demonstrates that the DCD, and as a result, the COLA, is incomplete and that there remain a number of serious safety inadequacies in the AP1000 design that have not been satisfactorily addressed. In addition to the still unresolved issues in Revision 16,⁴ the uncertified components specifically addressed in Revision 17, include turbine design changes, physical security, human factors engineering, responses to seismic activities and adverse weather conditions, radiation protection measures, technical specifications for valves and piping, accident analyses, and aircraft impact. These non-certified components interact with Tier 1 components and each other to a significant degree. During the new Revision 17 certification process, any or all of these may be modified by the Commission, and as a result,

⁴ The unresolved issues in Revision 16 are containment, control room set up, seismic qualifications, fire areas, heat removal, human factors engineering design, plant personnel requirements, operator decision-making, alarms and piping.

require the applicant to modify its application.

It should be noted in the Memorandum and Order (CLI-08-15) denying NC WARN's motion to indefinitely postpone the notice of hearing in this docket because of the lack of certified design and operational components under Revision 16, the Commission states that

If the Petitioners believe the Application is incomplete in some way, they may file a contention to that effect. Indeed, the very purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application; such contentions are commonplace at the outset of NRC adjudications.

Similar to Contention TC-1, the validity of this contention does not depend on whether the ultimate design is certified or not; the COLA is incomplete and cannot be reviewed by the NRC staff or affected petitioners.

An assessment of risk is required for a COLA review, and that depends on the ultimate design of the reactor and how all of the components interact with each other. Likewise, the ER culminates in the assessment of DBAs, and then the severe accidents to develop the severe accident mitigation design. The NRC staff's Environmental Assessment on the AP1000 Revision 15 was conducted in 2005, prior to the submittal of the Harris application, and there is no EA on either Revisions 16 and 17. Without having the current configuration, design and operating procedures in the application, the risk assessment and SAMAs cannot be determined. Until major components are incorporated into the COLA for a full review, much of the interaction between the various components cannot be resolved.

Conclusion. The deficiencies in the Harris COLA are manifold with much of the technical descriptions of major components of the plant subject to change. The

unresolved issues in basic design and operating requirements for the AP1000 reactor Revision 16 have been pushed into a new revision, Revision 17. To date, there is no timetable for the certification of the new revision. Regardless of whether the reactor components would be certified or not at some time in the future, the COLA does not contain the necessary information on major design and operational components, nor is there any timetable for when these components may be certified.

THEREFORE, NC WARN prays that the ASLB admits this new contention and to hold full hearing on it.

Respectfully submitted this the 13th day of November 2008.

_____/s/jr_____
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CERTIFICATE OF COUNSEL

Pursuant to 10 C.F.R. 2.323(b), I certify that on November 12, 2008, I contacted counsel for NRC, Sara E. Brock, and counsel for Progress Energy, Robert B. Haemer, by telephone to inform them that NC WARN was filing this new contention. Ms. Brock responded that the Staff will not take a position until it has the opportunity to review the contention. Mr. Haemer stated that Progress would oppose all or part of the contention.

_____/s/jr_____
John D. Runkle, Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that copies of this MOTION BY NC WARN TO ALLOW NEW CONTENTION was served on the following via email and via the EIE system:

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This is the 13th day of November 2008.

_____/s/jr_____
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