

November 29, 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))	
)	

REPLY BY NC WARN TO RESPONSES BY
PROGRESS AND NRC STAFF IN OPPOSITION TO
NC WARN'S MOTION TO HOLD PROCEEDING IN ABEYANCE

NOW COMES the North Carolina Waste Awareness and Reduction Network, Inc. ("NC WARN"), by and through the undersigned counsel, with a reply to Progress Response to NC WARN Second Motion to Hold Proceeding in Abeyance and NRC Staff Answer to "Motion by NC WARN to Hold the Harris Combined License Application Adjudication in Abeyance Pending Completion of Rulemaking on The Standard Design Certification Application for The AP1000 Reactor Design," both filed on November 24, 2008.

In this motion, NC WARN adopts the compelling legal arguments in Texans for a Sound Energy Policy ("TSEP") in its Petition to Hold Docketing Decision and/or Hearing Notice for Victoria Combined License Application in Abeyance Pending Completion of Rulemaking on Design Certification Application for Economically Simplified Boiling Water Reactor ("Texas Petition"), filed on November 3, 2008, and the AP1000 Oversight

Group's Response to the TSEP Petition, filed on November 18, 2008, and AP1000 Oversight Group's Response to Exelon Motion to Dismiss Unauthorized Responses, filed on November 28, 2008.¹

The Texas Petition asks in part that the Commission reconsider its decision in CLI-08-15 denying NC WARN's earlier petition to stay the proceedings in the present docket, although TSEP's position does not depend on the Commission reconsidering CLI-08-15. Texas Petition, at page 3. In an abundance of caution, NC WARN submitted its Motion to Stay in a timely manner in order to preserve its ability to argue to the ASLB, or the Commission, that the Harris proceeding should also be stayed if the Commission decides in TSEP's favor. NC WARN did not want to be in the procedural position of having delayed overly long in asserting the legal arguments in the Texas Petition because they are also relevant in the Harris docket. Prudence dictates that these arguments should be made as soon as possible in order to preserve the ability to later argue them to the Commission.

Both of the opposing parties argue that this motion is untimely. In its petition, TSEP argues compellingly that the Commission cannot initiate a licensing proceeding until the reactor design and operational procedures are finalized and included in the combined COLA. This a condition precedent that must be met before the process can begin; the Texas Petition maintains that a licensing proceeding is unlawful until the application is complete. This is the core breakdown in the licensing proceedings, that

¹ NC WARN is one of the members of the AP1000 Working Group, consisting of organizations in the Southeast concerned about the deficiencies in the combined operating license applications ("COLAs") that adopt the AP1000 reactors by reference.

no one knows what the final designs and operational procedures will be at the reactors. From the beginning of the latest round of COLAs, the Commission anticipated that reactor designs and operational procedures would be finalized prior to the initiation of the COLA reviews.²

The Commission also stated that the risk would be on the applicant if the reactor design and operational procedures were not finalized.³ One of the risks undertaken by Progress Energy in submitting its COLA for the proposed Harris reactors is that the Commission would find that its application cannot be reviewed without including the final design and operational procedures. As NC WARN argues, based on the Texas Petition, that until that happens, the licensing proceeding should be held in abeyance.

THEREFORE, NC WARN prays that the ASLB grants NC WARN's motion to stay the proceedings.

Respectfully submitted this the 29th day of November 2008.

_____/s/jr_____
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² In the Memorandum and Order (CLI-08-15) denying NC WARN initial motion to stay the notice of hearing, the Commission stated that "although the Commission anticipated that applicants would first seek to have designs certified before submitting COLs which reference those designs, the NRC's regulations, nonetheless, allow an applicant – at its own risk – to submit a COL application that does not reference a certified design."

³ See footnote 2 above.

CERTIFICATE OF SERVICE

I hereby certify that copies of this REPLY BY NC WARN TO RESPONSES BY PROGRESS AND ANSWER BY NRC STAFF IN OPPOSITION TO NC WARN'S MOTION FOR LEAVE TO FILE A NEW CONTENTION was served on the following via email and via the EIE system:

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This is the 29th day of November 2008.

_____/s/jr_____
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