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January 29, 2009

Hon. G. Paul Bollwerk, III
Hon. Nicholas G. Trikouros
Hon. James F. Jackson
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Southern Nuclear Operating Co., Inc. (COL for Plant Vogtle)
Docket Nos. 52-025-COL and 52-026-COL; ASLBP No. 09-873-01-COL-BD01

Dear Judges Bollwerk, Trikouros and Jackson:

Yesterday in oral argument on Petitioner's contentions MISC 1 and 2, reference was made to December 23, 2008 decision of the Atomic Safety and Licensing Board in the Shearon Harris Combiend License proceeding. The citation to the decision in question is Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP 08-868-04-COL-BD01 (Dec. 23, 2008). The discussion referenced is set forth at pages 7 through 11. For the convenience of the Board and the Parties, I have attached a copy of the slip opinion to this letter.

Sincerely,

/s/ M. Stanford Blanton

M. Stanford Blanton

MSB:dc
Encl.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Paul B. Abramson, Chairman
Dr. William E. Kastenberg
Dr. Michael F. Kennedy

In the Matter of PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3)	Docket Nos. 52-022-COL & 52-023-COL ASLBP No. 08-868-04-COL-BD01 December 23, 2008

MEMORANDUM AND ORDER
(Ruling on Request to Admit New Contention)

This proceeding concerns the 10 C.F.R. Part 52 application of Progress Energy Carolinas (Progress Energy or Applicant) for a combined operating license (COL) to construct and operate two new units employing the Westinghouse Electric Corporation AP1000 advanced pressurized water power reactor certified design on its existing Shearon Harris site. On November 13, 2008, Intervenor NC WARN submitted a motion seeking the admission of a new contention, designated as TC-7, concerning information that is included in the pending Revision 17 to the Design Control Document (DCD) for the AP1000 reactor.[1] Intervenor's motion cites, as a principal basis for its motion, a cover letter by Westinghouse detailing what is included in Revision 17. Both Progress Energy and the NRC Staff filed responses objecting to the admission of this contention,[2] and NC WARN filed a reply to those objections.[3]

For the reasons set out below, we find that NC WARN's Contention TC-7 is inadmissible.

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[1] See Motion by NC WARN to Allow New Contention (Nov. 13, 2008) [hereinafter NC WARN Submission].
[2] See Progress Response Opposing the Motion by [NC WARN] for Leave to File a New Contention (Nov. 24, 2008) [hereinafter Progress Answer]; NRC Staff Answer to "Motion by NC WARN to Allow New Contention" (Nov. 24, 2008) [hereinafter Staff Answer].
[3] See Reply by NC WARN to Responses by Progress and NRC Staff in Opposition to NC WARN's Motion for Leave to File a New Contention (Nov. 28, 2008) [hereinafter NC WARN Reply].

I. BACKGROUND

On October 30, 2008, this Board granted a Petition to Intervene submitted by NC WARN, opposing an application by Progress Energy to construct and operate two Westinghouse AP1000 pressurized water reactors at the existing Shearon Harris site.[4] This Board admitted one Contention, TC-1, and, holding any hearing in abeyance, we referred the contention to the NRC Staff for further review in accordance with the Commission directive in the Final Policy Statement on the Conduct of New Reactor Licensing Proceedings, 73 Fed. Reg. 20,963 (Apr. 17, 2008), and in accordance with the Commission ruling and directive in CLI-08-15, 68 NRC __ (slip op.) (July 23, 2008).[5] While the Board was considering whether the hearing petition should be granted, Progress Energy notified the Board by letter dated October 6, 2008, of the September 22, 2008 Westinghouse letter to the NRC, submitting Revision 17 to the AP1000 Design Certification Application.[6]

On November 13, 2008, NC WARN filed a motion to admit a new contention based on the Westinghouse letter. In response to a request to establish a scheduling order for this and any future similar untimely filed contentions, this Board issued an order detailing the requirements for such contention motions and subsequent responses and replies to those motions.[7] On November 24, 2008, both Progress Energy and the NRC Staff filed responses in opposition to the admission of the new contention.[8] On November 28, 2008, NC WARN filed a reply to the answers of Progress Energy and the NRC Staff.[9]

II. ANALYSIS

A. Timeliness Standards Governing Admissibility of TC-7

This Board, on November 19, in response to the request of all the parties, established a scheduling order that contained a two-step process for filing and addressing new contentions

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[4] See LBP-08-21, 68 NRC __ (slip op.) (Oct. 30, 2008).
[5] See id. at __-__ (slip op. at 5-9).
[6] See Letter from John O'Neill, Counsel for Applicant (Oct. 6, 2008).
[7] See Order (Scheduling Order for Responses to Late-Filed Contentions) (Nov. 19, 2008) [hereinafter Scheduling Order].
[8] See Progress Answer; Staff Answer.
[9] See NC WARN Reply.

relative to the subject COLA and the design certification rulemaking proceeding.[10] First, motions to admit a new contention must be filed seeking leave from the Board to file such a contention and addressing the requirements of sections 2.309(f)(2) and 2.309(c)(1). Second, if the Board finds those matters satisfactorily addressed and sufficient to meet the regulatory requirements, the Applicant and the NRC Staff then file Answers addressing the admissibility portion of the motion for a new contention. Since admissibility of any late-filed contention hinges as a threshold matter upon whether or not the timeliness standards are satisfied, our November 19 Order simply separates addressing the timeliness standards from addressing the admissibility standards for this unique situation; it does, of course, also require the Intervenor to address the contention admissibility standards set out in section 2.309(f)(1).[11]

1. The Requirements of 10 C.F.R. § 2.309(f)(2)

Section 2.309(f)(2) expressly sets out the conditions with which an intervenor who has been admitted in a proceeding and later seeks admission of a new contention must comply for the proposed new contention to be admissible. Under these provisions, for the new contention to be admissible it must be shown that:

> (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.[12]

In its motion to admit a new contention, NC WARN attempts to adopt by reference previous claims and assertions contained in its original August 4 Petition for intervention.[13] NC WARN recites the components of a COLA as set out in 10 C.F.R. § 50.34(a)(4) and asserts that the COLA is incomplete and "a number of serious safety inadequacies in the AP1000 design

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[10] See Scheduling Order.
[11] See id.
[12] 10 C.F.R. § 2.309(f)(2).
[13] NC WARN Submission at 1-2.

have not been satisfactorily addressed."[14] NC WARN asserts that "[i]n addition to the still unresolved issues in Revision 16," there are additional "uncertified components specifically addressed in Revision 17."[15] In making an argument that Revision 17 does not remedy the certification deficiencies it claimed were present in its admitted Contention TC-1, NC WARN restates Contention TC-1[16] and further asserts that "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."[17] NC WARN admits that it has not reviewed Revision 17, notes that the "entire application apparently has not been entered into the ADAMS system" and states that the new contention "was filed promptly after NC WARN had the opportunity to at least nominally review what would be included in it."[18] Despite the fact that they have not reviewed Revision 17, NC WARN asserts that "Revision 17 demonstrates that the DCD, and as a result, the COLA is incomplete."[19]

It is clear that the September 22, 2008 letter was not previously publicly available; therefore, if the information in that letter and the documents it references is indeed new and material, its newness would enable satisfaction of the requirements of section 2.309(f)(2)(i) if the petition related to it were filed in a timely manner. However, as we discuss below, NC WARN has completely failed to address the nearly six-week delay in its filing and to make the required showing of materiality and timeliness of its filing as required by sections 2.309(f)(2)(ii) and (iii).

Rather than make a substantive argument regarding how or why the requirements of section 2.309(f)(2)(ii) are met, NC WARN merely makes the bare, unsupported and conclusory statement that "[t]his 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

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[14] Id. at 6.
[15] Id.
[16] See id. at 4.
[17] Id.
[18] Id. at 3.
[19] Id. at 6.

the Harris COLA."[20] But bare, unsupported assertions are insufficient to support admission of a new contention.[21] Furthermore, and more fundamental here, because NC WARN has failed to demonstrate how the information in the September 22 letter is materially different from information previously available, including, for example, failing to point to any specific part of the letter or information about Revision 17 that would indicate any change, let alone a material one, from the current COLA submitted by Progress Energy, NC WARN fails to satisfy the requirements of section 2.309(f)(ii). NC WARN's attempts to incorporate information from its original petition regarding Contention TC-1, without specificity, explanation or logical reference, is insufficient to overcome this failure.[22]

Finally, as to the requirements of section 2.309(f)(2)(iii), NC WARN has neither provided any explanation, nor offered any logical reason, for its delay of nearly six weeks after becoming aware of the Westinghouse letter to the date it filed this motion to admit its proposed new contention. This unexplained delay causes this Board to find this motion untimely.

2. The requirements of 10 C.F.R. § 2.309(c)(1)

Because the motion to admit the proposed new contention was filed after the date for submitting hearing petitions had passed, for the proposed new contention to be admissible it must also satisfy the additional factors governing untimely filed submissions set out in 10 C.F.R. § 2.309(c)(1).[23] However, NC WARN failed entirely to address any of the factors set out in

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[20] Id. at 3.

[21] "A petitioner's issue will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'" Fansteel, Inc. (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (citing GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

[22] Nor do we find anything in the original petition that provides such specificity.

[23] In pertinent part, the provision sets forth five factors to be weighed in determining the admission of a new contention subsequent to the time the filing party's hearing petition is granted:

> (i) Good cause, if any, for the failure to file on time; . . .
> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
> (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

section 2.309(c)(1) in its motion to admit its proposed new contention, addressing those factors only in its reply to the answers submitted by Applicant and NRC Staff pointing out that failure.[24] Such an effort to supply new and material additional information in a reply is impermissible under our regulatory standards as is well explained by relevant case law.[25] Furthermore, even if we were to consider NC WARN's assertion, in that reply, that it had addressed the factors of section 2.309(c)(1)(i-viii) and asserting that it had incorporated its support from its original petition in its request for a hearing,[26] we would find that assertion vague and non-specific. Moreover, NC WARN fails to indicate in what manner, or where, or even how its original petition had addressed these factors (which would certainly not be expected to be addressed in its original timely petition), and therefore is entirely insufficient to overcome this failure.

For the foregoing reasons, we find that NC WARN has failed to satisfy the requirements of both sections 2.309(f)(2) and 2.309(c)(1) and Contention TC-7 is not admissible.

> (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
> (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1)(i), (iv)-(viii).

[24] As NC WARN has been granted standing in this proceeding, it is not necessary to address the other factors of 2.309(c)(1) that are matters that go to the standing of a petitioner.

[25] As the Commission has stated:

> NRC contention admissibility and timeliness requirements demand a level of discipline and preparedness on the part of petitioners. But there would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements every time they "realize[d] . . . that maybe there was something after all to a challenge it either originally opted not to make or which simply did not occur to it at the outset."

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003) (quoted in La. Energy Servs., L.P. (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004)). Further, "[i]n Commission practice, and in litigation practice generally, new arguments may not be raised for the first time in a reply brief." LES, CLI-04-25, 60 NRC at 225.

[26] See NC WARN Reply.

B. Contention Admissibility Standards

In addition to satisfying the foregoing requirements, NC WARN must also show that the new contention is admissible under section 2.309(f)(1)(i)-(vi).[27] Those factors were discussed in our ruling on NC WARN's original petition to intervene, and will not be repeated here.[28] Because NC WARN's request for admission of its new contention has failed to satisfy the threshold requirements for admission of an untimely filed contention, we do not analyze here those contention admissibility requirements as they might have been applicable to Contention TC-7.

C. Additional Requirements for Consideration

NC WARN claims that its proposed new contention, although similar to its admitted Contention TC-1, covers new ground.[29] In our October 30 Order ruling on contention admissibility, we found that the admissible portion of "Contention TC-1 is not a challenge to the AP1000 design review process, but rather a challenge to the Application itself."[30] NC WARN asserted in connection with Contention TC-1 that there were a number of specific omissions from the COLA which made it impossible for the NRC Staff and affected petitioners to review the COLA.[31] NC WARN further asserted that the risk assessment could not be performed "without having the current configuration, design and operating procedures in the application."[32] This Board found that sufficient to satisfy the requirements for specificity associated with a contention of omission and, as the Commission directed in CLI-08-15 for such circumstances, admitted Contention TC-1

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[27] See Sacramento Mun. Util. Dist. (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 362-363 (1993). Note also that this Board referenced this requirement in its October 30 Order admitting TC-1, and therefore, in addition to being held generally to be aware of all of our regulatory requirements, NC WARN was put on express notice by this Board. See LBP-08-21, 68 NRC __ (slip op.).
[28] See LBP-08-21, 68 NRC at __ (slip op. at 5).
[29] NC WARN Submission at 4.
[30] See LBP-08-21, 68 NRC at __ (slip op. at 8).
[31] See Petition for Intervention and Request for Hearing by [NC WARN] at 17 (Aug. 4, 2008) [hereinafter Petition for Intervention].
[32] See Petition for Intervention at 17.

based on those identified omissions.[33] However, unlike the challenge to the COLA made in Contention TC-1, proposed new Contention TC-7 focuses on the lack of final certified design safety components and procedures for the Shearon Harris site which it asserts are indicated by revisions to the DCD.[34]

Generally, the safety components, procedures and safety analyses for a nuclear power plant are set out in the Final Safety Analysis Report (FSAR) for that individual plant. In this case, and in any other case where a COLA is submitted that incorporates a certified design, the applicant is required to incorporate the final FSAR for the certified design and identify any changes to it associated with the plant/site-specific adaptation for the particular COLA.[35] The final approved FSAR from the design certification cannot be challenged in the COLA licensing proceeding.[36] As described in 10 C.F.R. § 52.79

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[33] See LBP-08-21, 68 NRC __, __-__ (slip op. 6-9).

[34] See NC WARN Submission at 4-8.

[35] See 10 C.F.R. 52.79(d)(1), which provides, in relevant part, as follows:

> If the [COLA] references a standard design certification, . . . (1) the [FSAR] need not contain information or analyses submitted to the Commission in connection with the design certification, *provided, however*, that the [FSAR] must either include or incorporate by reference the standard design certification [FSAR] and must contain, in addition . . . information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the design certification. In addition, the plant-specific PRA information must use the PRA information for the design certification and must be updated to account for site-specific design information and any design changes or departures.

[36] Appendix D to Part 52 explains:

The Commission considers the following matters resolved within the meaning of 10 C.F.R. § 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under 10 C.F.R. § 52.103, and enforcement proceedings involving plants referencing this appendix:

> 1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking record for certification of the AP1000 design;
> 2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP1000 design;
> 3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;
> 4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

(d)(1), and as specified in sections 52.63(b)(1) and 52.93, although the Commission requires an applicant for a COLA to incorporate the FSAR from the certified design, a COLA applicant may request exemptions from Commission regulations and must incorporate site-specific design information and design changes or departures in its site specific FSAR for the certified design.[37] In such an event, these exemptions, changes, or departures must be reviewed in the same manner as issues that are "material to the license hearing."[38] There will be an opportunity for the petitioner to challenge the safety analysis for the plant to the extent it differs from the FSAR for the certified design.[39] Not only are challenges to the certified design outside the scope of a licensing board proceeding on a COLA, it is not possible at this juncture to challenge design issues for the COLA where the design certification is yet to be completed, and the applicant has yet

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> 5. All departures from the DCD that are approved by license amendment, but only for that plant;
> 6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;
> 7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for the AP1000 design and Appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

10 C.F.R. Part 52, Appendix D.

[37] See 10 C.F.R. §§ 52.63(b)(1), 52.79(d)(1), 52.93.

[38] See AP1000 Design Certification, Final Rule, 71 Fed. Reg. 4464 (Jan. 27, 2006) (citing 10 C.F.R. § 50.12(a)). "If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 C.F.R. § 52.63(b)(1)." Id. at 4473.

[39] As expressed by the Commission in CLI-08-15,

> When a contention is raised in a COL proceeding that challenges information in the design certification rulemaking, licensing boards "should refer such a contention to the staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible." If an applicant later decides not to reference a certified design, and instead proceeds with a site-specific design, any admissible issues would have to be addressed in the licensing adjudication.

(citing Final Policy Statement on the Conduct of New Reactor Licensing Proceedings, 73 Fed. Reg. 20,963, 20,972 (Apr. 17, 2008) [hereinafter Final Policy Statement]).

to identify (in its plant/site specific COLA FSAR) any changes from the final certified design FSAR.[40]

As the design certification rulemaking evolves, and the COL applicant expressly adopts those evolutionary changes, such an adoption might appear to put intervenors on notice that there is new information and to toll the "clock" as to the timeliness of motions relating to the new information contained therein. However, as those matters relate solely to the design certification rulemaking, intervenors must wait until the applicant takes a particular exemption, change, or departure in its COLA.[41] For example, when addressing exemptions, our regulations require that "[t]he granting of an exemption on request of an applicant is subject to litigation in the same manner as other issues in the operating license or combined license hearing."[42] Effectively, this means that when the applicant finalizes its site-specific FSAR (including its site-specific Probabilistic Risk Assessment), any exemptions, changes or departures will give rise to an opportunity for a hearing thereupon.

In its Final Policy Statement for the Conduct of New Reactor Licensing Proceedings, the Commission explained the logic behind allowing admission of contentions similar to TC-1, despite their prematurity, and holding any hearing on them in abeyance,[43] the exact policy it followed in this licensing proceeding when NC WARN asked them to indefinitely delay this licensing proceeding until the final design certification was completed.[44] Admissible contentions that assert omissions in the COLA based on the design certification process are to be referred to the Staff, and any hearing by a licensing board held in abeyance. In the COL process where an applicant is relying

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[40] See 10 C.F.R. Part 52, Appendix D.
[41] As an example, 10 C.F.R. § 52.93(a)(1) and (2) specify that the Commission may grant requested exemptions, although that section does not specify whether or not, or under what conditions, such a situation gives rise to notice and opportunity for a hearing.
[42] 10 C.F.R. § 52.63(b)(1).
[43] See Final Policy Statement at 20,966.
[44] See Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC __ (July 23, 2008).

on a standard design certification that has yet to be granted, the applicant may, once the FSAR for the certified design is finalized, adopt a design which differs, taking an exception or using the required site-specific information which gives rise to changes or departures referred to in 10 C.F.R. § 52.79(d)(1).[45] Such changes will, if material, give rise to an opportunity for the filing of late-filed contentions.[46]

We do not see Contention TC-7 as presenting issues of omissions from the COLA; rather, Contention TC-7 is singularly focused upon the existence of Revision 17 and the fact that the certified design is not yet complete. While any changes resulting from Revision 17 (or, for that matter, subsequent revisions) will eventually find their way into the overall FSAR for the COLA (either through direct adoption by the mandatory incorporation or through exemptions or changes), matters regarding the design certification and its process are outside the scope of this proceeding. Therefore, even had NC WARN satisfied the criteria relating to untimeliness, the substantive focus of Contention TC-7 on the revisions in the design certification process would present an inadmissible contention.

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[45] See 10 C.F.R. Part 52, Appendix D, Section VIII.

[46] In its final policy statement, the Commission explains:

> A COL applicant referencing a design certification application may request an exemption from one or more elements of the requested design certification, as provided in § 52.63(b) and Section VIII of each appendix to 10 C.F.R. Part 52 that certifies a design. As set forth in those provisions, such a request is subject to litigation in the same manner as other issues in a COL proceeding. Since the underlying element of the design may change after the exemption request is submitted, such an exemption may ultimately become unnecessary or may need to be reconsidered or conformed to the final design certification rule. Such matters would be considered by an application-specific licensing board. A licensing board considering a COL application referencing a design certification application might conclude the proceeding and determine that the COL application is otherwise acceptable before the design certification rule becomes final. In such circumstances, the license may not issue until the design certification rule is final, unless the applicant requests that the entire application be treated as a "custom" design.

See Final Policy Statement on the Conduct of New Reactor Licensing Proceedings, 73 Fed. Reg. 20,963, 20,972-973 (Apr. 17, 2008).

III. CONCLUSION

For the reasons set forth above, we find that NC WARN has failed to satisfy the requirements of sections 2.309(f)(2) and 2.309(c)(1) and its motion to admit a new contention is denied. In accordance with the provisions of 10 C.F.R. § 2.311, any appeal to the Commission of the outcome of this Memorandum and Order shall be taken within ten (10) days of the date it is served.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD[47]

/RA/
Paul B. Abramson, Chairman
ADMINISTRATIVE JUDGE

/RA/
Dr. William E. Kastenberg
ADMINISTRATIVE JUDGE

/RA/
Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 23, 2008

[47] Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) applicant Progress Energy; (2) Petitioner NC WARN; (3) NRC Staff; 4) SC ORS; and 5) NCUC.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
PROGRESS ENERGY CAROLINAS, INC.	)	Docket Nos. 52-022 and 52-023-COL
	)	
(Shearon Harris, Units 2 and 3)	)	
	)	
(Combined Operating License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON REQUEST TO ADMIT NEW CONTENTION) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by R. L. Giitter]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of December 2008