

Southern Nuclear
Operating Company, Inc.
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PR 50 and 52
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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

U.S. Nuclear Regulatory Commission
Secretary
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

Southern Nuclear Operating Company
Comments on Enhancements to Emergency Preparedness Regulations, Proposed Rule

Ladies and Gentlemen:

Southern Nuclear Operating Company (SNC) has reviewed the proposed amendments to 10 CFR Part 50 regarding emergency planning and preparedness as published in 74 Fed. Reg. 23254, May 18, 2009. In addition, SNC has reviewed the related draft guidance documents proposed by the U.S. Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) published in 74 Fed. Reg. 23219, 23220, 23221, and 23198. The nuclear industry, through the Nuclear Energy Institute (NEI), is preparing a comprehensive comment document for the regulatory issues identified in the proposed rulemaking and the associated guidance documents. SNC endorses the comments made on behalf of the nuclear industry through NEI. In addition, the NRC requested specific comments on the potential impact of the rulemaking on combined license (COL) and early site permit (ESP) applications (74 Fed. Reg. 23,255-23,256). SNC's comments address this specific request related to the impact on new nuclear plants.

SNC submitted an application for an Early Site Permit (ESP) for the Vogtle Electric Generating Plant (VEGP) site in August 2006, and was granted an ESP and LWA in August 2009. The ESP application contained a full and integrated Emergency Plan, which was reviewed and approved as documented in the ESP Final Safety Evaluation Report (NUREG-1923). SNC submitted a Combined License (COL) application for VEGP Units 3 and 4 that references the Westinghouse AP1000 certified design in March 2008. The COL application incorporates by reference the approved ESP Emergency Plan. Regulation 10 CFR 52.39(a) makes clear that the NRC may not impose new requirements on an ESP, including an Emergency Plan approved in connection with an ESP, in the absence of a finding that (1) the new requirement is necessary to ensure compliance with regulations "in effect at the time the permit was issued," (2) is necessary to adequately protect public health and safety, or (3) as required in connection with an Emergency Plan update under 10 CFR 52.39(b). The finality provisions of 10 CFR 52.39 are an express exception to the provisions of the backfit rule, 10 CFR 50.109, as applied to ESPs (See 10

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CFR 50.109(a)(1)(vii)). The NRC has stated that the new requirements in the proposed rule are considered enhancements that are not necessary to ensure adequate protection (id. at 23,256), therefore, SNC does not believe the proposed regulation satisfies the special backfit criteria of 52.39(a)(1). Accordingly, the proposed rule should not impose changes to SNC's ESP or COL application, which incorporates the ESP, including the Emergency Plan, by reference.

Since the Emergency Plan and other operational programs are not required to be implemented until several years after an ESP or COL is issued, ample time is available for the NRC to review the licensee's emergency and/or other operational programs and verify compliance with amended regulations. In order to avoid imposing delays on the review of pending COL applications, SNC wishes to emphasize the need for the new rule to include a provision similar to the following:

"For a combined license (COL) pending on the effective date of this rule, the requirements in this final rule shall become applicable after issuance of the COL. For an early site permit (ESP) pending on the effective date of this rule, the licensee would be expected to address the new EP requirements in any COL application referencing the ESP that is filed after the effective date of the rule. With respect to any reactor for which a COL application is pending on the effective date of this rule, the requirements of this rule shall be implemented prior to the initial emergency planning exercise for such unit."

If you have any questions regarding this letter, please contact Ms. Amy Aughtman at (205) 992-5805 or Mr. Wes Sparkman at (205) 992-5061.

Sincerely,



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AP1000 Licensing Manager

CRP/AGA/dmw

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