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Subject: Docket ID NRC-2009-0263
Duke Energy Carolinas, LLC (Duke Energy)
Comments on Draft Regulatory Guide (DG)-1229, "Assuring the Availability of
Funds for Decommissioning Nuclear Reactors" (76 FR 2425, January 13, 2011)

Duke Energy has reviewed the above document referenced in the *Federal Register* notice published on January 13, 2011 (76 FR 2425) concerning the draft Regulatory Guide DG-1229 regarding the availability of decommissioning funds and provides the attached comments.

Duke Energy appreciates being given an opportunity to comment on these matters:

If you have any questions, please contact L. B. Jones at 704-382-4753.

Sincerely,

R. Michael Glover
General Manager, Nuclear Plant Support

Attachment - Duke Energy Comments on DG-1229

SUNSI Review Complete
Template = ADM-013

EXDS = ADM-03
Call = A. Szabo (ALS5)
m. Cree (mso)

Duke Energy Comments on DG-1229 (Docket Number NRC-2009-0263) Assuring the Availability of Funds for Decommissioning Nuclear Reactors

Duke Energy has comments on DG-1229, Section 2.1.5, third paragraph which includes guidance that licensees should request action from their rate regulators in the event of a shortfall in their external sinking funds. Under North Carolina and South Carolina public utility law, retail electric rates are set by the North Carolina Utilities Commission (NCUC) and the Public Service Commission of South Carolina (PSCSC) respectively in a general rate case. A general rate case is based upon a test year taking into consideration a representative level of ongoing operating and maintenance costs, investment in utility property plant and equipment, and appropriate financing costs, including setting a return on equity to provide an opportunity for shareholders to earn a reasonable return. Decommissioning funding costs are included as an operating cost. A general rate case is broad scoped, time consuming (typically taking more than a year to prepare and prosecute) and expensive. DG-1229, Section 2.1.5, third paragraph prescribes a timeline for interacting with the rate regulator to obtain rate relief. The actions and timeline provided in the draft guide are not consistent with existing state regulatory processes in North Carolina and South Carolina.

The North Carolina and South Carolina public utility statutes provide for certain specific types of costs, most significantly fuel costs, to be evaluated on a standalone basis and adjusted annually through a rate rider. Generally, the NCUC and PSCSC do not have statutory authority to adjust other costs, such as decommissioning funding expenses, on a standalone basis. Absent statutory authority to approve a rate rider, in the context of a general rate case, the NCUC or PSCSC may consider whether a certain cost item meets specific criteria (such as a cost which is volatile and beyond the utility's control) and create an adjustment mechanism for some period of time in the future; however, such a decision is within the NCUC's and PSCSC's discretion.

Duke Energy informs the NCUC and PSCSC about the funding status of its decommissioning funds on a regular basis, and in North Carolina is subject to a review process established by the NCUC; however, Duke Energy cannot require either the NCUC or the PSCSC to take action outside of a general rate case to adjust rates to address a funding shortfall. Furthermore, the NCUC or PSCSC may take the position that absent specific statutory authority it does not have authority to make such an adjustment.

Duke Energy proposes a modification to the draft guide that would remove the prescriptive text without changing the intent of the guide. This change would result in an approach that is more performance based. Therefore, the following changes are proposed to DG-1229, Section 2.1.5, third paragraph (page 14).

A licensee that may rely exclusively on an external sinking fund to provide financial assurance under the circumstances defined in 10 CFR 50.75(e)(ii)(A) or (B) (that is, where the total cost of decommissioning is provided through rates established by cost-of-service ratemaking or non-bypassable charges) may make a good-faith effort to obtain rate relief to cover its shortfall. A licensee meeting these criteria should inform its rate regulator by March 31 of each year when a shortfall in financial assurance has occurred as of December 31 of the preceding year. The information should include the NRC minimum financial assurance requirement, the actual amount of the licensee's decommissioning financial assurance, and the amount of additional cost recovery needed to meet the NRC amount. The licensee should request its rate regulator to schedule a review of decommissioning cost recovery by the end of the year. A copy of the information and request should be included in the licensee's decommissioning fund status report in the years that the report is required. The licensee is expected to make adjustments to the amount of funds set aside as necessary to meet the minimum requirement of 10 CFR 50.75(c), but in every case, within 5 years.