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April 15, 2011

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Subject: Duke Energy Carolinas, LLC (Duke Energy)
William States Lee III Nuclear Station - Docket Nos. 52-018 and 52-019
AP1000 Combined License Application for the William States Lee III
Nuclear Station Units 1 and 2 (Lee)
Reply to Notice of Violation (NOV) Nos: 05200018/2011-201-01
and 05200019/2011-201-01 from NRC Inspection Report Nos.
05200018/2011-201 and 05200019/2011-201 (ML110540452)
LTR# WLG2011.04-05

Duke Energy hereby responds to NRC Notice of Violation (NOV) 05200018/2011-201-01 and 05200019/2011-201-01 (ML110540452), transmitted March 16, 2011. Pursuant to the Inspection Report, Duke Energy is required to submit a written statement or explanation to the NRC within 30 days of the NRC letter. Duke Energy's response is enclosed. There are no regulatory commitments contained in this submittal.

If you have any questions or need any additional information, please contact Peter S. Hastings, Nuclear Plant Development Licensing Manager, at 980-373-7820.

Sincerely,

Ronald A. Jones
Senior Vice President
Nuclear Development

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Enclosure:

William States Lee III Nuclear Station, Units 1 and 2, Response to NOV Nos.
05200018/2011-201-01 and 05200019/2011-201-01

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xc (with attachment):

Loren Plisco, Deputy Regional Administrator, Region II

Brian Hughes, Senior Project Manager, DNRL

Juan D. Peralta, Chief, Quality and Vendor Branch 1 Division of Inspection and
Operational Programs (ONR)

Enclosure
William States Lee III Nuclear Station, Units 1 and 2
Response to Notice of Violation Nos.
05200018/2011-201-01 and 05200019/2011-201-01

NRC Violation:

Title 10 of the Code of Federal Regulations (10 CFR) 21.21, "Notification of Failure to Comply or Existence of a Defect and Its Evaluation," paragraph 21.21(a) requires, in part, that each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall adopt appropriate procedures to evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable.

10 CFR 21.3, "Definitions" states, that "discovery" means the completion of the documentation first identifying the existence of a deviation or failure to comply potentially associated with a substantial safety hazard within the evaluation procedures discussed in § 21.21(a). In addition, Section 21.3 states that an "evaluation," means the process of determining whether a particular deviation could create a substantial hazard or determining whether a failure to comply is associated with a substantial safety hazard.

10 CFR 21.21(a)(1) requires, in part, that deviations and failures to comply be evaluated within 60 days of discovery in order to identify a reportable defect or failure to comply that could create a substantial safety hazard were it to remain uncorrected.

10 CFR 21.21(a)(2) require, in part, that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer or designated person as discussed in § 21.21(d)(5).

Contrary to the above, as of January 28, 2011, Duke procedural guidance NSD 229, "Evaluation and Reporting of Potential Defects and Noncompliance per 10 CFR Part 21" incorrectly defined "discovery" and "evaluation;" and did not used the terms "deviations" and "defect" consistently through the procedure. Additionally, Duke failed to evaluate a deviation or failures to comply associated with substantial safety hazards within 60 days of discovery and failed to submit an interim report to the NRC if an evaluation of an identified deviation or failure to comply cannot be completed within 60 days of discovery.

This issue has been identified as Violations 05200018/2011-201-01 and 05200019/2011-201-01.

This is a Severity Level IV violation (Section 6.5).

William States Lee III Nuclear Station Response to Notice of Violation:

(1) The reason for the violation:

Duke Energy acknowledges this violation.

Duke Energy definitions for "discovery" and "evaluation" are not consistent with those in 10 CFR Part 21. Further, "potential defect" is used instead of "deviation" within the Duke Energy definitions of "discovery" and "evaluation." The NRC does not define "potential defect" or use it within other 10 CFR Part 21 definitions. This phrase is used in Section 21.2, Scope, to describe the evaluation of potential defects and appropriate reporting of defects, and Duke Energy carried this additional information into the definitions of NSD 229 to make a clearer tie between deviations and defects. The use of "potential defect" as a synonym for "deviation" resulted in inconsistent use of the terms "deviation" and "defect" throughout the procedure.

Additionally, Duke Energy failed to effectively perform an evaluation of a deviation within 60 days of discovery or to submit an interim report to the NRC. The specific example of untimely evaluation cited in the NOV is based on a problem with defective charging motors for 5HK (4,160 volt) switchgear breakers, first noted in Duke Energy's Corrective Action Program via Problem Investigation Program (PIP) O-00-1990. The NRC Inspection Report states that "Duke Energy had first identified and documented the deviation in May 22, 2000, under PIP O-00-01990." On May 23, 2000, the issue was screened as a QA supplier quality problem and prematurely closed after contacting the vendor. Thus, Duke Energy recognizes that the issue was improperly dispositioned without "discovery".

In December 2002, Duke Energy performed an assessment on Part 21 implementation at the Duke sites. This assessment was documented in PIP O-02-7236. A corrective action created in April 2003 requested a Regulatory Compliance review of Oconee PIPs with QA supplier quality problems for the previous three years to determine if any Part 21 issues had been missed. This review of over 300 PIPs was completed in December 2007. Three PIPs were identified as needing additional review and PIP O-00-1990 was one of the three. A review of the issue in PIP O-00-1990 was completed on April 2, 2008 and was determined by NSD 229 terminology at the time to be a "potential deviation."

On April 2, 2008, a "Phase I/Discovery" corrective action was assigned to Engineering to confirm if this issue constituted a "deviation". On April 29, 2008, Engineering characterized the issue as a "deviation." On that date a "Phase II/Evaluation" corrective action was created to evaluate the known deviation. With the understanding that the discovery phase had identified a deviation on April 29, 2008, the due date for the action was set to be within 60 days from April 29, 2008. The report date of June 23, 2008 was within 60 days of the April 29, 2008 date.

Duke Energy acknowledges a missed opportunity to identify the existence of a "deviation or failure to comply potentially associated with substantial safety hazards" that occurred originally in PIP O-00-1990. In addition, Duke Energy failed to submit an interim report to the NRC when an evaluation of an identified deviation or failure to comply was not completed within 60 days of discovery.

The actual date of discovery was unclear and subject to interpretation as a result of the following problems within NSD 229: 1) misuse of the word "potential defect" in lieu of "deviation"; 2) inconsistent use of the words "defect" and "deviation"; and 3) definitions of "discovery" and "evaluation" that were not entirely consistent with the definitions in 10 CFR Part 21.

It is Duke Energy's judgment that this lack of clarity in Duke Energy's definitions and determination of "discovery" date resulted in this violation.

(2) The corrective steps that have been taken and the results achieved:

1. NSD 229, Evaluation and Reporting of Deviations and Noncompliance Per 10 CFR Part 21, Rev. 5, was issued on April 15, 2011, with elimination of the term "potential defect" and corrected use of the word "deviation." This new revision provided clarification of the 60-day reporting requirements. In addition, the terms "Discovery" and "Evaluation" were added and the terms "Phase I" and "Phase II" were eliminated to prevent confusion with Part 21 terminology.
2. As part of the investigation associated with this violation, an "Extent of Condition" evaluation was performed using the Corrective Action Program (PIP) for all Duke Energy sites to determine whether other open Part 21 issues could be impacted by the new understanding of the "discovery" date. Thirty-nine PIPs were reviewed; two had open reportability investigations and were being adequately addressed pursuant to the requirements of 10 CFR Part 21. Based on this review, there are no other current issues affected by this violation.

(3) The corrective steps that will be taken:

No additional actions are required.

(4) The date when full compliance will be achieved

Full Compliance was achieved on April 15, 2011 with the issuance of NSD 229, Rev. 5.