August 22, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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)	)	
	)	ASLBP No. 08-868-04-COL
(Combined License Application)	)	

PROGRESS ENERGY CAROLINA'S OBJECTION TO THE NORTH CAROLINA WASTE AWARENESS AND REDUCTION NETWORK**'S SUPPLEMENTAL COMMENTS RELATING TO PETITION TO SUSPEND LICENSING PROCEEDINGS**

Progress Energy Carolinas, Inc. ("Progress") hereby objects to the supplemental comments[1] that the North Carolina Waste Awareness and Reduction Network ("NC WARN") has filed in this proceeding purporting to supplement the previously submitted Emergency Petition to Suspend All Pending Reactor Licensing Decisions And Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Corrected April 18, 2011) ("Petition"). The Supplemental Comments are not authorized by any Commission regulation, and the deadline has passed for supplementing the Petition. Further, NC WARN does not have standing to file these comments because it is no longer a party to this proceeding. Moreover, the Supplemental Comments include no new information that addresses the Commission's standard for suspending a proceeding, nor do they make any attempt to address this proceeding specifically. Thus, the Commission should not consider the Supplemental Comments and should deny the Petition.

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[1] Supplemental Comments by the North Carolina Waste Awareness and Reduction Network in Support of Emergency Petition Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) ("Supplemental Comments").

I. THE SUPPLEMENTAL COMMENTS CONSTITUTE AN UNAUTHORIZED FILING

The Supplemental Comments should not be considered because they constitute an unauthorized filing. Petitions to the Commission to suspend proceedings are treated as motions under 10 C.F.R. § 2.323. AmerGen Energy Co., LLC et al. (Oyster Creek Nuclear Generating Station, et al.), CLI-08-23, 68 N.R.C. 461, 476 (2008); Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 N.R.C. 230, 237 (2002). 10 C.F.R. § 2.323 allows for an answer to a motion and no further filings. No other NRC regulation contemplates or allows for the filing of supplemental comments to motions pending before the Commission.

Moreover, the Secretary issued an Order ("Order") on April 19, 2011 that "set a schedule for further briefing" in connection with the Petition. Order at 1. The Order directed that (1) "[a]ny supplements to the petition may be filed no later than Thursday, April 21, 2011" (id. at 1-2, footnote omitted) and (2) that "[a]ny person may file an answer to the petition, or a brief *amicus curiae*, no later than Monday, May 2, 2011." Id. at 2. The Order does not authorize any additional filings relating to the Petition. The April 21, 2011 deadline for supplementing the Petition has clearly passed, and NC WARN did not request an extension of that deadline or otherwise request leave to file its Supplemental Comments.

In addition, as Progress has previously argued, NC WARN was not entitled to file the Petition in this proceeding because it is no longer a party. See Progress Energy Carolina Inc.'s Response Opposing Emergency Petition to Suspend All Pending Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from the Fukushima Daiichi Nuclear Power Station Accident at 8-9 (May 2, 2011) ("Progress Answer"). By the same

token that NC WARN was not entitled to seek suspension of the proceeding in the first instance, NC WARN has no right to supplement that request.

II. THE SUPPLEMENTAL COMMENTS DO NOT SATISFY THE COMMISSION'S STANDARDS FOR GRANTING SUSPENSIONS

Even if NC WARN's Supplemental Comments were somehow authorized (which they are not), they are irrelevant because they make no attempt to address the standards that the Commission applies to suspension requests. As Progress discussed in its answer opposing the Petition, the Commission considers suspension of licensing proceedings to be a "drastic" action that is not warranted absent "immediate threats to public health and safety." See Progress Answer at 8, and cases cited therein. In addition, the Commission considers whether moving forward with proceedings would prove an obstacle to fair and efficient decision making, or prevent appropriate implementation of any rule or policy changes that might emerge from its ongoing evaluation of that event. See id. at 11. The Supplemental Comments make no effort to address these considerations. They certainly do not demonstrate that suspension is warranted by any immediate threats to public health and safety. Indeed, as the Supplemental Comments admit, the NRC's Fukushima Task Force concluded that "continued operation and continued licensing activities do not pose an imminent risk to public health and safety."[2] The Supplemental Comments provide no explanation of how there could possibly be such a threat or need to suspend the Shearon Harris Units 2 and 3 ("Harris") COL proceeding where a final decision is not expected until at least 2014, and plant operation is not contemplated until at least 2026.

[2] Recommendations for Enhancing Reactor Safety in the 21st Century, The Near Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) at vii, 18 ("Task Force Report").

Instead, most of the Supplemental Comments are devoted to argument that the NRC must consider the Task Force Report as new and significant information required to be evaluated under the National Environmental Policy Act ("NEPA"), but even this argument fails to explain why the Harris COL proceeding should be suspended. The draft EIS for the Harris COL Application ("COLA") is not scheduled to be issued until January of 2013, at which time NC WARN will have the opportunity to submit comments if it believes new and significant information has been ignored, and the final EIS is not scheduled to be issued until January of 2014. See http://www.nrc.gov/reactors/new-reactors/col/harris/review-schedule.html Thus, there is ample time to consider implications of the Fukushima Daiichi accident, if there are any, and absolutely no reason to suspend the proceeding.

Moreover, if anything, the Supplemental Comments demonstrate just how frivolous petitioners' NEPA argument is. The suggestion that Task Force recommendations must be evaluated as severe accident mitigation alternatives ("SAMAs") without considering cost (see Supplemental Comments at 14-15) is simply at odds with the Commission's regulations implementing NEPA, which expressly provide that (with certain exceptions not applicable here) an applicant's environmental report and the NRC Staff's EIS should include consideration of the economic, technical and other benefits and costs of the proposed action and alternatives. 10 C.F.R. §§ 51.49(c), 51.71(d). Any suggestion to the contrary is an impermissible challenge to the NRC rules, barred by 10 C.F.R. §2.335(a).

Finally, the Supplemental Comments make absolutely no attempt to relate any of the Task Force recommendations to Harris, or to show that there is any deficiency in the Harris

Environmental Report[3] ("ER"). The Supplemental Comments inaccurately assert that the "environmental documents associated with the proposed Harris reactors do not address the radiological consequences of design basis accidents or demonstrate that those reactors can be operated without undue risk to the health and safety of the public." Supplemental Comments at 13. Contrary to that assertion, section 7.1.3 and Tables 7.1-1 – 7.1-12 of the ER present the radiological consequences of design basis accidents, and section 7.2 and Tables 7.2-1 – 7.2-9 present the consequences of severe accidents. Thus, the only specific challenge addressing the Harris ER is mistaken. The Harris ER has considered both design basis accidents and severe (beyond design basis) accidents and their consequences. Even if at some point in the future a change is made to what must be analyzed as a design basis accident, its consequences (for purposes of NEPA) as a severe accident have already been taken into account. Further required safety systems to address a new design basis accident would simply reduce the probability of the accident and reduce the probability of the consequences already considered.

The Supplemental Comments refer to the Task Force recommendation that licensees reevaluate seismic and flooding hazards and if necessary update the design basis (Supplemental Comments at 16, citing Task Force Report at 30 (Recommendation 2.1)); but the Supplemental Comments conveniently fail to mention that this recommendation is applicable only to existing licensees:

> "The Task Force concludes that all of the current early site permits already meet the requirements of detailed recommendation 2.1, relating to the design-basis seismic and flooding analysis, and all of the current COL and design certification applicants are addressing them adequately in the context of the updated state-of-the-art and regulatory guidance used by the staff in its reviews."

[3] COLA, Part 3 (Rev. 3) (April 2011). Chapter 7 of the ER, relevant to this discussion, remains unchanged from the initial submittal of the COLA.

Task Force Report at 71. With respect to NC WARN's reference to the recommendation of "strengthening SBO [station black out] mitigation capability," the Supplemental Comments (at 17) fail to address the Task Force Report's specific exception to this recommendation relevant to the AP 1000 design,

> "The Task Force notes that the two design certifications currently in the rulemaking process (i.e., the AP1000 and the economic simplified boiling-water reactor (ESBWR)) have passive safety systems. By nature of their passive designs and inherent 72-hour coping capability for core, containment, and spent fuel pool cooling with no operator action required, the ESBWR and AP1000 designs have many of the design features and attributes necessary to address the Task Force recommendations. The Task Force supports completing those design certification rulemaking activities without delay."

Task Force Report at 71. Thus, the Task Force report provides no basis for any further assessment of the seismic or flooding hazards for Harris. Similarly, the reference to tsunami hazards (Supplemental Comments at 16) has no bearing on Harris, which is an inland location approximately 140 miles from the Atlantic coast. COLA, Part 2, Final Safety Analysis Report ("FSAR"), at § 2.4.6. The reference to requiring reliable hardened vent designs in BWR facilities with Mark I and II containments (Supplemental Comments at 17) is likewise inapplicable to the Harris AP 1000 PWR design.

While there are some Task Force recommendations that the Commission may consider applying to new plants, the Supplemental Comments make no attempt to show that any such recommendations would represent a potentially cost-beneficial SAMA for the AP 1000 design or Harris. For example, while the Supplemental Comments refer to the Task Force Recommendation to enhance spent fuel pool makeup capability and instrumentation (Supplemental Comments at 17), they make no attempt to address the AP 1000 design. The AP 1000 spent fuel pool cooling system is not required to operate to mitigate design basis events. AP 1000 DCD (Rev. 19), § 9.1.3.4.3. The spent fuel pool is designed such that a water level is

maintained above the spent fuel assemblies for at least 7 days following a loss of the spent fuel pool cooling system, using only onsite makeup water, considering there is sufficient heat removal capacity in the spent fuel pool. Id. Safety-related makeup water can be supplied to the spent fuel pool from a number of alternative sources and paths including gravity driven flow from the cask washdown pit and from the passive containment cooling water storage tank. AP1000 DCD (Rev. 19), §§ 9.1.3.4.3, 9.1.3.5. The AP1000 design also has adequate instrumentation capability to monitor spent fuel pool level for extended durations. AP 1000 DCD (Rev. 19), § 9.1.3.7D. NC WARN does not identify with specificity any alternative or even allege any possible benefits of any alternatives to passive self-cooling of the pool or alternate instrumentation. In sum, the Supplemental Comments do not come close to demonstrating the need for any further environmental analysis, and they certainly do not demonstrate any need to suspend a proceeding not scheduled for completion until at least 2014.

III. CONCLUSION

The Supplemental Comments are nothing more than an unauthorized filing by an entity that is not a party to this proceeding that makes no argument that might lead the Commission to suspend this proceeding. Consequently, the Commission should disregard the Supplemental Comments and move expeditiously to deny the Petition.

Respectfully Submitted,

/Signed electronically by John H. O'Neill, Jr./

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2011 a copy of the foregoing "Progress Energy Carolinas, Inc.'s Objection to the North Carolina Waste Awareness and Reduction Network's Supplemental Comments Relating to Petition to Suspend Pending Licensing Proceedings" was provided to the Electronic Information Exchange for service upon the following persons.

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