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NUCLEAR REGULATORY COMMISSION

[Docket No. 72-3]

Progress Energy Carolinas, Inc.; Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for Renewal of Materials License SNM-2502 for the H. B. Robinson, Unit 2, Independent Spent Fuel Storage Installation

ACTION: Notice of license renewal, and opportunity to request a hearing.

DATES: A request for hearing and/or petition for leave to intervene must be filed by June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-1179; fax number: (301) 415-1179; e-mail: cmr1@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application dated February 27, 2004, from Progress Energy Carolinas, Inc. (applicant or PEC) for the renewal of materials license SNM-2502, under the provisions of 10 CFR part 72, for the receipt, possession, storage and transfer of spent fuel, reactor-related Greater than Class C (GTCC) waste and other radioactive materials associated with spent fuel storage at the H. B. Robinson, Unit 2, Independent Spent Fuel Storage Installation (ISFSI), located at the H. B. Robinson Steam Electric Plant, Unit 2, site in Darlington County, South Carolina. If granted, the renewed license will authorize the applicant to continue to store spent fuel in a dry cask storage system at the applicant's H. B. Robinson, Unit 2, ISFSI. Pursuant to the provisions of 10 CFR part 72, the renewal term of the license for the ISFSI would be twenty (20) years; however, the applicant has submitted a separate exemption request with the license renewal application, which, if granted, would allow the license to be renewed for 40 years. This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72-3.

An NRC administrative review, documented in a letter to PEC dated April 7, 2004, found that the application contains sufficient information for the

NRC staff to begin its technical review. Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. These findings will be documented in a Safety Evaluation Report. The issuance of the renewed materials license will not be approved until the NRC has reviewed the application and has concluded that renewal of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing

In accordance with the general requirements in subpart C of 10 CFR part 2, "Rules of General Applicability; Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,"¹ any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene ("request for hearing") and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff;
2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;
3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, hearingdocket@nrc.gov; or
4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission,

¹ The references to 10 CFR part 2 in this notice refer to the amendments to the NRC Rules of Practice, 69 FR 2182 (January 14, 2004).

Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415-1101; verification number is (301) 415-1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. Mr. J. W. Moyer, Vice-President—HBRSEP, Unit 2, Progress Energy Carolinas, Inc., H. B. Robinson Nuclear Plant, 3851 West Entrance Road, Hartsville, SC 29550.

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415-3725, or by e-mail to ogcmailcenter@nrc.gov.

The formal requirements for documents are contained in 10 CFR 2.304(b), (c), (d), and (e). In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by June 14, 2004.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for hearing must state:

1. The name, address, and telephone number of the requestor;
2. The nature of the requestor's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requestor's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b). Nontimely requests will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and

contentions that the request should be granted and the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c).

In accordance with 10 CFR 2.309(f)(1), a request for hearing must set forth with particularity the contentions sought to be raised. For each contention, the request must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's position on the issue and on which the requestor intends to rely at hearing, together with references to the specific sources and documents on which the requestor intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requestor disputes and the supporting reasons for each dispute, or, if the requestor believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by the applicant, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requestor shall file contentions based on the applicant's environmental report. The requestor may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Contentions may be amended or new contentions filed after

the initial filing only with leave of the presiding officer upon making the showings specified in 10 CFR 2.309(f)(2).

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Analysis Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above. If the requestor believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requestor must set forth the contention and supporting bases, in full, separately for each category into which the requestor asserts the contention belongs with a separate designation for that category.

Requestors should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requestor that wishes to adopt a contention proposed by another requestor must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor.

In accordance with 10 CFR 2.309(g), a request for hearing may also address the selection of hearing procedures, taking into account the provisions of 10 CFR 2.310. The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWSA), 42 U.S.C. 10154. Under section 134 of NWSA, the Commission, at the request of any party to the proceeding, shall use hybrid hearing procedures with respect to any matter which the Commission determines to be in controversy among the parties. The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by

discovery under the Commission's rules. Following oral argument, those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, shall be designated for resolution in an adjudicatory hearing. Adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of NWSA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors," (as revised at 69 FR 2182, 2266–2267; January 14, 2004). Under those rules, any party may invoke the hybrid hearing procedures by requesting an oral argument in a request for hearing filed in accordance with 10 CFR 2.309, or in the applicant's or the NRC staff's response to a request for hearing. If it is determined that a hearing will be held, the presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, the presiding officer shall conduct the proceeding in accordance with the subpart under which the proceeding was initially conducted as determined in accordance with 10 CFR 2.310.

III. Further Information

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action, including the application for license renewal dated February 27, 2004, and supporting documentation, are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> under Accession No. ML040690774. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR

reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or (301) 415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 7th day of April, 2004.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

*Project Manager, Spent Fuel Project Office,
Office of Nuclear Material Safety and
Safeguards.*

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NUCLEAR REGULATORY COMMISSION

U.S. Armed Forces: Environmental Assessment and Final Finding of No Significant Impact, Exemption to the Requirements in 10 CFR 20.1801, 20.1802 and 20.2201

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) has performed an Environmental Assessment (EA) to evaluate a license amendment that would add a license condition exempting the U.S. Armed Forces (Armed Forces) from certain requirements involving the use and storage of radioactive sealed source devices used for monitoring and detecting chemical warfare agents during military exercises and maneuvers. During these times, the Armed Forces would be specifically exempt from requirements contained in: (1) 10 CFR 20.1801, "Security of stored material," when the Armed Forces store authorized radioactive sealed source devices that are used for monitoring and detecting chemical warfare agents during military exercises or maneuvers on U.S. Government-controlled property;¹ (2) 10 CFR 20.1802, "Control of material not in storage," when the Armed Forces employ these devices during exercises or maneuvers on U.S. Government-controlled property; and (3) 10 CFR 20.2201, "Reports of theft or loss of licensed byproduct material," when these devices are lost when they are stored or used during military exercises or maneuvers on U.S. Government-controlled property. The conclusion of the EA is a Finding of No

Significant Impact (FONSI) for the proposed licensing action.

II. Environmental Assessment

1.0 Introduction

1.1 Background

U.S. Department of the Army reported a number of lost licensed radioactive sealed source devices that are used for monitoring and detecting chemical warfare agents. In response to this, NRC performed a reactive inspection (Report No. 030-35349/2002-001). In an "Exercise of Enforcement Discretion" letter dated October 3, 2003, to the Director, Integrated Material Management Center, U.S. Department of the Army (Army), NRC stated that the NRC plans to amend the Army's license to exempt the licensee from the requirements in 10 CFR 20.1801, 20.1802, and 20.2201 when the licensee is storing or using devices intended to monitor and detect chemical warfare agents during military exercises or maneuvers on U.S. Government-controlled property. The U.S. Navy and U.S. Air Force have also acquired these types of devices and are using them under Master Materials Licenses issued by the NRC. Thus, NRC plans to grant them the same license amendment.

NRC staff has evaluated the environmental impacts of a license amendment that would exempt the Armed Forces from the requirement in: (1) 10 CFR 20.1801, "Security of stored material," when the Armed Forces store authorized radioactive sealed source devices that are used for monitoring and detecting chemical warfare agents during military exercises or maneuvers on U.S. Government-controlled property; (2) 10 CFR 20.1802, "Control of material not in storage," when the Armed Forces employ these devices during exercises or maneuvers on U.S. Government-controlled property; and (3) 10 CFR 20.2201, "Reports of theft or loss of licensed byproduct material," when these devices are lost when they are stored or used during military exercises or maneuvers on U.S. Government-controlled property.

This EA has been prepared pursuant to the NRC regulations in 10 CFR part 51, which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed action and the alternatives to the proposed action.

1.2 Review Scope

In accordance with part 51, this EA: (1) Presents information and analysis for determining whether to issue a FONSI

or to prepare an Environmental Impact Statement (EIS); (2) fulfills NRC's compliance with NEPA when no EIS is necessary; and (3) facilitates preparation of an EIS if one is necessary. Should NRC issue a FONSI, no EIS would be prepared and NRC would issue a license condition to the Armed Forces exempting them from meeting the requirements in 10 CFR 20.1801, 20.1802, and 20.2201, when the Armed Forces use authorized radioactive sealed source devices for monitoring and detecting chemical warfare agents during planned military exercises or maneuvers on U.S. Government-controlled property located in the United States, as described herein. This EA applies to consideration of amendments to licenses held by the Army, Navy and Air Force as discussed hereafter.

The Army holds NRC Byproduct Material License No. 12-00722-16, (Ref. 2) (previously License No. 19-30563-01), pursuant to 10 CFR part 30, which authorizes the possession and use of chemical agent detectors or chemical agent monitors containing small amounts of radioactive sealed source material.

NRC has established a license category known as a Master Materials License (MML). An MML can be issued only to a Federal organization that successfully meets the criteria stated in 10 CFR 30.33 (and 10 CFR 40.32 or 10 CFR 70.31, as appropriate), and can demonstrate to NRC, through its diverse licensing activities, experience of complex radiation-program centralized management, inspection, education, qualification, training, and experience as outlined in NRC NUREG-1556 Volume 10, (Ref. 4) that it is able to administer effectively a licensing program.

The U.S. Navy (Navy) holds MML No. 45-23645-01NA, (Ref. 3) from NRC, that allows the Navy to possess and use sealed sources as required. The Navy and Marine Corps use the Navy's license for chemical agent detectors in their possession. NRC issued MML No. 42-23539-01AF, (Ref. 1) to the U.S. Air Force (Air Force) for byproduct, source, and special nuclear material, as needed. The Air Force has acquired and uses chemical detectors under this license.

Armed Forces licenses authorize possession and use of devices containing up to 300 microcuries of Americium-241 (Am-241) or up to 30 millicuries of Nickel-63 (Ni-63). The U.S. Armed Forces use these chemical detecting and monitoring devices on Department of Defense (DOD) installations and temporary job sites, where NRC has jurisdiction.

¹ Government-controlled property refers to property that is permanently maintained by the U.S. Federal Government for planned training exercises or maneuvers by individual units, commands, and inter-commands of the U.S. Armed Forces, including friendly foreign military elements.