

Review and Comments on the  
U.S. Nuclear Regulatory Commission Chairman's  
Supplement to the Report of Investigation

"Questions on Oconee"

RE: File No. DI-15-5254

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By

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These are comments on the NRC Chairman's February 27, 2017, response to the Office of Special Counsel (OSC) request for additional information (RAI) regarding case file DI-15-5254. The review only covers the supplemental information supplied by the Chairman on Page 17 of 23 with the heading "Questions on Oconee, Part 2 – 'Explain Any Changes to the Flood Estimates at the Site.'" "

The Chairman's RAI response describes the process and basis for lowering the flood height protection required of Duke at the Oconee site. The NRC's January 28, 2011, letter and attached safety evaluation<sup>1</sup> required Duke to protect the Oconee reactors from a Jocassee Dam failure to a flood height of about [REDACTED] at the Oconee site. The Chairman's RAI response goes on to describe lowering this flood height requirement to about [REDACTED] as documented in the NRC's April 14, 2016, letter and enclosed staff assessment.<sup>2,3</sup>

The intent of the NRC's Near Term Task Force (NTTF) on Fukushima was to determine if the protection of the plants should be increased. The recommendations were never intended to decrease the level of protection afforded to the public. NTTF recommendation 2 which states in part: "The Task Force recommends that the NRC require licensees to reevaluate and upgrade as necessary the design-basis seismic and flooding protection ..."<sup>4</sup>

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<sup>1</sup> NRC Letter to P. Gillespie, "Staff Assessment of Duke's Response to Confirmatory Action Letter Regarding Duke's Commitments to Address External Flooding Concerns at Oconee," dated January 28, 2011, [ML110280153](#).

<sup>2</sup> NRC Letter to S. Batson, Oconee Staff Assessment of Response to Request for Information Pursuant to 10 CFR 50.54(f) Flood-Causing Mechanisms Reevaluation and Path Forward on Confirmatory Action Letter," dated April 14, 2016, [ML15352A207](#).

<sup>3</sup> NRC "Staff Assessment by the Office of Nuclear Reactor Regulation Related to Flooding Hazard Reevaluation Report Near-Term Task Force Recommendation 2.1 Oconee, Enclosures 1 and 2," dated April 2016, ML15356A158 (not publicly available).

<sup>4</sup> NRC "Recommendations for Enhancing Reactor Safety in the 21<sup>st</sup> Century, the Near-Term Task Force Review of the Insights from the Fukushima Dai-ichi Accident," July 12, 2011, [ML111861807](#).

The NRC's 50.54(f)<sup>5</sup> letter to Duke further reinforces this point when it states in part: "(T)he NRC staff will determine whether additional regulatory actions are necessary (e.g., update the design basis and SSCs important to safety) to provide **additional protection** ...(emphasis added)"

However, the NRC staff decreased the public safety when it lowered the required flood protection at Oconee from [REDACTED] to [REDACTED].

A second and equally significant oversight in the Chairman's RAI response is on the issue of "adequate protection." Former NRC Commissioner Ostendorff captured the significance of this term in his remarks on the issue in March of 2011 when he said:

One of the most important aspects of the substance of the Atomic Energy Act is the "adequate protection" charge. Through [the NRC's] own interpretations and those of the courts over the decades, we now understand that the NRC is required to provide "reasonable assurance of 'adequate protection.'" This interpretation was affirmed early on in the landmark 1961 Supreme Court decision Power Reactor Development Company. The "adequate protection" mandate also permeates the Commission's regulations.<sup>6</sup>

The NRC raised the Jocassee Dam failure issue to the adequate protection level in its letter to Duke in April 2009.<sup>7</sup> The NRC set a path for resolution of this adequate protection issue with its letter and safety evaluation of January 2011 when it required Duke to protect Oconee to a flood height of [REDACTED] from a Jocassee dam failure.<sup>8</sup> Subsequently, as discussed above, the NRC lowered the flood height to [REDACTED]. However, the NRC staff remained silent as to whether the [REDACTED] of protection meets the "adequate protection charge" in its staff assessment transmitted to Duke on April 14, 2016.<sup>9</sup> The Chairman also remains silent on this issue in her correspondence to the OSC.

This leaves the following question unanswered: Is the public adequately protected from a Jocassee Dam failure when Oconee is protected to a flood height of [REDACTED]?

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<sup>5</sup> NRC Letter to All Reactor Licensees, "Request for Information Pursuant to Title 10 of Code of Federal Regulations 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident," dated March 12, 2012, [ML12053A340](#).

<sup>6</sup> Adequate Protection in Commission Decision-Making Remarks of Commissioner William C. Ostendorff, US NRC, NEI Lawyers Committee Meeting, March 7, 2011, [ML110670377](#).

<sup>7</sup> NRC Letter to D. Baxter, "Evaluation of Duke Energy Carolinas, LLC (Duke), September 26, 2008, Response to NRC Letter dated August 15, 2008, Related to External Flooding at Oconee," dated April 30, 2009, [ML090570779](#).

<sup>8</sup> NRC Letter to P. Gillespie, "Staff Assessment of Duke's Response to Confirmatory Action Letter Regarding Duke's Commitments to Address External Flooding Concerns at Oconee," dated January 28, 2011, [ML110280153](#).

<sup>9</sup> NRC Letter to S. Batson, Oconee Staff Assessment of Response to Request for Information Pursuant to 10 CFR 50.54(f) Flood-Causing Mechanisms Reevaluation and Path Forward on Confirmatory Action Letter," dated April 14, 2016, [ML15352A207](#).