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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore The CommissionRichard A. Meserve, Chairman
Edward McGaffigan, Commissioner
Jeffrey S. Merrifield, Commissioner
Greta J. Dicus, Commissioner
Nils J. Diaz, Commissioner

In the Matter of

Docket No's. 50-369-LR, 50-370-LR,
50-413-LR, and 50-414-LR

DUKE ENERGY CORPORATION

(McGuire Nuclear Station, Units 1 and 2,
Catawba Nuclear Station, Units 1 and 2)

11-05-2001

Response to Blue Ridge Environmental Defense League's Petition to Dismiss Licensing
Proceeding, or in the Alternative, Hold it in Abeyance

Nuclear Information and Resource Service (NIRS) is a party to the consideration of Duke Energy's license renewal application for Catawba and McGuire nuclear power stations, and hereby registers to the Commission and all other parties our support for Blue Ridge Environmental Defense League's (BREDL) "Petition to Dismiss Licensing Proceeding, or in the Alternative, Hold it in Abeyance."

We find the issues raised in the BREDL Petition to be compelling, and agree that these should form the basis for the Commission to dismiss the Duke License Renewal application, or

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delay it until key matters are resolved in due course. Chief of these, in the Duke case, is the use of weapons grade plutonium fuel. NIRS concurs completely with BREDL that consideration of the license renewal of these four reactors (the only reactors currently under a Department of Energy contract to irradiate experimental weapons grade plutonium fuel) without any consideration of the impact of plutonium fuel use on reactor operations and impacts during the license renewal period, constitutes a violation of the National Environmental Policy Act (NEPA). Plutonium fuel, particularly experimental, first-time-ever-used in MOX weapons grade plutonium must be considered in the safety evaluation and environmental impacts of extended operations at these sites. MOX fuel will most certainly impact nearly every parameter considered in the question of license renewal, and was not treated in the Generic Environmental Impact Statement on License Renewal, or its supplements.

Plutonium fuel does not constitute a trivial change in potential impacts to the Carolinas. Dr. Edwin Lyman of the Nuclear Control Institute has found that mixed oxide fuel made from weapons grade plutonium **doubles** the latent cancer fatalities in those exposed from a major reactor accident, in proportion to the percentage of mixed oxide fuel in the core, compared to the same situation with conventional uranium fuel, for which Catawba 1 & 2 and McGuire 1 & 2 are currently licensed to use.

Proceeding with the license process at this time would result in key issues either being foreclosed prior to any future MOX license amendment, or alternately, litigation of the same issues twice. Since Duke Energy has gone on the record many times stating that they intend to use MOX fuel, and since they are under a contract with the Department of Energy to use these

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reactors to irradiate MOX fuel, it is completely disingenuous of NRC to say that they cannot address this issue since there is no MOX application before them. The alternative is to forestall the renewal process until either Duke withdraws from the MOX contract, or they file the MOX license amendment. The people of North and South Carolina are protected by NEPA, and NRC should not force them to go to court in order to obtain that protection.

Beyond this NEPA issue, we are particularly concerned that there are issues raised by this license renewal application, since it comes at this time, which must be dealt with in a generic manner before valid and enduring decisions can be made for individual licensees. These issues are of sweeping significance and therefore should not be undertaken piecemeal. Security and the newly realized threat of terrorist action is such an issue. Indeed, in the last week the worldwide press has quoted Director General Mohamed ElBaradei of the International Atomic Energy Agency, as stating on November 1, 2001 that an act of nuclear terrorism is "far more likely" than previously thought. The nuclear safety and security concerns of NIRS and BREDL are appropriate; the litigation of most of them in the context of the license renewal of four reactors is not. Indeed, legislative proposals that have enjoyed bi-partisan support and passed the House Commerce Committee would direct the Commission to undertake a vital, generic revision of the nuclear security component of your jurisdiction, and include issues that could change design and therefore license bases.

In this regard, we would like to reference, and support another filing, which pertains to nuclear security and safety made in the "Matter of Dominion Nuclear Connecticut, Inc (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF-49), by Connecticut Coalition Against Millstone (CCAM) and Long Island Coalition Against Millstone (CAM). The 10-31-2001

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declaration filed by Dr. Gordon Thompson in support of a motion by CCAM and CAM reveals that the vulnerability of every reactor site to fuel pool fire is much greater than has been factored in all previous evaluations. We again see this as a generic issue that applies to every reactor site in the US, indeed, the world. Therefore it should first be handled generically, rather than litigated in the context of a single site.

The fuel pool issue of course intersects the concerns about terrorism since fuel pools are not hardened targets to the same degree that reactors may be, and per the CAM and CCAM motion, under some conditions, fuel pool accidents constitute an even greater threat to public health and safety than a reactor accident. Additionally, a full-scale attack that did lead to a reactor accident might well trigger a fuel pool fire as a tertiary event arising out of the inhabitability of a catastrophically disrupted reactor site. All of these vital concerns (and more) must be addressed. However, they should first be address in a generic way, which establishes broad policy objectives and guidelines, not litigated piecemeal by CCAM, CAM, BREDL, NIRS, and others who are also raising these issues, such as GANE (Georgians Against Nuclear Energy) and Nuclear Control Institute in the case of the MOX Fuel Fabrication Facility.

It is however, also the case that there are site-specific components to these issues at every reactor and nuclear site, therefore we do not suggest that the NRC address these needs in a solely generic manner. Indeed, NRC's own studies of nuclear reactor containment strength show that Duke's Catawba and McGuire reactors rise to the top of the list for those most likely to fail under conditions of station blackout. This is particularly worrying since nearly every scenario

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for an airplane or other bomb attack to a reactor site greatly increases the chances of station blackout, which are already somewhat elevated at these sites.

Our recommendation to the Commission, as we support dismissal of the current proceeding, is that a generic process be undertaken, and then supplemented by site-specific processes needed to fully address these new pieces of information. This should be the case, even in the event of a decision to close reactors due to these increased risks. Reactor sites would remain vulnerable to attack for some time after reactor closure, and each site presents unique challenges and unique waste disposition arrangements.

Plutonium fuel again highlights the necessity of specific analysis in addition to generic reevaluation. Clearly any agent seeking a means for wreaking mass destruction would be attracted to sites that would present a greater degree of harm from their action. MOX as stated above, significantly increases the hazard of a nuclear release. Thus the use of plutonium fuel compounds both the risk and consequences of a malicious act against a reactor site. Irradiated MOX plutonium fuel also compounds both the risk of and consequences of a fuel pool fire. Therefore MOX use would also necessitate site-specific analysis of these broad issues, but this is best accomplished as a supplement to a generic treatment of terrorist risks and fuel pool fires. We believe that an honest assessment will show that there is no basis for supporting the increased risks posed by MOX fuel, particularly in this new era of violent conflict.

Since action on License Renewals, particularly those that are being tendered more than a decade before the expiration of the current operating licenses, is not a matter of public health

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and safety, we urge the Commission to exercise their leadership in the current crisis by tabling ALL license renewal actions pending a complete review of what generic actions such as rulemakings that these new findings require. If NRC were to continue with site specific actions while strong indications from Capitol Hill and the International Atomic Energy Agency that complete security reviews are warranted, this would also appear to be a violation of the National Environmental Policy Act. Citizens would likely be forced to litigate the same issues twice, now prior to such a review, and likely again after. This is unproductive and a waste of resources. The same concerns apply to the issues brought forth in Dr. Thompson's declaration. We offer this perspective not to slow the progress of this important work, but the exact opposite.

Finally, we find the absence of documents formerly available to the public via the NRC website, and no longer available via any source, including large bodies of data in the licensee Daily Event Reports, which are not specifically safeguard related an impediment to public participation in any licensing action. This is an additional reason to table ALL license actions until document access is restored.

Sincerely,

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Date: Tue, Nov 6, 2001 11:59 PM
Subject: CORRECTED -- NIRS RESPONSE TO BREDL PETITION TO DISMISS DUKE LICENSE RENEWAL

Please note: earlier today an incomplete copy of the attached file was sent in error -- Final edits had been made to the document, but were not saved to the hard drive of the computer at the time the document was attached to the e-mail message. Apologies for any inconvenience that this has caused. The corrected, final document is attached here and will be served by mail in the morning.

Below is the original message sent with the faulty document so that you can disregard the previous message.

-- Mary Olson

 All on the above Service List by e-mail,
 Please find the attached WORD file as a response by intervenor NIRS to intervenor BREDL's "Petition to Dismiss, or in the Alternative Hold in Abeyance" the Duke License Renewal Application for Catawba and McGuire, before the Commission.

Service includes the Atomic Safety Licensing Board and all parties, as well as the NIRS DC office, and will be made by U.S. Postal Service on 11-07-2001.

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