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FINAL REPLY:

Bruce R. Duncil

TO:

Chairman Meserve

FOR SIGNATURE OF : ** GRN **

CRC NO: 01-0317

Virgilio

DESC:

ROUTING:

Proposed MOX Fuel Fabrication Facility

Travers
Paperiello
Kane
Norry
Reiter
Craig
Burns/Cyr
Reyes, RII

DATE: 06/25/01

ASSIGNED TO: CONTACT:
NMSS Virgilio

SPECIAL INSTRUCTIONS OR REMARKS:

REF: G20010215

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OFFICE OF THE SECRETARY
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AUTHOR: Bruce Dencil
AFFILIATION: GA
ADDRESSEE: CHRM RICHARD MESERVE
SUBJECT: Requests denial of the Construction Permit Request for the proposed MOX fuel fabrication facility and extension of the public comment period

ACTION: Direct Reply
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EDO --G20010260

6695

22 JUN 01 2:30

REC'D BY SECY

June 15, 2001

The Honorable Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Chairman Meserve:

Thank you for directing Mr. Timothy Johnson's June 7th response to my May 18th letter to you requesting denial of the Construction Authorization Request (CAR) for the proposed MOX fuel fabrication facility and an extension of the public comment period beyond May 21 on the scope of the NRC's environmental impact statement (EIS). Mr. Johnson's response outlined what might appear to be a systematic approach by both the Department of Energy (DOE) and NRC in the disposition of excess plutonium inventory. However, both an examination of this approach as well as historical fact demonstrate that it will not adequately protect public health and safety. Mr. Johnson's understanding was correct in that my original intent was not to file a request for hearing on the pending CAR; however, I must reconsider based on the following points.

Mr. Johnson denies that this MOX facility will create a global plutonium economy by citing DOE's Record of Decision for the "Surplus Plutonium Disposition Final Environmental Statement". Therein DOE states that spent MOX fuel will be disposed of at the (proposed) high-level waste repository, thus protecting it from accident and diversion. Mr. Johnson states that since MOX fuel will not be reprocessed, it will not create a plutonium economy. However, this "rationale" ignores the weapons-grade plutonium trade established by converting warheads to new (unirradiated) MOX fuel. It also ignores the fact that the high-level repository remains years away from completion, thus creating yet more irradiated waste which must reside in "temporary" on-site storage for perhaps decades yet to come. In such conditions the plutonium is most certainly susceptible to both accident and diversion. Finally, it ignores the fact that the mere existence of such a facility integrates the military and civilian nuclear programs in a way that violates certainly the intent, if not the letter, of our nonproliferation policy of the past quarter century. Although Mr. Johnson states that policy is not the jurisdiction of NRC, DOE has obviously placed NRC squarely in the midst of making and implementing such policies.

NRC's licensing approach appears to neatly segregate issues between the environmental impact statement scope, the CAR and, ultimately, the operating license application so as to move the process forward. However, in so doing, and in preventing the re-litigation of issues, this approach precludes a complete and consistent address of the issues created by this new fuel cycle. Are we to actually believe that environmental impact can be ascertained without a detailed understanding of how the facility would be constructed and operated? How is it possible that construction of a facility can be approved without fully understanding how it will be operated? Certainly it is not possible while continuing to maintain that the public is protected.

In similar manner, the public comment process neatly segregated the MOX facility EIS scope into a "local" issue by limiting the comment period and in the location of the 3 public meetings. In fact, use of MOX fuel in any commercial U.S. reactor has regional impact, national consequences and global implications. What has NRC done to alert the vast majority of the public, who certainly will be affected as bystanders, ratepayers and taxpayers, to the far-reaching decisions being made on their behalf, let alone the fact that they have a voice in shaping the outcomes? And how might they make informed decisions when even the presiding authorities fail to

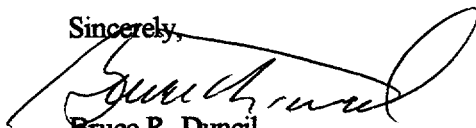
thoroughly consider cradle-to-grave (warhead to irradiated MOX fuel disposition and both production and utilization facility decontamination and decommissioning) requirements for handling a plutonium fuel cycle?

My letter cited a number of failures I have witnessed throughout the industry relative to commercial nuclear power implementation. These included failure on the part of constructors and licensees to build and operate facilities in accordance with safety analysis reports covering construction and license applications. However, Mr. Johnson's response would have us take two things on faith: a) that this consortium, unlike all others before it, would somehow fulfill their CAR commitments and imposed requirements; and b) that NRC would somehow, this time, verify that these commitments and requirements are actually implemented. I must therefore ask, what measures will NRC take, above and beyond business-as-usual, to guarantee that a MOX fuel fabrication facility would, in fact, be constructed in compliance with every one of its CAR commitments and requirements?

A great many of the failures cited in my letter are a matter of public record. In most cases, NRC either knew or should have known about these failures either prior to their approval of the respective application or during the issue in question. NRC after-the-fact reactions have generally been limited to notices of violation made inconsequential by their numbers and insignificant by the ridiculously small civil penalties imposed. And I am aware of no case of successful criminal prosecution resulting from, for example, the willful delivery of material false statements regarding fire barrier penetration testing, withholding evidence during NRC inspections (SSFI), mishandling of whistleblowers or negligence in performing (or failing to perform) analysis and testing for environmental qualification or steam generator degradation or the QA of fuel transportation systems. Yet Mr. Johnson's response would have those of us who previously used "the system" in vain to still naively believe that there is an effective system of checks and balances in place to correctly resolve safety issues and address individual wrongdoing. NRC has yet to demonstrate its willingness and ability to handle differently the individual and corporate responsibilities for the construction and operation of this facility.

I therefore submit, contrary to Mr. Johnson's assertion, that it is not premature to make a decision and I again respectfully request that NRC deny the MOX fuel facility CAR and return the disposition of excess plutonium inventory back to the DOE where it must be resolved.

Sincerely,



Bruce R. Duncil
2680 Highbrooke Trail
Duluth, GA 30097
770 813-9371

cc:

Mr. Timothy Johnson
Honored elected officials
Other industry participants