



RAS 3206

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL  
WASHINGTON, D.C. 20555-0001

DOCKETED  
USNRC

DOCKET NUMBER July 10, 2001  
PROD. & UTIL. REG. ~~10-3098~~ ML

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MEMORANDUM TO: Emile L. Julian  
Assistant for Rulemakings  
And Adjudications  
Office of the Secretary

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

FROM: Thomas S. Moore TSM  
Administrative Judge

SENT JUL 12 2001

SUBJECT: LIMITED APPEARANCE STATEMENT

Attached please find a letter sent to me from Bruce R. Duncil that should be placed in the docket of the MOX fuel fabrication facility proceeding as a limited appearance statement pursuant to 10 C.F.R. § 2.1211.

Attachment: As stated

Template = SECY-038

SECY-02

July 2, 2001

DOCKETED  
USNRC

Administrative Judge Thomas S. Moore, Chairman  
Atomic Safety and Licensing Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

01 JUL 11 P3:04

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dear Judge Moore:

As a former nuclear submarine officer, with a nuclear engineering degree, and as a licensed professional engineer who served the nuclear industry for more than two decades, my purpose in writing is to respectfully request that the Construction Authorization Request (CAR) for the plutonium mixed oxide nuclear (MOX) fuel fabrication facility at Savannah River Station (SRS) be denied. The basis for this request is embodied in the grave issues and concerns associated with the implementation of this new fuel cycle. MOX represents a high-risk option that we dare not take as part of a responsible energy policy.

In separate correspondence, NRC has denied 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. The NRC stated 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 NRC has stated 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?

I previously cited in correspondence to NRC a number of incidents that I witnessed throughout the industry relative to commercial nuclear power implementation. These included the following:

- failure on the part of reactor vendors to implement basic design criteria and standards, allowing, for example, loose cold shutdown criteria, positive temperature coefficients, and flux tilt, in the name of economy of scale and other economics;
- failure on the part of A-Es to implement in their design and construction, basic commitments such as fire protection measures, contained in station FSARs which serve as the basis for all licensing actions;
- failure on the part of utility managements to undertake basic analyses of potential or actual problem conditions (e.g., environmental qualification and steam generator degradation) knowing that identified problems would require solution at shareholder expense and that NRC-identified problems or forced shutdowns would be fixed at rate-payer expense;
- failure on the part of NRC to effectively follow-up the results of inspections, such as SSFIs which demonstrated that safety systems were in fact not capable of carrying out their design basis safety function - or inspections that demonstrated certain fuel carriers had ignored their cask quality programs in violation of their license. Such follow-up might have included requiring shutdown of the operation until meaningful re-start/JCO decisions could be made, based on verified fixes, and imposing civil penalties of such amounts as to actually economically prohibit future such operator lapses. Indeed, such inspections have tended to result in reducing the rigor or fully discontinuing such inspections, chastisement of the inspectors, "no fault" fixes of the inspection results by failing to hold operator management fully accountable for the conditions, and simply taking at face value the management's "word" that agreed fixes had, in fact, been implemented.

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, the NRC 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?

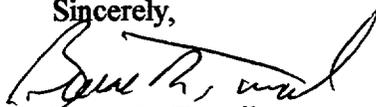
A great many of these failures are a matter of public record. In most cases, NRC either knew or should have known about these failures either prior to their approval of the respective application or during the issue in question. NRC after-the-fact reactions have generally been limited to notices of violation 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 (SSFIs), 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 NRC 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 NRC's asserted position, that it is not premature to deny the construction permit request (CAR). I therefore respectfully request that the MOX fuel facility CAR be rejected and that the disposition of excess plutonium inventory returned to the DOE where it must be resolved.

Thank you, sir, in advance, for your understanding and efforts in ensuring that our energy needs are met in a responsible manner consistent with protecting public health and safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce R. Duncil", written over a horizontal line.

Bruce R. Duncil  
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770 813-9371

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
DUKE COGEMA STONE & WEBSTER ) Docket No. 70-3098-ML  
 )  
(Savannah River Mixed Oxide Fuel )  
Fabrication Facility) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM FROM JUDGE THOMAS S. MOORE AND THE LIMITED APPEARANCE STATEMENT OF BRUCE R. DUNCIL) have been served upon the following persons by U.S. mail, first class, as indicated by an asterisk (\*) or through the Nuclear Regulatory Commission's internal distribution as indicated by double asterisks (\*\*), with copies by electronic mail or fax as indicated.

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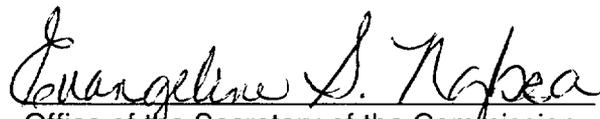
Docket No. 70-3098-ML  
MEMORANDUM FROM JUDGE THOMAS S.  
MOORE AND THE LIMITED APPEARANCE  
STATEMENT OF BRUCE R. DUNCIL

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 12<sup>th</sup> day of July 2001