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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
DUKE ENERGY CORPORATION)
)
)
)
(McGuire Nuclear Station,)
Units 1 and 2, and)
Catawba Nuclear Station,)
Units 1 and 2))
)

Docket Nos. 50-369-LR
50-370-LR
50-413-LR
50-414-LR

RESPONSE OF DUKE ENERGY CORPORATION TO BLUE RIDGE ENVIRONMENTAL
DEFENSE LEAGUE PETITION TO DISMISS
LICENSING PROCEEDING OR, IN THE ALTERNATIVE, HOLD IT IN ABEYANCE

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I. INTRODUCTION

Duke Energy Corporation ("Duke"), the applicant in the above-captioned matter, herein responds to the "Petition to Dismiss Licensing Proceeding or, in the Alternative, Hold It in Abeyance" (the "Petition"), filed by the Blue Ridge Environmental Defense League (hereafter, "BREDL" or "Petitioner") on October 24, 2001.¹ BREDL's Petition seeks to have the Nuclear Regulatory Commission ("NRC" or "Commission") dismiss the ongoing proceeding in which Duke seeks renewed operating licenses for its McGuire Nuclear Station ("McGuire") and Catawba Nuclear Station ("Catawba").² In the alternative, BREDL asks that the Commission "hold the proceeding in abeyance." BREDL seeks relief because it views Duke's application as insufficient. BREDL prefers to defer action on license renewal for McGuire and Catawba: (a) until decisions are made regarding the use of mixed oxide ("MOX") fuel and those decisions are addressed by the NRC in licensing documents, (b) until completion of twenty years of operation of McGuire Unit 2 and Catawba Units 1 and 2, and (c) until regulatory changes are made with respect to the design basis security threat for nuclear plants. (Petition at 3).³

¹ Although dated October 23, 2001, the petition was filed by BREDL on October 24, 2001, as reflected in the Certificate of Service.

² BREDL has filed a petition to intervene and request for hearing in connection with Duke's application to renew the McGuire and Catawba operating licenses. However, the NRC Atomic Safety and Licensing Board has yet to rule on the petition to intervene and thus BREDL is not a party to the license renewal proceeding at this time.

³ BREDL's Petition also suggests (Petition at 3) that the license renewal proceeding should be held in abeyance pending "a decision on the Facility License Operator." This issue is not addressed further in the Petition. BREDL appears to be referring to Duke's application under 10 C.F.R. § 50.80 currently pending before the NRC. That application was the subject of a separate notice and opportunity for hearing published in the *Federal Register*. See "Duke Energy Corporation, Oconee Nuclear Station, McGuire Nuclear Station, and Catawba Nuclear Station, Notices of Consideration of Approval of Transfer of Operating Authority under Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing," 66 Fed. Reg. 49,048-49,051 (Sept. 25, 2001). The time for intervention in that matter has now lapsed.

Although the issues covered in the Petition might have been proffered as contentions (although not necessarily admissible contentions) in the proceeding before the Atomic Safety and Licensing Board ("Licensing Board"), BREDL has chosen to file its Petition with the Commission. For the reasons discussed below, Duke asks that the Commission deny the Petition and, in so doing, clarify the proper scope of the hearing before the Licensing Board.

II. BACKGROUND

Duke submitted a joint license renewal application for McGuire and Catawba on June 13, 2001. Notice of the NRC's receipt of the application was published in the *Federal Register* on July 16, 2001,⁴ and the NRC Staff issued a Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing on August 15, 2001 (66 Fed. Reg. 42,893). BREDL and the Nuclear Information and Resource Service ("NIRS") filed petitions to intervene and requests for hearing pursuant to 10 C.F.R. § 2.714 on September 14, 2001. Duke and the NRC Staff responded to these petitions, on the issue of standing only, on October 1, 2001.⁵

On October 4, 2001, the Commission issued an "Order Referring Petitions for Intervention and Requests for Hearing to the Atomic Safety and Licensing Board Panel."⁶ On October 16, 2001, the presiding Licensing Board in the license renewal proceeding issued an Order

⁴ See "Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), Notice of Receipt of Application for Renewal of Facility Operating License Nos. NPF-9, NPF-17, NPF-35, and NPF-52 for an Additional 20-Year Period," 66 Fed. Reg. 37,072 (July 16, 2001).

⁵ See "NRC Staff's Response to Requests for Hearing and Petitions for Leave to Intervene Filed by Nuclear Information and Resource Service and Blue Ridge Environmental Defense League" (October 1, 2001) and "Duke Energy Corporation's Response to Requests for Hearing and Petitions for Leave to Intervene" (October 1, 2001).

⁶ *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), CLI-01-20, ___ NRC ___ (slip op., Oct. 4, 2001).

establishing a schedule for the filing of pleadings.⁷ Petitioners were originally scheduled to submit proposed contentions on November 6, 2001. However, at the request of NIRS, the Licensing Board extended that deadline by approximately three weeks, until November 27, 2001.⁸ Accordingly, neither petitioner in the license renewal proceeding has submitted proposed contentions at this juncture. BREDL filed its current Petition on October 24, 2001, in the midst of the ongoing Licensing Board proceeding.

III. THE COMMISSION SHOULD ASSERT ITS INHERENT AUTHORITY AND RULE ON THE PETITION

The NRC technical review and the proceeding before the Licensing Board concerning the issuance of renewed operating licenses for the McGuire and Catawba facilities is currently at a preliminary stage, and BREDL's Petition is in many respects premature. While both BREDL and NIRS have filed petitions to intervene and requests for hearing, to which the NRC Staff and Duke have responded on the issue of standing only, neither BREDL nor NIRS has filed proposed contentions. Thus, neither Duke nor the NRC Staff has responded to any proposed contentions, no prehearing conference has been held, and no prehearing conference order has been issued by the Licensing Board. Significantly, BREDL has not yet been admitted as a party to the proceeding. To say the least, it is premature for BREDL to, in effect, file proposed contentions with the Commission and petition the Commission to decide those issues without following the prescribed hearing process.

⁷ *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), ASLBP No. 02-794-01-LR, "Order (Setting Deadlines, Schedule, and Guidance for Proceedings)," __ NRC __ (slip op., Oct. 16, 2001).

⁸ *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), LBP-01-31, "Memorandum and Order (Granting Motion to Extend Time and Resetting Deadlines and Schedule for Proceeding)," __ NRC __ (slip op., Oct. 31, 2001).

Yet that is precisely what BREDL has done.

Nonetheless, Duke urges the Commission to take the opportunity clearly presented to it by BREDL ____ by virtue of the Petition filed with the Commission rather than the Licensing Board ____ to address and resolve important issues that will shape the nascent McGuire-Catawba license renewal proceeding. By considering the BREDL Petition, the Commission will be able to address and promptly resolve significant policy issues, such as those relating to MOX fuel and security, as identified by BREDL and NIRS in their intervention petitions. Commission action at this time will more clearly define the scope of the license renewal hearing, facilitating the efficient conduct of this matter. This course of action would be consistent with the Commission's Policy Statement on Conduct of Adjudicatory Proceedings ("Policy Statement").⁹

The Policy Statement discusses various measures intended to ensure that NRC license renewal proceedings are conducted efficiently and that they "focus on issues germane to the proposed actions under consideration."¹⁰ The Commission clearly expressed its intention to "exercise its inherent supervisory authority, including its power to assume part or all of the functions of the presiding officer in a given adjudication, as appropriate in the context of a particular proceeding." The Commission further emphasized that it will "take action in individual proceedings, as appropriate, to provide guidance to the boards and parties and to decide issues in the interest of a prompt and effective resolution of the matters set for adjudication."¹¹

⁹ Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872 (Aug. 5, 1998).

¹⁰ *Id.* at 41,873.

¹¹ *Id.* at 41,875. See *Duke Energy, supra*, CLI-01-20, slip op. at 2-3 (Oct. 4, 2001); see also p. 8, where the Commission reiterates its willingness to exercise "supervisory authority" to provide guidance to resolve matters in controversy.

BREDL's proposed treatment of the McGuire-Catawba license renewal application is certainly "novel" and poses exactly the type of issue contemplated in the Commission's Policy Statement and in the Commission's referral Order in the license renewal proceeding. First, BREDL would insert into the license renewal proceeding the potential for future use of MOX fuel at McGuire or Catawba. As is discussed further below, MOX fuel may be used in the future, but only if, among other things, an application is submitted to the NRC and an appropriate authorization then is granted. MOX fuel issues should be addressed if and when Duke actually files a request to utilize MOX fuel at McGuire or Catawba. Consideration of those potential issues in the license renewal proceeding now before the Licensing Board would inappropriately and unnecessarily complicate the license renewal proceeding.¹² Moreover, it would improperly broaden the scope of that proceeding beyond the "discrete safety and environmental issues" authorized to be heard.¹³

The Petition also raises a threshold question regarding the NRC's grant of an exemption ____ in 1999 ____ to permit Duke to file a license renewal application early for McGuire Unit 2 and Catawba Units 1 and 2, based in part on information from the older, nearly identical sister unit, McGuire 1. BREDL's argument represents a late challenge to the exemption and would lead the Commission and the Licensing Board into matters that must be raised by other means. Moreover, BREDL's attack on the exemption does not fall within the scope of the license renewal proceeding, which is limited by regulation and Commission order to defined, "discrete safety and

¹² Both BREDL and NIRS have identified MOX fuel concerns to be addressed in the proceeding. BREDL has also sought to intervene in the ongoing MOX fuel fabrication facility licensing proceeding.

¹³ *Duke Energy, supra*, CLI-01-20, slip op. at 2 (Oct. 4, 2001).

environmental issues."¹⁴

Additionally, the Petition's proposal to dismiss or stay the renewal proceeding because "major changes in security and safeguards requirements" should occur following September 11, 2001, clearly poses a policy question that the Commission is currently addressing on a generic basis. Concerns regarding security are present-day regulatory issues under serious consideration by the Commission. These are, by definition, not license renewal issues, and should not be addressed in the proceeding before the Licensing Board.

Given the importance of all three of these issues to shaping the proceeding below, Duke urges the Commission to address these issues now. As further discussed below, the Petition should be denied.

IV. THE COMMISSION SHOULD DENY THE PETITION TO DISMISS THE LICENSE RENEWAL PROCEEDING

BREDL's Petition requests that the Commission summarily dismiss the license renewal proceeding and, presumably, Duke's license renewal application. BREDL offers three bases for this extraordinary relief. Each basis is invalid and is discussed below.

A. The Issue of MOX Fuel Use Is Beyond the Scope of License Renewal

BREDL first contends that the McGuire-Catawba license renewal application is "fundamentally deficient" and that the license renewal proceeding should be dismissed because the NRC Staff intends to prepare an environmental impact statement ("EIS") for the renewal of the licenses without taking into account the alleged impacts (with regard to reactor aging, accidents and

¹⁴ *Id.*

terrorist incidents) of using MOX fuel during the plants' current license terms. (Petition at 5-7). According to BREDL, the NRC Staff's approach to the EIS "misidentifies" the proposed action and would violate the National Environmental Policy Act ("NEPA"). However, Duke's license renewal application does not "misidentify" the proposed licensing action. Rather, it is BREDL that seeks to mischaracterize the licensing action, by insisting that an application to renew the operating licenses for McGuire and Catawba also encompass the effects of an unrelated potential future licensing action: the use of MOX fuel at those facilities. BREDL's suggested approach is inconsistent with the NRC's established licensing and regulatory framework and is based upon an incorrect interpretation of NEPA.

*1. MOX Fuel Issues Will Be Addressed by the NRC If and When
Duke Files a MOX Fuel License Amendment Application*

BREDL begins its argument by quoting selectively from Duke's letter to the NRC that accompanied the submittal of Duke's McGuire-Catawba license renewal application.¹⁵ When that passage in Duke's letter to the NRC is reviewed in its entirety, it clearly sets forth Duke's position on license renewal versus possible future use of MOX fuel. For clarity, we reiterate and update that information here:

- The McGuire-Catawba license renewal application assumes throughout that licensed activities are now conducted, and will continue to be conducted, in accordance with the facilities' current licensing bases (*e.g.*, use of low enriched uranium fuel only). Duke is not

¹⁵ For the convenience of the Commission, a copy of Duke's cover letter accompanying its June 13, 2001 license renewal application is included as an Attachment to this Response.

presently authorized to use MOX fuel at McGuire and Catawba and the license renewal application is not seeking that authority.

- Any changes made to the current licensing basis of McGuire or Catawba during the Staff review of the renewal application will be made in accordance with Commission regulations. Likewise, following issuance of the renewed operating licenses, Duke will address any future changes in the current licensing basis at the time of those changes, and in accordance with governing NRC regulations.
- One potential future change to the current licensing basis involves the use of MOX fuel at McGuire and Catawba. As a part of the international program to reduce stockpiles of surplus weapons plutonium in the United States and in Russia, Duke is currently evaluating and planning for the use of MOX fuel in batch quantities (up to 40% core fractions) in its McGuire and Catawba reactors.
- Duke will perform all required safety analyses and environmental evaluations, and will obtain necessary NRC approvals and license amendments, prior to loading any MOX fuel in its reactors. Duke would address any changes in the McGuire and Catawba licensing bases related to the use of MOX fuel, and any long-term impacts (including any impacts during the period of extended operation), in the associated MOX-related licensing submittals to the NRC.
- Duke is currently planning to submit in the Spring of 2002 a license amendment request to allow the loading of a very limited number of MOX fuel demonstration assemblies. Use of those demonstration MOX fuel assemblies would begin no earlier

than 2004. The current schedule calls for submittal in late 2003 or early 2004 of license amendment requests to allow the use of MOX fuel in batch quantities, with such use beginning no earlier than late 2007.

- The schedules for MOX fuel-related license amendment requests and for use of MOX fuel at McGuire and Catawba, and indeed even the continuation of the program, are dependent on various factors, including (but not necessarily limited to) the NRC reviews of amendment applications, U.S. Department of Energy actions, the licensing of the MOX fuel fabrication facility by the NRC, international agreements, and plutonium disposition activities in Russia. Based on the number and type of external factors involved, the currently contemplated schedule is subject to change.

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In sum, the use of MOX fuel at McGuire and Catawba is not a certainty. Moreover, any future use of MOX fuel at Duke reactors — should it occur — will involve an NRC licensing action that is separate from, and independent of, the license renewal application. The current McGuire-Catawba license renewal application does not seek approval for MOX fuel use, is in no way dependent upon the use of MOX fuel, and is of importance to Duke regardless of whether MOX fuel is ever authorized and used. The MOX fuel licensing process, if ultimately pursued, would involve a separate NRC license amendment application, Safety Analysis Report, Technical

¹⁶ To the extent that the dates given here differ from those cited at the time the license renewal application was filed in June 2001, it is because some of the dates have slipped.

Specification revisions, and Environmental Report. The NRC Staff would then conduct an independent safety and environmental review before acting on the amendment request. Significantly, NRC regulations would provide an opportunity for a licensing hearing in connection with any MOX fuel-related license amendment application. Thus, Petitioner's assertions that the scope of the present action is incorrect, and that MOX fuel must be addressed here, are invalid. The relief sought should be denied.

2. *Neither Duke nor the NRC Has Improperly "Segmented" Consideration of Environmental Issues Associated with Potential MOX Fuel Use from the McGuire and Catawba License Renewal Environmental Analysis*

BREDL suggests (Petition at 6-7) — without citation or analysis — that Duke and the NRC Staff are attempting to improperly "segment" consideration of the environmental impacts of license renewal from the environmental impacts of MOX fuel use. Petitioner asserts that the Environmental Impact Statements to be issued in connection with the license renewal application should include the impacts of MOX fuel use on "accident source terms, nonproliferation, and increased aging impacts."

¹⁷ (Petition at 7).

BREDL's invocation of the "segmentation" issue in this context is unfounded, and is inextricably linked to its position that the McGuire-Catawba license renewal application and the possible future use of MOX fuel at these facilities constitute a single NRC licensing action, whose environmental impacts must be considered together. However, as discussed above, these two

¹⁷ In the context of Part 54, the Petitioner further views the exclusion of MOX issues from the license renewal EISs as an attempt to "establish a Licensing Basis for the renewed license that excludes the actual licensing basis being considered." (Petition at 7).

licensing actions (one of which may not even occur and, if it does occur, will not commence for some months or years) are *not* part of the same licensing action. They are separate and distinct licensing actions. Certainly, license renewal with the current licensing basis has value to Duke regardless of the future of the government's MOX fuel program. BREDL has failed to make any showing to the contrary.

Council on Environmental Quality ("CEQ") regulations, at 40 C.F.R. § 1508.25, *et seq.*, instruct Federal agencies to define the scope of an EIS in part by determining whether a single EIS is appropriate where multiple actions may be involved.

¹⁸ To avoid improper "segmentation," agencies must consider impacts of other proposed actions when developing an EIS for a proposed action only if the projects at hand are "so interdependent that it would be unwise or irrational to complete one without the others."

¹⁹ Clearly, the McGuire-Catawba license renewal application and the possible future submittal of a license amendment application to approve the use of MOX fuel at McGuire and Catawba are separate projects that do not meet this standard of "interdependence." All four McGuire and Catawba units currently operate without MOX fuel and can continue to do so through their full operating license terms, and through the proposed renewal period. Conversely, even if the renewed licenses were not issued, the McGuire and Catawba facilities could still seek approval to use MOX

¹⁸ As stated in the cited CEQ regulations, "[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts." 40 C.F.R. § 1508.27(b)(7).

¹⁹ *Webb v. Gorsuch*, 699 F.2d 157, 161 (4th Cir. 1983). *Accord, Society Hill Towers Owners' Ass'n v. Rendell*, 210 F.3d 168, 181 (3rd Cir. 2000); *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 430 (10th Cir. 1996).

fuel during their current license terms.

A second standard often used by courts in addressing the scope of an EIS is the test of "independent utility." In these cases, the environmental impacts of a single segment (or project) may be evaluated separately from those of other segments if the former segment has "independent utility," such that the agency might reasonably consider a proposal involving only the segment in question.

²⁰ License renewal for McGuire and Catawba clearly has "independent utility" from possible MOX fuel use at these facilities. The license renewal application and the MOX license amendments can each be considered separately without reference to the other, and no environmental impacts will escape review. Thus, no impermissible segmentation is occurring. Contrary to BREDL's unsupported assertions, denial of Petitioner's request to consider potential future use of MOX fuel in the scope of the license renewal proceeding is entirely consistent with NEPA requirements and with the Commission's mandate to limit the scope of review in license renewal proceedings to defined, discrete safety and environmental issues. Not only should BREDL's Petition be dismissed, but the Commission should dictate that MOX fuel issues are beyond the scope of the license renewal proceeding.

²⁰ *Thomas v. Peterson*, 753 F.2d 754, 759 (9th Cir. 1985) (citing *Daly v. Volpe*, 514 F.2d 1106 (9th Cir. 1975)); see also *Wetlands Action Network v. U. S. Army Corps of Eng'rs*, 222 F.3d 1105, 1118-19 (9th Cir. 2000). This standard has also been applied by the NRC in discussing segmentation. See, e.g., *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-88-19, 28 NRC 145, 157 (1988).

B. Petitioner's Attack on Duke's 1999 Exemption from 10 C.F.R. § 54.17(c) Is Untimely, Unfounded, and Beyond the Scope of License Renewal

BREDL contends that an exemption from the requirements of 10 C.F.R. § 54.17(c) that the NRC granted to Duke in October 1999 ____ to allow the filing of the license renewal applications for McGuire Unit 2 and Catawba Units 1 and 2 at the same time as that for McGuire Unit 1 ____ "was based on invalid statements by the licensee regarding its aging management program." (Petition at 8). BREDL appears to contend that the exemption was invalid. However, BREDL is raising an issue that does not entitle it to any relief in this proceeding.

1. Petitioner's Attack on the 1999 Exemption Is Untimely

On June 22, 1999, Duke submitted an application for an exemption from the requirements of 10 C.F.R. § 54.17(c). The exemption allowed Duke to submit license renewal applications for McGuire Unit 2, and for Catawba Units 1 and 2, somewhat earlier than twenty years before the expiration of the initial operating licenses for those three units.²¹ The exemption was purely schedular in nature. The NRC determined that Duke's exemption request met applicable standards.²² The NRC provided public notice in the *Federal Register* that Duke's exemption had

²¹ McGuire Unit 1 had operated for 20 years at the time the renewal application was filed in June, 2001. At that time, McGuire Unit 2 had operated for approximately 18.3 years, Catawba Unit 1 for 16.5 years, and Catawba Unit 2 for 15.3 years.

As the NRC explained in issuing the exemption, the underlying purpose of the "twenty year rule" in Section 54.17(c) was to "ensure that substantial operating experience is accumulated by a licensee before it submits a renewal application." See 64 Fed. Reg. 54,924 (Oct. 8, 1999), citing 56 Fed. Reg. 64,963 (Dec. 13, 1991). By the time the NRC issued the amended license renewal rule in 1995, it specifically indicated its willingness to consider exemptions to the twenty-year requirement if "sufficient information" was available on a plant-specific basis to justify submission of an application. See 64 Fed. Reg. 54,924.

²² Since granting Duke's exemption application, the NRC has also granted a similar exemption from the requirements of Section 54.17(c) to at least one other reactor licensee that

been granted.²³

In effect, BREDL's Petition now raises an untimely challenge to the 1999 exemption. Had BREDL wished to contest the exemption's granting in a timely fashion, it should have commented or taken some other appropriate action in 1999. BREDL, however, did not challenge Duke's exemption at that time or for two years thereafter. BREDL's attempt to attack the exemption now is clearly untimely and must itself be denied by the Commission and ruled to be outside the scope of the proceeding before the Licensing Board.

Moreover, regardless of the lack of timeliness, the Duke exemption request did not and does not create any hearing rights that could now somehow ripen in the present context. Duke's 1999 exemption was procedural in nature, merely permitting Duke to file stand-alone license renewal applications which would themselves be subject to NRC Staff review and requests for hearing. It did not, by its terms, grant Duke new or renewed licenses, grant any other authority, or amend Duke's existing licenses. In such a circumstance, both the Commission and federal courts have held that regulatory exemptions are outside the scope of the hearing rights in Section 189a of

²³ subsequently filed a license renewal application. *See* "Florida Power and Light Company et al., St. Lucie Plant, Unit No. 2; Exemption," 66 Fed. Reg. 13,596 (Mar. 6, 2001). *See* "Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), Exemption," 64 Fed. Reg. 54,924 (Oct. 8, 1999).

the Atomic Energy Act of 1954, as amended ("AEA"), and are not valid subjects for hearing.²⁴ No hearing rights attach to the exemption granted to Duke, and, as such, the exemption is not a part of the pending license renewal application. Likewise, the exemption should not be elevated to a status that would permit its consideration as grounds to dismiss the license renewal proceeding.

Further, in contrast to the recent Commission decision in the *Private Fuel Storage* ("PFS") proceeding,²⁵ where the Commission held an exemption from NRC seismic hazards analysis regulations to be litigable in a licensing proceeding because the exemption "directly affect[ed] the licensability of the proposed ISFSI, [and] raise[d] material questions directly connected to an agency licensing action,"²⁶ Duke's exemption does not materially affect the ability of the NRC Staff to determine whether renewal licenses may be granted. The exemption affects only the timing of the NRC Staff review, not the nature of the review. The NRC Staff review will consider the technical merits of the license renewal application in accordance with the NRC's regulations and guidance documents. No existing, substantive license terms or requirements were changed in any way. See *Kelley, supra*, 42 F.3d at 1517 ("[T]he grant of an exemption from a generic requirement does not constitute an amendment to the reactor's license that would trigger hearing rights."). Accordingly, the 1999 exemption does not provide any basis to dismiss and cannot now be bootstrapped into the

²⁴ See, e.g., *Commonwealth Edison Company* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 96 (2000); *Kelley v. Selin*, 42 F.3d 1501, 1517 (6th Cir. 1995), cert. denied, 515 U.S. 1159 (1995) (citing *Commonwealth of Massachusetts v. U.S. Nuclear Regulatory Com'n*, 878 F.2d 1516, 1520-21 (1st Cir. 1989)). The exemption issued to Duke did not directly affect operation of the subject facilities. The Commission's earlier reinstatement of a reactor license to a shutdown facility, allowing restart, had a more tangible effect on operation and was nonetheless held not to be subject to a hearing. See *Commonwealth of Massachusetts*, 878 F.2d at 1521-22.

²⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 2001 WL 709427 (2001).

²⁶ *PFS*, CLI-01-12, 53 NRC at ___, 2001 WL 709427 at **6.

hearing process.

2. *BREDL's Assertion that the Exemption Application Contained Invalid Information Is Unfounded and Raises Regulatory Issues Beyond the Scope of License Renewal*

BREDL more specifically asserts, based on recent developments at Oconee Nuclear Station ("Oconee"), that the 1999 exemption "was based on invalid statements by the licensee regarding its aging management program." (Petition at 8). Their claims, however, are simply incorrect. Petitioner's stated concerns regarding the exemption fail to provide any basis for dismissing the license renewal proceeding.

Duke's exemption application relied heavily upon the similarity in design, operation and maintenance between the McGuire units and the Catawba units, which are "sister plants." Duke indicated that its combined operating experience for all four of the units would allow it to perform the evaluations required for a license renewal application. Although the similarities between McGuire and Catawba were the most significant for purposes of supporting the exemption, Duke also indicated that there are "regular and systematic exchanges of information on plant-specific operating experience among all three Duke nuclear stations."

²⁷ BREDL contends that Duke's reference to an ongoing "exchange of information on plant-specific operating experience" among the Duke nuclear stations was false or "in error" because "significant circumferential cracks in PWR Alloy 600 weldments, apparently at growth rates that are faster than previously modeled," were discovered at Oconee in early 2001. (Petition at 9.) (emphasis supplied). Although the underlying rationale is unclear, BREDL appears

²⁷ See "Duke Exemption," 64 Fed. Reg. at 54,924.

to be suggesting that, because this problem was not discovered by the Oconee aging management program, there could not, by definition, have existed an ongoing exchange of information between the three Duke plants. The logic is flawed and the conclusion unclear. No communication regarding the Oconee issue could take place unless and until that issue appeared and was identified. Moreover, this 2001 operating experience at Oconee does not undermine the basis for the exemption: *i.e.*, that experience at the McGuire and Catawba units would support the license renewal application.

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Petitioner also obliquely raises an issue (Petition at 10) regarding the supposed 1998 findings of the NRC Allegation Review Board ("ARB"), as illustrative of a supposed "failure" by Duke to facilitate the exchange of operating information among its nuclear plants. However, in doing so, BREDL mischaracterizes an anonymous allegation as a conclusion of the ARB. The result is that BREDL totally misrepresents the NRC's position on this allegation.

²⁹ Thus, this information also does not, in any way, illustrate a failure by Duke to exchange plant

²⁸ *In the McGuire-Catawba license renewal application, the Oconee experience in this regard is also explicitly addressed in Appendix B, Section B.3.9-3, "Control Rod Drive Mechanism Nozzle and other Vessel Closure Penetrations Inspection Program."*

²⁹ *A June 22, 1998 NRC memorandum from Oscar De Miranda to Jean Lee, Office of Nuclear Reactor Regulation, encloses the results of an NRC Region II review of the transcript of a Department of Labor case involving another NRC licensee. The review was conducted to identify any potential issues that might have been raised related to ice condensers. The purpose was to determine whether or not any technical issues would need to be addressed by other plants (such as Duke's) with ice condensers. Attachment 1 to that memorandum is a copy of the June 19, 1998 meeting minutes of the Region II ARB, providing the ARB's determination of the results of the NRC Staff's review of the DOL transcript. The concern by an unknown allegor was that "problems with D.C. Cook ice condenser containment such as configuration and testing and ice basket bay doors and components were known but not reported by D.C. Cook, Watts Bar, McGuire, and Westinghouse." This statement does not in any way reflect the finding of the Allegation Review Board. Rather, the action recommended by the Region II ARB was to "forward allegation along with the matrix which*

operating experience among its nuclear plants. Even if Petitioner's characterization were accurate, their logic is flawed and their conclusion is unsupported.

In sum, BREDL's assertion that Duke relied upon "invalid statements" in its 1999 exemption application is totally baseless and does not merit further consideration by the Commission. To the extent that Petitioner alleges some misconduct in connection with the issuance of the exemption, that is certainly not a license renewal issue.

³⁰ Rather, it is an issue of ongoing regulatory oversight of a type clearly excluded from license renewal proceedings.

³¹

C. Petitioner Raises Generic Security Matters that Should Not Be Addressed in Connection with License Renewal

As its third basis for relief, BREDL raises generic issues based upon the NRC's

delineates the ARB determination to NRR OAC and close [the] case."

³⁰ *If BREDL asserts the existence of some misconduct in connection with the issuance of the Duke exemption, one possible approach would be to file a 10 C.F.R. § 2.206 petition requesting that agency enforcement action be taken.*

³¹ *In issuing the license renewal rule, the Commission articulated its fundamental regulatory philosophy for license renewal that "issues material to the renewal of a nuclear power plant operating license are to be confined to those issues that the Commission determines are uniquely relevant to protecting the public health and safety and preserving the common defense and security during the period of extended operation. . . . Given the Commission's ongoing obligation to oversee the safety and security of operating reactors, issues that are relevant to current plant operation will be addressed by the existing regulatory processes within the present license term rather than deferred until the time of license renewal." "Final Rule, Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,463-64 (May 8, 1995).*

ongoing re-evaluation of security issues, in light of the horrific events of September 11, 2001.

BREDL asserts:

Major changes in security and safeguard requirements at all Nuclear Power Plants (NPP) are inevitable in the aftermath of the September 11, 2001 terrorist attacks in New York City and Washington, D.C. Although the economic and environmental impacts of these changes must be understood for all relicensing efforts, McGuire and Catawba NPP's are particularly vulnerable to acts of sabotage because of their meager, three-foot thick concrete containment structures. In addition, a subsidiary of the licensee is weakening security by actively developing the former buffer zones around both McGuire and Catawba NPPs. (Petition at 2).

According to BREDL, no renewal licenses should be issued for McGuire and Catawba until these generic issues are resolved. As discussed below, however, these security-related issues do not provide a valid basis on which to dismiss an NRC license renewal proceeding or hold that proceeding in abeyance. The Commission should deny the relief requested by the Petitioner and should further direct that these issues not be considered in the proceeding before the Licensing Board.

1. *BREDL's Security Concerns Involve Generic Issues Currently under Review by the Commission*

BREDL's security-related concerns are in reality generic issues currently under review by the Commission.³² In the cover letter transmitting his October 16, 2001 response to questions posed by Congressman Edward Markey, NRC Chairman Richard Meserve stated in part: "For the longer term, I, with the full support of the Commission, have directed the NRC Staff to

³² *As BREDL itself acknowledges, the security issues currently under review by the Commission are clearly generic and industry-wide in nature. BREDL asserts that "major changes in security and safeguards requirements at all Nuclear Power Plants" are "inevitable." (Petition at 3) (emphasis added).*

thoroughly reevaluate the NRC's safeguards and physical security programs. This reevaluation will be a top-to-bottom analysis involving all aspects of the Agency's safeguards and physical security programs." It is therefore clear that the NRC is addressing these matters as a current regulatory issue. Given the significance and generic nature of these security concerns, this assessment of NRC security requirements will apply to all (not merely some) NRC commercial reactors. The Commission's ongoing generic review of security issues is the appropriate vehicle for considering BREDL's security-related concerns.

The generic nature of BREDL's security issues makes their consideration in an individual licensing proceeding inappropriate. Well-established Commission precedent holds that proposed contentions concerning generic issues that are (or that are about to become) the subject of rulemaking by the NRC should not be adjudicated in individual licensing proceedings.³³ Accordingly, these generic concerns may not properly be invoked as a basis for dismissing the license renewal proceeding.

Similarly, BREDL asserts that the current design basis threat assumed for the purposes of compliance with NRC security regulations is "understated" and inadequate, and "hopelessly minimizes the threat of radiological and industrial sabotage." (Petition at 11-13). However, to the extent that Petitioner seeks to attack Commission security regulations in connection with license renewal, such an attack is impermissible in an individual licensing proceeding. *See* 10

³³ *See, e.g., Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993).

C.F.R. § 2.758(a); *see also Florida Power & Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 151 (2001); *Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); *Metropolitan Edison Company* (Three Mile Island Nuclear Station, Unit 2), ALAB-456, 7 NRC 63, 65 (1978).³⁴ Accordingly, security concerns do not provide a basis on which to deny the McGuire-Catawba license renewal application, nor are these issue to be addressed in this arena.

2. *Security Issues Are Beyond the Scope of License Renewal*

Security issues such as those raised by the Petitioner are also clearly beyond the scope of a license renewal proceeding. It is well-established that "the subject matter of all contentions is limited to the scope of the proceeding delineated by the Commission in its hearing notice and referral order delegating to the licensing Board the authority to conduct the proceeding."³⁵ In this license

³⁴ *Currently, 10 C.F.R. § 50.13 explicitly provides that NRC reactor licensees are not required to provide for design features or other measures to protect against the effects of attacks and destructive acts, including sabotage, by an enemy of the United States (including, but not limited to, foreign governments). The NRC and federal case law have consistently held that the responsibility for defense against such acts of war lies with the United States government. See Siegel v. Atomic Energy Commission, 400 F.2d 778, 783-84 (D.C. Cir. 1968) (In licensing commercial reactors, the NRC is not required to take into account ____ or require a showing of effective protection against ____ the possibilities of attack or sabotage by foreign enemies.). See also Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2098 (1982), where the Licensing Board held that commercial reactors cannot be effectively protected against certain external attacks (such as artillery bombardments, missiles with nuclear warheads, or kamikaze dives by large aircraft), without "turning them into virtually impregnable fortresses at much higher cost."*

³⁵ *See Florida Power & Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 151 (2001), (*citing Florida Power & Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000) and *Duke Power Company* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785.

renewal proceeding, the Commission's referral order explicitly limits the scope of the proceeding to discrete safety and environmental issues encompassing "a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses."³⁶ In addition, the Commission stated that the review of environmental issues was limited "in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c)."³⁷ Because security issues fall outside the scope of license renewal, the Petitioner may not properly rely upon the NRC's treatment of security-related issues as a basis for dismissing the proceeding, or for holding the proceeding in abeyance.

V. THE COMMISSION SHOULD DENY THE REQUEST FOR A STAY OF THE LICENSE RENEWAL PROCEEDING

BREDL'S Petition requests that, if the Commission does not dismiss the McGuire-Catawba license renewal proceeding, it should alternatively consider holding the proceeding in abeyance "pending the submission of a complete license application and the completion of changes to the security requirements at NPP's." (Petition at 16.) However, BREDL has not shown sufficient cause to justify either cutting short or deferring the Staff's review, particularly at this early stage of the review and the proceeding. *See generally New England Power Company* (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271 (1978); *see also Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 386-87 (1998) ("[Petitioners'] argument fails to recognize that all information regarding Staff review of an NRC licensing application does not have to be complete

790 (1985)).

³⁶ *See also* note 31, *supra*.

³⁷ *CLI-01-20, supra*, slip op. at 2 (citations omitted).

prior to the time the application is contested at a hearing").

What BREDL is requesting is, in effect, a stay. The NRC's criteria for granting a stay are described in 10 C.F.R. § 2.788(e), which directs the Commission or presiding officer to consider the following factors:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.

BREDL has failed to address any of these factors. An examination of the Petition pursuant to the above criteria demonstrates that it in no way meets its burden to justify a stay. For the reasons stated above, BREDL cannot be said to have made a "strong" showing of the likelihood of prevailing on the merits of any of its claims. Its issues, quite simply, have no nexus to the particular approval before the NRC. Similarly, BREDL has made no showing of irreparable injury if the proceeding is not suspended. If future use of MOX fuel by Duke is BREDL's concern, that matter — although inadmissible as an issue in the license renewal proceeding — will be the subject of a future license amendment request and an opportunity for hearing. BREDL will have an opportunity at that time to participate in that proceeding. With regard to post-September 11 terrorism issues, any changes in Commission policy will almost certainly be made via rulemaking or other generic processes, with appropriate opportunities for public participation.

The Commission recently emphasized its "reluctan[ce] to suspend pending

adjudications to await developments in other proceedings . . ."³⁸ It would be equally inappropriate to suspend the instant license renewal proceeding to await both a possible future decision by Duke to seek a license amendment permitting use of MOX fuel or a possible future Commission decision to revise its safety and safeguards regulations. Further, granting this relief would harm Duke by delaying consideration of its properly filed license renewal application and would be inconsistent with the public interest in timely evaluation of license renewal applications.

³⁸ *Consolidated Edison Company of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229 (2001) (denying motion to suspend or terminate license transfer proceeding for Units 1 and 2 until conclusion of Unit 3 license transfer proceeding and consideration of Unit 2-related Section 2.206 petition).

VI. CONCLUSION

For all of the reasons stated above, the Commission should deny BREDL's petition to dismiss the McGuire/Catawba license renewal proceeding and Duke's license renewal application. Likewise, the Commission should reject the alternative request for a stay of the proceeding. Finally, the Commission should provide specific guidance to the Licensing Board on these matters, clarifying the appropriate issues for the license renewal proceeding consistent with the discussion above.

Respectfully submitted,

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Dated in Washington, D.C.
This 5th day of November 2001

ATTACHMENT



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Subject: Application to Renew the Operating Licenses of
McGuire Nuclear Station, Units 1 & 2 and
Catawba Nuclear Station, Units 1 & 2

Docket Nos. 50-369, 50-370, 50-413 and 50-414

Dear Sir:

Pursuant to U.S. Nuclear Regulatory Commission (NRC) regulations set forth in 10 C.F.R. Parts 50, 51 and 54, Duke Energy Corporation (Duke) hereby applies for the renewal of the operating licenses for the McGuire Nuclear Station (McGuire), Units 1 and 2, and Catawba Nuclear Station (Catawba), Units 1 and 2, originally issued in 1981, 1983, 1985 and 1986 respectively. These licenses were all issued by the NRC under Section 103 of the Atomic Energy Act of 1954, as amended (AEA). Duke's Application to Renew the Operating Licenses of McGuire Nuclear Station, Units 1 and 2 and Catawba Nuclear Station, Units 1 and 2 (the Application), is enclosed.¹

The submittal of concurrent applications to renew the operating licenses of all four of these units was approved by the NRC in response to Duke's request for an exemption from the schedule requirements of 10 C.F.R. § 54.17(c).²

¹ In accordance with NRC requirements in 10 C.F.R. §§ 54.17 and 50.4, Duke is submitting an original and thirteen (13) copies of this Application. A copy is also being provided to the NRC Region II Administrator. Twenty-six (26) copies of the Applicant's Environmental Report, Operating License Renewal Stage, for each station are being provided to the NRC, pursuant to 10 C.F.R. § 51.55. Duke submitted a request for exception to the copy requirements of 10 C.F.R. § 50.4 by letter dated December 19, 2000. In a letter dated March 8, 2001, the NRC staff approved this request.

² By letter dated June 22, 1999, Duke requested an exemption pursuant to 10 C.F.R. §§ 54.15 and 50.12 from the schedular requirements of 10 C.F.R. § 54.17(c) to allow the submission of applications to renew the operating licenses for McGuire Unit 2, and Catawba Units 1 and 2 earlier than 20 years before expiration of the current operating licenses but not earlier than June 13, 2001 (20 years after McGuire Unit 1 was initially licensed). In a letter dated October 1, 1999, the NRC staff approved the exemption request for McGuire Unit 2 and Catawba Units 1 and 2, thereby permitting the submittal of concurrent applications to renew the operating licenses of all four units on or after June 13, 2001.

For McGuire Unit 1 (Facility Operating License NPF-9), the requested renewal would extend the existing license expiration date from midnight June 12, 2021, until midnight June 12, 2041. For McGuire Unit 2 (Facility Operating License NPF-17), the requested renewal would extend the existing license expiration date from midnight March 3, 2023, until either midnight March 3, 2043 or midnight 40 years from the date of the issuance of the renewed operating license for Unit 2, whichever is earlier.

For Catawba Unit 1 (Facility Operating License NPF-35), the requested renewal would extend the existing license expiration date from midnight December 6, 2024, until either midnight December 6, 2044 or midnight 40 years from the date of the issuance of the renewed operating license for Unit 1, whichever is earlier. For Catawba Unit 2 (Facility Operating License NPF-52), the requested renewal would extend the existing license expiration date from midnight February 24, 2026, until either midnight February 24, 2046 or midnight 40 years from the date of the issuance of the renewed operating license for Unit 2, whichever is earlier.³

The technical and environmental reviews performed in connection with this Application cover operation for a period of sixty years. As reflected in the requested revisions to the license expiration dates, Duke recognizes the legal limits associated with the term of renewed operating licenses. Nonetheless, Duke requests that the staff complete its safety and environmental reviews such that 60-years of operation are evaluated, even though the renewed licenses issued may actually provide somewhat less than an additional 20-years of operation beyond the end of the current operating licenses of one or more of the McGuire or Catawba units.

Duke's Application satisfies applicable requirements in 10 C.F.R. §§ 54.17, 54.19, 54.21, 54.22, and 54.23. Duke also has reviewed and addressed other relevant filing requirements found in 10 C.F.R. Part 2, Subpart A, and 10 C.F.R. §§ 50.4, 50.30, and 50.33. Duke believes that this Application, taken in its entirety, contains information and analyses sufficient to support the Commission findings required by 10 C.F.R. § 54.29 for an additional twenty years of operation for each unit beyond the end of its current operating license or for a total of 40-years from the date of issuance of the renewed licenses, whichever is earlier. Specifically, as required by Part 54, actions have been identified that have been or will be taken to manage the effects of aging on the structures and components subject to aging management review, such that their intended functions will be maintained consistent with the current licensing basis during the renewed term of operation of each McGuire and Catawba unit or for sixty years. Time-limited aging analyses have been identified and demonstrated to meet the requirements set forth in 10 C.F.R. § 54.21(c)(1). In addition, Duke has not identified any McGuire or Catawba-specific exemptions granted pursuant to 10 C.F.R. §50.12 that are in effect and are based on time-limited

³ As set forth in 10 C.F.R. § 54.31, the renewed license cannot exceed a term of 40 years, but is subject to further extension.

aging analyses. Finally, the Environmental Reports submitted for McGuire Nuclear Station and Catawba Nuclear Station, respectively, as part of this Application satisfy applicable provisions in 10 C.F.R. Part 51, Subpart A.

The Application contains the information required by Commission regulations and is presented in a manner designed to allow the NRC to make the findings required by 10 C.F.R. § 54.29 in a timely and efficient manner. The guidance contained in Supplement 1 to Regulatory Guide 4.2, "Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses" (September 2000), was used in the preparation of the plant specific environmental reports contained in Appendix E of this Application. In addition, draft Regulatory Guide DG-1104, "Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses" (August 2000) and draft "Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants" (SRP-LR) (August 2000) have been used as guidance in preparation of the remaining portions of this Application.⁴ Appendix A.3 of SRP-LR (August 2000) states that the version of NUREG-0933, "A Prioritization of Generic Safety Issues" that is current on the date six months before the date of the license renewal application should be used by an applicant. In accordance with this guidance, Duke used Supplement 24 of NUREG-0933 (June 2000) in the preparation of this Application.⁵

By its nature, preparation of a license renewal application requires substantial planning and preparation. SECY-01-0074 dated April 26, 2001 provided proposed final versions of three guidance documents for use by license renewal applicants: Regulatory Guide 1.188, "Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses," NUREG-1800, "Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants" and NUREG-1801, "Generic Aging Lessons Learned. On May 7, 2001, Duke received a copy of SECY-01-0074, along with all of its attachments from the NRC. Because the McGuire and Catawba license renewal technical reviews were complete and because the industry activities to demonstrate a process to use these guidance documents in a license renewal application are still in progress, these guidance documents have not been used by Duke in preparing this Application.

⁴ In this Application, systems, structures and components are described consistent with their respective locations in NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," (July 1981), except where the internal operating environment or function of the system, structure or component suggests a more appropriate section for the description within the Application. In these situations, the system, structure, or component is described in the more appropriate section.

⁵ SRP-LR (August 2000) inaccurately references Supplement 23 of NUREG-0933, April 1999 as the version current six months before the date of this Application.

The Application to Renew the Operating Licenses of McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, assumes throughout that licensed activities are now conducted, and will continue to be conducted, in accordance with the facilities' current licensing bases (e.g., use of low enriched uranium fuel only). Any changes made to the current licensing basis of McGuire Nuclear Station, Units 1 and 2 or Catawba Nuclear Station, Units 1 and 2 during the staff review of this Application will be made in accordance with the AEA and with Commission regulations.⁶ Following issuance of the renewed operating licenses, Duke will address any future changes in the current licensing basis at the time of those changes, and in accordance with governing NRC regulations.

One potential future change to the current licensing basis involves the use of mixed oxide (MOX) fuel at McGuire and Catawba. As a part of the international program to reduce stockpiles of surplus weapons plutonium in the United States and in Russia, Duke is currently evaluating and planning for the use of MOX fuel in batch quantities (up to 40% core fractions) in its McGuire and Catawba reactors. Duke will perform all required safety analyses and environmental evaluations, and will obtain necessary NRC approvals and license amendments, prior to loading any MOX fuel in its reactors. Duke would address any changes in the McGuire and Catawba licensing bases related to the use of MOX fuel, and any long-term impacts, in the associated MOX-related licensing submittals to NRC. Duke is planning to submit, later this year, a license amendment request to allow the loading of a limited number of MOX fuel assemblies. Use of those demonstration MOX fuel assemblies would begin no earlier than late 2003. The current schedule calls for submittal in late 2003 or early 2004 of license amendment requests to allow the use of MOX fuel in batch quantities, with such use beginning no earlier than 2007. The eventual schedules for MOX fuel-related license amendment requests and for use of MOX fuel at McGuire and Catawba are dependent on various factors, including NRC reviews, U.S. Department of Energy actions, international agreements, and plutonium disposition activities in Russia. Based on the number and type of external factors involved, the currently contemplated schedule is subject to change. For the reasons noted above, any potential MOX fuel-related changes to the current licensing basis will be addressed in the associated MOX fuel-related licensing submittals, not in the Application to Renew the Operating Licenses of McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2.

⁶ In accordance with 10 C.F.R. § 54.21(b), changes to the McGuire Nuclear Station, Units 1 and 2 and Catawba Nuclear Station, Units 1 and 2 licensing bases that materially affect the content of this Application will be identified by Duke at least annually during the NRC's review of the Application. Duke currently intends to provide the first update to the Application in June 2002.

Duke has worked with the nuclear industry, the Commission, and its staff for a number of years to develop a stable and predictable license renewal process. This Application reflects the results of a considerable investment of time on behalf of Duke, the NRC, and the industry. Duke appreciates the collective efforts devoted to this Application to date. Our goal is to facilitate a thorough, yet efficient, review of this Application so as to avoid unnecessary delay in the issuance of the requested renewed operating licenses. We stand ready to provide whatever assistance and information is necessary to achieve this goal. In this regard, Duke would like to propose periodic meetings between its management and the NRC's License Renewal Project Directorate, with the goal of establishing an expeditious process for resolving any issues arising during the course of the Application review process.

Very truly yours,



M. S. Tuckman

Attachments: (14 Copies of the Application)

Affidavit

M. S. Tuckman, being duly sworn, states that he is Executive Vice President, Nuclear Generation Department, Duke Energy Corporation; that he is authorized on the part of said Corporation to sign and file with the U. S. Nuclear Regulatory Commission this Application to Renew the Facility Operating Licenses of McGuire Nuclear Station and Catawba Nuclear Station, Docket Nos. 50-369, 50-370, 50-413 and 50-414, and that all the statements and matters set forth herein are true and correct to the best of his knowledge and belief. To the extent that these statements are not based on his personal knowledge, they are based on information provided by Duke employees and/or consultants. Such information has been reviewed in accordance with Duke Energy Corporation practice and is believed to be reliable.

M. S. Tuckman

M. S. Tuckman, Executive Vice President
Duke Energy Corporation

Subscribed and sworn to before me this 13TH day of June 2001.

Mary P. Nelms
Notary Public

My Commission Expires:

JAN 22, 2006

xc: (w/ Attachment)

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Regional Administrator, Region II
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	Docket Nos.
)	50-369 - LR
Duke Energy Corporation)	50-370 - LR
)	50-413 - LR
(McGuire Units 1 and 2, and)	50-414 - LR
Catawba Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Response Of Duke Energy Corporation To Blue Ridge Environmental Defense League Petition To Dismiss Licensing Proceeding Or, In The Alternative, Hold It In Abeyance" in the captioned proceeding have been served on the following by electronic mail this 5th day of November, 2001. Additional courtesy service will be made by deposit in the United States mail, as shown below.

Richard A. Meserve, Chairman
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Jeffrey S. Merrifield, Commissioner
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Attn: Rulemakings and Adjudications Staff
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Counsel for Duke Energy Corporation