

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of	)	
	)	
<b>PRIVATE FUEL STORAGE L.L.C.</b>	)	<b>Docket No. 72-22-ISFSI</b>
(Independent Spent Fuel Storage	)	
Installation)	)	

In the Matter of	)	
	)	
<b>DUKE COGEMA STONE &amp; WEBSTER</b>	)	
(Savannah River Mixed Oxide Fuel	)	<b>Docket No. 070-03098</b>
Fabrication Facility)	)	

In the Matter of	)	
	)	
<b>DOMINION NUCLEAR</b>	)	
<b>CONNECTICUT, INC.</b>	)	<b>Docket No. 50-423-LA-3</b>
(Millstone Nuclear Power Station,	)	
Unit No. 3)	)	

In the Matter of	)	
	)	
<b>DUKE ENERGY CORPORATION</b>	)	<b>Docket Nos. 50-369-LR</b>
(McGuire Nuclear Station,	)	<b>50-370-LR</b>
Units 1 and 2,	)	<b>50-413-LR</b>
Catawba Nuclear Station,	)	<b>50-414-LR</b>
Units 1 and 2)	)	
	)	

**MOTION BY THE NUCLEAR ENERGY INSTITUTE FOR LEAVE  
TO FILE AN AMICUS BRIEF IN RESPONSE TO THE COMMISSION'S  
MEMORANDUM AND ORDERS DATED FEBRUARY 6, 2002, REGARDING  
THE COMMISSION'S CONSIDERATION OF POTENTIAL INTENTIONAL  
MALEVOLENT ACTS**

Pursuant to 10 C.F.R. § 2.715(d), the Nuclear Energy Institute (“NEI”) hereby moves for leave to file the attached Amicus Brief in response to the Commission’s Orders of February 6, 2002, (CLI-02-03, CLI-02-04, CLI-02-05, and CLI-02-06). In those Orders, the Commission requested that the parties to those proceedings<sup>1</sup> file briefs regarding whether the Commission’s responsibility under the National Environmental Policy Act (NEPA)<sup>2</sup> requires consideration of intentional malevolent acts, such as those directed at the United States on September 11, 2001. NEI seeks leave to file as Amicus Curiae because of the importance of this issue and the potential generic applicability of this ruling the nuclear energy industry generally.

NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI’s members include all entities licensed by the NRC to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel

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<sup>1</sup> Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-03, 55 NRC \_\_ (slip op., Feb. 6, 2002) (accepting certification of terrorism issues raised in Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-37, 54 NRC \_\_ (slip op., Dec. 13, 2001)); Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-04, 55 NRC \_\_ (slip op., Feb. 6, 2002) (granting applicant’s petition to review the licensing board’s ruling admitting contentions on terrorism in Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 55 NRC \_\_ (slip op., Dec. 6, 2001)); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF-49), CLI-02-05, 55 NRC \_\_ (slip op., Feb. 6, 2002); and Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2, and Catawba Nuclear Station, Units 1 & 2), CLI-02-06, 55 NRC \_\_ (slip op., Feb. 6, 2002) (accepting certification of radiological sabotage issue raised in Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2, and Catawba Nuclear Station, Units 1 & 2), LBP-02-04, 55 NRC \_\_ (slip op., Jan. 24, 2002)).

<sup>2</sup> National Environmental Policy Act, Section 102(2)(C), 42 U.S.C. § 4332.

fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Since the September 11, 2001, attack on the United States, virtually all aspects of homeland security have been subject to intense scrutiny to ensure appropriate measures are in place to protect the nation and its citizens. Since its inception, the commercial nuclear energy industry has been stalwart in upholding its responsibility to protect the public health and safety through the combination of robust physical protection, well-trained and armed security forces and extensive emergency response capability found at every nuclear facility in the United States. In addition, nuclear facility security programs have been upgraded based on additional experience, new information and new technology, consistent with NRC regulatory requirements. Thus, the nuclear energy industry is unique among operators of private industrial facilities in the level of security that was in place *prior* to September 11. And to further reduce the likelihood of a successful terrorist attack on a nuclear facility, the industry promptly implemented a heightened level of security immediately following the events of September 11, and is now implementing even more extensive security measures at each nuclear power plant pursuant to the NRC's recently issued Orders.<sup>3</sup>

In the above captioned proceedings, the Commission has decided to consider whether the agency has a responsibility under NEPA to consider intentional malevolent acts, such as those directed at the United States on September 11, 2001.

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<sup>3</sup> In the Matter of All Operating Power Reactor Licensees, Order Modifying Licenses (Effective Immediately), dated February 25, 2002, "Issuance of Order for Interim Safeguards and Security Compensatory Measures," which was issued to each Part 50 licensee.

Notably, the Commission is considering this issue in the context of a variety of licensing proceedings, including applications for initial licenses and license renewal. The Commission's determination regarding this issue likely will have generic applicability to all future licensing actions where a NEPA analysis is required.

Accordingly, NEI respectfully requests that the Commission accept NEI's Amicus Brief for consideration as it deliberates on these important issues affecting the nuclear energy industry.

Respectfully submitted,

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