

RAS 4310

RELATED CORRESPONDENCE

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

DUKE ENERGY CORPORATION'S FIRST SET OF INTERROGATORIES, REQUESTS
FOR ADMISSION, AND DOCUMENT PRODUCTION REQUESTS TO
THE NUCLEAR INFORMATION AND RESOURCE SERVICE

I. INTRODUCTION

In accordance with the directives of the NRC Atomic Safety and Licensing Board ("Licensing Board") in its Order of March 14, 2002,¹ and NRC regulations governing discovery, Duke Energy Corporation ("Duke") hereby requests that the Nuclear Information and Resource and Service ("NIRS") answer this set of interrogatories and requests for admission in the fullest detail possible, in writing and under oath, within 14 days after service of this request, in accordance with 10 C.F.R. § 2.740b, and provide the requested documents within 30 days, pursuant to 10 C.F.R. § 2.741.

¹ ORDER (Addressing Matters Discussed at March 13, 2002, Telephone Conference and Scheduling April 10, 2002, Telephone Conference), ASLBP No. 02-794-01-LR, March 14, 2002.

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All of these discovery requests pertain to NIRS Contention 1, as reformulated and admitted by the Licensing Board in its January 24, 2002 Memorandum and Order. Regarding this contention, the Board stated in its March 1 Order that:

For purposes of framing the issues presented in Contention 1 in terms that relate more specifically to the various case law standards discussed in LBP-02-04 and to discovery-related and evidentiary questions discussed in the February 12 conference, the Board views this hearing as addressing whether anticipated use of MOX fuel in the Duke plants is sufficiently definite and related under relevant case law to license renewal aging and environmental issues to warrant requiring such use to be addressed in the SEIS and LRA. Thus, at this hearing, evidence may be presented that is relevant to whether such use of MOX fuel warrants consideration in this license renewal proceeding and should therefore be addressed in the SEIS and LRA because:

(A) it is sufficiently concrete, certain, probable, reasonably foreseeable or otherwise definite enough under appropriate case law standards to warrant such consideration; and

(B) its impact will be 'cumulative or synergistic,' so 'interdependent that it would be unwise or irrational' to proceed with the license renewal proceeding without considering it, or otherwise appropriately connected or related under appropriate case law standards to license renewal aging and environmental issues in this proceeding so as to warrant such consideration.'²

II. DEFINITIONS AND INSTRUCTIONS

1. These interrogatories cover all information in the possession, custody, and control of NIRS, including information in the possession of employees, agents, representatives, attorneys, consultants, or other persons directly or indirectly employed or retained by them or voluntarily working with them, or anyone else acting on behalf of NIRS or otherwise subject to their control.

² *ORDER (Addressing Matters Discussed at February 12, 2002, Telephone Conference and Scheduling March 13, 2002, Telephone Conference)*, ASLBP No. 02-794-01-LR, March 1, 2002 (at 1-2) (citation omitted).

2. If NIRS currently lacks information to answer any interrogatory completely, please state:

- a. the reasons for the lack of information;
- b. the responsive information currently available;
- c. the responsive information identified but currently unavailable; and
- d. when such information will become available.

As appropriate, the discovery requests below require supplementation in accordance with 10 C.F.R. §§ 2.740(e)(1) – (2).

3. If privilege is claimed as grounds for not answering an interrogatory or if the interrogatory is otherwise objected to, describe fully the legal and/or factual basis for the claim of privilege or other objection in sufficient detail to allow the Licensing Board to adjudicate the validity of the claim or objection.

4. When an interrogatory requires NIRS to “identify the basis” or give a “description” of a claim, contention, assertion, allegation or the like, please provide a complete summary in which the rationale for the position and all pertinent facts, including the identity of persons, dates, documents, and events, are included.

5. For each interrogatory, identify all documents that support, refer, or relate to the subject matter of the interrogatory and the answer thereto.

6. References to NIRS, “you,” and “your” refer to any branch, department, division, or other affiliate of NIRS, including its employees, agents, representatives, attorneys, consultants, or other persons directly or indirectly employed or retained by them or voluntarily working with them, or anyone else acting on behalf of NIRS or otherwise subject to its control.

7. References to “documents” mean any written or graphic matter of any kind, or any data compilation, no matter how produced, recorded, stored, or reproduced (including electronic, mechanical, or electronic records or representation of any kind), including, but not limited to, any writing, letter, telegram, facsimile, meeting minutes, meeting notes, memorandum, statement, computer file, book, record, survey, map, study, handwritten note, working paper, chart, tabulation, graph, tape, data sheet, database, data processing card, printout, microfilm or microfiche, interoffice and intra-office communications, instructions, reports, demands, schedules, notices, recordings, analyses, sketches, manuals, brochures, telephone minutes, calendars, accounting ledgers, invoices, indices, notebooks, personal notes, diary entries, electronic mail, notes of interview, communication, contracts, any other agreements, data compilations, and all other writings and papers similar to any of the foregoing, however designated by you, including all drafts of all such documents.

8. The words “describe” or “identify” shall have the following meanings:

a. In connection with a person, the words “describe” or “identify” mean to state the name, current (or, if current is unknown, the last known) business address, business telephone number, and place of employment and job title;

b. In connection with a document, the words “describe” or “identify” mean to give a description of each document sufficient to uniquely identify it among all of the documents related to this matter, including, but not limited to, the name of the author of the document, the name of each person or entity signing or approving the document, the date on which the document was prepared, signed, and/or executed, and any other information necessary to adequately identify the document;

c. In connection with any activity, occurrence, or communication, the words “describe” or “identify” mean to describe the activity, occurrence, or communication, the date of its occurrence, the identity of each person alleged to have had any involvement with or knowledge of the activity, occurrence, or communication, and the identity of any document recording, referencing or documenting such activity, occurrence, or communication.

III. INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

Interrogatory 1:

Identify each person who supplied information for responding to these interrogatories. Specifically note the interrogatories for which each such person supplied information.

Interrogatory 2:

Identify and explain the factual basis (bases) supporting NIRS’s contention that the anticipated use of mixed oxide (“MOX”) fuel in the McGuire Nuclear Station, Units 1 and 2 (“MNS”) and the Catawba Nuclear Station, Units 1 and 2 (“CNS”) is:

- (a) sufficiently “concrete”
- (b) sufficiently “certain”
- (c) sufficiently “probable”
- (d) “reasonably foreseeable,” or
- (e) “otherwise definite enough”

to warrant consideration in this license renewal proceeding.

Interrogatory 3:

Identify and explain the factual basis (bases) supporting NIRS's contention that the impact of the anticipated use of MOX fuel at MNS and CNS will be:

- (a) "cumulative or synergistic,"
- (b) so "interdependent that it would be unwise or irrational" to proceed with the license renewal proceeding without considering it;" and/or
- (c) "otherwise appropriately connected or related . . . to license renewal aging and environmental issues in this proceeding" to warrant consideration of MOX fuel issues in this license renewal proceeding.

Interrogatory 4:

Describe with particularity any deficiencies that NIRS contends exist in the NRC's process for conducting a safety review in connection with any NRC license amendment applications relating to the anticipated use of MOX fuel at MNS and/or CNS.

Interrogatory 5:

Describe with particularity any deficiencies that NIRS contends exist in the NRC's process for conducting an environmental review in connection with any NRC license amendment applications relating to the anticipated use of MOX fuel at MNS and/or CNS.

Request for Document Production 1:

Produce all documents that you believe support your answers to each of the Interrogatories above.

IV. REQUESTS FOR ADMISSION

Request for Admission 1:

Does NIRS admit that an NRC license renewal application must be based on the plant design as described in the current licensing basis in effect at the time of submittal of the license renewal application?

If your answer to the foregoing Request for Admission is other than an unequivocal admission, identify and explain the factual basis for your response.

Request for Admission 2:

Does NIRS admit that an NRC license renewal application should not include any changes to the current licensing basis other than those necessary to address age-related degradation?

If your answer to the foregoing Request for Admission is other than an unequivocal admission, identify and explain the factual basis for your response.

Request for Admission 3:

(a) Does NIRS admit that the use of MOX fuel at MNS or CNS would require NRC authorization in the form of NRC approval of one or more license amendments (*i.e.*, a change to the current licensing basis)?

(b) Does NIRS admit that completion of safety and environmental reviews in connection with the MOX fuel license amendment application(s) will be necessary prior to the NRC issuing such approval?

If your answer to the foregoing Request for Admission 3(a) or 3(b) is other than an unequivocal admission, identify and explain the factual basis for your responses.

Request for Admission 4:

Does NIRS admit that under existing NRC regulations, any license amendment application(s) filed by Duke seeking authorization to use MOX fuel at MNS or CNS would trigger an opportunity for a public hearing?

If your answer to the foregoing Request for Admission is other than an unequivocal admission, identify and explain the factual basis for your response.

Request for Admission 5:

(a) Does NIRS admit that the U.S. Department of Energy ("DOE") may cancel the MOX Fuel Project unilaterally should it choose to do so?

(b) Does NIRS admit that DOE has cancelled other DOE projects in the past (including, for example, the New Production Reactor, the Advanced Neutron Source Reactor, Accelerator Production of Tritium, the Superconducting Supercollider, and the Actinide Processing and Storage Facility)?

(c) Does NIRS admit that uncertainties exist in the international support for plutonium disposition activities, including DOE's MOX Fuel Project?

(d) Does NIRS admit that uncertainties exist regarding the funding needed to support the continuation of plutonium disposition activities, including DOE's MOX Fuel Project?

(e) Does NIRS admit that, to use significant quantities of MOX fuel at MNS and/or CNS, a MOX Fuel Fabrication Facility ("MOX FFF") must be designed, constructed, licensed, and operated at the Savannah River Site in South Carolina?

(f) Does NIRS admit that there are uncertainties associated with the completion of construction and the ultimate operation of the MOX FFF?

(g) Does NIRS admit that there are uncertainties associated with the NRC's ultimate issuance of licensing approval to DCS for the MOX FFF?

If your answers to Request for Admission 5(a)-5(g) are anything other than an unequivocal admission, identify and explain the factual basis for your responses.

Request for Admission 6:

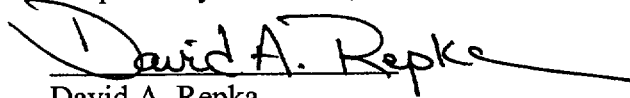
Does NIRS admit that renewal of operating licenses for United States commercial nuclear power plants has occurred, is ongoing, or is planned for numerous reactors in the United States that have no involvement in any project that could result in the use of MOX fuel at those reactors?

If your answer to the foregoing Request for Admission is other than an unequivocal admission, identify and explain the factual basis for your response.

Request for Admission 7:

Does NIRS admit that authority to use MOX fuel could be requested, and MOX fuel could be used (if authorized by the NRC) during the present license terms for MNS and CNS, regardless of whether the license terms for these facilities are ever extended?

Respectfully submitted,

A handwritten signature in black ink, reading "David A. Repka", with a long horizontal flourish extending to the right.

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ATTORNEYS FOR DUKE ENERGY
CORPORATION

Dated in Washington, D.C.
this 5th day of April, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Catawba Nuclear Station,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "DUKE ENERGY CORPORATION'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND DOCUMENT PRODUCTION REQUESTS TO THE NUCLEAR INFORMATION AND RESOURCE SERVICE" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 5th day of April, 2002. Additional e-mail service, designated by **, has been made this same day, as shown below.

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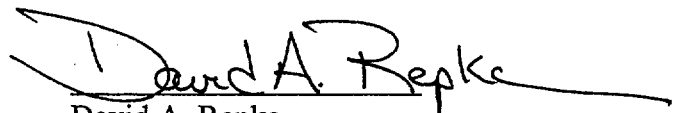
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A handwritten signature in black ink that reads "David A. Repka". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

David A. Repka
Counsel for Duke Energy Corporation