

RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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)	)	

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

I. INTRODUCTION

In accordance with the directives of the NRC Atomic Safety and Licensing Board ("Licensing Board") in its Order of March 14, 2002,<sup>1</sup> and the rules and procedures in 10 C.F.R. Part 2 governing discovery responses, Duke Energy Corporation ("Duke") hereby provides its first response to the "Interrogatories, Requests for Admission and Requests for Production to Duke Energy" (hereafter, "Discovery Request") filed by the Nuclear Information and Resource Service ("NIRS") on March 29, 2002.

NIRS's Discovery Request pertains 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

<sup>1</sup> "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, at 2. See also "Order (Addressing Matters Discussed at February 12, Telephone Conference and Scheduling March 13, 2002, Telephone Conference)," March 1, 2002, at 2; and Transcript at 749-51.

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.'<sup>2</sup>

NIRS's Discovery Request, and Duke's proposed responses and/or objections to some of the interrogatories, requests for admission, and requests for production of documents therein, were discussed in an April 10, 2002 conference call with the Licensing Board. To focus the parties' discussions, Duke had provided a "written recounting" of the status of the discovery disputes as of April 8, 2002.<sup>3</sup> This status report also reflects agreements reached as of that date with NIRS, which have been considered in developing the Responses below. While the transcript of the April 10 Licensing Board conference call was not available at the time this Response was filed, the text of the Response also reflects Duke's understanding of decisions made and directions given by the Licensing Board during the call.

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<sup>2</sup> "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).

<sup>3</sup> See the April 8, 2002 letter to the Licensing Board from David A. Repka, counsel for Duke Energy Corporation, and attached chart reflecting the status of discussions between Duke and NIRS regarding the Discovery Request.

In general, Duke objects to discovery requests where the information sought is irrelevant, immaterial, and/or not reasonably calculated to lead to the discovery of admissible evidence. To the extent that the information or documents requested exceed the defined scope of NIRS's reformulated Contention 1, as that contention was admitted by the Licensing Board, Duke objects, as discussed below in individual responses.

## II. DUKE RESPONSES TO NIRS DISCOVERY REQUESTS

### NIRS Request for Admission Number 1:

"Catawba 1, Catawba 2, McGuire 1 and McGuire 2 are under contract (or subcontract) with the U.S. Department of Energy (DOE) to irradiate surplus weapons plutonium in the form of MOX fuel."

### Duke Response to Request for Admission Number 1:

Duke does not admit to the foregoing. See the response to Interrogatory No. 1, below.

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### NIRS Interrogatory No. 1:

"If your answer to the foregoing Request for Admission No. 1 is other than an unequivocal admission, please state the factual basis for such response."

### Duke Response to Interrogatory No. 1:

As part of the program to dispose of surplus weapons-usable plutonium, the consortium of Duke COGEMA Stone & Webster, LLC ("DCS") is under contract to provide mixed oxide ("MOX") fuel fabrication and irradiation services to the United States Department of Energy ("DOE"). Duke, the operator of the McGuire Nuclear Station, Units 1 and 2, and the Catawba Nuclear Station, Units 1 and 2, is a subcontractor to DCS in connection with the MOX Fuel Project. Under the Duke-DCS subcontract, Duke's Base Contract scope of work involves: (i) qualification of MOX fuel for use in the McGuire and Catawba reactors (including irradiation of lead assemblies), and (ii) some preparations for the McGuire and Catawba reactors to use MOX fuel.

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NIRS Request for Production No. 1 A:

"Please produce for inspection and copying all documents, which you believe, support your answer to Interrogatory No. 1."

Duke Response to Request for Production No. 1 A:

The Duke-DCS subcontract will be provided in response to Request for Production No. 1 C.<sup>4</sup>

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NIRS Request for Production No. 1 B:

"Please produce for inspection and copying all contract(s) between the U.S. DOE and DCS (Duke Cogema Stone and Webster) and all amendments regarding surplus plutonium disposition and plutonium (MOX) fuel irradiation or Mission Reactors."

Duke Response to Request for Production No. 1 B:

NIRS currently has in its possession DOE contract DE-AC02-99CH10888. To Duke's knowledge, this is the only existing contract between the United States Department of Energy and DCS "regarding surplus plutonium disposition and plutonium (MOX) fuel irradiation or Mission Reactors."

Regarding the existence of amendments to DOE contract DE-AC02-99CH10888, NIRS has agreed to identify to Duke those amendments it has already. In response, Duke will provide any additional amendments to the contract that are currently in Duke Power's possession.

In general, Duke objects to discovery requests to the extent they call for proprietary commercial information. With respect to Request for Production No. 1 B, NIRS has agreed that Duke may redact any proprietary commercial terms in any DOE-DCS contract amendments provided.

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<sup>4</sup> Consistent with the schedule provided in 10 C.F.R. § 2.741(d) for responses to requests for the production of documents, Duke will provide or make available documents responsive to NIRS's production requests at a later date.

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NIRS Request for Production No. 1 C:

"Please produce for inspection and copying contract(s) between Duke Energy (or any other entity with authority over Catawba 1, Catawba 2, McGuire 1 and McGuire 2 ) and DCS with respect to Catawba 1, Catawba 2, McGuire 1 and McGuire 2."

Duke Response to Request for Production No. 1 C:

As agreed with NIRS, and as reflected in the discovery status report accompanying Duke's April 8, 2002 letter to the Licensing Board, Duke will produce the Duke-DCS subcontract (Duke Power Subcontract No. 10888 DCS-0006). NIRS has agreed that proprietary commercial terms will be redacted.

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NIRS Request for Admission No 2:

"DCS is contracted with the U.S. Department of Energy (DOE) for specified 'deliverables' listed in Attachment 1 of Section J of Contract No. DE-AC02-99CH10888 including: Mission Reactor System Modification Plan(s); Mission Reactor Licensing Plan(s); Mission Reactor Permitting Plan(s); Mission Reactor Irradiation Plan(s). Since Catawba and McGuire are Mission Reactors, these reports to DOE refer to them, and activities that pertain to them."

Duke Response to Request for Admission No 2:

Duke does not admit to the foregoing. See the response to Interrogatory No. 2, below.

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NIRS Interrogatory No. 2:

"If your answer to the foregoing Request for Admission No. 2 is other than an unequivocal admission, please state the factual basis for such response."

Duke Response to Interrogatory No. 2:

The "Mission Reactors Permitting Plan(s)" referred to in NIRS Request for Admission No. 2 does not exist. In lieu of that plan, DCS submitted a letter to DOE indicating that no new permits or permit revisions would be required in order to use MOX fuel at McGuire and Catawba. The other plans referred to in Request for Admission No. 2 do exist, and refer to the current "mission reactors," McGuire and Catawba.

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**NIRS Request for Production 2 A:**

**“Please produce for inspection and copying all current final or current draft versions of: Mission Reactor System Modification Plan(s).”**

**Duke Response to Request for Production 2 A:**

NIRS withdrew Request for Production 2 A on the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call. Accordingly, no response is required.

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**NIRS Request for Production 2 B:**

**“Please produce for inspection and copying all current final or current draft versions of Mission Reactor Licensing Plan(s).”**

**Duke Response to Request for Production 2 B:**

NIRS Request for Production 2 B, and Duke’s objections to this production request as beyond the scope of Contention 1 of the McGuire/Catawba license renewal proceeding, were discussed with the Licensing Board during the April 10, 2002 conference call. Consistent with that discussion and the accompanying direction from the Board, Duke will produce those portions of the Mission Reactor Licensing Plan that specifically address the schedule for MOX fuel use at McGuire and Catawba. However, as noted during the telephone discussions, this schedule information is now out of date. Duke also agreed to produce those portions of the Mission Reactor Licensing Plan that contain information regarding the relationship between license renewal at McGuire and Catawba and the MOX fuel license amendments to be sought by Duke.

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**NIRS Request for Production 2 C:**

**“Please produce for inspection and copying all current final or current draft versions of Mission Reactor Permitting Plan(s).”**

**Duke Response to Request for Production 2 C:**

As noted in the response to Interrogatory No. 2, the Mission Reactors Permitting Plan does not exist. The letter that was submitted to DOE in lieu of the Permitting Plan will be produced.

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**NIRS Request for Production 2 D:**

“Please produce for inspection and copying all current final or current draft versions of Mission Reactor Irradiation Plan(s).”

**Duke Response to Request for Production 2 D:**

NIRS Request for Production 2 D, and Duke’s objections to this production request on grounds that it is both beyond the scope of Contention 1 and contains information proprietary to Duke, were discussed with the Licensing Board during the April 10, 2002 conference call. In accordance with that discussion with the Board, Duke has agreed to produce Table 3 (“Cycle by Cycle Fuel Loading Plan”) from the Plan. As noted during the conference call, this Plan is out of date. Additionally, as agreed during the Licensing Board conference call, the outage schedule dates for McGuire and Catawba contained in Table 3 are considered proprietary to Duke, and will be redacted in the copy produced.

Pursuant to the Licensing Board’s Order of April 11, 2002,<sup>5</sup> Duke will also produce the partial MOX fuel core loading pattern figures contained in the Mission Reactor Irradiation Plan.

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**NIRS Request for Production 2 E:**

“Please produce for inspection and copying all documents used to prepare the contracted items identified in requests for production 2 A - 2 D.”

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<sup>5</sup> “ORDER (Addressing Matters Discussed at April 10, 2002, Telephone Conference and Scheduling April 29, 2002 Telephone Conference),” ASLBP No. 02-794-01-LR, April 11, 2002, at 1-2.

**Duke Response to Request for Production 2 E:**

Duke objects to this request for production as beyond the scope of Contention 1, and as unreasonably onerous to address. NIRS has agreed to re-formulate the request to be more specific. Accordingly, no response is needed.

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**NIRS Request for Admission No. 3:**

“Duke Energy intends to apply for a license amendment to load test fuel (MOX) assemblies into one or more of the Catawba 1, Catawba 2, McGuire 1 and McGuire 2 reactors under the current license for these reactors, or in the initial time of the renewed license.”

**Duke Response to Request for Admission No. 3:**

Duke does not admit to the foregoing. See response to Interrogatory No. 3, below.

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**NIRS Interrogatory No. 3:**

“If your answer to the foregoing Request for Admission No. 3 is other than an unequivocal admission, please state the factual basis for such response.”

**Duke Response to Interrogatory No. 3:**

NIRS Request for Admission No. 3 addresses “test” fuel assemblies, which Duke interprets to mean “lead” assemblies. Duke is making preparations to apply to the NRC for license amendments allowing the receipt, storage, and use of MOX fuel lead assemblies at one of the McGuire or Catawba units. Factors beyond the control of Duke may preclude the submittal of a separate request for NRC license amendments to authorize use of MOX fuel lead assemblies at McGuire and Catawba. Any MOX fuel lead assemblies used in one of the McGuire or Catawba units would be used during the original forty year operating license period of one of the plants.

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**NIRS Request for Production No. 3 A:**

**“Please produce for inspection and copying any documents or contracts or work product on the development, production and prospective loading of test MOX fuel assemblies.”**

**Duke Response to Request for Production No. 3 A:**

Duke objects to this request for production because it is overly broad and unreasonably onerous, and because information relevant to this request will be provided in the response to Request for Production 3B, below. NIRS has agreed to be more specific in reformulating its request. Accordingly, no response is needed.

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**NIRS Request for Production No. 3 B:**

**“Please produce for inspection and copying all documents evidencing the current timetable for lead test assembly development and application for license amendment to load lead test assembly(s).”**

**Duke Response to Request for Production No. 3 B:**

NIRS has agreed to limit this request for production to a request that Duke provide information presented to the NRC in recent public meetings regarding the timetable for a planned license amendment to load MOX lead assemblies. Specifically, the current timetable for MOX fuel lead assembly deployment and the associated licensing action was described to the Nuclear Regulatory Commission in a public meeting on October 4, 2001. The presentation materials are public documents. Nevertheless, Duke has agreed to provide these presentation materials to NIRS.

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**NIRS Request for Admission No. 4:**

**“On July 25<sup>th</sup>, 2000 at a public meeting at NRC headquarters during a presentation about license renewal at Catawba and McGuire by Duke Energy, a representative of Duke Energy stated that if MOX fuel would interfere with safe operations at Duke reactors through the period of license extension, then Duke would not use MOX fuel.”**

**Duke Response to Request for Admission No. 4:**

Duke admits that a statement to the effect of that described in Request for Admission No. 4 was made by a representative of Duke Energy Corporation in response to a question at the July 25, 2000 public meeting at the NRC concerning the license renewal application format.

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**NIRS Interrogatory No. 4:**

If your answer to the foregoing Request for Admission No. 4 is other than an unequivocal admission, please state the factual basis for such response.

**Duke Response to Interrogatory No. 4:**

See the response to Request for Admission No. 4, above.

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**NIRS Request for Production No. 4 A:**

Please produce for inspection and copying a list of all Duke representatives and other personnel from the company who were present at the July 25, 2000 meeting at NRC headquarters on license renewal.

**Duke Response to Request for Production No. 4 A:**

Duke will respond to this request for production on the schedule for production of documents.

\*\*\*\*\*

**NIRS Request for Production No. 4 B:**

Please produce for inspection and copying all documents pertaining to MOX fuel use and license renewal, particularly, but not limited to, the period of extended operations.

**Duke Response to Request for Production No. 4 B:**

Duke will respond to this request for production on the schedule for production of documents.

\*\*\*\*\*

**NIRS Request for Production No. 4 C:**

Please produce for inspection and copying all documents pertaining to exemption requests made to NRC with respect to license renewal for McGuire 2 and Catawba 1 & 2 and MOX fuel, or plutonium disposition or DOE or DCS contracts or Duke or DCS reports to DOE.

**Duke Response to Request for Production No. 4. C:**

Duke finds this request unclear. NIRS has agreed to limit this request for production to documents related to Duke's license renewal-related exemption request for MNS and CNS, and the rationale/justification for that request. Duke will respond accordingly on the schedule for production of documents.

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**NIRS Request for Production No. 4 D:**

Please produce for inspection and copying all documents on the fission yield and neutron flux of weapons grade plutonium and also reactor grade plutonium (MOX) fuel reviewed, used or consulted by Duke in assessing plutonium (MOX) fuel use or impacts.

**Duke Response to Request for Production No. 4 D:**

NIRS Request for Production 4 D, and Duke's objections to this production request on grounds that it is overly broad and beyond the scope of Contention 1, were discussed with the Licensing Board during the April 10, 2002 conference call. As directed by the Board during that call, further discussions between Duke and NIRS on this request for production are required. The goal of these additional discussions will be to make this discovery request more specific and focused, and/or to reach some mutually agreeable stipulation in lieu of a discovery response.

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**NIRS Request for Production No. 4 E:**

Please produce for inspection and copying all documents pertaining to plutonium fuel characteristics and any and all types of aging of reactor vessel, reactor vessel penetrations and reactor internal components.

**Duke Response to Request for Production No. 4 E:**

NIRS Request for Production 4 E, and Duke's objections to this production request on grounds that it is overly broad and beyond the scope of Contention 1, were discussed with the Licensing Board during the April 10, 2002 conference call. As directed by the Board during that call, further discussions between Duke and NIRS on this request for production are required. The goal of these additional discussions will be to make this discovery request more specific and focused, and/or to reach some mutually agreeable stipulation in lieu of a discovery response.

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**NIRS Request for Production No. 4 F:**

Please produce for inspection and copying all documents pertaining to plutonium (MOX) fuel source term and Duke reactors.

**Duke Response to Request for Production No. 4 F:**

NIRS Request for Production 4 F, and Duke's objections to this production request on grounds that it is overly broad and beyond the scope of Contention 1, were discussed with the Licensing Board during the April 10, 2002 conference call. During this call, NIRS agreed to "table" this issue pending further discussion of Interrogatories 10 and 11 (discussed below).

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**NIRS Request for Production No. 4 G:**

Please produce for inspection and copying all documents concerning the feasibility of using mixed oxide fuel as a light water reactor fuel in general, and specifically in Catawba and McGuire.

**Duke Response to Request for Production No. 4 G:**

Duke objected to this request for production on grounds that it was overly broad and beyond the scope of Contention 1. NIRS subsequently withdrew Request for Production No.

4 G on the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call. Accordingly, no response is required.

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**NIRS Interrogatory No. 5:**

Please state the reasons that Duke Energy decided to contract Catawba and McGuire as Mission Reactors to irradiate weapons plutonium (MOX) fuel.

**Duke Response to Interrogatory No. 5:**

Duke has offered to use MOX fuel derived from surplus weapons plutonium in the McGuire and Catawba reactors, contingent on receiving the required regulatory approvals and satisfying other conditions as set forth in the Duke-DCS subcontract. The reasons for doing so are as follows:

1. Duke Energy Corporation supports the United States Government's national security and nuclear nonproliferation initiative to reduce the stockpiles of surplus weapons-usable plutonium in Russia and the United States.
2. Duke Energy Corporation desires to secure a long-term, economical supply of nuclear fuel for its nuclear power plants.

\*\*\*\*\*

**NIRS Interrogatory No. 6:**

Identify the individual by name, address and job title, and relationship to Duke Energy who participated in or prepared the answers to these interrogatories and requests for production, other than in a purely clerical capacity. If more than one person was involved in preparing the answers to these interrogatories, describe for each such individual the information which that person provided in preparing the answers.

**Duke Response to Interrogatory No. 6:**

In addition to the undersigned counsel, the following individuals provided information in response to NIRS's discovery requests:

Steven P. Nesbit  
Duke Power MOX Fuel Project Manager  
Duke Energy Corporation--EC09A  
526 South Church Street  
Charlotte, NC 28201

Gregory D. Robison  
Project Manager, Nuclear Generation Dept.  
Duke Energy Corporation—EC12R  
526 South Church Street  
Charlotte, NC 28201

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NIRS Interrogatory No. 7:

Identify all documents, records, or other materials used in, or relied upon, in preparing your answers and all relevant documents containing information relating to each Interrogatory, and identify by number which interrogatory response to which each document is applicable.

Duke Response to Interrogatory No. 7:

Specific documents relied upon in response to specific interrogatories/requests for admission are identified in each specific response.

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NIRS Interrogatory No. 8:

For each isotope present in a typical, new, enriched uranium fuel rod at Catawba and McGuire, please specify

- a. The mass,
- b. The number of curies
- c. The half life and
- d. The type of radiation emitted.

Duke Response to Interrogatory 8:

Duke objected to this interrogatory on grounds that it was beyond the scope of Contention 1. NIRS subsequently withdrew Interrogatory 8 on the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call. Accordingly, no response is required.

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NIRS Interrogatory No. 9:

For each isotope present in a typical spent enriched uranium fuel rod with full burnup at the Catawba and McGuire power plants, specify

- a. The mass
- b. The number of curies
- c. The half life and
- d. The type of radiation emitted.

Duke Response to Interrogatory No. 9:

Duke objected to Interrogatory 9 on grounds that it was beyond the scope of Contention 1. NIRS subsequently withdrew Interrogatory 9 on the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call. Accordingly, no response is required.

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NIRS Interrogatory No. 10:

For each isotope present in a new mixed oxide fuel rod contemplated for use in the McGuire and Catawba power plants, specify

- a. The mass
- b. The number of curies
- c. The half life and
- d. The type of radiation emitted.

Duke Response to Interrogatory No. 10:

NIRS Interrogatory 10, and Duke's objections to this interrogatory on grounds that it is overly broad and beyond the scope of Contention 1, were discussed with the Licensing Board during the April 10, 2002 conference call. As directed by the Board during that call, further discussions between Duke and NIRS on this interrogatory are required.

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NIRS Interrogatory No. 11:

For each isotope projected to be present in a spent mixed oxide fuel rod with full burnup from Catawba and McGuire, specify

- a. The mass
- b. The number of curies
- c. The half life and
- d. The type of radiation emitted.

**Duke Response to Interrogatory No. 11:**

NIRS Interrogatory 11, and Duke's objections to this interrogatory on grounds that it is overly broad and beyond the scope of Contention 1, were discussed with the Licensing Board during the April 10, 2002 conference call. As directed by the Board during that call, further discussions between Duke and NIRS on this interrogatory are required.

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**NIRS Interrogatory No. 12:**

For each reactor at the Catawba nuclear station, specify

- a. The number of fuel rod assemblies
- b. The number of control rod assemblies
- c. The number of fuel rods in each assembly
- d. The total mass of all fuel rod assemblies in each reactor
- e. The total mass of all control rod assemblies in each reactor.

**Duke Response to Interrogatory No. 12:**

Duke objected to this interrogatory on grounds that it was overly broad and beyond the scope of Contention 1. NIRS subsequently withdrew Interrogatory 12 on the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call. Accordingly, no response is required.

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**NIRS Interrogatory No. 13:**

For each reactor at the McGuire nuclear station, specify

- a. The number of fuel rod assemblies
- b. The number of control rod assemblies
- c. The number of fuel rods in each assembly
- d. The total mass of all fuel rod assemblies in each reactor
- e. The total mass of all control rod assemblies in each reactor.

**Duke Response to Interrogatory No. 13:**

Duke objected to this interrogatory on grounds that it was overly broad and beyond the scope of Contention 1. NIRS subsequently withdrew Interrogatory 13 on the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call. Accordingly, no response is required.

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**NIRS Request for Production No. 5:**

Please produce for inspection and copying all of Duke Energy's annual reports to shareholders for the years 1992 to 2002.

**Duke Response to Request for Production No. 5:**

Duke objects to this request for production on grounds that it is overly broad and beyond the scope of Contention 1. Nevertheless, Duke has agreed to provide Duke Energy Corporation's annual reports for the last five years.

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**NIRS Request for Production No. 6:**

Please produce for inspection and copying all reports filed by Duke Energy with the PSC/PUCs of North Carolina and South Carolina concerning future availability of electrical generation for the years 1992 to 2012.

**Duke Response to Request for Production No. 6:**

Duke objected to this request for production on grounds that it was both poorly-defined and beyond the scope of Contention 1. Annual resource plans filed in North Carolina and South Carolina are public documents that are available through the respective state commissions. On the basis of discussions between the Licensing Board and the parties during

the April 10, 2002 conference call, NIRS withdrew Request for Production No. 6, and will pursue these documents through public channels. Accordingly, no response is required.

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NIRS Request for Production No. 7:

Please identify and make available all letters, memos, electronic mails ("emails"), contracts, reports, audio recordings, transcripts, documents or work product which Duke Energy as licensee has sent to the Nuclear Regulatory Commission concerning mixed oxide fuel.

Duke Response to Request for Production No. 7:

Duke objected to this request for production on grounds that it was overly broad, and also on grounds that documents reflecting NRC-licensee interactions of this nature can typically be obtained by members of the public through various public processes for availability of documents. On the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call, NIRS withdrew Request for Production No. 7, and will pursue these documents through public channels. Accordingly, no response is required.

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NIRS Request for Production No. 8:

Please produce for inspection and copying all letters, memos, electronic mails, contracts, reports, audio recordings, transcripts, documents, or work product which Duke Energy as licensee has received from the Nuclear Regulatory Commission concerning mixed oxide fuel.

Duke Response to Request for Production No. 8:

Duke objected to this request for production on grounds that it was overly broad, and also on grounds that documents reflecting NRC-licensee interactions of this nature can typically be obtained by members of the public through various public processes for availability of documents. On the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call, NIRS withdrew Request for Production No. 8, and will pursue these documents through public channels. Accordingly, no response is required.

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**NIRS Request for Production No. 9:**

Identify and make available all letters, memos, electronic mails, contracts, reports, audio recordings, transcripts, documents or work product the licensee has sent to the Department of Energy concerning mixed oxide fuel.

**Duke Response to Request for Production No. 9:**

As reflected in the April 8, 2002 letter from counsel for Duke Energy Corporation to the Licensing Board, and in the chart attached to that letter, Duke objected to this request for production on grounds that it was as both overly broad and unreasonably burdensome. On the basis of discussions between Duke and NIRS, NIRS agreed to re-define Request for Production No. 9 in a more limiting way. Accordingly, no response is required.

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**NIRS Request for Production No. 10:**

Please produce for inspection and copying all letters, memos, electronic mails, contracts, reports, audio recordings, transcripts, documents or work product the licensee has received from the Department of Energy concerning mixed oxide fuel.

**Duke Response to Request for Production No. 10:**

As reflected in the April 8, 2002 letter from counsel for Duke Energy Corporation to the Licensing Board, and in the chart attached to that letter, Duke objected to this request for production on grounds that it was as both overly broad and unreasonably burdensome. On the basis of discussions between Duke and NIRS, NIRS agreed to re-define Request for Production No. 10 in a more limiting way. Accordingly, no response is needed.

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**NIRS Request for Production No. 11:**

Identify and make available all letters, memos, electronic mails, contracts, reports, audio recordings, transcripts, documents or work product the licensee has sent the Nuclear Energy Institute concerning mixed oxide fuel.

**Duke Response to Request for Production No. 11:**

As reflected in the April 8, 2002 letter from counsel for Duke Energy Corporation to the Licensing Board, and in the chart attached to that letter, Duke objected to this request for

production on grounds that it was overly broad, irrelevant, and not likely to lead to the production or relevant or material information. On the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call, NIRS agreed to re-define Request for Production No. 11 so as to limit it. Accordingly, no response is needed.

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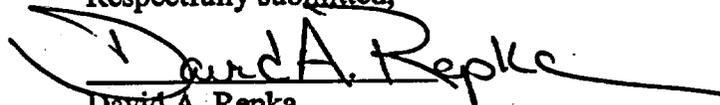
NIRS Request for Production No. 12:

Please produce for inspection and copying all letters, memos, electronic mails, contracts, reports, audio recordings, transcripts, documents or work product the licensee has received from the Nuclear Energy Institute concerning mixed oxide fuel.

Duke Response to Request for Production No. 12:

As reflected in the April 8, 2002 letter from counsel for Duke Energy Corporation to the Licensing Board, and in the chart attached to that letter, Duke objected to this request for production on grounds that it was overly broad, irrelevant, and not likely to lead to the production or relevant or material information. On the basis of discussions between the Licensing Board and the parties during the April 10, 2002 conference call, NIRS agreed to re-define Request for Production No. 12 so as to limit it. Accordingly, no response is needed.

Respectfully submitted,



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Charlotte, N.C. 28202  
704/382-8134

Counsel for DUKE ENERGY CORPORATION

Dated in Washington, D.C.  
this 11<sup>th</sup> day of April, 2002

April 10, 2002

**NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

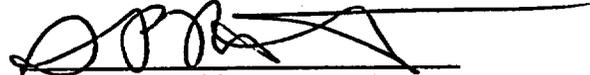
In the Matter of:	)	
	)	
DUKE ENERGY CORPORATION	)	Docket Nos. 50-369-LR
	)	50-370-LR
(McGuire Nuclear Station,	)	50-413-LR
Units 1 and 2, and	)	50-414-LR
Catawba Nuclear Station,	)	
Units 1 and 2)	)	

**AFFIDAVIT OF STEVEN P. NESBIT**

I, Steven P. Nesbit, being duly sworn, state as follows:

1. I am currently employed by Duke Energy Corporation as the Manager of the Mixed Oxide ("MOX") Fuel Project. In this capacity, my responsibilities include managing Duke Power's activities as part of the project to dispose of surplus United States weapons plutonium using MOX fuel. I direct technical, licensing, and business activities for Duke in this area.
2. I have been employed by Duke for approximately 20 years.
3. I provided input to Duke Energy Corporation's response to Interrogatories 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 and its response to Requests for Admission 1, 2, and 3. These interrogatories and requests for admission, set forth in the "Interrogatories, Requests for Admission and Requests for Production to Duke Energy" filed by the Nuclear Information and Resource Service ("NIRS") on March 29, 2002, relate to NIRS Contention 1, as reformulated and admitted by the NRC Atomic Safety and Licensing Board in its January 24, 2002 Memorandum and Order in this proceeding.

4. The information presented in the discovery references identified in Paragraph 3 is true and correct to the best of my knowledge and belief.

  
Steven P. Nesbit

Sworn and subscribed to before me on this 10th day of April, 2002.

  
Notary Public

My Commission Expires: 10-17-2004

April 11, 2002

**NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:

**DUKE ENERGY CORPORATION**

(McGuire Nuclear Station,  
Units 1 and 2, and  
Catawba Nuclear Station,  
Units 1 and 2)

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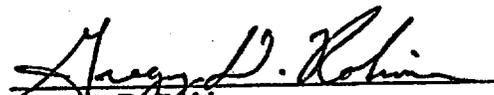
Docket Nos. 50-369-LR  
50-370-LR  
50-413-LR  
50-414-LR

**AFFIDAVIT OF GREGORY D. ROBISON**

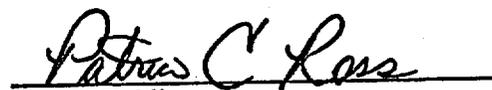
I, Gregory D. Robison, being duly sworn, state as follows:

1. I am currently employed by Duke Energy Corporation ("Duke") as the Project Manager for the Duke License Renewal Project. In this capacity, my responsibilities include management of the Duke License Renewal Project.
2. I have been employed by Duke Energy Corporation for approximately 21 years.
3. I provided input to Duke's responses to Interrogatory 4 and Request for Admission 4, as set forth in the "Interrogatories, Requests for Admission and Requests for Production to Duke Energy" filed by the Nuclear Information and Resource Service ("NIRS") on March 29, 2002. These interrogatories and requests for admission relate to NIRS Contention 1, as reformulated and admitted by the NRC Atomic Safety and Licensing Board in its January 24, 2002 Memorandum and Order in this proceeding.

4. The information presented in the discovery references identified in Paragraph 3 is true and correct to the best of my knowledge and belief.

  
Gregory D. Robison

Sworn and subscribed to before me on this 11th day of April, 2002.

  
Notary Public

My Commission Expires: 10-17-2004

**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)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "First Response of Duke Energy Corporation to the Nuclear Information and Resource Service's 'Interrogatories, Requests for Admission and Requests for Production to Duke Energy'" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 11<sup>th</sup> day of April, 2002. Additional e-mail service, designated by asterisks (\*\*), has been made this same day, as shown below.

Ann Marshall Young, Chairman \*\*  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(e-mail: amy@nrc.gov)

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Dr. Charles N. Kelber \*\*  
Administrative Judge  
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U.S. Nuclear Regulatory Commission  
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Office of the Secretary \*\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn: Rulemakings and Adjudications Staff  
(original + two copies)  
(e-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Adjudicatory File  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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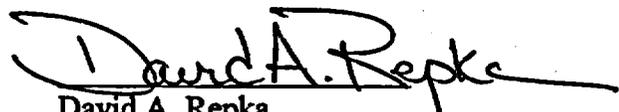
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David A. Repka  
Counsel for Duke Energy Corporation