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April 8, 2002

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USNRC

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dr. Charles N. Kelber
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lester S. Rubenstein
Administrative Judge
4760 East Country Villa Drive
Tucson, Arizona 85718

Re: **In the Matter of Duke Energy Corporation
McGuire Nuclear Station, Units 1 and 2
Catawba Nuclear Station, Units 1 and 2
Docket Nos. 50-369-LR, 50-370-LR, 50-413-LR, 50-414-LR**

Dear Administrative Judges:

On March 29, 2002, Nuclear Information and Resource Service (NIRS) filed Interrogatories, Requests for Admission, and Requests for Production from Duke Energy in this license renewal proceeding (relating to Contention 1). Duke Energy objects to some of these discovery requests and has sought clarifications and limitations of others. In accordance with the Licensing Board's Order of March 14, 2002, Duke Energy has discussed these issues with NIRS's representative and some progress has been made.

Nonetheless, some disputes remain. Therefore, consistent with the March 14 Order, Duke Energy is providing this "written recounting" of the remaining discovery disputes so these matters may be addressed during the scheduled April 10 prehearing call.

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SECY-02

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Specifically, attached is a chart reflecting the status of discussions on discovery issues. The specific requests that will require discussion before the Licensing Board are marked by an asterisk (*). We do not here attempt to recount fully the objections and discussions. Our intent is merely to allow the Licensing Board to review the requests at issue prior to the call.

We will be prepared to discuss these matters as necessary on the status call.

Sincerely,


David A. Repka
Counsel for Duke Energy Corporation

cc: Service List (w/Enclosure)

DAR:kmj

March 29, 2002 NIRS Interrogatories and Discovery Request

Reference	Summary	Status
Request for Admission No. 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 will respond.
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 will respond.
Request for Production No. 1A	Please produce for inspection and copying all documents, which you believe, support your answer to Interrogatory No. 1.	Duke will respond.
Request for Production No. 1B	Please produce for inspection and copying all contract(s) between the U.S DOE and DCS (Duke Cogema StoneandWebster) and all amendments regarding surplus plutonium disposition and plutonium (MOX) fuel irradiation or Mission Reactors.	NIRS has DOE contract DEAC0299CH1088 and some amendments thereto. NIRS will identify to Duke those amendments it has already. Duke will provide any additional amendments that are in Duke's possession (NIRS understands that Duke may not have a complete set). NIRS agrees that Duke may redact proprietary commercial terms.
Request for Production No. 1C	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 will provide Duke-DCS subcontract. NIRS agrees that Duke may redact proprietary commercial terms.

Matters that require discussion on April 10, 2002 status call with Licensing Board are marked by a "*".

Reference	Summary	Status
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 will respond.
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 will respond.
Request for Production No. 2A*	Please produce for inspection and copying all current final or current draft versions of: Mission Reactor System Modification Plan(s).	Duke objects to request as beyond scope. Also, the document includes proprietary information. Issue remains subject to further discussion.
Request for Production No. 2B*	Please produce for inspection and copying all current final or current draft versions of Mission Reactor Licensing Plan(s)	Duke objects to request as beyond scope. Duke proposes to provide elements of the plan related to schedule. Issue remains subject to further discussion.
Request for Production No. 2C	Please produce for inspection and copying all current final or current draft versions of Mission Reactor Permitting Plan(s).	Permitting plan was not created. Duke/NIRS agree that Duke will provide copy of letter to DOE re: permitting.
Request for Production No. 2D*	Please produce for inspection and copying all current final or current draft versions of Mission Reactor Irradiation Plan(s).	Duke objects to request as beyond scope. Also, the document includes proprietary information. Duke proposes to provide non-proprietary elements of plan related to schedule. Issue remains subject to further discussion.

Reference	Summary	Status
Request for Production No. 2E	Please produce for inspection and copying all documents used to prepare the contracted items identified in requests for production 2 A - 2 D.	Duke objects as beyond scope and overbroad. NIRS agrees to be more specific. No response needed at this time.
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 will respond.
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 will respond.
Request for Production No. 3A	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 objects to request as overbroad and onerous, and because relevant information is in the response to 3B below. NIRS agrees to be more specific. No response needed at this time.
Request for Production No. 3B	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(ies).	NIRS has agreed to limit the request such that Duke will provide the most recent information on timetable as presented to NRC in public meetings.
Request for Admission No. 4	On July 25 th , 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 will respond.

Reference	Summary	Status
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 will respond.
Request for Production No. 4A	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 will respond.
Request for Production No. 4B	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 will respond.
Request for Production No. 4C	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 finds this request unclear. NIRS has clarified the request such that the focus is on the exemption request for MNS and CNS, and the rationale/justification for that request and any link to MOX. Duke will respond accordingly.
Request for Production No. 4D*	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 objects to request as beyond scope. NIRS does not concede the point.
Request for Production No. 4E*	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 objects to request as beyond scope. NIRS does not concede the point.

Reference	Summary	Status
Request for Production No. 4F*	Please produce for inspection and copying all documents pertaining to plutonium (MOX) fuel source term and Duke reactors.	Duke objects to request as beyond scope. NIRS does not concede the point.
Request for Production No. 4G*	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 objects to request as beyond scope <u>and</u> overbroad. NIRS does not concede the point.
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 will respond.
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 will address in its response.
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 will address in its response.

Reference	Summary	Status
Interrogatory No. 8*	<p>For each isotope present in a typical, new, enriched uranium fuel rod at Catawba and McGuire, please specify</p> <ul style="list-style-type: none"> a. The mass, b. The number of curies c. The half life and d. The type of radiation emitted. 	Duke objects to request as beyond scope. NIRS does not concede the point.
Interrogatory No. 9*	<p>For each isotope present in a typical spent enriched uranium fuel rod with full burnup at the Catawba and McGuire power plants, specify</p> <ul style="list-style-type: none"> a. The mass b. The number of curies c. The half life and d. The type of radiation emitted. 	Duke objects to request as beyond scope. NIRS does not concede the point.
Interrogatory No. 10*	<p>For each isotope present in a new mixed oxide fuel rod contemplated for use in the McGuire and Catawba power plants, specify</p> <ul style="list-style-type: none"> a. The mass b. The number of curies c. The half life and d. The type of radiation emitted. 	Duke objects to request as beyond scope. NIRS does not concede the point.

Reference	Summary	Status
Interrogatory No. 11*	<p>For each isotope projected to be present in a spent mixed oxide fuel rod with full burnup from Catawba and McGuire, specify</p> <ul style="list-style-type: none"> a. The mass b. The number of curies c. The half life and d. The type of radiation emitted. 	Duke objects to request as beyond scope. NIRS does not concede the point.
Interrogatory No. 12*	<p>For each reactor at the Catawba nuclear station, specify</p> <ul style="list-style-type: none"> 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 objects to request as beyond scope. NIRS does not concede the point.
Interrogatory No. 13*	<p>For each reactor at the McGuire nuclear station, specify</p> <ul style="list-style-type: none"> 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 objects to request as beyond scope. NIRS does not concede the point.
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 objects to request as beyond scope, but Duke/NIRS agree that Duke will provide last five years only.

Reference	Summary	Status
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 objects to request as beyond scope and not well-defined. NIRS has agreed to limit the scope of the request to reports from 1996 on, but the request remains subject to further clarification and discussion. Annual resource plans filed in both states are public documents available through the commissions.
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 objects to request as overbroad and because NRC-licensee interactions are subject to public process for availability of documents. NIRS does not concede the point.
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 objects to request as overbroad and because NRC-licensee interactions are subject to public process for availability of documents. NIRS does not concede the point.
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 objects to request as overbroad and burdensome. NIRS agrees to redefine the request in a more limiting way. No response needed at this time.
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 objects to request as overbroad and burdensome. NIRS agrees to redefine the request in a more limiting way. No response needed at this time.

Reference	Summary	Status
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 objects to request as overbroad and irrelevant. NIRS does not concede the point.
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 objects to request as overbroad and irrelevant. NIRS does not concede the point.