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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

Docket No's. 50-369-LR, 50-370-LR,
50-413-LR, and 50-414-LR

DUKE ENERGY CORPORATION

ASLBP No. 02-794-01-LR

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

June 14, 2002

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S AND
NUCLEAR INFORMATION AND RESOURCE SERVICE'S
REPLY TO RESPONSES TO AMENDED CONTENTION 2
WITH RESPECT TO THE ISSUE OF TIMELINESS**

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's) May 13, 2002, Order (Addressing Matters Discussed at April 29, 2002, Telephone Conference and Scheduling June 18, 2002, Telephone Conference), Intervenors Blue Ridge Environmental Defense League ("BREDL) and Nuclear Information and Resource Service ("NIRS") hereby submit this reply to responses filed by Duke Energy Corp. ("Duke") and the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff to Amended Consolidated Contention 2, relating to Ice Condensers and Station Blackout Risks.¹ As per the ASLB's Order, this reply addresses only the issue of timeliness. BREDL and NIRS plan to address other aspects of their satisfaction of the late-filed contention standard and challenges to the admissibility of the amended contention in the telephone conference scheduled for July 10, 2002.

Amended Contention 2 sets forth various ways in which Duke's Severe Accident Mitigation Alternatives ("SAMA") analysis is incomplete because it fails to incorporate new and

¹ See Response of Duke Energy Corporation to Proposed Late-Filed Contentions (June 10, 2002) (hereinafter "Duke Response"); NRC Staff's Answer to Blue Ridge Environmental Defense League's and Nuclear Information and Resource Service's Amended Contention 2 (June 10, 2002) (hereinafter "Staff Response").

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extensive information regarding ice condenser vulnerabilities, particularly the findings of a recent report by Sandia National Laboratories, NUREG/CR-6427, Assessment of the DCH [Direct Containment Heating] Issue for Plants With Ice Condenser Containments (April 2000). Duke and the NRC Staff argue that the contention is not timely under the Commission's late-filing standard.

General Arguments

Duke objects to the timeliness of almost all of the subparts of Amended Contention 2. Duke generally argues that to the extent Amended Contention 2 challenges the SAMA analysis by questioning the underlying probabilistic risk analysis ("PRA"), the contention is untimely because "the PRAs and the SAMA methodology are not implicated by the RAI [Request for Additional Information] responses or altered by the RAI responses." Duke Response at 13. Duke also argues that the contention's subparts "overreach the scope of the lateness justification," because:

The alleged issues identified by the Intervenors far exceed the scope of the SAMA evaluations as those evaluations relate to the NUREG/CR-6427 issue or to the cost-benefit assessment of the dedicated transmission lines. Issues that challenge the PRA itself, issues that challenge the approach to the SAMA evaluation as described in the original ERs (such as issues related to uncertainties, accident consequence analyses, and peer review), issues that raise generic concerns (such as issues related to source term and the radiological consequence analysis), and issues contending that certain scenarios (such as earthquakes and floods) are not addressed in the PRA, all could have been raised by the Intervenors in the initial proposed contentions.

Duke Response at 16 [footnotes omitted].

Amended Contention 2 legitimately and timely questions Duke's reliance on its SAMA analysis and PRA to address the concerns raised in NUREG/CR-6427. Duke's simplistic general argument overlooks the fact that in order to challenge the degree to which Duke has taken NUREG/CR-6427 into account in revising its SAMA analysis, the contention necessarily

must address the adequacy of the SAMA analysis. It must also address the PRA, which provides the input to the SAMA analysis.

Moreover, Duke sidesteps the fact that the RAI responses constitute the first attempt Duke has made to address the implications of NUREG/CR-6427 in its SAMA analysis. Thus, it is difficult to see how the Intervenors could have raised questions about the degree to which the SAMA analysis took NUREG/CR-6427 into account before the RAI responses were issued.

The NRC Staff tries to revive the discussion that the ASLB held with the parties in the April 29, 2002, teleconference, arguing that “BREDL/NIRS’s belief that the scope of Consolidated Contention 2 encompassed the adequacy of Duke’s discussion of NUREG/CR-6427 and the dedicated electrical line SAMA in its RAI responses was not reasonable.” Staff Response at 8. The Staff does not add anything new to the discussion that took place in the April 29, 2002, telephone conference, in which the ASLB effectively acknowledged that there was, at the very least, ambiguity in its order that should be addressed by setting a deadline for the submittal of a late-filed amended contention. Transcript of Telephone conference at 880, 897-914. BREDL and NIRS rest on the arguments made by their counsel at 873-80.

BREDL and NIRS reply below to Duke’s and the Staff’s responses to each of the contention’s subparts:

1. Failure to evaluate alternative of not renewing licenses

In this subpart, the Intervenors criticized the RAI responses for failing to consider whether, in light of new information, it would be unreasonable to preserve the option of license renewal. NRC regulations at 10 C.F.R. § 51.53(c)(3)(iv) require that an Environmental Report (“ER”) must contain “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.” In addition, the NRC must include in its

supplemental EIS “any significant new information.” 10 C.F.R. § 51.95(c)(4). This new information must be taken into account, and a determination made, as to “whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.” *Id.* As GANE and BREDL pointed out in the contention, Duke’s list of SAMA mitigative measures does not include discontinuing operation, which is the most obvious means of mitigating the risks of a containment breach accident that are set forth in NUREG/CR-6427.

Duke and the Staff argue that Intervenors are too late in raising this issue, because the no action alternative was discussed in the ERs for McGuire and Catawba, as well as NUREG-1437, the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (1996). Duke Response at 19-20, Staff Response at 12-13. This argument misses the Intervenors’ point, which is that the ER should discuss the question of whether, in light of the information provided in NUREG/CR-6427, the environmental impacts of license renewal are so great that the NRC should consider whether it would be unreasonable to preserve the option of license renewal. Obviously, since the 1996 GEIS preceded NUREG/CR-6427 by four years, there is no such discussion in the GEIS. And the sections of the ER identified by Duke likewise do not contain any such discussion. Now that Duke has purported to take NUREG/CR-6427 into account, this is the appropriate juncture at which to raise the question of whether Duke has done an adequate job of considering it, by addressing the implications of NUREGCR-6427’s conclusions with respect to the wisdom of preserving the license renewal option.

2. Failure to provide adequate support for conclusory results in RAI responses

This subpart of the contention asserts that Duke has not supported its SAMA analysis by publication of its PRA. Duke argues that the Intervenors are “in reality raising an untimely

challenge to the PRA and the SAMA evaluation beyond the scope of the issues now before the Licensing Board.” Duke Response at 23. This argument is mistaken. The question of the adequacy of Duke’s consideration of NUREG/CR-6427 necessarily raises questions about the adequacy of Duke’s entire PRA methodology, because Duke had to use the PRA in order to take NUREG/CR-6427 into consideration. Level 1 and 2 of the PRA were involved in performing an evaluation of containment failure probabilities using NUREG/CR-6427, and Level 3 was involved in evaluating the consequences of those containment failure probabilities. As discussed in the contention, it simply is not possible to determine whether Duke took NUREG/CR-6427 into consideration adequately, without also knowing what is in the PRA.²

3. Failure to support conclusions regarding frequency of accident contributors

This subpart of the contention asserts that Duke’s RAI responses are inadequate because they make unsupported assertions that the frequency of Station Blackout (“SBO”) and other events leading to core damage and containment rupture is lower than previously predicted. Duke argues that this aspect of the contention is inexcusably late because it could have been based on information that Duke had submitted earlier. Duke Response at 25-26.

Duke’s objection is frivolous. The plain language of RAI 3 shows that its purpose was to elicit from Duke a comparison of its own analysis of SBO frequency with that of NUREG/CR-6427. This is something that Duke had not attempted previously, and thus the RAI responses

² The Staff implicitly concedes that this subpart of the contention is based on the RAI responses; but it argues that Intervenors are impermissibly late because they amended the contention nearly four months after Duke submitted the RAIS responses on which the contention is based. Staff Response at 16. The Staff also makes the same argument with respect to subparts 3, 4, and 7 of the contention. See Staff Response at 16, 18, and 23. As discussed above at page 3, this argument hearkens back to an issue that was raised and disposed of in the April 29 telephone conference. As Intervenors pointed out in the telephone conference, they reasonably relied on language in LBP-02-04 indicating that the contention, as admitted, embraced the question of the degree to which Duke had taken NUREG/CR-6427 into account.

constitute new information. Subpart 3 of Amended Contention 2 criticizes the comparison that Duke provides, and thus relates to the adequacy of Duke's consideration of NUREG/CR-6427.

4. Failure to justify departures from NUREG/CR-6427

Duke does not object to the lateness of this subpart of Amended Contention 2.

5. Failure to take adequate account of uncertainties

This subpart of the contention asserts that Duke has either failed to perform an uncertainty analysis, or its uncertainty analysis is inadequate; and therefore the results of its PRA are not sufficiently reliable. Duke asserts that the contention is impermissibly late, because the Intervenors could have raised it in relation to Duke's original SAMA analysis last November. Duke Response at 32. *See also* Staff Response at 20. The argument misses the point that in order to challenge the adequacy of Duke's consideration of NUREG/CR-6427, it is necessary to challenge the input to the analysis, including the uncertainty analysis or lack thereof. It is Intervenors' position that Duke cannot be said to have taken NUREG/CR-6427 adequately into account if it has not performed an uncertainty analysis for the assumptions on which it relies in evaluating the issues raised by NUREG/CR-6427. Therefore, the contention is not late.

6. Failure to Use Reasonably Conservative Values in Calculating Accident Consequences

In this subpart of Amended Contention 2, Intervenors assert that even assuming Duke's use of point estimates is acceptable, Duke's SAMA analysis understates the consequences of accidents, because it relies on assumptions that are unreasonable and unsupported. Duke argues that the contention is impermissibly late, because it is based on Duke's SAMA analysis and not on the RAI responses. Duke Response at 42. *See also* Staff Response at 22. To the contrary, this subpart of Contention 2 relates to the adequacy of Duke's effort to take NUREG/CR-6427

into account. As recognized in RAI 4, consideration of NUREG/CR-6427 includes a re-evaluation of the consequences of accidents and the relative costs and benefits of mitigative measures. The Intervenors have provided evidence, with basis and specificity, that the consequence analysis provided by Duke is overly simplistic. Thus, this part of the contention is not impermissibly late.

7. Failure to submit PRA for peer review

In this subpart of Amended Contention 2, Intervenors charge that Duke has not obtained peer review for all of the revisions to the PRA and IPE on which it relies for its SAMA analysis, and that therefore there is not an adequate basis for reliance on the SAMA analysis. Duke argues that this subpart of the contention is impermissibly late, because it could have been raised in relation to the SAMA.³ Once again, this subpart of the contention relates to the adequacy with which Duke has taken NUREG/CR-6427 into account. If Duke is using assumptions that have not been peer reviewed, then it cannot be said to have done an adequate job.

CONCLUSION

For the foregoing reasons, Duke's and the Staff's objections to the timeliness of Amended Contention 2 are without merit. The ASLB should admit Amended Contention 2 for litigation.

³ The Staff objects that Intervenors are late in raising issues on the basis of the RAI responses. See discussion above at page 3 and note 2.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2002, copies of Blue Ridge Environmental Defense League's and Nuclear Information and Resource Service's Reply to Responses to Amended Contention 2 on the Issue of Timeliness were served on the following by e-mail and/or first class mail, as indicated below:

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