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June 2, 2003

U.S. Nuclear Regulatory Commission
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Subject: Duke Energy Corporation
Oconee Nuclear Station, Units 1, 2, and 3
NRC Docket Nos. 50-269, 50-270, 50-287
McGuire Nuclear Station, Units 1 and 2
NRC Docket Nos. 50-369, 50-370
Catawba Nuclear Station, Units 1 and 2
NRC Docket Nos. 50-413, 50-414
**ANSWER, RESPONSE AND REQUEST FOR CLARIFICATION TO
APRIL 29, 2003 NRC ORDER FOR COMPENSATORY MEASURES
RELATED TO DESIGN BASIS THREAT FOR OPERATING REACTORS
(EA-03-086)**

Section IV of the April 29, 2003, Order Requiring Compliance with Revised Design Basis Threat for Operating Power Reactors (EA-03-086) ("Order") states that, in accordance with 10 C.F.R. §2.202, a licensee must submit an answer to the Order and may request a hearing on the Order within 35 days of the date of the Order. Duke Energy Corporation ("Duke") hereby submits its answer (pursuant to 10 C.F.R. §2.202 and Section IV of the Order) and response (pursuant to 10 C.F.R. §50.4 and Sections III A.1, B.1 and B.2 of the Order) for 50-269, 50-270, 50-287, Oconee Nuclear Station, 50-369, 50-370, McGuire Nuclear Station, and 50-413, 50-414, Catawba Nuclear Station.

Section II of the Order states that "[i]n order to provide assurance that licensees are implementing prudent measures to protect against the revised Design Basis Threat ("DBT"), all licenses identified in Attachment 1 to this Order shall be modified to require that the physical security plans, safeguards contingency plans, and the guard training and qualification plans required by 10 C.F.R. §§ 50.34(c), 50.34(d), and 73.55(b)(4)(ii) be revised to provide protection against this revised DBT."

Duke consents to the Order, and does not request a hearing. Duke notes the request for clarification of five DBT issues provided in the safeguards attachment to the letter from Mr. Colvin, President and CEO of the Nuclear Energy Institute, to Chairman Diaz dated May 16, 2003. We encourage the Commission to respond to this request as soon as possible, as the Commission's clarifications may affect the manner of Duke's compliance with the Order.

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Because the NRC has used force-on-force testing as a standard by which compliance with the DBT was evaluated, Duke also requests that the NRC provide a clear definition of the objectives and criteria for force-on-force exercises so that appropriate revisions can be made to Duke's safeguards contingency plans, security plans and security officer training and qualification plans.

Specifically, Duke needs a clear explanation of the purpose of the force-on-force exercise (e.g., is the purpose of force-on-force exercises for security officer training, or to evaluate licensee compliance with the Design Basis Threat?). Similarly, the success criteria for the force-on-force exercise needs to be established (e.g., is the criterion prevention of a large offsite release, which would be consistent with the basis for risk-informing NRC regulations, or some other criteria?). Finally, if a force-on-force exercise is going to be used as a performance test of the licensee's ability to protect against the Design Basis Threat, a clear definition of adversary rules of engagement and adversary tactics is needed to provide appropriate predictability and stability in the regulatory program. Absent these clarifications, the standard by which licensee performance will be measured will continue to be a constantly moving target which is counter to the Commission's Principles of Good Regulation.

To enable Duke to meet the compliance dates specified in the Order, the requested clarifications are needed as soon as possible. If the clarifications cannot be provided by October 1, 2003, we respectfully request that the Director, Nuclear Reactor Regulation extend the dates for submitting the revision to the security plan and safeguards contingency plan, training and qualification plan, and for full implementation of the Order on a day-for-day basis until such clarifications are provided.

Duke also confirms its understanding that the Commission intends to exercise enforcement discretion to accommodate issues which may arise as licensees, in good faith, take reasonable actions to implement the specific requirements of this Order. We further understand that the Commission will exercise enforcement discretion for the period necessary to resolve such issues and to integrate the requirements of this Order with the orders issued February 25, 2002, as well as with other pertinent regulatory requirements, and our safeguards contingency plans, security plans and security officer training and qualification plans.

If you have any questions regarding this submittal, please contact Dana L. Boies, Nuclear Regulatory & Industry Affairs, at (704) 382-1694.

Very truly yours,



M. S. Tuckman

Attachments

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M. S. Tuckman, affirms that he is the person who subscribed his name to the foregoing statement, and that all the matters and facts set forth herein are true and correct to the best of his knowledge.

M. S. Tuckman

M. S. Tuckman

Subscribed and sworn to me: June 2, 2003
Date

Mary P. Nelson
Notary Public

My Commission Expires: JAN 22, 2006
Date

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