

December 19, 2003

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

DOCKETED  
USNRC

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In the Matter of  
DUKE ENERGY CORPORATION  
(Catawba Nuclear Station, Units 1 and 2)

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December 30, 2003 (9:49AM)  
Docket No's. 50-413-OLA,  
50-414-OLA OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S  
REPLY TO NRC STAFF REGARDING APPLICABILITY  
OF EXECUTIVE ORDER 12114**

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") order of December 8, 2003, Blue Ridge Environmental Defense League ("BREDL") hereby replies to NRC Staff's Response to Board's Questions Regarding Executive Order 12114 (December 12, 2003) (hereinafter "Staff Response").

Among other things, Executive Order 12114 requires consideration of environmental impacts of significant federal actions on the environment of the "global commons," i.e., areas outside the jurisdiction of any nation. See Section 2-3(a). The Staff argues that this requirement, along with all other requirements of Executive Order, is inapplicable, by virtue of an exemption from the Executive Order for "export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility." *Id.*, Section 2-5(v). As the Staff states:

[T]he Order, by its own terms, does not apply to the Department of Energy's Request to export plutonium for fabrication of the mixed oxide lead test assemblies and the Commission need not consider it with respect to this action.

Staff Response at 2.

BREDL does not agree with the Staff. Whether or not the Executive Order applies to the export of plutonium to France, nothing in the Executive Order states that transportation of plutonium to and from France by a DOE contractor is exempt from NEPA. The plutonium will not be transferred to French custody until it reaches France. Instead, according to the Department of Energy's export license application, the plutonium will be shipped under an agreement between DOE's contractor, Duke Cogema Stone & Webster, and the carrier, Pacific Nuclear Transport, Ltd. ("PNTL").<sup>1</sup> Moreover, although PNTL is partially owned by the British government, DOE has not sought a license to export the plutonium to the U.K. Instead, PNTL is being treated as a U.S. contractor.

Thus, contrary to the NRC Staff's argument, the plutonium shipments themselves are not part of the "export" activity that is covered by the DOE export license application. Therefore, they are not exempt from the requirements of Executive Order 11241.<sup>2</sup>

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<sup>1</sup> Letter from Edward J. Siskin, DOE, to Deputy Director, Office of International Programs, NRC, Attachment to NRC Form 7 (October 1, 2003). This document can be found on ADAMS, at Accession # ML032801463.

<sup>2</sup> In fact, only the NRC Staff seems to believe that the exemption in Section 2-5(v) of the Executive Order applies here. The DOE obviously considers itself required to examine the impacts of the plutonium shipments on the global commons. *See* DOE/EIS-0229-SA3, Supplemental Analysis, Fabrication of Mixed Oxide Fuel Lead Assemblies in Europe at 5, 10 (November 2003). Duke also states, in its license amendment application, that to extent that the proposed fabrication of lead assemblies in Europe has potential impacts on the environment of the global commons, those impacts must be considered. *See* letter from M.S. Tuckman, Duke Power, to U.S. Nuclear Regulatory Commission, Attachment 5 at 5-2 (February 27, 2003).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diane Curran". The signature is fluid and cursive, with a large initial "D" and "C".

Diane Curran

Harmon, Curran, Spielberg, & Eisenberg, L.L.P.

1726 M Street N.W., Suite 600

Washington, D.C. 20036

202/328-3500

e-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

December 19, 2003

## CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2003, copies of Blue Ridge Environmental Defense League's Reply to NRC Staff Regarding Applicability of Executive Order 12114 were served on the following by e-mail and/or first-class mail, as indicated below:

Ann Marshall Young, Chair  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3F23  
Washington, D.C. 20555  
E-mail: [AMY@nrc.gov](mailto:AMY@nrc.gov)

Anthony J. Baratta  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3F23  
Washington, D.C. 20555  
E-mail: [AJB5@nrc.gov](mailto:AJB5@nrc.gov)

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, D.C. 20555

Thomas S. Elleman  
Administrative Judge  
Atomic Safety and Licensing Board  
4760 East Country Villa Drive  
Tucson, AZ 85718  
E-mail: [elleman@eos.ncsu.edu](mailto:elleman@eos.ncsu.edu)

Office of the Secretary (original and two copies)  
ATTN: Docketing and Service  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, D.C. 20555  
E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov)

Susan L. Uttal, Esq.  
Antonio Fernandez, Esq.  
Kathleen A. Kannler, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
E-mail: [slu@nrc.gov](mailto:slu@nrc.gov) [axf2@nrc.gov](mailto:axf2@nrc.gov),  
[KAK1@nrc.gov](mailto:KAK1@nrc.gov)

Mary Olson  
Southeast Office, Nuclear Information and  
Resource Service  
P.O. Box 7586  
Asheville, NC 28802  
E-mail: [nirs.se@mindspring.com](mailto:nirs.se@mindspring.com)

Lisa F. Vaughn, Esq.  
Legal Dept. (PBO5E)  
Duke Energy Corporation  
526 South Church Street (EC11X)  
Charlotte, NC 28201-1006  
E-mail: [lfvaughn@duke-energy.com](mailto:lfvaughn@duke-energy.com)

Janet Marsh Zeller, Executive Director  
Blue Ridge Environmental Defense League  
P.O. Box 88  
Glendale Springs, NC 28629  
E-mail: [BREDL@skybest.com](mailto:BREDL@skybest.com)

<p>David A. Repka, Esq. Anne W. Cottingham, Esq. Winston &amp; Strawn, LLP 1400 L Street, N.W. Washington, D.C. 20005-3502 E-mail: <a href="mailto:drepka@winston.com">drepka@winston.com</a> <a href="mailto:acotting@winston.com">acotting@winston.com</a></p>	
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Diane Curran