

March 25, 2004

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

DOCKETED
USNRC

March 31, 2004 (11:11AM)

In the Matter of

DUKE ENERGY CORPORATION

Docket No's. 50-413-OLA,
50-414-OLA

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

(Catawba Nuclear Station, Units 1 and 2)

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S
OPPOSITION TO DUKE ENERGY CORPORATION'S
MOTION TO DISMISS CONTENTION III**

Blue Ridge Environmental Defense League ("BREDL") hereby responds to Duke Energy Corporation's Motion to Dismiss Contention III (March 15, 2004) ("Motion to Dismiss"). Duke Energy Corporation ("Duke") argues that Contention III should be dismissed, because Duke has provided an RAI response letter demonstrating consideration of Oconee as an alternative to Catawba for testing plutonium fuel. Duke's Motion at 1-2, citing letter from H.B. Barron, Duke Energy Corp., to U.S. Nuclear Regulatory Commission (March 1, 2004) (hereinafter "RAI Response").

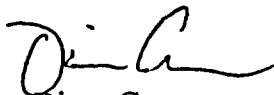
Contention III states that: "[t]he Environmental Report is deficient because it fails to consider Oconee as an alternative for the MOX LTAs." LBP-04-04, Memorandum and Order (Ruling on standing and Contentions), slip op. at 50-51.

Duke's RAI Response is fundamentally inadequate to satisfy the requirement for consideration of Oconee as an alternative, because its analysis is based on the assumption that "batch" use of plutonium fuel will be carried out only at Catawba. Having made this assumption, the RAI Response reaches the unsurprising, indeed inevitable, conclusion

that it is appropriate to test the fuel at the same plant where ultimately it will be used in batch quantities.

Duke completely misses the point of BREDL's Contention 5 (which was reframed as Contention III), that in light of new information regarding the hazards of operating nuclear plants with ice condenser containments, it is appropriate to consider batch use of MOX fuel at another nuclear power plant under Duke's control, *i.e.*, Oconee, as an alternative for mitigating or avoiding the impacts of accidents. *See* BREDL Supplemental Petition to Intervene at 12-13. It is therefore inappropriate for Duke to limit its factual analysis of the suitability of Oconee as an alternative to the question of whether Oconee would be an appropriate location to test fuel that ultimately will be used at Catawba. Duke's analysis should have addressed, in addition, the question of whether Oconee would be a more suitable alternative for batch use of plutonium fuel.

Respectfully submitted,



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

March 25, 2004

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2004, copies of the foregoing BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S OPPOSITION TO DUKE ENERGY CORPORATION'S MOTION TO DISMISS CONTENTION III 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

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

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

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

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 axf2@nrc.gov,
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

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

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

<p>David A. Repka, Esq. Anne W. Cottingham, Esq. Winston & Strawn, LLP 1400 L Street, N.W. Washington, D.C. 20005-3502 E-mail: drepka@winston.com acotting@winston.com</p>	
--	--



Diane Curran