RAS 7663

April 19, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
DUKE ENERGY CORPORATION	)	Docket Nos. 50-413-OLA
	)	50-414-OLA
(Catawba Nuclear Station,	)	
Units 1 and 2)	)	

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S PROPOSED HEARING SCHEDULE AND REQUEST FOR RECONSIDERATION OF ASLB'S INTERNAL DEADLINE OF AUGUST 2004 FOR ISSUING A DECISION IN THIS PROCEEEDING

I. INTRODUCTION

In preparation for discussion of litigation scheduling issues at a telephone conference on April 20, 2004, Blue Ridge Environmental Defense League ("BREDL") hereby proposes a schedule for litigation of security issues and Contention III. BREDL also proposes minor modifications to the schedule established by the Atomic Safety and Licensing Board ("ASLB") for litigation of Contentions I and II in its March 30, 2004, Order (Confirming Matters Addressed at March 25 Telephone Conference).

The time frame for BREDL's proposed schedule is based on a goal of allowing the ASLB to issue a decision regarding Contentions I, II, and III, by September of 2004; and on Security Contention 5 by March of 2005. BREDL does not believe it is possible or necessary to litigate its admitted contentions in time for reach its stated goal of issuing a completed decision in this

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proceeding by August of 2004. Thus, BREDL's proposal includes a request that the ASLB reconsider the August 2004 goal.

II. FACTUAL BACKGROUND

A. Schedule for Testing of Plutonium Fuel Assemblies at Catawba

This proceeding relates to Duke Energy Corporation's ("Duke's) application for a license amendment allowing it to test plutonium mixed oxide ("MOX") lead test assemblies ("LTAs") in the Catawba nuclear power plant. In its License Amendment Request ("LAR") of February 27, 2003, Duke stated that "[t]he current lead assembly fabrication schedule will support the insertion of MOX fuel lead assemblies into either McGuire Unit 2 or Catawba Unit 1 during the Spring 2005 refueling outage for the selected units." *Id.*, cover letter at 1.[1]

Although Duke does not explain the statement, it appears to be based in part on the U.S. Department of Energy's ("DOE's") schedule for fabrication of plutonium LTAs in France. On October 1, 2003, the DOE submitted to the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") an application for an export license to ship plutonium to France for processing into LTAs. Letter from Edward J. Siskin, DOE, to Deputy Director, Office of Nuclear Programs.[2] According to the export license application, the plutonium will be shipped to France in July or August of 2004, and processed into MOX fuel rods at the Cadarache fuel fabrication facility for assembly into LTAs at the Mélox facility. *Id.*, Attachment to NRC Form 7. The export license application contemplates that the completed LTAs will be shipped back to the U.S. and delivered to Catawba in the "general timeframe" of the first half of 2005. *Id.* at 2. The DOE subsequently stated that "the summer 2004 shipping date must be met" in order to allow sufficient time to manufacture the LTAs before Cadarache is permanently shut down in July

[1] Duke later restricted its application to the Catawba plant.

2005. Declaration of Edward J. Siskin, par. 5 (December 30, 2003), submitted in support of Opposition of Department of Energy in Response to Request for Hearing, Petition to Intervene and Request for Waiver by Greenpeace International, Charleston Peace, and Blue Ridge Environmental Defense League (December 31, 2003).[3] The French government has decided to close Cadarache because its seismic design is inadequate. Ann MacLachlan, "Cogema's Cadarache Plant Ends Commercial Work, Will Shut in 2006;" Nuclear Fuel (August 18, 2004). A copy is attached as Exhibit 2.

The testing of plutonium LTAs at Catawba is part of a much broader program to dispose of the U.S.'s stockpile of surplus weapons-grade plutonium. Under a treaty with Russia, the U.S. is proceeding in parallel with Russia to develop and implement programs for the disposition of weapons-grade plutonium. The U.S. program for implementation of the MOX program has been set back a year by delays in the design and construction of a MOX fabrication facility at the Savannah River Site. Letter from Alex S. Polonsky to Administrative Judge Thomas S. Moore re: Notice of Delay in Construction of the MOX Fuel Fabrication Facility; Duke Cogema Stone and Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-ML (February 10, 2004) (hereinafter "DCS Letter"). A copy is attached as Exhibit 3. According to the DCS Letter:

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[2] A copy of the DOE export license application is attached as Exhibit 1.

[3] On November 26, 2003, BREDL, together with Greenpeace International and Charleston Peace, requested a hearing on DOE's export license application, as well as a waiver of NRC security standards governing exports of nuclear materials to foreign countries. Request for Hearing and Petition to Intervene and Request for Waiver by Greenpeace International, Charleston Peace, and Blue Ridge Environmental Defense League; Request for Waiver of 10 C.F.R. § 110.44 by Greenpeace International, Charleston Peace, and Blue Ridge Environmental Defense League. Their requests are still pending before the Commission.

> the U.S. Department of Energy has officially notified Duke Cogema Stone & Webster LLC (DCS) that the start of construction of the MOX Facility at the Savannah River Site will be postponed from July 2004 until approximately May 2005.

Moreover, the schedule for parallel implementation of the MOX program has been thrown into doubt by the failure of the parties to come to an agreement on liability issues. The National Nuclear Security Administration's ("NNSA's") FY 2005 budget request to Congress indicates that construction of the proposed MOX Facility may be delayed much longer than the ten months represented in the DCS Letter. Department of Energy FY 2005 Congressional Budget Request, National Nuclear Security Administration, Office of the Administrator, Weapons Activities, Defense Nuclear Nonproliferation, Naval Reactors (February 2004) (hereinafter "NNSA Budget Request") (February 2, 2004). Copies of relevant pages are appended as Exhibit 4.

The Budget Request shows that the May 2005 date is a "target" date, not an estimate, because:

> [u]ncertainties associated with the international contributions to the Russian program together with Congressional requirements for parallel progress in both nations *make estimation of key schedule milestones inappropriate at this time.* The targets in 2004 and beyond assume the issue of liability will be resolved by April 1, 2004.[4]

Id. at 480 (emphasis added). May 2005 is also described as the "earliest possible date" for commencement of construction." *Id.* at 503. In his recent annual report to Congress regarding progress on the MOX Facility, the Secretary of Energy provided no further assurance that the

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[4] *Id.* Similarly, at page 481, the Budget Request explains that technical work on the design and licensing of the U.S. plutonium disposition facilities to be located at the Savannah River Site "has progressed to the point that DOE is ready to start construction of the Mixed Oxide Fuel Fabrication Facility in May of FY 2005." But in the same paragraph, the Budget Document states that "the Congressional requirement that both the U.S. and Russian program proceed in parallel may impact this schedule." *Id.* Later in the document, the NNSA indicates that the delay is caused by the lack of resolution of "liability issues." *Id.* at 487.

DOE could meet the new construction schedule. His statement can only be described as noncommittal:

> Accordingly, pursuant to section 3182(a)(3) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, I certify that it remains possible to meet the MOX production objective by January 2009, if there is no further significant delay in the start of construction due to liability issues and if the annual funding requirements that will be requested by the President in the outyears are made available by Congress.

Letter from Spencer Abraham, Secretary of Energy, to Hon. John Warner, Chairman, Senate Committee on Armed Services (February 17, 2004). A copy is attached as Exhibit 5. Thus, the targeted construction commencement date of May 2005 was based on the hope that liability issues would have been resolved by April 1, 2004. Since these issues were not resolved by that date, then one must anticipate that construction will be delayed even longer than NNSA projected earlier this year. A recent article in the Nuclear Monitor reports that the DOE's internal deadline for determining whether it can meet its targets for the MOX program has been moved to July of 2004. "No Solution to Liability Issue Yet, but Pu Program Schedule Still Valid," Nuclear Weapons and Materials Monitor at 1 (April 12, 2004). A copy is attached as Exhibit 6.

B. Schedule for Litigation of BREDL's Contentions

On March 5, 2004, the ASLB admitted three contentions submitted by BREDL regarding the adequacy of BREDL's application with respect to safety and environmental issues: Contentions I and II (relating to Duke's safety analysis), and Contention III (relating to Environmental Report's discussion of alternatives). LBP-04-04, Memorandum and Order (Ruling on Standing and Contentions). On March 15, 2004, Duke appealed the admission of the contentions. Memorandum of Law in Support of Duke Energy Corporation's Appeal from the

Atomic Safety and Licensing Board's memorandum and Order LBP-04-04 (Ruling on Standing and Contentions). Duke's appeal is still pending.

On March 15, 2004, Duke also filed a motion to dismiss Contention III. Duke Energy Corporation's Motion to Dismiss Contention III. Duke also objected to a question in BREDL's first set of discovery requests regarding Contention III. Duke Energy Corporation's Objections to Blue Ridge Environmental Defense League's First Discovery Requests at 8 (April 2, 2004). Duke's objection is still pending before the ASLB. *See* Order (Confirming Matters Addressed at April 6 Telephone Conference) at 3 (April 8, 2004).

On April 12, 2004, the ASLB admitted BREDL's Security Contention 5, regarding the adequacy of numerous aspects of Duke's application for an exemption from certain NRC security requirements for Category I special nuclear materials facilities. Memorandum and Order (Ruling on Security-Related Contentions). On April 8, 2004, BREDL submitted proposed revisions to its security contentions, based on new information in Duke's responses to the NRC Staff's Request for Additional Information on security issues. Blue Ridge Environmental Defense League's Amended Contentions on Duke's Security Plan Submittal.

III. REQUEST FOR RECONSIDERATION OF ASLB'S GOAL OF COMPLETING ITS DECISION BY AUGUST 2004

BREDL requests that the ASLB reconsider its goal of completing its decision on the Catawba LTA proceeding by August of 2004, because it is neither feasible nor necessary to adhere to that schedule. First, it is not feasible to add litigation of any additional issues to the already-compressed litigation schedule that the ASLB has established for Contentions I, II and III. The current litigation schedule is extremely tight, and will require a tremendous concentration of effort and resources to complete testimony by the end of May, as well as to prepare for an oral hearing in mid-June. BREDL does not believe it is possible for the ASLB to

provide it with a "meaningful" opportunity for a hearing, as required by Section 189a of the Atomic Energy Act, if the ASLB adheres to a schedule calling for a decision by August.[5] *Union of Concerned Scientists v. NRC,* 735 F.2d 1437, 1446 (D.C. Cir.1984), cert. denied, 469 U.S. 1132 (1985), quoting *Bellotti v. NRC,* 725 F.2d 1380, 1389 (D.C. Cir. 1983)

Second, even if it were lawful for the ASLB to sacrifice the statutory hearing required by Section 189a of the Atomic Energy Act to Duke's schedule for LTA production, Duke has not provided any compelling reasons for doing so. The only reason to decide the case by August 2004 is so that Duke can know, before the plutonium is shipped to France, whether or under what conditions it will receive a license to use the LTAs. While this level of certainty may be useful to Duke, it is not required.

In addition, as discussed in Section II.A above, the MOX program has been delayed by a year to date, and may be delayed even further if the U.S. and Russia do not resolve their disagreements over liability issues. The delays provide the DOE with additional time to seek alternative European and U.S. locations for manufacturing the LTAs, other than a French plant that should not be operating at all because of its lack of seismic qualification.[6]

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[5] In this context, BREDL notes that the time frame of 44 days for completing discovery on Contentions I, II and III is about half the amount of time allotted by NRC regulations for *expedited* proceedings on expansion of spent fuel storage capacity at nuclear power plants. *See* 10 C.F.R. § 2.1111 (setting a 90-day discovery period for expanded spent fuel storage cases), 10 C.F.R. § 2.1101 (explaining that these procedures "are intended to encourage and expedite onsite expansion of spent nuclear fuel storage capacity.") While Subpart K does not establish time frames for submitting evidentiary presentations following the close of discovery, one ASLB order in a 1999 Subpart K proceeding gave the parties 50 days after the close of discovery for submission of "written summaries" containing testimony and legal briefs on two technical contentions. *See* Memorandum and Order (Granting Request to Invoke 10 C.F.R. Part 2, Subpart K Procedures and Establishing Schedule) at 2-3. In contrast, the parties to this case have been given 11 days after the close of discovery in which to file their written testimony.

[6] For instance, France has a much larger and more recently constructed MOX fuel fabrication plant known as Mélox. The MOX fuel rods that would be fabricated at Cadarache are already scheduled for shipment to Mélox to be assembled into LTAs. While the ASLB obviously has no

IV. PROPOSED SCHEDULE

Below, BREDL proposes minor alterations to the schedule for the conclusion of the litigation of Contentions I, II, and III; and a schedule for litigation of BREDL's Security Contention 5. The schedule balances BREDL's need for a meaningful opportunity to prepare its case against Duke's desire to obtain a decision as soon as possible. Thus, while the time frames are longer than originally proposed by the ASLB, they are equivalent to or shorter than timeframes that are generally established in Subpart K proceedings. *See* note 5, *supra.*

BREDL proposes that the hearing on Contentions I, II and III should be held the second week of June. If the hearing is held that week, the extremely short time frame for filing testimony and rebuttal testimony can be relaxed slightly, to allow more time for preparation. BREDL believes this change will allow the parties a minimally adequate opportunity to prepare their cases. Moreover, if the ASLB is not able to issue a ruling on Duke's motion to dismiss Contention III shortly, BREDL recommends that litigation of Contention III be included with litigation of BREDL's security contention.

BREDL also proposes a schedule for litigation of Security Contention 5 which involves holding a hearing in November 2004. This schedule will allow the ASLB to make a decision by early March of 2005. The schedule anticipates that discovery on the security contention will begin after the parties have finished litigating Contentions I, II and III.

BREDL proposes the following schedule:

May 28	Prefiled written testimony on Contentions I, II, and III (Contention III to be postponed if ASLB does not rule soon on Duke's Motion to Dismiss)

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control over DOE, it does not need to sacrifice its own hearing process to DOE's or Duke's insistence that fabrication of the LTAs at the Cadarache plant is the only alternative open to them.

June 9	Prefiled written rebuttal testimony on Contentions I, II and III
June 14-18	Hearing on Contentions I, II and III
July 16	Proposed Findings of Fact and Conclusions of Law
July 30	Proposed Reply Findings of Fact and Conclusions of Law
September 30	Goal for decision on Contentions I, II and III
June 21-Sept. 20	Discovery on Security Contention 5 (all discovery responses must be completed by 9/20)
October 29	Prefiled initial testimony on Security Cont. 5
November 10	Prefiled rebuttal testimony by all parties
November 15-19	Hearing on Security Contention 5
December 17	Proposed Findings of Fact and Conclusions of Law
January 7, 2005	Proposed Reply Findings of Fact and Conclusions of Law
March 8	Goal for decision on Security Contention 5

BREDL requests that the ASLB adopt this schedule for the conduct of this proceeding.

Respectfully submitted,

Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
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Washington, D.C. 20036
202/328-3500
e-mail: dcurran@harmoncurran.com

April 19, 2004

Exhibit 1

Department of Energy
National Nuclear Security Administration
Washington, DC 20585

XSNM03327

October 1, 2003

11005440

Deputy Director
Office of International Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Enclosed for review and approval is a U.S. Department of Energy (DOE) application to the NRC for a license to export of up to 140 kg of weapon-grade plutonium oxide to France under the provisions of 10 CFR110, "Export and Import of Nuclear Equipment and Material." Export of this material is needed to support mixed oxide (MOX) fuel qualification efforts for the Department's surplus plutonium disposition program. The material will be used to fabricate MOX fuel lead assemblies (LAs) for irradiation in a U.S. commercial nuclear reactor.

It is our understanding that DOE will not need an import license to bring the finished lead assemblies and left over material in the form of fuel rods back into the United States. However, if this understanding is not correct, this letter is also a request to import the finished lead assemblies and left over material under the general license for import provisions of 10 CFR110.27.

It is also our understanding that a new Environmental Report is not required for this export license. If this understanding is not correct, please notify us as soon as possible so that we can submit the appropriate information in a timely manner.

Lead assemblies are to be tested to confirm fuel performance and to demonstrate the United States' capability to receive, inspect, store, and load the fuel assemblies at commercial reactors. In addition, the LA program is necessary to obtain NRC approval for large-scale use of weapon-grade MOX fuel in commercial reactors. Reactor-based plutonium disposition using MOX fuel is the basis for the September 2000 U.S./Russia Plutonium Management and Disposition Agreement, under which each country will disposition 34 metric tons of surplus weapon-grade plutonium for nonproliferation purposes.

DOE and its contractor, Duke Cogema Stone and Webster (DCS), have evaluated alternatives for the early fabrication of the LAs. It has been decided to have the LAs fabricated and assembled in Cogema's Cadarache and MELOX facilities in France. DCS has contracted with Cogema to provide fuel fabrication services for the LAs. A total of

XSNM03327

four lead assemblies will be fabricated. Implementation of this decision will require the export of up to 140 kg of weapon grade plutonium oxide powder to France for use in fabrication of the LAs.

To support the plutonium disposition program schedule, DOE requests that NRC complete its review of the enclosed application by June 15, 2004.

If you have any questions, please feel free to call me at 202-586-2695, or Dave Nulton of my staff at 202-586-4513.

Sincerely,

Edward J. Siskin
Assistant Deputy Administrator
Office of Fissile Materials Disposition

Enclosure

cc: J. David Nulton, NA-261
Joseph Olencz, NA-261
Patrick T. Rhoads, NA-261
David Alberstein, NA-26
Richard Goorevich, NA-24
Kathleen Martin, OGC
Robert Newton, OGC
Arvid M. Jensen, DCS
Janice Dunn Lee, USNRC IP

NRC FORM 7 (5-2003) (10 CFR 110) U.S. NUCLEAR REGULATORY COMMISSION

APPROVED BY OMB: NO. 3150-0027 EXPIRES: 05/31/2006

Estimated burden per response to comply with this mandatory collection request: 2.4 hours. This submittal is reviewed to ensure that the applicable statutory, regulatory, and policy considerations are satisfied. Send comments regarding burden estimate to the Records Management Branch (T-6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0027), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

APPLICATION FOR LICENSE TO EXPORT NUCLEAR MATERIAL AND EQUIPMENT

(See Instructions on Reverse)

1. APPLICANT'S USE	a. DATE OF APPLICATION	b. APPLICANT'S REFERENCE	2. NRC USE	a. DOCKET NUMBER	b. LICENSE NUMBER
	10/1/2003			11005440	XSNM03327

3. APPLICANT'S NAME AND ADDRESS

a. NAME: U.S. Department of Energy

b. STREET ADDRESS (Facility Site): 1000 Independence Avenue SW

c. CITY: Washington | d. STATE: DC | e. ZIP CODE: 20585

f. TELEPHONE NUMBER: 202-586-2695 | g. FAX: 202-586-2710 | h. E-MAIL:

4. SUPPLIER'S NAME AND ADDRESS *(Complete if applicant is not supplier)*

a. NAME: Los Alamos National Laboratory

b. STREET ADDRESS: P.O. Box 1663

c. CITY: Los Alamos | d. STATE: NM | e. ZIP CODE: 87545

6. FIRST SHIPMENT SCHEDULED	6. FINAL SHIPMENT SCHEDULED	7. APPLICANT'S CONTRACTUAL DELIVERY DATE	8. PROPOSED LICENCE EXPIRATION DATE	9. CONTRACT NO.
August 2004	One shipment	To be determined	3 years from issue	

10. ULTIMATE FOREIGN CONSIGNEE

a. NAME: COGEMA Cadarache

b. STREET ADDRESS (Facility Site): B.P. 33-F-13115 Saint-Paul-lez-Durance

c. CITY | d. COUNTRY: France

11. ULTIMATE END USE *(Include plant or facility name)*

For use in fabrication of four MOX lead assemblies, which will be returned to the U.S. for insertion into a commercial nuclear reactor.

11a. DATE REQUIRED

12. INTERMEDIATE FOREIGN CONSIGNEE

a. NAME

b. STREET ADDRESS (Facility Site)

c. CITY | d. COUNTRY

13. INTERMEDIATE END USE

13a. DATE REQUIRED

14. INTERMEDIATE FOREIGN CONSIGNEE

a. NAME

b. STREET ADDRESS (Facility Site)

c. CITY | d. COUNTRY

15. INTERMEDIATE END USE

15a. DATE REQUIRED

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16. COM CODE	17. DESCRIPTION (Include chemical and physical form of nuclear material; give dollar value of nuclear equipment and components)	18. MAX. ELEMENT WEIGHT	19. MAX. WT. %	20. MAX. ISOTOPE WEIGHT	21. UNIT
	Plutonium oxide powder, isotopics to meet the following specification: Pu-238/Pu total: <0.05% Pu-241/Pu total: <1% Pu-239/Pu total: 90%<X<95% Pu-242/Pu total: <0.1% Pu-240/Pu total: 5%<X<9%	140.0 kg PuO2	100 %	123.48	kg Pu

22. FOREIGN OBLIGATIONS BY COUNTRY AND PERCENTAGE *(Use separate sheet if necessary)*

23. ADDITIONAL INFORMATION ON CONSIGNEES, END USES, AND PRODUCT DESCRIPTION *(Use separate sheet if necessary)*

See attachment.

24. The applicant certifies that this application is prepared in conformity with Title 10, Code of Federal Regulations; and that all information in this application is correct to the best of his/her knowledge.

25. AUTHORIZED OFFICIAL	b. SIGNATURE	b. TITLE
	Edward J. Siskin	Assistant Deputy Administrator Office of Fissile Materials Disposition

NRC FORM 7 (5-2003) PRINTED ON RECYCLED PAPER

XSNM03327

11005440

Attachment to NRC Form 7
Application for License to Export Nuclear Material and Equipment
Submitted by U.S. Department of Energy
October 1, 2003

Item No. 23: Additional Information on Consignees, End Uses, and Product Description

After the end of the Cold War, both the United States and the Russian Federation designated large inventories of weapon-grade plutonium surplus to defense needs. The United States and Russia completed an agreement in September 2000 for the management and disposition of such plutonium. It commits each to dispose of 34 metric tons (MT) of weapon-grade plutonium. This will be accomplished in the U.S. by using the surplus plutonium to fabricate mixed oxide (MOX) nuclear reactor fuel and irradiating the fuel in commercial reactors. Effectively and transparently changing such readily usable weapons plutonium into forms unusable for weapons is a high priority national security objective to advance important nonproliferation and other policy interests.

For the program in the U.S., a prototypical set of reactor fuel (called "lead assemblies" or LAs) is to be tested in a Duke Energy reactor to confirm fuel performance and to demonstrate the United States' capability to receive, inspect, store, and load the fuel assemblies at commercial reactors. In addition, the LA program is necessary to obtain U.S. Nuclear Regulatory Commission (NRC) approval for large-scale use of weapon-grade MOX fuel in commercial reactors.

The U.S. Department of Energy (DOE) and its contractor, Duke Cogema Stone and Webster (DCS), have evaluated alternatives for the early fabrication of the LAs. It has been decided to have the LAs fabricated and assembled in Cogema's Cadarache and MELOX facilities in France. DCS has contracted with Cogema to provide fuel fabrication services for the LAs. A total of four lead assemblies will be fabricated. Implementation of this decision will require the export of up to 140 kg of weapon grade plutonium oxide powder to France for use in fabrication of the LAs.

Title to the plutonium oxide required for the LAs is held by DOE. Accordingly, the application for the license to export the material is being submitted by DOE. Title to the material and to the fabricated assemblies will remain with DOE until the LAs are inserted into the reactor for irradiation.

The plutonium oxide is being purified at Los Alamos National Laboratory, where it is currently stored. Transportation by land of the plutonium oxide from Los Alamos to the Charleston Naval Weapons Station (NWS) on the East Coast will be provided using the Safe Secure Transport (SST) system operated by the DOE Office of Safeguards Transportation (OST). At the Charleston NWS the material will be loaded onto Pacific Nuclear Transport, Ltd. (PNTL) ships. The material will be contained in eight or nine FS 47 shipping packages, each of which contains five containers of plutonium oxide. The material will be transported by sea to Cherbourg, France, where it will be unloaded for overland shipment to the Cadarache fabrication facility. The general timeframe for this activity is July/August 2004.

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11005440

Upon completion of lead assembly fabrication, the completed assemblies, along with archive and extra material, will be returned to Cherbourg via overland shipment and loaded onto the PNTL ships. Left over feed material in France will be pelletized in the form of MOX fuel, inserted into fuel rods, and welded closed as is the practice with other fuel rods. The left over material, as well as spare and archive fuel rods, will be returned to the US in the same shipment as the finished LAs. The assemblies and other material will be contained in six FS 65 shipping packages. These packages will be transported by sea back to the United States in the PNTL ships. The packages will be unloaded at the Charleston NWS for overland shipment via SST to the reactor in which the assemblies will be irradiated. In the case of the extra material, it will be shipped by SST to either Los Alamos, Y-12 at Oak Ridge, or the Savannah River Site for temporary storage until the MOX Fuel Fabrication Facility at SRS is operational. The general timeframe for this activity is the first half of 2005.

Contractual arrangements and payment for use of the PNTL ships will be made directly between DOE's contractor, DCS, and the PNTL operating company. These parties will also, under DOE programmatic oversight and review, determine technical details regarding handling of the materials and the required equipment. Applications for Certification of Competent Authority for the FS 47 and FS 65 shipping packages, both of which are of French design, will be filed with the Department of Transportation and the NRC by DCS. An application for an amendment to the operating license of the McGuire and Catawba nuclear power stations, to allow insertion of the lead assemblies into a reactor at either station, was filed with the NRC by Duke Energy in February 2003. Duke Energy recently amended the application by withdrawing McGuire from consideration for lead assembly irradiation.

The transfer of the plutonium oxide powder to Europe and the return of the fabricated lead assemblies and left over material will take place pursuant to the U.S.-EURATOM peaceful nuclear agreement. Safeguards will be implemented by the EURATOM Safeguards Inspectorate, which is very similar to the IAEA system.

For sea transport, the system of two armed PNTL ships sailing in convoy for mutual protection will be used. This system has been reviewed and approved by U.S. authorities for MOX fuel transport from Europe to Japan in recent years. The basic security philosophy behind the two-ship convoy is that each armed ship escorts and protects the other. In the judgment of all the U.S. agencies involved in the earlier review processes, the PNTL MOX transportation system, with its two armed vessels, provides an acceptable level of protection. This system has been used as recently as the summer of 2002 for the shipment of MOX fuel from Japan back to the UK.

Physical protection measures in France will be decided by the Government of France, in full compliance with the relevant IAEA recommendations, including INFCIRC 225, "Physical Protection of Nuclear Material and Nuclear Facilities." Actual physical protection measures implemented in the fuel fabrication facilities and during transportation are classified, such classification being an important element of their effectiveness. They include armed guards and close connection with the national response forces. These measures are comparable to those used in the U.S. for land transportation and processing of such materials and are subject to periodic review by the DOE Office of Export Control.

Exhibit 2

Inside NRC article

Nuclear Fuel

August 18, 2003

HEADLINE: Cogema's Cadarache plant ends commercial work, will shut in 2006

BYLINE: Ann MacLachlan, Paris

BODY:

Cogema's ATPu mixed-oxide (MOX) fuel production plant at Cadarache ended commercial production as expected last month, but the company says the plant will remain active through 2006 to allow conditioning of scrap as well as ''research and development'' work.

That work could include fabrication of lead test assemblies (LTAs) from ex-weapons plutonium destined for irradiation in a Duke Power reactor, under the U.S. plutonium disposition program. A Cogema spokesman confirmed last week that the company had replied to a call for bids on the LTA fabrication, saying it was ''awaiting the result'' of the bid competition. The other bidder is known to be Belgonucleaire, although the Belgian fabricator has not publicly confirmed its bid. The proposal, known as Eurofab, was made after LTA manufacture at Los Alamos National Laboratory was ruled out.

The last MOX pins were fabricated in ATPu on July 16, ahead of the July 31 deadline set by Cogema after French safety authorities warned the old plant wouldn't be allowed to operate beyond mid-2003. ATPu, which entered into production in 1962, wasn't up to modern seismic safety standards and Cogema opted not to do the major reconstruction work required to bring it into conformance with today's standards. Cogema in 2000 proposed transferring the Cadarache MOX fabrication to its newer Melox plant in Marcoule; the French government finally authorized Cogema to expand production at Melox to accommodate the ATPu business.

Cadarache was responsible for Cogema's MOX business for German customers. With the prospect of a production stop, Cogema Cadarache began downsizing its workforce in 2001. From a high of 300 employees, the site is now down to a staff of 166, the company said.

Cogema said that fabricating the MOX LTAs ''would not pose safety problems,because there would be only a small quantity of plutonium, less than a tenth
of what was there when the plant operated at full capacity.'' The director general of French nuclear regulatory agency DGSNR has confirmed that the source term for the MOX LTA production would be so small that it wouldn't represent a threat even given the plant's seismic weaknesses. The fabrication of four LTAs is expected to take less than three months.

In a report prepared for Greenpeace France and released last month, WISE-Paris said that Cogema has informed safety authorities it intends to shortly submit a licensing request for shipping casks for the U.S. plutonium and the LTAs. Neither French safety authorities nor the French government has announced a decision on the status of the LTA program.

WISE-Paris argued that the French government would have trouble explaining to the French public why a plant that is ''too unsafe for fabrication of French or German MOX made from reactor-grade plutonium...is safe enough for fabrication of weapons-grade MOX for the U.S.'' The consultancy argued that the ''flimsy''

regulatory framework of the Cadarache plant, as well as of Belgonucleaire's PO
plant at Dessel that is still in operation, ''does not guarantee an appropriate licensing procedure'' for the LTAs. ATPu was not formally licensed at the beginning of its life, but its operating conditions currently require a fertile plutonium content of 17%, and an exemption would be required for manufacture of the LTAs. PO's license has allowed it to work with weapons-grade plutonium from the beginning.

The report also insisted that the public should be involved in any decision and that ''plans for the sea shipment of weapons plutonium from the U.S. to Europe should be revealed and publicly discussed.'' The cost of the U.S. LTA program should also be revealed, WISE-Paris said.

The consultants also claimed that ''transport casks and fabrication lines...have never demonstrated that they can handle such reactive materials,'' that is, plutonium with a high Pu-239 content that ''presents a higher criticality sensitivity'' than the Pu normally put through the Cadarache plant. They said the potential consequences of a terrorist attack or accident in transport of the 150 kilograms of U.S. Pu should be ''thoroughly assessed'' before any decision is taken on the future of the Eurofab plan.

Exhibit 3

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February 10, 2004

Administrative Judge Thomas S. Moore
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Notice of Delay in Construction Schedule for the MOX Facility; *Duke Cogema Stone and Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098- ML

Dear Judge Moore:

This is to inform the Licensing Board and the parties of a change in the schedule for the construction of the MOX Fuel Fabrication Facility (MOX Facility). Specifically, the U.S. Department of Energy has officially notified Duke Cogema Stone & Webster LLC (DCS) that the start of construction of the MOX Facility at the Savannah River Site will be postponed from July 2004 until approximately May 2005. This change to the construction schedule does not directly affect the schedule for design of the MOX Facility or the three contentions remaining in this proceeding. Accordingly, DCS hopes the Licensing Board will rule on DCS's existing dispositive motions so any uncertainties that may affect the MOX Facility's design may be addressed at the earliest possible time.

Respectfully submitted,

Alex Polonsky

Alex S. Polonsky

cc: Service List

Exhibit 4

DOE/ME-0032
Volume 1

Department of Energy FY 2005 Congressional Budget Request

National Nuclear Security Administration

Office of the Administrator

Weapons Activities

Defense Nuclear Nonproliferation

Naval Reactors

February 2004

Office of Management, Budget and Evaluation/CFO

Volume 1

Defense Nuclear Nonproliferation

Annual Performance Results and Targets

FY 2000 Results	FY 2001 Results	FY 2002 Results	FY 2003 Results
There were no related targets.	There were no related targets.	Developed a plan for U.S. and Russian plutonium disposition that is politically, fiscally, and technically feasible, and obtain White House approval. (MET GOAL)	Complete Title II (detailed) design of the Mixed Oxide Fuel Fabrication Facility for the disposition of excess US weapons-grade plutonium, and commence down blending of off-specification highly enriched uranium at the Savannah River Site. (MET LESS THAN 80% OF TARGET)

Annual Performance Results and Targets

Performance Indicators	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Endpoint Target Date
Percentage of the design and construction of the Pit Disassembly and Conversion Facility (PDCF) completed	Completed 60% of the detailed design of the U.S. Pit Disassembly and Conversion Facility.	Complete 85% of the detailed design of the U.S. Pit Disassembly and Conversion Facility.	Complete 100% of the detailed design of the U.S. Pit Disassembly and Conversion Facility. Begin design of PDCF Waste Solidification Building. Accomplish all site preparation activities, including site clearing, grading, installation of utilities and installation of infrastructure support.	Begin construction of the U.S. Pit Disassembly and Conversion Facility WSB. Award construction management contract for WSB.	* Continue construction of the U.S. Pit Disassembly and Conversion Facility WSB.	* Continue construction of the U.S. Pit Disassembly and Conversion Facility WSB. Award construction management contract for PDCF complex.	*Complete construction of U.S. Pit Disassembly & Conversion Facility WSB. Start Construction of PDCF complex.	EOY FY 2013
Percentage of the design and construction of the MOX Fuel Fabrication Facility completed.	Completed 75% of the detailed design of the U.S. MOX Fuel Fabrication Facility.	Complete the last 25% of the U.S. MOX Fuel Fabrication Facility detailed design (total of 100% complete).	* Begin site preparation and construction of the U.S. MOX facility and initiate procurement of long lead equipment.	*Continue the construction of the U.S. MOX Fuel Fabrication Facility.	*Continue the construction of the U.S. MOX Fuel Fabrication Facility.	*Continue the construction of the U.S. MOX Fuel Fabrication Facility.	*Complete the construction of the U.S. MOX Fuel Fabrication Facility	FY 2009

(479)

Performance Indicators	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Endpoint Target Date
Amount of HEU shipped to the United States Enrichment Corporation (USEC) for down-blending. (EFFICIENCY MEASURE)	Processed the equivalent of 11MT @40% of surplus HEU for shipment to USEC.	Ship an additional 11MT of surplus HEU to USEC for down-blending to LEU. A grand total of 45MT has been shipped.	Complete U.S. 50 MT HEU shipments to USEC. Begin shipments of compensation HEU to USEC.	Complete shipments of compensation HEU to USEC.	N/A	N/A	N/A	FY 2006
Amount of off-specification HEU down-blended.	Completed capital improvements at SRS for off-specification HEU down-blending and deliver resulting LEU and surplus HEU to TVA (equivalent to ~2.4MT of HEU).	Down-blend off-specification HEU at SRS and deliver resulting LEU and surplus HEU to TVA (equivalent to ~ 9.0MT of HEU for a cumulative total of 12.7 MT).	Down-blend off-specification at SRS and deliver resulting LEU and surplus HEU to TVA (equivalent to ~ 9.0MT of HEU for a cumulative total of 21.7 MT).	Down-blend off-specification HEU at SRS and deliver resulting LEU and surplus HEU to TVA (equivalent to ~ 6.0MT of HEU for a cumulative total of 27.7 MT).	Complete U.S. HEU/LEU shipments to TVA.	N/A	N/A	FY 2007
Russianize the design and construct the MOX Fuel Fabrication Facility in Russia.	Finalized decisions on the technical path forward for disposing of surplus Russian weapon-grade plutonium. Began and completed 10% of the Russianization of U.S. MOX facility design.	Complete 60% of the Russianization of the design. Begin characterization of Russian MOX site.	Complete 100% Russianization of the U.S. MOX Fuel Fabrication Facility. Complete 100% characterization of Russian MOX site. Begin site preparation and construction of the Russian MOX Fuel Fabrication Facility.	Complete 40% of the construction of the Russian MOX Fuel Fabrication Facility.	Complete 80% construction of the Russian MOX Fuel Fabrication Facility.	Complete 100% construction of the Russian MOX Fuel Fabrication Facility.		FY 2008

(480)

* Uncertainties associated with the international contributions to the Russian program together with Congressional requirements for parallel progress in both nations make estimation of key schedule milestones inappropriate at this time. The targets in 2004 and beyond assume the issue of liability will be resolved by April 1, 2004.

Detailed Justification

(dollars in thousands)

FY 2003	FY 2004	FY 2005

U.S. Plutonium Disposition

DOE is responsible for disposing of 34 metric tons of U.S. surplus weapons grade plutonium, in accordance with a September 2000 U.S.-Russia Plutonium Management and Disposition Agreement and Congressional direction to conduct both disposition programs (U.S. and Russia) in parallel. Two key facilities will be built at the Savannah River Site: a Pit Disassembly and Conversion Facility, which will primarily disassemble nuclear weapons pits and convert the resulting plutonium metal to an oxide form, and a MOX Fuel Fabrication Facility which will mix the plutonium oxide with depleted uranium oxide to produce mixed oxide (MOX) fuel for subsequent irradiation in existing domestic reactors.

Technical work on the design and licensing of the U.S. plutonium disposition facilities to be located at the Savannah River Site (SRS) has progressed to the point that the DOE is ready to start construction of the Mixed Oxide Fuel Fabrication Facility in May of FY 2005. Equipment procurement will be initiated in FY 2005. However, the Congressional requirement that both the U.S. and Russian program proceed in parallel may impact this schedule (see section dealing with the Russian Fissile Material Disposition).

Reactor-Based Technologies	**57,400**	**36,750**	**38,600**

Reactor Based Technologies activities include work necessary to convert weapons grade plutonium oxide into finished MOX fuel assemblies to be irradiated to the spent fuel standard in commercial reactors.

As part of fuel qualification activities, continue the implementation of the Lead Assembly (LA) work, including initiation of fuel fabrication and completion of the fabrication and insertion of lead assemblies into a mission reactor. Continue fuel transportation and packaging activities, including submitting certification documents to the Nuclear Regulatory Commission (NRC). Develop information and responses to NRC questions to assure NRC approval of the operating license for the MOX FFF, continue modifications to the commercial nuclear reactors, complete irradiation of last test specimens, and perform the bulk of post-irradiation examination of all the test specimens. Begin operations planning activities in support of the MOX FFF, including recruiting, training, manual and procedure development, and personnel costs.

The increase in FY 2005 relative to FY 2004 is due to the increased costs for expansion of operational support levels as the design effort matures, partially offset by the decreased costs relating to the completion of the fabrication and insertion of lead assemblies into a mission reactor.

(dollars in thousands)

FY 2003	FY 2004	FY 2005

Russian Fissile Materials Disposition

Russian Plutonium Disposition (funds spent in Russia)

The 1998 U.S.-Russia Joint Scientific and Technical Cooperation Agreement, which provided limited liability protection for technical work (pre-construction) in support of plutonium disposition, expired in July 2003. Senior officials in both countries are now working to develop satisfactory liability provisions for the September 2000 U.S.-Russia Plutonium Management and Disposition Agreement. This Agreement covers design, construction and operation of facilities required for plutonium disposition.

Given that preliminary site characterization work in Russia will not start until the spring of 2004 and the U.S. and Russia must exchange detailed technical engineering data to Russianize the design of the MOX Facility, the start of construction in both countries will now begin in FY 2005.

As specified in the U.S.-Russia Plutonium Management and Disposition Agreement, funding from new budget authority continues the work initiated in FY 2002 and 2003. As soon as the U.S. and Russia resolve the liability issues and inform Congress of the revised path forward, the available prior year balances mandated for work in Russia as specified will be obligated.

The Plutonium Conversion and MOX Fuel Fabrication activities and budget, which appeared under this heading in previous years, have been consolidated and placed in a new task entitled "Implementation of MOX FFF Design". Given that Russia has accepted the offer of the design of the U.S.MOX Facility prepared by Duke Engineering Services, COGEMA, Inc. and Stone & Webster (DCS), this task includes both a Russian and a U.S. component.

VVER-1000 Reactors	**1,700**	**2,500**	**3,500**

This effort involves modifying Russian VVER-1000 power reactors to utilize MOX fuel. FY 2005 efforts include: develop reactor physics data for insertion of MOX fuel lead test assemblies. Complete the MOX core design and design for reactor modifications for the lead test assemblies. Upgrade the VVER-1000 safety basis and submit MOX fuel licensing documents to GAN. Obtain licenses for experimental fuel and prepare for the insertion of the lead test assemblies.

The increase will be used to support the modifications to the VVER-1000 reactors for use of MOX, and preparation of licensing documents.

BN-600 Reactor	**1,300**	**2,500**	**3,500**

This effort involves converting the BN-600 fast neutron breeder reactor into a net burner of plutonium. FY 2005 efforts include: completing the BN-600 uranium core with reflector/shield safety analyses and submit the licensing package to GAN for approval of the blanket replacement. Complete the design upgrade of photo-neutron source and control/shutdown rods and other plant modifications. Fabricate reflector/shield components.

99-D-143, Mixed Oxide Fuel Fabrication Facility, Savannah River Site, Aiken, South Carolina

Significant Changes

The schedule for starting construction of Mixed Oxide Fuel Fabrication Facilities (MOX FFF) in the U.S. and Russia has been adjusted to allow time for resolution of issues regarding Russian tax exemptions and liability. Given the political realities and impacts of these issues, the earliest possible date that construction can begin on the two facilities is May 2005. Despite this delay in the start of construction, the NNSA has structured the program to minimize adverse impacts. The overall program and project costs will be updated in the Program's annual report to Congress.

This schedule adjustment will allow the U.S. to transfer the domestic MOX FFF design to Russia for use in processing Russian surplus plutonium. This approach was proposed to the Russians in April 2002 and accepted in December 2002. It eliminates the 2 to 3 years of time required for Russia to develop their own MOX facility design, and will, ultimately, minimize the cost and schedule of both programs. It will also allow the Congressional requirements for parallel progress in the U.S. and Russia to be met.

1. Construction Schedule History

	Fiscal Quarter					
	A-E Work Initiated	A-E Work Completed	Physical Construction Start	Physical Construction Complete	Total Estimated Cost ($000)	Total Project Cost ($000)
FY 2000 Budget Request (A-E *and technical design only*)	2Q 1999	4Q 2001	1Q 2002	4Q 2005	[a]	[a]
FY 2001 Budget Request (*Preliminary Estimate*)	2Q 1999	3Q 2002	4Q 2002	1Q 2006	[a]	[a]
FY 2002 Budget Request (*Preliminary Estimate*)	2Q 1999	4Q 2002	2Q 2003	1Q 2007	[a]	[a]
FY 2003 Budget Request (*Preliminary Estimate*)	2Q 1999	4Q 2003	2Q 2004	4Q 2007	[a]	[a]
FY 2004 Budget Request (*Preliminary Estimate*)	2Q 1999	1Q 2004	2Q 2004[b]	4Q 2007[b]	1,622,000[a]	1,842,000[a]
FY 2005 Budget Request (*Current Estimate*)	2Q 1999	3Q 2004	3Q 2005[b]	2Q 2009[b]	TBD[ab]	TBD[a]

[a] Total Estimate Cost (TEC) and Total Project Cost (TPC) estimates will be updated when the Project Performance Baseline is established in FY 2004.

[b] *The Report to Congress: Disposition of Surplus Defense Plutonium at Savannah River Site* dated February 12, 2002, cites a Physical Construction Start date of FY2004, a Physical Construction Completion date of FY 2007, and the first fabrication of MOX fuel in FY2008. These dates will be revised in the 2004 report to Congress.

& Webster (DCS) on March 22, 1999 for the design of a MOX FFF to be built at the DOE Savannah River Site (SRS) and licensed by the Nuclear Regulatory Commission.

The MOX FFF will produce completed MOX fuel assemblies for use in existing domestic, commercial nuclear power reactors. The MOX FFF will be designed to receive and process 3.5 MT per year of plutonium powder from the Pit Disassembly and Conversion Facility (PDCF) and other selected inventories of weapon-grade plutonium oxide available within the DOE complex and accommodate about two-years storage for the incoming plutonium powder. The MOX FFF is capable of expanding throughput to 4 MT per year to meet provisions in the Russian agreement. The facility's operating life is expected to be approximately 12 years.

Design of the MOX FFF is based on processes and facilities currently being successfully operated in Europe, specifically the MELOX and La Hague facilities in France. The MOX fuel fabrication design will replicate the automated MELOX equipment and facility design and will include lessons learned from operations and maintenance experiences. The MOX FFF will be designed and built to meet U.S. conventions, codes, standards, and regulatory requirements (Americanization process). After completing its mission, the facility will be deactivated, decontaminated, and decommissioned over a three- to four-year period.

The MOX FFF will require approximately 366,000 square feet to perform all material processing and fabrication operations to produce MOX fuel. Specific MOX FFF operations include the following: aqueous polishing (to purify plutonium before fabrication into fuel); blending and milling; pelletizing; sintering; grinding; fuel rod fabrication; fuel bundle assembly; storage of feed material, pellets, and fuel assemblies; a laboratory; and space for use by International Atomic Energy Agency (IAEA). The facility also requires 120,000 square feet of structures adjacent to the MOX process areas for secure shipping and receiving, material receipt, utilities, and technical support.

Cost and Schedule

The TEC for the MOX FFF is TBD due to FY 05 budget changes. These changes require a revision to the overall cost and schedule estimates for the MOX FFF. Cost and schedule estimates in this Data Sheet are preliminary. The revised cost and schedule will be completed by June 2004.

The overall process and facility design (also known as base design) is 75% complete as of September 1, 2003. Title I (preliminary) design began in mid FY 1999 and was completed in December 2000. Title II (detailed design) began in January 2001 and will be completed in 2004. The Title II design has taken longer than planned due to scope changes to accommodate impure plutonium previously destined for immobilization and delays dictated by the Russian program. In order to maintain project schedule and reflect industry experience, glove box and equipment design efforts were initiated in FY 2002.

FY 2004 and FY 2005 Description of Activities

The main FY 2004 activities include completing the base design of the MOX FFF and continuing the manufacturing design activities of the process equipment units. In the base design, the structural design will be completed to develop construction bid packages to support construction commencement in May 2005. The remaining design packages (mechanical, electrical, etc.) will also be completed in FY 2004 to

support the construction schedule in FY 2005 and beyond. Construction planning will fully commence in FY 2004 with the finalizing of Construction Management Plans.

For FY 2005, the initial suite of construction work packages will be issued to support the schedule and site preparation activities and will include land clearing and grading, temporary road construction, and establishment of temporary construction services. Procurement of the MOX FFF structural subcontract will begin in 2nd quarter FY 2005 with award in the third quarter. Initial mobilization and material procurement will begin in FY 2005 with MOX FFF building excavation scheduled in early FY 2006.

The FY 2005 construction TEC activities will also cover finalization of manufacturing design and continuation of software design for process equipment. Initiation of long lead equipment procurement and equipment fabrication will commence.

4. Details of Cost Estimate [a]

	(dollars in thousands) Current Estimate	Previous Estimate
Design Phase		
Preliminary and Final Design costs (Design Drawings and Specifications)	163,300	153,300
Contingencies (4.7% of TEC)	8,000	18,018
Total, Design Phase (TBD% of TEC)	171,300	171,318
Construction Phase		
Improvements to Land	TBD	N/A
Buildings	TBD	N/A
Other Structures	TBD	N/A
Utilities	TBD	N/A
Standard Equipment	TBD	N/A
FY03 Procurment Engineering and Site Preparation	TBD	53,993
FY04 Procurment Engineering and Site Preparation	TBD	74,000
FY03 Physical Construction and Long Lead Procurments	TBD	328,000
Removal less salvage	TBD	N/A
Inspection, design and project liaison, testing, checkout and and acceptance (0.0% of TEC)	TBD	N/A
Construction Management (0.0% of TEC)	TBD	N/A
Project Management (0.0x% of TEC)	TBD	N/A
Total, Construction Costs (72.7% of TEC)	0	455,993
Contingencies	TBD	N/A
Design Phase (0.0% of TEC)	TBD	N/A
Construction Phase (0.0x% of TEC)	TBD	N/A
Total, Contingencies (0.0% of TEC)	0	0
Total, Line Item Costs (TEC)	171,300	627,311

[a] Amounts and schedules to be finalized by June 2004.

Exhibit 5

The Secretary of Energy
Washington, DC 20585

February 17, 2004

The Honorable John Warner
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Section 3182(a)(3) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. No. 107-314) requires the Department of Energy to submit to Congress, not later than February 15 of each year beginning in 2004, a report on the implementation of the February 2003 plan for the construction and operation of the mixed oxide fuel (MOX) facility at the Savannah River Site, Aiken, South Carolina. The report is to include "(i) an assessment of compliance with the schedules included with the plan...and (ii) a certification whether or not the MOX production objective can be met by January 2009."

Schedule Assessment

In the Congressional Report on the Plan for Construction and Operation of MOX Facility that was submitted in February 2003, the Department listed its key milestones, which included the start of construction of the facility in FY 2004 and the initial fabrication of plutonium into MOX fuel in FY 2008. This strategy for U.S plutonium disposition was based on continuing work in Russia without interruption and on obtaining the estimated annual funding requirements that were presented in the report to Congress, *Disposition of Surplus Defense Plutonium at Savannah River Site dated February 2002*.

We completed overall design of the MOX fabrication facility on schedule by the end of FY 2003 Since the 2003 plan was submitted, however, the U S and the Russian Federation have disagreed on liability protections for work done in Russia. This disagreement has resulted in the interruption of critical work in Russia, which (in light of the Administration's and congressional intent that the two programs proceed in rough parallel), has delayed the start of construction of both MOX facilities and delay of a number of the interim milestones identified in the 2003 plan. The liability problem remains unresolved. However, we are determined to resolve this issue in time to prevent slippages that will prevent us from meeting our 2009 commitments.

While the start of construction will be delayed due to our ongoing disagreement with Russia regarding liability, we are confident that we will be able to meet overall program objectives – the elimination of enough weapon-grade plutonium for thousands for nuclear weapons. We are still reviewing how to minimize any impacts that this delay might have on the overall program milestones and cost. We will notify Congress if it becomes necessary to modify program schedule or to adjust the funding profile.

Accordingly, pursuant to section 3182(a)(3) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, I certify that it remains possible to meet the MOX production objective by January 2009, if there is no further significant delay in the start of construction due to liability issues and if the annual funding requirements that will be requested by the President in the outyears are made available by Congress.

I appreciate your continued support for this important nonproliferation program. If you have any further questions, please contact Mr. Rick A. Dearborn, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Spencer Abraham

cc: The Honorable Carl Levin
Ranking Minority Member

Exhibit 6

NUCLEAR WEAPONS & MATERIALS MONITOR

U.S. National Nuclear Security Administration ◆ Russian Ministry of Atomic Energy
...*plus* International Nonproliferation Initiatives *(State, DoD, G-8, IAEA)* ◆ Uranium Enrichment

Volume 8 No. 16 **April 12, 2004**

— *INSIDE HIGHLIGHTS* —

NO SOLUTION TO LIABILITY ISSUE YET, BUT Pu PROGRAM SCHEDULE STILL VALID

But One-Year Delay Expected If There Is No Resolution by July

The U.S.-Russian joint plutonium disposition program will still stay on schedule to start construction on the Russian Mixed-Oxide Fuel Fabrication Facility in FY05, even though the Dept. of Energy missed a self-imposed April 1 deadline to resolve the contractor liability issue. The April 1 deadline comes from the DOE FY05 budget request, which sets out the target dates for major milestones in the program assuming that "the issue of liability will be resolved by April 1, 2004." However, from what *NW&M Monitor* has learned, the schedule will be significantly delayed—as much as a year—if both sides do not come to an agreement by July. This is the message DOE officials are delivering to Congress.

(*See* ***Pu Disposition*** *on Pg. 10*)

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(*Pu Disposition from Pg. 1*)
The April 1 deadline was pushed back to July because DOE was able to reach an agreement with the Russian side that is allowing U.S. officials to perform some technical evaluation and pre-licensing work that the Department previously believed would have to wait until the liability issue was resolved. However, if the liability dispute is not resolved by July, all of the projected milestones for the program will be moved back by one year, as it would be impossible to begin essential components of the work in 2004 due to the Russian winter. ■

RUSSIA DEFENSE CHIEF CRITICAL OF U.S. WORK ON NEW WEAPONS

Russia is concerned by the U.S.' plans to research nuclear weapon concepts such as the robust nuclear earth penetrator, warned Russian Defense Minister Sergei Ivanov during an April 7 speech in Washington, D.C. hosted by the Center for Defense Information. According to Ivanov, it is "quite enough" to attack terrorists using conventional weapons. The new weapons concepts being studied by the U.S. are unnecessary and run the risk of "letting the genie out of the bottle" by lowering the nuclear threshold, he asserted. Much of Ivanov's speech was devoted to criticizing the expansion of NATO to include three former Soviet states—Estonia, Latvia and Lithuania—a move he warned could prompt Russia to reevaluate its nuclear weapons doctrine. In response to questions after the speech, Ivanov also defended the necessity of the U.S.-Russia Cooperative Threat Reduction program, though at the same time stressing that Russian nuclear materials are secure.

New Weapons Would 'Destabilize' NPT Regime

Ivanov said that he viewed the U.S. weapons research as "a rather dangerous thing," adding that "I think that we can actually go ahead, go along without any [new] nuclear weapons." He argued that "such weapons ... can actually destabilize the whole regimes and controls currently in place of proliferation." Ivanov asserted that conventional weapons would suffice in dealing with hard and deeply buried targets, noting that research on such weapons was being conducted.

At the same time, however, Ivanov asserted that nuclear weapons continue to be necessary. "There is a lot of talk about the need to scrap strategic nuclear weapons which will allegedly deepen the partnership [between the U.S. and Russia]. The proponents of this idea are wrong, I'm afraid," Ivanov said. "I believe that the phenomenon which the political scientists call recital strategic deterrence plays in fact a positive role. ... So let us guard this heritage, especially when it is a cornerstone of strategic stability."

Continued Existence of NATO Questioned

Ivanov said Russia's stance on NATO expansion "is calm, but negative." In an op-ed in the *New York Times* expressing arguments similar to those he offered in his address, Ivanov asked "why is an organization (NATO) that was designed to oppose the Soviet Union and its allies in Eastern Europe still necessary in today's world?" Ivanov notes in the op-ed that "the alliance is gaining greater ability to control and monitor Russian territory," adding that Russia "cannot turn a blind eye as NATO's air and military bases get much closer to cities and defense complexes in European Russia."

In his CDI speech, he asserted that there is still a "window of opportunity" to improve Russian-NATO relations, but he said it was up to the United States and the alliance to do so, adding that any improvement would have to be based on mutual concessions. "If the Alliance needs partnership with Russia, it should not be built upon the disregard of Russian legitimate interests. Mutually acceptable concessions have to be made," he said. He warned, though, that "since the Baltic states are now included into the alliance, should any military infrastructure be created on their territory, Russia will conduct its policy and military policy-planning based on the principles of self defense." The issue of the NATO expansion was also one of several discussed last week during a meeting between U.S. Secretary of State Colin Powell Powell and Ivanov held in Washington, State Department deputy spokesman Adam Ereli said during a press briefing earlier this month. "It was a very broad and free-flowing exchange," Ereli said.

RAS 842

Exhibit 7

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Frederick J. Shon
Dr. Peter S. Lam

'99 JUL 29 P3:31

SERVED JUL 30 1999

In the Matter of	Docket No. 50-400-LA
CAROLINA POWER & LIGHT COMPANY	ASLBP No. 99-762-02-LA
(Shearon Harris Nuclear Power Plant)	July 29, 1999

MEMORANDUM AND ORDER
(Granting Request to Invoke
10 C.F.R. Part 2, Subpart K
Procedures and Establishing Schedule)

In response to the Licensing Board's July 12, 1999 memorandum and order admitting petitioner Board of Commissioners of Orange County, North Carolina, (BCOC) as a party to this proceeding, see LBP-99-25, 50 NRC ___ (July 12, 1999), in a filing dated July 21, 1999, applicant Carolina Power and Light Company (CP&L) has requested that this proceeding be conducted in accordance with the hybrid hearing procedures of 10 C.F.R. Part 2, Subpart K. In addition, CP&L has proposed a schedule for the ninety-day discovery period permitted under 10 C.F.R. § 2.1111, submitting the written summaries provided for under section 2.1113(a), and holding the oral argument mandated by section 2.1113(a) concerning whether there are disputed

Template = SECY-039

SECY-02

issues of law or fact that require resolution in an evidentiary hearing. In its request, CP&L also indicated that while the staff agrees with this schedule, which would culminate in an oral argument in mid-December 1999, intervenor BCOC was unable to agree or disagree because of the unavailability of one of its experts.

To obtain more information regarding BCOC's position, on July 27, 1999, we conducted a telephone conference with the parties. Citing scheduling problems regarding the availability of its experts and its counsel, BCOC suggested a schedule under which the oral argument be held in mid-January 2000. Both CP&L and the staff objected to this request, asserting the BCOC had failed to demonstrate sufficient grounds for its alternative schedule.

Under section 2.1109(a)(1), a timely request by any party to a spent fuel storage expansion proceeding to invoke the Subpart K hybrid hearing procedures must be approved. Accordingly, we grant the July 21, 1999 CP&L request to proceed under Subpart K. Further, bearing in mind the various parties' concerns about scheduling as expressed during the July 27 telephone conference, we establish the following timetable for utilizing the Subpart K procedures:

Discovery Begins	Monday, August 2, 1999
Discovery Ends	Sunday, October 31, 1999
Written Summaries Filed	Monday, December 20, 1999

Oral Argument Tuesday, January 4, 2000

Relative to this schedule, we make the following additional observations. Although we explored with the parties the utility of using informal discovery methods (e.g., document exchanges and witness interviews) during the first portion of the discovery period, CP&L suggested that given the limited time period involved, this would not result in any significant time or resource savings. Neither BCOC nor the staff voiced strong objections to this position. Accordingly, we will permit the ab initio use of the formal discovery techniques set forth in 10 C.F.R. §§ 2.740-.744. As we noted during the telephone conference, however, we expect that all the parties will attempt to be as specific as possible in their information requests and provide access to requested documents and knowledgeable individuals to the maximum degree possible.

In connection with the discovery process, the parties also are advised of the following limitations and guidelines:

1. Absent prior leave of the Board or written stipulation, relative to each admitted contention each party may serve on the other two parties not more than fifteen interrogatories per party, including all discrete subparts, and not more than three deposition notices per party.

2. To be timely, a discovery request must permit a timely response on or before the day the discovery period closes.[1] Likewise, depositions should be scheduled to conclude on or before the date discovery closes.

3. Absent some other agreement of the parties, discovery requests and responses (including requests for admissions) should be served on the Board (if required by agency rules) and the other parties by e-mail, facsimile transmission, or other means that will ensure receipt on the day of filing, with conforming paper copies to follow.

4. As part of any motion to compel/motion for protective order, counsel for the moving party shall provide a certification that he or she previously has (a) provided the opposing party to whom the motion is directed a clear and concise written statement of the asserted deficiencies or objections and the requested action relative to the discovery request; and (b) after providing this statement, consulted with that party's counsel in an attempt to resolve all the disputed matters without Board action.

Finally, for planning purposes, the parties should be aware that the Board intends to conduct the Subpart K oral

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[1] The filing deadlines specified for interrogatory, admission, and document production responses can be extended by agreement of the parties involved so long as the response does not run beyond the scheduled discovery cut-off date. The filing deadline for motions to compel can be extended only by leave of the Board.

argument in the Atomic Safety and Licensing Board Panel Hearing Room at NRC Headquarters in Rockville, Maryland. In addition, the parties are advised that the Board intends to conduct one or more sessions to receive 10 C.F.R. § 2.715(a) limited appearance statements in the vicinity of the Shearon Harris facility during the first half of December 1999.[2] Additional details on these sessions will be provided at a later time.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD[3]

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 29, 1999

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[2] If the parties have any suggestions regarding potential appropriate venues for limited appearance sessions, they should contact Licensing Board Panel administrative director Jack Whetstine at (301) 415-7319 on or before Friday, August 13, 1999.

[3] Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant CP&L; (2) petitioner BCOC; and (3) the staff.

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2004, copies of Blue Ridge Environmental Defense League's Proposed Hearing Schedule and Request for Reconsideration of ASLB's Internal Deadline of August 2004 for Issuing a Decision in This Proceeding were served on the following by e-mail and/or first-class mail, as indicated below. In addition, copies of the exhibits were served by FAX.

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Diane Curran