RAS 8788

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October 29, 2004

Ann Marshall Young, Chair
Anthony J. Baratta, Administrative Judge
Thomas S. Elleman, Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

SUBJECT: *Schedule for Plutonium MOX LTA Program*

Dear Administrative Judges,

On behalf of Blue Ridge Environmental Defense League ("BREDL"), I am writing to respond to Duke Energy Corporation's ("Duke's") October 29, 2004, letter to you which purports to "clarify" the schedule for the plutonium Mixed Oxide ("MOX") fuel lead test assembly ("LTA") program. Letter from David A. Repka, Counsel for Duke Energy Corporation, to Ann Marshall Young et al. (hereinafter "Duke Letter"). We believe that Duke has omitted or distorted some information about the MOX schedule, leaving a false impression that if the ASLB does not issue its decision in the MOX LTA license amendment proceeding by early March 2005, the schedule for the entire MOX program will be thrown into disarray.

The first claim Mr. Repka makes is that if "it becomes apparent that the MOX fuel lead assemblies will not be available for use, Duke will be required to expend substantial additional resources to design and validate the all-LEU [low-enriched uranium] core." Duke Letter at 2. According to the letter, the design work for an all-LEU core must begin by March 1, 2005. *Id.* Duke's failure to make a contingency plan for the possible use of an all-LEU core reflects poor planning. Clearly, there are other contingencies besides the timing of the ASLB's decision in this case that could up the test of four plutonium LTAs at Duke, including shipping problems to or from France, manufacturing problems in France, or safety problems encountered during irradiation that would require premature removal of the LTAs. For Duke to have failed to have a backup plan for an all-LEU core is simply irresponsible.

Mr. Repka's next claim, that Duke will be required to "expend substantial additional resources" to design an all-LEU core, is also misleading. *Id.* The MOX testing program is being paid for by the U.S. taxpayers, not Duke. Even if Duke has to spend its own money to design an all-LEU core, that expenditure would not be "in addition to" other Duke expenditures on MOX, because the U.S. taxpayers are footing the bills for the MOX program. Moreover, the expense of designing an all-LEU core is an ordinary expense of doing business for Duke.

Mr. Repka also implies that Duke must make a decision early in the spring whether to use the MOX LTAs or an all-LEU core, because LEU shipments "are scheduled well in advance with the LEU fuel fabricators." Duke Letter at 2. But Duke presumably has already ordered 84 LEU fuel assemblies for the spring refueling outage. If it turns out that the MOX LTAs will not be inserted in the core during the next refueling outage, then Duke would only have to order four more assemblies. It is difficult to believe that the addition of four fuel assemblies to an existing order of 84 would pose an insurmountable scheduling problem.

Mr. Repka also states that if the use of MOX LTAs is postponed until the spring 2006 refueling outage, that would "create additional transportation and storage issues." Duke Letter at 3. Mr. Repka offers no reason, however, that the MOX fuel cannot be stored at the MELOX plant until next spring. Moreover, even if the French government were to insist on shipping the MOX LTAs back to the United States as soon as the manufacturing process is finished, it does not need to be shipped directly to Catawba on arrival in the U.S. The MOX LTAs can be stored at the K reactor on the Savannah River Site, where other Category I strategic special nuclear material is also stored.

Finally, Mr. Repka fails entirely to address the fact that the MOX LTA testing program is only a part of a much larger program, whose schedule has now slipped by at least a year. When the construction authorization proceeding for the MOX Fuel Fabrication Facility ("FFF") began in 2001, the NRC gave an estimated date of October 31, 2002 for issuance of the construction permit for the MOX FFF. A copy of the schedule, which was posted on the NRC's website at that time, is attached. The NRC's website now shows an estimated date of February 28, 2005, for issuance of the construction permit. According to the Draft Environmental Impact Statement ("Draft EIS") for the proposed MOX Fabrication Facility, construction of the MOX FFF will take five years. *Draft Environmental Impact Statement on the Construction and Operation of a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina* at 4-7 (February 2003). Thus, even if the testing of the four MOX LTAs is delayed by as much as a year, it will not, by itself, cause any delay in the implementation of the MOX program.

For these reasons, we believe that Mr. Repka has overstated the urgency of making your decision by early March 2005.

Sincerely,

Diane Curran

Cc: Service list

MOX REVIEW SCHEDULE
(Last updated - 5/25/01 (4:00pm))

Reactor-related work shown in italics/NMSS work shown in bold
MOX FFF = MOX fuel fabrication facility
LTA = LA = lead test assembly
C = complete

DATE	ACTION
6/22/00C	(NMSS) DCS submits Quality Assurance Plan
12/19/00C	(NMSS) DCS submits MOX FFF environmental report
2/28/01C	(NMSS) DCS submits MOX application for construction authorization
3/07/01C	(NMSS) NRC issues notice of intent(NOI) for EIS scoping meetgs
3/28/01C	(NMSS) NRC completes acceptance review of application
4/12/01C	(NMSS) NRC issues Notice of Opportunity for Public Hearing
4/17/01-4/18/01C	(NMSS) Conduct EIS scoping mtgs for MOX FFF (N Augusta, SC; Savannah, GA)
5/08/01C	(NMSS) Conduct EIS scoping mtg for MOX FFF (Charlotte, NC)
6/13/01	(NMSS) Complete technical review of MOX FFF Environmental Report/issue RAI
6/18/01	(NMSS) Issue RAI on QA Program Plan for Construction
6/29/01	(NMSS) Issue RAI re. construction of MOX FFF (allow 60 days to respond)
7/12/01	(NMSS) DCS responds to Environmental Report RAI
7/18/01	(NMSS) DCS responds to QA Program Plan for Construction RAI
7/31/01	(NMSS) Issue EIS scoping summary report
8/17/01	(NMSS) Issue draft SER on QA Program Plan for Construction
8/31/01	(NMSS) DCS responds to construction RAI #1
10/01/01	(NMSS) Issue final SER on QA Program Plan for Construction
10/30/01	(NMSS) Issue RAI #2 re construction of MOX FFF (allow 45 days to respond) (if necessary)
12/15/01	(NMSS) DCS responds to construction RAI #2 (If necessary)
2/28/02	(NMSS) Issue draft MOX FFF EIS for public comment
3/18/02-3/22/02	(NMSS) Conduct EIS public meetings for MOX FFF

4/30/02	(NMSS) EIS public comment period ends for MOX FFF
4/30/02	(NMSS) Issue draft SER for construction of MOX FFF
7/31/02	(NMSS) DCS submits license application for operation of MOX FFF
8/30/02	(NMSS) NRC completes acceptance review of license application
9/30/02	(NMSS) Issue final EIS for MOX FFF
9/30/02	(NMSS) Issue final SER for construction of MOX FFF
10/31/02	(NMSS) Issue FRN opportunity for hearing for operation of MOX FFF
10/31/02	(NMSS) Public hearings begin on construction of MOX FFF
10/31/02	(NMSS) Issue ROD for MOX FFF
10/31/02	(NMSS) Issue licensing decision on Construction Authorization Request for MOX FFF
11/29/02	(NMSS) Issue RAI operating license for MOX FFF
2/29/04	(NMSS) Issue draft SER for operating license of MOX FFF
7/31/04	(NMSS) Issue final SER for operating license of MOX FFF
8/31/04	(NMSS) Issue licensing decision on operation license
10/31/04	(NMSS) Public hearings on operation of MOX FFF begin
3/31/05	(NMSS) DCS cold start-up of MOX FFF (if authorized)
11/30/05	(NMSS) DCS hot start-up of MOX FFF (if authorized)