

**HARMON, CURRAN, SPIELBERG & EISENBERG, LLP**

1726 M Street, NW, Suite 600 Washington, DC 20036

(202) 328-3500 (202) 328-6918 fax

April 12, 2005

DOCKETED  
USNRC

April 18, 2005 (3:53pm)

Nils J. Diaz, Chairman  
Edward McGaffigan, Jr., Commissioner  
James S. Merrifield, Commissioner  
Gregory B. Jaczko, Commissioner  
Peter B. Lyons, Commissioner

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

SUBJECT: *Request for Measures to Correct Apparent Illegal Shipment  
of Plutonium MOX Fuel to Catawba Nuclear Power Plant*

Dear Commissioners,

On behalf of the Blue Ridge Environmental League ("BREDL"), I am writing to protest apparent illegal shipments of plutonium to the Catawba nuclear plant.

As you know, on March 10, 2005, the Atomic Safety and Licensing Board ("ASLB") issued a decision in the license amendment proceeding regarding Duke Energy Corporation's ("Duke's") proposal to test four plutonium mixed oxide ("MOX") fuel assemblies at the Catawba nuclear power plant. The decision ruled on BREDL's legal challenge to Duke's application for an exemption from various NRC security regulations governing the protection of formula quantities of strategic special nuclear material ("SSNM") from theft. While the ASLB approved the exemptions, it nevertheless imposed several conditions that must be fulfilled before the plutonium fuel may be received at Catawba.

Today we received a news report that the plutonium fuel has been shipped to Catawba. See "Plutonium Delivery Making Way Through South Carolina," <http://www.wsoc.tv.com/news/4371418/detail.html>. Yet, we have received no report from either Duke or the NRC Staff that the license conditions have been fulfilled. In fact, the attached letter from Duke to the NRC states only that Duke has orally committed to a plan and a schedule for fulfilling the license conditions. Letter from H.B. Barron to U.S. Nuclear Regulatory Commission (March 29, 2005). The March 29 letter constitutes the only report of the status of Duke's compliance with the license conditions that the NRC Staff hearing counsel has provided to us in response to our request for information on the subject.<sup>1</sup>

<sup>1</sup> Notably, although the attached letter was written several weeks ago, on March 29, 2005, it was not served on counsel for BREDL, nor was it placed in the NRC's ADAMS system.

NRC Commissioners

April 12, 2005

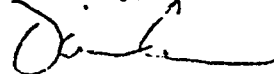
Page 2

If, as it appears, the plutonium MOX fuel has been shipped to the Catawba plant prior to Duke's fulfillment of the license conditions and approval by the NRC Staff, then its receipt by Duke is blatantly illegal, and poses an unacceptable security risk to the public. As the ASLB made clear in its decision, the security measures for protection of plutonium MOX fuel from theft cannot be deemed adequate to protect the public unless and until the license conditions are fulfilled. Under the circumstances, the fuel should be removed immediately and transferred to another site whose security measures have been determined to be adequate. It should be kept at the alternative site until such time as Duke has been found by the Staff to have fulfilled the license conditions.

Moreover, if the plutonium MOX fuel has indeed been shipped to Catawba, we demand an immediate investigation into (a) Duke's unlawful conduct in accepting the plutonium fuel, (b) the NRC Staff's failure to take any measures to ensure that the shipment of plutonium fuel to Catawba was delayed, and (c) the apparent lack of communication or coordination between the NRC and the U.S. Department of Energy, which was responsible for the plutonium shipments.

If the plutonium has not been shipped to Catawba, we request confirmation of that fact and a commitment to ensure that it will not be shipped to Catawba until the license conditions are fulfilled.

Sincerely,



Diane Curran  
Counsel for BREDL

Cc w/ enclosure:      License Amendment Proceeding Service List  
                                 Secretary of Energy  
                                 NRC Inspector General



HENRY B BARRON  
Group VP, Nuclear Generation and  
Chief Nuclear Officer

Duke Power  
526 South Church St.  
Charlotte, NC 28202

Mailing Address:  
EC07H / PO Box 1006  
Charlotte, NC 28201-1006

704 382 2200  
704 382 6056 fax  
hbarron@duke-energy.com

March 29, 2005

U. S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, DC 20555-0001

Subject: Duke Energy Corporation  
Catawba Nuclear Station Units 1 & 2 Docket Nos. 50-413, 50-414  
Planned Schedule for Completion of Conditions from Atomic Safety & Licensing  
Board Final Partial Initial Decision dated March 10, 2005

Reference: Telephone conference call between NRC and Duke Power representatives on  
March 22, 2005

(U) The Atomic Safety & Licensing Board (ASLB) issued its Final Partial Initial Decision on March 10, 2005 finding that Duke had satisfied the regulatory and legal requirements related to Duke's request for exemption from certain security requirements in 10 CFR Parts 11 and 73 related to the use of four MOX fuel lead assemblies in Catawba Nuclear Station. In this decision, the ASLB approved the exemptions subject to certain conditions. These conditions are summarized in Section VII of the ASLB decision and are repeated below:

Safeguards Information has  
been deleted from this copy.

SAFEGUARDS INFORMATION

Safeguards Information has  
been deleted from this copy.

(U) Duke representatives outlined the general plans and schedule for satisfying these conditions in the reference telephone call. Duke also committed to submit the planned dates for completing the actions associated with each condition, or subpart thereof, to the NRC in writing. This information is contained in Attachment 1.

(U) This letter and attachment contain Safeguards Information and is subject to restrictions pursuant to 10 CFR 73.21. If there are any questions regarding this letter, please contact Steve Nesbit at (704) 382-2197.



H. B. Barron

attachment

cc: w/ attachment

R.E. Martin, NRC Senior Project Manager  
U.S. Nuclear Regulatory Commission  
Mail Stop O-8G9  
Washington, DC 20555-0001

William Travers, Regional Administrator  
U.S. Nuclear Regulatory Commission - Region II  
Atlanta Federal Center  
61 Forsyth St., SW, Suite 23T85  
Atlanta, GA 30303

~~SAFEGUARDS INFORMATION~~

Attachment 1  
Planned Schedule for Satisfying Conditions from  
ASLB Partial Initial Decision dated March 10, 2005

Safeguards Information has  
been deleted from this copy.

~~SAFEGUARDS INFORMATION~~