Chattooga River Watershed Coalition
P. O. Box 2006 ◦ Clayton, GA 30525
(706) 782-6097 ◦ Fax: (706) 782-6098
crwc@acme-brain.com

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chair
Nils J. Diaz
Edward McGaffigan, Jr.
Greta J. Dicus
Jeffrey S. Merrifield

In the Matter of	)	
Duke Energy Corporation's	)	Docket Nos. 50-269/270/287-LR
License Renewal Application for Oconee Nuclear Station, Units 1, 2 & 3	)	

NOTICE OF APPEAL

Pursuant to 10 C.F.R. 2.714a, Petitioners Chattooga River Watershed Coalition, et al., hereby files its Notice of Appeal to the Commission for review of the Atomic Safety and Licensing Board's December 30, 1998 Memorandum and Order denying Petitioners' petition for leave to intervene and request for hearing. A supporting brief accompanies this notice.

Respectfully submitted,

Buzz Williams

Buzz Williams, Executive Director
Chattooga River Watershed Coalition
W. S. Lesan
William Clay

PO Box 2006
49 East Savannah Street
Clayton, GA 30525

January 14, 1999

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In the Matter of	)	
Duke Energy Corporation	)	Docket Nos. 50-269/270/287-LR
	)	ASLB No. 98-752-02-LR
License Renewal Application for Oconee Nuclear Station, Units 1, 2 & 3	)	

January 14, 1999

CHATTOOGA RIVER WATERSHED COALITION'S BRIEF
IN SUPPORT OF APPEAL OF ORDER
DENYING INTERVENTION PETITION AND DISMISSING PROCEEDING

Petitioner Chattooga River Watershed Coalition (representing Buzz Williams, member and Executive Director of the organization, and members W. S. Lesan and William Clay) hereby submits their brief in support of their notice of appeal of the Atomic Safety and Licensing Board (ASLB) Memorandum and Order of December 30, 1998, denying Petitioners' intervention petition and dismissing this proceeding.

BACKGROUND

On September 8, 1998, members of the Chattooga River Watershed Coalition (named above and hereinafter collectively referred to as "Petitioners" and "CRWC") filed a timely request for intervention in Duke Energy Corporation's ("Duke" and the "Applicant") application to extend the license of their Oconee Nuclear Station, Units 1, 2 and 3, for an additional 20 years ("application"). Subsequently, Petitioners augmented their initial September 8th filing with timely filings on September 30, 1998, October 30, 1998, and December 9, 1998. On December 30, 1998, the Atomic Safety and Licensing Board served a Memorandum and Order (LBP-98-33) affirming the Petitioners' standing, but denying Petitioners' intervention petition and dismissing this proceeding. The Petitioners hereby reaffirm and include in this appeal their grounds for intervention in the above captioned proceedings, which have been set forth

previously in the filings identified above. For the reasons discussed below as well as those stated in previous filings, the CRWC holds that their petition to intervene has merit and should be granted.

DISCUSSION

I. The CRWC's Petition to Intervene Should Be Granted

A. Requests for Additional Information Support CRWC's First Contention

Contention #1: As a matter of law and fact, Duke Energy Corporation's Application for Renewed Operating License for Oconee Nuclear Station Units 1, 2 and 3 is incomplete, and should be withdrawn and/or summarily dismissed.

The CRWC appeals the ASLB's ruling (denying the admissibility of this contention) on the basis that the numerous Requests for Additional Information (RAIs) submitted by Nuclear Regulatory Commission staff (NRC) to Duke regarding the subject application are prima facie evidence supporting CRWC's first contention that the application is incomplete. The simple and clear logic supporting this contention is that if the application were complete, then the NRC staff would not need to solicit follow-up information. Further, the Petitioners assert that the extensive supplemental submittals by Duke will fundamentally alter the original submittal by introducing new and very important scientific and technical facts. Thus, it is obviously unfair to the Petitioners and unreasonable for the NRC to mandate that the CRWC file contentions and prepare to litigate on an application that is incomplete, and as such, fails to provide the Petitioners with a comprehensive factual record. Indeed, even the NRC staff is requesting major clarification of critical sections of the application's contents, and requests for the application's expected contents that are missing. Said contents are "critical" as they provide the basis for reaching a determination on the reasonably foreseeable ability of the Oconee Nuclear Station to operate safely for the duration of the proposed renewal period.

The NRC counsel as well as the ASLB have focused their rebuttal of the Petitioners' first contention on the basis that "contentions regarding the adequacy of staff's review of a license application are inadmissible in licensing hearings" (p. 10, LBP-98-33). This argument fails to recognize that it is the specific contents of the staff's review completed to date that supports the basis for Petitioners first contention. The Petitioners are not contesting the RAIs, or the adequacy of the staff's review. Indeed, the Petitioners respect the NRC staff's technical and scientific analysis of the application. In addition, the NRC is the leading federal agency in these matters, whose actions are funded by the Petitioners' tax dollars. While Petitioners have learned a great deal about the scientific and technical issues associated with the application, it is not possible for Petitioners to become experts with regard to these issues within the adjudicatory time frame dictated by the Commission. Thus, it is completely reasonable, and is the Petitioners right as taxpayers and concerned citizens, to access the complete assembly of technical and scientific facts produced by the NRC staff. The Petitioners hold that the uncompleted staff review obviously undercuts the Petitioners review of the application, placing Petitioners at a disadvantage by depriving them of access to the NRC staff's technical and scientific assessment of the application, which is currently being expressed in ongoing RAIs. For these reasons, the CRWC has requested that the application be withdrawn and/or dismissed. Further, Petitioners have also requested that the adjudicatory facet of these relicensing proceedings be revised, and rescheduled at such a time as the dialog between NRC and Duke results in an application that is complete (that is, the RAIs have been resolved) and fully docketed for public review.

A revised schedule such as this would allow all parties to this proceeding equal reference to a complete and final record of the scientific and technical issues relevant to the application. As it stands now, the schedule of dates for litigating contentions in the above-captioned proceedings is inherently premature, because critical information regarding unresolved safety concerns is outstanding. This missing information has direct bearing on the establishment of a factual record, which is essential in determining the reasonably foreseeable ability of the Oconee Nuclear Station to operate safely during the proposed 20-year extension of its operating period. Since the absence of this information renders portions of the application incomplete, the current application cannot serve as a complete document from which to identify potential contentions. Due to the

large volume of RAIs that speak to areas of the application needing more information, the current application provides an inadequate basis for the Petitioners' comprehensive evaluation of material issues of law and fact, and from this evaluation process, to determine grounds to frame contentions, if warranted. (Acknowledging this disadvantage, the Petitioners have nevertheless identified and structured their contentions within this biased framework.)

The Applicant's responses to many of the RAIs are pending. We expect that the responses shall be subjected to another round of NRC staff review. In defense of its ruling (denying petition to intervene), the ASLB states that after the NRC staff completes this review, the Petitioners would be "free to intervene and file late contentions" (p. 10, LBP-98-33). Petitioners assert that this procedure clearly indicates the presence of a fundamental prejudice against the Petitioners, because at that time any contention would be tagged with the stigma of being "late." In sum, by adhering to the current, expedited adjudication regime, this hearing process cannot serve the public interest, since the projected resolution of important safety issues is timed to occur well after the established timeline for opportunities to resolve these issues through timely adjudicatory proceedings.

Thus, in addition to withdrawing and/or dismissing the application until such a time as the dialog between NRC and Duke results in an application that is complete, Petitioners have requested that the time period for timely filings should be extended until at least 90 days after Duke's final submittal of supplemental information. This would enable the Petitioners to review a comprehensive record of all of the NRC's RAIs and the Applicant's responses, and then, if warranted, set forth contentions based on the best scientific information available and designed to express the public's interest of ensuring adequate protection of their health and safety. As the ASLB aptly notes, they are bound by a Commission directive that mandates they decide "on intervention petitions and admissibility of contentions affecting the public health and safety almost three decades into the future" (p. 24, LBP-98-33). Surely, decisions of this magnitude that are tied to a distant time must be supported by a complete scientific and technical record that is also available for public review. This record has yet to emerge.

B. Requests for Additional Information Support CRWC's Second Contention

Contention #2:

As a matter of law and fact, Duke Energy Corporation's Application for Renewed Operating License for Oconee Nuclear Station Units 1, 2 and 3 does not meet the aging management and other safety-related requirements mandated by law and NRC regulations, and therefore should be withdrawn and/or summarily dismissed.

In the CRWC's December 9, 1998 filing, Petitioners cited the language in a number of RAI's that obviously describes specific inadequacies and problems with the application's proposed aging management programs for critical nuclear reactor components and systems. If unresolved, these problems and inadequacies could result in a major radiological accident. For instance, regarding reinforced concrete elements, including the reactor building internal structures, the NRC staff questions "...why cracking is not treated as an applicable aging effect" (RAI #3.7.7-4). Clearly, there exists a fundamental void in the application's charge to identify and describe an aging management program for managing cracking of reinforced concrete elements. RAI #3.5.3-2 states: "Thermal fatigue has not been identified as an applicable aging effect for the components of the Containment Heat Removal System...". Clearly, there exists a fundamental void in the application's charge to identify and describe an aging management program for the effects of thermal fatigue on the Containment Heat Removal System. RAI # 3.4.5-2 (b), which pertains to the reactor vessel, questions the aging management review program for the lower control rod drive mechanism service support structure, noting: "However, the B&WOG has decided to exclude them from the scope of topical report BAW-2251. Identify which aging effects are applicable to these components and describe your aging management program for these components in the license renewal application." Clearly, there exists a fundamental void in the application's charge to identify and describe an aging management program for the lower control rod drive mechanism service support structure. RAI #'s 3.4.5-4 and 3.4.5-5 also address the reactor vessel components and pertain, respectively, to the reactor vessel flow stabilizers and the austenitic stainless steel

weld cladding in reactor vessel forgings. Both of these RAIs request that an aging management program be provided for these components, whose functions are inextricably linked to the "integrity of the reactor vessel." Clearly, there exists a fundamental void in the application's charge to identify and describe an aging management program for the reactor vessel flow stabilizers and the austenitic stainless steel weld cladding in reactor vessel forgings.

As noted in the Petitioners December 9, 1998 filing, the RAIs persist in identifying broad deficiencies in the application's aging management programs. For example, RAI #4.3.9-2 states: "The Reactor Building Spray System Inspection will be completed by February 6, 2013 (the end of the initial license of Oconee Unit 1). The staff finds this date to be unacceptable without additional information. Provide a justification for not completing the inspection activities at the time of application. Along with your justification, describe the methodology, identify any applicable acceptance criteria, identify planned corrective actions, and provide a schedule for implementation." In addition, General Question G-2 states: "Sections 4.3.2, 4.3.3 and 4.3.8 all describe new one time inspection programs to verify the presence or absence of various degradation mechanisms specific to certain components. These sections all deal with time dependent mechanisms. However, given that Oconee has been operating for approximately 24 years, discuss the rationale for delaying these inspections to the time period between the issuance of a license extension and the expiration of the existing license. The staff recognizes the financial constraints in the utility business, however, given some of the mechanisms specified, it is not clear why some programs are not advanced in schedule...".

Unfortunately, the ASLB's recent ruling (LBP-98-33) totally misinterpreted the Petitioners' reference to the "one time inspection programs" (LBP-98-33 at p. 13). Regarding these inspection programs, the Petitioners' point is the same that, at a later date, was expressed in the RAI's General Question G-2 (please see above). Petitioners asserted that it is inappropriate and unacceptable to delay these inspections to the time period between the issuance of a license extension and the expiration of the existing license. The ASLB also neglected to discuss the specific points included with the Petitioners' December 9th filing, where language was cited from the RAI's contents (and repeated, in part, above). The ASLB simply reiterated the NRC counsel's hasty and superficial analysis of the points raised in the Petitioners argument. The Petitioners assert that the language they cited from a number of RAIs obviously evidence credible safety significance, as well as show how the Oconee application is materially incomplete because of RAI matters. The material issues of fact clearly exist and have been identified by the Petitioners, who also utilized the expertise of the NRC's technical staff. Furthermore, since the current application fails to provide the aforementioned information, Petitioners specific contentions on, for example, the Applicant's aging management program for managing cracking of reinforced concrete elements, would have to be based on an application and factual record that is incomplete at this time. Thus, since many of the application's most important aging management programs are presently undetermined, as reiterated above, Petitioners again request that the application be withdrawn and/or summarily dismissed until such a time as these programs are clearly defined.

C. Duke Energy Corporation's Application Fails to Comply With Current Requirements of 10 C. F. R. Section 51.53(c)(3)(ii)(M).

Contention #4:

The Petitioners submit that the specific issue of the storage of spent fuel and other radioactive substances on the site of the Oconee Nuclear Station must be addressed in these proceedings. In addition, the status and capacity of the current spent fuel storage facility must be disclosed and addressed. The transport of radioactive material to other locations, if and when storage capacity is exceeded, must be disclosed and addressed. The real and potential availability and viability of other High Level Waste storage sites must be disclosed and addressed.

The Petitioners, in this filing, again point out that the Applicant explicitly states, "Duke has not addressed the existing requirements of Section 51.53(c)(3)(ii)(M) in this Environmental Report" (vol. 4, p.4-55). Petitioners assert that the regulations governing this requirement are unchanged. The NRC's proposed new rule has not been published in the Federal Register. If and when it's published, there is no guarantee that the proposal to change the HLW rule will proceed unimpeded. HLW management and transportation is a

controversial issue, and it is reasonable to expect opposition to downgrading this issue to a "generic" consideration. If challenged through litigation, it is reasonable to predict that the NRC's projected timeline for changing the HLW management and transportation rule would be delayed, or thwarted altogether. Thus, the Petitioners hold that existing regulations, which mandate that Duke Energy Corporation's application disclose their plan for management and transportation of HLW, should be followed. Petitioners urge the Commissioners to uphold their agency's stated charge of adhering to their Principles of Good Regulation, which says that "regulatory actions should always be fully consistent with written regulations."

In consideration of 10 C.F.R. section 2.788, the Petitioners' interests of protecting and promoting the natural ecological integrity of the Chattooga River watershed would be irreparably damaged, should a major radiological accident occur as a result of the applicant neglecting to determine and follow an approved plan for the management and transportation of Oconee Nuclear Station' s repository of HLW, as required by law. Certainly, the public interest is best served by the requisite examination and disclosure of the Applicant's plans to safely manage and transport HLW, as required by existing law, not a law that may or may not be codified at some point in the future. Therefore, the Petitioners have requested that the above-captioned proceedings be stayed, until such a time as Duke Energy Corporation complies with 10 C. F. R. Section 51.53(c)(3)(ii)(M) in their application. Current law requires the disclosure of a plan for management and transportation of HLW. This plan is not included in the applicant's current Environmental Report.

It is both reasonable, timely and appropriate that the HLW issue be addressed. Indeed, in a recent letter to the NRC Chair (dated December 17, 1998) from Senators Hollings and Thurmond, and Representatives Spence, Graham, Sanford, Spratt and Clyburn (the entire South Carolina congressional delegation), these Members of Congress state: "Spent fuel management should be a significant consideration in any environmental review of nuclear facilities." Further, they state: "We believe that the NRC should be able to express confidence in the [repository] program and that it should be considered under Oconee's site specific evaluation." Obviously, Petitioners concern about the HLW issue (as summarized in Petitioners' fourth contention) is reaffirmed by this letter.

Regarding Contention 4, a supplemental issue is the NRC's Waste Confidence Decision. In the 1980s, the NRC issued the first Waste Confidence Decision (see www.nrc.gov/SECY/smj/homepage/hlw.htm). It has periodically reviewed and re-issued that decision with minor revisions. Basically, the NRC concluded that it had reasonable confidence that Department of Energy (DOE) would provide an ultimate repository for high level radioactive waste (spent fuel) and that this waste could be safely stored at reactor sites for 30 years after cessation of reactor operation, at which time the spent fuel would be transported to the DOE repository. The Waste Confidence Decision appears to be challenged, if not compromised, by the license renewal of Oconee, or other nuclear plants, in the following ways. 1) Current legislation limits the capacity of Yucca Mountain to 70,000 metric tons of high level waste. While some nuclear plants have shut down before the end of their 40-year lifetimes, thus providing margin to the 70,000 ceiling, it seems reasonable to conclude that additional 20 years of reactor operation--and spent fuel generation--could at some point challenge the limit. 2) Problems have been experienced with onsite storage of spent fuel since the initial Waste Confidence Decision was issued. At the Point Beach plant in 1996, a dry cask containing spent fuel experienced an explosion as its lid was being welded on (see www.nrc.gov /NRC/GENACT/GC/IN/1997/in97051.txt). At another plant, a dry storage cask was found to have faulty welds after it was fully loaded (see www.nrc.gov/NRC/GENACT/GC/IN/1997/in97051.txt). Obviously, this cask needs to be unloaded and the spent fuel moved to a good cask; however, the cask cannot be unloaded. Among the concerns is as water is put back into the dry cask, the 700F spent fuel cladding will rapidly boil the water and produce a steam explosion. 3) DOE's original target date of January 31, 1998, for the HLW repository was missed. The current date is somewhere around the year 2010, at the earliest. To date, the Yucca Mountain site has not been approved. If ongoing testing concludes that the site cannot be used, the 2010 date will slip well out into the future. For these reasons, the NRC's Waste Confidence Decision appears suspect and Petitioners assert that this matter should be addressed during relicensing, especially since Petitioners' Contention 4 raises this issue.

CONCLUSION

Given the importance of public participation in this proceeding, a timely resolution of the matters set forth above is in the public interest. Thus, the Commission should grant this petition for review. In this regard, the NRC must ensure that this proceeding is conducted consistent with the Administrative Procedures Act, the Atomic Energy Act, the National Environmental Policy Act and the published regulations of the Nuclear Regulatory Commission. The Commission should remand the ASLB's Memorandum and Order (LBP-98-33), and consider this case for proceedings related to a proper disposition of the Petitioners contentions.

Respectfully submitted,

Buzz Williams

Buzz Williams, Executive Director
Chattooga River Watershed Coalition
W. S. Lesan
William Clay