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USNRC

December 22, 1998

'98 DEC 22 P3:26

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos.	50-269-LR
)		50-270-LR
DUKE ENERGY CORPORATION)		50-287-LR
)		
(Oconee Nuclear Station,)		
Unit Nos. 1, 2, and 3))		

NRC STAFF'S RESPONSE
TO PETITIONERS' NEW INFORMATION

INTRODUCTION

Pursuant to an "Order (Requests by Staff and Applicant to File Responses)," issued on December 14, 1998, by the Atomic Safety and Licensing Board designated in the above-captioned proceeding (Board), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the information contained in "Petitioners' Response to the Atomic Safety & Licensing Board's (ASLB) Request for Additional Information and New Information for the ASLB to Consider with the Petitioners' First Supplemental Filing" (Petitioners' Response) filed by Norman "Buzz" Williams, William "Butch" Clay, W.S. Lesan, and the Chattooga River Watershed Coalition (CRWC) (collectively referred to as Petitioners). As discussed below, the information provided by the Petitioners neither is new nor does it support the admission of their proposed contentions.

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of the proposed contentions. Thus, as discussed in the Staff's Response to the Petitioners'

BACKGROUND

On December 2, 1998, in accordance with the Board's "Order (Requesting Additional Information from the Staff)," November 19, 1998, the Staff provided the Board with information regarding the status of the high-level waste transportation rulemaking. "NRC Staff's Response to Order Requesting Information." In accordance with the Board's Order, the Petitioners filed their Response. In their Response, in addition to responding to the Staff's information, the Petitioners "introduce[d] new information that has bearing on their Contentions." Petitioners' Response at 2. On December 14, 1998, the Board issued its Order granting the Staff's and Duke Energy Corporation's (Applicant) motions to file responses to the Petitioners' "new information."

DISCUSSION

In their Response, the Petitioners claim that since the filing deadline for contentions, October 30, 1998, they have received copies of numerous Requests for Additional Information (RAIs) that were issued by the Staff to the Applicant. Petitioners' Response at 2. The Petitioners claim that these RAIs constitute new information which the Board should consider before ruling on their proposed contentions. *Id.* The issuance of the Staff's RAIs, however, neither constitutes new information, nor do the RAIs support the admission of the proposed contentions. Thus, as discussed in the Staff's Response to the Petitioners' First Supplemental Filing, the Board should dismiss the Petitioners' proposed contentions and terminate this proceeding. *See* "NRC Staff's Response to Petitioner's First Supplemental Filing," November 16, 1998 (Staff's Response) at 6-23.

According to the Petitioners, the RAIs support three of the Petitioners' proposed contentions that were based on the assertion that safety evaluations and aging management programs were missing from the Applicant's license renewal application. Petitioners' Response at 2. The Petitioners assert that the Board should review all of the RAIs to date in order to judge the validity of the Petitioners' proposed contentions. *Id.* The Petitioners then go on to quote from certain RAIs to demonstrate that their contentions regarding the inadequacies of the Application are valid. *See id.* at 2-3.

The issuance of the Staff's RAIs, however, does not constitute new information warranting the Board's consideration. The Staff's RAIs are based on the Staff's own review of the Application and not on any information not available to the Petitioners. A petitioner in an NRC proceeding is obligated to examine the publicly available information to enable it to uncover any information that could serve as the foundation for a specific contention. *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983)*. Thus, the Petitioners were obligated to review the Application to formulate admissible contentions based on this review. The Petitioners fail to explain why they could not have uncovered the same issues as the Staff and timely formulate admissible contentions.

Even if the Staff's RAIs did constitute new information, they do not, without further analysis, provide adequate bases for the Petitioners' proposed contentions that the Application is deficient. For example, the Petitioners reference RAI #3.7.7-4. Petitioners' Response at 2-3. RAI #3.7.7-4, however, only requests that the Applicant explain why cracking is not treated as an applicable aging effect. *See id.* at 3, quoting RAI #3.7.7-4. Similarly, RAI #3.4.5-4, referenced by the Petitioners, simply requests the Applicant to

either provide the details of an aging management program or justify why such a program is not needed.¹ *See id.* at 3. Moreover, to the extent that the RAIs indicate the need for additional information, that fact, alone, does not indicate that the Application should be rejected. *See Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 395 (1995). Rather, the Petitioners must provide sufficient information to demonstrate that a genuine dispute exists with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.714(b)(2)(iii). Mere reference to the Staff's RAIs is insufficient. *Sacramento Municipal Utility Dist.* (Rancho Seco, Nuclear Generating Station), CLI-93-3, 37 NRC 135, 146-147 (1993) (Staff's questioning does not establish that a genuine dispute exists with the applicant on a material issue of law or fact). Thus, none of the RAIs provide adequate bases to support the Petitioners' contentions that the Application is deficient.

¹ RAI #3.4.5-4 specifically states:

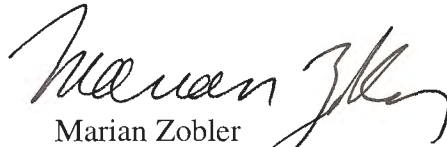
The staff has concerns about whether the flow stabilizers should be excluded from an aging management review for license renewal. Although the flow stabilizers themselves do not have safety-related functions, they were installed to address flow-induced vibration (FIV) problems experienced during hot functional testing. Thus, cracking of the attachment weld may cause the reactor vessel shell to crack thereby affecting its intended functions. Indicate if an aging management program is provided to manage the aging effects on the flow stabilizers. If so, provide the details of such a program; if not justify why such a program is not needed to ensure the integrity of these stabilizers over the extended life for the units.

Letter to William R. McCollum, Jr. Vice President, Oconee Nuclear Site, Duke Energy Corp. from Joseph M. Sebrosky, Project Manager, License Renewal Project Directorate, Division on Reactor Program Management, Office of Nuclear Reactor Regulation, November 20, 1998, enclosure at 2.

CONCLUSION

For the reasons discussed above, the information provided by the Petitioners neither is new nor does it support the admission of their proposed contentions. The Board should, therefore, dismiss the proposed contentions contained in the Petitioners' Supplemental Filing and terminate this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marian Zobler", written in a cursive style.

Marian Zobler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of December, 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITIONERS' NEW INFORMATION" in the above captioned proceeding have been served on the following by electronic mail with conforming copies deposited in the Nuclear Regulatory Commission's internal mail system, or as indicated by an asterisk, by e-mail with conforming copies deposited in United States mail, first class, or as indicated by a double asterisk by deposit in the NRC's internal mail system or as indicated by triple asterisk by deposit in the United States mail, first class, this 22nd day of December, 1998.

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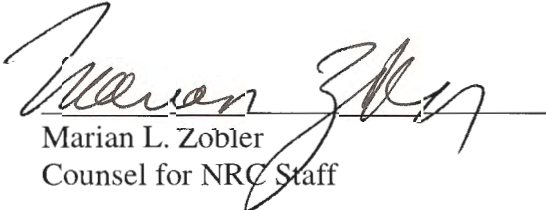
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