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December 2, 1998

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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  
TO ORDER REQUESTING INFORMATION

INTRODUCTION AND BACKGROUND

On November 19, 1998, the Atomic Safety and Licensing Board (Board) issued "Order (Requesting Additional Information from Staff)" (Order), requesting information from the staff of the Nuclear Regulatory Commission (Staff) regarding the status of the high-level waste transportation rulemaking. The Staff's responses to the Board's questions are set forth below.

DISCUSSION

**Question 1:**

What is the date staff anticipates the license renewal process for Oconee will be completed?

Order at 3.

Staff Response:

By letter dated July 31, 1998, the Staff provided the Duke Energy Corporation (the Applicant) with a safety and environmental review schedule for the application to renew the

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operating licenses for the Oconee Nuclear Station, Units 1, 2, and 3. Letter to Mr. William R. McCollum, Jr., Vice President, Oconee Nuclear Site, Duke Energy Corporation from Christopher I. Grimes, Director, License Renewal Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, July 31, 1998. A copy of this letter is attached as Attachment 1. According to this schedule, the Staff intends to issue the Draft Environmental Impact Statement (DES) by June 2, 1999. The Staff will issue a Safety Evaluation Report (SER), which will include open items needing resolution before the Staff can complete its review, by June 17, 1999. The Staff intends to complete its review and issue both the supplemental SER, which will resolve all open items identified in the SER, and the Final Environmental Impact Statement (FES) by February 12, 2000. Based on the Commission's goal of issuing a decision on the Application in about two and one-half years from the date the Application was received (July 1998), the license renewal process is expected to be completed by December 2000. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-98-17, slip op. at 4 (Sept. 15, 1998).

**Question 2:**

When was HLW [High Level Waste] transportation rulemaking initiated and what is the approximate date that a completed rule will become effective?

*Id.*

**Staff Response:**

The HLW transportation rulemaking was initiated on January 13, 1998, the date the Commission issued SRM M970612, approving the Staff's proposal to proceed with a rulemaking to categorize the impacts of transportation of HLW as a Category 1 issue. *See*

Affidavit of Donald P. Cleary at ¶ 3, attached hereto as Attachment 2. The Staff anticipates that the proposed rule will be published in the *Federal Register* in January 1999. *Id.* at ¶ 4. It is expected that the final rule will be published in the *Federal Register* no later than August 1999, and will be effective 30 days later, no later than September 1999. *Id.*

**Question 3:**

Under the schedule identified in response to questions 1 and 2, will this rulemaking delay the license renewal process for the Oconee units in the manner of concern to the Commission in SRM M970612 so as to require HLW transportation impacts to be addressed in the plant specific environmental report. If not, please explain why?

Order at 3.

**Staff Response:**

The Staff does not anticipate that under the schedules provided in response to questions 1 and 2, HLW transportation impacts will need to be addressed by the Applicant in its environmental report. As noted in response to Question 2, the Staff expects that the rule would become effective in September, 1999. Since a Commission decision on the Application is not expected until some time after that date, it is not anticipated that waiting for the completion of the rulemaking will delay the license renewal process.

**Question 4:**

To what extent, if any, must licensing boards in NRC adjudicatory proceedings adhere to Commission directives in SRMs?

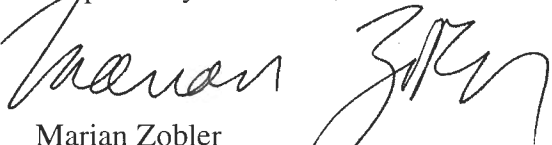
*Id.*

Staff Response:

Staff Requirements Memoranda (SRMs) contain Commission decisions on recommendations in staff papers to the Commission and appropriate directives setting forth the Commission's instructions to various organizations within the NRC regarding the subjects of the SRMs. In this case, SRM M970612 directed the Staff to consider the environmental impacts of the transportation of HLW on a plant-specific basis only if to await the completion of the rulemaking would delay the licensing process for that particular facility. The SRM is not specifically directed to the Board and does not otherwise purport to provide direction to any adjudicatory tribunal in an individual proceeding. In and of itself, therefore, the SRM does not bind this Board in its conduct of this proceeding. The SRM, however, provides evidence of the Commission's intention that consideration of the environmental impacts of the transportation of HLW should not be on a case-by-case basis, but rather generically in the Generic Environmental Impact Statement (GEIS), NUREG-1437. Further, as the Staff explained in its response to Petitioner's First Supplemental Filing, dated October 30, 1998, Commission precedent has established that where the Commission has indicated that an issue should be considered generically, that same issue should not be considered in individual licensing proceedings. *See* NRC Staff's Response to

Petitioner's First Supplemental Filing, November 16, 1998 at 21-23. Thus, in the Staff's view, the impacts of the transportation of HLW is not an appropriate issue for litigation in this proceeding. *See id.* at 23.

Respectfully submitted,



Marian Zobler  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of December, 1998

**ATTACHMENT 1**

July 31, 1998

Mr. William R. McCollum, Jr., Vice President  
Oconee Nuclear Site  
Duke Energy Corporation  
P. O. Box 1439  
Seneca, SC 27679

SUBJECT: PROPOSED NRC REVIEW SCHEDULE FOR DUKE ENERGY CORPORATION  
APPLICATION FOR RENEWAL OF OPERATING LICENSES FOR OCONEE  
NUCLEAR STATION, UNITS 1, 2, AND 3

Dear Mr. McCollum:

This letter forwards the staff's proposed safety and environmental review schedule for the Duke Energy Corporation (Duke) application submitted on July 7, 1998, to renew the operating licenses for the Oconee Nuclear Station, Units 1, 2, and 3. The NRC staff will follow established review procedures and the enclosed schedule to complete the safety and environmental reviews required by 10 CFR Parts 54 and 51, respectively. The enclosed schedule does not address any hearing that might be held in the proceeding.

I would like to stress that this is a very ambitious schedule and the staff will make every effort to meet or exceed the milestones. We therefore request that you inform the staff as early as possible should potential schedule delays arise in your support for the milestones.

If you have any questions on this matter, please contact Stephen T. Hoffman, the License Renewal Project Manager for Oconee at 301-415-3245.

Sincerely,

original signed by  
Christopher I. Grimes, Director  
License Renewal Project Directorate  
Division of Reactor Program Management  
Office of Nuclear Reactor Regulation

Docket Nos.: 50-269, 50-270,  
and 50-287

Enclosure: As stated

cc: See next page

Distribution (w/encl.)

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**NRC REVIEW SCHEDULE FOR DUKE ENERGY CORPORATION'S  
APPLICATION FOR RENEWAL OF OPERATING LICENSES FOR  
OCONEE NUCLEAR STATION, UNITS 1, 2, AND 3**

<u>Milestone</u>	<u>Date</u>
Receive Renewal Application	7/7/98
Notice Application Tendered	7/22/98
Complete Acceptance & Docketing	8/6/98
Public Meeting & EIS Scoping	10/19/98
Staff Complete Technical RAIs	12/4/98
Staff Complete Environmental RAIs	1/3/99
Applicant Complete Technical RAI Responses	2/17/99
Applicant Complete Response to Environmental RAIs	3/4/99
Issue DES for comment	6/2/99
Staff Complete SER and Identify Open Items	6/17/99
Public Meeting	7/2/99
Complete DES Comments	8/16/99
Applicant Complete Response to Open Items	10/15/99
Staff Issue SSER & FES	2/12/00
ACRS Meeting	5/12/00
Commission Decision on Application	TBD

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**Abbreviations**

<b>ACRS</b>	<b>Advisory Committee on Reactor Safeguards</b>
<b>DES</b>	<b>Draft environmental statement</b>
<b>EIS</b>	<b>Environmental impact statement</b>
<b>FES</b>	<b>Final environmental statement</b>
<b>RAIs</b>	<b>Requests for additional information</b>
<b>SER</b>	<b>Safety evaluation report</b>
<b>SSER</b>	<b>Supplemental evaluation report</b>
<b>TBD</b>	<b>To be determined</b>

Enclosure

**ATTACHMENT 2**

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
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(Oconee Nuclear Station,	)		
Unit Nos. 1, 2, and 3)	)		

AFFIDAVIT OF DONALD P. CLEARY  
IN RESPONSE TO LICENSING BOARD QUESTIONS

I, Donald P. Cleary, first being duly sworn, depose and state:

1. My name is Donald P. Cleary. I am employed by the U.S. Nuclear Regulatory Commission (NRC) as a Senior Task Manager. I am the project manager for the rulemaking regarding the environmental impacts of the transportation of high level waste (HLW).

2. The purpose of my affidavit is to respond to the Atomic Safety and Licensing Board's questions concerning the schedule for this rulemaking.

3. The HLW transportation rulemaking was initiated on January 13, 1998, the date the Commission issued SRM M970612 approving the Staff's proposal to categorize the impacts of transportation of HLW as a Category 1 issue in SRM M970612.

4. The Staff anticipates that the proposed rule will be published in the *Federal Register* in January 1999. The Staff expects that the final rule will be published in the *Federal Register* no later than August, 1999 and will be effective 30 days later, no later than September, 1999.

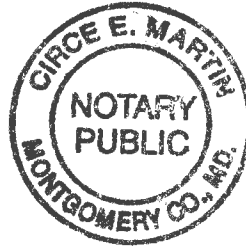
5. The matters stated above are true and correct to the best of my knowledge, information and belief.

Donald P. Cleary  
Donald P. Cleary

Subscribed and sworn to before  
me this 30 day of November, 1998

Circe E. Martin  
Notary Public

My commission expires: March 29, 1999



CIRCE E. MARTIN  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires March 29, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '98

DEC -2 P3:41

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO ORDER REQUESTING INFORMATION" in the above captioned proceeding have been served on the following by electronic mail, with conforming copies, and attachments deposited in Nuclear Regulatory Commission internal mail system, or as indicated by an asterisk, by e-mail with conforming copies, and attachments deposited in United States mail, first class, or as indicated by a double asterisk by deposit in NRC internal mail system or as indicated by triple asterisk by deposit in the United States mail, first class, this 2nd day of December, 1998.

B. Paul Cotter, Jr., III, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
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(E-mail copy to [bpc1@nrc.gov](mailto:bpc1@nrc.gov))

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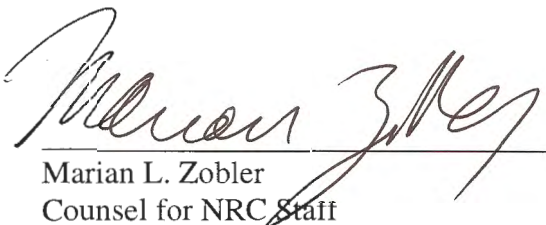
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