November 16, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Duke Energy Corporation	)	Docket Nos. 50-269/270/287 LR
	)	
(Oconee Nuclear Station, Units 1, 2, and 3)	)	

RESPONSE OF DUKE ENERGY CORPORATION TO SUPPLEMENTAL PETITION TO INTERVENE FILED BY CHATTOOGA RIVER WATERSHED COALITION AND NORMAN "BUZZ" WILLIAMS, WILLIAM "BUTCH" CLAY, AND WILLIAM "W.S." LESAN

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), and the schedule established by the Atomic Safety and Licensing Board ("Licensing Board") in this proceeding by Order of October 1, 1998, Duke Energy Corporation ("Duke"), applicant in the above-captioned matter, hereby responds to the "First Supplemental Filing" amending the petition to intervene filed on October 30, 1998, by the Chattooga River Watershed Coalition ("CRWC") and Messrs. Norman "Buzz" Williams, William "Butch" Clay, and William "W.S". Lesan (collectively, the "Petitioners"). As discussed below further, Duke opposes Petitioners' request for hearing because Petitioners have failed to identify an admissible contention. In addition, Petitioners' request that this proceeding be stayed and that they be granted more time to prepare additional contentions should be denied.

II. BACKGROUND

Duke filed an application to renew the operating licenses for its Oconee Nuclear Station, Units 1, 2, and 3 (NRC license numbers DPR-38, DPR-47, and DPR-55), on July 6, 1998. On July 14, 1998, the NRC published in the *Federal Register* a Notice of Receipt of Duke's application. 63 Fed. Reg. 37909 (1998). On August 11, 1998, the Commission published in the *Federal Register* its "Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of Licenses Nos. DPR-38, DPR-47, and DPR-55 for an Additional 20-Year Period." 63 Fed. Reg. 42885 (1998).

On September 8, 1998, Petitioners submitted a letter seeking leave to intervene in the Oconee license renewal proceeding. On September 15, 1998, the Commission issued an Order delegating the matter to the Atomic Safety and Licensing Board ("Licensing Board") and prescribing detailed scheduling and policy guidance for the conduct of any hearing. See CLI-98-17, 48 NRC __ (Sept. 15, 1998). Shortly thereafter, on September 18, 1998, the Licensing Board issued its initial prehearing Order setting forth its directives and expectations regarding the conduct of this proceeding, and establishing an initial schedule for amended intervention petitions, including proposed contentions and responses.

Petitioners' September 8, 1998 filing, when measured against the requirements of 10 C.F.R. § 2.714(a)(2), was on its face insufficient to establish standing of either CRWC or the individual petitioners. In accordance with the Licensing Board's initial prehearing Order, Petitioners made a second filing, directed solely at the issue of Petitioners' standing, on September 30, 1998.[1/]

[1/] Duke does not construe the concerns articulated in the Petitioners' September 30, 1998 filing as proposed contentions.

This filing was still insufficient to establish standing. The Licensing Board identified certain defects in this regard in its October 1, 1998 "Order (Ruling on Request for Extension of Time)" (see note 2 in the Order). The Licensing Board there allowed Petitioners until October 30, 1998 to supplement their petition to intervene to: 1) address these defects and establish standing to intervene in this proceeding, and 2) propose all of their contentions for litigation, in accordance with the requirements of 10 C.F.R. § 2.714(b)(2).

Petitioners' filing of October 30, 1998, styled as "Petitioner's [sic] First Supplemental Filing," amends, supplements, and effectively supersedes, its earlier filings. Duke herein responds with respect to the issues of the Petitioners' standing and the inadmissibility of the proposed contentions in this license renewal proceeding. In addition, Duke opposes Petitioners' request for a stay to allow them to prepare another supplemental list of contentions.

III. STANDING

The NRC's requirements with respect to the standing of both individuals and organizations to intervene in licensing matters are established in 10 C.F.R. §§ 2.714(a)(2) and (d)(1), and in abundant case law. The precedent on these matters is cogently summarized in the NRC Staff's filing of October 9, 1998.[2/]

Duke acknowledges the NRC Staff's position in its October 9, 1998 filing that standing in this proceeding cannot be presumed based alone on a petitioner's nearby residence, and

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2/ "NRC Staff's Answer to the Petition for Leave to Intervene Filed by Norman 'Buzz' Williams, William 'Butch' Clay, W.S. Lesan, and the Chattooga River Watershed Coalition," filed on this docket, dated October 9, 1998.

does not disagree. Considering the information filed by Petitioners on October 30, 1998[3/], Duke does not contest the standing of the individual petitioners to intervene in this proceeding. However, Duke does not believe that CRWC has established organizational standing.[4/]

3/ Duke notes that the affidavit of Mr. Clay accompanying the Petition is not signed. Duke assumes that a signed version exists or that this defect could be easily remedied. Duke further notes that Paragraph 11 of the affidavit of Mr. Williams, and Paragraph 5 of the affidavits of Mr. Clay and Mr. Lesan, articulate certain concerns. Duke believes that these statements satisfy the requirement of 10 C.F.R §2.714(a)(2) regarding identification of a "specific aspect or aspects" of the proceeding as to which a petitioner wishes to intervene. Duke does not concede, however, that all of the issues articulated in these paragraphs are properly within the scope of this license renewal proceeding.

4/ CRWC states that its mission is "to protect, promote, and restore the natural ecological integrity of the Chattooga River Watershed Ecosystems . . ." (See paragraph 8 of Mr. Norman Williams's affidavit.) CRWC carries out its mission through six primary goals contained in its constitution. In paragraph 9 of his affidavit, Mr. Williams asserts that without participation in this hearing, CRWC cannot fulfill the two organizational goals which he deems relevant to this proceeding. Specifically, he states that CRWC "could not 'educate the public' and 'promote public choice based on credible scientific information.' " Significantly, neither of these goals has any reasonable nexus to this license renewal *adjudicatory* proceeding. Rather, they are aimed at assuring public awareness. While laudable, public awareness is not a reason in and of itself to support standing; public awareness is a function of the NRC. The NRC carries out this function through such vehicles as Federal Register notices, creating a local (and national) public document room to house relevant information, scoping meetings, public meetings when discussing issues with Duke, and public dissemination of its Safety Evaluation Report and Environmental Impact Statement. See, in this regard, Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521 (1991), wherein the Appeal Board, in addressing standing of organizations which provide for public education of nuclear energy issues, stated that such asserted purposes ". . . simply do not demonstrate an injury in fact . . ." Id. at 530. See also Advanced Medical Systems, Inc. (Cleveland, Ohio), LBP-95-3, 41 NRC 195, 201 (1995), which held that a "mere academic interest in a matter, without any real impact on the person asserting it, will not confer standing." This principle was articulated by the Commission in Portland General Electric Co., et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976).

IV. PROPOSED CONTENTIONS

A. NRC Requirements for Admission of Contentions

To be admissible, proposed contentions must meet the detailed basis and specificity thresholds provided in the Commission's requirements of 10 C.F.R. §§ 2.714(b)(2) and (d)(2), as revised in 1989.[5/] The Commission, in Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248-49 (1996)(footnote omitted), has held:

> For a contention to be admissible, a petitioner must refer to the specific portion of the license application being challenged, state the issue of fact or law associated with that portion, and provide a "basis" of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or expert opinions. 10 C.F.R. §§2.714(b)(2), (d)(2). The basis must be sufficient to show that a genuine dispute exists on a material issue of fact or law. 10 C.F.R. §2.714(b)(2). "A contention may be refused if it does not meet the requirements of section 2.714(b) or if the contention, even if proven, would 'be of no consequence in the proceeding because it would not entitle the petitioner to relief.' 10 C.F.R. § 2.714(d)(2)(ii)." *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 142 (1993).

In the Supplementary Information accompanying the 1989 amendments to 10 C.F.R. §2.714, the Commission emphasized that the rule "require[s] the proponent of the contention to supply information showing the existence of a genuine dispute with the applicant on an issue of law or fact." 54 Fed. Reg. 33168 (Aug. 11, 1989). The Commission further emphasized that contentions cannot be admitted when unaccompanied by supporting facts. Id. at 33171. In Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149

5/ 54 Fed. Reg. 33168 (August 11, 1989).

(1991), the Commission stated its intent that §§2.714(b)(2)(I)-(iii) be interpreted strictly: "If any one of these requirements is not met, a contention must be rejected." 34 NRC at 155 (citing the Supplementary Information, 54 Fed. Reg. at 33171). The Commission further stated:

> These requirements are designed to raise the Commission's threshold for admissible contentions and to require a clear statement as to the basis for the contentions and the submission of more supporting information and references to specific documents and sources that establish the validity of the contention. *See* 54 Fed. Reg. 33168, 33170 (August 11, 1989).

34 NRC at 155-56.

The NRC's rules on admission of contentions therefore require precision in the contention pleading process to ensure that a proposed contention is specific. In addition, the proposed contention *must have factual support.*[6/] While this support need not be in evidentiary form, it must be sufficient to satisfy the Commission's strict requirement that the supporting basis for proposed contentions be adequate to *establish the validity of the contention.*

Moreover, under longstanding Commission precedent, proposed contentions must also fall within the scope of the issues set forth in the notice of hearing. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 91 (1990); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316,

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6/ In Union of Concerned Scientists v. United States Nuclear Regulatory Comm'n, 920 F.2d 50 (D.C. Cir. 1990), the Court upheld the NRC's revisions to 10 C.F.R. §2.714, compared the amended Section 2.714(b) to the prior version, and confirmed that "[t]he new rule perceptibly heightens th[e] pleading standard" for contentions. Id. at 52.

3 NRC 167, 170 (1976). See also Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983).[7/]

The Commission's expectations with respect to all of these requirements have also been emphasized recently. First, in its recent "Statement of Policy on Conduct of Adjudicatory Proceedings," CLI-98-12, 48 NRC ___, dated July 28, 1998, the Commission emphasized (slip op. at 7) the required evidentiary basis for a proposed contention:

> The Commission has stated that a board may appropriately view a petitioner's support for its contention in a light that is favorable to the petitioner, but the board cannot do so by ignoring the requirements set forth in section 2.714(b)(2). *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). The Commission re-emphasizes that licensing boards should continue to require adherence to section 2.714(b)(2), and that the burden of coming forward with admissible contentions is on their proponent. A contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions in 10 C.F.R. § 2.714(b)(2).

In addition, in the particular context of license renewal, the Commission emphasized (slip op. at 7-8) the limited scope of the formal adjudicatory proceeding:

> The scope of a proceeding, and, as a consequence, the scope of contentions that may be admitted, is limited by the nature of the application and pertinent Commission regulations. For example, with respect to license renewal, under the governing regulations in 10 C.F.R. Part 54, the review of license renewal applications is confined to matters relevant to the

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[7/] See 54 Fed. Reg. at 33169-171 (revised rules on admissibility of contentions did not alter pre-existing case law).

> extended period of operation requested by the applicant. The safety review is limited to the plant systems, structures, and components (as delineated in 10 C.F.R. § 54.4) that will require an aging management review for the period of extended operation or are subject to an evaluation of time-limited aging analyses. *See* 10 C.F.R. §§ 54.21(a) and (c), 54.29, and 54.30. In addition, the review of environmental issues is limited by rule by the generic findings in NUREG-1427, "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants." *See* 10 C.F.R. §§ 51.71(d) and 51.95(c).

Second, the Commission specifically reiterated these expectations on *this docket,* by its order delegating the matter to the Licensing Board. See "Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board Panel," CLI-98-17, 48 NRC ___, dated September 15, 1998. The Commission again directed that "[i]t is the responsibility of the petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a *genuine* dispute exists within the scope of this proceeding." CLI-98-17, slip op. at 2 (emphasis added).

B. Proposed 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.*

This proposed contention must be rejected because Petitioners have failed to state a material issue of law or fact. 10 C.F.R. § 2.714(b)(2)(iii). Additionally, even if the contention were true (it is not), it would be of no consequence in this proceeding because it would not entitle

Petitioners to relief. 10 C.F.R. § 2.714(a)(2)(ii). Duke has filed a license renewal application that is complete, that is in accordance with 10 C.F.R. §§ 54.21-54.23, and that has been accepted as sufficient for review by the NRC Staff. The fact that certain issues are subject to outstanding Staff questions or review does not entitle Petitioners to the relief requested.[8/]

On its face, proposed Contention 1 is no more than a challenge to the *completeness* of the application. However, the NRC Staff has already accepted the Oconee license renewal application as sufficient for review. See 63 Fed. Reg. 42885-42887 (August 11, 1998). This "sufficiency review" is not the subject of this proceeding. The mere existence of questions and issues to be addressed during the course of the Staff's review is precisely what would be expected in any thorough review process. It certainly does not mean that the license application must be rejected altogether. Curators of the University of Missouri, CLI-95-8, 41 NRC 386, 395 (1995); see also Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC ____, slip op. at 17-18 (October 16, 1998).

The Commission has made clear that the focus of this proceeding, as in any NRC proceeding, "is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC Staff performance." 54 Fed. Reg. 33168, 33170-71 (1989) (NRC Supplementary Information accompanying 1989 amendments to 10 C.F.R. § 2.714); see also University of Missouri, CLI-95-8, 41 NRC at 396; Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 808, review declined, CLI-83-32,

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8/ See 54 Fed. Reg. 33168, 33171 (August 11, 1989) (Supplementary Information accompanying 1989 amendments to 10 C.F.R. Part 2), where the NRC states: "Apart from NEPA issues, which are specifically dealt with in the rule, a contention will not be admitted if the allegation is that the NRC staff has not performed an adequate analysis." See also the discussion of this point in Section V of this response, below.

18 NRC 1309 (1983). Contrary to this established tenet, this proposed contention completely fails to articulate any flaw in the Oconee application, much less provide a basis sufficient to meet 10 C.F.R. § 2.714(b)(2).

As a "basis" for this proposed contention, Petitioners point to certain generic "topical reports" referenced in the renewal application, and argue (Petition, at p. 3) that "the incomplete status of the final disposition of [these] reports renders the Application incomplete, and inadequate for meaningful public and technical expert review." (In particular, Petitioners cite BAW-2251 and BAW-2248,[9/] as referenced in the renewal application.) No challenge is made with respect to the substantive adequacy of any of these topical reports; the "basis" statement is limited to the completeness of the Staff's review of the topical reports.

Contrary to the implication of the contention, topical reports have been an important and accepted part of license renewal review. In 1992, the B&W Owners Group ("B&WOG"), of which Duke is a member, established a project whose objective was to develop topical reports covering the aging management requirements of various components within the reactor coolant system. Because the reactor coolant systems of the B&W plants are very similar in design and operation, topical reports could be developed that would reasonably bound the B&W plants. The B&WOG identified several reactor coolant system components that needed to be reviewed for license renewal and topical reports were developed for each of these components. Of these reports, four were selected for submittal to the NRC Staff as B&WOG topical reports for Staff review and approval in connection with license renewal.

[9/] BAW-2251, "Demonstration of the Management of Aging Effects for the Reactor Vessel" (submitted June 1996); BAW-2248, "Demonstration of the Management of Aging Effects for the Reactor Vessel Internals" (submitted July 1997).

Topical reports that are generic to several plants have been used for many years within the nuclear industry as a means to facilitate review by the NRC Staff. Once approved, a bounding report may be used by each individual utility on its own docket. Accordingly, each of the B&WOG topical reports identifies the plants to which the report is applicable. Oconee Nuclear Station is included in the list of plants in each of these reports. Each of the topical reports that has been submitted for NRC Staff review and approval in connection with renewal is considered to be a complete demonstration of the management of aging effects during the period of extended operation for the specific component in question. These reports were all submitted to the NRC well in advance of the Oconee license renewal application.[10/]

The concept of incorporating information contained in other documents into a license renewal application is not new. NRC license renewal regulations, at 10 C.F.R. § 54.17(e), explicitly provide that:

> An application may incorporate by reference information contained in previous applications for licenses or license amendments, statements, correspondence, or reports filed with the Commission, provided that the references are clear and specific.

The NRC Staff has completed its review of two of the four B&WOG topical reports. These reviews are documented in Staff Safety Evaluation Reports ("SERs"). The two B&WOG topical reports referenced by the Petitioners under proposed Contention 1 are both currently under

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10/ In March 1993, the NRC Staff established "Project Number 683" as the location in the Public Document Room where copies of all documents relative to the B&WOG efforts would be placed and made available for review by the public. Copies of B&WOG submittals to the NRC, NRC Staff meeting summaries, and NRC Staff letters to the B&WOG concerning the submitted reports are located in the Public Document Room within Project Number 683. All meetings between B&WOG and the NRC Staff were publicly noticed and open to the public.

Staff review, but neither report is "incomplete." As with any application review of "open items," Duke will respond to any NRC Staff requests for additional information on these reports as such requests are identified during the Staff review. Duke expects that the NRC Staff review of these reports, and the Duke responses, will be completed prior to or concurrent with the completion of the review of the remaining portions of the Oconee application. The status of these topical reports, therefore, is analogous to that of the rest of the application: open, subject to NRC Staff review. This alone, however, does not mean the application is "incomplete." Proposed Contention 1 identifies no technical challenge to any aspect of the two reports or the Oconee license renewal application. It therefore fundamentally fails to meet 10 C.F.R. § 2.714(b)(2).[11/]

In their "basis" statement, Petitioners similarly refer to NRC Staff Requests for Additional Information ("RAIs"), both those "filed or forthcoming." This reference also purports to support the conclusion that the application is incomplete. Again, for the reasons already discussed, this is an insufficient basis for an insufficient contention. See, e.g., Calvert Cliffs, LBP-98-26, slip op. at 19. Indeed, to accept the mere existence of open topical reports, RAIs, or the mere possibility of RAIs as Petitioners here contemplate, as an adequate basis for a contention, would make a mockery of the Commission's requirements for admission of contentions. By this flawed reasoning, because RAIs and open items are a natural and necessary part of the review process, a petitioner

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11/ Further, as part of their basis for proposed Contention 1, Petitioners cite the fact that a 1996 report on the Reactor Building Containment that Duke submitted to the NRC is still under review by the NRC Staff. This report is incorporated by reference into Duke's license renewal application for Oconee. Petitioners suggest (Petition, at p. 3) that Duke's application is incomplete because the NRC Staff is still reviewing the 1996 report. This suggestion is incorrect. See 54 Fed. Reg. 33168, 33171 (August 11, 1989). As discussed above, the "completeness" of the Oconee renewal application is in no way tied to the completion of the NRC Staff's review of this containment report.

could plead a contention on every application before the agency. Admitting these contentions would create the prospect of an open-ended licensing hearing piggybacking the entire scope of the NRC Staff's technical review of the application. Such an approach would lead to licensing "gridlock," effectively undermining the Commission's commitment to support an expeditious license renewal process and greatly damaging the prospects for the renewal option.

In sum, Proposed Contention 1 must be rejected for sound legal and policy reasons. The topical reports were "complete" when submitted, the Oconee application is complete, and only the Staff reviews of these matters are ongoing. There is in the proposed contention no basis for the contention that the application is incomplete, no technical challenge to the application, and no basis for the relief requested.

C. Proposed 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.*

CRWC's proposed Contention 2 should be rejected. The proposed contention fails to include a legitimate basis that would show the existence of a genuine dispute. 10 C.F.R. § 2.714(b)(2)(iii). Moreover, as with proposed Contention 1, there is no basis provided for the relief requested.

Proposed Contention 2 simply asserts that the Oconee renewal application "does not meet the aging management and other safety-related requirements." However, this bald assertion is insufficient to meet the standards of Section 2.714(b)(2). "Neither Section 189a of the Atomic

Energy Act nor § 2.714 . . . permits the filing of a vague, unparticularized contention . . ." See 54 Fed. Reg. 33168, 33170 (1989) (Supplementary Information for 1989 amendments to 10 C.F.R. § 2.714, quoting Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983)). Rather, an admissible contention requires that a petitioner "refer to the specific portion of the license application being challenged, state the issue of fact or law associated with that portion, and provide a 'basis' of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or expert opinions." Yankee Atomic, CLI-96-7, 43 NRC 235, 248.

The various "bases" proffered for this proposed contention do not remedy these defects. CRWC first suggests (Petition, at p. 4) that their "basis" discussion set forth in connection with Contention 1 be incorporated by reference into the basis discussion for this contention. In response to this suggestion, Duke submits (as discussed above) that nothing in Petitioners' discussion of Contention 1 provides the requisite basis and specificity required by Section 2.714. Petitioners' discussion of proposed Contention 1 mischaracterizes the role of the topical reports on aging management vis-a-vis the completeness of the Oconee renewal application. Accordingly, Petitioners' mere recitation of their bases for proposed Contention 1 as one of the bases for proposed Contention 2 does nothing to meet the pleading requirements in Section 2.714.

As an additional "basis" for this proposed contention, Petitioners cite (Petition, at p. 4) topical reports BAW-2243A and BAW-2244A.[12/] Unlike the two topical reports specifically referenced under proposed Contention 1, these two B&WOG topical reports *have already been*

12/ BAW-2243A, "Demonstration of the Management of Aging Effects for the Reactor Coolant System Piping," approved March 1996; BAW-2244A, "Demonstration of the Management of Aging Effects for the Pressurizer," approved November 1997.

approved by the NRC Staff -- each in a Safety Evaluation Report (SER). These SERs include a number of "Renewal Applicant Action Items." Renewal Applicant Action Items are set forth in an approved topical report to specify where applicant-specific responses are necessary. In the Oconee application, these Renewal Applicant Action Items are addressed in Volume I, Chapter 2, Tables 2.4-2 and 2.4-3 (pp. 2.4-24 -- 2.4-30) for the Reactor Coolant System Piping (BAW-2243A) and the Pressurizer (BAW-2244A), respectively.[13/] Duke has clearly met the renewal requirements with respect to each of these matters. Each of the Renewal Applicant Action Items identified in the SERs for these two reports has been addressed in the Oconee application. An assertion that the application is incomplete in this regard is simply incorrect. The proposed contention and "basis" statement fail even to acknowledge the actions being taken by Duke to meet the Renewal Applicant Action Items, much less articulate or support any technical challenge to the Oconee actions.

To support their assertion that the application is inadequate, Petitioners also quote an excerpt from the NRC Staff's SER on BAW-2243A, taken from Volume III, Section 4.3.12 (pp. 4.3-29 - 30) of the Oconee application. As used here, this SER quotation is nonsensical. Worse, Petitioners have taken the quote out of context. The NRC Staff's statements in the SER merely point out that, in connection with BAW-2243A, the B&WOG opted to defer the development of detailed sample inspections of small bore RCS piping, preferring to leave such details to any applicant who subsequently opted to reference that topical report. Further, the NRC Staff states in its SER that the renewal applicant will have to provide details of these inspection programs in its renewal application. Consistent with the NRC Staff's direction, Duke has described such sample inspections in Volume

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13/ The left-hand column of each of these tables contains the specific Renewal Applicant Action Item from the Staff's SER. The right-hand column of each of these two tables contains the Oconee-specific response.

III, Section 4.3.12 (pp. 4.3-29 - 30) of its application. Thus, Duke has addressed this action item and, again, Petitioners have failed to identify any alleged flaw with the proposed action.

Similarly, Petitioners allege (Petition, at p. 4) as an additional "basis" in support of this contention, that the Oconee application is defective in its treatment of BAW-2244A. In support of this claim, Petitioners quote a single sentence from the NRC Staff's SER prepared in connection with this topical report. The SER statement is found in Table 2.4-3 (pp. 2.4-26 - 2.4-28) of the Oconee application. Here too, the SER section quoted constitutes part of the Staff's explanation of the Renewal Applicant Action Item that requires license renewal applicants to address potential cracking in cladding. Inexplicably, Petitioners do not go on to reference the application text in the right-hand column of Table 2.4-3, "Oconee-Specific Response" (p. 2.4-28), which lists the sections of the Oconee application that address this action item. When both columns of this table are read together, it is clear that Duke has responded to this action item from the SER. Thus, contrary to Petitioners' assertions, the Oconee license renewal application is not "incomplete," and it does not fail to "meet the aging management and other safety-related requirements mandated by law and NRC regulations." Moreover, Petitioners have failed to allege any specific deficiency with regard to Duke's treatment of BAW-2244A.

Finally, in the "basis" statement for this proposed contention, Petitioners "question the timing, and therefore validity, of specific aging management program activities that are apparently undeveloped and vaguely referenced in the Application" (Petition, at p. 4). To the extent that this broad assertion is intended as a basis in support of Contention 2, it too must fail. The sole example cited by Petitioners in support of this claim consists of another reference to Table 2.4-3 (Volume I,

p. 2.4-28). Petitioners, however, fail to show that specific aging management programs are either "undeveloped" or "vaguely referenced" in the Oconee application.

Petitioners' reference to the application taken from the left column of Table 2.4-3, under the "Renewal Applicant Action Item" heading, again consists of an excerpt from the NRC Staff's SER. As discussed above, the NRC Staff has determined that when license renewal applicants reference this topical report in their individual applications, they must address certain action items. As explanation, the application quotes (p. 2.4-28) the Staff SER as follows:

> cracking of the stainless steel is a potential aging effect that must be addressed by an aging management program for the period of extended operation. A program to provide a reasonable demonstration of the integrity of the pressurizer cladding could be a one-time inspection for license renewal.

The quoted portion of the SER then goes on to suggest certain characteristics for the inspection program.

Petitioners' characterization (Petition, at p.4) of this aging management program as "apparently undeveloped and vaguely referenced" is inaccurate. As Petitioners should be aware, this aging management program is described in the application in Volume III, Section 4.3.7 (pp. 4.3-16 - 17). This is far more than a "vague reference" to the program. Petitioners fail even to cite the correct information in the application, much less provide a basis for an assertion that the program, as described, is flawed. Moreover, Petitioners' suggestion that the timing of the one-time inspection would be inadequate, and thus "unacceptable in addressing public health and safety-related issues,"

is simply without foundation.[14/] The basis proffered "fails to establish the validity of the contention." See Arizona Public Service Co., CLI-91-12, 34 NRC at 155-56.

In sum, no aspect of the treatment of either of these NRC-approved topical reports in the Oconee application supports a contention that the application is incomplete or that it fails to meet "aging management and other safety-related requirements." Where the NRC Staff SER for the topical report includes certain action items for a plant-specific applicant, Duke has addressed that action in its application. For their part, Petitioners have failed to demonstrate the existence of a genuine dispute on a material issue of law or fact. 10 C.F.R. § 2.714(b)(2)(iii). Petitioners have not met the "perceptibly heightened" threshold for admissibility of contentions. Union of Concerned Scientists, 920 F.2d at 52; see also CLI-98-12, slip op. at 7. Additionally, even if the contention were true, it would be of no consequence in this proceeding because it would not entitle Petitioners to the relief requested. 10 C.F.R. § 2.714(d)(2)(ii).

Proposed Contention 2 highlights precisely the type of contention that the NRC's revised rules of practice, as adopted in 1989, were intended to avoid. The contention fails to specify a concrete technical issue that would focus litigation. The proffered basis fails to demonstrate any real issue. Mischaracterizations or misunderstandings of the application materials do not, and as a matter of sound policy cannot, constitute a basis for proceeding through expensive, formal litigation. While a review of a proposed contention cannot reach evidentiary or merits issues, the Commission nonetheless expects a licensing board to perform a "thoughtful review" of the claimed basis for a proposed contention at the outset of adjudicatory proceedings to assure adequate basis and the

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[14/] Duke certainly agrees with Petitioners' assertion that the one time inspection should be later in the current operating license period in order to detect potential aging effects prior to entry into the renewal period.

existence of a genuine issue, to avoid inefficient legal process. Compare Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48-49 (1989); Georgia Institute of Technology (Georgia Tech Research Reactor), LBP-95-6, 41 NRC 281, 304-5 (1995). Such a "thoughtful review" in this case must conclude that the contention is inadmissable.[15/]

D. Proposed Contention 3

> *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 fails to meet mandated law under the National Environmental Policy Act (NEPA), and therefore should be withdrawn and/or summarily dismissed.*

Proposed Contention 3 is, on its face, a very broad challenge to the sufficiency of the Oconee renewal application to meet the National Environmental Policy Act ("NEPA"). However, such a broad, and indeed vague, assertion is not enough to satisfy NRC pleading requirements. This proposed contention should be rejected because it fails to articulate any specific defect in, or challenge to, the Oconee license renewal application. Further, it lacks the requisite basis as required by Section 2.714(b)(2) to establish the existence of a genuine issue in dispute.

As a preliminary matter, the sole basis offered in support of this contention is that the Oconee license renewal application violates various regulations, which Petitioners cite as "NEPA

15/ In conducting a thoughtful review of a proposed contention, the Licensing Board is free to look at the license application at issue to ascertain whether the asserted basis for the proposed contention correctly characterizes the contents of the application. See, e.g., Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 64, 90, n.30 (1996) ("A document put forth by an intervenor as the basis for a contention is subject to scrutiny both for what it does and does not show.") When a document is cited as the basis for a proposed contention, the contents of that document (including both those portions that support the petitioner's assertions and those that do not) are deemed to be subject to Board scrutiny).

1500.1(b)," "NEPA at 1502.2(g)," and "NEPA at 1502.21." These are not correct citations to either NEPA or to any applicable NRC regulations. For the purposes of this response, Duke interprets the citations as references to the Council on Environmental Quality ("CEQ") guidelines, codified at 40 C.F.R. Part 1500. This point is significant because NRC licensing proceedings are not governed by the CEQ regulations. The NRC has its own regulations implementing Section 102(2) of the National Environmental Policy Act; these Commission regulations are codified at 10 C.F.R. Part 51. Petitioners have failed to allege any specific defect against Part 51. For this reason alone, the proposed contention should be rejected.

As promulgated, the NRC's environmental regulations implement NEPA in a manner which "reflects the Commission's announced policy to take account of the regulations of the Council on Environmental Quality published November 29, 1978 (43 Fed. Reg. 55978-56007) voluntarily, subject to certain conditions." 10 C.F.R. § 51.10(a). Nevertheless, although the NRC's regulations in Part 51 are intended to be consistent with the CEQ guidelines, they are separate and distinct from those guidelines. Thus, in this NRC proceeding, to allege that an NRC license renewal applicant has acted in a manner inconsistent with CEQ guidelines is not sufficient to allege any cognizable defect. In NRC licensing proceedings such as this, the applicant's satisfaction of NEPA is gauged against its compliance with the particular requirements of 10 C.F.R. Part 51 -- not against the CEQ regulations. Thus, by their failure to ground this contention in the requirements of Part 51, Petitioners have failed to allege any *relevant* defects in Duke's application. The proposed contention on its face fails to establish the existence of a genuine dispute on a *material* issue of law or fact.

Even if the Licensing Board were to ignore this fatal flaw, the proposed contention still fails. In the proffered "basis" for this proposed NEPA contention, Petitioners assert (Petition,

at p. 4) that by deferring "the development of specific safety and aging management programs" until after the issuance of the Oconee renewal license, and/or shortly before the expiration of the current Oconee operating licenses, Duke is violating CEQ guidelines which stipulate that environmental information must be publicly available before decisions are made and actions are taken (Petition, at p. 4). This argument also does not constitute an admissible contention or adequate basis under NRC requirements. First, this assertion too is impermissibly vague. Not a single example of a safety or aging management program is cited. Second, Petitioners do not provide any support for their implicit claim that license renewal applicants may not delay implementing aging management programs until shortly before the expiration of the existing license, or shortly after issuance of the renewal license.

In compliance with applicable regulations in 10 C.F.R. Parts 54 and 51, Duke's license renewal application includes a description of an Integrated Plant Assessment ("IPA") that identifies and lists those structures and components within the scope of license renewal that are subject to an aging management review, identifies the applicable aging effects, and identifies existing and new plant-specific programs and activities that manage known applicable aging effects. 10 C.F.R. § 54.21. The IPA also contains a demonstration of the effectiveness of the existing aging management programs. Significantly, many of the Oconee programs and activities that are credited for managing aging are existing, ongoing actions. Some of these were implemented after initial licensing, and were further developed based on experience during the operating life of the plant. Similarly, for the other aging management programs not yet underway, the application describes attributes of those programs. (See Volume III, Section 4.3.) These aging management programs will be implemented and further developed based on experience at the appropriate time in the life cycle of the plant to address aging effects. This concept is contemplated by, and is consistent with, the

Commission's license renewal regulations. Petitioners' suggestion (Petition, at p. 4) that this approach is somehow improper, or that it will impair the NRC's ability to adequately review renewal activities, is baseless. Irrespective of license renewal, by their very nature, aging management programs have been and will continue to be evolutionary.

Petitioners seem to characterize this approach as an impermissible "segmentation" of licensing actions (Petition, at p. 4).[16/] This characterization is largely opaque, and in any event totally inapposite. The practice of "segmentation" was recently described by a federal court of appeals as follows:

> In assessing the 'significance' of environmental effects, agencies must ask 'whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.' 40 C.F.R. § 1508.27(b)(7). N2. To run afoul of this rule is to engage in illegal 'segmentation.'

The New River Valley Greens v. U.S. Department of Transportation, No. 97-1978, slip. op. at 8 (4th Cir. Sept. 10. 1998) (per curiam). Petitioners seem to suggest that Duke has improperly delayed completion of certain activities in connection with the application, with the intent of "segmenting" them so as to avoid having the NRC assess the overall environmental and safety implications of the license renewal project. Duke is doing no such thing. The Oconee license renewal application,

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16/ Apart from the NEPA "segmentation" argument, Petitioners separately suggest that this approach to aging management would "impair the NRC's ability (and responsibility) to provide the necessary safety analyses" (Petition, at p. 4). Again, no specifics are provided, rendering the assertion hopelessly vague and inadequate as a basis for a contention. In addition, this assertion seems to confuse the Staff's NEPA (Parts 51) and safety (Part 54) reviews.

including the environmental report, encompasses all of the necessary information and addresses of all of the necessary issues. The NRC Staff will complete one environmental review under Part 51, which will address those matters required to be addressed pursuant to Part 51. There is no "segmentation" as that term is used in the NEPA context. Timely implementation of programs during plant operation, as Duke contemplates, is not improper "segmentation."

Petitioners' other attempts to provide a basis for Contention 3 are equally unavailing. For example, they suggest, somewhat enigmatically, that "these proceedings" are circumventing the intent of the CEQ regulations requiring that an Environmental Impact Statement ("EIS") is to "serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made." (Petition, at p. 5). Support for this assertion is lacking in the Petitioners' lone cite to their previous discussion under proposed contention 1 -- a cite consisting of nothing more than a reference to the cover letter accompanying the Oconee license renewal application. Such vague and unsubstantiated statements cannot serve as the basis for a proposed contention in an NRC licensing proceeding. See, e.g., Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-21, 38 NRC 143, 146 (1993) ("the regulation requires substantial specificity and it is a settled rule of practice at this Commission that contentions ought to be interpreted in light of the required specificity, so that adjudicators and parties need not search out broader meanings than were clearly intended."); Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 22 (1996) (a "lack of precision about what is a contention and what are its bases serves to obfuscate the general principle that contentions, not bases, are litigated in NRC adjudications.")[17/]

[17/] Moreover, as discussed above, 10 C.F.R. Part 51, not the CEQ regulations, provides the applicable environmental review standard. To the extent Petitioners are challenging Part 51, their challenge is in the wrong forum and out of time.

Similarly unconvincing is Petitioners' citation to "NEPA at 1502.21." Assuming the reference is to CEQ regulations, the regulation might reasonably be paraphrased as allowing agencies to incorporate material by reference into an EIS when the effect is to reduce bulk and when review of the action is not impeded. This CEQ provision further states that material incorporated by reference must be reasonably available for inspection by interested persons within the time allowed for comment. Petitioners' explanation of this citation is limited to referring the reader to the discussions in Contentions 1 and 2. No attempt is made to provide a nexus between this provision (which, as noted above, is not applicable to Duke's submittal in this proceeding) and the application. This purported basis is deficient as a matter of law because it is impermissibly vague and because it fails to raise the existence of a dispute on any material issue of law or fact. For the reasons discussed under those proposed contentions, nothing provided by Petitioners supports the theory that the application fails to comply with NEPA or is incomplete.

In sum, proposed Contention 3 must be rejected. This contention is premised upon inapplicable legal citations, fails to state a specific defect with respect to Duke's compliance with NEPA or 10 C.F.R. Part 51, and is comprised only of vague assertions in the "basis" statement that lack factual support. The Commission has emphasized strict adherence to Section 2.714(b)(2). CLI-98-12, slip op. at 7-8. This proposed contention does not meet that threshold.

E. Proposed 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 materials 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.*

This proposed contention must be rejected as a matter of law. It raises matters specifically and explicitly outside the scope of the license renewal application and this proceeding. The proposed contention raises generic issues related to storage, transportation and ultimate disposal of high level waste, including the availability of a disposal site. The NRC has addressed these issues on a generic basis in its Waste Confidence rulemaking, eliminating any need for consideration of these matters in specific operating license or license renewal proceedings. See 10 C.F.R. §§ 51.23 and 51.53(c)(2).

The NRC, in the Waste Confidence rulemaking, has made a generic determination that:

> if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations . . . .
>
> There is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to

> dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time.

10 C.F.R. § 51.23(a) (emphasis added).[18/] In addition, in establishing its rules for environmental review of license renewal applications, the NRC specifically reiterated its belief that "there is sufficient understanding and experience with the storage of [low level waste] and [high level waste] to conclude that the waste generated at any plant can be stored safely and without significant environmental impacts. . . ." See 61 Fed. Reg. 66537, at 66537-38 (Supplementary Information accompanying the final rule on environmental review for renewal of nuclear power plant operating licenses).[19/]

Likewise, these matters have also been addressed as part of the Generic Environmental Impact Statement for license renewal, NUREG-1437 (as referenced in the Commission's delegation order discussed above). These matters do not require plant-specific environmental review by the NRC. 10 C.F.R. § 51.95(c). The conclusions of the NRC's generic environmental review are documented in Part 51, Appendix B to Subpart A. Consistent with the Waste Confidence determination, Table B-1, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," includes specific findings on offsite radiological impacts of spent fuel and high level waste disposal, low level waste storage and disposal, mixed waste storage and disposal, and on-site spent fuel storage. In all cases the potential environmental impacts have been determined to be "small." Transportation impacts are similarly addressed in Part 51, Table S-4. Nothing in the

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18/ See also 49 Fed. Reg. 34658 (Aug. 31, 1984); 55 Fed. Reg. 38472 (Sept. 18, 1990).

19/ Compare Pacific Gas and Electric Co. (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993) and Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 107-110 (1990) (both rejecting similar waste storage contentions in proceedings on amendments extending the term of plant operation by means of "construction period recapture").

proposed contention challenges these generic conclusions or supports the asserted need for further plant-specific environmental review.

Moreover, there is on-site spent fuel storage at the Oconee site in an independent spent fuel storage installation ("ISFSI") separately licensed by the NRC under 10 C.F.R. Part 72. The current fuel storage in the Oconee ISFSI is licensed under either a site-specific Part 72 license or a general license under Part 72, Subpart K. Both the specific and general licenses are completely separate from the Oconee Nuclear Station operating license and, as such, are completely separate from this operating license renewal proceeding. To the extent that those fuel storage licenses ever require modification over the course of the operating life of the fuel storage facility, Duke will follow the applicable processes of Part 72. These are not matters properly within the scope of this proceeding.[20/] In sum, the proposed contention must be rejected as a matter of law.

V. REQUEST FOR STAY

Petitioners, in their supplemental filing of October 30, 1998, also request (Petition, at p. 5) that "these proceedings be stayed" and that CRWC be "given at least 90 days after the Applicant has filed its responses to the Requests for Additional Information to file a Supplemental List of Contentions." This request should be summarily denied as contrary to substantial Commission precedent and guidance.

In its September 15, 1998 delegation Order in this matter, the Commission established milestones for the conclusion of significant steps in this proceeding. The very first milestone is that,

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[20/] In addition, there is spent fuel stored in the Oconee spent fuel pools. This is licensed under 10 C.F.R. Part 50, subject to the Part 50 amendment process.

within 90 days of the date of the order, the Licensing Board will reach a decision on intervention petitions and admissibility of contentions. CLI-98-17, slip op. at 5. A stay of the type requested by Petitioners would be completely contrary to the Commission's expectations. While the Commission did not preclude supplemental, "late-filed contentions" based on subsequent developments -- if the petitioners can meet the standards of 10 C.F.R. §§ 2.714(a)(1)(I)-(v) -- the Commission clearly expects this proceeding to move forward based upon the application that has been submitted by Duke.[21/]

In support of their suggestion that they be given more time in which to submit contentions, Petitioners make much of the fact that the volume of material that should be reviewed to develop proposed contentions is quite large (millions of pages, by their calculation). In addition to Duke's license renewal application, Petitioners assert (Petition, at p.2) that the Final Safety Analysis Report, the Crisis Management Implementation Procedures, the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, the Oconee Nuclear Station Emergency Plan, and 10 C.F.R. Part 2, plus 76 file cabinets of unspecified additional documents, must also be reviewed. Petitioners argue (Petition, at p. 3) that "under the current expedited timelines, meaningful public review is severely compromised, and in some cases may be impossible."

These complaints are ill-founded and inadequate. First, Petitioners make no effort to show the relevancy of some of the material cited, or the relevancy of the material in the unspecified 76 file cabinets, to this proceeding. If this material is not relevant to license renewal (and clearly

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[21/] Petitioners' stay request also ignores the reasonable schedule previously established by the Licensing Board in this proceeding, as well as the Board-established standard for requesting an extension of time. (See the September 18, 1998 initial Order, slip op. at p. 8.) These scheduling orders are the law of this case and may not be ignored.

much of it is not), then its volume is immaterial and does not support a request for additional review time. Moreover, with respect to the relevant application here, Petitioners' complaints concerning the volume of Oconee-related documents ignore the pivotal fact that the license renewal *application* has been publicly available for at least four months. See 63 Fed. Reg. 37909 (July 14, 1998).

Second, it is well-established that those who invoke the right to participate in a formal NRC proceeding -- including would-be intervenors -- are deemed to have accepted "the obligations attendant upon such participation."[22/] Thus:

> an intervenor in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material. Statements that such material is too voluminous or written in too abstruse or technical language are inconsistent with the responsibilities connected with participation in Commission proceedings and, thus, do not present cognizable arguments.

Catawba, CLI-83-19, 17 NRC at 1048. Simply because a task is difficult does not constitute a valid basis for delay.

Additionally, it is well established that petitioners in NRC licensing proceedings are required to base their proposed contentions on *the application itself.* For this reason, these Petitioners are not allowed to delay submittal of proposed contentions pending the availability of other NRC documents or reports, or the applicant's responses to Requests for Additional Information, or pending the availability of discovery. See Catawba, CLI-83-19, 17 NRC 1041, 1048.

22/ Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983), citing Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897 (1982).

This principle was also discussed in the Supplementary Information accompanying the 1989 revisions to the NRC's procedural requirements of 10 C.F.R. § 2.714. The Commission stated:

> The Commission also disagrees with the comments that § 2.714(b)(2)(iii) should permit the petitioner to show that it has a dispute with the Commission staff or that petitioners not be required to set forth facts in support of contentions until the petitioner has access to NRC reports and documents. Apart from NEPA issues, which are specifically dealt with in the rule, a contention will not be admitted if the allegation is that the NRC staff has not performed an adequate analysis. With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC staff performance. *See, e.g., Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807, *review declined,* CLI-83-32, 18 NRC 1309 (1983) [footnote omitted]. For this reason, and because the license application should include sufficient information to form a basis for contentions, we reject commenters' suggestions that intervenors not be required to set forth pertinent facts until the staff has published its FES and SER.

54 Fed. Reg. 33168, 33171 (1989). For all of these reasons, the Petitioners' request for a stay is legally inadequate and must be rejected.

VI. CONCLUSION

For the reasons set forth above, the Petitioners have failed to propose a contention admissible in this proceeding. Accordingly, the request for hearing should be denied.[23/] In addition, for the reasons set forth above, the Petitioners have failed to meet the applicable standards for a stay of the proceeding and for more time to prepare further proposed contentions. Accordingly, such requests should also be denied.

Respectfully submitted,

J. Michael McGarry, III
David A. Repka
Anne W. Cottingham

WINSTON & STRAWN
1400 L Street, NW
Washington, D.C. 20005-3502
202/371-5726 or 202/371-5724

Paul R. Newton
Lisa F. Vaughn
DUKE ENERGY CORPORATION
422 South Church Street
P.O. Box 1244
Charlotte, North Carolina 28202

ATTORNEYS FOR
DUKE ENERGY CORPORATION

Dated in Washington, D.C.
This 16th day of November, 1998

[23/] Petitioner CRWC has also failed to meet the standards for organizational standing.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "RESPONSE OF DUKE ENERGY CORPORATION TO SUPPLEMENTAL PETITION TO INTERVENE FILED BY CHATTOOGA RIVER WATERSHED COALITION AND NORMAN "BUZZ" WILLIAMS, WILLIAM "BUTCH" CLAY, AND WILLIAM "W.S." LESAN" in the above captioned proceeding have been served upon the following by electronic mail or facsimile as noted, with conforming copies and additional service deposited in United States Mail, first class, this 16th day of November 1998.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Chief Administrative Judge
B. Paul Cotter, Jr., Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Two White Flint North, 3rd Floor
11545 Rockville Pike
Rockville, MD 20852-2738
(E-mail copy to bpc1@nrc.gov)

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Two White Flint North, 3rd Floor
11545 Rockville Pike
Rockville, MD 20852-2738
(E-mail copy to rfc1@nrc.gov)

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Two White Flint North, 3rd Floor
11545 Rockville Pike
Rockville, MD 20852-2738
(E-mail copy to psl@nrc.gov)

Marian L. Zobler
Robert M. Weisman
Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
(E-mail copies to mlz@nrc.gov
and rmw@nrc.gov)

Norman "Buzz" Williams
190 Mountain Cove Rd.
Mountain Rest, SC 29664

William "Butch" Clay
P.O. Box 53
Long Creek, SC 29658

W.S. Lesan
P.O. Box 66
Long Creek, SC 29658

Chattooga River Watershed Coalition
P. O. Box 2006
Clayton, GA 30525
(facsimile copy to (706)782-6098; e-mail copy
to crwc@acme-brain.com)

Adjudicatory File
Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Office of the Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
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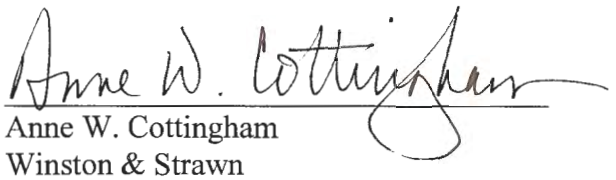

Anne W. Cottingham
Winston & Strawn
Counsel for Duke Energy Corporation