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SUBJECT: Response in opposition to Carolina Environ Study Group 800529 proposed elements of fact & conclusions of law toward initial decision.No good reason presented for not approving application re spent fuel shipment.W/Certificate of Svc.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Duke Power Company	)	Docket No. 70-2623
	)	
(Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage At McGuire Nuclear Station)	)	

APPLICANT'S RESPONSE TO "CESG'S PROPOSED ELEMENTS OF FACT AND CONCLUSIONS OF LAW TOWARDS AN INITIAL DECISION"

On May 29, 1980, Carolina Environmental Study Group ("CESG") filed its "Proposed Elements Of Fact And Conclusions Of Law Toward An Initial Decision" ("CESG's Proposed Elements") in the captioned proceeding. Therein, CESG addressed for the most part five issues: (1) Fuel Cask Integrity, (2) Consideration of Alternatives, (3) Radiation Doses, (4) Cask Drop Analysis, and (5) Sabotage. Pursuant to 10 CFR §2.754 and consistent with the schedule approved by this Atomic Safety and Licensing Board ("Licensing Board") (Tr. 4117-8) Applicant submits the following response.

I. General Comments

A. CESG's Compliance With Commission Rules Of Practice.

Applicant maintains that CESG's filing is not in compliance with the provisions of 10 CFR §2.754(b) and (c)

in that, inter alia, such filing does not contain record citations for many of the purported facts contained therein (e.g., page 10, representative of CESG's filing, contains approximately 7 purported facts with no record citations). In addition, and more significantly, as is shown in the following representative examples taken also from page 10 of CESG's filing, CESG attempts to introduce new evidence not contained in the record.

- Page 10, lines 11 and 12: "The DC-10 in Chicago in May, 1979, does not support this thesis, nor do other unusually severe accidents." There is no support in the record for this statement.

- Page 10, lines 24-27: "It would seem reasonable to increase total dose in this case by a factor of at least ten thousand to allow for distances down to 1m and of the order of 10 persons so exposed (Staff Ex. 3, 6.1.3, Table 6-2)." The record citation does not in any way speak to the proposition stated. Indeed, this position is not in the record.

In addition, CESG, in many instances, has misquoted the record with respect to significant facts contained therein. For example, on page 11 of CESG's Proposed Elements, CESG cites Table 6-3 of Staff Exhibit 3 for support of the statement that the maximum individual will receive a "bone dose commitment" of 11,000 man rem. However, Table 6-3 reflects that the maximum individual bone dose commitment is 11,000 mrem, not 11,000 man-rem as stated by CESG. Further, this is not an annual dose, but rather a 50 year bone dose commitment, which averages to approximately 0.22 rem per year.

In addition, CESG has on numerous occasions cited sources which are not part of the record (e.g., CESG's Proposed Elements at p. 18 wherein CESG cited the Affidavit of Donald J. Kasun and the Further Supplemental Testimony of Lionel Lewis, both of which are not in the record).

Due to CESG's failure to give record citations to its purported facts, Applicant maintains that all such statements of fact should be disregarded by this Board. See Kansas City Power & Light Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-424, 6 NRC 122, 127 (1977); Consolidated Edison Co. v. New York, Inc. (Indian Point Station, Unit No. 2), ALAB-159, 6 AEC 1001 (1973).

B. The Atomic Energy Act Preempts State And Local Action.

CESG notes that limited appearance statements from approximately 20 persons, some representing local governing organizations, were in opposition to the proposed action. (CESG Proposed Elements at pp. 2-3). CESG submits that this Licensing Board should take into consideration these opinions in forming its Initial Decision. (Id. at p. 3). Applicant notes that the primary concern of these individuals is related to accidents and the radiological consequences

thereof. 1/ As noted herein, and in Applicant's Proposed Findings at pp. 40-42 and 53-55, the radiological consequences of the proposed action, to include hypothetical accidents, are negligible. Thus, Applicant submits that such concerns have been considered and found to be unwarranted.

In the event the limited appearance statements are to be read as requiring that federal law yield to local resolutions, such are misplaced. The criteria for issuing or denying licensing amendments, such as requested here, are clearly set forth in the Atomic Energy Act of 1954 and Commission regulations. Once an Applicant has exhibited that these requirements have been satisfied, as is the case here, the license must issue notwithstanding local actions regarding the plant in question. To hold otherwise would frustrate the policies and intent of Congress. See Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971) wherein the court stated:

> . . . we hold that the federal government has exclusive authority under the doctrine of preemption to regulate the construction and operation of nuclear power plants. . . [447 F.2d at 1154.]

See also Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission, CV S-78-527-R, ___ F.Supp. ___ (E.D. Cal. April 23, 1980).

1/ To the extent that such individuals seek resolution of the waste storage issue, as advanced by CESG (CESG's Proposed Elements at pp. 1-3), Applicant notes that the appropriate forum for such resolution is the ongoing rulemaking actions regarding such issues. See Waste Confidence Rulemaking, PR-50, 51 (44 Fed. Reg. 61372).

C. Expert Opinion.

In its Proposed Elements, CESG emphasizes that the calculations and judgments of Applicant and Staff witnesses are simply "conjecture" (e.g., CESG's Proposed Elements at p. 3, 4, 5, and 10). Rather than being mere conjecture, the testimony referenced by CESG is that of expert witnesses and is to be considered accordingly.

II. Specific Commments

A. Fuel Cask

While CESG maintains that "it appears quite likely that if the proposed action is taken that no cask will be damaged to the point of causing release and that the quality of the human environment will not be significantly affected," CESG notes that this conclusion is simply conjecture. (CESG Proposed Elements at p. 4). Notwithstanding Commission regulations, which if complied with permit transportation of spent fuel, CESG still asserts that transportation of spent fuel is inherently unacceptable due to the risks associated with doses resulting from normal transportation and possible releases of radioactive material due to hypothetical accident conditions. (CESG's Proposed Elements at pp. 10 and 11). To the extent that CESG maintains that transportation of spent fuel is inherently unacceptable, Applicant maintains that such a position is an impermissible attack on Commission regulations and their underlying bases. (10 CFR

§2.758). (See Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and2), ALAB-281, 8 AEC 79, 88-89 (1974)).

In any event, Staff's and Applicant's testimony clearly establish that transshipment in spent fuel shipping casks, even in severe accident conditions, does not present a significant risk to the public. (Applicant Exhibits 12 and 24; Staff Exhibits 3, 6, 9, 10A, 21 and 37; and Tr. 1408-9, 1413-16, 1446-7 and 1429-31). In short, there is no merit to CESG's position that the proposed action should be denied due to the inordinate risk associated with transshipment.

B. Consideration Of Alternatives

With respect to consideration of alternatives, CESG maintains that the physical expansion of the Oconee unit 3 spent fuel pool and construction of an independent spent fuel storage facility at the Oconee site should be given favorable consideration. 2/ With regard to alternatives, Applicant maintains that where, as here, the proposed action will have a negligible impact upon the environment, there is no requirement to consider such alternatives. (See Applicant's Proposed Findings at pp. 27-28). In any event, with

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2/ CESG cites CESG's Exhibit 5 at p. 3 for the proposition that "favorable consideration for this choice [physical expansion of spent fuel pool 3] and the availability of materials were advanced by CESG." (CESG's Proposed Elements at p. 5). However, the testimony contained in the record citation regarding this position was not admitted as evidence because it was argumentative and not within the knowledge of CESG's witness. (Tr. 2384-2387).

regard to physical expansion of the Oconee unit 3 spent fuel pool, Applicant submits that such expansion is technologically not feasible. (See Applicant's Proposed Findings at pp. 48-49). With regard to construction of a separate independent spent fuel storage installation ("ISFSI") at Oconee, Applicant submits that such an alternative is not preferable to the proposed action in that, inter alia, it is not economically practicable, may not be needed, and will not lessen the number of spent fuel transfers to be accomplished. (See Tr. 4771 and Applicant's Proposed Findings at pp. 30-32, and 49-50). 3/

CESG also maintains that the initiation of efforts regarding construction of an ISFSI or physical expansion of the Oconee unit 3 spent fuel pool does not need to proceed until approximately 1985 due to the feasibility of reracking the two Oconee spent fuel pools with poison racks. (CESG Proposed Elements at pp. 6-8). Further, CESG maintains that such actions can be taken without offsite transshipment as proposed here. With respect to Oconee units 1 and 2 pool, Applicant submits that it is probable that such reracking

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3/ Applicant would note that, in the event the poison reracking presently comtemplated for Oconee Unit 1 and 2 spent fuel pool is not approved or is delayed (like the instant transportation option), construction of an ISFSI could not be a timely alternative to prevent the shutdown of the Oconee units due to lack of spent fuel storage space. (See NRC Staff Exhibit 30 at table entitled Alternatives For The Storage Of Oconee Spent Fuel).

can occur without offsite transshipment. 4/ With respect to Unit 3, Applicant and Staff maintain that reracking of Oconee unit 3 spent fuel pool with poison racks cannot be implemented without offsite transshipment of spent fuel. (Tr. 3480-82, Applicant Exhibit 30 at pp. 2-3, and Staff Exhibit 36 at pp. 4-5). Applicant's position is based on the facts that (a) the Oconee unit 3 pool must be empty prior to installing poison racks (Tr. 3480-82 and 4752), and (b) there is insufficient storage space available in the Unit 1 and 2 pool to accomodate the assemblies currently in the Unit 3 pool and those being discharged from the three units. (Applicant's Exhibit 31, Tr. 3480-82, Tr. 4770). With regard to this, the critical factor is the time required to transfer the assemblies from the unit 3 pool to the unit 1 and 2 pool. Applicant testified that the maximum rate of transfer of spent fuel assemblies ever achieved between the Oconee units was 30 assemblies per month. (Tr. 4753 and 4782). This rate was achieved during the period of unloading the Oconee Units 1 and 2 pool to prepare for installation of high density racks. (Id.) Applicant maintains that this maximum of 30 assemblies cannot be sustained on a

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4/ Applicant, however, submits that if the instant action is not approved and issuance of a licensing amendment regarding poison racks for Oconee Units 1 and 2 pool, or installation of such poison racks, is significantly delayed, the Oconee units will be forced to shutdown for lack of spent fuel storage space. (Applicant's Exhibit 30 at pp. 2-3).

continual basis; thus, Applicant maintains that a reasonable sustained transfer rate of assemblies between the Oconee pools is 25 per month. (Tr. 4782). Considerations regarding this transfer rate includes maintenance of equipment required in such transfers (Tr. 4799), increased decontamination problems (Id.), and plant scheduling problems regarding equipment and personnel (Tr. 4754). In addition the Licensing Board noted the potential safety consequences involved with attempting to accelerate the transfer schedule beyond that which is reasonable. (Tr. 4789). Despite this testimony, CESG attempts to advance the argument that 37-50 transfers per month is reasonable. (CESG's Proposed Elements at p. 7). In that CESG's witness has not conducted any time motion studies with respect to spent fuel shipments, nor has he any personal onsite experience in movement of spent fuel casks (Tr. 5112-3), CESG must rely on the record advanced by Applicant and Staff for such support. As previously noted, the record does not bear out CESG's assertion. 5/

C. Radiation Exposure

With regard to issues involving radiation exposure as advanced by CESG's Contention 2 and contained in CESG's

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5/ CESG stated that at Tr. 4754 Applicant testified to an 8-hour loading time for spent fuel casks. Applicant notes that this transcript citation does not support CESG's position.

Proposed Elements at pages 8-12, Applicant readvances its positions as expressed in its Proposed Findings at pages 40-42 and 51-55. In addition, Applicant notes the following specific comments relative to this section of CESG's filing:

(1) Page 8, lines 17-24: CESG states that the Staff did not consider the 16 man-rem estimated dose to the drivers for the 300 trips as "being non-significant." CESG states that such dose is equivalent to 40 years of exposure to 4 persons at the locally prevailing natural radiation level of 100 mrem per year. 6/ Applicant notes that the NRC Staff has extensively evaluated occupational exposure and concluded that the environmental impact associated with the proposed action is negligible. (Staff Exhibit 3 at p. 59). Further, with respect to this particular dose, the Staff states that "experiences indicated that the calculations tend to overestimate actual cumulative exposure." (Staff Exhibit 3 at p. 30). In addition, it is clear that the 16 man-rem cumulative dose is equivalent to less than the annual occupational dose limit for four individuals as set forth in 10 CFR Part 20.

(2) Page 8, line 25 through page 9, line 10: CESG cites several NRC Staff calculations concerning exposures of

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6/ Applicant notes that the natural radiation background level in North Carolina is approximately 145 mrem per year, and in South Carolina is approximately 135 mrem per year. (Tr. 1407).

various individuals and groups resulting from approval of the proposed action. Applicant notes that in each case, the underlying assumptions upon which these calculations were based are extremely conservative. (See Staff Exhibit 3 at pp. 30-32). Furthermore, the evidence clearly shows that, in terms of health effects, the doses associated with the transportation activity are insignificant. (Applicant Exhibit 12 and 14; Staff Exhibit 3 at pp. 30-43; Tr. 1446-7).

(3) Page 9, lines 11-20: With regard to the radiation dose of a "tailgater" following the cask, CESG states that the dose depends upon, inter alia, the source term assumed. CESG assumes that the spent fuel cask is a point source. (See CESG Exhibit 6 at p. 6; and Tr. 2454-5). Based on this assumption the dose varies as the inverse of the square of the distance from the assumed point source. (Id.). While CESG's assumption may be valid for large distances from the cask (i.e., where the cask would act as a point from which radiation is eminating), it is obvious that for closer distances the cask would not act as a point source and the inverse square law would not hold. (CESG Exhibit 5 at p. 6). The practical effect of CESG's error would be to reduce significantly CESG's calculated dose of 36 mrem as the exposure of a tailgater following the cask for four hours. In addition,

CESG's calculations in regard to a tailgater are based upon travel on a two lane road. (CESG Exhibit 5 at p. 9 and Tr. 2434). CESG admits that with respect to the proposed route the length of two lane roads would require only approximaely 1 hour to traverse. (Tr. 2435). Thus, CESG admits that its assumption that a tailgater would remain behind a truck for four hours is unrealistic and, as such, acknowledges that its estimate of 36 mrem is overstated by a factor of four. (Tr. 2434-36). Further, Applicant questions the validity of the assumption used by CESG that a car with four occupants would, or even could, tailgate a truck with clearly distinguishable warning signs thereon such that the occupants of the car are less than one car length (10 feet) from the end of the cask.

(4) Page 9, lines 22-26: CESG asserts that the 30 meter figure used by Staff as the distance of the maximum individual from the roadway was in error. However, CESG has never measured the distances. (Tr. 2429). Further, Staff witnesses testified that the 30 meter figure was valid. (Tr. 1540-41). In any event, the Applicant testified that even if dose estimates regarding the proposed action were 10 times higher than estimated it would not alter their conclusions that the total risk and risk to any one individual is very small and for all practical purposes zero. (Tr. 1408-9).

(5) Page 9, line 26, through page 10, line 3: CESG alleges that "realistic worst case distances would increase dose about one hundred-fold to about 20-50 man rem." Applicant notes that there is no support in the record for this proposition. Indeed, Applicant cannot determine the dose to which CESG is referring. 7/ Further, CESG's statement of general concern about environmental degradation is without supporting facts on the record showing any such degradation. Indeed, the record reflects that the transportation activity will not pose a significant adverse impact to the environment. (NRC Staff Exhibit 3 at p. 65).

(6) Page 10, lines 15-18: CESG questions the validity of the 100 meter distance for dispersal of gasses leaking from a hypothetically damaged cask. Applicant notes that CESG's record citation does not support the proposition for which it is cited. In addition, there is no support in the record for CESG's position that gasses, if released, would not be dispersed for more than 100 meters before impacting upon an individual. In

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7/ While it appears that CESG is referring to the 100 feet distance of the maximum individual, this does not fit CESG's end figures. To illustrate, increasing the dose by a factor of 100 for the maximum individual previously assumed to be 100 feet from the route and present for all 300 shipments, only increases his dose from 0.02 mrem to 2 mrem, or from approximately 0.02% of the annual background dose to approximately 2% of such dose. (Staff Exhibit 3 at p. 31).

addition, Applicant notes, and CESG is aware (CESG's Proposed Elements at p. 16), that such gasses would be very hot and thus, if released, would rise and disperse rapidly. In any event, Applicant notes that even assuming all such gasses are released instantaneously, and making other very conservative assumptions, the maximum individual would receive a dose on the order of only 1×10^{-4} mrem. (Staff Exhibit 3 at p. 34). Such a dose does not pose a significant environmental impact. (Id.)

(7) Page 10, lines 18-21: CESG raises the radiological consequences of loss of the "neutron shield" water and questions its effects on an individual 1 meter from the cask. Applicant notes that CESG's record citation does not support the proposition for which it is cited. It is clear that loss of such water "would cause no release of radioactive material." (Staff Exhibit 3 at p. 34). However, loss of enough water could result in a decrease in the neutron shielding and thus result in a dose rate of 0.6 mrem per hour at 10 meters. (Staff Exhibit 3 at p. 35). CESG questions the potential dose of an individual 1 meter from the cask. There is no support in the record that this assumption would be valid. In addition, Applicant notes that the new

Commission regulations regarding security requires continual surveillance of the cask when stopped. (10 CFR §73.37(b)(9)). Such surveillance should assure that this situation does not arise.

(8) Page 10, lines 21-29: CESG questions the NRC assumption that the maximum individual will be 100 meters from the scene of a cask accident caused by a collision and a substantial fire. (Staff Exhibit 3 at p. 35). CESG implies that the crew and emergency response personnel will be closer and, thus, the doses calculated should be increased by at least ten thousand. Applicant notes that there is no basis in the record for CESG's statements. NRC's assumption was based on exposure to the general population, and not occupational workers. (See Staff Exhibit 3 at p. 35 wherein the Staff states "[P]ostulated doses to the public . . . would be negligible." (emphasis supplied)). With regard to occupational workers, dose limitations as contained in 10 CFR Part 20, and with regard to accidents, explained in 10 CFR Part 100.11 note 2.

(9) Page 11, lines 13 through the end of the page: CESG attempts to point out differences in Applicant's analysis of the risk associated with traffic accidents. With respect to such attempts, Applicant did consider the effects of varying population densities

depending on the actual densities around the route. (See Applicant's Exhibit 9 at p. A-13 and Applicant Exhibit 22 at p. 2). Applicant notes that there is no testimony in the record which supports CESG's assertions that (a) the water supply can be contaminated by release of radioactive material from a cask, (b) the incidents of tractor trailor turnovers are high at any point along the proposed route, or (c) a specific bridge on the proposed route is particularly susceptible to icing problems. Thus, Applicant submits that CESG has no basis for asserting that such should receive special consideration.

D. Cask Drop Analysis

With regard to issues involving the cask drop analysis (amended CESG Contention 2; Tr. 4181), Applicant re-advances its position as expressed in its Proposed Findings at pp. 55-61. In addition, Applicant notes the following specific comments with respect to this section of CESG's filing:

(1) Page 12, lines 14-16: CESG states that administrative controls as proposed by Applicant and Staff will not prevent a cask drop into the spent fuel pool. As Applicant has set forth in its Proposed Findings, its detailed analysis demonstrates that the cask will not fall into the pool. (Applicant Exhibit 28; Tr. 4339-41. See also, Applicant's Proposed Findings at pp.

55-61). No credible evidence has been presented to the contrary. Further, Applicant submits that use of adminitrative control is but one of the levels of safety in preventing a cask tiping incident.

(3) Page 13, lines 5-10: CESG makes several statements regarding the results of its model. Applicant submits that the significant differences in the crude model presented by CESG and the actual cask and walls it was attempting to model casts such doubt on CESG's test that it should be accorded little weight. (Tr. 4877-84). Although CESG implies that Applicant's engineering analysis with respect to the cask tipping incident (Applicant's Exhibit 28) "ignores significant factors and makes inaccurate assumptions," CESG does not note any specific deficiencies in Applicant's analysis. CESG's reference to the Sandia Laboratory report has no bearing on CESG's model.

(4) Page 13, 14 and 15: CESG makes numerous assertions regarding criticality considerations in the event of a hypothetical cask drop which falls into the spent fuel pool. Applicant notes that many of CESG's purported facts have no record citations or are referenced to material outside the record. In any event, with regard to such assertions, Applicant readvances its discussion of this subject contained in Applicant's Proposed Findings at pp. 55-61.

E. Sabotage

CESG in page 15-18 of its Proposed Elements attempts to advance a contention relating to sabotage of a spent fuel shipment. Applicant notes that this Licensing Board has previously denied CESG's request to add a sabotage contention. (Tr. 1259). Further, this Board stated that it will not permit CESG to ride the coattails of NRDC's sabotage contention when, as here, NRDC has chosen not to pursue the contention. (Tr. 1259). In any event, NRDC's contention was limited to whether Applicant demonstrated compliance with the appropriate regulations regarding spent fuel shipment security. (Tr. 343). This is not CESG's concern here. CESG appears to be advancing the position that regardless of the regulations, spent fuel shipments are unsafe due to potential sabotage, and, thus should not be permitted. Applicant is mindful of this Board's position with respect to this issue:

> We will indicate also that we are not going to engage in any interpretation of procedural maneuvering which could result, in effect, upon a challenge to the regulations. (Tr. 1257).

In short, Applicant submits that CESG's position constitutes an impermissible attack on the Commission's regulations, 10 CFR §73.37. (10 CFR §2.758).

In any event, with respect to CESG's filing regarding sabotage, the majority is simply purported facts stated by CESG which are not in the record (e.g., pages 16, 17 and 18).

F. Conclusion

From the foregoing, Applicant maintains that each contention raised by CESG has been properly addressed and resolved on the record, and that no good reason has been presented for not approving the instant application.

Respectfully submitted,

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June 13, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Duke Power Company	)	Docket No. 70-2623
	)	
(Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage At McGuire Nuclear Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response To 'CESG'S Proposed Elements Of Fact And Conclusions Of Law Towards An Initial Decision'" dated June 13, 1980, in the above-captioned matter have been served upon the following by deposit in the United States mail this 13th day of June, 1980:

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