UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

IN THE MATTER OF DUKE POWER COMPANY (Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage at McGuire Nuclear Station)	Docket No. 70-2623

NRC STAFF RESPONSE TO THE COMMISSION'S INQUIRY OF SEPTEMBER 12, 1979

I. INTRODUCTION

Following oral argument before the Commission in this proceeding on the question of public disclosure of route information, the Commission by inquiry dated September 12, 1979 raised three matters on which it sought further information from the parties.[1/] The NRC Staff presents its views on these questions seriatum.

II. DISCUSSION

The Commission first inquired what benefit is gained by protecting route information when large, well-marked trucks moving by day are to make 300 shipments over the routes within a 1-year period. To respond to this inquiry, some background as to the timing of the 300 shipments proposed to be made from the Oconee facility is necessary.

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1/ The background of this matter was set out fully in the NRC Staff's Petition to the Commission for review, dated September 7, 1979. Subsequent to the filing of that petition, the Commission by Order of September 7, 1979 scheduled oral argument on the matter for September 10, 1979.

In the proceeding before the Licensing Board, Duke contends that it will lose its full-core reserve (FCR) capability at the Oconee facility in September, 1982 (Tr. 842).[2/] Given that spent fuel shipments can be made at the rate of one per day (Tr. 3131) and given that a discharge batch at the Oconee facility will average approximately 60 fuel assemblies in size (Affidavit of Brett S. Spitalny and John P. Roberts, p. 2, following Tr. 3844), shipments of spent fuel would of necessity have to commence approximately two months prior to the critical dates of September, 1982 and September, 1983 in order to avoid either the loss of FCR capability or a plant shutdown. Subsequent spent fuel shipments would have to be initiated approximately two months prior to subsequent fuel off-loadings at the Oconee facility. Transshipment of 300 spent fuel assemblies would alleviate the Oconee fuel storage problem for approximately 2 years (Tr. 528) and so transshipment campaigns could extend to either 1984 or 1985 depending on whether or not an FCR capability is retained. Thus the time interval over which spent fuel shipments could occur can be a lengthy one extending from the point at which authorization is granted into either 1984 or 1985 depending on the retention of an FCR capability.

Consequently, while it is possible for all 300 shipments of spent fuel to occur in the space of one year, it is not necessary to so compress the

2/ FCR capability allows for off-loading of an entire core should circumstances so require. One of the issues in the proceeding below is whether such an FCR capability should be maintained by Duke. In the event that such a capability is deemed not necessary, the Oconee Units could continue operation for an additional year and would not face shutdown until September, 1983. (Tr. 842).

schedule. There is clearly considerable flexibility concerning when a specific spent fuel shipment is made. Specific spent fuel shipments could be varied within a wide margin subject only to the limitation that sufficient storage spaces be available at the Oconee facility to accommodate a discharge of spent fuel in either September of 1982 or September 1983 and at those later points in times when subsequent discharges occur.

Therefore, presuming a favorable Licensing Board decision in 1980, the time required for Duke to transship spent fuel assemblies and maintain the Oconee facility operational would be far exceeded by the time available in which to make such shipments. It would not be necessary to make such shipments on a daily basis and the shipment schedules could be adjusted to thwart efforts of saboteurs seeking to piece together the routes. For example, if there were indications of surveillance at Oconee in order to follow shipments and discover the specific routes, no shipments need to be made that day, that week, or even that month.

Other factors also support maintaining the confidentiality of these routes even given the visibility of the spent fuel shipments.[3/] There is a

3/ No argument relative to the security significance of the routing information was entertained by the Licensing Board. The question of whether routing information should be accorded confidential treatment was never reached below. However, the Staff was prepared at oral argument to present the route information to the Commission and to develop its security significance (Tr. 12;36). The Staff still feels that the Commission should consider this material in camera to be fully informed on the security significance of this information.

distinction to be made between routing information gathered by unknown sources of unknown realibility and presented to the public as fact and route information which is disseminated by the Nuclear Regulatory Commission with its official imprimatur. In the Staff's view, the latter information would provide greater incentive and a sounder basis for potential sabotage. Given the substantial effort a successful sabotage would entail, it is less likely that a saboteur would be inspired to act based on unofficial information.

Should a saboteur plan an effort directed at these spent fuel shipments he would likely find it necessary to establish or verify the route information. This would require some conspicuous activity such as extensive surveillance of the Oconee site and/or following the trucks, thus exposing himself to discovery.

Additional arguments support maintaining the confidentiality of the route information in this case. There are alternative routes available to Duke for the proposed shipments. Efforts to identify all the routes would be considerable, increasing the risk of discovery. A decision to release routing information in this case would be precedent-setting. There are circumstances, such as coast-to-coast spent fuel shipments, where efforts at route detection would be virtually impossible. The safeguards significance of maintaining the route information in confidence in such circumstances is clear.

In summary, it is the Staff's view that much is to be gained by protecting route information. Duke has available great flexibility in the timing of its spent fuel shipments. This flexibility can be of substantial aid in thwarting attempts on the part of others to ascertain and then disclose the route information.

Releasing route information would place a government imprimatur on information which otherwise would necessarily be of a doubtful and infirm nature unless personally developed by a potential saboteur. In this latter event, the saboteur would expose himself to discovery. And such exposure would be substantial given the number of alternate routes involved. Finally, consideration must be given to any precedents to be set in this area.4/

The Staff would note two additional points relative to the Commission's first inquiry. First, the concept that restricting general public access to specific route information is a unique and novel step is incorrect. The

4/ As the Commission is aware, specific route information relative to Category I shipments has always been held in confidence by the NRC Staff. In the future, such information will be classified CNSI. These shipments are also made in large placarded vehicles.

ICC requires carriers to maintain route information in confidence.[5/] To the extent that there is a need to know what these routes are as for example in the context of the ongoing Licensing Board proceeding there are procedures available for the handling of that situation. Second, the Staff has approached this entire question as one of implementing Commission policy. As was emphasized at oral argument 10 CFR Section 73.37 deals with safeguards information in general and routing information in particular and 10 CFR 2.790(d)(1) limits disclosure of such information. The Commission was informed of the implementation of this policy by the Staff on June 25, 1979.[6/]

5/ See Part II, Interstate Commerce Act, Section 222, Paragraph (e)

"It shall be unlawful for any motor carrier or broker engaged in interstate or foreign commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, broker, or person, or for any other person authorized by such carrier, broker, or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such motor carrier or broker for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used." (emphasis added).

6/ Memorandum for: Samuel J. Chilk, Secretary to the Commission, From: William J. Dircks, Director, Office of Nuclear Material Safety and Safeguards, Subject: SECY 79-278 and 278A Physical Protection of radiated fuel shipments SECY memorandum of May 25, 1979. (Marked as Staff Exhibit No. 23 in this proceeding.)

In response to the second Commission inquiry relative to the draft protective agreement, the Staff would suggest the following modification to the second sentence for the purpose of clarity.

> I will protect such information, including transcripts of in camera sessions at which such information is discussed so that it will at all times be under my control and cannot be read by anyone except a person who has executed an affidavit to the same effect as this one.

With regard to the third inquiry of the Commission concerning Duke's shipment schedule, Duke has indicated that it would to begin spent fuel shipments shortly after approval of its instant application and that the rates of shipment would be subject to a number of factors. (Tr. 7689).7/ However, as elaborated by the Staff above, Duke possesses considerable flexibility in conducting the spent fuel shipments and need not begin such shipments until approximately two months prior to losing FCR capability at Oconee which would occur in September of 1982.

7/ It should be noted that the casks which Duke originally proposed for use in transshipping, namely the Model No. NFS-4 casks, are presently subject to an Order to Show Cause issued in Docket No. 71-6698 on April 6, 1976 which removed this model from service.

Finally, the Staff would renew its offer to present to the Commission the route specific information in camera and to elaborate for the Commission the security significance of that information.

Respectfully submitted,

Richard K. Hoefling
Counsel for NRC Staff

William J. Olmstead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of September 1979.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO THE COMMISSION'S INQUIRY OF SEPTEMBER 12, 1979", dated September 14, 1979 in the above captioned proceeding, have been served on the following, by deposit in the united states mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 14th day of September, 1979:

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