

TERA

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) )

MOTION REQUESTING BOARD CONSIDERATION  
OF PROPOSED PRIMARY ROUTE

On June 15, 1979, the NRC promulgated an Interim Final Rule concerning physical protection regulations which, inter alia, required the submittal of transportation routes to the NRC for approval. The NRC indicated that these regulations were developed to minimize potential radiological consequences of sabotage of a spent fuel shipment. They are interim measures which would be in effect until results of confirmatory research relative to the estimated consequences resulting from a successful act of sabotage of spent fuel can be completed. 44 Fed. Reg. 34467 (June 15, 1979).

Pursuant to the newly enacted transportation regulations, the Applicant submitted five proposed routes. On August 3, 1979, the NRC approved three of these routes. <sup>1/</sup> One of the proposed routes that was not approved was the primary route identified by Applicant (I-85/I-77). This primary route was the subject of the NRC Staff's Environmental Impact Appraisal as well as the early

---

<sup>1/</sup> See Board Order of March 7, 1980 for an identification of these routes.

8004230012

phases of the hearings.<sup>2/</sup> On August 30, 1979, Applicant requested the NRC to reconsider the primary route. Copies of this request were furnished to the Board and parties. On September 7, 1979, the NRC stated that "the requirement for avoiding heavily populated areas as contained in 10 CFR 73.37(a)(3) can be abrogated only if it can be shown that no practicable alternative routes are available." The NRC was of the opinion that practicable alternate routes were available. Applicant does not dispute that there are alternative routes. However, Applicant maintains that the availability of alternate routes is not germane to the initial question, of whether the transportation activity transverses a heavily populated area. Indeed, 10 CFR 73.37(a)(3), the pertinent regulation in question, is applicable to only very limited situations. The regulation is premised upon a Sandia Laboratories study<sup>3/</sup> which suggested that "the sabotage of spent fuel shipments has the potential for producing serious radiological consequences in areas of high population density." 44 Fed. Reg. 34466, 34467 (June 15, 1979) The basis of the Sandia conclusion was a highly unlikely sabotage event in downtown New York City.<sup>4/</sup> Applicant maintains that the regulation was enacted to limit similar transportation activities, .e., driving into and through large cities

---

<sup>2/</sup> The primary route, which makes maximum use of the interstate system, is also described in the Board's Order of March 7, 1980, as Route No. 4.

<sup>3/</sup> SAND-77-1927, Transport of Radionuclides in Urban Environs: A Working Draft Assessment.

<sup>4/</sup> SAND-77-1927, pp. 157-249. Applicant, pursuant to 10 CFR 2.743(i) asks the Board to take official notice of Sandia's study, particularly the above referenced pages.

such as New York City and not the present situation, i.e., driving around Charlotte.<sup>5/</sup>

The bases for the Staff's action with regard to the primary route lies in the assumptions contained in its guidance document.<sup>6/</sup> Inasmuch as a guidance document is not legally binding,<sup>7/</sup> Applicant wishes to bring to the Board's attention other matters which warrant approval of the primary route. To accomplish this end Applicant filed testimony with the Board and parties specifying that the probability of successful sabotage is greater on the non-interstate roads utilized in the approved routes than on the interstate roads of the primary route.<sup>8/</sup> Applicant also plans to file population density testimony which supports the approval of the primary route. This testimony (i.e., probability and population density

---

<sup>5/</sup> In a recent presentation to the Commission the Staff acknowledged that shipment around Washington, D.C. on the interstate beltway would be permissible, but that shipment through Washington via 16th Street was not. See March 31, 1980 Transcript of In the Matter of: Physical Protection of Irradiated Reactor Fuel In Transit at pp. 5 and 32.

<sup>6/</sup> See NUREG-0561 entitled Physical Protection of Shipments of Irradiated Reactor Fuel, June 1979.

<sup>7/</sup> See Staff's March 28, 1980 Memorandum to the Commission concerning Physical Protection of Irradiated Reactor Fuel In Transit at pp. 23-24. Copies have been served on the Board and parties.

<sup>8/</sup> See Testimony of J. Mark Elliott filed September 4, 1979. Due to the issue that was raised as to the confidentiality of the routes, detailed discussion of routes was postponed. At the upcoming April 28, 1980 hearing, Applicant intends to introduce the testimony of Dr. Elliott and seek its admission as evidence. Dr. Elliott will be in attendance at the hearing.

information) when coupled with the fact that each of the Applicant's shipments will be comprised of a single element of at least 270 day cooled fuel as compared to the shipment comprised of three elements of 150 day cooled fuel assumed in the Sandia study, plainly shows that the primary route should be approved.

In the interest of efficient utilization of hearing time, Applicant formally requests that the Board permit the presentation of evidence with regard to the approval of the proposed primary route. If upon review of the evidence to be presented the approved route is found to be acceptable, Applicant would request a Board finding authorizing use of the proposed primary route, as well as the approved routes.

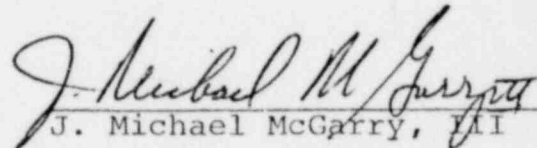
On March 31, 1980, the NRC Staff appeared before the Commission to propose that the Interim Final Route be amended. In pertinent part the NRC Staff proposed that the transit through heavily populated areas be permitted at the option of the licensee, if the licensee commits to additional vehicle protection measures (i.e., either maintaining a private armed escort vehicle both before and after the shipment or providing an armed escort inside the tractor and a law enforcement vehicle behind the tractor). The basis for this revision is a recognition of the preferability of use of the interstate system and the reduced likelihood that a successful sabotage would occur. Specifically, the Staff stated:

Compared with interstate highways,...secondary roads are characterized by a higher likelihood of conventional traffic accident, by longer times in

transit, by less frequent patrolling by the local law enforcement agency (LLEA), and by lengthened response times in the event that LLEA assistance is requested. See Staff March 28, 1980 Memorandum at p. 5.

If the Commission approves the amendments, Applicant would seek to comply with the amendments and therefore be entitled to use the primary route (i.e., Route No. 4). If such a circumstance eventuates prior to the hearing, it will be unnecessary for Applicant to introduce the referenced testimony. In this regard, the NRC Staff,<sup>9/</sup> as well as Applicant,<sup>10/</sup> has urged the Commission to give expeditious consideration to the proposed amendments. If the amendments are not approved by the hearing date, Applicant, with the Board's permission, will present appropriate testimony in support of the primary route.

Respectfully submitted,

  
J. Michael McGarry, III

DEBEVOISE & LIBERMAN  
1200 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 857-9800

April 4, 1980

Of Counsel

W.L. Porter  
Associate General Counsel  
DUKE POWER COMPANY

---

<sup>9/</sup> See NRC Staff March 28, 1980 memorandum to the Commission.

<sup>10/</sup> See Applicant's March 28, 1980 letter to the Commission, which was served on the Board and parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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 "Motion Requesting Board Consideration of Proposed Primary Route," dated April 4, 1980 in the above captioned matter have been served upon the following by deposit in the United States mail this 4th day of April, 1980.

Marshall I. Miller, Esq.  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mr. Jesse L. Riley  
President  
Carolina Environmental  
Study Group  
854 Henley Place  
Charlotte, North Carolina 28207

Dr. Emmeth A. Luebke  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Edward G. Ketchen, Esq.  
Counsel for NRC Regulatory  
Staff  
Office of the Executive Legal  
Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Cadet H. Hand, Jr.  
Director  
Bodega Marine Laboratory  
of California  
Post Office Box 247  
Bodega Bay, California 94923

William L. Porter, Esq.  
Associate General Counsel  
Duke Power Company  
Post Office Box 33189  
Charlotte, North Carolina 28242

Richard P. Wilson  
Assistant Attorney General  
State of South Carolina  
2600 Bull Street  
Columbia, South Carolina 29201

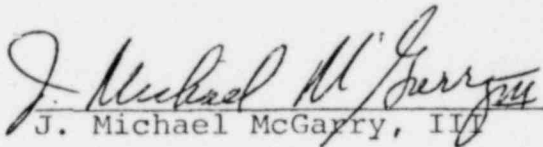
David S. Fleischaker, Esq.  
Natural Resources Defense  
Council  
1735 Eye Street, N.W., Suite 709  
Washington, D.C. 20006



Chairman, Atomic Safety and  
Licensing Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Chairman, Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mr. Chase R. Stephens  
Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

  
J. Michael McGarry, II