

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSIONERS

In the matter of	)	MARCH 22, 2002
Duke Energy Corporation	)	Docket Nos. 50-369-LR
McGuire Nuclear Station, Units 1 & 2	)	50-370-LR
Catawba Nuclear Station, Units 1 & 2	)	50-413-LR
	)	50-414-LR

REPLY OF BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE TO  
DUKE ENERGY CORPORATION AND NRC STAFF BRIEFS IN RESPONSE TO  
BREDL BRIEF OF FEBRUARY 27, 2002 IN RESPONSE TO  
COMMISSION MEMORANDUM AND ORDER CLI-02-06

**Part 1. Introduction**

This is the rebuttal of the Blue Ridge Environmental Defense League to the Reply of Duke Energy Corporation to Nuclear Information and Resource Service and Blue Ridge Environmental Defense League Briefs In Response To Commission Memorandum and Order CLI-02-06 (Duke Reply) filed on March 12, 2002 and the Nuclear Regulatory Commission Staff's Brief in Reply to Responses to CLI-02-06 (Staff Reply) filed on March 12, 2002. Both the Duke Reply and the Staff Reply were filed in response to BREDL's Brief of February 27, 2002 (BREDL Brief) filed per the Nuclear Regulatory Commissions Memorandum and Order of February 6, 2002 (CLI-02-06).

In their response, NRC Staff states that the attachments to BREDL's Brief of February 27 ought to be stricken because of page limitations. (Staff Reply at 3, footnote 7) The Commissions Order states, "page limitations are exclusive of pages containing a table of contents, table of cases, and any addendum containing statutes, rules, regulations, etc." (CLI-02-06) This unfair attempt by NRC Staff to undermine the public's ability to submit information critical to the matters before the Commission should be rejected out of hand.

**Part 2. NRC's Obligations Under the National Environmental Policy Act**

**2A. Plant Specific Impacts Must Be Addressed**

In their March 12 Reply, Duke argues that, "The NRC Is Addressing Heightened Plant Security Concerns and Need Not Analyze Plant Specific Environmental Impacts of Malevolent Acts Under NEPA." (Duke Reply at 2)  
First, in its Memorandum and Order of February 6, 2002, the Commission itself states,

“Finally, in LBP-02-04, the Board certified to the Commission the petitioners’ issues related to risks from acts of terrorism. Specifically, the Board certified to the Commission the question whether Duke Energy Corporation’s license renewal application for the four captioned facilities “has...realistically or fully analyzed and evaluated all structures, systems, and components required for the protection of the public health and safety from deliberate acts of radiological sabotage.” (CLI-02-06 at 1) (emphases added)

The Commission accepted the Board’s certification and directed the parties to submit briefs. We have complied with the Commission’s order. The order plainly directs submittal of information on plant-specific impacts of malevolent acts at the four Duke plants. In our brief filed February 27 in response to CLI-02-06, we addressed the potential impacts on many structures and components in order to define the problem outlined by the Commission.

Second, with regard to nuclear power plant license renewal and NEPA, as we stated in our Motion To Dismiss dated October 11, 2001, “The NRC cannot claim to have taken a hard look at environmental impacts required by the National Environmental Policy Act if it fails to make the fundamental safety determination of whether a proposed nuclear facility poses undue risk to public health and safety.” (See *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838; DC Cir. 1972 )

Third, contrary to Duke’s argument, our position on the failures of NRC to address security and terrorism issues is consistent. In our brief filed February 27, we called upon the NRC to initiate a broad-based assessment of these issues. Nowhere does BREDL state “NRC’s ‘preoccupation’ with security.” (Duke Reply at 3)

Fourth, although, as Duke argues, NRC may address some security and terrorism issues “outside the framework of NEPA,” (Duke Reply at 3) the law in sections 42 USC 4331(a) and 4332(2)(c) nonetheless directs federal agencies undertaking major actions to assess the impact of human activity on the environment. (BREDL Brief at 4) Moreover, NRC actions outside the framework of NEPA might include a 1999 petition for rulemaking, brought by the State of Nevada under 10 CFR 73, which seeks to amend 20 year old outdated regulations for the protection of shipments of nuclear fuel from acts of terrorism and sabotage. (BREDL Brief at 7) The petition of the State of Nevada has gone unheeded for nearly three years. The NRC Staff’s response appears to also sidestep the extant Nevada petition. (Staff Reply at 2)

Finally, on February 25, 2002, more than five months after the terrorist attacks on New York and Washington, the NRC issued an Order to all nuclear power plant licensees (cited in Duke’s Reply at footnote 4). The Order, as characterized in a March 4, 2002 letter from NRC’s Robert C. Haag, Chief of Reactor Projects Branch 1, to Duke-McGuire Vice President H. B. Barron, states, “On February 25, 2002, the NRC issued an Order to all nuclear plant licensees, requiring them to take certain additional interim compensatory measures to address the generalized high-level threat environment.” (emphasis added) However, based on the responses of Mr. Haag to questions posed at the NRC Annual Assessment Meeting for McGuire on March 21, 2002, we find that no implementation schedule for this order exists. The Order itself is a Safeguard

document, making it unavailable to the public. We grant that the specifics of a given utility's *response* to the Order must remain secret for security reasons; however, the order itself is a "generalized" document "issued to all nuclear plant licensees." Six months after the attacks, no timeline for implementation of this order exists. The magnitude of the human and environmental disasters which have occurred and which may yet occur seem to have instilled little sense of urgency in NRC or Duke. Only 10 CFR § 51.15 establishes the guidelines for time schedules for the NRC's NEPA process. Without the requirements of NEPA, what law may citizens rely upon to effect public policy in a timely manner?

## 2B. NEPA Requires NRC To Consider Impacts of Malevolent Acts

In their Reply Duke cites 10 CFR § 50.13 and states that it "precludes consideration of the impacts at issue under NEPA (Duke Reply of March 12, 2002 at 4).

### **10 CFR § 50.13 Attacks and destructive acts by enemies of the United States; and defense activities.**

An applicant for a license to construct and operate a production or utilization facility, or for an amendment to such license, is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

[32 FR 13445, Sept. 26, 1967]

But is 10 CFR 50 NEPA? No. Part 50 is Domestic Licensing of Production and Utilization Facilities. Section 50.13 was published in 1967, prior to NEPA. 10 CFR Part 51 contains the environmental protection regulations relevant to NRC's licensing functions under the National Environmental Policy Act of 1969, Section 102(2).

Categorical exclusions under 10 CFR § 51.22 are delimited to sabotage of "*special nuclear material*," not nuclear power plants.

## PART 51 ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

### **10 CFR § 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.**

(c) The following categories of actions are categorical exclusions:

(12) Issuance of an amendment to a license pursuant to parts 50, 60, 61, 70, 72 or 75 of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to parts 50, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to (i) organizational and procedural matters, (ii) modifications to systems used for

security and/or materials accountability, (iii) administrative changes, and (iv) review and approval of transportation routes pursuant to 10 CFR 73.37.

The Nuclear Regulatory Commission has made no exemption from NEPA in this matter as it is authorized to do by 10 CFR § 51.6. Moreover, an exemption would be inimical to the public interest.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and are otherwise in the public interest.(10 CFR § 51.6)

Although questions of how and when it shall be done are matters are for the Commission and ASLB Judges to decide, NEPA Requires NRC to consider impacts of malevolent acts.

### **Part 3. Conclusion**

On March 21, 2002 members of the public were invited to attend an Annual Assessment of Safety Performance Meeting held at the Duke Energy Explorium adjacent to the McGuire nuclear power station. The meeting was announced on the NRC's website, in letters to interested parties, and on at least one local commercial television station. Next to the Explorium is a nature walk and a fishing area which is also open to the public. After attending the meeting, I visited the fishing area which is perhaps five hundred feet from the containment structures of McGuire plants 1 & 2. I observed six fishermen and took the photographs shown on page five. The security at Duke's McGuire station is virtually non-existent if vans and pick-up trucks with assorted gear can drive within a couple hundred yards of the plant. The Commission must find a way to act to correct deficiencies in commercial nuclear plant security. If our arguments and briefs are found to be imperfect, that should not prevent the Commission from safeguarding nuclear plant sites and protecting nearby communities.

Respectfully submitted,

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Janet Marsh Zeller, Executive Director

March 22, 2002

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Louis Zeller, Southern Anti-plutonium Campaign Coordinator

March 22, 2002

March 22, 2002



Photographs taken by Louis Zeller at McGuire Nuclear Power Station, March 21, 2002

