

August 25, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

In the Matter of DUKE ENERGY CORPORATION
(McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2)
Docket No's. 50-369, 50-370, 50-413, and 50-414

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S
HEARING REQUEST AND PETITION TO INTERVENE**

Pursuant to 10 C.F.R. § 2.714 and a notice published by the Nuclear Regulatory Commission ("NRC" or "Commission") at 68 Fed. Reg. 44,107 (July 25, 2003), Blue Ridge Environmental Defense League ("BREDL") hereby requests a hearing and petitions to intervene in the above-captioned license amendment proceeding for the proposed use of mixed oxide ("MOX") Lead Test Assemblies ("LTAs") at either the Catawba or McGuire nuclear power plant.

Standing

As required by the NRC's Federal Register notice for this proceeding, a hearing request must demonstrate 1) the requester's right to be made a party to the proceeding, 2) its interest in the proceeding, and 3) possible effects on the petitioner's interest. 68 Fed. Reg. at 44,107. BREDL has a right to a hearing, as an interested member of the public, under Section 189a of the Atomic Energy Act. BREDL's interest in the proceeding is to ensure that any license amendment issued to Duke Power Company ("Duke") for the proposed LTA tests complies with the requirements of the Atomic Energy Act and the National Environmental Policy Act ("NEPA"). The proceeding could have an adverse effect on BREDL's interest, if a license amendment is issued without compliance with these statutes.

BREDL also satisfies the standing requirements established in NRC case law. As summarized by the Atomic Safety and Licensing Board (“ASLB”) in a recent decision, these standing requirements are as follows:

In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plants), LBP-99-25, 50 NRC 25, 29 (1999). An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998). To intervene in a representational capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests. *See Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 168, *aff’d on other grounds*, CLI-98-13, 48 NRC 26 (1998).

Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002)(hereinafter “*Diablo Canyon*”).

BREDL meets the above-cited test for standing to participate in this proceeding. BREDL is a nonprofit membership organization whose purposes include the fostering of earth stewardship and conservation of natural resources by the government and the public. As demonstrated in the Declaration of Gregg Jocoy (August 19, 2003) (hereinafter “Jocoy Declaration”), attached hereto as Exhibit 1, BREDL has representational standing to participate in this proceeding on behalf of its members. Mr. Jocoy is a member of BREDL who authorizes BREDL to represent him in this proceeding. *See* Jocoy Declaration, pars. 3 and 7. Mr. Jocoy lives less than 20 miles

from the Catawba and McGuire plants, and therefore is within the 50-mile radius “zone of possible harm” that has been held to confer presumptive standing in nuclear power plant licensing cases. *Diablo Canyon, supra*, 56 NRC at 427. As demonstrated in paragraph 6 of Mr. Jocoy’s declaration, the potential harm to Mr. Jocoy’s health and property posed by the proposed license amendment consists, in part, of the exacerbation of radiological impacts if an accident should occur at the Catawba or McGuire nuclear power plant. See ERI/NRC 02-202, "Accident Source Terms for Light-Water Nuclear Power Plants: High-Burnup and Mixed Oxide Fuels" (November 2002). (A copy of the relevant pages of this report is attached as Exhibit 2.)

Mr. Jocoy’s health and property could also be injured if MOX fuel were stolen from the Catawba or McGuire plant, and intentionally or unintentionally released to the environment. As discussed in paragraph 5 of Mr. Jocoy’s declaration, plutonium is an attractive target for terrorists. Therefore it is reasonable to expect that Duke would upgrade its security plans to provide adequate security measures for reactor fuel that contains plutonium. Nevertheless, Duke states in its February 27, 2003, license amendment application that it has not submitted proposed revisions to the Catawba and McGuire security plans as part of this license amendment proceeding. Duke says that it intends to submit these revisions "separately," i.e. outside this license amendment proceeding. That could mean that the new security measures are not reviewed in connection with this license application, or implemented in a timely way. As Mr. Jocoy explains, the lack of upgraded security measures in Duke’s license amendment application concerns him, because MOX Fuel that is illegally transported offsite could be accidentally or intentionally released to the environment, thus posing a health risk to him and a contamination risk to his property.

The potential radiation-induced injuries to Mr. Jocoy’s health and property interests that are described in his declaration are fairly traceable to the proposed action, and also fall within the “zone of interest” protected by the Atomic Energy Act and the

National Environmental Policy Act (“NEPA”). Moreover, these injuries would be redressed by a decision denying the requested license amendment. Therefore, Mr. Jocoy has demonstrated his own standing to participate in this case. Because he has authorized BREDL to represent his interests in the proceeding, Mr. Jocoy has also conferred representational standing on BREDL.

Specific Aspects of the Subject Matter As To Which BREDL Seeks to Intervene

As required by the Federal Register notice, BREDL sets forth below the specific aspects of the subject matter of this proceeding as to which BREDL wishes to intervene:

1. Whether Duke’s failure to submit security plan revisions for the proposed license amendment violates the Atomic Energy Act and NRC’s implementing safety regulations;
2. Whether the use of MOX fuel at the Catawba and McGuire would unacceptably elevate the risk posed by containment sump failure, in violation of the Atomic Energy Act, NRC safety regulations, and NEPA;
3. Whether Duke’s safety analysis for the proposed license amendment request is adequate to satisfy NRC safety regulations;
4. Whether Duke has understated the environmental impacts of the proposed license amendment, in violation of NEPA;
5. Whether Duke has adequately identified reasonable alternatives to the proposed license amendment, and other measures to avoid or mitigate the environmental impacts of the proposed license amendment.

Respectfully submitted,

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