

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3497

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 10/16/01

SERVED 10/16/01

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Charles N. Kelber
Lester S. Rubenstein

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-LR, 50-370-LR,
50-413-LR, and 50-414-LR

ASLBP No. 02-794-01-LR

October 16, 2001

ORDER

(Setting Deadlines, Schedule, and Guidance for Proceedings)

1. This proceeding involves the application of Duke Energy Corporation (Duke) to renew the operating licenses for its McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, for additional twenty-year periods commencing in 2021, 2023, 2024, and 2026, respectively. In response to an August 15, 2001, notice of opportunity for hearing on the proposed license renewals, Petitioners Nuclear Information and Resource Service (NIRS) and Blue Ridge Environmental Defense League (BREDL) filed, on September 14, 2001, petitions to intervene and requests for hearing in accordance with 10 C.F.R. § 2.714. On October 4, 2001, the Commission issued an Order referring the hearing requests and intervention petitions to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, for assignment of a Licensing Board to rule on the petitions and conduct any proceeding should a hearing be granted; in its Order the Commission also provided the

Licensing Board with guidance for the conduct and scheduling of the proceeding, with specific milestones set for various steps of the proceeding. On October 5, 2001, this Licensing Board was established to preside over the proceeding.

2. Schedule for Amended and Supplemented Petitions, Responses, Prehearing Conference/Oral Argument, and Decision on Standing and Contentions: Pursuant to 10 C.F.R. § 2.714(a)(3) & (b)(1), the petitioners have the right, respectively, to amend their petition with regard to standing, and to supplement their petition with regard to contentions. In light of the milestone set by the Commission for the issuance of a decision on the intervention petitions and contentions (90 days from issuance of the Commission's October 4, 2001, Order, or January 4, 2002), we set the following deadlines for the filing of amended and supplemented petitions, and responses thereto, recognizing and balancing the needs of the parties and the board, in the context of the upcoming holiday season:

A. The Petitioners shall file their amended and supplemented petitions no later than November 6, 2001.

B. The Applicant and the Staff shall file their responses to the Petitioners' amended and supplemented petitions no later than November 20, 2001.

C. We further notify the participants that we shall hold **a prehearing conference in the vicinity of the Applicant's facilities during the week of November 26, 2001, reserving for the present the dates of November 27 through 29, 2001, for oral argument on standing and the contentions to be filed by the Petitioners.** All participants shall be notified of the location of this conference at a later date; also, after receipt of the amended and supplemented petitions, and responses, a more specific schedule for the conference shall be defined, with any appropriate time limits for argument also defined.

D. The Board intends to issue its decision on standing and contentions on or about **December 31, 2001.**¹ Thereafter, if appropriate, a further scheduling Order shall be issued by the Board.

¹The December 31, 2001, date is required by virtue of already-scheduled travel plans of one member of the Board in January. We also note our regret at not issuing these deadlines earlier, but this was impossible due to the absence of the Board Chair from the office on previously-scheduled travel from the evening of October 4 until October 15, 2001.

We also remind the participants to note the Commission's statement in its referral order that we "should not grant requests for extensions of time absent unavoidable and extreme circumstances."

3. **Standing:** We note that on October 2, 2001, the Staff and Duke filed responses to the petitions to intervene and hearing requests of NIRS and BREDL, indicating that neither the Staff nor Duke contests BREDL's standing, but that NIRS' standing is opposed in part by the Staff, and in full by the Applicant. With regard to standing, Petitioner NIRS in particular should note that, in addressing standing issues, a petitioner must, pursuant to 10 C.F.R. § 2.714(a)(2) & (d)(1), address the type of standing it wishes to establish and provide the required particulars of such standing, including filing appropriate affidavits demonstrating how it meets the requirements of the rule. Petitioner NIRS may also wish to address the specific problem issues raised by the Staff and the Applicant in their responses to its petition and request for hearing, with regard to its standing. *See also Yankee Atomic Electric Company (Yankee Nuclear Power Station)*, CLI-98-21, 48 NRC 185, 194-196 (1998); *Atlas Corp. (Moab, Utah Facility)*, LBP-97-9, 45 NRC 414, 423-427 (1997); *Energy Fuels Nuclear, Inc. (White Mesa Uranium Mill)*, LBP-97-10, 45 NRC 429, 431(1997).

4. **Contentions:** With regard to the petitioners' contentions, as neither petitioner appears to be represented by counsel, the following guidance is provided on the subject of the form of contentions and bases for contentions:

A. The petitioners are advised to identify and number each contention separately, and to assure that each contention consists of "a specific statement of the issue of law or fact to be raised or controverted," as required by C.F.R. § 2.714(b)(2).

B. Directly following each contention, the complete basis or bases for it shall be identified and stated in narrative form.² With regard to the bases for contentions, the petitioners must, for each contention, fully comply with all the requirements of 10 C.F.R. § 2.714(b)(2), including providing, for each contention, as part of its basis or bases: (i) a brief explanation of the basis or bases of the contention; (ii) a concise statement of all appropriate facts and expert opinion relied upon to support such contention(s), with specific reference to documentary, expert and other sources of such facts and opinion; and (iii) sufficient information to show a genuine dispute on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, and/or identification of each asserted failure of the application to contain information on a relevant matter as required by law, as well as the supporting reasons for the petitioner's belief that the application fails to contain relevant information required by law. See 10 C.F.R. § 2.714(b)(2); *Gulf States Utilities Company (River Bend Station, Unit 1)*, CLI-94-10, 40 NRC 43, 51-53 (1994); *Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3)*, CLI-91-12, 34 NRC 149, 155-156 (1991); *Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, LBP-93-23, 38 NRC 200, 205-206 (1993); *Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4)*, LBP-90-16, 31 NRC 509, 515 *et seq.* (1990).

C. In addition, as with all pleadings and other submissions by all participants, the supplemented and amended petitions shall have the **filing date** printed on the top right-hand

²It is noted that the Board Chair has reviewed BREDL's August 13, 2001, Contentions in another case, *Duke Cogema Stone and Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-ML, and would advise the petitioners that the format used therein, with various cross-references between contentions and bases rather than following each contention with a concise statement of its basis or bases, etc., is not a particularly effective model to use in writing contentions.

side of the first page of the submission; and all participants in all their filings shall **avoid the use of mere abbreviated incorporation by reference** to other parts of the same or other documents, in place of stating the arguments supporting a position at the appropriate place in the document.

D. Finally, all contentions must be within the **limited scope of the proceeding as set forth by the Commission in its October 4, 2001, Order**. In this regard the petitioners may also wish to refer to the Licensing Board's decision in *Florida Power & Light* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138 (2001), a recent decision ruling on standing and contentions in a license renewal case, for guidance in stating and supporting their contentions.

5. **Service on the Licensing Board Members and Other Participants**. Absent some other directive from the Board, **all filings in this case should be served** on the Board and the other participants **so as to ensure receipt on or before the filing deadline**. Participants may use any of the methods outlined below so long as the filing is received no later than midnight Eastern Time on the date due.

A. **Service on Licensing Board Members**. For each pleading or other submission filed in this proceeding, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.708(d) and serving a copy on every other participant in accordance with section 2.701(b), a participant should serve conforming copies on the members of the Licensing Board by one of the following methods:

i. **E-Mail**. To complete service on the members of the Licensing Board by e-mail transmission, a participant should (a) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to each of the Licensing Board members (Internet IDs: AMY@NRC.GOV, CNK@NRC.GOV, RLS4@QWEST.NET); and

(b) send paper conforming copies that same date to each of the Licensing Board members by regular first-class mail, at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the NRC staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first class mail.

Any attachments or exhibits to a pleading that cannot be transmitted by e-mail should be sent to the Licensing Board members by separate facsimile transmission or other means that will ensure receipt by the due date, with paper conforming copies mailed that same day to each of the Licensing Board members.

ii. **Facsimile Transmission**. To complete service on the members of the Licensing Board by facsimile transmission, a participant should (a) send one copy by rapifax to the attention of the members of the Licensing Board at 301/415-5599 (verification (301/415-7393)); and (b) send paper conforming copies that same date to each of the Licensing Board members by regular mail at the address above.

iii. **Overnight or Hand Delivery**. To complete service on Licensing Board members via overnight (e.g., express mail, Federal Express, etc.) or hand delivery, a participant should send conforming copies to each of the Licensing Board members at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

It should be noted that use of the Board's regular Washington, D.C., mailing address (see above) on an overnight/hand delivery may delay receipt of the filing.

B. **Service on Other Participants.** Whichever of the methods outlined above is used for service on the Licensing Board, the participant serving the pleading should make service on all other participants and the Office of the Secretary by the same or a comparable method.

6. **Motions for Extension of Time.** For any motion for extension of time, except upon a showing of good cause, the participant requesting the extension shall (a) ascertain whether and when any other participant intends to oppose or otherwise respond to the motion and apprise the Licensing Board of that information in the motion; (b) serve the motion on the Licensing Board so that it is received at least three business days before the due date for the pleading or other submission for which an extension is sought; and (c) state in the motion, specifically and in detail, what “unavoidable and extreme circumstances” warrant the extension.

7. Any attorney or other representative for any participant who has not already filed a notice of appearance shall file such a notice that conforms with the requirements of 10 C.F.R. § 2.713(b). Any such notice or amendment thereto shall also include an internet e-mail address and facsimile number, if available.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 16, 2001

³Copies of this Order were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(McGuire Nuclear Station, Units 1 and 2;)
Catawba Nuclear Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SETTING DEADLINES, SCHEDULE, AND GUIDANCE FOR PROCEEDINGS) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-369/370/413/414-LR
LB ORDER (SETTING DEADLINES, SCHEDULE,
AND GUIDANCE FOR PROCEEDINGS)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 16th day of October 2001