

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3535

DOCKETED 10/31/01

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 10/31/01

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 31, 2001

MEMORANDUM AND ORDER(Granting Motion to Extend Time and Resetting Deadlines and Schedule 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. Petitions to intervene and requests for hearing have been filed by Nuclear Information and Resource Service (NIRS) and the Blue Ridge Environmental Defense League (BREDL). Petitioner NIRS filed, on October 29, 2001, a Motion to Extend Time for filing its amended and supplemented petition and contentions, based upon the recent unavailability of the NRC public website. On October 30, 2001, a telephone conference was held¹ to address NIRS' motion and hear responses to the motion on an expedited basis, in

¹The October 30, 2001, telephone conference was scheduled in a Memorandum and Order issued October 25, 2001, after the Board's receipt of NIRS' notification of that same date that it intended to file its motion on October 29, and of a copy of BREDL's October 23, 2001, Petition to Dismiss Licensing Proceeding or, in the Alternative, Hold it in Abeyance, relating to this proceeding. Memorandum and Order (Regarding Filing of Documents with Licensing Board, and Telephone Conference on Motion for Extension) (Oct. 25, 2001) (unpublished). We note that BREDL's Petition also refers to the NRC public website unavailability, but we do not

order to assure compliance with the Commission's guidance on the schedule for this proceeding as stated in its Order Referring Petitions for Intervention and Requests for Hearing to the Atomic Safety and Licensing Board Panel. See *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC —, slip op. at 4-7 (Oct. 4, 2001) [hereinafter *Duke Energy*]. Present for the conference in addition to the Board were Mary Olson on behalf of NIRS; Duke counsel David Repka, Ann Cottingham, and Lisa Vaughn, along with Bob Gill and Bill Miller of Duke; and Susan Uttal and Antonio Fernandez, counsel for the NRC Staff. BREDL did not appear at the conference.

2. After hearing the arguments of counsel and/or representatives for all participants who were present, and based upon circumstances summarized below, the Board granted the Motion to Extend Time to the following extent:

A. The deadline for both Petitioners to file their amended and supplemented petitions is extended three weeks, from November 6 to no later than November 27, 2001.

B. The deadline for the Applicant and Staff to file their responses to the Petitioners' amended and supplemented petitions is extended three weeks, from November 20 to no later than December 11, 2001.

C. The prehearing conference to hear oral argument on standing and the contentions filed by the Petitioners is rescheduled from the week of November 26, three weeks forward, to December 18 and 19, 2001, to be held in the vicinity of the Applicant's facilities. At a later date, all participants will be notified of the exact location of this conference, along with a more specific schedule for the conference and appropriate time limits for argument, as necessary.

D. The deadline for issuance of the Board's decision on standing and contentions is also extended three weeks from the original deadline of 90 days from the Commission's October 4, 2001, referral Order (i.e., January 2, 2002) to January 23, 2002.

address this Petition, given that it was filed with and is directed to the Commission. As indicated in paragraph 1 of this Memorandum and Order, BREDL did not appear at the October 30 conference (after receiving notice of it via e-mail of the October 25 Memorandum and Order), but, as further indicated herein, BREDL and all participants in this proceeding will be held to the deadlines set forth herein, absent the granting of BREDL's Petition by the Commission.

E. Another telephone conference (contact information to be provided via e-mail on November 6), for the purpose of discussing the status of the case and of efforts to obtain and/or provide access to documents needed to prepare contentions and bases, will be held on Wednesday, November 7, 2001, at 9:30 a.m. eastern time. Prior to this conference, the participants shall continue to work together in a good faith effort to see that all documents are made available insofar as possible, and shall be prepared at the conference to address appropriate ways of resolving any remaining disputes that may exist between the Petitioners, Duke, and the Staff, with regard to any documents.

3. We grant the Motion to Extend Time based upon the following circumstances:

First, we find the basis for the motion, the unavailability to the public, including NIRS, of the NRC website and various documents formerly available there, to fit the “unavoidable and extreme circumstances” guideline stated by the Commission in its referral Order. See *Duke Energy*, CLI-01-20, 54 NRC — , slip op. at 6; see also *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998). The unavailability of the NRC website and/or portions thereof stems from the terrorist acts of September 11, 2001, and the need thereafter to assure that no information on the NRC public website contains security-sensitive information. This necessarily resulted in restricting public access to documents formerly found on or through the website, and we find this situation – which commenced when the website was taken down on October 11, 2001, after the Commission issued its October 4 referral Order – to be a clearly extreme and unavoidable circumstance for all persons concerned, including Petitioner NIRS.

4. We note Duke’s opposition to the motion, based largely on the prior availability of various of the documents to which NIRS wishes to have access, as well as on the asserted lack of relevance of certain of the documents in question. We note also, however, the Staff’s agreement that an extension of three weeks, which is approximately equivalent to the time period during which the Generic Environmental Impact Statement on License Renewal (GEIS-LR) was unavailable to Petitioner NIRS, would be appropriate in light of such lack of access. We note as well the circumstance, as discussed in the October 30 conference, that

downloading and/or printing various documents, including the GEIS-LR, in anticipation that the NRC public website would be taken down, was not reasonable in this instance. Moreover, the prior availability on the website of various historical and indexed information helpful to the sort of research needed to prepare contentions and bases therefor, the current absence of which was pointed out by Ms. Olson, coupled with the apparent unavailability to the public until recently of access to the Agencywide Document Access and Management System (ADAMS) and/or many documents found in ADAMS, supports a conclusion that some relief is warranted in this instance.

5. Granting this extension of time, based on the unavailability for various periods of time of documents that were previously available to Petitioner NIRS to utilize in preparing and supporting contentions and bases, is not, as Duke in effect argues, equivalent to granting NIRS discovery of particular documents, nor does a discovery standard apply in this instance. We find, rather, the situation here to be comparable to that of having a research library closed based on unexpected, unavoidable and extreme circumstances, to an unpredictable extent, thereby seriously handicapping the Petitioner's ability to do research using a broad array of materials as necessary to draft and support contentions under the heightened requirements of 10 C.F.R. § 2.714(b)(2), (d)(2). As indicated above, it appears the participants are making an effort to work cooperatively to assure that Petitioner NIRS has access, as much as possible, to all information it would otherwise have had prior to the closing of the "library" of the NRC public website. We commend all participants on this, and urge such cooperation as well with regard to BREDL's preparation of its supplemented and amended petition and contentions. In this connection, we note that neither Duke nor the Staff object to including BREDL in the new, extended deadline for the filing of supplemented and amended petitions and contentions, or that for responses thereto, in the interest of facilitating the expeditious handling of this case by the Board and all participants in the simplest possible manner.

6. To the degree any security concerns may become a matter of significance after efforts to find alternatives to any security-sensitive information (for example, monitoring reports to state agencies and licensee event reports, as alternatives to daily event reports that may not be returned to the website for security reasons), as well as the possible need for protective orders, have been explored and exhausted, this may at an appropriate time become an appropriate question for certification to the Commission, as directed in the Commission's referral Order regarding novel legal or policy questions that arise in making rulings on contentions. *Duke Energy*, CLI-01-20, 54 NRC —, slip op. at 2. Finally, should any information currently unavailable later become available, it may be appropriate at such time to consider late-filed contentions, under the criteria set forth at 10 C.F.R. § 2.714(a), (b).

7. In conclusion, we find the circumstances summarized in the previous paragraphs to constitute sufficient unavoidable and extreme circumstances to grant an extension of three weeks for the filing of both petitioners' supplemented and amended petitions and contentions, with additional three-week periods added, as noted above, to relevant deadlines and dates following thereafter.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 31, 2001

²Copies of this Order were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING MOTION TO EXTEND TIME AND RESETTING DEADLINES AND SCHEDULE FOR PROCEEDINGS) (LBP-01-31) 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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LB MEMORANDUM AND ORDER (GRANTING
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[Original signed by Evangeline S. Ngbea]

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Dated at Rockville, Maryland,
this 31st day of October 2001