

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

November 9, 2001

MEMORANDUM AND ORDER
(Denying Request for Additional Extension of Time)

1. Petitioner Nuclear Information and Resource Service (NIRS) has, during a telephone status conference held November 7, 2001, requested an additional extension of time for filing its amended and supplemented petition and contentions, in this proceeding involving 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. During the November 7 conference the Board heard argument on this request, and discussed with the participants their progress in obtaining and/or providing access to documents NIRS says are needed to prepare contentions and bases, which were previously publicly available but subsequently removed from the NRC public website and public documents room. Present in addition to the Board were Mary Olson and Paul Gunter on behalf of NIRS; Duke counsel David Repka, Ann Cottingham, and Lisa Vaughn, along with Bob Gill and Bill Miller of Duke; Susan Uttal and Antonio Fernandez, counsel for the NRC Staff; and Don Moniak on behalf of BREDL.

2. For the reasons set forth herein, NIRS' request is denied.

3. On October 30, 2001, the Board had, on an expedited basis, heard argument on NIRS' earlier October 29 Motion to Extend Time, and then, in a Memorandum and Order issued October 31, 2001, granted a three-week extension of the deadline for filing the petitioners' amended and supplemented petitions and contentions. Licensing Board Memorandum and Order (Granting Motion to Extend Time and Resetting Deadlines and Schedule for Proceedings), LBP-01-31, 54 NRC -- (Oct. 31, 2001). This extension was based upon the recent unavailability of the NRC public website, considered in light of 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). All subsequent deadlines were extended three weeks as well, to assure the orderly progress of the case.

4. During the November 7 conference, the documents that remained unavailable to NIRS, after reasonable efforts to obtain them, were narrowed down to daily event reports (DERs) for the four Duke plant units. BREDL through Mr. Moniak suggested that there were also other documents still unavailable, but since BREDL had not timely filed a motion to extend, these were not considered. After hearing the argument of the participants, the Board directed the Staff to file a document stating whether, to what degree, and under what conditions it would be able to provide the DERs in question to the petitioners; and providing legal authority for any failure to provide the documents.

5. On November 8, the Staff filed a document indicating that it was that day sending to the petitioners via overnight mail the DERs in question through October 31, 2001, and that DERs generated subsequent to October 31 would be sent through overnight mail on a weekly basis to the petitioners and the applicant. NRC Staff's Response to Atomic Safety and Licensing Board's Order Regarding Production of Documents (Nov. 8, 2001). (The Staff notes

that in providing these documents it is waiving no right to object to the production of the documents, and that the sending of such documents will cease upon termination of this proceeding or when the agency makes a determination on their public availability.)

6. Based upon this expedited provision of the DERs to the petitioners, the Board finds that a further extension of time is not appropriate, and therefore denies NIRS' request for the same. Thus, the following previously-extended deadlines and dates shall remain applicable in this case:

A. The Petitioners shall file their amended and supplemented petitions no later than November 27, 2001.

B. The Applicant and Staff shall file their responses to the Petitioners' amended and supplemented petitions no later than December 11, 2001.

C. The prehearing conference to hear oral argument on standing and the contentions filed by the Petitioners shall be held December 18 and 19, 2001, in Courtroom 2 of the U.S. Courthouse, on 401 W. Trade Street, in Charlotte, North Carolina, commencing at 9:00 a.m. each morning and continuing into the evening as required.

D. The Board shall issue its decision on standing and contentions on or before January 23, 2002.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 9, 2001

¹Copies 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 (DENYING REQUEST FOR ADDITIONAL EXTENSION OF TIME) 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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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of November 2001