

DOCKETED 12/11/01

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3647

SERVED 12/11/01

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

December 11, 2001

MEMORANDUM AND ORDER

(Denying Motion to Suspend Proceeding Pending Public Release of FSARs)

Petitioner Nuclear Information and Resource Service (NIRS) has, in a November 29, 2001, "Motion to Suspend License Renewal Proceeding Pending Public Release of Final Safety Analysis Reports" (hereinafter Motion to Suspend) moved that this proceeding be suspended pending public release of final safety analysis reports (FSARs) for the Catawba and McGuire Nuclear Power Stations. We DENY this motion, for the following reasons:

The reports at issue are among documents that have, for security reasons, been removed from the NRC public website and public documents room since the terrorist events of September 11, 2001. NIRS states in its motion that it discovered the loss of a compact disk on which it had stored previously-obtained copies of the FSARs in question, only on November 16, after a move of its North Carolina office. NIRS asserts that the unavailability of these documents has significantly impaired its ability to prepare contentions that meet the basis and specificity requirements of 10 C.F.R. § 2.714, and that the unavailability of FSARs for other comparable reactors may hamper its ability to participate in this proceeding if its contentions are admitted. NIRS states further, among other things, that NRC License Renewal Project

Manager Rani Franovich, when contacted by NIRS representative Jesse Riley, suggested that NIRS contact the Board to obtain these documents. No attempt to contact the Board was made, however.

The NRC Staff and Duke Energy oppose NIRS' motion, noting that previous extensions have been granted to NIRS, that NIRS' present motion was not promptly filed, that the present circumstances are largely a product of its own making, that when the FSARs become available NIRS may move to submit late-filed contentions under section 2.714, and that NIRS has already filed contentions on which the Board can decide without resolving the issue of access to the FSARs. Response of Duke Energy Corporation to Nuclear Information and Resource Service Motion to Suspend License Renewal Proceeding Pending Public Release of Final Safety Analysis Reports (Dec. 10, 2001) (hereinafter Duke Response), at 1-4; NRC Staff's Response to NIRS Motion to Suspend License Renewal Proceeding Pending Public Release of Final Safety Analysis Reports (Dec. 10, 2001) (hereinafter Staff Response), at 1-2. In addition, the Staff states that it is willing to release the FSARs to NIRS subject to a temporary non-disclosure agreement, pending Commission determination of agency policy with regard to the release of potentially sensitive information to the public, *id.* at 2, and Duke states that it does not object to such release. Duke Response at 3.

In view of these circumstances, which we find to be well-founded, we conclude that a suspension of the proceeding as requested by NIRS is not appropriate. Both NIRS and Petitioner Blue Ridge Environmental Defense League (BREDL) have filed contentions, oral argument on which is scheduled for next week. No good reason has been shown to reschedule, and the Board will therefore hold this oral argument as scheduled.

Had NIRS contacted the Board on November 16 when it discovered the loss of the disk on which it had copies of the FSARs in question, this could have been handled in the same manner as the previous unavailability of the daily event reports was handled, which resulted in

the provision of these documents to NIRS by the Staff. See Board Memoranda and Orders of November 9 and 15, 2001. The Staff now offers to provide the FSARs subject to a temporary non-disclosure agreement, a course of action we find to be appropriate at this time. If the parties cannot agree on the manner, extent, or precise terms upon which this is to be accomplished, any disputes can be taken up after the conclusion of oral argument on the contentions currently pending before the Board.

In the meantime, the Board looks forward to hearing the parties' oral argument on the petitioners' standing and contentions on December 18 and 19, 2001, in Courtroom 2 of the U.S. Courthouse, 401 W. Trade Street, Charlotte, North Carolina, commencing at 9:00 a.m. each day. In the interest of a more efficient use of the time of all concerned, we advise NIRS and BREDL to direct their arguments specifically to issues raised in the responses of the Staff and Duke, and advise all parties to use their time not simply to repeat their written arguments, but to expand upon them concisely and straightforwardly, as required to address the matters placed at issue in the amended and supplemented petitions and responses thereto, and to be prepared to respond to Board questions on matters raised in these documents.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 11, 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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(McGuire Nuclear Station, Units 1 and 2;)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING MOTION TO SUSPEND PROCEEDING PENDING PUBLIC RELEASE OF FSARS) 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 MEMORANDUM AND ORDER
(DENYING MOTION TO SUSPEND
PROCEEDING PENDING PUBLIC
RELEASE OF FSARS)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of December 2001