

November 14, 2001
DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

January 18, 2002 (10:40AM)
OFFICE OF SECRETARY

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

DUKE ENERGY CORPORATION)

Docket Nos. 50-369-LR
50-370-LR
50-413-LR
50-414-LR

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

**RESPONSE OF DUKE ENERGY CORPORATION TO NOVEMBER 13, 2001,
LICENSING BOARD ORDER**

I. Background

On November 13, 2001, the Atomic Safety and Licensing Board ("Licensing Board") issued an "Order (Setting Response Deadline and Telephone Conference)" (hereafter, the "Order") in which it directed the NRC Staff and Duke Energy Corporation to respond electronically by noon, Wednesday, November 14, 2001, to two separate, uncoordinated documents filed by Petitioner¹ Nuclear Information and Resource Service ("NIRS"): (1) a November 9, 2001, "NIRS Reply to Licensing Board Memorandum and Order" (hereafter, "NIRS Reply"), filed by Mr. Paul Gunter; and (2) a November 12, 2001, "Report and Appeal by

¹ NIRS is not a party to this license renewal proceeding at this time. NIRS filed a petition for leave to intervene and a request for a hearing in this proceeding on September 14, 2001. However, NIRS has not yet submitted any proposed contentions because the Licensing Board granted the petitioner's request for a three-week extension of time (until November 27, 2001) to do so.

Nuclear Information and Resource Service of Judge Young's 11-09-01 Memorandum and Order (Denying Request for Additional Extension of Time)" (hereafter, "NIRS Appeal"), filed by Ms. Mary Olsen. The response of Duke Energy Corporation ("Duke"), submitted pursuant to 10 C.F.R. § 2.730(c), is set forth below.

The NIRS Reply is styled as a "significant clarification" of the Licensing Board's November 9, 2001 Memorandum and Order.² NIRS asserts that the Board's November 9, 2001 Order provided insufficient relief to Petitioner because only the Daily Event Reports ("DERs") for the four McGuire and Catawba units were provided by the NRC Staff. Mr. Gunter asks that the Licensing Board consider the NIRS Reply "as a clarification in request of DER generated by all operating pressurized water reactors including those of the same design, model and vintage as the Catawba and McGuire units." On this same point, the NIRS Appeal similarly contends that the Licensing Board should have ordered the release of "all DERs." At this juncture, however, NIRS states that they "now seek only to obtain DERs for PWR reactors." (NIRS Appeal, p. 2).

II. Discussion

A. Petitioner's Timely Access to the DERs Already Issued by the NRC Staff

The NIRS Appeal filed by Mary Olsen asserts that, as of November 12, 2001, it had not received in any of its offices any of the DERs relating to the McGuire and Catawba Nuclear Stations that the NRC Staff undertook to make available to the Petitioner in its November 8, 2001 Response to the Board's Order regarding the Production of Documents. Those documents were to be transmitted by the NRC Staff to NIRS and to Duke via overnight

² *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), ASLB-02-794-01-LR, "Memorandum and Order (Denying Request for Additional Extension of Time)", __ NRC __ (slip op., Nov. 9, 2001).

mail sent on November 8, 2001. Duke did, in fact, receive its copy of the documents in the Washington, D.C. offices of Winston & Strawn and in the Charlotte, N.C. offices of Duke on Friday, November 9, 2001, via overnight mail. We further note that, curiously, the November 9, 2001 NIRS Reply filed by Mr. Gunter makes no mention of a failure to receive the DERs sent by the Staff.

To the extent that some or all offices of NIRS have not yet received the documents sent to them by the NRC in overnight mail on November 8, Duke agrees that Petitioner should be provided such documents promptly. Nonetheless, this brief administrative delay is not a sufficient basis for the grant of additional time to draft proposed contentions.

B. The Licensing Board Should Not Require that NIRS Be Given Additional DERs To Prepare Proposed Contentions in this Proceeding

For all of the reasons previously stated during the October 30, 2001 and November 7, 2001 conference calls with the Licensing Board with respect to the McGuire and Catawba DERs, Duke opposes Petitioner's request that it be given all DERs "generated by all operating pressurized water reactors including those of the same design, model and vintage as the Catawba and McGuire units."

As a preliminary matter, the October 29, 2001 NIRS Motion to Extend Time, as well as the discussions during the October 30 and November 7, 2001 conference calls with the Licensing Board, indicate that NIRS' initial request for DERs was for McGuire and Catawba DERs. Significantly, the participants on these conference calls apparently based their comments regarding this issue upon the reasonable belief that the Petitioner sought access only to DERs

relating to McGuire and Catawba.³ This being the case, NIRS should not now be heard in its after-the-fact attempt to expand the scope of relief previously granted.

Moreover, NIRS has failed utterly to demonstrate that access to every DER generated for every operating commercial PWR in the United States is needed to enable Petitioner to prepare proposed contentions in this license renewal proceeding. Duke disagrees with Petitioner's characterization of the November 9, 2001 Board Order as "recognition" by the Board and the NRC Staff that the DER category "is both significant and relevant to the Petitioner's efforts to prepare contentions in this matter." (NIRS Reply, p. 1).⁴ The Licensing Board has made no such ruling.

Petitioners that seek to intervene in an NRC licensing proceeding, including a license renewal proceeding, should base their proposed contentions upon publicly available information, and, in particular, upon the applicant's licensing documents.⁵ In this proceeding, all potentially relevant information of any significance that might be available in the DERs now requested by NIRS is reflected in NRC generic issuances. Additionally, the licensing documents

³ Certainly, this was Duke's understanding, and the basis for its comments and position on this issue.

⁴ Nor does Duke agree with the NIRS assertion that by providing the McGuire and Catawba DERs, "the Licensing Board and the Staff acknowledge that these documents rightfully belong in the public domain as a matter of a licensing proceeding impacting public health and safety." (NIRS Reply, p. 1). The Licensing Board has made no such ruling.

⁵ See *Duke Power Company* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983) (Intervenors are obligated to "uncover and apply all publicly available information to the prompt formulation of contentions"); see also *Northern States Power Company* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192 (1973), *affd.*, CLI-73-12, 6 AEC 241 (1973) ("there is abundant information respecting the particular facility available to the public at the time of the publication of the notice of hearing . . . -- including at least the applicant's detailed safety analysis and environmental reports.")

submitted by Duke are available. Thus, there is ample information and documentation available to the Petitioner in public documents to enable them to develop proposed contentions relating to the renewal of the McGuire and Catawba operating licenses. Relevant information is found in the license renewal application and the Environmental Report, as well as in the various categories of license renewal-related NRC documents and regulatory guidance that have been discussed at length in previous conference calls. Any plant "operating experience" arguably of significance for license renewal can be found in the Licensee Event Reports (LERs) for McGuire and Catawba and other PWRs. As NIRS is aware, these LERs (including those for PWRs other than McGuire and Catawba) are publicly available.

C. NIRS Should Not Be Granted Additional Time to Develop Proposed Contentions

Regardless of whether the NRC Staff and the Licensing Board opt to provide the Petitioner with additional DERs beyond those that the Staff has already agreed to provide, Duke opposes any grant of additional time to the Petitioner to submit its proposed contentions. NIRS has already been granted an additional three weeks by the Licensing Board in which to develop proposed contentions. The argument for more time presented in the NIRS Appeal is not based upon new facts and does not state an adequate basis for the grant of Petitioner's request. Indeed, the NIRS Reply and the NIRS Appeal fail to provide any basis that would justify the grant of still another extension of this deadline by the Licensing Board. The fact that DERs generated for every PWR in the United States are not currently available does not cause "unavoidable and extreme" impacts that warrant an additional extension.⁶ This is particularly the case since, as

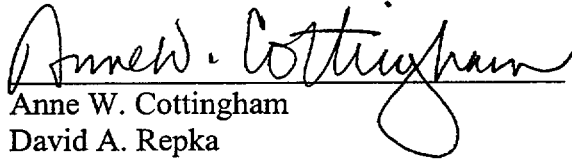
⁶ See *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), CLI-01-20, "Order Referring Petitions for Intervention and Requests for Hearing to the Atomic Safety and Licensing Board Panel," __ NRC __ (slip op. at 7, Nov. 9, 2001).

noted above, NIRS has failed to show any nexus even between the subset of DERS that it has already been given and the proper scope of a license renewal proceeding.

III. Conclusion

To the extent that the NRC Staff can facilitate NIRS's access to additional DERS in the short term, Duke does not object to the Staff doing so. However, for all of the reasons stated above and in prior calls on this subject, Duke disagrees that access to additional categories of Daily Event Reports (to include the DERS generated for all operating PWRs in the United States, apparently for an unlimited time period) is essential for developing proposed contentions. The Licensing Board should deny the NIRS request for the grant of an additional extension of time in which to file proposed contentions in this license renewal proceeding.

Respectfully submitted,



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dated in Washington, D.C.
This 14th day of November, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Response of Duke Energy Corporation to November 13, 2001, Licensing Board Order" in the captioned proceeding have been served on the following by electronic mail, this 14th day of November, 2001. Additional courtesy service will be made this same day by deposit in the United States mail, first class, as shown below.

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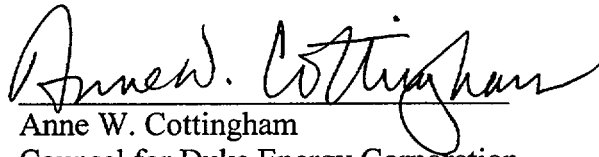
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