

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3977

DOCKETED 03/01/02

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 03/01/02

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

March 1, 2002

ORDER

(Addressing Matters Discussed at February 12, 2002, Telephone Conference
and Scheduling March 13, 2002, Telephone Conference)

On February 12, 2002, a telephone conference was held in the above-referenced proceeding, which concerns the license renewal application (LRA) of Duke Energy Corporation (Duke), seeking approval under 10 C.F.R. Part 54 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. The following matters were addressed:

1. A hearing will be held during the week of July 15, 2002, on Contention 1; i.e., whether

Anticipated MOX fuel use in the Duke plants will have a significant impact on aging and environmental license renewal issues during the extended period of operations in the Duke plants, through mechanisms including changes in the fission neutron spectrum and the abundances of fission products, and must therefore be considered in the license renewal application and addressed in the Supplemental EIS.

For purposes of framing the issues presented in Contention 1 in terms that relate more specifically to the various case law standards discussed in LBP-02-04 and to discovery-related and evidentiary questions discussed in the February 12 conference, the Board views this

hearing as addressing whether anticipated use of MOX fuel in the Duke plants is sufficiently definite and related under relevant case law to license renewal aging and environmental issues to warrant requiring such use to be addressed in the SEIS and LRA. Thus, at this hearing, evidence may be presented that is relevant to whether such use of MOX fuel warrants consideration in this license renewal proceeding and should therefore be addressed in the SEIS and LRA because:

(A) it is sufficiently concrete, certain, probable, reasonably foreseeable or otherwise definite enough under appropriate case law standards to warrant such consideration; and

(B) its impact will be “cumulative or synergistic,” so “interdependent that it would be unwise or irrational” to proceed with the license renewal proceeding without considering it, or otherwise appropriately connected or related under appropriate case law standards to license renewal aging and environmental issues in this proceeding so as to warrant such consideration.

See LBP-02-04, 55 NRC__ (slip op. at 53-69).

2. Discovery on the issues summarized in paragraph 1 shall begin on Friday, March 15, 2002, and be completed by Friday, May 3, 2002. With regard to aging issues and MOX fuel, although such aging issues will not be addressed in the depth in which they may later be addressed in any further hearing should the resolution of the issues in paragraph 1 be in favor of Petitioner NIRS, discovery on such aging issues may be permitted to a reasonable extent, insofar as matters on which discovery is sought are relevant to the issues summarized in paragraph 1 and are otherwise within the scope of discovery as defined in 10 C.F.R. § 2.740. The parties are encouraged to cooperate in furtherance of an efficient discovery process, and shall, in any motions or requests for Board resolution of any discovery disputes, attest that good faith effort has been made to resolve disputes between the parties prior to seeking Board action.

3. Any motions for summary disposition with regard to any issues related to Contention 1 and the issues summarized in paragraph 1 shall be filed no later than May 10, 2002.

Responses shall be filed no later than May 30, 2002. Any such motions and responses shall comply with 10 C.F.R. § 2.749.

4. Assuming all issues relating to Contention 1 are not earlier resolved by grant of any motion for summary disposition, prefiled written testimony shall be filed no later than June 28, 2002.

5. On March 13, 2002, at 10:00 a.m., a telephone status conference shall be held to address any matters that may aid in the most efficient conduct of this proceeding, including preparation for and discovery related to the July hearing referenced in paragraph 1, possible partial or complete resolution through settlement of Contention 2 based on Duke's responses to Staff Requests for Additional Information relating to Contention 2 issues, any necessary discovery and other scheduling issues with regard to Contention 2, any necessary definition of lead parties on Contention 2, scheduling of additional status conferences and other scheduling matters, and any other matters relating to this proceeding that are appropriate for consideration at that time. **Participants should call 301/231-5539 or 1-800/638-8081 a few minutes before 10:00 a.m. and give passcode #5755, in order to be connected in to the March 13 conference.**

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 1, 2002

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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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 (ADDRESSING MATTERS DISCUSSED AT FEBRUARY 12, 2002, TELEPHONE CONFERENCE AND SCHEDULING MARCH 13, 2002, TELEPHONE CONFERENCE) 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 ORDER (ADDRESSING MATTERS DISCUSSED
AT FEBRUARY 12, 2002, TELEPHONE CONFERENCE
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of March 2002