

RAS 4244

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

April 8, 2002 (11:35AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before The Commission

Richard A. Meserve, Chairman
Edward McGaffigan, Commissioner
Jeffrey S. Merrifield, Commissioner
Greta J. Dicus, Commissioner
Nils J. Diaz, Commissioner

In the Matter of

Docket No's. 50-369-LR, 50-370-LR,
50-413-LR, and 50-414-LR

DUKE ENERGY CORPORATION

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

March 21, 2002

RESPONSE OF NUCLEAR INFORMATION & RESOURCE SERVICE TO
NRC STAFF'S MOTION FOR STAY AND INTERLOCUTORY REVIEW OF
THE LICENSING BOARD'S MARCH 1, 2002 ORDER
AUTHORIZING DISCOVERY AND ORDERING AN EVIDENTIARY HEARING
REGARDING MOX-RELATED ENVIRONMENTAL AND SAFETY ISSUES

Nuclear Information and Resource Service (NIRS) conditionally supports the NRC Staff's request for a stay and interlocutory review of the March 1, 2002 Order authorizing discovery and ordering an evidentiary hearing in the Duke license renewal proceedings, insofar as this would be the effective result should the Commission decide to suspend the Duke license renewal process for Catawba 1 & 2 and McGuire 1 & 2 as premature until such time as any question about Duke's intention to use plutonium fuel is definitively settled. NIRS has previously proposed this resolution¹ as the most efficient, technically defensible, and procedurally sound path, and it would

1 NIRS RESPONSE TO APPEAL MEMORANDA OF DUKE ENERGY AND NRC STAFF TO ATOMIC SAFETY LICENSING BOARD JANUARY 24, 2002 RULING ON STANDING AND CONTENTIONS 02-14-02 page 4.

Template = SECY-041

SECY-02

resolve NRC Staffs concerns. In the alternative, NIRS requests that the NRC Staff motion be denied since it fails to show irreparable harm will be caused by proceeding on the current path.

It is well established that participation in a hearing does not constitute irreparable harm, and further previous petitions on the impropriety of the current process of considering MOX and renewal have been rejected. Indeed, the Commission's own response to "Blue Ridge Environmental Defense League Petition To Dismiss Licensing Proceeding Or, In The Alternative, Hold It In Abeyance"² states:

We are unpersuaded by BREDL's assertion that the "piecemeal" nature of the adjudication "makes it impossible to perform a complete or effective evaluation of the issues ... within the scope of the current hearing" and "is wasteful of [the petitioners'] resources." See Petition at 16. We have repeatedly rejected such resource-related arguments in prior proceedings, and do so again here. As we stated just this March in *Consolidated Edison Co. of NY* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229-30 (2001), "litigation invariably results in the parties' loss of both time and money. We cannot postpone cases for many weeks or months simply because going forward will prove difficult for litigants or their lawyers."

It is NIRS view that the only irreparable harm to NRC at this time stems from their own failure to pose to Duke when they came to renew the licenses for Catawba 1 & 2 and McGuire 1 & 2, the same question that NIRS has posed (effectively) "What is the impact of Duke's contractually stated intent to use plutonium fuel in these four reactors on license renewal?" In NIRS view, if NRC staff had asked this question at the outset, NRC staff would not be in the situation that they are complaining about. NIRS appreciates the ASLB ruling of January 24, 2002³ ruling which affirmed that this is a question relevant to the current proceeding. The March 1, 2002 ASLB Order⁴ is merely the implementation of this ruling.

Alternately, NIRS notes that if NRC staff were to embrace the intent of the National Environmental Policy act to provide information that INFORMS the decisions and actions of

² CLI-01-27 MEMORANDUM AND ORDER, DOCKETED 12/28/01

³ LPB-02-04 MEMORANDUM AND ORDER (Ruling on Standing and Contentions)

⁴ ORDER (Addressing Matters Discussed at February 12, 2002, Telephone Conference

federal agencies, perhaps it would joyfully engage with the ordered discovery and hearing process on this question. It would appear from the Staff's Motion that it is, instead following the misguided impression that the NEPA process is merely a set of procedures to justify irreparable, but avoidable, harm to the public caused by the actions of federal agencies; or simply a packaging and mode of presentation that assists the beneficiaries of such major federal actions in proclaiming that any resulting harm is "acceptable."

NIRS asks the Commission to carefully consider the root causes of this situation and to rule in a manner that truly protects public health, safety, our environment, and upholds the public's rights to full participation in decisions regarding programs which significantly impact health, safety and environment and security, such as the utilization of plutonium as fuel.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mary Olson', with a long horizontal flourish extending to the right.

Mary Olson
Director, Southeast Office
Nuclear Information & Resource Service
Asheville, NC
March 21, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)	
)	Docket Nos. 50-369-LR
DUKE ENERGY CORPORATION)	50-370-LR
)	50-413-LR
(McGuire Nuclear Station,)	50-414-LR
Units 1 and 2,)	
Catawba Nuclear Station,)	March 21, 2002
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Response Of Nuclear Information & Resource Service To NRC Staff's Motion For Stay And Interlocutory Review Of The Licensing Board's March 1, 2002 Order Authorizing Discovery And Ordering An Evidentiary Hearing Regarding MOX-Related Environmental And Safety Issues " is being serves on the parties listed below via electronic transmission and will be deposited in US first class mail on February 15, 2002 to the postal addresses listed below.

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lester S. Rubenstein
Administrative Judge
4760 East Country Villa Drive
Tucson, Arizona 85718
(e-mail: lesrrr@msn.com)

Ann Marshall Young, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: amy@nrc.gov)

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemakings and Adjudications Staff
(original + two copies)
(e-mail: HEARINGDOCKET@nrc.gov)

Dr. Charles N. Kelber
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: cnk@nrc.gov)

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David Repka, Anne Cottingham
Winston & Strawn
1400 L St. NW
Washington, DC 20005-3502
(e-mail: drepka@winston.com and
acotting@winston.com)

Paul Gunter
Nuclear Information and Resource Service
1424 16th Street, NW
Washington, DC 20026
(e-mail: pgunter@nirs.org)


Jesse Riley
854 Henley Place
Charlotte, NC 28207
(e-mail: Jlr2020@aol.com)

Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Susan L. Uttal, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(e-mail: slu@nrc.gov)

Janet Marsh Zeller
Executive Director
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
(e-mail: BREDL@skybest.com)

Donald J. Moniak
Blue Ridge Environmental Defense League
P.O. Box 3487
Aiken, SC 29802-3487
(e-mail: donmoniak@earthlink.net)



Mary Olson
Nuclear Information & Resource Service, Southeast Office
P.O. Box 7586
Asheville, North Carolina 28802 USA
March 21, 2002