

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 4423

DOCKETED 05/13/02

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 05/13/02

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

May 13, 2002

ORDER

(Addressing Matters Discussed at April 29, 2002, Telephone Conference
and Scheduling June 18, 2002, Telephone Conference)

On April 29, 2002, a telephone conference was held in this proceeding, which concerns the license renewal application of Duke Energy Corporation, 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. The following matters were addressed:

1. The parties having previously been advised to be prepared to address all issues remaining in the case after the Commission's issuance of CLI-02-14 reversing the Board's ruling on Contention 1 (relating to MOX fuel use), issues relating to Contention 2 (the appeal on which has not yet been ruled on by the Commission) were discussed. The parties will continue their settlement discussions relating to Contention 2, the relevance of Generic Safety Issue 189, and related issues, and report on whether they have settled any or all parts of Contention 2 at another telephone conference scheduled for June 18. In addition, the following deadlines were set:

a. Any late-filed contentions based on new information based upon Duke's responses to Staff RAIs shall be filed, jointly by the petitioners through their lead counsel on this issue, no

later than May 20. Tr. 914. Any such late-filed contentions shall comply with all relevant requirements of NRC rules relating to such late-filing.

b. Responses to any such late-filed contentions shall be filed no later than June 10, 2002. *Id.*

c. To the degree the responses to any late-filed contentions raise timeliness issues, the petitioners may file a joint response with regard to these issues, no later than June 14, 2002.

Tr. June 14.

2. Another telephone conference shall be held on June 18, 2002, tentatively at 10:00 a.m., at which time the parties shall report on their continuing settlement efforts and on any related issues, and any necessary oral argument on late-filed contentions shall be scheduled, as appropriate. See Tr. 915. (Because of Judge Young's involvement in a hearing in another case June 11-21 in Tennessee, the time for this conference may need to be reset; the parties will be notified of the final time for the conference, as well as the pass code for participating, at a later date.)

3. Deadlines for discovery and for motions for summary disposition will be set at a later date, as necessary and appropriate. See Tr. 916.

4. In the meantime, the Staff will continue to attempt to ascertain the status of Staff action on Generic Safety Issue 189, share information on this with the parties as soon as possible, and also report on this at the June 18 conference. In addition, the parties are directed to a document located by Judge Kelber, a portion of which may be relevant to Contention 2 and continuing settlement discussions relating to it, namely, a Memorandum to Christopher Grimes from Richard Barrett, dated March 11, 2002, with ADAMS accession number ML020720136, entitled EVALUATION OF SEVERE ACCIDENT MITIGATION ALTERNATIVES FOR LICENSE RENEWAL OF McGUIRE, UNITS 1 AND 2. Specifically, Judge Kelber suggests the parties note the following statement from the referenced document:

The staff has recognized hydrogen control in SBO sequences as an operating license issue for all ice condenser plants and is pursuing this matter as Generic Safety Issue 189. The need for plant/procedure changes will be addressed as part of the generic safety issue resolution and if found to be justified, plant modifications at McGuire will be made as a current operating license issue.

To the degree these issues and any other issues relating to Contention 2 remain in dispute at the June 18 conference, they shall be discussed at that time.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 13, 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DUKE ENERGY CORPORATION) Docket Nos. 50-369/370/413/414-LR
)
(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 APRIL 29, 2002, TELEPHONE CONFERENCE AND SCHEDULING JUNE 18, 2002, TELEPHONE CONFERENCE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Ann Marshall Young, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge, ASLBP
Lester S. Rubenstein
4760 East Country Villa Drive
Tucson, AZ 85718

Susan L. Uttal, Esq.
Antonio Fernández, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Michael S. Tuckman, Executive Vice President
Nuclear Generation
Duke Energy Corporation
526 South Church Street
P.O. Box 1006
Charlotte, NC 28201-1006

Mary Olson
Director of the Southeast Office
Nuclear Information and Resource Service
729 Haywood Road, 1-A
P.O. Box 7586
Asheville, NC 28802

Janet Marsh Zeller, Executive Director
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629

Docket Nos. 50-369/370/413/414-LR
LB ORDER (ADDRESSING MATTERS DISCUSSED
AT APRIL 29, 2002, TELEPHONE CONFERENCE
AND SCHEDULING JUNE 18, 2002, TELEPHONE
CONFERENCE)

David A. Repka, Esq.
Anne W. Cottingham, Esq.
Winston & Strawn
1400 L Street, NW
Washington, DC 20005

Lisa F. Vaughn, Esq.
Duke Energy Corporation
422 South Church Street
Charlotte, NC 28202

Paul Gunter
Nuclear Information and Resource Service
1424 16th St., NW
Washington, DC 20026

Jesse Riley
854 Henley Place
Charlotte, NC 28207

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of May 2002