

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO
APPLICANT'S MOTION FOR RECONSIDERATION

On August 8, 2002, Duke Energy Corporation (Duke) filed its "Motion for Reconsideration" with the Atomic Safety and Licensing Board (Board) in this proceeding. Duke's Motion for Reconsideration sets forth an approach for the resolution of BREDL/NIRS Contention 2 as an alternative to that outlined by the Board during the July 29, 2002, telephone conference held between the Board and the parties in this proceeding. See Official Transcript of Proceedings (Tr.) at 1129-33, 1139-46. The staff of the Nuclear Regulatory Commission (Staff) hereby submits its response in support of Duke's Motion for Reconsideration.

In its Motion for Reconsideration, Duke argues that the question of mootness previously raised with respect to BREDL/NIRS Contention 2 should be resolved before any discovery begins regarding the contention.¹ In order to resolve the mootness question, Duke advocates further written filings from the parties on the following two questions:

¹Both Duke and the Staff have previously taken the position that Duke's supplemental SAMA analysis rendered BREDL/NIRS Contention 2 moot. See, e.g., Tr. at 871, 877 (stating Duke's position that its responses to the Staff's requests for additional information effectively mooted the contention); "NRC Staff's Answer to Blue Ridge Environmental Defense League's and Nuclear Information and Resource Service's Amended Contention 2," (June 10, 2002) at 7-8 (stating the Staff's position that Duke's responses to the Staff's requests for additional information mooted the contention).

1. What exactly are the values from NUREG/CR-6427² that Consolidated Contention 2 alleges should be included in the Severe Accident Mitigation Alternatives ("SAMA") Analyses for McGuire and Catawba?
2. Have these values been included in the supplemental SAMA analyses submitted by Duke and incorporated in the NRC Staff's draft Supplemental Environmental Impact Statements ("SEIS") for McGuire and Catawba?

Motion for Reconsideration at 2. Under Duke's proposed approach, after the parties complete the filings described above, the Board would make a ruling regarding the mootness of BREDL/NIRS Contention 2 based upon the parties' filings and the current record. *Id.* at 1-2, 7-9.

In the Staff's view, the current record is sufficient to resolve the mootness question. Relevant information currently available includes: (1) the Sandia study; (2) Duke's responses to Staff requests for additional information regarding the license renewal application;³ and (3) the Staff's draft supplemental environmental impact statements for the Catawba and McGuire nuclear plants.⁴ This information, when coupled with further filings from the parties as described above, obviates the need for further discovery prior to a decision regarding the mootness of BREDL/NIRS Contention 2. A decision from the Board regarding the mootness question prior to discovery would serve to more clearly define the precise issues open to further discovery, thereby eliminating any potential delay caused by currently anticipated discovery disputes. See Tr. at 1132-33, 1140.

²NUREG/CR-6427, "Assessment of the DCH [Direct Containment Heating] Issue for Plants with Ice Condenser Containments," (April 2000) (the Sandia study).

³See Letter from M.S. Tuckman to NRC, "Response to Requests for Additional Information in Support of the Staff Review of the Application to Renew the Facility Operating Licenses of McGuire Nuclear Station, Units 1 & 2 and Catawba Nuclear Station, Units 1 & 2" at 8 (January 31, 2002); Letter from M.S. Tuckman to NRC, "Response to Requests for Additional Information in Support of the Staff Review of the Application to Renew the Facility Operating Licenses of McGuire Nuclear Station, Units 1 & 2 and Catawba Nuclear Station, Units 1 & 2" at 7 (February 1, 2002).

⁴See NUREG-1437, Supplement 8, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding McGuire Nuclear Station, Units 1 and 2," (May 2002) at 5-28, Table 5-8; NUREG-1437, Supplement 9, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Catawba Nuclear Station, Units 1 and 2," (May 2002) at 5-27, Table 5-7.

Finally, the procedure outlined by Duke in its Motion for Reconsideration would focus the issues open to litigation, resulting in a more efficient hearing process for all parties involved.

CONCLUSION

For the reasons stated above, the Staff supports Duke's Motion for Reconsideration and the approach for resolution of BREDL/NIRS Contention 2 outlined therein.

Respectfully Submitted,

/RA/

Jared K. Heck
Counsel for NRC Staff

Dated at Rockville, Maryland
This 19th day of August, 2002.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), by deposit in the Nuclear Regulatory Commission's internal mail system; as indicated by two asterisks (**), by electronic mail, this 19th day of August, 2002.

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