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January 2, 2003

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-LR
)	50-370-LR
(McGuire Nuclear Station,)	50-413-LR
Units 1 and 2,)	50-414-LR
Catawba Nuclear Station.)	
Units 1 and 2))	

**DUKE ENERGY CORPORATION'S RESPONSE TO THE INTERVENORS'
DECEMBER 31, 2002 MOTION FOR AN EXTENSION OF TIME TO
RESPOND TO DUKE'S MOTION TO DISMISS CONTENTION 2**

Duke Energy Corporation ("Duke") herein responds to the Intervenor's December 31, 2002 Motion for Extension of Time in which to respond to Duke's pending Motion to Dismiss Consolidated Contention 2.¹ Duke is aware of an e-mail communication from the NRC Atomic Safety and Licensing Board ("Licensing Board"), also of December 31, 2002, indicating that the Board is "inclined to look favorably" on the extension request.² In this context, despite the fact that the Intervenor has failed to demonstrate the existence of "extreme and unavoidable" circumstances that are required for any extension, Duke will not object to an

¹ See Blue Ridge Environmental Defense League's and Nuclear Information and Resource Service's Motion for an Extension of Time to Respond to Duke Energy Corporation's Motion to Dismiss Contention 2," December 31, 2002 ("Intervenor's Motion for Extension of Time").

² The e-mail communication from the Licensing Board Chairman was transmitted at 2:33 p.m.; Intervenor's motion was transmitted at 2:54 p.m. on December 31. Thus, the Licensing Board's stated inclination to grant the Intervenor's motion was apparently based on the telephone conversation between Ms. Curran, counsel for Intervenor, and Judge Young, before the Intervenor's written motion was filed.

extension until January 13, 2003. However, Duke does object to the further extension requested by Intervenors.

Duke's Motion to Dismiss Consolidated Contention 2 in light of the conclusions and guidance of the Commission in CLI-02-28 is a simple and straightforward matter. The "technical" issues raised by that motion are by no means formidable. Moreover, since that motion was filed, the NRC Staff has issued the final versions of the Supplemental Environmental Impact Statements ("SEISs") for the McGuire and Catawba Nuclear Stations.³ These licensing documents incorporate the same conclusions relevant to Consolidated Contention 2 that were crucial to the Commission's analysis in CLI-02-28. The SEISs specifically utilize evaluations of benefits of Severe Accident Mitigation Alternatives ("SAMAs") based on Duke's re-evaluations, assuming a containment response consistent with the simplified Level 2 analysis in NUREG/CR-6427, "Assessment of the DCH [Direct Containment Heating] Issue for Plants with Ice Condenser Containments."⁴ It simply does not require extensive expert analysis to determine, as the Commission directed, that the environmental analyses provided by Duke and the NRC Staff have now incorporated the conservative conditional containment failure probabilities of NUREG/CR-6427 and that Consolidated Contention 2 is therefore moot.⁵

³ See NUREG-1437, Supp. 8, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding McGuire Nuclear Station, Units 1 and 2" (December 2002); and NUREG-1437, Supp. 9, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Catawba Nuclear Station, Units 1 and 2" (December 2002).

⁴ See, e.g., NUREG-1437, Supp 8, at 5-27; NUREG-1437, Supp. 9, at 5-25 - 5-26.

⁵ See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC ___, slip op. at 13-16 (Dec. 18, 2002) (regarding "contentions of omission").

Rather than addressing the obvious issues posed by CLI-02-28 and Duke's Motion to Dismiss, the Intervenor's in their Motion for Extension of Time continue their pattern of obfuscation and delay that has been the rule with respect to this contention for almost a year. This time, their focus is on procedure — the form of Duke's Motion to Dismiss. Intervenor's argument that Duke's Motion to Dismiss is in reality a Motion for Summary Disposition is inaccurate. Indeed, the Intervenor's own description of a Motion to Dismiss seems to fit the present circumstances. In addition, Intervenor's suggestion that the Commission compelled one form of motion over any other form misreads CLI-02-28. In the end, however, the proffered distinction simply does not matter. The point remains that Consolidated Contention 2 is moot and no amount of procedural wrangling can change that fact.

Nonetheless, in light of the circumstances discussed above, Duke will not object to an extension of time for a response to the Motion to Dismiss through January 13, 2003. This would allow as much time as allowed by the rules for a summary disposition response. Moreover, such an extension would in itself allow ample time for the Intervenor's to read CLI-02-28, Duke's Motion to Dismiss, and the relevant portions of the SEISs and to accept the obvious.

Notwithstanding the Licensing Board's initial inclination, Duke does object to granting any further extension of time to the Intervenor's. The circumstances outlined in the Motion for Extension of Time simply do not rise to the standard of "extreme and unavoidable circumstances" established by the Commission for extensions of deadlines.⁶ Parties to NRC

⁶ See *Commission Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 216 (2001) ("[T]o avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances."); see also *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 342 (1998).

licensing proceedings have an obligation to meet the deadlines set by the rules of practice. Holidays and travel commitments of principals, counsel, or experts do not change that fact. Additionally, in this day and age of quick and global communications, Duke finds it woefully inadequate for a party to base a motion for more time simply on the assertion that individuals are “out of town.” The Commission has made clear that:

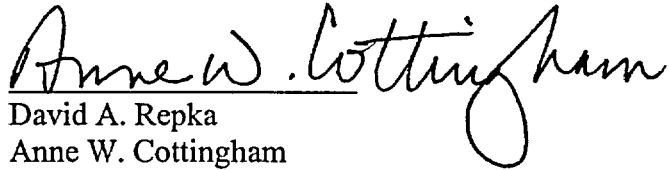
Fairness to all involved in NRC’s adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.⁷

Intervenors’ reliance on personal vacation and travel plans fails to demonstrate such “special circumstances,” as the Commission requires.

⁷ See, e.g., *Commission Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981).

For these reasons, the Intervenor's Motion for Extension of Time should be denied. However, Duke will not, under the present circumstances, object to an extension through January 13, 2003.

Respectfully submitted,



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Dated in Washington, D.C.
this 2nd day of January 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "DUKE ENERGY CORPORATION'S RESPONSE TO THE INTERVENORS' DECEMBER 31, 2002 MOTION FOR AN EXTENSION OF TIME TO RESPOND TO DUKE'S MOTION TO DISMISS CONTENTION 2" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 2nd day of January, 2003. Additional e-mail service, designated by **, has been made this same day, as shown below.

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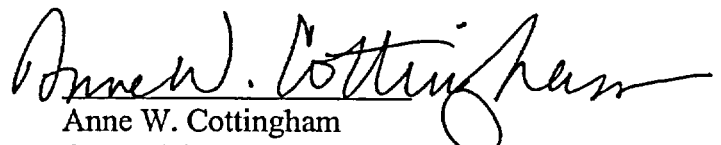
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