

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

RAS 5606

DOCKETED 02/04/03

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 02/04/03

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

February 4, 2003

ORDER

(Ruling on Duke Motion to Dismiss, Setting Briefing Deadlines,  
and Scheduling Oral Argument on Amended Contention 2)

On January 31, 2002, the Licensing Board held a telephone conference with the parties 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, and in which the Nuclear Information and Resource Service (NIRS) and the Blue Ridge Environmental Defense League (BREDL) have intervened. The following matters were addressed at this conference:

1. With regard to Duke's Motion to Dismiss Consolidated Contention 2 based on grounds of mootness, the Board GRANTED the motion, in light of the Commission's December 18, 2002, Memorandum and Order, CLI-02-28, and having received and considered the responses of the NRC Staff and the Intervenors to the motion.

2. The Board will hear oral argument on the Intervenors' Amended Contention 2 on Tuesday, February 18, 2003, starting at 9:00 a.m. in the Atomic Safety and Licensing Board Panel hearing room in Rockville, Maryland. In order to facilitate the orderly handling of NRC

security procedures for the session, non-NRC parties should send the Board chair a list of all persons who will be attending the oral argument, providing names, dates of birth, social security numbers, and whether each person is a U.S. citizen, along with an indication of whether any persons will be arriving in their own automobiles such that they will need parking, no later than the close of business on Thursday, February 13, 2003, with a copy to Mack Cutchin (also with the ASLBP, email address: [JMC3@nrc.gov](mailto:JMC3@nrc.gov)) by the same time.

3. The Board asked the parties to brief, prior to oral argument, various issues relating to the admissibility of the amended contention. These briefs shall be filed no later than February 7, 2003, and responses to each other's briefs shall be filed no later than February 12, 2003. The parties shall address the following issues in their brief and responses:

a. mootness and/or viability of the various parts of the amended contention in light of CLI-02-28, and, as indicated therein, whether any issues may have been cured by the Staff's draft and final SEISs, see CLI-02-28, slip op. at 17-18;

b. whether the various parts of the amended contention were timely filed or could have been raised earlier with "sufficient care" on the part of the Intervenors in examining publicly available documentary material, see CLI-02-28, slip op. at 18-20, in light of any ambiguity and confusion surrounding certain issues, see *id.* at 16, and any related "scope" issues, see *id.* at 19;

c. reasons for any departures from recognized NRC guidance documents with regard to any parts of the amended contention; and

d. any other issues arising out of CLI-02-28 or that would otherwise be relevant.

During oral argument, which may be more extensive on parts 5 through 8 of Amended Contention 2 since argument on these parts has not yet been heard, the parties should be prepared to address all parts of the amended contention with regard to the issues described in paragraphs 3.a and 3.b, and, as applicable, 3.c.

4. All parties agreed that any discovery matters, see CLI-02-28, slip op. at 20-23, would most appropriately be resolved after the Board rules on the Intervenors' Amended Contention 2.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>1</sup>

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 4, 2003

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<sup>1</sup>Copies 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 (RULING ON DUKE MOTION TO DISMISS, SETTING BRIEFING DEADLINES, AND SCHEDULING ORAL ARGUMENT ON AMENDED CONTENTION 2) 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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Docket Nos. 50-369/370/413/414-LR  
LB ORDER (RULING ON DUKE MOTION TO DISMISS,  
SETTING BRIEFING DEADLINES, AND SCHEDULING  
ORAL ARGUMENT ON AMENDED CONTENTION 2)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 4<sup>th</sup> day of February 2003