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December 10, 2001

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

NRC STAFF'S RESPONSE TO NIRS MOTION TO SUSPEND LICENSE RENEWAL PROCEEDING PENDING PUBLIC RELEASE OF FINAL SAFETY ANALYSIS REPORTS

INTRODUCTION

The staff of the Nuclear Regulatory Commission (Staff) hereby responds to the motion filed by Nuclear Information and Resource Service (NIRS) to suspend the license renewal proceeding for McGuire Nuclear Station, Units 1 and 2 (McGuire), and Catawba Nuclear Station, Units 1 and 2 (Catawba) pending the release of the Final Safety Analysis Reports (FSARs) for the McGuire and Catawba Nuclear Power Stations to the NRC Public Document Room (NIRS Motion). For the reasons set forth below, the Staff submits that the proceeding should not be suspended pending release of the FSAR.

DISCUSSION

Following the events of September 11, 2001, documents containing potentially sensitive information have been removed from the NRC Public Document Room for reasons of security. The Final Safety Analysis Reports (FSAR) are among the documents that are not currently available to the public. NIRS has argued that due to its inability to access the FSARs for the McGuire and Catawba Nuclear Power Stations, it has been deprived of an adequate opportunity to participate in the license renewal proceeding before this Licensing Board. (NIRS Motion at 1-2). NIRS

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believes that access to the FSARs is necessary if it is to file fully developed contentions that meet the basis and specificity requirements of 10 C.F.R. § 2.714. (NIRS Motion at 1-2).

The license renewal proceedings should not be suspended pending the release of the FSARs to the public.[1] NIRS has already submitted contentions for which NIRS apparently did not need to rely on information from the FSARs.[2] The Licensing Board can decide on these submitted contentions without waiting for access to the FSARs, thus obviating the need to suspend the proceedings. In addition, NIRS is permitted to file a motion seeking to submit late-filed contentions that meet the standards of 10 C.F.R. § 2.714 and Commission precedent. This will allow NIRS to include information gathered from review of the FSARs. Furthermore, the Staff notes that NIRS has not identified any specific information or type of information uniquely available in the FSAR that would prevent submission of contentions. If NIRS had submitted all contentions it intended to, noting any contentions that might be deficient solely because of their inability to access and reference the FSARs, it would have permitted a more focused and reasoned response by the other parties as well as the Board.

The Commission is currently in the process of deciding upon the proper method of release of potentially sensitive information to the public following the events of September 11. The Staff is willing to release the FSARs to NIRS subject to a temporary non-disclosure agreement, pending Commission determination of agency policy with regard to the release of potentially sensitive information to the public.

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[1] NIRS had access to the FSARs prior to November 16, 2001 at which time they claim they discovered that they had misplaced the compact disk containing their copy of the FSAR. (NIRS Motion at 2).

[2] The only contention for which NIRS cites lack of information due to inaccessibility of the FSARs, Contention 2.1.1, concerning stud bolts, fails not because NIRS did not have the FSAR, but because NIRS failed to note that the bolts are addressed in the aging management programs and in the TLAAs.

CONCLUSION

For the reasons set forth above, NIRS' motion to suspend the license renewal proceeding pending public release of the FSARs should be denied.

Respectfully submitted,

Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 10th day of December 2001.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO NIRS MOTION TO SUSPEND LICENSE RENEWAL PROCEEDING PENDING PUBLIC RELEASE OF FINAL SAFETY ANALYSIS REPORTS" 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 10TH day of December, 2001.

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