

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 6847

DOCKETED 09/23/03

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 09/23/03

Before Administrative Judges:

Ann Marshall Young, Chair
Anthony J. Baratta
Thomas S. Elleman

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-OLA, 50-370-OLA,
50-413-OLA, and 50-414-OLA

ASLBP No. 03-815-03-OLA

September 23, 2003

ORDER

(Setting Deadlines, Schedule, and Guidance for Proceedings)

This proceeding involves the application of Duke Energy Corporation (Duke) to amend the operating licenses for its McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, by revising certain Technical Specifications (TSs) to allow the use of four mixed oxide (MOX) lead assemblies at either of the stations. In response to a July 25, 2003, notice of opportunity for hearing on the proposed license renewals, 68 Fed. Reg. 44,107, Petitioners Nuclear Information and Resource Service (NIRS) and Blue Ridge Environmental Defense League (BREDL) filed, on August 21 and 25, 2003, respectively, petitions to intervene and requests for hearing pursuant to the provisions of 10 C.F.R. § 2.714. On September 11, 2003, these petitions were referred to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action in accordance with 10 C.F.R. § 2.772(j). On September 17, 2003, the above-listed Atomic Safety and Licensing Board was established to preside over the proceeding. The parties are directed to the following schedule and requirements for this proceeding:

1. **Schedule for Amended and Supplemented Petitions, Responses, Prehearing**

Conference/Oral Argument, and Decision on Standing and Contentions: Pursuant to 10 C.F.R. § 2.714(a)(3) & (b)(1), the petitioners have the right, respectively, to amend their petition with regard to standing, and to supplement their petition with regard to contentions. The following deadlines are set for the filing of amended and supplemented petitions, and responses thereto:

A. **The Petitioners shall file their amended and supplemented petitions no later than October 14, 2003.**

B. **The Applicant and the Staff shall file their responses to the Petitioners' amended and supplemented petitions no later than November 4, 2003.**

C. We further notify the participants that we shall hold a prehearing conference in the vicinity of the Applicant's facilities, to hear oral argument on the Petitioners' standing to participate in this proceeding and on the admissibility of their contentions, at one of the following times: **November 13-14, November 24-25, or December 3-4, 2003, depending upon the availability of a court room and of all parties.** All participants shall notify the Board in writing of their availability on these dates no later than September 30, 2003, and will thereafter be notified of the exact location of this conference. Also, after receipt of the amended and supplemented petitions, and responses, a more specific schedule and time limits for the conference may be defined.

2. All pleadings and other submissions to be filed in this proceeding by all participants shall have the **filing date printed on the top right-hand side of the first page** of the submission; and all participants in all their filings shall **avoid the use of mere abbreviated incorporation by reference** to other pleadings and documents but rather shall state all arguments to be made with regard to the issues addressed in any pleading within that pleading itself.

3. **Service on the Licensing Board Members and Other Participants.** Absent some other directive from the Board, **all filings in this case should be served** on the Board and the other participants **so as to ensure receipt on or before the filing deadline.** Participants may

use any of the methods outlined below so long as the filing is received no later than **midnight Eastern Time** on the date due.

A. **Service on Licensing Board Members.** For each pleading or other submission filed in this proceeding, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.708(d) and serving a copy on every other participant in accordance with section 2.701(b), a participant should serve conforming copies on the members of the Licensing Board by one of the following methods:

i. **E-Mail.** To complete service on the members of the Licensing Board by e-mail transmission, a participant should (a) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to each of the Licensing Board members (Internet IDs: AMY@NRC.GOV, AJB5@NRC.GOV, elleman@eos.ncsu.edu); and (b) send paper conforming copies that same date to each of the Licensing Board members by regular first-class mail, at the following addresses:

For Judges Young and Baratta:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For Judge Elleman:

5207 Creedmoor Rd. #101
Raleigh, NC 27612

For regular mail service, the NRC staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first class mail.

Any attachments or exhibits to a pleading that cannot be transmitted by e-mail should be sent to the Licensing Board members by separate facsimile transmission or other means that will ensure receipt by the due date, with paper conforming copies mailed that same day to each of the Licensing Board members.

ii. **Facsimile Transmission.** To complete service on the members of the Licensing Board by facsimile transmission, a participant should (a) send one copy by rapifax to the attention of the members of the Licensing Board at 301/415-5599 (verification (301/415-7393); and (b) send paper conforming copies that same date to each of the Licensing Board members by regular mail at the addresses listed above.

iii. **Overnight or Hand Delivery.** To complete service on Licensing Board members via overnight (e.g., express mail, Federal Express, etc.) or hand delivery, a participant should send conforming copies to Judge Elleman at the address listed for him above, and to Judges Young and Baratta at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

It should be noted that use of the Board's regular Washington, D.C., mailing address (see above) on an overnight/hand delivery may delay receipt of the filing.

B. **Service on Other Participants.** Whichever of the methods outlined above is used for service on the Licensing Board, the participant serving the pleading should make service on all other participants and the Office of the Secretary by the same or a comparable method.

4. **Motions for Extension of Time.** For any motion for extension of time, except upon a showing of good cause, the participant requesting the extension shall (a) ascertain whether and when any other participant intends to oppose or otherwise respond to the motion and apprise the Licensing Board of that information in the motion; (b) serve the motion on the Licensing Board so that it is received at least three business days before the due date for the pleading or other submission for which an extension is sought; and (c) state in the motion, specifically and in detail, what "unavoidable and extreme circumstances" warrant the extension.

See Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

5. Any attorney or other representative for any participant who has not already filed a notice of appearance shall file such a notice that conforms with the requirements of 10 C.F.R. § 2.713(b). Any such notice or amendment thereto shall also include an internet e-mail address and facsimile number, if available.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 23, 2003

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)
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DUKE ENERGY CORPORATION) Docket Nos. 50-369/370/413/414-OLA
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(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 (SETTING DEADLINES, SCHEDULE, AND GUIDANCE FOR PROCEEDINGS) 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
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Washington, DC 20555-0001

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Docket Nos. 50-369/370/413/414-OLA
LB ORDER (SETTING DEADLINES, SCHEDULE,
AND GUIDANCE FOR PROCEEDINGS)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of September 2003