

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 6871

DOCKETED 10/06/03

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 10/06/03

Before Administrative Judges:

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

In the Matter of

DUKE ENERGY CORPORATION

(Catawba Nuclear Station, Units 1 and 2)

Docket No's. 50-413-OLA, 50-414-OLA

ASLBP No. 03-815-03-OLA

October 3, 2003

ORDER

(Granting Request for Extension of Time)

In this Order the Licensing Board grants Blue Ridge Environmental Defense League's Request for Extension of Time to File Supplemental Petition to Intervene (Sept. 29, 2003), in this proceeding involving Duke Energy Corporation's application to amend the operating license for its Catawba Nuclear Station units by revising certain Technical Specifications (TSs) to allow the use of four mixed oxide (MOX) lead assemblies at the Catawba station. In response to Duke's original February 2003 application (which originally involved both the Catawba Station and the McGuire Nuclear Station, see 68 Fed. Reg. 44,107 (July 25, 2003)) Petitioners BREDL and Nuclear Information and Resource Service (NIRS) filed, on August 25 and 21, 2003, respectively, petitions to intervene and requests for hearing. Both Duke and the NRC Staff oppose BREDL's request.

BREDL asserts that the extension is warranted by the "unavoidable and extreme circumstances" of the unavailability of its expert, Dr. Edwin Lyman, during the week of September 29 and the period of October 6-14, 2003, due to previously made professional commitments to other parties and being out of town during the October 6-14 period. BREDL Request at 1. Duke opposes the extension, contending that the circumstances BREDL

describes do not demonstrate unavoidable and extreme circumstances as required by the Commission in its *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998), and citing as well the Commission's recent re-emphasis of the importance of a disciplined and efficient hearing process in *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-03-11, __ NRC __ (Sept. 8, 2003). Duke Energy Corporation's Opposition to BREDL's Request for an Extension of Time (Sept. 30, 2003) (hereinafter Duke Opposition), at 2. The Staff for its part also opposes BREDL's Request, citing the Commission's 1998 Statement of Policy, as well as this Licensing Board's own Sept. 23, 2003, Order (Setting Deadlines, Schedule, and Guidance for Proceedings) (hereinafter Scheduling Order). NRC Staff's Opposition to Bredl's Request for an Extension of Time (Oct. 2, 2003) (hereinafter Staff Opposition), at 1-2.

The Board indeed required, in its September 23 Order, that any party seeking an extension, among other things, state specifically and in detail what "unavoidable and extreme circumstances" warrant the extension, citing the Commission's *Statement of Policy*. Scheduling Order at 4-5. As with the Commission's *Statement of Policy*, the Board's concern was, and is, with avoiding unnecessary delay that might compromise prompt decisions on issues before us. *See Statement of Policy*, 48 NRC at 20. All "parties to a proceeding . . . are expected to adhere to the time frames specified in the Rules of Practice in 10 C.F.R. Part 2 for filing and the scheduling orders in the proceeding." *Id.* at 21. Also, as the Commission recognized, "of course, . . . boards may grant extensions of time under some circumstances, but this should be done only when warranted by unavoidable and extreme circumstances." *Id.*

As the Staff points out, the Commission itself granted a petitioner an extension of a deadline for filing contentions, approximately six weeks after issuance of its *Statement of Policy*. As stated by the Staff:

the Commission explained that it extended the deadline based on its conclusion that “at the time [petitioner] requested a hearing in early August, it might not have anticipated that the Board would set a date as early as September 11th [a period of four weeks] as the deadline for filing contentions. . . .” *Id.* By granting the two and one half week extension, the Commission increased the period between the date of petitioner’s request and the deadline for filing contentions from four to six and a half weeks.

Staff Opposition at 3-4, citing *Baltimore Gas and Electric Company* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-19, 48 NRC 132, 134 (1998).

The Commission in *Calvert Cliffs* also recognized the petitioner’s representation in that case that “its experts were unable to complete their review of the Calvert Cliffs application by the September 11th deadline,” and stated further as follows:

To ensure that [the petitioner] has an adequate opportunity to introduce matters of safety or environmental concern into the Calvert Cliffs proceeding, we have decided to grant [the petitioner] until September 30 to file contentions.

Id. In this proceeding, the Licensing Board was established on September 17, 2003. The Scheduling Order was issued September 23, 2003, and it required amended and supplemented petitions, which would include contentions, to be filed three weeks later, by October 14, 2003.

In addition, in an Order issued Oct. 1, 2003, the Licensing Board set December 3-4, 2003, as the dates for a prehearing conference to hear oral argument on the Petitioners’ standing to participate in this proceeding and on the admissibility of their contentions. These dates was selected among several dates in November and December offered by the Board, based on their being the only dates all participants and a courtroom would be available for the conference. Order (Setting Prehearing Conference Dates and Location) (Oct. 1, 2003), at 1-2. BREDL had, in accordance with the Board’s September 23 Scheduling Order, promptly notified the Board of its availability for the conference, and timely filed its Request for Extension, following all the Board’s requirements for such requests.

The Board, as indicated above, intends to conduct this proceeding in a manner that avoids unnecessary delay, and to achieve this through all appropriate means. We have a

concern for efficiency, and also, as the Commission did in *Calvert Cliffs*, “to ensure that [the petitioner] has an adequate opportunity to introduce matters of safety or environmental concern into the . . . proceeding.” *Calvert Cliffs*, 48 NRC at 134. In this proceeding, these concerns do not conflict with each other, as the prehearing conference for hearing oral argument has already been set for December 3 and 4, 2003. Therefore, extending the October 14 deadline for the filing of amended and supplemented petitions by one week to October 21, and the deadline for responses by a like time, from November 4 to 11, which is over three weeks before the December 3-4 prehearing conference, will occasion no delay whatsoever in this proceeding. It will, moreover, further the interest, recognized by the Commission in *Calvert Cliffs*, in ensuring that petitioners have “adequate opportunity to introduce matters of safety or environmental concern.” *Id.* Finally, we find that setting these deadlines consistently for all participants will be more efficient and less conducive to any possible confusion.

We therefore grant Petitioner BREDL’s Request for Extension, and, in the interest of efficiency and consistency, reset the previous deadlines for all participants, as follows:

The Petitioners shall file their amended and supplemented petitions no later than October 21, 2003, and the Applicant and the Staff shall file their responses to the Petitioners’ amended and supplemented petitions no later than November 11, 2003.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 3, 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.

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NUCLEAR REGULATORY COMMISSION

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Catawba Nuclear Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING REQUEST FOR EXTENSION OF TIME) 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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LB ORDER (GRANTING REQUEST FOR EXTENSION
OF TIME)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of October 2003