

September 30, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

October 14, 2003 (9:16AM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
DUKE ENERGY CORPORATION)
)
(McGuire Nuclear Station,)
Units 1 and 2, and)
Catawba Nuclear Station,)
Units 1 and 2))

Docket Nos. 50-369-OLA
50-370-OLA
50-413-OLA
50-414-OLA

DUKE ENERGY CORPORATION'S OPPOSITION TO BREDL'S REQUEST
FOR AN EXTENSION OF TIME

Duke Energy Corporation ("Duke") herein responds to the September 29, 2003 "Request for Extension of Time to File Supplemental Petition to Intervene" filed by petitioner Blue Ridge Environmental Defense League ("BREDL"). BREDL's extension request asserts that it is unable to comply with the October 14, 2003 deadline for filing amended and supplemented petitions to intervene, including proposed contentions, established by the September 23, 2003 Order of the Atomic Safety and Licensing Board ("Licensing Board").¹ BREDL's extension request fails to meet Commission standards for extension requests and therefore should be denied.

This proceeding relates to Duke's February 27, 2003 license amendment request ("LAR"), as limited by a September 23, 2003 submittal to the NRC. Duke is seeking NRC authorization to allow the insertion of four mixed oxide ("MOX") fuel lead assemblies at Catawba Nuclear Station. As indicated in both the original LAR and in the September 23, 2003

¹ See "ORDER (Setting Deadlines, Schedule, and Guidance for Proceedings)," September 23, 2003 ("Scheduling Order") (slip op. at 2).

LAR amendment, the current MOX fuel fabrication schedule supports insertion of the lead assemblies during the spring 2005 refueling outage at Catawba Unit 1. To support this schedule, this licensing proceeding must proceed expeditiously.²

The Commission has a “long-standing commitment to the expeditious completion of adjudicatory proceedings while still ensuring that hearings are fair and produce an adequate record for decision,”³ and it has recently re-emphasized the importance of a disciplined and efficient hearing process.⁴ To achieve this goal, the Commission’s policy for adjudicatory proceedings underscores repeatedly the importance of parties adhering to the time frames established by NRC licensing boards, and the concomitant need for licensing boards to “take appropriate action to enforce compliance with these schedules,” thereby avoiding unnecessary hearing delays.⁵ Consistent with this policy, the Commission has deliberately set a high threshold for petitioners who seek extensions of time in NRC licensing proceedings, directing

² In addition to the need for approval of the LAR prior to the insertion of the lead assemblies in early 2005, other considerations dictate the need for an expeditious licensing and hearing process. In particular, the core design activities for the operating cycle that begins with the spring 2005 outage will begin this fall. The MOX fuel lead assemblies are an integral part of the core design. Further, aspects of planning for the lead assembly fabrication and for transportation are also implicated by the timely progress of this proceeding.

³ *Commission Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 24 (1998).

⁴ *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-03-11, __ NRC __ (Sept. 8, 2003) (slip op. at 1-2).

⁵ *Commission Statement of Policy on Conduct of Adjudicatory Proceedings*, 48 NRC 18, 19-21; *see also 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); *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 342 (1998).

that such extensions be granted “only when warranted by unavoidable and extreme circumstances.”⁶ Similarly, this Licensing Board has echoed this concept.⁷

BREDL has not demonstrated the existence of any “unavoidable” or “extreme” circumstances in support of its extension request, and therefore fails to satisfy this Commission’s standard. BREDL’s request offers only that its consultant, Dr. Edwin Lyman, is unavailable “for a portion of the time before October 14, 2003.” A lack of availability of a consultant for a period during the time allocated by the Board does not constitute “extreme and unusual circumstances.”⁸ Moreover, Duke’s MOX fuel lead assembly LAR, filed with the NRC in late February 2003, has now been publicly available for approximately 7 months. BREDL can hardly claim to be surprised by the Board’s schedule, and could surely have anticipated the need to timely prepare its proposed contentions. BREDL is already familiar with the subject of MOX fuel, given its historic and ongoing involvement in two other NRC proceedings involving MOX fuel issues.

At bottom, the petitioner’s extension request does not adequately address or meet the Commission’s standard for extensions. With respect to Dr. Lyman’s unavailability “during the week of September 29,” the motion merely recites his previous “professional commitments,” with no further discussion. BREDL offers even less explanation of its consultant’s unavailability

⁶ *Statement of Policy on Conduct of Adjudicatory Proceedings*, 48 NRC at 21.

⁷ September 23, 2003 Scheduling Order, at 4-5.

⁸ *See Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981): “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.”

from October 6-14, stating only that Mr. Lyman will be "out of town." These generalized and casual excuses, with no attendant discussion of attempts by petitioner to meet the established schedule, clearly do not rise to the level of "unavoidable and extreme circumstances" needed to warrant additional time.

Accordingly, BREDL's request for an extension of time should be denied.

Respectfully submitted,



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Dated in Washington, District of Columbia
This 30th day of September 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 Opposition to BREDL's Request for an Extension of Time in the above captioned proceeding have been served as shown below by first class, this 30th day of September, 2003. Additional e-mail service, designated by **, has been made this same day, as shown below.

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