

**RAS 7140**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 12/15/03**

Before Administrative Judges:

**SERVED 12/15/03**

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

December 15, 2003

ORDER

(Regarding Deadlines and Scheduling Issues)

A telephone conference was held in this proceeding<sup>1</sup> on December 11, 2003, to consider various scheduling issues as discussed during oral argument on December 3-4, 2003, Tr. 569-75, and as subsequently proposed by the participants in the proceeding, at the suggestion of the Licensing Board. The following matters were addressed during this conference:

1. After hearing from all participants on the issue of BREDL's December 10, 2003, Objection to Protective Order, the Board stated that it would issue an updated version of the originally-proposed Protective Order, encompassing changes made by the participants and submitted to the Board on December 11 by Duke counsel with the agreement of all participants, Tr. 602, and the final Protective Order will be issued, on this date, December 15, 2003.

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<sup>1</sup>This proceeding involves Duke Energy Corporation's (Duke's) February 2003 application to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) lead test assemblies at the station; Petitioners Nuclear Information and Resource Service (NIRS) and Blue Ridge Environmental Defense League (BREDL) in August 2003 filed petitions to intervene and requests for hearing in response to a July 2003 Federal Register notice concerning this application. See 68 Fed. Reg. 44,107 (July 25, 2003).

With regard to the matter of whether particular information contained in any Safeguards documents, and/or any description, characterization, or summaries made of such information and the extent to which this itself would or would not constitute Safeguards Information, the Board asked that the NRC Staff have a security expert present at oral argument on security contentions, to educate and assist the Board on such matters; in addition, counsel for Duke indicated that it would be glad to assist the Board in making such determinations, which information might also be helpful to BREDL in drafting its pleadings in both their original form and in any summary form that would be appropriate for distribution to its members and the public. Tr. 598-99. Any further issues related to these matters may be taken up in the February 2004 oral argument on security related contentions (see below).

2. The following items were to be filed by December 12, 2003:

- (a) BREDL's response to Duke's oral proposal to withdraw Section 3.8 of license amendment application;
- (b) BREDL's submission regarding caselaw on the applicability of CEQ regulations;
- (c) BREDL's submission of any additional information on the legal effect in this proceeding of the Commission's rulings on NEPA/terrorism;
- (d) BREDL's submission regarding NEPA caselaw on alternatives; and
- (e) the NRC Staff's submission on the applicability to the NRC of Executive Order 12114.

3. The following items shall be filed by December 19, 2003:

- (a) Duke and Staff replies to items 2(a), 2(b), and 2(d) above;
- (b) Duke and BREDL replies to item 2(e) above; and
- (c) NRC Staff citations to any additional document references regarding state of the art on MOX fuel.

4. The following items shall be filed by December 26, 2003:

(a) Duke and Staff responses to BREDL's supplemental contentions of December 2, 2003, with any Duke and Staff replies to item 2(c) above to be included in their responses to BREDL supplemental Contention 13; and

(b) any Duke and BREDL supplements to item 3(c) above.

5. BREDL shall file any contentions based on security information by January 14, 2004; Duke and the Staff shall file their replies to these by February 4, 2004.

6. Oral argument on BREDL's December 2, 2003, supplemental contentions shall be held in Charlotte on January 15, 2004, with the exact location to be provided at a later date.

7. Oral argument on security-related contentions shall be held in a closed session in the NRC offices on February 12 and 13, 2004, with the exact location to be provided at a later date. This session shall be closed to all but those who have appropriate clearance and need to know with regard to the information to be discussed during the session.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 15, 2003<sup>2</sup>

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<sup>2</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.

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NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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DUKE ENERGY CORPORATION ) Docket Nos. 50-413-OLA  
 ) 50-414-OLA  
Catawba Nuclear Station, Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REGARDING DEADLINES AND SCHEDULING ISSUES) 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. 50-413-OLA and 50-414-OLA  
LB ORDER (REGARDING DEADLINES AND  
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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 15<sup>th</sup> day of December 2003