

March 15, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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March 19, 2004 (12:41PM)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)

DUKE ENERGY CORPORATION)

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

(Catawba Nuclear Station,
Units 1 and 2))

NOTICE OF APPEAL OF DUKE ENERGY CORPORATION FROM
ATOMIC SAFETY AND LICENSING BOARD MEMORANDUM
AND ORDER LBP-04-04 (RULING ON STANDING AND CONTENTIONS)

Pursuant to Nuclear Regulatory Commission ("NRC") regulations in 10 C.F.R. § 2.714a(c), Duke Energy Corporation ("Duke") hereby appeals the March 5, 2004, Memorandum and Order of the Atomic Safety and Licensing Board ("Licensing Board") in this matter.¹ That Memorandum and Order reframed and admitted three contentions for hearing based on proposed contentions filed by petitioner Blue Ridge Environmental Defense League ("BREDL") on October 21, 2003 and December 2, 2003. The Memorandum and Order also considered and rejected all of the proposed contentions filed by petitioner Nuclear Information and Resource Service ("NIRS") on October 21, 2003.

As discussed further in the supporting Memorandum of Law filed with this Notice of Appeal, Duke opposes admission of all three of the reframed contentions. Contrary to the

¹ *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-04, __ NRC __ (slip op., Mar. 5, 2004) ("Memorandum and Order").

ruling of the Licensing Board, none of the proposed contentions proffered by BREDL meets NRC standards for admissibility or raises matters within the scope of this proceeding. Moreover, contrary to Commission policy, the Licensing Board reframed the proposed contentions. The contentions that the Licensing Board created are themselves deficient and do not satisfy Commission standards for admissibility. The restated contentions lack a clear and well-defined basis, establish an erroneous precedent regarding the consideration of risk in a license amendment proceeding, impermissibly broaden the scope of the contentions on which they are based, and fail to provide a clear statement of the matters to be litigated. Accordingly, Duke respectfully requests that the Commission reverse the Licensing's Board's admission of these three contentions.

The license amendment at issue in this proceeding would authorize Duke to utilize four mixed oxide ("MOX") fuel lead assemblies at the Catawba Nuclear Station ("Catawba"). This license amendment supports the Department of Energy ("DOE") plutonium disposition program — an important nuclear non-proliferation program undertaken by the United States in conjunction with Russia and the international community. Duke has indicated its plan to load the lead MOX fuel assemblies at Catawba in Spring 2005. In its February 27, 2003 license amendment application, Duke requested that the NRC issue the license amendment by August 2004. This schedule for NRC action will support DOE's schedule for export of feed material to fabricate the MOX fuel assemblies.

In parallel with the Memorandum and Order, the Licensing Board in this case established an aggressive schedule to attempt to complete the hearing on a schedule consistent with the Duke and DOE schedule. Given the schedule considerations, Duke evaluated pressing forward with litigation of the three admitted contentions. After careful deliberation, however,

Duke has concluded that discovery and hearings on the three admitted contentions would be so ill-defined and inefficient that a prompt resolution on the schedule established by the Licensing Board would be unlikely. The Memorandum and Order admits contentions that impermissibly expand the scope of the hearing; as such, it seriously compromises a timely resolution of this proceeding. Duke accordingly requests expeditious Commission action on this appeal.

Respectfully submitted,



David A. Repka
WINSTON & STRAWN LLP
1400 L Street, NW
Washington, D.C. 20005-3502
(202) 371-5726

Lisa F. Vaughn
DUKE ENERGY CORPORATION
422 South Church Street
Charlotte, N.C. 28202

ATTORNEYS FOR DUKE ENERGY
CORPORATION

Dated in Washington, D.C.
this 15th day of March 2004