

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

RAS 8203

ATOMIC SAFETY AND LICENSING BOARD PANEL

July 28, 2004 (2:24PM)

Before Administrative Judges:

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED July 28, 2004

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

July 28, 2004

ORDER

(Addressing Discovery Scheduling Matters)

This Order addresses three scheduling matters in this proceeding.¹ First, on the request of all parties, *see* attached e-mail message, a closed session previously scheduled for July 27, 2004, was canceled, based on the suspension of discovery, *see* Memorandum and Order (Confirming July 16, 2004, Bench Ruling Suspending Discovery Proceedings Pending Further Commission Guidance) (July 28, 2004), and the lack of any change in status in the case since such suspension.

Second, after the Board was notified of a Commission affirmation session in which a currently pending interlocutory appeal is expected to be acted on, on July 27 the Board held a short telephone conference call with counsel to consider when all parties might reconvene to address pending discovery matters in light of the Commission's action. It was decided to hold an on-the-record telephone conference on August 3, 2004, at 9:00 a.m., to address as much as

¹This 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. On September 17, 2003, this Licensing Board was established to preside over this proceeding. 68 Fed. Reg. 55,414 (Sept. 25, 2003). By Memoranda and Orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards Information; redacted version issued May 28, 2004), the Licensing Board granted Blue Ridge Environmental Defense League [BREDL]'s request for hearing and admitted various non-security-related and security-related contentions. LBP-04-04, 59 NRC __ (2004); LBP-04-10, 59 NRC __ (2004).

may be done at that time; this will be followed by the already-scheduled closed session, to be held in Rockville at 10:00 a.m. on August 10, 2004.

Participants should call 301/231-5539 or 1-800/638-8081 a few minutes before 9:00 a.m. Tuesday, August 3, and give passcode 5851# to be connected in to the conference.

Third, each party shall also file preliminary proposed courses of action in light of the Commission's expected ruling, along with a list of items that they wish to have addressed in the August 3 conference and August 10 closed session, no later than 5:00 p.m. Friday, July 30, 2004. The parties may also submit a joint proposed schedule, with ranges of dates that each party can have all necessary counsel and witnesses present, and in any event should have their calendars available on August 3.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 28, 2004²

²Copies of this document were sent this date by Internet e-mail to all parties.

From: Diane Curran <dcurran@harmoncurran.com>
To: Ann Young <AMY@nrc.gov>
Date: 7/26/04 1:37PM
Subject: Re: change in start time for 7/27 closed session

Dear Judge Young,

I am writing on behalf of the parties to the security proceeding, to follow up on a telephone message that Mark Wetterhahn left on our behalf this morning. Because there has been no change in the status of the proceeding since we last met on June 16, we do not believe that any useful purpose would be served by convening tomorrow afternoon. Therefore, we request that you cancel the conference that is scheduled for tomorrow at 1:30 p.m. Hopefully, we will hear something from the Commission before the next time we are due to meet, on August 10.

Sincerely,
Diane Curran

Ann Young wrote:

> Because of another proceeding in our hearing room tomorrow morning, and the need for security to check the room before we start our closed session in the Catawba proceeding tomorrow afternoon, we will be starting at 1:30 p.m. rather than 1:00. Also, you may not be able to get into the hearing room very much in advance of that time, so please plan accordingly.

>

> Thank your for your attention to this notification.

>

> Judge Young

CC: <lvaughn@duke-energy.com>, <elleman@eos.ncsu.edu>, Anthony Baratta <AJB5@nrc.gov>, Antonio Fernandez <AXF2@nrc.gov>, James Cutchin <JMC3@nrc.gov>, Margaret Bupp <MJB5@nrc.gov>, Susan Uttal <SLU@nrc.gov>, <acotting@winston.com>, <drepka@winston.com>, <MWetterhahn@winston.com>

From: David Gamberoni
To: Commission Executive/Legal TAs; COMMISSION_SCHEDULING_LEADS;
OCAA_OFFICE; OGC_OFFICE
Date: 7/27/04 1:43PM
Subject: AFFIRMATION - Thursday, July 29th, 9:25 a.m.
Place: OPA

The following paper will be affirmed on Thursday, July 29, 2004, 9:25 a.m., Commissioners' Conference Room:

a. SECY-04-0120, Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); NRC Staff's Petition for Interlocutory Review of the Licensing Board's June 25, 2004 Oral Order (Finding the Intervenor's Witness Qualified as an Expert in the Area of Nuclear Security)

SECY

CC: ADM_ELECTRONICS; ADM_ROOMS; CFO_OFFICE; Commission Administrative Assistants - Adjudicatory; EDO_OFFICE; OCA_OFFICE; OIP_OFFICE; OPA_OFFICE; SECY_OFFICE_OPS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
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 (ADDRESSING DISCOVERY SCHEDULING MATTERS) 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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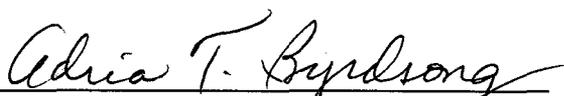
Docket Nos. 50-413-OLA and 50-414-OLA
LB ORDER (ADDRESSING DISCOVERY
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of July 2004