

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 10/04/01

COMMISSIONERS:

SERVED 10/04/01

Richard A. Meserve, Chairman
Greta Joy Dicus
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

IN THE MATTER OF)
)
DUKE ENERGY CORPORATION)
)
(McGuire Nuclear Station, Units 1 and 2)
(Catawba Nuclear Station, Units 1 and 2)
_____)

Docket Nos. 50-369, 50-370, 50-413, and 50-414

CLI-01-20

**ORDER REFERRING PETITIONS FOR INTERVENTION AND
REQUESTS FOR HEARING TO THE
ATOMIC SAFETY AND LICENSING BOARD PANEL**

I. Introduction

On June 13, 2001, Duke Energy Corporation ("the Applicant") submitted an application to renew the operating licenses for its McGuire Nuclear Station, Units 1 and 2, and the Catawba Nuclear Station, Units 1 and 2. Both the McGuire and Catawba facilities are located near Charlotte, North Carolina. The notice of receipt of application was published in the Federal Register on July 16, 2001. See 66 Fed. Reg. 37072 (2001). On August 15, 2001, the staff of the Nuclear Regulatory Commission ("the Staff") issued a Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing. See 65 Fed. Reg. 60693 (2001).

Two organizations, the Nuclear Information and Resource Service ("NIRS") and the Blue Ridge Environmental Defense League ("BREDL"), have filed petitions to intervene and requests for hearing in accordance with 10 C.F.R. § 2.714. This Order refers those petitions to intervene and requests for hearing to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for assignment of an Atomic Safety and Licensing Board to rule on these and any additional requests for hearing and petitions for leave to intervene and, if a hearing is granted, to conduct the proceeding. The Order also provides the Licensing Board with guidance for the conduct of any proceeding if a hearing is granted, and a suggested schedule for any such proceeding.

II. Commission Guidance

A. Scope of Proceeding

The scope of this proceeding is limited to discrete safety and environmental issues. Florida Power and Light (Turkey Point Nuclear Generating Plant Units 3 and 4), CLI-01-17,

54 NRC 3, 6-13 (2001). This encompasses a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses. See 10 C.F.R. §§ 54.21(a) and (c), 54.4; Nuclear Power Plant License Renewal: Revisions, Final Rule, 60 Fed. Reg. 22,461 (1995). In addition, review of environmental issues is limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c). See NUREG-1437, "Generic Environmental Impact Statement

(GEIS) for License Renewal of Nuclear Plants;" Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule, 61 Fed. Reg. 28,467 (1996), amended by 61 Fed. Reg. 66,537 (1996). The Licensing Board shall be guided by these regulations in determining whether proffered contentions meet the standard in 10 C.F.R. § 2.714(b)(2)(iii). It is the responsibility of the petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and to demonstrate that a genuine dispute exists within the scope of this proceeding. If rulings on the admission of contentions or the admitted contentions themselves raise novel legal or policy questions, the Licensing Board should refer or certify such rulings or questions to the Commission on an interlocutory basis. The Commission itself is amenable to such early involvement and will evaluate any matter put before it to ensure that substantive interlocutory review is warranted.

The Commission expects that matters within the scope of this proceeding but not put into controversy will be considered by the Licensing Board only where the Licensing Board finds that a serious safety, environmental, or common defense and security matter exists. Such consideration should be exercised only in extraordinary circumstances. If the Licensing Board decides to raise a matter on its own initiative, a copy of its ruling, setting forth in general terms its reasons, must be transmitted to the Commission. The Licensing Board should not proceed to consider such sua sponte issues unless the Commission approves the Licensing Board's proposal to do so.

B. Discovery Management

Similar to the practice under current Rule 26 of the Federal Rules of Civil Procedure, if a hearing is granted, the Licensing Board should order the parties to provide certain information to the other parties without waiting for discovery requests. This information will include the names and addresses of individuals likely to have discoverable information relevant to the admitted contentions, the names of individuals likely to be witnesses in this proceeding, the identification of documents that will likely contain discoverable information, the production of such documents (if not already publicly available), and any other information relevant to the admitted contentions which the Licensing Board may require in its discretion.

Within 30 days of any Licensing Board order granting a request for a hearing, the Staff shall file in the docket, present to the Licensing Board, and make available a case file to the applicant and any other party to the proceeding. The Staff will have a continuing obligation to keep the case file up to date, as documents become available. The case file will consist of the application and any amendments thereto, the Final Environmental Impact Statement (in the form of a plant-specific supplement to the GEIS), any Staff safety evaluation reports relevant to the application, and any correspondence between the applicant and the NRC that is relevant to the application. Formal discovery against the Staff, pursuant to 10 C.F.R. §§ 2.720(h), 2.740, 2.742, and 2.744, regarding the Staff's safety and environmental review documents will be suspended until after issuance of the final Safety Evaluation Report (SER) -- i.e., the Supplemental SER -- and the Final Supplemental Environmental Impact Statement (FES),⁽¹⁾ unless the Licensing Board in its discretion finds that starting discovery against the Staff on safety issues before the final SER is issued will expedite the hearing without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

The Licensing Board, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round each for original and late-filed contentions.

C. Proposed Schedule

The Commission directs the Licensing Board to set a schedule for any hearing granted in this proceeding that establishes as a goal the issuance of a Commission decision on the pending application in about two and one half years from the date that the application was received. In addition, if the Licensing Board grants a hearing, once the Licensing Board has ruled on any petition for intervention and request for a hearing, formal discovery against the Staff shall be suspended until after the Staff completes its final SER and FES, subject to the discretion discussed above of the Licensing Board to proceed with discovery against the Staff on safety issues prior to the issuance of the final SER, or to proceed with discovery against the Staff on either the FES or final SER (see n. 1, supra). The evidentiary hearing should not commence until after completion of the final SER and FES, unless the Licensing Board in its discretion finds that starting the hearing with respect to safety issues prior to issuance of the final SER will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

The Commission believes that, in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final SER is issued will serve to further the Commission's objective, as reflected in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21, 24 (1998), to ensure a fair, prompt, and efficient resolution of contested issues.⁽²⁾

The Commission also believes that the goal of issuing a decision on the pending application in about two and one half years may be reasonably achieved under the current rules of practice and the enhancements directed by this order and by our understanding of the Staff's current schedule for review of the application. We do not expect the Licensing Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect, however, the Licensing Board to use the techniques specified in this order and in the Commission's policy statement on the conduct of adjudicatory proceedings (id.) to ensure prompt and efficient resolution of contested issues. See also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).

If the Licensing Board grants a hearing request, the Board should adopt the following milestones, in developing a schedule, for conclusion of significant steps in the adjudicatory proceeding:

- Within 90 days of this Order: Decision on intervention petitions and contentions. Start of discovery on admitted contentions, except against the Staff.
- Within 30 days of the issuance of final SER and FES: Completion of discovery against the Staff on admitted contentions. Late-filed contentions to be filed
- Within 40 days of the issuance of final SER and FES: Responses to late-filed contentions to be filed
- Within 50 days of the issuance of final SER and FES: ASLB decision on late-filed contentions
- Within 80 days of the issuance of final SER and FES: Completion of discovery on late-filed contentions
- Within 90 days of the issuance of final SER and FES: Pre-filed testimony to be submitted
- Within 125 days of the issuance of final SER and FES: Completion of evidentiary hearing
- Within 220 days of the issuance of final SER and FES: ASLB initial decision on application

To meet these milestones, the Licensing Board should direct the participants to serve all filings by electronic mail (in order to be considered timely, such filings must be received by the Licensing Board and parties no later than midnight Eastern Time on the date due, unless otherwise designated by the Licensing Board), followed by conforming hard copies that may be sent by regular mail. If participants do not have access to electronic mail, the Licensing Board should adopt other expedited methods of service, such as express mail, which would ensure receipt on the due date ("in-hand"). If pleadings are filed by electronic mail, or other expedited methods of service which would ensure receipt on the due date, the additional period provided in our regulations for responding to filings served by first-class mail or express delivery shall not be applicable. See 10 C.F.R. § 2.710.

In addition, to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances. The Licensing Board shall not entertain motions for summary disposition under 10 C.F.R. § 2.749, unless the Licensing Board finds that such motions are likely to expedite the proceeding. Unless otherwise justified, the Licensing Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

Furthermore, parties are obligated in their filings before the Licensing Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed from the proceeding.

If a hearing is granted on this application, the Commission directs the Licensing Board to inform the Commission promptly, in writing, if the Licensing Board determines that any single milestone could be missed by more than 30 days. The Licensing Board should include an explanation of why the milestone cannot be met and the measures the Licensing Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

III. Conclusion

The Commission directs the Licensing Board to conduct this proceeding in accordance with the guidance specified in this order. As in any proceeding, the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Licensing Board and participants and to resolve any matter in controversy itself.

It is so ORDERED.

For the Commission⁽³⁾

/RA/

ANDREW L. BATES
Acting Secretary of the Commission

Dated at Rockville, Maryland,

this 4th day of October, 2001.

1. This direction is based on the Staff's review schedule for the Duke Energy application, which indicates that the final SER and FES will be issued fairly close in time. If this is not the case, the Board, in its discretion, may commence discovery against the Staff on safety issues if the final SER is issued before the FES or on environmental issues if the FES is issued before the final SER. In addition, as discussed infra, the Board has the discretion in the appropriate circumstances to permit discovery to begin against the Staff with respect to safety issues before the issuance of the final SER.
2. For example, it may be appropriate for the Licensing Board to permit discovery against the staff and/or the commencement of an evidentiary hearing with respect to safety issues prior to the issuance of the final SER in cases where the applicant has responded to the Staff's "open items" and there is an appreciable lag time until the issuance of the final SER, or in cases where the initial SER identifies only a few open items.
3. Commissioner Dicus was not present for the affirmation of this Order. If she had been present, she would have approved it.