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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
DUKE ENERGY CORPORATION	)	Docket Nos. 50-369-LR
	)	50-370-LR
(McGuire Nuclear Station,	)	50-413-LR
Units 1 and 2, and	)	50-414-LR
Catawba Nuclear Station,	)	
Units 1 and 2)	)	

RESPONSE OF DUKE ENERGY CORPORATION TO NUCLEAR INFORMATION AND  
RESOURCE SERVICE MOTION TO SUSPEND LICENSE RENEWAL PROCEEDING  
PENDING PUBLIC RELEASE OF FINAL SAFETY ANALYSIS REPORTS

Duke Energy Corporation ("Duke") herein responds to the "Motion to Suspend License Renewal Proceeding Pending Public Release of Final Safety Analysis Reports" ("Motion"), submitted by the Nuclear Information and Resource Service ("NIRS") on November 29, 2001. In its Motion, NIRS requests that the Atomic Safety and Licensing Board ("Licensing Board") suspend the McGuire and Catawba license renewal proceeding until the Final Safety Analysis Reports ("FSARs") for the Catawba and McGuire Nuclear Power Stations are available in the Nuclear Regulatory Commission's ("NRC's") Public Document Room. Motion at 1. For the reasons discussed below, the Motion should be denied.

First, NIRS has previously requested extensions of time in which to draft contentions in this proceeding. These prior requests had the same basis as the present request —

the unavailability of information because of the events of September 11, 2001. In its first such request, dated October 29, 2001,<sup>1</sup> NIRS specifically listed a number of documents that, it asserted, it needed in order to draft contentions and move forward in this proceeding. Nowhere in this first request for more time, or in any of the subsequent written requests and conference calls, did NIRS ever raise to the Licensing Board the need for access to the FSARs. And now there is no showing made as to what specific information is needed or why it is important. In sum, NIRS has presented no good cause — much less “unavoidable and extreme circumstances”<sup>2</sup> — to support its asserted need for an undefined extension of time now (the effect of suspending the proceeding) in order to obtain the FSARs. Indeed, NIRS’s own Motion acknowledges that the present circumstances are largely a product of its own making; NIRS apparently had copies of the FSARs, on compact disc, which were “lost during a recent move.” Motion at 2.<sup>3</sup> NIRS never explains why this situation was not recognized more promptly.<sup>4</sup>

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<sup>1</sup> “Motion to Extend Time,” dated October 29, 2001.

<sup>2</sup> See, e.g., *Duke Energy Corporation* (McGuire Nuclear Station Units 1 and 2, Catawba Nuclear Station Units 1 and 2), CLI-01-20, slip op. at 7 (October 4, 2001).

<sup>3</sup> It would certainly seem that information important enough to warrant a further extension of time, indeed a suspension of the entire proceeding, would be important enough to attempt to locate more quickly than a few days prior to the date for proposed contentions.

<sup>4</sup> NIRS states that Mr. Riley did contact Ms. Vaughn of Duke Energy some time “about” November 16<sup>th</sup>, and that he was “denied” the right to have access to the documents. Motion, at 2. However, this account is neither complete nor accurate. Ms. Vaughn did receive a message from Mr. Riley on November 19<sup>th</sup> requesting answers to certain questions that he thought might be obtained in the FSARs. Ms. Vaughn looked into the matter and spoke with Mr. Riley on or about November 20 (after she placed a call to Ms. Olson in which Ms. Olson expressed no interest in the specifics of the issue or in receiving a response to Mr. Riley’s question). Ms. Vaughn explained to Mr. Riley that some of these answers he was seeking were likely not in the FSARs, but that he could contact the NRC Public Document Room regarding obtaining a copy. Ms. Vaughn gave Mr. Riley the phone number. Mr. Riley told Ms. Vaughn that if the FSARs were not

(Footnote continued on next page)

Second, NIRS also seems to be confusing the focus of the contention drafting stage of an NRC proceeding. In *Baltimore Gas and Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325 (1998), the Commission emphasized that “[u]nder our longstanding practice, contentions must rest on the license application.” *Id.* At 349 (emphasis in original). Similarly, the Commission observed longstanding agency precedent that precludes an intervenor from obtaining discovery to assist it in framing contentions. *Id.* at 351. The Commission has therefore recognized that not all information relevant to a subject will be available at the proposed contention stage. Nonetheless, to be successful, the petitioner must assert deficiencies in the application and provide their own bases for their views. See *Florida Power and Light Co.* (Turkey Point Nuclear Plant, Units 3 and 4), CLI-01-17, \_\_\_ NRC \_\_\_, slip op. at 30, citing *Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (proposed contentions must be based on the License Application and the Environmental Report).

Duke Energy recognizes the unusual nature of the present circumstances with respect to the FSARs, including that FSARs are ordinarily in the Public Document Room. Duke Energy will not object should the NRC Staff choose to make the FSARs, or portions of the FSARs, available. However, these circumstances do not offset the Commission’s stated interest in efficient and expeditious administrative proceedings nor do they justify a suspension of the proceeding. In *Oconee*, the petitioners asserted that unavailable NRC Staff “requests for additional information” on the application were a basis to suspend the proceeding. The Commission disagreed, emphasizing the need to move forward and meet mileposts. *Oconee*,

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available from the NRC he would either qualify his contentions (*e.g.*, by using words like “approximately”) or wait for discovery.

CLI-99-11, 49 NRC at 339. As in that situation, the present unavailability of the FSARs is not a basis to suspend the proceeding.<sup>5</sup> As with the requests for information, when the FSARs become available, the NRC's rules of procedure specifically allow the petitioners an opportunity to supplement their proposed contentions, with an appropriate showing of good cause. *See* 10 C.F.R. § 2.714(a).<sup>6</sup>

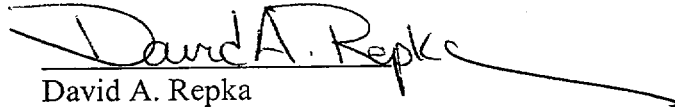
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<sup>5</sup> Compare *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), 1986 WL 328182 (NRC), at page 5 (availability of certain emergency preparedness exercise documents found not to be necessary prior to filing contentions).

<sup>6</sup> However, as observed by the Commission in *Turkey Point*, new information may not always provide a basis for new issues; it may provide what is merely new evidence on issues that were apparent at the time of the application. *Turkey Point*, CLI-01-17, slip op. at 30, citing *Union of Concerned Scientists v. NRC*, 920 F.2d 50,55 (D.C. Cir. 1990).

In sum, the Motion to suspend these proceedings pending availability of the McGuire and Catawba FSARs should be denied. There has been no showing that the present unavailability of these documents has an unavoidable or extreme impact on NIRS's ability to move forward in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Repka", with a long horizontal flourish extending to the right.

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ATTORNEYS FOR DUKE ENERGY  
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Dated in Washington, D.C.  
this 10<sup>th</sup> day of December 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Response of Duke Energy Corporation to Nuclear Information and Resource Service Motion to Suspend License Renewal Proceeding Pending Public Release of Final Safety Analysis Reports" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 10<sup>th</sup> day of December 2001. Additional e-mail service has been made this same day as shown below.

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Adjudicatory File  
Atomic Safety and Licensing Board Panel  
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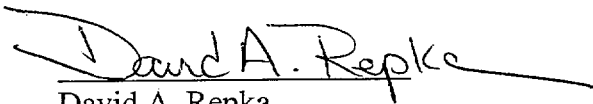
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