

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 3873

DOCKETED 02/06/02

COMMISSIONERS

SERVED 02/06/02

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

In the Matter of)
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)

DUKE ENERGY CORP.)

(McGuire Nuclear Station, Units 1 & 2, and)
Catawba Nuclear Station, Units 1 & 2)

Docket Nos. 50-369-LR, 50-370-LR,
50-413-LR, & 50-414-LR
(consolidated)

CLI-02-06

MEMORANDUM AND ORDER

On January 24, 2002, the Licensing Board issued LBP-02-04, ruling that the Blue Ridge Environmental Defense League and the Nuclear Information and Resource Service had each demonstrated standing and that each had filed at least one admissible contention regarding whether the Commission should grant Duke's application to renew its operating licenses for Units 1 and 2 of the McGuire Nuclear Station and Units 1 and 2 of the Catawba Nuclear Station. More specifically, the Board admitted two contentions regarding the anticipated use of MOX fuel in the four subject facilities and the risks associated with ice condensers and station blackouts.

Finally, in LBP-02-04, the Board certified to the Commission the petitioners' issues related to risks from acts of terrorism. Specifically, the Board certified to the Commission the question whether Duke Energy Corporation's ("Duke") license renewal application for the four captioned facilities "has ... realistically or fully analyzed and evaluated all structures, systems and components required for the protection of the public health and safety from deliberate acts

of radiological sabotage.” Slip op. at 69, quoting petitioner Nuclear Information and Resource Service’s (“NIRS”) Contentions, dated Nov. 29, 2001, at 5.

As is our customary practice, the Commission accepts the Board’s certification.¹ The parties to this proceeding shall file briefs that address all issues that the parties determine are relevant to the matters discussed above, and in addition shall address in particular the following question:

What is an agency’s responsibility under NEPA to consider intentional malevolent acts such as those directed at the United States on September 11, 2001? The parties should cite all relevant cases, legislative history and regulatory analysis.

Pursuant to 10 C.F.R. § 2.786(d), the Commission sets the following briefing schedule:

1. The parties shall file their briefs on or before February 27, 2002. Each brief shall be no longer than 40 pages.
2. Reply briefs should be submitted no later than March 12, 2002 and shall not exceed 20 pages in length.
3. The parties shall submit briefs electronically (or by other means to ensure that receipt by the Secretary of the Commission by the due date, with paper copies to follow.

Briefs in excess of 10 pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited. Page limitations are exclusive of pages containing a table of contents, table of cases, and any addendum containing statutes, rules, regulations, etc.

¹ See *Private Fuel Storage* (ISFSI), CLI-00-03, 52 NRC 23, 28-29 (2000).

IT IS SO ORDERED.²

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of February, 2002.

² Today the Commission also agrees to examine terrorism contentions in three other cases. See *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-01-37, 54 NRC __ (Dec. 13, 2001) (denying admission of terrorism contention and referring issue to the Commission), *referral accepted*, CLI-02-__, 55 NRC __ (Feb. __, 2002); *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF-49), LBP-02-05, 55 NRC __ (Jan. 24, 2002) (denying admission of terrorism contention and referring issue to the Commission), *referral accepted*, CLI-02-__, 55 NRC __ (Feb. __, 2002); and *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), unpublished Memorandum and Order (Ruling on Motion to Reconsider) (Jan. 16, 2002) (denying reconsideration of admission of terrorism contention), *petition for interlocutory review accepted in part*, CLI-02-__, 55 NRC __ (Feb. __, 2002).

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DUKE ENERGY CORPORATION)	Docket Nos. 50-369/370/413/414-LR
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(McGuire Nuclear Station, Units 1 and 2;)	
Catawba Nuclear Station, Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-02-06) have been served upon the following persons by deposit in the U.S. mail, first class, as indicated by an asterisk (*) or through the Nuclear Regulatory Commission's internal distribution as indicated by double asterisks (**), with copies by electronic mail.

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Docket Nos. 369/370/413/414-LR
COMMISSION MEMORANDUM AND ORDER (CLI-02-06)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of February 2002