

RAS 6781

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 09/08/03

COMMISSIONERS:

SERVED 09/08/03

Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
DUKE ENERGY CORPORATION)
)
(McGuire Nuclear Station, Units 1 & 2,)
Catawba Nuclear Station, Units 1 & 2))
_____)

Docket Nos. 50-369-LR
50-370-LR
50-413-LR
50-414-LR

CLI-03-11

MEMORANDUM AND ORDER

In 1998, the Commission issued a "Statement of Policy on Conduct of Adjudicatory Proceedings," re-emphasizing the need for a disciplined hearing process.¹ As we noted in our policy statement, the Commission expects that in the next few years a number of lengthy and complex adjudicatory proceedings may be instituted. These may include an expected application to license the Yucca Mountain high-level waste depository, and further applications to transfer, or, as in this case, to renew reactor operating licenses. Indeed, a "leading consideration[]" of our policy statement was the necessity of managing license renewal proceedings in a fair and efficient way, given the potential for "large numbers of utilities to seek license renewal soon."² Faced with limited adjudicatory resources, the Commission cannot overemphasize the need to avoid unnecessary delay in our adjudicatory process.

¹ "Statement of Policy on Conduct of Adjudicatory Proceedings," CLI-98-12, 48 NRC 18 (1998); 63 Fed. Reg. 41,872 (Aug. 5, 1998).

² *Baltimore Gas and Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 339 (1998).

The Commission therefore has emphasized that Licensing Boards must “establish schedules for promptly deciding the issues before them,” must issue “timely rulings on prehearing matters,” and, in short, must “ensure a prompt yet fair resolution of contested issues.”³ Not all proceedings, however, including this one, have moved forward as expeditiously as we had intended.

At the very outset of this proceeding, as in all other license renewal proceedings, the Commission called upon the Licensing Board to fairly, promptly, and efficiently resolve contested issues.⁴ The Commission’s goal in contested license renewal cases is the “issuance of a Commission decision on the pending application in about 2½ years from the date that the application was received.”⁵ To that end, we directed the Board to achieve particular milestones. Among these milestones was a Licensing Board decision on late-filed contentions “[w]ithin 50 days of the issuance of [the] final SER [Safety Evaluation Report] and FES [Final Environmental Statement].”⁶ In this case, the NRC staff published the final environmental impact statements for the Catawba and McGuire nuclear stations in December 2002.⁷ The staff completed and served the SER in January 2003.⁸

³ See Policy Statement, 48 NRC at 20; see also *Calvert Cliffs*, 48 NRC at 339-40.

⁴ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-01-20, 54 NRC 211, 215 (2001).

⁵ *Id.* at 214.

⁶ *Id.* at 215 (emphasis in original).

⁷ See NUREG 1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” Supplement 8 (Regarding McGuire Nuclear Station, Units 1 & 2)(Dec. 2002); NUREG 1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” Supplement 9 (Regarding Catawba Nuclear Station, Units 1 & 2)(Dec. 2002).

⁸ The SER was formally published in March 2003, but nonetheless was completed and served upon the Board and parties in January. See Letter from Susan L. Uttal, NRC staff, to Administrative Judges (Jan. 10, 2003); Letter from Susan L. Uttal, NRC staff, to Administrative Judges (Jan. 14, 2003).

Obviously, many months have passed after the issuance of the FEIS and SER. Given when the FES and SER became available, and the Commission's clear expectation that license renewal cases would be decided expeditiously, it is unclear why threshold decisions on the admissibility (and mootness) of contentions remain pending in this case.

It has been nearly nine months since the Commission remanded to the Board three questions related to the intervenors' original and amended "SAMA" contention:⁹

(1) whether the draft SEISs render the original SAMA contention moot, which the Commission itself stressed "appears to be the case."¹⁰

(2) whether the intervenors' amended SAMA contention raises timely, adequately supported, and otherwise admissible genuine material disputes for litigation; and

(3) whether there is any basis for the intervenors' demand for access to Duke's PRA [probabilistic risk assessment] analysis.

The Commission expected that these questions could be resolved without extensive deliberation or delay, and indeed our decision provided extensive guidance to the Board. In addition, on April 11, 2003, the intervenors requested reinstatement of a previously-dismissed contention on the environmental impacts of using Mixed Oxide ("MOX") fuel.¹¹ The reinstatement question, too, remains undecided.

We therefore direct the Board to inform the Commission when it expects to issue a decision on the remaining contentions, to provide the Commission with an explanation of the reasons for the delay thus far, and to explain the measures the Board will take to restore the

⁹ See CLI-02-28, 56 NRC 373, 388 (2002). The acronym "SAMA" refers to "Severe Accident Mitigation Alternatives."

¹⁰ *Id.* at 378.

¹¹ See CLI-02-14, 55 NRC 278, 294-97 (2002).

proceeding to the original schedule reflected in the Commission's order, CLI-01-20, 54 NRC at 215-16. The Board should provide this information within three business days.

It is so ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of September 2003.

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(McGuire Nuclear Station, Units 1 and 2;)
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-03-11) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution with copies by electronic mail as indicated.

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Docket Nos. 369/370/413/414-LR
 COMMISSION MEMORANDUM AND ORDER
 (CLI-03-11)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
 this 8th day of September 2003