

RAS 7105

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 12/01/03

SERVED 12/01/03

Before Administrative Judges:

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

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

December 1, 2003

ORDER

(Regarding Motion for Protective Order and
General Conduct of Oral Argument)

The NRC Staff has, on November 26, 2003, filed a Motion for Protective Order in this proceeding,¹ and requested that the Board address this motion at the December 3-4 Prehearing Conference in Charlotte. The Board will hear argument on the proposed order to the extent possible within the time available during the conference, at the conclusion of oral argument on the petitioners' contentions. As previously discussed, see Tr. 68-69, the Board expects that an NRC security expert will be present at oral argument and, to the extent it is possible to consider the Staff's Motion for Protective Order, may have questions for the security expert on the proposed order. Should there be a need to discuss any Safeguards Information or other protected information, this shall be done in the Atomic Safety and Licensing Board Panel Hearing Room in Rockville, or at another suitable location, at a later date.

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; Petitioners Nuclear Information and Resource Service (NIRS) and Blue Ridge Environmental Defense League (BREDL) in August 2003 filed petitions to intervene and requests for hearing in response to a July 2003 Federal Register notice concerning this application. See 68 Fed. Reg. 44,107 (July 25, 2003).

With regard to any documents referenced in the supplemented petitions and responses, other than the License Amendment Request (LAR) and any other documents already provided, any such documents may be provided at the prehearing conference (unless they contain any Safeguards or other protected information).

With regard to the conduct of the prehearing conference, the Board will hear argument on the petitioners' contentions in the order specified in the attached list, absent persuasive indication that a modified order would be preferable.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 1, 2003

²Copies of this Order were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

Contentions Related to Risk Issues

BREDL 2 - Inappropriate Use of SPDEIS for Estimate of Consequence Increase

BREDL 7 - Inappropriate Use of SPDEIS for Conclusion that Impacts are Insignificant

NIRS 2 - Provisions for Irradiated MOX Test Assemblies

"Omission" Contentions - Safety Related

BREDL 1 - Failure to Provide Quantitative Information in Risk Impact Analysis

BREDL 3 - Failure to Evaluate Containment Sump Failure

NIRS 1 - Lack of "key benchmarks"

(Lack of documentation of amounts of gallium and other contaminants in Pu oxide;
lack of indication of quality certification of test fuel pellets and rods.)

"Omission" Contentions - Environmental

BREDL 6 - Failure to Provide Quantitative Info in Support of Assertions re Envir'l Impacts

BREDL 4 - Failure to Evaluate Future Use of MOX fuel in batch quantities

NIRS 5 - EIS needed

"Omission" Contentions - Transportation

BREDL 8 - Failure to Address Environmental Impacts of Plutonium Shipments

BREDL 9 - Failure to Identify Quantity of Plutonium to Be Shipped to France

Contentions Related to Consideration of Alternatives, including No Action Alternative

BREDL 5 - Failure to Consider New Information Showing Viability of Alternatives

NIRS 4 - Only No Action Alternative is Consistent with Overall Goal for Plutonium

Other

NIRS 3 - Regarding Regulatory Gap Between NRC and DOE, and DOE NEPA Responsibility

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NUCLEAR REGULATORY COMMISSION

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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 (REGARDING MOTION FOR PROTECTIVE ORDER AND GENERAL CONDUCT OF ORAL ARGUMENT) 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 (REGARDING MOTION FOR PROTECTIVE
ORDER AND GENERAL CONDUCT OF ORAL
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of December 2003