

December 20, 2001

Mr. M. S. Tuckman
Executive Vice President
Nuclear Generation
Duke Energy Corporation
526 South Church Street
Charlotte, NC 28201-1006

SUBJECT: ORDER APPROVING THE TRANSFER OF OPERATING AUTHORITY UNDER
FACILITY OPERATING LICENSES FOR CATAWBA NUCLEAR STATION,
UNITS 1 AND 2, FROM DUKE ENERGY CORPORATION TO DUKE ENERGY
NUCLEAR, LLC (TAC NOS. MB2380 AND MB2381)

Dear Mr. Tuckman:

The staff has completed its review of your application dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, requesting approval of the transfer of operating authority under Facility Operating Licenses (FOLs) Nos. NPF-35 and NPF-52 for the Catawba Nuclear Station, Units 1 and 2, to Duke Energy Nuclear, LLC, and approval of conforming amendments, pursuant to 10 CFR 50.80 and 10 CFR 50.90. The licenses are held by the Duke Energy Corporation, which has held the operating authority, and the North Carolina Electric Membership Corporation, Saluda River Electric Cooperative, Inc., North Carolina Municipal Power Agency No. 1 and the Piedmont Municipal Power Agency. The enclosed Order approves the proposed transfer, subject to the conditions described therein. The Order also approves conforming license amendments, which will be issued and made effective at the time the transfer is completed.

This Order is being forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Chandu Patel, Project Manager, Section 1
Project Directorate II
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-413 and 50-414

Enclosures: 1. Order
2. Conforming Amendments
3. Safety Evaluation

cc w/encls: See next page

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NAME	HBerkow for RMartin	HBerkow for CPatel	CHawes	PKleene	SHom	AMcKeigney for PMadden	DTrimble
DATE	12/17/01	12/17 /01	12/20/01	11/20/01	12/13/01	12/14/01	11/29/01

OFFICE	PDII-1\ASC	PDII/D	DLPM/D	NRR/ADP	NRR/D
NAME	HBerkow for RLaufer	HBerkow	TMarsh for JZwolinski	BSheron	BSheron for SCollins
DATE	12/17/01	12/17/01	12/18/01	12/19/01	12/20/01

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ORDER APPROVING TRANSFER OF OPERATING AUTHORITY FOR CATAWBA,
DATED December 20, 2001

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PMadden

RHall

WBrach

WKane

RUleck

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
)	
DUKE ENERGY CORPORATION)	Docket No. 50-413
NORTH CAROLINA ELECTRIC)	Docket No. 50-414
MEMBERSHIP CORPORATION)	
SALUDA RIVER ELECTRIC)	License No. NPF-35
COOPERATIVE, INC.)	License No. NPF-52
NORTH CAROLINA MUNICIPAL)	
POWER AGENCY NO. 1)	
PIEDMONT MUNICIPAL POWER AGENCY)	
)	
(Catawba Nuclear Station, Units 1 and 2))	

ORDER APPROVING TRANSFER OF OPERATING AUTHORITY
AND CONFORMING AMENDMENTS

I.

Duke Energy Corporation (Duke Energy, or DEC), the North Carolina Electric Membership Corporation, and the Saluda River Electric Cooperative, Inc. are the holders of Facility Operating License No. NPF-35, which authorizes operation of the Catawba Nuclear Station, Unit 1. DEC, the North Carolina Municipal Power Agency No. 1, and the Piedmont Municipal Power Agency are the holders of Facility Operating License No. NPF-52, which authorizes operation of the Catawba Nuclear Station, Unit 2. The Catawba Nuclear Station (Catawba or the facility) is located in York County, South Carolina.

II.

By application dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, (collectively referred to herein as "the application" unless otherwise indicated), the Commission was informed that DEC, the sole

licensed operator of both Catawba units, proposes to enter into an Operation and Maintenance Services Agreement with Duke Energy Nuclear, LLC (Duke Nuclear), and transfer operating authority under the licenses to Duke Nuclear. Under the proposed transaction, Duke Nuclear, which will be a wholly owned indirect subsidiary of DEC, will become a new licensee, exclusively authorized to operate Catawba in accordance with the terms and conditions of the licenses. The transaction involves no change in facility ownership, which is as follows: DEC owns 25%, the North Carolina Membership Corporation owns 56.25%, and the Saluda River Electric Cooperative owns 18.75% of Catawba Unit 1, and the North Carolina Municipal Power agency No. 1 owns 75% and Piedmont Municipal Power Agency owns 25% of Catawba Unit 2¹.

DEC requested approval of the proposed transfer of operating authority under the Catawba licenses to Duke Nuclear pursuant to 10 CFR 50.80. The application also requested approval of conforming amendments pursuant to 10 CFR 50.90 to reflect the transfer. The proposed amendments would add Duke Nuclear to the licenses and reflect that Duke Nuclear is exclusively authorized to operate Catawba.

Notice of the application for approval and an opportunity for a hearing was published in the *Federal Register* on September 25, 2001 (66 FR 49050). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Duke Nuclear is qualified to hold the operating

¹ DEC does not have an ownership interest in Catawba Unit 2, but nonetheless is a holder of the Unit 2 license in connection with the operating authority granted to DEC under that license.

authority under the licenses, and that the transfer of the operating authority under the licenses to Duke Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated December 20, 2001.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of operating authority under the licenses, as described herein, to Duke Nuclear is approved, subject to the following conditions:

- (1) Duke Nuclear shall, prior to completion of the transfer of operating authority for Catawba, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Duke Nuclear has obtained the

appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

- (2) After receipt of all required regulatory approvals of the transfer of operating authority to Duke Nuclear, DEC and Duke Nuclear shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 2 business days prior to the date of closing. If the transfer is not completed by December 31, 2002, this Order shall become null and void, provided however, upon written application and for good cause shown, such date may in writing be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 10, 2001, the supplemental letters dated October 31, November 1 and 26, and December 10, 2001, and the Safety Evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the

Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>.

Dated at Rockville, Maryland, this 20th day of December, 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

DUKE ENERGY CORPORATION
NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION
SALUDA RIVER ELECTRIC COOPERATIVE, INC.
DOCKET NO. 50-413
CATAWBA NUCLEAR STATION, UNIT 1
AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-35

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Duke Energy Corporation dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of the date of issuance and shall be implemented within 45 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Facility Operating License and Technical Specifications

Date of issuance:

DUKE ENERGY CORPORATION
NORTH CAROLINA MUNICIPAL POWER AGENCY NO. 1
PIEDMONT MUNICIPAL POWER AGENCY
DOCKET NO. 50-414
CATAWBA NUCLEAR STATION, UNIT 2
AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-52

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Duke Energy Corporation dated July 10, 2001, as supplemented October 31, November 1 and 26, and December 10, 2001, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 45 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Facility Operating License and Technical Specifications

Date of issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

TO FACILITY OPERATING LICENSE NO. NPF-35

AND LICENSE AMENDMENT NO. _____

DOCKET NO. 50-413

ATTACHMENT TO LICENSE AMENDMENT NO. _____

TO FACILITY OPERATING LICENSE NO. NPF-52

DOCKET NO. 50-414

Replace the following pages of the Facility Operating Licenses with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

REMOVE

1 through 7
Appendix D, Page 1

1 through 6
Appendix D, Page 1

INSERT

1 through 6
Appendix D, Page 1

1 through 6
Appendix D, Page 1

Replace the following page of the Appendix A Technical Specifications with the attached revised page. The revised page is identified by amendment number and contains marginal lines indicating the areas of change.

REMOVE

5.2-1

INSERT

5.2-1

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

TRANSFER OF OPERATING AUTHORITY

FROM DUKE ENERGY CORPORATION

TO DUKE ENERGY NUCLEAR, LLC

CATAWBA NUCLEAR STATION, UNITS 1 AND 2

DOCKET NOS. 50-413 AND 50-414

1.0 INTRODUCTION

By application dated July 10, 2001, as supplemented October 31, November 1 and 26, and December 10, 2001, Duke Energy Corporation (Duke Energy or DEC), requested NRC consent to the transfer of operating authority under Operating Licenses Nos. NPF-35 and NPF-52 for Catawba Nuclear Station, Units 1 and 2, (Catawba or the Facilities) from DEC to Duke Energy Nuclear, LLC (Duke Nuclear). Catawba Unit 1 is owned by DEC (25% interest), the North Carolina Electric Membership Corporation (56.25% interest), the Saluda River Electric Cooperative, Inc. (18.75% interest), and has heretofore been operated by DEC. Catawba Unit 2 is owned by the North Carolina Municipal Power Agency No. 1 (75% interest) and the Piedmont Municipal Power Agency (25% interest) and has heretofore been operated by DEC under an agreement with the owners. The initial application and supplements are hereinafter referred to as "the application," unless otherwise indicated.

Ownership of the Facilities will not be affected by the proposed transfer of operating authority to Duke Nuclear. Duke Nuclear will not own any portion of the Facilities. Also, each owner's entitlement to capacity and energy from Catawba will not be affected by the transfer of operating authority.

Duke Nuclear will be a limited liability company formed under the laws of the State of Delaware. Duke Nuclear will be a wholly owned subsidiary of Duke Energy Generation Services, LLC, which will be a new indirectly wholly owned operating company of Duke Energy. Duke Nuclear's corporate purpose, according to the application, is to provide services in connection with the operation, maintenance, eventual decommissioning and performance of related business activities of the Facilities on behalf of, and for the benefit of, the owners of the Facilities.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

The supplemental information provided after the filing of the initial July 10, 2001 submittal did not expand the scope of the request for approval as originally noticed in the *Federal Register* on September 25, 2001.

2.0 TECHNICAL QUALIFICATIONS

2.1 Basis and Guidance for the Evaluation

The staff used the following regulations and guidance to complete its evaluation: 10 CFR 50.40 (b), "Common Standards;" 10 CFR 50.80, "Transfer of licenses;" the Standard Review Plan (SRP) NUREG-0800, Chapter 13, "Conduct of Operations", Section 13.1.1, "Management and Technical Organization;" SRP Section 13.1.2-13.1.3, "Operating Organization;" and American National Standards Institute (ANSI) N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel," American Nuclear Society/American National Standards Institute (ANS/ANSI) 3.1-1981, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants," as endorsed by Regulatory Guide 1.8, Revision 2, April 1987, "Qualification and Training of Personnel for Nuclear Power Plants," and ANS/ANSI 3.1-1993, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants," as endorsed by Regulatory Guide 1.8, Revision 3, May 2000, "Qualification and Training of Personnel for Nuclear Power Plants."

2.2 Purpose of the Evaluation

The purpose of this evaluation is to ensure that the corporate management of the proposed transferee, Duke Nuclear, will be involved with, informed of, and dedicated to the safe operation of the Facilities, and that sufficient, qualified technical resources will be provided to support safe plant and facility operation and maintenance. In addition, changes to plant operating organizations or personnel qualifications that may occur as a result of the license transfer, are also evaluated.

2.3 Evaluation: Management, Technical Support, and Operating Organizations

The staff reviewed the Duke Energy application to determine the acceptability of the proposed corporate management and technical support organization. The staff evaluated the Duke Energy application using the applicable acceptance criteria contained in the SRP, Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization."

With respect to the operating organization, the staff evaluated the application using the applicable acceptance criteria contained in SRP Section 13.1.2 - 13.1.3, "Operating Organization." The initial licensing review determined that the initial operating organization was acceptable. Subsequent safety-related changes to the operating organization were required to have been evaluated with an appropriate methodology and the staff is aware of no deficiencies with the current operating organization. Consequently, the staff's review of the operating organization was focused on changes to the current operating organization proposed as a result of the transfer.

Duke Energy's initial application of July 10, 2001 included the following statements:

"The technical qualifications of Duke Nuclear to carry out its responsibilities under the operating license[s] for ... Catawba, will be at least equivalent to the present technical

qualifications of Duke Energy. Principal officers and executives from Duke Energy's present nuclear organization will manage Duke Nuclear..."

"Concurrent with the license transfers, the current on-site organizations and corporate Nuclear Generation organizations will be transferred substantially intact to Duke Nuclear. The existing organization structure provides for clear lines of authority and responsibility for management of the plants. It is also expected that substantially all Duke Energy nuclear personnel in these existing nuclear organizations will become employees of Duke Nuclear. Therefore, the qualifications of the organization will not change and the organizational responsibility to Duke Nuclear management will be clear and unambiguous."

"In total, the technical qualifications of the Duke Nuclear management, site, and support organizations will be essentially equivalent to those of the existing organization. Personnel qualification requirements presently defined in the respective plant Technical Specifications will not be changed as a result of the restructuring and license transfers, and will continue to be met. Sufficient qualified technical resources will be provided to support safe operation and maintenance of the units, and the plants will continue to be operated in accordance with the licenses, NRC requirements, the licensing bases, and other NRC commitments."

Based on the application, the NRC staff concludes that Duke Energy has described Duke Nuclear's organization for managing and providing technical support to the plant staff for operation of the plants after the license transfers. The staff concludes that Duke Nuclear will have acceptable management and adequate resources to provide technical support for the operation of the Facilities under both normal and off-normal conditions in accordance with the SRP, Chapter 13, Section 13.1.1.

The proposed transfer of licensed operating authority will not materially change the current operating organization or the qualifications of personnel responsible for the operation and maintenance of the facilities. Therefore, the staff further concludes that the Duke Nuclear onsite organizations established to operate and maintain the Facilities will be acceptable in accordance with the SRP, Chapter 13, Section 13.1.2 - 13.1.3.

In consideration of the foregoing, the staff finds that Duke Nuclear will be technically qualified to hold the operating authority under the licenses for the Facilities.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

The NRC's regulations at 10 CFR 50.33(f) require "information sufficient to demonstrate" an applicant's financial qualifications "to carry out . . . the activities for which the permit or license is sought." In Northern States Power Co. (Monticello Nuclear Generating Plant, et al), CLI-00-14, 52 NRC 37, 48-51 (2000), the Commission clarified that the detailed requirements of 10 CFR 50.33(f)(2) and (f)(3) were not applicable to a proposed nonowner operator licensee when the proposed operator was not seeking to engage in any funding activity and the application contained information sufficient to demonstrate that full financial responsibility for funding the safe operation, maintenance, and decommissioning of the plant had been contractually assumed by the non-operator owner licensee that itself was financially qualified under 10 CFR 50.33(f) in light of its status as an "electric utility" pursuant to 10 CFR 50.2.

Here, the application is proposing that Duke Nuclear become the licensed entity responsible for operating and maintaining the Facilities, but not be ultimately responsible for funding the associated costs. Rather, through contractual arrangements, the owners of the Facilities would remain responsible for such costs.

According to the application, all of the owners of the Catawba units are “electric utilities,” as defined in 10 CFR 50.2, in that they recover the cost of electricity generated or distributed through rates they themselves establish or through rates established by a separate regulatory authority. Currently, operating agreements between Duke Energy and the other co-owners of the Facilities, which are essentially cost pass-through agreements, establish that the co-owners are responsible for operation and maintenance costs for the Facilities in proportion to their “effective ownership” interests in both units. “Effective ownership” is determined by totaling the legal ownership interest in each unit, dividing that sum in half, and assigning each half to each unit. For example, Duke Energy legally owns 25% of Unit 1, and 0% of Unit 2. The 25% total, divided in half, results in Duke Energy having a 12.5% “effective ownership” interest in each unit. Thus, for the purposes of the current operating agreements, Duke Energy is responsible for 12.5% of operation and maintenance costs for each unit. Similarly, North Carolina Electric Membership Corporation is responsible for 28.125%, the Saluda River Electric Cooperative, Inc., is responsible for 9.375%, the North Carolina Municipal Power Agency No. 1 is responsible for 37.5%, and the Piedmont Municipal Power Agency is responsible for 12.5% of the operation and maintenance costs for each unit, notwithstanding their legal ownership of each unit. (Decommissioning funding responsibility is determined in the same manner.)

According to the application, the current operating agreements will be assigned to Duke Nuclear upon the transfer of operating authority. At the same time, Duke Energy and Duke Nuclear will enter into a new Operation and Maintenance Services Agreement (O&M Agreement), a copy of which was provided with the November 26, 2001 supplemental submittal. Under the O&M Agreement, also basically a cost pass-through agreement with respect to costs for operation and maintenance, Duke Energy shall pay Duke Nuclear for all costs for operating the Facilities, and Duke Nuclear shall have the sole authority to make decisions relating to the public health and safety, and security of the Facilities, and is exclusively authorized to take such actions which it, in its sole discretion, deems necessary to protect public health and safety, and maintain security to comply with the NRC operating licenses and other applicable laws and regulations. In effect, with the assignment of the current operating agreements and the execution of the O&M Agreement, Duke Energy will be nominally responsible for all operating and maintenance costs for the Facilities, but the other co-owners will also continue to be ultimately responsible for their agreed-upon shares of operating and maintenance costs under the assigned operating agreements. Given these facts, the detailed financial requirements of 10 CFR 50.33(f)(2) and (f)(3) are not applicable to Duke Nuclear, because of its cost pass-through contract with Duke Energy, and assigned cost pass-through contracts with the other co-owners, all of which owners are electric utilities.

In consideration of the information in the application describing the financial arrangements for funding costs for operation and maintenance, the staff concludes that Duke Nuclear will be financially qualified with respect to its proposed activities, i.e., to operate and maintain the Facilities (but not to ultimately fund such activities).

4.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The Commission's regulations at 10 CFR 50.33(k), "Contents of Applications; General Information," require information showing "reasonable assurance . . . that funds will be available to decommission the facility."

The costs of decommissioning the Facilities will continue to be funded by the mechanism that Duke Energy and the Catawba co-owners previously established for each licensed reactor unit in accordance with 10 CFR 50.75, which is an external sinking fund for each unit. The application states that "Duke Energy will continue to be responsible for its current share of decommissioning funding assurance for the units". The other co-owners of the Facilities, which currently maintain separate decommissioning trusts, will also continue to be responsible for their shares of decommissioning funding assurance for the units. Thus, the staff concludes that the proposed change in the licensed operator of the Facilities will not alter the obligations or arrangements of Duke Energy and the Catawba co-owners for funding decommissioning of the Facilities.

5.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the Atomic Energy Act) and the Commission's regulations at 10 CFR Part 140 require that Duke Nuclear be added to the current indemnity agreements. Under these provisions, Duke Nuclear will also be required to be added as a named insured on the applicable nuclear liability insurance policies and participate in the secondary retrospective insurance pool. Duke Nuclear also will be required to maintain property insurance as specified in 10 CFR 50.54(w), which requirement can be satisfied by Duke Nuclear being added to the property insurance policy. The staff does not have any reason to believe that Duke Nuclear will be unable to meet the statutory and regulatory insurance requirements applicable to all power reactor licensees.

Consistent with NRC practice, the staff will require Duke Nuclear to provide satisfactory documentary evidence that Duke Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended licenses reflecting Duke Nuclear as a licensee. Since issuance of the amended licenses is directly tied to the consummation of the proposed transfers, the order approving the transfers will contain the following condition:

Duke Nuclear shall, prior to completion of the transfer of operating authority for Catawba, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Duke Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

6.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the transfer application post-dates the

issuance of the Catawba operating licenses, no antitrust review is required or authorized. Accordingly, no new antitrust conditions applicable to Duke Nuclear were considered by the staff, notwithstanding the staff's practice concerning operating authority transfers before the Wolf Creek decision. In regard to the existing antitrust license conditions applicable to Duke Energy, the staff has determined that since Duke Energy will remain a licensee, and its entitlement to power will not be affected by the transfer of operating authority, the existing antitrust conditions should not be amended in any respect in connection with the transfer of operating authority to Duke Nuclear.

7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The application states that Duke Nuclear is a limited liability company formed under the laws of the State of Delaware, with headquarters located in Charlotte, North Carolina. Duke Nuclear will be a wholly owned indirect subsidiary of Duke Energy, which is a publicly traded U.S. company whose shares of common stock are widely traded. With the exception of a single citizen of the United Kingdom, all of the directors and principal officers of Duke Energy are U.S. citizens. Regarding all of the intermediate parent companies of Duke Nuclear, which are directly or indirectly wholly-owned by Duke Energy, all of the directors and principal officers are U. S. citizens, except for a single individual at Duke Capital Corporation. The application states that Duke Energy will designate the Board of Directors of Duke Nuclear, all of whom are expected to be citizens of the United States.

The application states that Duke Nuclear will not be owned, controlled, or dominated by foreign interests. The staff does not know or have reason to believe otherwise.

8.0 CONCLUSIONS REGARDING TRANSFER OF OPERATING AUTHORITY

In consideration of the foregoing, the staff concludes that Duke Nuclear is qualified to hold the operating authority under the licenses as described above, and that the transfer of operating authority is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

9.0 CONFORMING AMENDMENTS

A. Introduction

As stated previously, DEC requested approval of proposed conforming amendments to Facility Operating Licenses Nos. NPF-35 and NPF-52 for Catawba. The requested changes replace references in the licenses to DEC or its organizations or officials in connection with operation of Catawba with references to Duke Nuclear or its organizations or officials to reflect the proposed transfer of operating authority.

The supplemental information received after the initial *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

B. Discussion

The changes to be made to the licenses are indicated in the conforming amendments identified as Enclosure 2 to the cover letter forwarding the staff's order regarding the subject transfer. The specific text of the changes as proposed by the licensee was slightly modified by the staff for clarification and the pages were repaginated. The changes do no more than accurately reflect the approved transfer action. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

C. State Consultation

In accordance with the Commission's regulations, the South Carolina State official was notified of the proposed issuance of the amendments. The State official had no comments.

D. Conclusion With Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

10.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

Principal Contributors: R. Uleck
R. Pelton
C. Regan
R. Martin

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