

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Ann Marshall Young, Chair  
Dr. Charles N. Kelber  
Lester S. Rubenstein

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In the Matter of

Docket No's. 50-369-LR, 50-370-LR,  
50-413-LR, and 50-414-LR

DUKE ENERGY CORPORATION

ASLBP No. 02-794-01-LR

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

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January 17, 2002

Response to NRC Staff Correction of January 7, 2002

We appreciate the clarification and correction offered by Counsel Fernandez about the rights of petitioners to challenge a finding of no significant impact and the issue of whether or not an environmental impact statement is warranted.

I would like to point out that the burden of making a showing that Duke and the NRC must do an environmental impact statement (EIS) is far greater than to the showing that a particular aspect of an EIS is not adequate, is incorrect, or that relevant analyses have been left out. The fact that an environmental impact statement on the impact of the operation of these reactors over the potential plutonium-use period is currently being prepared must not be forgotten. In our view, if license renewal were timed so that the MOX-use issue were definitively resolved for these reactors, then the environmental impacts of MOX use would either be irrelevant (in the case that the program is not implemented), or alternately, plutonium fuel impacts would be within the scope of the analysis if the program goes forward. In the latter case, the public that will

be impacted by this novel program would have the opportunity to assess that analysis without first having to create one of their own, sufficient to meet the requirement of over-turning staff findings.

Since the Commission has referred the issue of MOX consideration to the ASLB, we ask again that the Board rule upon our contentions, with recognition that changes in fuel type is not an inconsequential matter. Examination of the transcript from the oral arguments of December 18 underscores the need for clarification of two other matters, which we hope the Board will address in the ruling. The first of these is that while there is abundant transcript from the Duke legal representative, Mr. Repka, about the fact that no plutonium fuel use issues will be foreclosed in advance, there is only concomitant "nodding of heads" from NRC staff counsel. We are concerned by this since it is NRC that is in the position to foreclose a petitioner's issues than is Duke. Therefore we ask again that the order reflect this conversation, and not simply the transcript of oral argument.

The second issue is confusion in the transcript about what section of the regulations a MOX-use license amendment would fall. At one point Judge Kelber mentioned, "subpart K" (I regret that I have loaned my copy of the transcript to an associate and so cannot add a citation here). On the next day, the 19<sup>th</sup>, it was stated that the process would be under Subpart G. It would be helpful for this issue also to be clarified at this stage, since there is no precedent for this type of fuel use.

Thank you,



Mary Olson  
Nuclear Information and Resource Service  
Asheville, NC

January 18, 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Response to NRC Staff Correction of January 7, 2002" were deposited in US mail, first class today, January 18, 2002 subsequent to electronic transmission yesterday, to all parties listed below.

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A handwritten signature in black ink, appearing to read "M. Olson", written over a horizontal line.

Mary Olson  
Nuclear Information & Resource Service  
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This 18<sup>th</sup> Day of January, 2002