

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE TO
DUKE ENERGY CORPORATION'S MOTION TO DISMISS CONTENTION III

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730(c), the Nuclear Regulatory Commission staff (Staff) hereby responds to Duke Energy Corporation's (Duke) March 15, 2004, motion to dismiss Contention III.¹ The basis for Duke's motion is that, based on Duke's response to the Staff's Request for Additional Information (RAI), the contention is moot. The Staff does not oppose Duke's motion.

DISCUSSION

The Atomic Safety and Licensing Board (Board), in its Memorandum and Order (Ruling on Standing and Contentions), issued March 5, 2004 (Order), admitted Contention III, a reframed and renumbered version of Blue Ridge Environmental Defense League's (BREDL) proposed Contention 5.² Contention III reads:

The Environmental Report is deficient because it fails to consider Oconee as an alternative for the MOX LTAs [mixed oxide lead test assemblies].

Order at 50-51, 63. In its motion to dismiss Contention III, Duke asserted that the contention is moot because the answer to the Staff's RAI provided a discussion of Oconee sufficient to meet the

¹ Duke Energy Corporation's Motion to Dismiss Contention III, March 15, 2004 (Duke Motion).

² The Board also admitted reframed and renumbered Contentions I and II.

requirements of the Board's Order, and 10 C.F.R. § 51.30(a), cited therein. See Order at 50-51. The Staff agrees.

In its Environmental Report (ER), submitted with its license amendment request, Duke did not address Oconee Nuclear Station as an alternative to Catawba for use of the MOX LTAs. A brief discussion of alternatives, "as appropriate," is required pursuant to 10 C.F.R. § 51.30(a)(1)(iii). As part of its review of the ER, the Staff issued Environmental RAIs requesting that Duke provide an assessment of Oconee as alternative facilities for the irradiation of MOX LTAs. On March 1, 2004, Duke responded to the RAIs, providing an analysis of the technical feasibility of using the MOX LTAs at Oconee, concluding that it would not be feasible.

The contention, as admitted, is a contention of omission, in that BREDL complained that the ER is inadequate because it did not address Oconee as an alternative. Since the information has now been supplied in the answer to the Staff's RAI, the contention is moot. See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002). Therefore, the Staff does not object to Duke's motion to dismiss Contention III.

CONCLUSION

Based upon the foregoing discussion, the Staff does not oppose Duke's motion to dismiss Contention III.

Respectfully submitted,

/RA/

Susan L. Uttal
Counsel for NRC staff

Dated at Rockville, Maryland
this 30th day of March, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE TO DUKE ENERGY CORPORATION'S MOTION TO DISMISS CONTENTION III" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (**), this 30TH day of March, 2004.

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