

June 27, 2008

MEMORANDUM TO: Melanie C. Wong, Branch Chief
Plant Licensing Branch II-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

FROM: Michael A. Dusaniwskyj, Acting Branch Chief **/RA/**
Financial, Policy & Rulemaking
Division of Policy & Rulemaking
Office of Nuclear Reactor Regulation

SUBJECT: SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR
REGULATION APPLICATION FOR DIRECT TRANSFER OF
FACILITY OPERATING LICENSE CATAWBA NUCLEAR STATION,
UNIT 1; DOCKET No. 50-413 FROM SALUDA RIVER ELECTRIC
COOPERATIVE, INC. TO DUKE POWER COMPANY LLC AND
NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION.
TAC MD7705

Attached is the subject safety evaluation in response to Plant Licensing, Branch II-1 request to evaluate the proposed direct transfer of the license named above. The evaluation is provided in only a non-proprietary version in response the applicant having revealed no financial forecasting data. This completes PFPB's review effort under the above TAC numbers.

Docket No. 50-413

Enclosure:
As stated

CONTACT: Michael A. Dusaniwskyj
301-415-1260

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OFFICIAL RECORD COPY

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

APPLICATION FOR DIRECT TRANSFER OF FACILITY OPERATING LICENSE

CATAWBA NUCLEAR STATION, UNIT 1; DOCKET No. 50-413

FROM SALUDA RIVER ELECTRIC COOPERATIVE, INC.

TO DUKE POWER COMPANY LLC AND

NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION

1.0 INTRODUCTION

By application dated December 20, 2007, (ML073580264) Duke Power Company LLC doing business as Duke Energy Carolinas, LLC (Duke), on behalf itself, North Carolina Electric Membership Corporation (NCEMC), and Saluda River Electric Cooperative, Inc. (SREC), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, requested that the United States Nuclear Regulatory Commission (NRC) consent to the transfer of SREC's 18.75% non-operating, undivided ownership interest in the Catawba Nuclear Station, Unit 1 (Catawba). SREC's 18.75% undivided ownership interest in Catawba, and ownership of 9.375% of certain support facilities will be transferred to the other current owners of Catawba, which are Duke and NCEMC. Currently, Duke, NCEMC, and SREC are joint holders of Operating License No. NPF-35 that authorizes the possession, use and operation of Catawba. The Catawba Operating License was extended an additional twenty years on December 5, 2003, authorizing operations until the year 2043. Additional information was provided in a May 29, 2008 letter, which provided clarification, and did not change the nature of the application.

Catawba Nuclear Station, Unit 1, is a 3,411 megawatt thermal Westinghouse four loop pressurized water reactor, located approximately six miles north, north-east of Rock Hill, South Carolina.

2.0 BACKGROUND

Currently, the ownership of Catawba is:

| | |
|-------|---------|
| Duke | 25.00% |
| NCEMC | 56.25% |
| SREC | 18.75% |
| Total | 100.00% |

After the proposed direct transfer, the ownership of Catawba will change to:

| | |
|-------|---------|
| Duke | 38.49% |
| NCEMC | 61.51% |
| SREC | 0.00% |
| Total | 100.00% |

ENCLOSURE

Duke currently is the licensed operator of Catawba. The proposed direct license transfer does not involve any transfer of operating authority from Duke. Duke will retain the operational responsibility for Catawba after the proposed direct transfer is executed.

SREC is a generation cooperative that is a wholesale power provider to five distribution cooperatives in South Carolina. In 1999, SREC entered into a debt restructuring agreement with the Rural Utilities Service, a division of the United States Department of Agriculture (RUS), in which SREC agreed to allow RUS to sell its non-operating, ownership interest in Catawba, and apply the proceeds toward the RUS guaranteed debt owed to the Federal Financing Bank by SREC. On June 7, 2004, the RUS as a foreclosing lender, issued a request for bids for the acquisition of the 18.75% SREC ownership interest in Catawba, representing approximately 214 megawatts of nuclear capacity.

In the response to the request for bids, Duke and NCEMC each submitted a bid to purchase SREC's ownership interest. The RUS selected NCEMC's bid as the winner. Pursuant to the original ownership agreement however, Duke and NCEMC share the right of first refusal to match any bids in proportion to their current ownership interest in Catawba. Duke currently owns 25.00% of Catawba and NCEMC owns 56.25% of Catawba. Based on these ownership percentages, Duke has the right of first refusal on 30.77% of SREC's ownership interest in Catawba and NCEMC has the right of first refusal on 69.23% of SREC's ownership interest.

Duke appealed the RUS bid selection process, and ultimately a settlement was reached between Duke, NCEMC and RUS. Under the settlement, Duke agreed to purchase 154 megawatts of SREC's ownership interest and NCEMC agreed to purchase the remaining 60 megawatts of SREC's ownership interest. Accordingly, Asset Purchase Agreements were entered into between SREC and Duke and SREC and NCEMC. As part of the sale of SREC's ownership interest, the current agreements that govern the co-ownership arrangement between Duke and SREC will be terminated.

3.0 REGULATORY EVALUATION

The applicants' request for approval of the indirect transfer of the licenses listed above, discussed in this Safety Evaluation is made pursuant to 10 CFR 50.80. Section 50.80(a) of 10 CFR states:

“No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.”

In addition, the requirements of 10 CFR 50.80(b) & (c) apply. Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34 “with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.”

Section 50.80(c) states that “the Commission will approve an application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.”

4.0 FINANCIAL QUALIFICATIONS

Section 50.33(f) of 10 CFR provides that each application shall state “except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 50.22, information sufficient to demonstrate to the Commission the financial qualification[s] of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought.”

Section 50.2 of 10 CFR states, in part, that an electric utility is “any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.”

4.0.1 Duke Power Company LLC d/b/a Duke Energy Carolinas, LLC (Duke)

Duke Power Company LLC, is a wholly-owned subsidiary of Duke Energy Corporation. Duke is engaged in the business of generating, transmitting and distributing electric power. Duke is an electric public utility under the laws of North Carolina and subject to the jurisdiction of the North Carolina Utilities Commission with respect to its operations in the State of North Carolina. Duke also transacts business in the State of South Carolina, and accordingly, its operations in that state are subject to the jurisdiction of the Public Service Commission of South Carolina. Duke is also a public utility under the Federal Power Act, and therefore certain parts of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. Duke owns and operates regulated electric facilities, including a total of seven nuclear units.

Duke Power Company LLC is a limited liability company duly organized and existing under the laws of the State of North Carolina. The company’s general office, and principal place of business, is located in Charlotte, North Carolina, and it also transacts business on a regular basis in the State of South Carolina.

Duke Energy Corporation is a holding corporation duly organized and existing under the laws of the State of Delaware. The corporation’s general office, and principal place of business, are located in Charlotte, North Carolina.

As specified in the NRC license, Duke is licensed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 50, to own and operate Catawba. In accordance with 10 CFR 50.33(f), “Electric Utilities” are exempt from the requirement to demonstrate financial qualifications. Duke is, and will remain, an “electric utility” within the meaning of 10 CFR 50.2 following the proposed transfer because Duke will generate and distribute electricity and recover the cost of that electricity, either directly or indirectly, through rates established by a separate regulatory authority. As an electric utility Duke’s financial qualifications are presumed, and no further financial qualifications review is necessary.

4.0.2 North Carolina Electric Membership Corporation (NCEMC)

According to the application, NCEMC is one of the nation's largest generation and transmission cooperatives, originally formed to support North Carolina's twenty-seven distribution electric cooperatives. NCEMC generates and transmits electricity to its member cooperatives via its ownership of two diesel peaking generators, two gas-fired peaking facilities currently under construction, and a 56.25% interest in Catawba. In addition, NCEMC purchases power from other electric utilities. NCEMC's member cooperatives provide services to more than 850,000 customers in 93 of North Carolina's 100 counties. As a borrower from the RUS, a division of the Department of Agriculture, NCEMC is subject to the jurisdiction of the RUS.

Under 10 CFR 50.33, electric utilities are exempt from the requirements to demonstrate financial qualifications. NCEMC is and will remain an "electric utility" within the meaning of 10 CFR 50.2 following the proposed transfer since it will remain an entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

NCEMC recovers costs for operations at Catawba through the sales of electricity output based on rates NCEMC proposes and its Board of Directors approves. Following the Board of Director's approval, these rates are submitted to the RUS and are deemed approved within 30 days of receipt unless NCEMC is notified otherwise.

Therefore, the staff finds that NCEMC is an electric utility under 10 CFR 50.2 and that as an electric utility NCEMC's financial qualifications are presumed. Accordingly, no further financial qualifications review is necessary.

5.0 DECOMMISSIONING FUNDING

Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e), as determined to be acceptable by the NRC. The NRC has determined that the requirement to provide reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety.

5.0.1 Duke Power Company LLC d/b/a Duke Energy Carolinas, LLC (Duke)

After the proposed transfer, Duke will receive the proportionate share of SREC's decommissioning trust funds that corresponds with the ownership interest in Catawba being acquired by Duke. Duke will also continue to maintain its existing decommissioning trust for its current 25.00% ownership interest. Duke will continue to

maintain these external decommissioning funds segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1).

Duke currently provides decommissioning funding assurance for its share of Catawba by maintaining an external Nuclear Decommissioning Master Trust. Duke has established separate Qualified and Non-Qualified trusts within the master trust. Internal Revenue Service

(IRS) regulations stipulate that, among other things, both the Qualified and Non-Qualified trusts are taxable such that the Qualified trust is subject to a flat 20% tax rate and the Non-Qualified

trust is subject to the Company's corporate tax rate. As an electric utility licensee, decommissioning costs related to Catawba are subject to a cost-of-service rate regulation rate base, and as such, will be included in the rates approved by the State regulatory authorities. According to the application, contributions to the master trust are made regularly based on collections from this established regulatory charge mechanism. As stated in the Biennial Decommissioning Funding Report, as of December 31, 2006, Duke's share of Catawba's decommissioning trust fund total was \$28,626,000. As of December 31, 2007, Duke's share of Catawba's decommissioning trust fund total was \$32,892,000. Duke's share of The Decommissioning Trust Fund will increase after the proposed direct transfer reflecting the proportional amount of ownership gained in Catawba after the direct transfer is completed.

According to the application, the Asset Purchase Agreement between Duke and SREC requires that a pro rata share of the funds in SREC's existing decommissioning funds, corresponding with the ownership interest in Catawba being acquired, be transferred to Duke. Upon close of the sale, the proportionate share of the funds accumulated in the SREC Nuclear Decommissioning Trust as of the date of the closing that corresponds with the ownership interest in Catawba that Duke is acquiring, will be transferred to Duke's existing Non-Qualified Trust. SREC's Biennial Decommissioning Funding Report, dated April 2, 2007 stated that as of December 31, 2006, the actual decommissioning trust fund totaled \$29,113,000. As of December 31, 2007 the actual decommissioning trust fund totaled \$30,207,000.

The NRC staff finds that these arrangements will continue to provide reasonable assurance that Duke will have the funds necessary to cover its proportionate ownership interest share of the minimum decommissioning funding costs of Catawba after the proposed transfer. Consistent with the NRC's practice, the order approving the license transfer should be conditioned as follows:

SREC shall transfer to Duke at the time of closing of the license transfer the proportional amount of SREC's decommissioning funds reflecting the proportionate ownership interest being transferred.

5.0.2 North Carolina Electric Membership Corporation (NCEMC)

After the proposed transfer, NCEMC will receive the proportionate share of SREC's decommissioning trust funds that corresponds with the ownership interest in Catawba being acquired by NCEMC. NCEMC will also continue to maintain its existing decommissioning trust for its current 56.25% ownership interest. NCEMC will continue to maintain these external decommissioning funds segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1).

NCEMC currently provides decommissioning funding assurance for its share of Catawba by maintaining external nuclear decommissioning trust funds in accordance with 10 CFR 50.75 (e)(1)(ii). NCEMC's decommissioning funding balance as of December 31, 2006, was

\$44,655,000. In addition, as of December 31, 2007, the decommissioning trust fund was \$52,080,000.

According to the application, the Asset Purchase Agreement between NCEMC and SREC requires that a pro rata share of the funds in SREC's existing decommissioning funds, corresponding with the ownership interest in Catawba being acquired, be transferred to NCEMC. Upon close of the sale, the proportionate share of the funds accumulated in the SREC nuclear decommissioning trust funds as of the date of closing that corresponds with the ownership interest in Catawba that NCEMC is acquiring, will be transferred to NCEMC's external nuclear decommissioning trust.

Periodic contributions to NCEMC's nuclear decommissioning trust for NCEMC's existing Catawba decommissioning obligations, as well as the newly acquired SREC ownership interest, will continue to be based on collections through rates established to recover NCEMC's cost-of-service. 10 CFR 50.75 (e)(1)(ii)(A) provide, in part "...rural electric cooperatives ... that establish their own rates and are able to recover their cost-of-service allocable to decommissioning are assumed to meet this condition."

The NRC staff notes that NCEMC's Board of Directors policies provide NCEMC the ability to recover cost-of-service through rates to members and nonmembers and to meet the requirements of mortgage and other agreements. Further, the "Consolidated Mortgage, Security Agreement and Financing Statement between NCEMC, RUS, and the National Rural Utilities Cooperative Finance Corporation, dated January 2, 2006, requires NCEMC to "...design and implement rates for electric capacity, energy, and other services furnished by it to provide sufficient revenue..." to pay all fixed and variable expenses, as well as meet certain self-imposed Time Interest Earned and Debt Service Coverage Ratio requirements.

The NRC staff further notes that on January 1, 2003, NCEMC adopted the Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations" as promulgated by the Financial Accounting Standards Board. As such, NCEMC recognizes annual decommissioning expense as required by this accounting standard. Annual decommissioning expense is included in NCEMC's cost-of-service and is collected through rates, whereby it is deposited into the external decommissioning trust.

The NRC staff finds that these arrangements will continue to provide reasonable assurance that NCEMC will have the funds necessary to cover its proportionate ownership interest share of the minimum decommissioning funding costs of Catawba after the proposed transfer. Consistent with the NRC's practice, the order approving the license transfer should be conditioned as follows:

SREC shall transfer to NCEMC at the time of closing of the license transfer the proportional amount of SREC's decommissioning funds reflecting the proportionate ownership interest being transferred.

5.0.3 Piedmont Municipal Power Agency and North Carolina Municipal Power Agency 1

The NRC staff notes that Piedmont Municipal Power Agency and North Carolina Municipal Power Agency 1, are contributors to the NRC decommissioning funding requirements of 10 CFR

50.75, but are not owners of Catawba Nuclear Station, Unit 1, reflecting a partnership agreement between themselves and Duke, NCEMC, and SREC. As of December 31 2007 Piedmont Municipal Power's Decommissioning Trust had \$23,686,000. As of December 31, 2007, North Carolina Municipal Power Agency 1's Decommissioning Trust had \$101,940,000.

6.0 TECHNICAL QUALIFICATIONS

There is no proposed transfer of operating authority from Duke (as licensed operator) in connection with the proposed transfer of ownership interests to Duke (as licensed owner) and NCEMC.

According to the application, the technical qualifications of Duke, as the operating licensee, to carry out its responsibilities under the operating license for Catawba will not be impacted by the proposed direct license transfer. The proposed direct license transfer will not result in any change in the design or operation of Catawba, any change in the technical aspects of the Catawba Facility Operating License or Technical Specifications, nor any change to the technical qualifications of personnel involved in the maintenance or operations of Catawba. Duke will at all times remain the operating licensee of Catawba and there will be no changes in the Duke management team or operating organization resulting from the proposed direct license transfer. Additionally, clear lines of responsibility and authority through the Chief Nuclear Officer will be maintained. The plant will continue to be operated in accordance with the license, NRC requirements, the licensing bases, and all other NRC prior imposed commitments.

The NRC staff finds that since there is no proposed transfer of operating authority and no other technical qualification issues have been raised, no technical qualifications findings that would be relevant for a new operating entity need be made.

7.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954 as amended 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). The application here postdates the issuance of the operating license for the unit under consideration in this Safety Evaluation, and therefore no antitrust review is required or authorized.

8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the Atomic Energy Act of 1954 as amended, prohibits the NRC from issuing a license for a nuclear power plant to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The NRC's regulation, 10 CFR 50.38, contains language to implement this prohibition. In the context of a direct transfer of control, the proposed direct license transfer can not result in foreign ownership, control or domination of the proposed transferee.

8.0.1 Duke Power Company LLC d/b/a Duke Energy Carolinas, LLC (Duke)

Duke, a North Carolina company whose principal place of business is Charlotte, North Carolina, is wholly owned by Duke Energy Corporation, a Delaware corporation whose principal place of business is Charlotte, North Carolina. The shares of common stock of Duke Energy Corporation are publicly traded and widely held. The directors and officers of Duke Energy Corporation and Duke are United States citizens. Under oath and affirmation, the application contains statements that neither Duke Energy Corporation nor Duke is owned, controlled or dominated by any alien, foreign corporation or foreign government. The staff does not know or have reason to believe otherwise.

8.0.2 North Carolina Electric Membership Corporation (NCEMC)

NCEMC, a North Carolina corporation whose principal place of business is North Carolina, is currently owned by twenty-six members that are all electric membership cooperatives which sell electricity at retail in the State of North Carolina. The executive officers and directors of NCEMC are United States citizens. Under oath and affirmation, the application contains statements that none of these members is owned, controlled, or dominated by any alien, foreign corporation, or foreign government.

Accordingly, the NRC staff does not know or have reason to believe that NCEMC is owned, controlled, or dominated by any alien, foreign corporation, or foreign government, within the meaning of the Atomic Energy Act of 1954, as amended, by reason of the proposed direct license transfer.

9.0 NUCLEAR INSURANCE & INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that the current indemnity agreement continue to reflect that Duke and NCEMC will remain the licensees after the proposed direct transfer takes effect.

Duke, as well as NCEMC, will be required to maintain the financial protection required by 10 CFR Part 140 and the property insurance required by 10 CFR 50.54(w). The NRC staff will issue to Duke and NCEMC modified Price-Anderson indemnity agreements to reflect that SERC will no longer be an owner or licensee.

According to the application, Duke and NCEMC will also continue to have pro-rata responsibility with respect to retrospective liability in accordance with 10 CFR 140.21.

The NRC staff finds that the annual reports for Duke and NCEMC (which were included in the December 20, 2007 application as Enclosures 2 and 3 respectively), indicate reasonable assurance that Duke and NCEMC will be able to pay their pro rata share of the maximum annual retrospective premium, pursuant to 10 CFR 140.21.

10.0 CONCLUSION

Based on the foregoing, the staff finds that Duke and NCEMC are qualified to hold the additional interests in the Catawba Unit 1 license as described in the application, , and that the direct

transfer of such interests in the license is otherwise consistent with applicable provisions of laws, regulations and orders issued by the Commission pursuant thereto, subject to the conditions described herein.

Principal Contributor: MADusaniwskyj, NRR/DPR/PFPB