

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

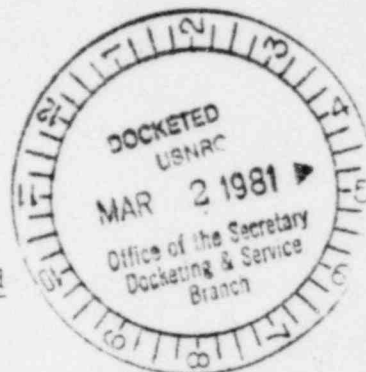
DUKE POWER COMPANY)

(William B. McGuire Nuclear
Station, Units 1 and 2))

Docket Nos. 50-369)

814342)

CESG'S OBJECTION TO MEMORANDUM
AND ORDER OF FEBRUARY 17, 1981
AND MOTION FOR CERTIFICATION
OR REFERRAL TO THE COMMISSION



The Carolina Environmental Study Group ("CESG") hereby files an objection to the Board's Memorandum and Order of February 17, 1981, which denied the admission of contentions 5 and 6 to this proceeding.^{1/} CESG also requests certification, pursuant to 10 C.F.R. 2.718(i), or referral, pursuant to 10 C.F.R. 2.730(f), of this Order to the Commission.

CESG submits that referral to the Commission for prompt appellate review is "necessary to prevent detriment to the public interest." 10 C.F.R. § 2.730(f). As explained in CESG's memorandum in support of further contentions, we contend that a supplementary Environmental Impact Statement on Class 9

^{1/} Although the Board's order indicates that it was served on February 17, 1981, counsel were apparently omitted from the official service list. The mistake has since been corrected, but we did not receive a copy of the Board's order until February 23, 1981.

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accidents is a necessary predicate for this reopened operating license proceeding, in which a hearing is now underway. Without such an analysis, certain issues, such as the adequacy of emergency evacuation plans for McGuire, cannot properly be evaluated and the question of whether an operating license should be granted cannot be determined on the basis of all the information NEPA requires.

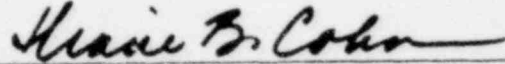
The Licensing Board has nevertheless interpreted the Commission's Statement of Interim Policy (June 13, 1980) as precluding the preparation of a supplemental EIS in this case. If that is the correct interpretation of the Commission's interim statement, CESC does indeed take issue with the Commission's policy as being directly contrary to the requirements of the National Environmental Policy Act. See CESC Memorandum at 7. Since this issue thus concerns the question of whether the Commission's policy statement is on a "collision course with governing legal principles,"^{2/} we submit that it is necessary and appropriate for the Commission to determine whether its Statement of Policy precludes the preparation of a class 9 analysis for McGuire.^{3/}

2/ Project Management Corporation Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406, 407, reconsideration denied, ALAB-330, 3 NRC 613, rev'd in part sub nom. USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976)

3/ 10 C.F.R. § 2.730(f) and § 2.718(i) provide for referral or certification to the Commission, although the Appeal Board is authorized to perform interlocutory review functions under 10 C.F.R. 2.785(b)(1). However, the Commission has not precluded itself from exercising this authority in appropriate circumstances. Since it is the Commission's Statement of Policy on which the Board has relied, we submit that it would be appropriate for the Commission itself to determine its application in this proceeding.

For the foregoing reasons, the Board should certify or refer the denial of CESG's contentions 5 and 6 to the Commission.

Respectfully submitted,



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March 2, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
DUKE POWER COMPANY) Docket Nos. 50-369, 30-370
)
(William B. McGuire Nuclear)
Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify, this 2nd day of March, 1981, that copies of CESG's Exception to Memorandum and Order of February 17, 1981 and Motion for Certification or Referral to the Commission have been served by hand upon those indicated by an asterisk and by mail, first class and postage prepaid, upon the remainder of the following:

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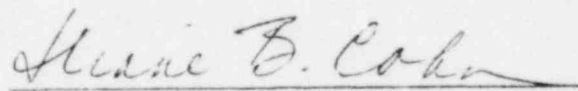
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