



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA ST., N.W., SUITE 3100
ATLANTA, GEORGIA 30303

APR 17 1981

MEMORANDUM FOR: Steven Sohinki, Counsel for NRC Staff, Office of the
Executive Legal Director

FROM: Carl E. Alderson, Director, Enforcement and Investigation
Staff, Region II

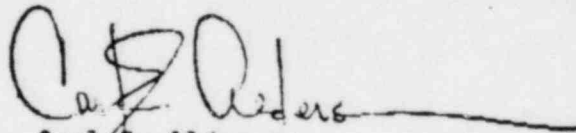
SUBJECT: DUKE POWER COMPANY - POSSIBLE FALSE STATEMENT REGARDING
AMENDMENT TO MATERIALS LICENSE, DOCKET 70-2623

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As you requested during our telephone conversation today, I am enclosing a copy of our Summary of Inquiry into the subject matter.

As you are aware, we have conducted a preliminary inquiry into this matter, the scope and results of which are documented in the enclosure herewith. Based on the information we have gathered to date, we do not believe that a formal investigation or further expenditure of investigative manpower is warranted.

If I can be of further assistance in this matter please contact me.


Carl E. Alderson

Enclosure: Summary of Inquiry

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ENCLOSURE

SUMMARY OF INQUIRY

As a result of a memorandum from W. J. Ward to J. P. O'Reilly dated November 24, 1980, Region II conducted an inquiry into comments made by the ASLB in their Initial Decision (dated October 31, 1980) in the matter of Duke Power Company's request for amendment to NRC License No. SNM-1773 (Docket 70-2623) to permit shipment of spent fuel from Oconee Nuclear Station to McGuire Nuclear Station for storage.

Of specific interest were the ASLB's statements that "...it appears that Duke was somewhat less than candid, if not actively devious, in not disclosing its Cascade Plan to the NRC..." (at page 12 in the Initial Decision) and "...we regard as disingenuous, the further note that 'Each plant is expanded solely on the basis of meeting its own need for storage. No mention of the cascade approach in licensing documents'." (at page 15).

The inquiry included a review of the entire Initial Decision and those pages of the hearing transcript which were cited by the ASLB in making the above statements. Additionally, both the applicant's and the NRC Staff's appeal briefs were reviewed.

An NRC staff member, Brett A. Spitalny, who was the project manager for the Duke license amendment review was telephonically interviewed concerning his knowledge of the cascade plan. During that interview, Spitalny explained that commencing sometime during the summer months of 1978, he had numerous telephone conversations with Duke personnel concerning shipments of spent fuel elements from Oconee to McGuire, McGuire to Catawba and Oconee to Catawba. He recalled that it was considered by Duke to be an inexpensive way to handle the fuel storage problem as the fuel pool at McGuire was empty and Duke was considering building a larger spent fuel pool at Catawba. He stated that the Catawba FSAR specifically stated Catawba was being designed so that spent fuel could be transported from McGuire and Oconee and stored at Catawba.

A review of the Catawba FSAR, Section 9.1.2.4., "Storage of Oconee and McGuire Spent Fuel" disclosed that it states, in part: "The interim spent fuel storage plans for Duke Power nuclear facilities call for storage of some Oconee and McGuire spent fuel assemblies in the Catawba spent fuel pools.

It should be noted that the prehearing conference for the materials license amendment took place on March 13, 1979, and discovery by the intervenors was conducted on April 26-27, 1979. The Catawba FSAR was submitted to the NRC for acceptance review on March 21, 1979, approximately one month before the intervenors obtained copies of the Duke internal documents to which the ASLB refers in calling Duke somewhat less than candid, if not actively devious.

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In that the Staff was aware, both informally (Spitalny telephone conversations with Duke employees) and formally (Catawba FSAR), that transshipment of fuel was being considered by Duke, it does not appear appropriate that the question of material false statement should be addressed further. While the statements contained in the Duke internal memoranda appear to suggest that information be withheld from the NRC, the information referred to, was in fact made known to the NRC.