

50-413
50-414



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

96 108

April 2, 1996

Mr. Charles Morris
6516 Roy Shafer Road
Middletown, Maryland 21769

Dear Mr. Morris:

This letter acknowledges receipt of your letter dated February 13, 1996, in which you request action with regard to the Catawba Nuclear Station (CNS) and 10 other nuclear power plant licensees. Your request is being treated as a Petition under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). In addition, your Petition requests that certain requirements be added to the U.S. Nuclear Regulatory Commission's (NRC) regulations. If you want to formally request the NRC to revise its regulations, you can follow the procedures set forth in 10 CFR 2.802 of the Commission's regulations (enclosed). For further information regarding this process, you may contact Michael Lesar in the Office of Administration at (301) 415-7163.

In your Petition you request that the operating licenses for CNS and "some ten other licensees with uncoordinated breakers" (not specifically identified in your Petition) be suspended until the lack of circuit breaker coordination has been remedied, that enforcement conferences be held on these aforementioned cases, and that the CNS be defueled. You also request that the NRC take enforcement action against CNS for operating with a "known safety deficiency of which they did not inform the NRC ..."

As bases for the requests, you submitted documentation that included a memorandum to William T. Russell, Director of the Office of Nuclear Reactor Regulation (NRR), dated May 6, 1994, wherein you expressed a differing professional view (DPV) regarding the resolution of a breaker coordination issue identified during an electrical distribution system functional inspection (EDSFI) conducted at CNS during January-February 1992, and an NRC memorandum dated July 21, 1994, responding to your DPV. The NRC memorandum of July 21 confirmed that the CNS licensee's analysis prepared during the inspection showed that the breaker coordination at CNS did not satisfy the CNS Final Safety Analysis Report (FSAR). You also included your memorandum to James M. Taylor, Executive Director for Operations, dated July 28, 1994, wherein you expressed a differing professional opinion (DPO) concerning the uncoordinated breakers at CNS, based on your concern that the staff was inclined to accept a licensee proposal to change the FSAR commitment rather than the circuit breakers without adequate justification or documentation to support such acceptance. Furthermore, you indicate that the "safety deficiency" was known by the CNS licensee before its discovery by the EDSFI; however, the NRC was not informed.

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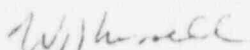
Dfa

Your request for the immediate suspension of the CNS license until the lack of circuit breaker coordination has been remedied, and your request for the defueling of CNS, are denied for the following reasons. The issue you raised is that the incoming breakers to the essential 600-volt alternating current motor control centers (MCCs) are not coordinated with the outgoing breakers from the MCCs for all faults, and the breakers in the 125-volt direct current vital instrumentation and control power system (EPL) distribution centers and power panelboards are not coordinated for all faults. This specific CNS technical issue was reviewed by the NRR Standing Panel whose review results are documented in the NRC memorandum of July 21, 1994, which you included with your Petition. The July 21 memorandum provides information that supports our conclusion that this issue does not warrant the immediate and urgent actions requested in your Petition. Your request that NRC take enforcement action against CNS for operating and not reporting a "known safety deficiency" related to breaker coordination will be addressed separately.

Your Petition also requests the suspension of operating licenses for "some ten other licensees with uncoordinated breakers". The Commission's regulations in 10 CFR Part 2.206 require that the facts that constitute the basis for the request be set forth. However, your Petition only provides an assertion that uncoordinated breakers may exist in the ten unspecified facilities and on that basis requests suspension of the ten licenses. To provide a credible basis for treating an issue pursuant to 10 CFR 2.206, a request should provide a specific factual basis to support the stated concern. Because your request related to ten unidentified plants does not meet the standards for treatment under 10 CFR 2.206, no action is being taken.

Your Petition for enforcement action against Catawba Nuclear Station has been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by Section 2.206, action will be taken on your requests within a reasonable time. I have enclosed for your information a copy of the notice that is being filed with the Office of the Federal Register for publication. The matters in your letter dated February 13, 1996 related to the handling of your DPO were addressed separately in a letter from Mr. James Milhoan to you dated March 19, 1996.

Sincerely,



William T. Russell, Director
Office of Nuclear Reactor Regulation

Docket Nos. 50-413 and 50-414
(10 CFR 2.206)

Enclosures: 1. Copy of 10 CFR 2.802
2. Federal Register Notice

cc w/encls: See next page

April 2, 1996

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Sincerely,

Original Signed By
WILLIAM T. RUSSELL

William T. Russell, Director
Office of Nuclear Reactor Regulation

Docket Nos. 50-413 and 50-414
(10 CFR 2.206)

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cc w/encls: See next page

* SEE PREVIOUS CONCURRENCES

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OFC	DE *	E	TECH EDIT *	N	PDII-2:PM/D	E	D:DRPE *
NAME	FSAshe : BSheron : JCalvo		rev'd w/cmnts		RMartin*: HBerkow *		SVarga
DATE	3/18/96: 3/21/96 : 3/18/96		3/18/96		3 29/96 : 3/ 29/96		3 / 25 /96
OFC	ADPR:NRR *		DD:NRR *		D:NRR		OGC *
NAME	RZimmerman		FMiraglia		WRussell		MRafky
DATE	3 / 27 /96		3 / 29 /96		4 / 7 /96		3 / 25 /96

Duke Power Company

cc:

Mr. M. S. Kitlan
Regulatory Compliance Manager
Duke Power Company
4800 Concord Road
York, South Carolina 29745

Mr. Paul R. Newton
Legal Department (PB05E)
422 South Church Street
Charlotte, North Carolina 28242-0001

J. Michael McGarry, III, Esquire
Winston and Strawn
1400 L Street, NW
Washington, DC 20005

North Carolina Municipal Power
Agency Number 1
1427 Meadowwood Boulevard
P. O. Box 29513
Raleigh, North Carolina 27626-0513

Mr. T. Richard Puryear
Nuclear Technical Services Manager
Westinghouse Electric Corporation
Carolinas District
2709 Water Ridge Parkway, Suite 430
Charlotte, North Carolina 28217

County Manager of York County
York County Courthouse
York, South Carolina 29745

Richard P. Wilson, Esquire
Assistant Attorney General
South Carolina Attorney General's
Office
P. O. Box 11549
Columbia, South Carolina 29211

Piedmont Municipal Power Agency
121 Village Drive
Greer, South Carolina 29651

Dayne H. Brown, Director
Division of Radiation Protection
N.C. Department of Environment,
Health and Natural Resources
P. O. Box 27687
Raleigh, North Carolina 27611-7687

Catawba Nuclear Station

North Carolina Electric Membership
Corporation
P. O. Box 27306
Raleigh, North Carolina 27611

Senior Resident Inspector
Route 2, Box 179 N
York, South Carolina 29745

Regional Administrator, Region II
U. S. Nuclear Regulatory Commission
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

Max Batavia, Chief
Bureau of Radiological Health
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Mr. G. A. Copp
Licensing - EC050
Duke Power Company
526 South Church Street
Charlotte, North Carolina 28242-0001

Saluda River Electric
P. O. Box 929
Laurens, South Carolina 29360

Ms. Karen E. Long
Assistant Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

Elaine Wathen, Lead REP Planner
Division of Emergency Management
116 West Jones Street
Raleigh, North Carolina 27603-1335

Mr. William R. McCollum
Site Vice President
Catawba Nuclear Station
Duke Power Company
4800 Concord Road
York, South Carolina 29745

PART 2 • RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS ...

Subpart H — Rulemaking

That information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

41 FR 11808

35 FR 11459

§ 2.800 Scope of rulemaking.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 553 of Title 5 of the U.S. Code.

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

27 FR 377

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Branch.

44 FR 61320

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief Rules Review and Directives Branch. A prospective petitioner may also telephone the Rules Review and Directives Branch on (301) 415-7158 or toll free on (800) 368-5642.

59 FR 60551

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

- (i) Describing the procedure and process for filing and responding to a petition for rulemaking;
(ii) Clarifying an existing NRC regulation and the basis for the regulation; and
(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

56 FR 10369

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended.

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Freedom of Information and Publications Services, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will deposit a copy of the docketed petition in the Commission's Public Document Room. Public comment may be requested by publication of a notice of the docketing of the petition in the FEDERAL REGISTER, or, in appropriate cases, may be invited for the first time upon publication in the FEDERAL REGISTER of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

53 FR 52993

(d) The following information shall be deemed to be commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and § 2.740(c).

41 FR 11808

53 FR 17688

44 FR 61320

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

59 FR 44894

(g) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

27 FR 377

§ 2.803 Determination of petition.

No hearing will be held on the petition unless the Commission deems it advisable. If the Commission determines that sufficient reason exists, it will publish a notice of proposed rulemaking. In any other case, it will deny the petition and will notify the petitioner with a simple statement of the grounds of denial.

50 FR 13006

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the FEDERAL REGISTER a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

27 FR 377

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined in the Public Document Room;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

(c) The publication or service of notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any, unless the Commission for good cause stated in the notice provides otherwise.

50 FR 13006

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest."

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the FEDERAL REGISTER containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

§ 2.805 Participation by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.