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December 14, 1987

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D. C. 20555

Subject: Catawba Nuclear Station
Docket Nos. 50-413 and 50-414
Fees for Review of IST Program

Dear Sir:

By letter dated September 4, 1987, Mr. C. J. Holloway, Jr., NRC/ARM, responded to Duke Power Company's March 27, 1987 appeal of fees assessed by the NRC for review of the Inservice Testing (IST) programs for Catawba Nuclear Station, Units 1 and 2. Mr. Holloway's letter 1) agreed, in part, that the fee schedules of 10 CFR 170 had been applied incorrectly by Reba M. Digg's letter of January 30, 1987; 2) credited Duke for \$25,108 in previously paid review fees; and 3) requested an additional \$12,300 as a license amendment fee under the Commission's March 23, 1978 regulations. After reviewing Mr. Holloway's letter, it is our conclusion that the Staff has again incorrectly applied the fee schedules of 10 CFR 170 in requesting a \$12,300 license amendment fee for a unit not yet licensed.

At the heart of this matter is the NRC Staff's review of the Catawba Units 1 and 2 IST program. The IST program for Catawba Unit 1 was submitted on March 9, 1983 in conjunction with the NRC Staff's review of Duke's application for an operating license. As discussed in Supplement 2 to the Catawba SER, the Staff conducted a preliminary review of the IST program and conditionally granted the relief requests until such time as the Staff completed its review. The IST program for Catawba Units 1 and 2 was approved on January 8, 1987.

Mr. Holloway's September 4, 1987 response notes that certain reviews, such as IST, are not required for the issuance of an initial or 100% operating license and separate fees can be assessed. In reviewing 10 CFR 50.34, Contents of Applications; Technical Information; 10 CFR 50.55a, Codes and Standards; 10 CFR 50.57, Issuance of Operating License; and Section 3.9.6 of NUREG-0800, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, it is not apparent how the Staff could reach a conclusion that review of the IST program was not required for issuance of an operating license. Specifically §50.34(b)(6)(iv) requires that an applicant describe "Plans for the conduct of normal operations, including maintenance, surveillance, and periodic testing of structures, systems, and components"; §50.55a(g)(4) requires that the requirements of Section XI of the ASME code be met, to the extent practical, throughout the service life of the facility; §50.57(a)(2) requires that the Commission make a finding that the facility will operate in conformity with the regulations; and SRP Section 3.9.6 describes the review of the IST program by the Staff, but make no mention of the SER input not being required for issuance of an operating license. Indeed, the Staff did conduct a preliminary review of the IST program as documented in Section 3.9.6 of Catawba SSER 2 and subsequent license conditions (FOL NPF-24, LC-4; FOL NPF-31, LC-5; and FOL NPF-35, LC-5) in order to

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satisfy the requirements of Part 50. It is also clear that the Staff deferred the detailed review of the Catawba IST program for their own convenience, due to a long standing backlog of Section XI reviews and not because of a pre-planned deferral of the review of the IST program.

As discussed in Mr. Holloway's September 4, 1987 letter, the NRC review staff reassessed their fee in response to Duke's appeal and determined, in part, that a Class IV fee (\$12,300) was appropriate for the March 9, 1983 Catawba 1 IST program, as revised through Revision 17. The Staff's current fee position is not supported by the regulations for the following reasons:

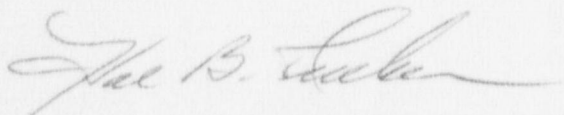
- (1) Catawba Unit 1 received an operating license on July 18, 1984. Submittal of the IST program and subsequent amendments was not a license amendment but a part of the operating license application.
- (2) The March 23, 1978 fee schedule which contained Amendment Classes I through VI was superseded by a new fee schedule on June 18, 1984. Therefore license amendments and other required approvals for Catawba would not come under the old \$170.22.

In order to resolve the issue of fees for review of the Catawba IST program, we would propose that a meeting be arranged to discuss our respective positions. In order for Duke to prepare for such a meeting, it is necessary that we understand the Staff's rationale in assessing the \$12,300 Class IV fee. It is therefore requested that responses to the following questions be provided:

- (1) What is the regulatory basis (i.e., regulations, Regulatory Guides, Generic Letters, Branch Technical Positions, internal memorandum, etc...) for the Staff's position that certain reviews are not required for the issuance of the initial OL or a 100% OL? Please provide a copy of any basis document not already available to Duke.
- (2) What review areas, other than Inservice Testing, are not required for license issuance and therefore billable in addition to the \$170.21 fees?
- (3) What is the regulatory basis for billing a license amendment fee to a license applicant under 10 CFR 170.22 of the Commission's March 23, 1978 regulations?

After receiving responses to the above questions, Duke will, if necessary and appropriate, request a formal appeal meeting in accordance with 10 CFR 15.31 and 170.51(C).

Very truly yours,



Hal B. Tucker

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