

security is not impacted by this exemption request.

### 3.3.4 Special Circumstances

Pursuant to 10 CFR 50.12, "Specific Exemption," the NRC staff reviewed the licensee's exemption request to determine if the legal basis for granting an exemption had been satisfied. With regards to the six special circumstances listed in 10 CFR 50.12(a)(2), the NRC staff finds that the licensee's exemption request satisfies 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." Specifically, the NRC staff concludes that since the licensee has satisfied the five criteria in Section 3.1 of this exemption, the application of the rule is not necessary to achieve its underlying purpose in this particular case.

### 3.4 Summary

Based upon the review of the licensee's exemption request to credit soluble boron during DSC loading, unloading, and handling in the HBRSEP2 SFP, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2) the licensee's exemption request is acceptable. However, the NRC staff places the following limitations/conditions on the approval of this exemption:

1. This exemption is limited to the loading, unloading, and handling of the DSC for only the TN NUHOMS®-24PTH at HBRSEP2.

2. This exemption is limited to the loading, unloading, and handling in the DSC at HBRSEP2 of Westinghouse 15 x 15 fuel assemblies that had maximum initial, unirradiated U-235 enrichments corresponding to the TS limitations in LCO 1.2.1 for Amendment 8 to the NUHOMS®-24PTH cask design.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants CP&L an exemption from the requirements of 10 CFR 50.68(b)(1) for the loading, unloading, and handling of the components of the Transnuclear NUHOMS®-24PTH dry cask storage system at HBRSEP2. However, since the licensee does not have an NRC-approved methodology for evaluating changes to the analyses or systems

supporting this exemption request, the NRC staff's approval of the exemption is restricted to those specific design and operating conditions described in the licensee's February 22, 2005, exemption request. The licensee may not apply the 10 CFR 50.59 process for evaluating changes to specific exemptions. Any changes to the design or operation of (1) the dry cask storage system, (2) the spent fuel pool, (3) the fuel assemblies to be stored, (4) the boron dilution analyses, or (5) supporting procedures and controls, regardless of whether they are approved under the general Part 72 license or perceived to be conservative, will invalidate this exemption. Upon invalidation of the exemption, the licensee will be required to comply with NRC regulations prior to future cask loadings.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 43462). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July 2005.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

### Duke Energy Corporation, et al.; Catawba Nuclear Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Renewed Facility Operating License Nos. NPF-35 and NPF-52 issued to Duke Energy Corporation (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendment would revise the Technical Specification 3.7.9, "Standby Nuclear Service Water Pond (SNSWP)," temperature limit from 91.5 °F to 95 °F.

Before issuance of the proposed license amendment, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

This license amendment request proposes a change to the SNSWP [Standby Nuclear Service Water Pond] TS [Technical Specification] requirement for maximum temperature. The SNSWP is the safety related ultimate heat sink utilized by the NSWS [Nuclear Service Water System]. Neither the NSWS nor the SNSWP is capable of initiating an accident. Therefore, the probability of initiation of any accident cannot be affected. The technical evaluation provided in support of this amendment request demonstrated that with a maximum allowable SNSWP temperature of 95 °F as specified in SR 3.7.9.2, the environmental qualification limit for applicable safety related equipment is not reached and the peak containment pressure remains below the TS limit. This amendment request does not involve any change to previously analyzed dose analysis results. The accident of interest from a dose perspective is the Main Steam Line Break Accident. The dose release path during this accident is via steaming of the Reactor Coolant System through the steam generator power operated relief valves. The results of this accident have been reviewed with the revised SNSWP temperature limit and it has been determined that the Reactor Coolant System cooldown is terminated early enough such that the dose analysis results are not adversely impacted. Therefore, there is no increase in any accident consequences.

2. Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

This proposed amendment does not involve addition, removal, or modification of any plant system, structure, or component. This change will not affect the operation of

any plant system, structure, or components as directed in plant procedures. Operation of the facility in accordance with this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety?

No.

Margin of safety is related to confidence in the ability of the fission product barriers to perform their design functions following any of their design basis accidents. These barriers include the fuel cladding, the Reactor Coolant System, and the containment. The proposed changes have no impact on fuel cladding performance. In addition, Reactor Coolant System performance (as determined by its impact on dose analysis results) continues to be acceptable as indicated above. Finally, containment performance (as determined by calculated containment peak pressure) remains acceptable. Therefore, the performance of these fission product barriers either during normal plant operations or following an accident will not be affected by the changes associated with this license amendment request. In addition, the operation of the NSWS and the SNSWP either during normal plant operations or following an accident will not be adversely impacted by implementation of the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the

Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may

issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Anne Cottingham, Esquire, Winston and Strawn LLP, 1700 K Street, NW, Washington, DC 20006, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 25, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet

at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 29th day of July 2005.

For the Nuclear Regulatory Commission.

**Sean E. Peters,**

*Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[EA-05-007]**

### **Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)**

The Licensees identified in Attachment A to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50, 70 and 71, or equivalent Agreement State regulations. The licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. The Commission has also communicated

with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B<sup>1</sup> of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These additional security measures will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many of the measures set forth in Attachment B to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of radioactive material quantities of concern.

Although the security measures implemented by Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the continuing threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that the security measures contained in Attachment B of this Order contains Safeguards Information and will not be released to

<sup>1</sup> Attachment B contains Safeguards Information and will not be released to the public.