

**RAS 7562**

**RELATED CORRESPONDENCE  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

April 2, 2004  
**DOCKETED 04/06/04**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DUKE ENERGY CORPORATION	)	Docket Nos. 50-413-OLA
	)	50-414-OLA
	)	
(Catawba Nuclear Station	)	
Units 1 and 2)	)	

NRC STAFF'S OBJECTIONS TO THE BLUE RIDGE  
ENVIRONMENTAL DEFENSE LEAGUE'S FIRST  
SET OF DISCOVERY REQUESTS TO NRC STAFF

INTRODUCTION

On March 31, 2004, the Blue Ridge Environmental Defense League (BREDL) filed the Blue Ridge Environmental Defense League's First Set of Discovery Requests to NRC Staff (Request) in the above-captioned matter. In its Request, BREDL filed three interrogatories and three requests for document production pertaining to Contentions I, II, and III; one interrogatory, one request for admission, and eight document requests pertaining to Contention I; and four document requests pertaining to Contention II. The NRC Staff (Staff) hereby files its objections to BREDL's Request, as discussed below. As a preliminary matter, the Staff notes that while some of BREDL's discovery requests may not be objectionable in themselves, specific documents that the staff compiles in response to BREDL's Request may be exempt from disclosure under principles of discovery applicable in this proceeding. Such documents will be identified in the Staff's response to the Request.

## OBJECTIONS

### A. Objection to Document Production Requests

To the extent that BREDL's document production requests seek the production of publicly available documents, the Staff objects. "When any . . . document . . . sought is reasonably available from another source . . . sufficient response to an interrogatory involving such materials would be the location [and] title [of] the . . . document." 10 C.F.R. § 2.740; *see also Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-48 (1979) (A party need only state that a document is publicly available and "provide sufficient information to locate the document."). Therefore, the Staff's response to BREDL's requests for document production will be limited to the production of documents that are not publicly available (assuming they otherwise may be released in discovery) and a list of the titles and locations of documents that are in the public domain or available from another source.

### B. Objection to General Interrogatory No. 1

GENERAL INTERROGATORY NO. 1. State the name, business address, and job title of each person who was consulted and/or who supplied information for responding to each of the interrogatories, requests for admission, and requests for the production of documents posed by BREDL herein. Specifically note for which interrogatories, requests for admissions and requests for production each such person was consulted and/or supplied information.

If the information or opinions of anyone who was consulted in connection with your response to an interrogatory or request for admission differs from your written answer to the discovery request, please describe in detail the differing information or opinions, and indicate why such differing information or opinions are not your official position as expressed in your written answer to the request.

The Staff has no objection to the first paragraph of General Interrogatory No. 1. The Staff, however, objects to the second paragraph of General Interrogatory No. 1 on the basis of the deliberative process privilege. The deliberative process privilege is designed to encourage frank discussions within the Government regarding the formulation of policy and the making of decisions. *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 197-98 (1994). Communications are deliberative if they reflect a consultative process. *Id.* at 197.

This privilege applies even where a purely factual matter is inextricably intertwined with privileged communications or the disclosure of the factual material would reveal the agency's decision-making process. Id. Since revealing the differing information or opinions, if any exist, along with the reasons why such information or opinions are not the official agency position would reveal the agency's decision-making process, the Staff objects to the second paragraph of General Interrogatory No. 1.

Further, Section 2.740(b)(3) states that "while interrogatories may seek to elicit factual information reasonably related to a party's position in the proceeding, including data used, assumptions made, and analyses performed by the party, such interrogatories may not be addressed to, or be construed to, require reasons for not using alternative data, assumptions, and analyses where the alternative data, assumptions, and analyses were not relied on in developing the party's position." 10 C.F.R. § 2.740(b)(3). Thus, to the extent the second paragraph of General Interrogatory No. 1 requests Staff to provide the reasons why any differing information or opinions, if any exist, are not the official position of the agency, the Staff objects to the interrogatory.

Respectfully submitted,

***/RAI***

Antonio Fernández  
Counsel for NRC Staff

Dated at Rockville, Maryland  
This 2<sup>nd</sup> day of April 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
)  
DUKE ENERGY CORPORATION ) Docket Nos. 50-413-OLA  
) 50-414-OLA  
)  
(Catawba Nuclear Station )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S OBJECTIONS TO THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S FIRST SET OF DISCOVERY REQUESTS TO NRC STAFF" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (\*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (\*\*), this 2<sup>nd</sup> day of April, 2004.

Ann Marshall Young, Chair\*\* \*  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: AMY@nrc.gov)

Anthony J. Baratta\*\* \*  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: AJB5@nrc.gov)

Thomas S. Elleman\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
5207 Creedmoor Rd. #101  
Raleigh, NC 27612  
(E-mail: elleman@eos.ncsu.edu)

Office of the Secretary\*\* \*  
ATTN: Docketing and Service  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, D.C. 20555  
(E-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate  
Adjudication\*  
Mail Stop: O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Board  
Panel  
Adjudicatory File\*  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, DC 20555

Diane Curran, Esq.\*\*  
Harmon, Curran, Spielberg  
& Eisenberg, L.L.P.  
1726 M Street, N.W., Suite 600  
Washington, DC 20036  
(E-mail: dcurran@harmoncurran.com)

Lisa F. Vaughn, Esq.\*\*  
Legal Department  
Mail Code - PB05E  
Duke Energy Corporation  
426 S. Church Street (EC11X)  
Charlotte, NC 28201-1006  
(E-mail: IfVaughn@duke-energy.com)

David A. Repka, Esq.\*\*  
Anne W. Cottingham, Esq.\*\*  
Winston & Strawn LLP  
1400 L Street, N.W.  
Washington, D.C. 20005-3502  
(E-mail: drepka@winston.com  
acotting@winston.com)

**/RA/**

---

Antonio Fernández  
Counsel for NRC Staff