

RELATED CORRESPONDENCE

April 2, 2004

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

April 8, 2004 (10:22AM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
DUKE ENERGY CORPORATION)
)
(Catawba Nuclear Station,)
Units 1 and 2))
)
)

Docket Nos. 50-413-OLA
50-414-OLA

DUKE ENERGY CORPORATION'S OBJECTIONS TO BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S FIRST DISCOVERY REQUEST

In accordance with the schedule established by the Atomic Safety and Licensing Board ("Licensing Board") in its March 30, 2004 "Order (Confirming Matters Addressed at March 25 Telephone Conference)," Duke Energy Corporation ("Duke") hereby files specific objections to certain requests in the "Blue Ridge Environmental Defense League's First Set of Discovery Requests Directed to Duke Energy Corporation" (hereafter, BREDL "First Discovery Request"), dated March 31, 2004. In accordance with 10 C.F.R. § 2.740(c), Duke requests an appropriate protective order limiting the discovery consistent with the objections stated herein.

I. GENERAL OBJECTIONS

These general objections apply to each of the requests in BREDL's First Discovery Request.

A. Duke objects to BREDL's interrogatories and document production requests to the extent that they request discovery of information or documents protected under the attorney-client privilege, the attorney work product privilege, and limitations on discovery of trial

preparation materials and experts' knowledge or opinions set forth in 10 CFR § 2.740, or as otherwise provided by law. See *Hickman v. Taylor*, 329 U.S. 495 (1947), and *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1162 (1982). Many of BREDL's interrogatories and document requests are overbroad and would encompass privileged material prepared or being prepared in anticipation of litigation in this proceeding.

B. Duke objects to all of the document requests insofar as they include e-mail in the scope of the term "document" and would necessitate a comprehensive search of any Duke e-mail account or backup or archives of such accounts. Such a request would constitute a substantial burden, would not be possible within any reasonable time constraints, and would not be justified by any reasonable need in this proceeding. To provide perspective, Duke maintains e-mail on an active server and on backup tapes. Restoration of relevant files from the server and tapes, subsequent keyword searching, and elimination of duplicates — for even a modest number of e-mail accounts — would consume many weeks. (This time constraint is largely driven by the number of relevant tape drives, not by the number of people engaged in the effort.) In the context of the present proceeding, Duke will respond to the general and specific document requests and interrogatories as described below, and accordingly will provide substantial discovery on the technical issues raised in the admitted contentions. To respond to the request, Duke will specifically identify all individuals who might reasonably be expected to possess information responsive to each request and will review potentially-affected local and central records. Duke will review applicable MOX Fuel Project files for responsive technical assessments, evaluations, calculations, justifications and reports — in whatever form in which they exist, including electronic documents, spreadsheets, or other files. Duke will include

responsive e-mail when such e-mail is included in such files. Duke's objection extends to performing additional, comprehensive e-mail searches that are unlikely to lead to any additional, significant information.

II. GENERAL DISCOVERY

A. GENERAL INTERROGATORIES

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.

No objection.

GENERAL INTERROGATORY NO. 2: For Contentions I, II, and III, give the name, address, profession, employer, area of professional expertise, and educational and scientific experience of each person whom Duke expects to call as a fact or expert witness at the hearing. For expert witnesses, provide a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has provided fact and/or expert testimony and/or submitted affidavit(s) or declaration(s) within the preceding four years. For purposes of answering this interrogatory, the educational and scientific experience of expected witnesses may be provided by a resume of the person attached to the response. Fact and expert witnesses should be distinguished.

No objection, subject to the clarification that Duke has not yet prepared testimony on the contentions and will supplement its response if and when additional witnesses are identified.

GENERAL INTERROGATORY NO. 3: For each witness identified in response to General Interrogatory No. 2 above, describe the facts and opinions to which each witness is expected to testify, including a summary of the grounds for each opinion, and identify the documents (including all pertinent pages or parts thereof), data or other information which each witness has reviewed and considered, or is expected to consider or to rely on for his or her testimony.

No objection, subject to the understanding that Duke has not yet prepared testimony on the contention and will supplement its response if and when additional witnesses are identified.

B. GENERAL DOCUMENT PRODUCTION REQUESTS

REQUEST NO. 1: All documents in your possession, custody or control that are identified, referred to or used in any way in responding to all of the above general interrogatories and the following interrogatories and requests for admissions relating to specific contentions.

No objection.

REQUEST NO. 2: All documents in your possession, custody or control relevant to each BREDL admitted contention, and to the extent possible, segregated by contention and separated from already produced documents.

In addition to the general objections stated above, Duke objects to this request as vague, overbroad and unduly burdensome. Duke will, in response to Request Nos. 1 and 3, supply documents identified, referred to, or relied upon in responding to the interrogatories as well as documents that will be used to support testimony in this case. This information will provide substantial discovery on Duke's position on the contentions — in addition to the information already included or referenced in the public docket on the license amendment application. This overbroad request for "all documents" that are "relevant" to each contention would create an undue administrative burden for no corresponding benefit. Duke also objects to this request to the extent it would require production of reports publicly available from the NRC or from open technical literature.

In addition, with respect to Contention III, Duke objects to this request to the extent it would involve Oconee as a potential alternative for *batch* use of MOX fuel. Duke also objects to the request as premature in light of Duke's pending Motion to Dismiss.

REQUEST NO. 3: All documents (including experts' opinions, workpapers, affidavits, and other materials used to render such opinion) supporting or

otherwise relating to testimony or evidence that you intend to use in the hearing on each BREDL admitted contention.

No objection, subject to the understanding that testimony has not yet been prepared. Duke will supplement its response as appropriate.

III. SPECIFIC DISCOVERY

A. SPECIFIC INTERROGATORIES

SPECIFIC INTERROGATORY NO. 1-1: Identify and describe in detail all experimental data and analysis relevant to your claim that the differences between MOX and LEU fuel performance during a design-basis LOCA are fully accounted for in your application and RAI responses, including your claim in the 11/4/04 RAI response that the methods employed by Duke for performing LOCA calculations, including calculations of fuel clad ballooning, "are applicable to both MOX and LEU fuel because they are independent of the pellet type." RAI response at 8. Address this subject in the context of the NRC's statement that "chemical bonding between the pellets and the cladding, which may be different for MOX pellets and UO₂, may affect the ballooning process and hence the fuel behavior." Memorandum from William Travers, Executive Director for Operations, to NRC Commissioners re: Agency Plan for Confirmatory Research Associated With the Use of Mixed-Oxide Fuel in Commercial Light Water Reactors, Attachment at 2 (February 11, 2000).

No objection.

SPECIFIC INTERROGATORY NO. 2: Identify and describe in detail all experimental data and analysis justifying your omission of a design-basis LOCA consequence analysis in the license amendment application. In particular, please address the extent to which you took into account in your assessment the wide uncertainty bands for MOX early in-vessel release fractions for most fission product categories presented in the expert panel report "Accident Source Terms for Light-Water Nuclear Power Plants: High-Burnup and Mixed-Oxide Fuels," Energy Research, Inc., ERI/NRC 02/0202 at 38 (November 2002).

Duke objects to Specific Interrogatory 2 on grounds that it is beyond the scope of the admitted contentions in this proceeding, and otherwise does not seek information reasonably calculated to lead to the discovery of admissible evidence. BREDL's proposed LOCA contention focused on certain physical phenomena associated with the fuel performance in a LOCA analysis. In proposed contention 10, BREDL concluded that because of certain

unknowns relating to MOX fuel behavior during a LOCA, Duke lacks a factual basis for assuming that the existing emergency core cooling system (ECCS) at Catawba will meet the acceptance criteria in 10 CFR 50.46. (See BREDL supplemental proposed contentions, p. 4.). This proposed contention related only to ECCS performance and did not mention dose consequences. Moreover, in admitting BREDL contention 10 and incorporating it as part of the basis for the admitted, reframed contentions, the Licensing Board also focused on these same considerations. See LBP-04-04, slip op. at 24, and pp. 19-27 generally.

BREDL raised no issue associated with the consequence (dose) analysis of a LOCA at Catawba while operating with four MOX fuel lead assemblies. Accordingly, raising this issue during discovery represents an impermissible broadening of the BREDL contentions beyond those that were proposed. On this point, the Licensing Board has emphasized that its reframing of the original issues in the original BREDL proposed contentions 1, 2, 6, 7, 10, 11, and 12, should not be interpreted as expanding the issues presented in those proposed contentions. See Tr. 1508-09 (This transcript contains Safeguards Information, but the Board statement in question is not Safeguards Information.). See also the Board's statement in LBP-04-04 that "we deny all portions not included within the [reframed] contentions." LBP-04-04, slip op. at 42.

Additionally, Duke objects to this request because it reflects an incorrect premise associated with the Duke license amendment application (LAR). Duke has in fact addressed the impact of operation with four MOX fuel lead assemblies on the design basis LOCA consequence analysis. See the February 27, 2003 LAR (Attachment 3, Section 3.7.3.3); see also Duke's November 3, 2003 response to an NRC request for additional information (Radiological Consequences - 3b); and, most recently, see the Duke March 16, 2004 letter to the NRC on this

docket. However, BREDL did not challenge these analyses contained in the LAR in any contention.

For all of these reasons, Specific Document Request No. II-1 should be disallowed.

B. SPECIFIC DOCUMENT REQUESTS

REQUEST NO. I-1: Any and all documents containing data or analyses described in response to Interrogatory I-1 above.

No objection.

REQUEST NO. II-1: Any and all documents containing results of severe accident consequence assessments that have been conducted by Duke for the Catawba nuclear power plant during the past five years. If documents responsive to this request include documents that have already been provided to BREDL in the license renewal case for Catawba and McGuire, it will be sufficient to identify the documents.

No objection.

REQUEST NO. II-2: Any and all MACCS2 input files that Duke has used in consequence assessments for the Catawba nuclear power plant during the last five years, including the meteorological data file and the source term release fractions for all severe accidents considered.

No objection.

REQUEST NO. II-3: With respect to any consequence assessments identified in response to Request No. 1, any and all documents containing technical justifications for any assumptions made with respect to the quantities and characteristics of radionuclides released from core to containment.

No objection.

REQUEST NO. II-4: With respect to any consequence assessments identified in response to Request No. 1, any and all documents containing technical justifications for any assumptions made with respect to the quantities and characteristics of radionuclides released from containment to the environment.

No objection.

REQUEST NO. II-5: *Any and all documents containing any analysis by Duke of the potential for or consequences of severe accidents when using MOX LTAs at the Catawba nuclear power plant.*

No objection.

REQUEST NO. II-6: *Any and all documents discussing research regarding the potential for increased probabilities or consequences of severe accidents during use of MOX fuel at nuclear power plants, including but not limited to studies by the Institut de Radioprotection et de Sûreté Nucléaire ("IRSN") or its predecessor, IPSN.*

Duke objects to this request to the extent it would include reports publicly available from the NRC or from open technical literature.

REQUEST NO. III-1: *Any and all documents evaluating the suitability of the Oconee nuclear power plant for batch use of plutonium MOX fuel.*

Duke objects to this request as beyond the scope of this proceeding. The alternative of Oconee for *batch* use is beyond the scope of this proceeding on the *lead assembly* application. Duke also objects to this request as premature in light of Duke's pending Motion to Dismiss Contention III.

IV. CONCLUSION

In accordance with 10 C.F.R. § 2.740(c), Duke requests a protective order with respect to BREDL's First Discovery Request, limiting the scope of that discovery consistent with the discussion above.

Respectfully submitted,



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ATTORNEYS FOR DUKE ENERGY
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Dated in Washington, District of Columbia
This 2nd 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
(Catawba Nuclear Station,) 50-414-OLA
Units 1 and 2))
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "DUKE ENERGY CORPORATION'S OBJECTIONS TO BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S FIRST DISCOVERY REQUEST," in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 2nd day of April, 2004. Additional e-mail service, designated by **, has been made this same day, as shown below.

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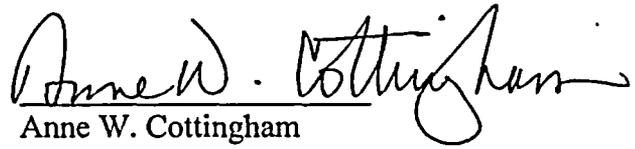
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