

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))	

NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE TO
BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S AMENDED
CONTENTIONS ON DUKE'S SECURITY PLAN SUBMITTAL

Pursuant to 10 C.F.R. § 2.714(c),¹ the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the Blue Ridge Environmental Defense League's (BREDL) Amended Contentions on Duke Energy Corporation's (Duke) Security Plan Submittal. See [BREDL's Amended Contentions on Duke's Security Plan Submittal (April 8, 2004) (BREDL's Amended Security Contentions)]. In substance, BREDL is attempting to amend the bases it previously identified in support of contentions filed earlier in this proceeding. The Staff does not oppose acceptance of BREDL's amended bases.

Additionally, the Staff hereby responds to the Board's suggestion that the Staff provide support for its position, stated at a telephone conference held on April 20, 2004, that the bases of a contention define its scope. See Tr. 1720. During the conference, the Board expressed surprise at the Staff's assertion that the articulated bases of a contention define the scope of that contention. *Id.* In fact, the position stated by the Staff on this issue is correct. The Commission has recently reiterated, "[w]hen an issue arises over the scope of an admitted contention, NRC opinions have long referred back to the bases set forth in support of the contention." *Duke Energy*

¹ Since this proceeding was instituted prior to the Commission's promulgation of the new hearing procedures in revised 10 C.F.R. Part 2, references to 10 C.F.R. Part 2 are to "old" Part 2.

Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002) (citations omitted). Further, in a case involving the Seabrook nuclear power plant, the Appeal Board observed that “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.” *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991). The Appeal Board went on to state that “an intervenor is not free to change the focus of its admitted contention, at will, as the litigation progresses.” *Id.* at 97 n.11. Accordingly, the scope of a contention in the litigation is determined by the bases submitted in support of the contention.

CONCLUSION

Based on the forgoing, the Staff submits that the bases proposed in BREDL’s Amended Security Contentions are valid.

Respectfully submitted,

/RA/
Antonio Fernández
Counsel for the NRC staff

Dated at Rockville, Maryland
this 26th day of April, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE TO BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S AMENDED CONTENTIONS ON DUKE'S SECURITY PLAN SUBMITTAL" 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 26TH day of April, 2004.

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