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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Nos. 50-413/414-OLA

RAS 7693

From: Susan Uttal
To: Curran, Diane
Date: Fri, Apr 16, 2004 4:04 PM
Subject: Re: Agreement regarding discovery responses

Dear Ms Curran;

This is to confirm our second agreement regarding more specific answers to discovery requests, reached as a result of our telephone conversation on April 16, 2004.

You agreed to provide an answer to the Staff's interrogatory number 16, as to LOCAs. In addition you agreed to provide the answers previously agreed upon and the answer to number 16 on Wednesday, April 21, 2004.

Also, as I explained to you during our first conversation, BREDL seems to have viewed the terms "analyses" and "evaluations" too narrowly in answering the interrogatories. The interrogatories call for responses detailing BREDL's interpretations and theories regarding Duke's submittal, which BREDL has not provided.

Finally, in response to your request, in BREDL's response to Interrogatory 18, for a definition of "success criteria", as I indicated, a definition of that term is found in the "Standard of Probable Risk Assessment for Nuclear Power Plant Applications, ASME RA-S- 2002, which is published by ASME and provides the industry standard in the filed of PRA. In addition, "success criteria" is briefly defined in Section 3.8 of Duke's LAR.

You advised me that you did not know whether Dr. Lyman had a copy of the ASME standard. I therefore agreed to provide you with the ASME definition:

success criteria: criteria for establishing the minimum number or combinations of systems or components required to operate, or minimum levels of performance per component during a specific period of time, to ensure that the safety functions are satisfied.

Because the Board's scheduling order designates April 16 2004, as the date to file Motions to Compel, we will be filing the Staff's motion today, with a request that the Board hold it in abeyance pending receipt of BREDL's responses.

Sincerely,
Susan Uttal

>>> Diane Curran <dcurran@harmoncurran.com> 04/16 3:14 PM >>>
Dear Susan,

This is to confirm an agreement we have reached in order to avoid litigation over motions to compel in the Catawba LTA proceeding. I have agreed to supplement BREDL's responses to Interrogatories 13, 14, 17a, 18, 24, 27, 28, 29, 32, 33, and 34 by providing specific information rather than referring to BREDL's contentions and the oral argument. As I stated over the telephone, this exercise will not result in the generation of any additional information other than was stated in the contentions and the transcripts, because BREDL has not yet had sufficient time to develop its testimony or otherwise refine its position on Contentions I and II, beyond what was stated in the contentions and at the oral argument.

I have also agreed to give you a list of documents that BREDL intends to rely on in the hearing. As I also explained over the telephone, at this point, BREDL has not identified additional documents on which it plans to rely, other than the documents that were referred to in its contentions and the oral arguments on them. Once Dr. Lyman begins preparing his testimony, we anticipate that we will identify additional documents responsive to your requests.

I have also agreed to amend BREDL's answer to Interrogatory 25, by providing more information about retention of radionuclides within a failed containment.

You have agreed to identify the owners of all of the proprietary documents listed in the Staff's privilege log. You have also agreed to give me contact information for each owner, so that I can informally seek access to the documents under a nondisclosure agreement. If we cannot obtain access to these documents informally, we will consider seeking a subpoena from the ASLB.

You have also agreed to make inquiries to the technical Staff regarding whether some of the documents withheld under the designation "deliberative process" actually constitute predecisional documents. The titles of two documents the Staff has withheld indicate to me that they represent final Staff reports on safety issues, rather than predecisional documents. These documents are:

Technical Evaluation Report (Non-Proprietary Version) of BAW-10231P
"COPERNIC Fuel Rod Design Computer Code Chapter 13-MOX Applications"

(July 2003) and

Safety Evaluation Report of the Topic Report BAW-10227P (Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel (October 1999).

Sincerely,
Diane Curran

CC: Baratta, Anthony; Cottingham, Anne W.; Elleman, Thomas S.; Repka, David A.; SECY, NRC-SECY; Vaughn, Lisa F.; Young, Ann

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Subject: Re: Agreement regarding discovery responses
Creation Date: Fri, Apr 16, 2004 4:04 PM
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Created By: SLU@nrc.gov

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