

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7733

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 05/06/04
SERVED 05/06/04

Before Administrative Judges:

Ann Marshall Young, Chair
Anthony J. Baratta
Thomas S. Elleman

In the Matter of

DUKE ENERGY CORPORATION

(Catawba Nuclear Station, Units 1 and 2)

Docket No's. 50-413-OLA, 50-414-OLA

ASLBP No. 03-815-03-OLA

May 6, 2004

ORDER

(Confirming Matters Addressed at May 4, 2004, Telephone Conference)

On May 4, 2004, a telephone conference was held in this proceeding,¹ to consider various discovery-related and other issues. The following matters were addressed:

1. In lieu of the telephone conference originally scheduled for May 14, 2004, at 10:00 a.m., a closed session will be held at the same time in the NRC offices in Rockville, so that, in addition to any discovery-related issues and other appropriate matters, any security-related matters involving Safeguards information, including proposed redactions from the Board's April 12, 2004, Memorandum and Order (Ruling on Security-Related Contentions), may be discussed. Tr. 1776-79. All non-NRC parties shall follow the same protocol as previously followed with regard to providing the names, organizational affiliations, birth dates and citizenship status for each person expected to attend the session; this information shall be

¹This proceeding involves Duke's February 2003 application to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) lead test assemblies (LTAs) at the station. By Memorandum and Order dated March 5, 2003, Petitioner Blue Ridge Environmental Defense League (BREDL) was admitted as a party in the proceeding, after having filed a petition to intervene and request for hearing in response to a July 2003 Federal Register notice concerning this application. See LBP-04-04, 59 NRC ____ (2004); 68 Fed. Reg. 44,107 (July 25, 2003). Additional background on this proceeding is provided in LBP-04-04, as well as in an April 12, 2004, Memorandum and Order (Ruling on Security-Related Contentions), which was, when issued, sealed as Safeguards Information, but a redacted version of which will be published in the near future.

provided no later than 9:00 a.m. Thursday, May 13, to the undersigned, Judge Baratta, and Mack Cutchin (email: JMC3@nrc.gov). Upon arrival at the NRC offices at Two White Flint on May 14, all participants will be escorted to the hearing room. In addition, as requested by Duke counsel, to the extent necessary to allow greater participation of the experts in Safeguards Information, the session will be conducted in a more informal conference-type manner; however, all discussion will be on the record.

2. Regarding the NRC Staff's April 30 discovery objections based on the deliberative process privilege, and request for protective order, the general nature of these was noted, and any necessary rulings on any such objections and request will be made only if the parties cannot resolve these issues among themselves, and to the degree appropriate after more specific content is provided with regard to these. Tr. 1773-76. Should there be any requests for subpoenas regarding any proprietary materials of other entities, any questions of subpoena power or jurisdiction over materials of the French government or French companies shall be raised as early as possible. Tr. 1774.

3. Based upon the extreme and unavoidable circumstance of serious accidental injury to the father of BREDL expert Dr. Edwin Lyman, the deadline for filing of responses to the second round of written discovery requests on non-security-related contentions was extended to May 13, 2004, and the deadline for motions to compel regarding the same was extended to May 17, 2004; the parties shall, however, be prepared to the extent possible to discuss any disputes relating to any such responses during the May 14 session. Tr. 1779-82.

4. The parties were given a deadline of May 5, 2004, to file responses to other parties' suggestions regarding redactions to the Board's April 12, 2004, sealed Memorandum and Order; discussion of all suggestions will be held during the May 14, 2004, session. The parties should be prepared at the May 14 session to address any legal standards for what constitutes

Safeguards Information, in addition to having the Staff's expert address the rationale behind the Staff's proposed redactions. Tr. 1777-78.

5. Duke counsel noted a problem with the June 25, 2004, date for a closed session based on conflicts that Mr. Repka and Mr. Wetterhahn have on that date. Tr. 1784. Due to other scheduling issues relating to the availability of all Board members, however, Duke counsel agreed to evaluate its options and possibly attempt to handle the situation by having Ms. Cottingham and Ms. Vaughn represent Duke at the June 25 session. Tr. 1786-89.

6. BREDL counsel asked whether the time for depositions on security-related issues might be extended beyond the August 9 end date, and it was agreed to consider the necessity for this based on whether any motions to compel are filed by the August 6 deadline for the same, and on whether any disputes require resolution by the Board at or after the August 10 scheduled closed session. Tr. 1792-95. The parties should therefore tentatively keep open the dates of August 11-13, 2004, to be utilized as necessary for any final discovery, including deposition(s), arising out of the resolution of any disputes considered on August 10. Tr. 1796.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 6, 2004²

²Copies of this Memorandum and Order were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

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NUCLEAR REGULATORY COMMISSION

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(Catawba Nuclear Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CONFIRMING MATTERS ADDRESSED AT MAY 4, 2004, TELEPHONE CONFERENCE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-413-OLA and 50-414-OLA
LB ORDER (CONFIRMING MATTERS ADDRESSED
AT MAY 4, 2004, TELEPHONE CONFERENCE)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of May 2004