

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))	

NRC STAFF'S RESPONSE TO THE BLUE RIDGE
ENVIRONMENTAL DEFENSE LEAGUE'S REQUEST
FOR A NEED TO KNOW DETERMINATION

INTRODUCTION

By letter dated June 19, 2004, the Blue Ridge Environmental Defense League (BREDL) requested a need to know determination regarding information and documents requested by BREDL through discovery requests served on Duke Energy Corporation (Duke) and the NRC Staff (Staff), including Duke's security plan for the Catawba Nuclear Station and answers to specific interrogatories 12-17 to the Staff. The request was made pursuant to the above-captioned proceeding concerning Duke's request to amend the operating licenses for the Catawba nuclear power plants to authorize irradiation of mixed oxide fuel lead test assemblies. The Staff had determined that BREDL does not have a need to know the requested information.

DISCUSSION

For Safeguards Information (SGI), the access requirements of 10 C.F.R. § 73.21(c) must be followed. These requirements state that an individual may be granted access to safeguards information if that person "has an established 'need to know' for the information and is . . . [an] individual to whom disclosure is ordered pursuant to § 2.744(e)" of the Commission's regulations. 10 C.F.R. § 73.21(c)(1)(vi). "Need to know" is defined as "a determination by a person having

responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment." 10 C.F.R. § 73.2(a). In the context of litigation, disclosure of information "necessary to a proper decision in the proceeding" may be made to "parties in the proceeding . . . and to their qualified witnesses and counsel." 10 C.F.R § 2.744(e). A witness is qualified to receive SGI only if they are qualified as an expert in the subject matter of the SGI documents. *Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1404 (1977); *see also* 46 Fed. Reg. 51718 (Oct. 22, 1981); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 71-73 (2004).¹ As the party offering an expert witness, BREDL bears the burden of showing that the proposed witness is qualified on the basis of his education, knowledge and experience. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-01-9, 53 NRC 239, 250 (2001); *see also* Fed. R. Evid. 702.

In the instant case, there is insufficient basis on the record to find that BREDL's proffered security expert, Dr. Lyman, is an expert on security matters. Therefore, the NRC Staff has determined that BREDL does not have a need to know for the documents discussed in the June 19, 2004 letter.

Respectfully submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 23rd day of June 2004

¹ This issue is also discussed in the Staff's Objections to the Blue Ridge Environmental Defense League's First Set of Discovery Requests to NRC Staff Regarding Security Plan Submittal, filed on June 23, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S REQUEST FOR A NEED TO KNOW DETERMINATION" 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 23rd day of June, 2004.

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