

RELATED CORRESPONDENCE

June 23, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

June 28, 2004 (9:18AM)

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 ON BREDL'S SECURITY CONTENTION

In accordance with the schedule established by the NRC Atomic Safety and Licensing Board ("Licensing Board") in its April 28, 2004 "Memorandum and Order (Setting Schedule for Discovery and Hearing on Security-Related Matters)," at p. 12, Duke Energy Corporation ("Duke") hereby files specific objections to certain requests in the "Blue Ridge Environmental Defense League's First Set of Discovery Requests to Duke Energy Corporation Regarding Security Plan Submittal" (hereafter, "BREDL Discovery Request"), dated June 19, 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. In conjunction with this pleading, Duke has requested that with regard to the objectionable discovery requests, the NRC Staff make a determination that BREDL has not made the requisite demonstration of a "need-to-know."

## I. GENERAL OBJECTIONS

These general objections apply to each of the requests in BREDL's 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 C.F.R. § 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 current proceeding, Duke will respond to the general and specific document requests and interrogatories as described below, and accordingly will provide substantial

discovery on the security issues raised in BREDL's admitted security contention. 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 files for responsive technical assessments, evaluations, justifications and reports — in whatever form in which they exist, including electronic documents 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. This is particularly true in the case of sensitive security information that is unlikely to be contained in e-mail.

## II. GENERAL DISCOVERY RESPONSES

### 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 and requests for the production of documents posed by BREDL herein. Specifically note for which interrogatories 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: 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 regarding Contention 5. 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 BREDL security contention 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 BREDL security contention and will supplement its response if and when additional witnesses are identified.

**B. GENERAL DOCUMENT PRODUCTION REQUEST RESPONSES**

*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 relating to Contention 5.*

No objection, except as to the categories of documents discussed below in conjunction with the objections to individual discovery requests.

*REQUEST NO. 2: All documents in your possession, custody or control relevant to Contention 5, and to the extent possible, segregated by contention and separated from already produced documents.*

Duke objects to General Document Production Request No. 2 as vague, overbroad and unduly burdensome. In response to and as discussed in its position regarding General Document Production Request Nos. 1 and 3, Duke will supply documents identified in, referred to, or relied upon in responding to BREDL's interrogatories, as well as documents that will be used to support testimony in this case on the security contention. This will provide information on Duke's position on the security contention, in addition to the information already included or referenced in the public docket on Duke's MOX fuel lead assembly license amendment request

("LAR"). Moreover, BREDL has already been given access to other, non-public information relating to the security contention, including the following protected information designated as NRC Safeguards Information:

- Duke's September 15, 2003 Security Submittal.<sup>1</sup>
- Duke's March 1, 2004 RAI responses relating to the Security Submittal.
- Duke's March 9, 2004 conforming changes to Attachment 1 of the September 2003 Security Submittal, necessitated by certain aspects of the March 1, 2004 RAI responses.
- Duke's April 13, 2004 RAI Responses concerning the Revised Attachment 1, which added more details from previous Duke RAI responses directly into the revised Attachment 1.
- The "Attachment 1" cited in connection with several of these Duke RAI responses consists of different revisions to Section 13.0 [of the Catawba Security Plan], "Special Situations Affecting Security," which includes Section 13.3, "Receipt and Storage of Unirradiated MOX Fuel Assemblies." Section 13.3 does not replace or conflict with any pre-existing sections of the Security Plan, but rather will supplement the existing Security Plan. Section 13.3 describes Duke's protective strategy against theft for MOX fuel, and contains the main elements of the contingency response strategy. It addresses actions of the Duke Security Force with assignments for protection of MOX fuel lead assemblies at Catawba, as well as interface with the U.S. DOE agents. This section also addresses interface with the Catawba MOX security force and the existing Catawba security force not assigned to the MOX receipt or storage activities.
- Duke's April 13, 2004 submittal also included an appendix relating to contingency event planning, which summarizes various security events, the corresponding method of

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<sup>1</sup> Duke's September 15, 2003 "Security Submittal" consisted of a transmittal letter and 7 attachments, including revision 16 to the Duke Energy Corporation Nuclear Security and Contingency Plan, and a related exemption request. Duke filed the Security Submittal with the NRC in connection with its February 27, 2003 MOX fuel lead assembly LAR. The Security Submittal was originally filed as proprietary information related to physical protection, which Duke sought to withhold from public disclosure under 10 C.F.R. §2.790(d)(1). The NRC subsequently determined that Attachments 1, 2, 3, 5, 6, and 7 to the Security Submittal include Safeguards Information subject to the requirements of 10 C.F.R. Part 73. Accordingly, the Security Submittal, any supplements or amendments thereto, any NRC Requests for Additional Information ("RAIs") or Duke responses to RAIs, or any information obtained, developed, or created by this proceeding, in any form, that is not otherwise a matter of public record and that deals with or describes details of the Security Submittal, is protected from disclosure under the December 15, 2003 Protective Order issued by the Licensing Board.

detection by the MOX security force, and resulting decisions and actions by the MOX security force.

Given the amount of substantive information, both public and non-public, to which BREDL already has access in this proceeding, the overbroad request for “all documents” that are “relevant” to the security contention in this general production request would create an undue administrative burden for no corresponding benefit. It fails to meet the Commission requirement that requests for discovery of Safeguards Information be as narrow as possible and be shown to be indispensable.<sup>2</sup>

*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 Contention 5.*

No objection, subject to the understanding that testimony on BREDL’s security contention has not yet been prepared. Duke will supplement its response as appropriate.

### III. SPECIFIC DISCOVERY RESPONSES

#### A. SPECIFIC INTERROGATORIES

*SPECIFIC INTERROGATORY NO. 1: Describe all methods used to verify Duke’s claim that the Catawba physical security plan, plus the proposed revisions in the Security Plan Submittal, provide a physical protection system capable of protecting against the design basis threat for theft of strategic special nuclear*

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<sup>2</sup> See *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-06, 59 NRC 62, 72-73, 75 (2004) (“[I]t is imperative that access to safeguards documents be as narrow as possible.”). In CLI-04-06, the Commission affirmed the NRC Staff’s determination that BREDL’s attorney, Diane Curran, and its security consultant, Edwin Lyman, lacked the requisite “need to know” with respect to the Safeguards Information that BREDL sought. The Commission ruled that “the touchstone for a demonstration of ‘need to know’ is whether the information is indispensable” (*id.* at 73), and that NRC regulations define “need to know” in the safeguards context as “a finding that it is necessary for a recipient to have the safeguards information to perform official duties . . .” (*Id.* at 71). Under the “necessity” definition, “need to know” is a much narrower standard than the standard for general discovery. *Id.* at 72. Thus, the bar set by the Commission post-9/11 for the release of Safeguards or Classified Information is high.

*material in 10 C.F.R. § 73.1(a)(2), including but not limited to table top exercises, security drills, force-on-force exercises, and computer models.*

Duke objects to Specific Interrogatory No. 1 to the extent it would require disclosure of certain specific Safeguards Information. In answering this interrogatory, Duke would necessarily be forced to reveal aspects of the NRC design basis threat (“DBT”) for radiological sabotage, such as specific adversary characteristics. Since the NRC’s DBT for radiological sabotage is generic for all nuclear power plants, such disclosure would effectively reveal that information for all nuclear power plants. This is protected as NRC Safeguards Information. Duke also would be required to disclose specific details of its responsive capabilities and defensive strategy such as defensive positions and timelines. Duke’s defensive strategy is common to all its nuclear units and thus disclosure would have impacts beyond those for the Catawba facility.

In CLI-04-06, the Commission ruled that: “All parties to this adjudication, including BREDL, may assume, as a baseline, that Duke’s Catawba facility will comply with all applicable general security requirements, both those prescribed in NRC rules and those prescribed by NRC order. That’s not at issue in this MOX license amendment case.” CLI-04-06, 59 NRC at 73. Such Safeguards Information, which would involve matters well beyond the admitted contention, would be revealed if, for example, Duke were to provide or disclose table top security exercise results, security drill results, force-on-force exercise results, and/or computer models (to the extent that Duke has such information in its possession or under its control). This discovery request is broad and overreaching and fails to focus on the “appropriate increment — the appropriate heightening of security measures — necessitated by the proposed presence of MOX fuel assemblies at the Catawba reactor site.” *Id.* BREDL may not seek to require Duke to provide protected Safeguards documents through the discovery process absent a

specific “need to know” determination and resulting authorization by the NRC Staff. See CLI-04-06, in which the Commission explicitly found that BREDL had not demonstrated a “need to know” certain protected security information relating to Catawba.<sup>3</sup> While that dealt with a specific phase of the proceeding, Duke is of the view that BREDL has not attempted to narrow its request and still has not demonstrated that the information is indispensable, the test mandated by the Commission. See CLI-04-06, 59 NRC at 73.

*SPECIFIC INTERROGATORY NO. 2: Describe all technical analyses performed by Duke in support of its claim that the Catawba physical security plan, plus the proposed revisions in the Security Plan Submittal, provide a physical protection system capable of protecting against the design basis threat for theft of strategic special nuclear material in 10 C.F.R. § 73.1(a)(2).*

Duke objects to Specific Interrogatory No. 2 for the same reasons that it objects to Specific Interrogatory 1, above to the extent it requires a similar disclosure of Safeguards Information.

*SPECIFIC INTERROGATORY NO. 3: For each analysis described in response to Interrogatory No. 2, provide the results.*

Duke objects to Specific Interrogatory No. 3 for the same reasons that it objects to Specific Interrogatories 1 and 2, above.

*SPECIFIC INTERROGATORY NO. 4: What is your understanding of the design basis threat for protection against theft of Category I quantities of strategic*

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<sup>3</sup> In CLI-04-06, the Commission reversed the Licensing Board’s January 29, 2004 unpublished memorandum and order directing the NRC Staff to provide BREDL with access to certain NRC Safeguards documents, including: (1) three April 29, 2003 Orders for Modification of License that the NRC issued for Catawba, including the revised DBT for radiological sabotage, the training order, and the fatigue order; (2) the January 7, 2003 access authorization order that the NRC issued for Catawba; and (3) any associated regulatory guidance. The Commission affirmed the NRC Staff’s determination that BREDL’s attorney, Diane Curran, and its expert, Edwin Lyman, lacked the requisite “need to know” with respect to this Safeguards Information. Duke submits that given the “indispensability” standard set by the Commission, the fact that a contention has been admitted does not by itself change the circumstances that would necessitate a reversal of that ruling.

*special nuclear material? In particular, describe the characteristics of the adversary, including number of attackers, tactics, skills, weaponry, and other equipment.*

No objection to the first question contained in the first sentence. Duke objects to the request contained in the second sentence to the extent it would require disclosure of the DBT which is Safeguards Information.

*SPECIFIC INTERROGATORY NO. 5:* *In Attachment 2 of the Security Plan Submittal at page 6, Duke states that:*

*[Remainder of the statement of this interrogatory has been deleted as potential Safeguards Information.]*

No objection.

*SPECIFIC INTERROGATORY NO. 6:* *Will Duke's security capability at the time of receipt of MOX LTAs include the ability to successfully defend against an overt assault with multiple coordinated teams that enter the protected area at multiple locations? If your answer is yes, please provide the basis for your statement.*

Duke objects to Specific Interrogatory No. 6 because, in answering this interrogatory concerning its "security capability," Duke would necessarily be forced to reveal aspects of the radiological DBT for Catawba, which constitutes protected Safeguards Information inasmuch as this interrogatory seeks specific information concerning Duke's ability to successfully defend against "an overt assault with multiple coordinated teams that enter the protected area at multiple locations."

*SPECIFIC INTERROGATORY NO. 7:* *In arguing why Duke does not need a tactical response team to protect Category I quantities of strategic special nuclear material, Duke has stated that [material omitted as potential Safeguards Information]. Answer of Duke Energy Corporation to the "Blue Ridge Environmental Defense League's Contentions on Duke's Security Plan Submittal" at 32 (March 16, 2004) (hereinafter "Duke's Answer"). Describe in detail the nature of post-9/11 increments in the ability of guard forces at Catawba, and how you believe they will contribute to providing the "requisite assurance" of protection against the Category I DBT. Provide the methods and results of any technical analyses you have performed in support of your conclusion.*

Duke objects to Specific Interrogatory No. 7 to the extent that in answering this interrogatory, Duke would necessarily be forced to reveal specific details of the DBT for Catawba, the contents of post-9/11 security orders, and Catawba's protective strategy, all of which constitute protected Safeguards Information. BREDL may not seek to require Duke to produce such Safeguards Information through the discovery process absent a specific "need to know" determination by the NRC Staff. Also, this discovery request fails to focus on the incremental measures required by the receipt and storage of MOX fuel as required by the Commission. See CLI-04-06, 59 NRC at 73.

*SPECIFIC INTERROGATORY NO. 8: Explain the basis for Duke's claim that the underlying rationale for imposing the regulatory requirements in 10 C.F.R. Parts 11 and 73, from which Duke is seeking an exemption, "does not apply to the contemplated use, i.e., the use of fuel pellets sealed inside fuel rods which are part of large, heavy fuel assemblies . . ." Security Plan Submittal, Attachment 7 at 1.*

No objection.

*SPECIFIC INTERROGATORY NO. 9: Duke has argued that BREDL's contentions are flawed, because they fail to identify [material omitted as potential Safeguards Information]. Duke's Answers at 7. Does Duke agree that in order for BREDL to provide this information, BREDL would have to have, at a minimum, access to Duke's physical security plan for the Catawba nuclear power plant? If not, explain how BREDL could provide such specific information otherwise.*

No objection.

*SPECIFIC INTERROGATORY NO. 10: State whether Duke used bullet-resistant enclosures ("BREs") at the Catawba site prior to September 11, 2001. If not, please state when they were installed and why.*

No objection.

*SPECIFIC INTERROGATORY NO. 11: State whether the BREs installed at Catawba are capable of resisting (a) 50-caliber armor-piercing bullets or (b) rocket-propelled grenades.*

Duke objects to Specific Interrogatory No. 11 because, in answering this question concerning bullet-resistant enclosures, Duke would necessarily be forced to reveal aspects of the DBT for Catawba, which constitutes protected Safeguards Information. The information requested does not focus on the incremental changes to the Catawba Security Plan related to the presence of MOX fuel assemblies. *See* CLI-04-06, 59 NRC at 73.

*SPECIFIC INTERROGATORY NO. 12: According to Duke:*

*[Remainder of the statement of this interrogatory has been deleted as potential Safeguards Information.]*

Duke objects to Specific Interrogatory No. 12. In answering this question relating to the specific characteristics of an adversary team, Duke would necessarily be forced to reveal aspects of the DBT for Catawba, as well as aspects of Duke's response strategy and security response force, all of which constitute protected Safeguards Information.

*SPECIFIC INTERROGATORY NO. 13:*

*[Remainder of the statement of this interrogatory has been deleted as potential Safeguards Information.]*

No objection.

B. SPECIFIC DOCUMENT PRODUCTION REQUEST RESPONSES

*REQUEST NO. 1: Provide a copy of the security plan for the Catawba nuclear power plant.*

Duke objects to providing the entire Catawba Nuclear Station Nuclear Security and Contingency Plan ("Security Plan"), as requested by BREDL Document Production Request 1. Duke believes that this production request for a document containing Safeguards Information is beyond the scope of BREDL's admitted security contention. BREDL has not sustained its burden for obtaining such a document. BREDL's security contention, as reformulated by the Licensing Board, is limited in scope, focusing on the adequacy of Duke's security-related

exemption request. In turn, that exemption request addresses the need for exemption from certain security provisions in 10 C.F.R. §§ 73.46(c)(1), (h)(3), (b)(3)-(12), and (d)(9), in connection with the proposed storage and use of four MOX fuel assemblies at Catawba. Given the narrow scope of the exemption request and the related BREDL contention, and the Commission's admonition that BREDL must show that any requested Safeguards Information is "indispensable," this document production request is overly broad, and should be denied.

In this regard, Duke has previously made available to BREDL portions of the Catawba Security Plan that apply to the incremental protection of the MOX fuel assemblies. BREDL has access to the specific security program associated with the storage and handling of the MOX fuel, from the time that the MOX fuel assemblies arrive on site to the time that the assemblies are placed in the Catawba reactor.<sup>4</sup> BREDL has not demonstrated that it needs access to the entirety of the Catawba Security Plan in order to litigate its security contention in this case. Viewed against this background, BREDL's Document Production Request No. 1 is overly broad, and should be denied.

In connection with its June 19, 2004 discovery request to Duke, BREDL has also requested from the NRC Staff a "need to know" determination that would authorize the release of the entire Catawba Security Plan to Ms. Curran and Dr. Lyman.<sup>5</sup> In brief, BREDL's request

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<sup>4</sup> As the Commission has recognized, BREDL has been given access to the physical security enhancements necessitated by the proposed presence of MOX fuel assemblies at Catawba, "and thus is in a position to measure Duke's security proposals against the requirements of Part 73." CLI-04-06, 59 NRC at 73.

<sup>5</sup> See June 19, 2004 Letter from Diane Curran, BREDL, to Susan Uttal and Antonio Fernandez, NRC Office of General Counsel, re "Request for Need to Know Determination." In addition to the Catawba Security Plan, counsel for BREDL also asks the Staff to consider and approve release of "information regarding the feasibility of manufacturing nuclear weapons from the quantity of strategic special nuclear material to be held at the Catawba nuclear power plant . . ." (Letter, at 1).

fails to demonstrate that access to the entire Catawba Security Plan in order to litigate its contention is indispensable, just as BREDL previously failed to demonstrate that certain Safeguards and Classified Information was indispensable to its ability to formulate security contentions. Duke has urged the NRC Staff to find that BREDL does not have a “need to know” regarding the Catawba Security Plan, and the Staff’s determination should inform the Licensing Board’s ruling on this production request.<sup>6</sup>

The Commission itself has previously ruled in this proceeding that “[m]ore general security information related to the Catawba plant-at-large” (precisely the kind of information contained in the Catawba Security Plan) “is not *necessary* to allow BREDL to participate meaningfully in this license amendment proceeding.” CLI-04-06, 59 NRC at 72. As the Commission also recognized, this is particularly the case given the limited scope of this proceeding, which focuses on the lawfulness and safety of Duke’s proposed license MOX license amendment, not the validity of the entire Security Plan. *Id.* Strong policy considerations also dictate against disclosing to BREDL (or to any other entity without the requisite “need to know”)

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<sup>6</sup> In its letter of June 23, 2004 to counsel for the NRC Staff, Duke points out that any determination of a “need to know” must consider the expertise of the recipient. The burden of demonstrating the qualifications of an expert lies with the party sponsoring the expert witness. *See Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1405 (1977). In general, the qualifications of an expert witness are established either through consideration of his academic training or of his relevant experience, or through some combination of these factors. *See Pacific Gas & Elec. Co., id.*, LBP-78-36, 8 NRC 567, 570 (1978). With respect to Dr. Lyman’s credentials as a security expert, NRC precedent establishes that: “An expert in nuclear power plant security should possess extensive training or experience in that or closely related fields. Such a person should be able to assess overall plant security with an appreciation for its interrelated aspects.” *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-51, 16 NRC 167, 176 (1982). Duke submits that BREDL has not demonstrated that Dr. Lyman meets this standard with respect to the details of physical security planning and implementation at Catawba.

the sensitive plant security information found in the Catawba Security Plan, particularly since so much of that information does not relate specifically to BREDL's security contention and would reveal Duke's general protective strategy for all its plants and all of the DBT applicable to all U.S. commercial nuclear power plants.<sup>7</sup>

*REQUEST NO. 2: Provide all documentation of Operational Safeguards Response Evaluation ("OSRE") test(s) at the Catawba nuclear power plant.*

Duke objects to BREDL Document Production Request No. 2, on grounds that it is beyond the scope of BREDL's security contention, and does not otherwise seek information reasonably calculated to lead to the discovery of admissible evidence. As discussed above, the security contention is limited in scope to the adequacy of Duke's exemption request, which in turn focuses narrowly on the need for exemption from certain provisions in Sections 73.46(c)(1), (h)(3), (b)(3)-(12), and (d)(9), in connection with the proposed storage and use of four MOX fuel assemblies at Catawba. Thus, only those aspects of the Catawba Security Plan and other security documents that relate to the incremental protection of MOX fuel on site are relevant to the security contention. BREDL's discovery request makes no showing at all as to why the records

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<sup>7</sup> On this point, the Commission stated in CLI-04-06 (59 NRC at 73):

As a policy matter, the Commission has a strong interest in limiting access to safeguards and security information. We must limit distribution of safeguards information to those having an actual and specific, rather than a perceived, need to know. Anything less would breach our duty to the public and to the nation, for the likelihood of inadvertent security breaches increases proportionally to the number of persons who possess security information, regardless of security clearances and everyone's best efforts to comply with safeguards requirements. The Commission is well aware of the delicate balance between fulfilling our mission to protect the public and providing the public enough information to help us discharge that mission. In this case, however, we find BREDL's lack of "need to know," within the meaning of our regulations, determinative.

of all Operational Safeguards Response Evaluation (“OSRE”) tests at Catawba are needed in connection with the litigation of its security contention, which does not deal with OSRE tests.

Duke further objects to this document production request on the basis that the OSRE test records in question are at least seven years old and outdated. Thus, these documents would be of no value in gauging the current state of security at Catawba. Even more importantly, the OSRE test records reflect a pre-September 11, 2001 security framework at Catawba. As BREDL is aware, NRC security requirements for all commercial nuclear power plants have changed dramatically since 9/11. The existing OSRE records do not reflect the current security environment at Catawba, either in terms of the current regulatory framework or the status of Duke’s compliance with such requirements.

*REQUEST NO 3: Provide all documents that support Duke’s claim that the Catawba physical security plan, plus the proposed revisions in the Security Plan Submittal, provide a physical protection system that is capable of protecting against the design basis threat for theft of strategic special nuclear material in 10 C.F.R. § 73.1(a)(2).*

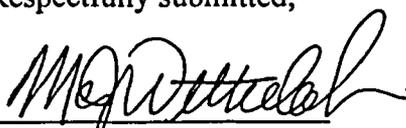
Duke objects to BREDL Document Production Request No. 3 as duplicative and unduly burdensome. BREDL has made no attempt to narrow this request. As noted above, BREDL has already been given access to Duke’s Security Submittal, which includes relevant sections of the Catawba Security Plan, and to the security-related RAI Responses submitted to the NRC by Duke. Collectively, these documents support Duke’s position that the Catawba Security Plan, and the Security Plan Submittal, “provide a physical protection system that is capable of protecting against the design basis threat for theft of strategic special nuclear material in 10 C.F.R. § 73.1(a)(2).” Duke has also agreed to provide its additional procedures relating to MOX fuel, which will supplement the Security Plan, as soon as they are finalized. For the

reasons discussed above, to the extent that this catchall production request seeks additional documents, it should be denied.

IV. CONCLUSION

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

Respectfully submitted,



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ATTORNEYS FOR DUKE ENERGY  
CORPORATION

Dated in Washington, District of Columbia  
This 23<sup>rd</sup> day of June 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
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DUKE ENERGY CORPORATION )  
)  
(Catawba Nuclear Station, ) Docket Nos. 50-413-OLA  
Units 1 and 2) 50-414-OLA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "DUKE ENERGY CORPORATION'S OBJECTIONS TO BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S FIRST DISCOVERY REQUEST ON BREDL'S SECURITY CONTENTION," in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 23<sup>rd</sup> day of June, 2004. Additional e-mail service, designated by \*\*, has been made this same day, as shown below.

Ann Marshall Young, Chairman\*\*  
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Washington, DC 20555  
Attn: Rulemakings and Adjudications Staff  
(original + two copies)  
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U.S. Nuclear Regulatory Commission  
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Adjudicatory File  
Atomic Safety and Licensing Board Panel  
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