

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 8019

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 06/28/04

SERVED 06/28/04

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

June 28, 2004

ORDER

(Ruling on Duke Energy Corporation Objection to BREDL Document Production Request No. 2
Regarding BREDL Security Contention)

Duke Energy Corporation [Duke] has objected to a document production request of Blue Ridge Environmental Defense League [BREDL] in this proceeding,¹ to the following effect:

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

See [BREDL]'s First Set of Discovery Requests to Duke Energy Corporation Regarding Security Plan Submittal (June 19, 2003); [Duke]'s Objections to [BREDL]'s First Discovery Request on BREDL's Security Contention (June 23, 2003). Duke objects to this request 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. *Id.* at 14. According to Duke, BREDL has made no showing as to why the records of all OSRE tests

¹This proceeding involves Duke Energy Corporation's (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 at the station. On September 17, 2003, this Licensing Board was established to preside over this proceeding. 68 Fed. Reg. 55,414 (Sept. 25, 2003). By Memoranda and Orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards Information; redacted version issued May 28, 2004), the Licensing Board granted BREDL's request for hearing and admitted various non-security-related and security-related contentions. LBP-04-04, 59 NRC __ (2004); LBP-04-10, 59 NRC __ (2004).

at Catawba are needed in connection with the litigation of its security contention, which does not deal with OSRE tests. *Id.* at 14-15. Duke further objects on the basis that “the OSRE test records in question are at least seven years old and outdated,” and would thus “be of no value in gauging the current state of security at Catawba.” *Id.* at 15. In addition, Duke argues, the records “reflect a pre-September 11, 2001 security framework at Catawba” and “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.” *Id.*

On the basis of BREDL’s response provided verbally in a closed session held June 25, 2004, and on the basis of the following analysis, the Licensing Board overrules Duke’s objection to Document Production Request No. 2. The interrelationship between various aspects of plant security has been recognized. *See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), LBP-82-51, 16 NRC 167, 176 (1982).*² Although the information contained in the records at issue may not, to the effect argued by Duke, ultimately be found to be relevant and admissible in this proceeding, we find that it is possible that they may provide information relating to basic structural issues that could relate to those matters at issue in BREDL’s security contention as admitted by the Licensing Board. As such, we find that the request is reasonably calculated to lead to the discovery of admissible evidence, and that the records in question should thus be provided.

²This case was cited by Duke in a June 23, 2004, letter to NRC Staff counsel regarding a “need to know” request filed by BREDL on June 19, 2003.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

Anthony J. Baratta
ADMINISTRATIVE JUDGE

/RA/

Thomas S. Elleman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 28, 2004³

³Copies of this document were sent this date by Internet e-mail to all parties.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (RULING ON DUKE ENERGY CORPORATION OBJECTION TO BREDL DOCUMENT PRODUCTION REQUEST NO. 2 REGARDING BREDL SECURITY CONTENTION) 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 (RULING ON DUKE ENERGY CORPORATION
OBJECTION TO BREDL DOCUMENT PRODUCTION
REQUEST NO. 2 REGARDING BREDL SECURITY CONTENTION)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of June 2004