

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 MOTION TO COMPEL BREDL
TO RESPOND TO NRC STAFF'S FIRST SET OF
DISCOVERY REQUESTS ON SECURITY CONTENTION 5

Pursuant to 10 C.F.R. §§ 2.740(f), 2.740 and 2.741, the NRC Staff (Staff) hereby moves the Board to compel the Blue Ridge Environmental Defense League (BREDL) to provide certain information requested in NRC Staff's First Set of Interrogatories and Request for Production of Documents On Security Contention 5, dated June 21, 2004.¹

BACKGROUND

The Staff submitted its First Set of Interrogatories and Request for Production of Documents On Security Contention 5 (Request) on June 21, 2004. The Request included Interrogatories 10, 11, 16, 17, 20, 21, 22, 23, and 24. BREDL's Response to NRC Staff's First Set of Interrogatories and Request for Production of Documents On Security Contention 5 (Response) was filed on July 2, 2004. The Staff submits that BREDL's answers to the interrogatories listed above are either evasive or incomplete, and, thus BREDL has failed to respond to the Staff's Request. Therefore, the Staff moves that BREDL be ordered to provide proper responses to these interrogatories, as described below.

¹Counsel for Staff spoke with counsel for BREDL by telephone on July 7, 2004, and agreed that, to the extent it is possible to resolve these issues informally, both parties will attempt to do so. No schedule for resolution, however, has been set.

ARGUMENT

- I. The discovery sought by the Staff is appropriate and BREDL should be compelled to respond, as required by the pertinent regulations.

Pursuant to 10 C.F.R. § 2.740b(b), each interrogatory must be answered fully by a respondent unless a proper objection is asserted. If the interrogatory is the subject of an objection, the reasons for the objection must be stated in place of the answer. *Id.* The deadline for the parties to file objections to discovery requests in this proceeding was June 23, 2004. In its objections, BREDL only objected to the Staff's Request to the extent that the Staff's Request called for BREDL to provide or analyze information to which the Staff had not granted BREDL access. BREDL did not raise any additional objections. Therefore, BREDL is required to respond to the interrogatories and requests for production of documents to the extent that the Request does not require BREDL to provide or analyze information to which it does not have access.

Discovery is proper if it extends to "any matter, not privileged, which is relevant to the subject matter involved in the proceeding." 10 C.F.R. § 2.740(b)(1). The Board has "always held that a . . . liberal definition of relevance may be used in the context of discovery." *Safety Light Corp.* (Bloomsburg Site Decontamination), LBP-92-3A, 35 NRC 110, 111 (1992); *see also Commonwealth Edison Company* (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 461-62 (1974). Information obtained during discovery "need not be admissible per se," as it "is sufficient if the requested discovery could reasonably lead to obtaining evidence that would be admissible at the future evidentiary hearing." *Safety Light Corp.*, LBP-92-3A, 35 NRC at 111. A motion to compel may be sought "if a deponent or party upon whom a request for . . . answers to interrogatories fails to respond." *Id.* § 2.740(f). Giving an "evasive or incomplete answer" is a failure to respond. *Id.*; *Houston Lighting and Power Company* (South Texas Project, Units 1 and 2), LBP-79-05, 9 NRC 193, 195 (1979); *see also Duke Power Company* (Catawba Nuclear Station,

Units 1 and 2), LBP-82-116, 16 NRC 1937 (1982). Under the standards discussed above, BREDL's answers to the interrogatories discussed below amount to a failure to respond.

The Staff submits that BREDL has filed incomplete answers to Interrogatories 10, 11, 16, 17, and 20 through 24, all of which are based on statements and scenarios put forth by BREDL in its Contentions or Amended Contentions.² Interrogatory 10 is based on a statement made on pages 18 through 20 of BREDL's Contentions. The Interrogatory seeks details on and support for a scenario postulated by BREDL. Interrogatories 11³, 16⁴, 17⁵, 20⁶, and 21 through 24⁷ also request details on statements and claims made by BREDL in its Contentions or Amended Contentions.

Rather than responding fully to each of these interrogatories, BREDL instead claims that these interrogatories cannot be answered without access to safeguards information that has not yet been provided. Response at 3. This response is inadequate. Each of these scenarios and statements was made by BREDL in either BREDL's Contentions or its Amended Contentions. BREDL must have had some basis for these statements and scenarios at the time they were postulated. If not, BREDL should so state, rather than claiming that more information is needed to provide the requested information. Even if BREDL cannot offer additional facts but instead is only able to offer speculative answers, such answers will illustrate BREDL's reasoning and also

²Blue Ridge Environmental Defense League's Contentions on Duke's Security Plan Submittal (Mar. 3, 2004) (Contentions); Blue Ridge Environmental Defense League's Amended Contentions on Duke's Security Plan Submittal (Apr. 8, 2004) (Amended Contentions).

³Contentions at 20.

⁴Contentions at 18-19; Amended Contentions at 3.

⁵Amended Contentions at 3.

⁶Contentions at 23-24.

⁷Contentions at 20-22; Amended Contentions at 3-4.

shed light on BREDL's proffered expert's level of expertise. Without the requested information, BREDL's responses remain incomplete.

CONCLUSION

For the foregoing reasons, BREDL has failed to provide proper responses to the Staff's Request. Therefore, the Staff moves that BREDL be ordered to provide proper answers to the above-described interrogatories.

Respectfully submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of July, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S MOTION TO COMPEL BREDL TO RESPOND TO NRC STAFF'S FIRST SET OF DISCOVERY REQUESTS ON SECURITY CONTENTION 5" 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 7th day of July, 2004.

Ann Marshall Young, Chair * **
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: AMY@nrc.gov)

Anthony J. Baratta * **
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: AJB5@nrc.gov)

Thomas S. Elleman **
Administrative Judge
Atomic Safety and Licensing Board
5207 Creedmoor Rd #101
Raleigh, NC 27612
(E-mail: elleman@eos.ncsu.edu)

Office of the Secretary * **
ATTN: Docketing and Service
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555
(E-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate
Adjudication *
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Board Panel
Adjudicatory File *
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC 20555

Diane Curran, Esq. **
Harmon, Curran, Spielberg
& Eisenberg, LLP
1726 M Street, NW, Suite 600
Washington, DC 20036
(E-mail: dcurran@harmoncurran.com)

Lisa F. Vaughn, Esq. **
Timika Shafeek-Horton, Esq. **
Legal Department
Mail Code - PB05E
Duke Energy Corporation
426 S. Church Street (EC11X)
Charlotte, NC 28201-1006
(E-mail: IfVaughn@duke-energy.com
tshafeek@duke-energy.com)

David A. Repka, Esq. **
Anne W. Cottingham, Esq. **
Mark Wetterhahn, Esq. **
Winston & Strawn, LLP
1400 L Street, NW
Washington, DC 20005-3502
(E-mail: drepka@winston.com
acotting@winston.com
mwetterhahn@winston.com)

/RA/

Margaret J. Bupp
Counsel for NRC Staff