

RAS 8090

RELATED CORRESPONDENCE

July 2, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

July 6, 2004 (1:30PM)

In the Matter of:)
)
DUKE ENERGY CORPORATION)
)
(Catawba Nuclear Station,)
Units 1 and 2))
)
)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Nos. 50-413-OLA
50-414-OLA

**DUKE ENERGY CORPORATION'S RESPONSE TO BLUE RIDGE
ENVIRONMENTAL DEFENSE LEAGUE'S FIRST DOCUMENT
PRODUCTION REQUEST ON BREDL SECURITY CONTENTION 5**

I. INTRODUCTION

In accordance with the schedule established by the 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)," Duke Energy Corporation ("Duke") hereby files its Response to General Document Production Requests Nos. 1, 2 and 3, and Specific Document Production Requests Nos. 1, 2, and 3, included in the June 19, 2004 "Blue Ridge Environmental Defense League's First Set of Discovery Requests to Duke Energy Corporation Regarding Security Plan Submittal" ("BREDL Discovery Request").¹ Duke's

¹ For the convenience of the Licensing Board and parties, this response contains brief summaries of Duke's objections to BREDL's document requests. For the statement of Duke's position on each objection, please consult "Duke Energy Corporation's Objections to Blue Ridge Environmental Defense League's First Discovery Request on BREDL's Security Contention," dated June 23, 2004 ("June 23, 2004 Duke Objections").

Responses to the Specific and General Interrogatories included in BREDL's Discovery Request are also being filed today.²

Documents being produced by Duke in response to the BREDL Discovery Request are governed by the December 15, 2003 Protective Order, as amended. Such documents have been identified as Protected Information in the index of documents (Attachment 1) included with this response. These documents will be made available for inspection in accordance with the terms of the Protective Order, as amended. Finally, with regard to certain documents, Duke has requested that the NRC Staff make an initial "need to know" determination. A copy of such request is being sent to the Licensing Board and parties.

II. RESPONSE TO BREDL GENERAL DOCUMENT PRODUCTION

Duke provides the following responses to the General Document Production Requests set forth at p. 7 of the June 19, 2004 BREDL Discovery Request.

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.

Response to General Document Production Request No. 1:

See Attachment 1 to this response.

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.

Response to General Document Production Request No. 2:

In its June 23, 2004 Objections (pp. 4-6), Duke objected to General Document Production Request No. 2 on grounds that the request is vague, overbroad and unduly

² See "Duke Energy Corporation's Answers to Blue Ridge Environmental Defense League's First Set of Interrogatories on BREDL Security Contention 5," dated July 2, 2004 (Safeguards).

burdensome, and that it fails to meet the Commission requirement that requests for discovery of NRC Safeguards Information be narrowly tailored and show that the information sought is “indispensable” to the entity seeking it.³ The Licensing Board has not yet ruled on Duke’s objection. In response to General Document Production Request Nos. 1 and 3, Duke will supply documents identified in, referred to, or relied upon in responding to BREDL’s security-related interrogatories, as well as documents that will be used to support Duke testimony on Security Contention 5.

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.

Response to General Document Production Request No. 3:

See Attachment 1 to this response. Additionally, Duke notes that it has not yet prepared its testimony on Security Contention 5, and cannot at this time identify all documents that may be relied upon in such testimony or at the hearing on Security Contention 5. Duke will supplement its response as necessary.

III. RESPONSE TO SPECIFIC DOCUMENT PRODUCTION REQUESTS

Duke provides the following responses to the Specific Document Production Requests set forth in the June 19, 2004 BREDL Discovery Request.

DOCUMENT PRODUCTION REQUEST NO. 1:

Provide a copy of the security plan for the Catawba nuclear power plant.

³ See *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-06, 59 NRC 62, 72-73, 75 (2004).

Response to Specific Document Production Request No. 1:

Duke has objected to Specific Production Request No. 1 to the extent that it seeks production of the entire Catawba Nuclear Security and Contingency Plan, which is protected Safeguards Information. The discovery request is overly broad, and ignores the information previously made available to BREDL. See June 23, 2004 Duke Objections, at 11-14. The Licensing Board has not yet ruled on Duke's objection. Additionally, the Catawba Security Plan is also the subject of an ongoing "need to know" determination request sought by BREDL. The NRC Staff has not yet issued its "need to know" determination regarding this document.

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

Response to Specific Document Production Request No. 2:

Duke objected to this document production request. See July 23, 2004 Duke Objections, at 14-15. The Licensing Board has overruled Duke's objection. See June 28, 2004 "ORDER (Ruling on Duke Energy Corporation Objection to BREDL Document Production Request No. 2 Regarding BREDL Security Contention)."

However, BREDL has not demonstrated the required "need to know" regarding this Safeguards Information. Regarding the requirement that any disclosure be "necessary," BREDL has not shown that access to all records of OSRE tests at Catawba are "indispensable" to its ability to litigate Security Contention 5.⁴ Moreover, CLI-04-06 requires that any disclosure of Safeguards Information be "as narrow as possible," and this production request is not tailored accordingly.

⁴ See *Duke Energy Corp.*, CLI-04-06, 59 NRC at 73.

DOCUMENT PRODUCTION 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).*

Response to Specific Document Production Request No. 3:

Duke has objected to Specific Production Request No. 3. See June 23, 2004 Duke Objections, at 15-16. The Licensing Board has not yet ruled on Duke's objection.

Respectfully submitted,



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ATTORNEYS FOR DUKE ENERGY
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Dated in Washington, District of Columbia
This 2nd day of July 2004

ATTACHMENT 1

MOX Lead Test Assembly (LTA) - Security
Index of Documents Responsive to BREDL Request

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
1	CN 1003-10-024		S000596	S000596	Drawings Protected area, Owner Controlled Area and Fuel Building	Y	N	N	N
2	CN-1200-11.04-15		S000598	S000598	"	Y	N	N	N
3	CN-1200-11.05		S000595	S000595	"	Y	N	N	N
4	CN-1200-11.06		S000599	S000599	"	Y	N	N	N
5	CN-1200-11.07		S000597	S000597	"	Y	N	N	N
6	C-001		S000592	S000592	"	Y	N	N	N
7	CN-1003-15		S000594	S000594	"	Y	N	N	N
8	OP/1/A/6550/006 "Transferring Fuel with the Spent Fuel Manipulator Crane"		S000044	S000095	Fuel Handling Procedures	Y	N	N	N
9	Scenario for Retrieving a New MOX Fuel Assembly from the Spent Fuel Pool to the Railroad Bay, James M. Brindle Memo				"	Y	Y-- Attorney- Client/ Work Product	N	Y

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
10	OP/0/A/6550/017 "Fuel Component Handling Tools"		S000001	S000029	"	Y	N	N	N
11	OP/0/A/6550/16 "Overhead Fuel Building Cranes"		S000030	S000043	"	Y	N	N	N
12	Catawba Nuclear Station, Units 1&2 – Operational Safeguards Response Evaluation (TACs N. M97195 & M97196), March 20, 1997 NRC Letter from LeMoine Cunningham				OSRE Report from NRC	Y	N	Y	Y
13	Catawba Nuclear Station OSRE Video	Jan-97				Y	N	Y	Y
14	OSRE Preparation Evaluation July 11, 1996 Dennis Collins				Duke OSRE Preparation Materials	Y	N	Y	Y
15	Lotus Note on Project Management Security Enhancements for Armed Response	8/29/1996	S000096	S000097		Y	N	N	N
16	Lotus Note on Door Changes	7/25/1996	S000098	S000099		Y	N	N	N

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
17	Duke Power Company-- OSRE Range	5/22/1996	S000100	S000103		Y	N	N	N
18	Oconee OSRE Schedule of Events	5/14/1996	S000104	S000108		Y	N	N	N
19	Operational Safeguards Response Evaluation	5/20-23, 1996	S000109	S000124		Y	N	N	N
20	Capital Items for Mod		S000125	S000127		Y	N	N	N
21	Lotus Note from Purser on Cost Variance on OSRE Mods	11/1/1996	S000128	S000129		Y	N	N	N
22	Lotus Note from Matt Hogan on Door changes	7/17/1996	S000130	S000130		Y	N	N	N
23	Operational Safeguards Response Evaluation Agenda	1/21-24, 1997	S000131	S000150		Y	N	N	N
24	Contents of Diskette Accompanying Operationa Safeguards Response Evaluation Agenda		S000151	S000179		Y	N	N	N
25	Memo to File "OSRE Meeting Minutes 2/8/94"	2/24/1994	S000180	S000183		Y	N	N	N
26	APS -- SSG Vital Target Identification and Analysis Report					Y	N	Y	Y
27	NSD Drill Evaluation Worksheet Index		S000184	S000190		Y	N	N	N
28	NSD Drill Evaluation Worksheets					Y	N	Y	Y

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
29	Catawba Security Drill Data Base Index		S000319	S000591		Y	N	N	N
30	Catawba Security Drill Data Base					Y	N	Y	Y
31	C-00-05997 Target Set PIP		S000199	S000204		Y	N	N	N
32	C-01-05551 Turbine Building Delay Barriers and Re-enforcement		S000205	S000222		Y	N	N	N
33	C-01-05554 Security Drill Evaluations		S000223	S000237		Y	N	N	N
34	C-01-05572 Security Drill Bullet Resistant Enclosure		S000238	S000243		Y	N	N	N
35	C-02-04838 Owner Controlled Area Security Equipment		S000244	S000249		Y	N	N	N
36	C-02-05455 Security camera RL discharge		S000250	S000254		Y	N	N	N
37	C-02-05454 Security Two-Way Communication		S000191	S000198		Y	N	N	N
38	C-02-06308 Location of TB workstation		S000255	S000261		Y	N	N	N

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
39	C-03-02685 Evaluation for Security Scenarios		S000262	S000267		Y	N	N	N
40	C-03-04422 Security Assessment Force on Force		S000268	S000275		Y	N	N	N
41	C-96-01959 Modifications Armed Response		S000276	S000281		Y	N	N	N
42	C-03-03959 Document Self Assessment		S000282	S000287		Y	N	N	N
43	C-03-06392 Security Third Quarter Assessment		S000288	S000298		Y	N	N	N
44	NRC Request for Additional Information, Mixed Oxide Lead Assemblies, R.E. Martin	3/31/2004	This document is already available to BREDL		Duke Interim MOX Measures RAI and Response	Y	N	Y	N
45	Rev. 16 to Duke Energy Corp. physical plant and Request for Exemption from certain Regulatory Requirements in 10 CFR 11 & 73 to support MOX Use		This document is already available to BREDL			Y	N	Y	N

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
46	NRC Request for Additional Information January 30, 2004 Mixed Oxide Lead Assemblies, R.E. Martin	1/30/2004	This Document is already available to BREDL			Y	N	Y	N
47	Response to Request for Additional Information, March 1, 2004 Mixed Oxide Lead Assemblies (Security), H.B. Barron		This Document is already available to BREDL			Y	N	Y	N
48	Response to Request for Additional Information Mixed Oxide Lead Assemblies (Security), March 9, 2004, H.B. Barron		This Document is already available to BREDL			Y	N	Y	N

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
49	Response to Request for Additional Information Mixed Oxide Lead Assemblies (Security), April 13, 2004, H.B. Barron		This Document is already available to BREDL			Y	N	Y	N
50	Supplement 1 to Safety Evaluation for Proposed Amendments to the Facility Operating License and Technical Specifications to Allow Insertion of Mixed Oxide Fuel Lead Assemblies, May 5, 2004, R.E. Martin		This Document is already available to BREDL			Y	N	Y	N
51	Appendix G, MOX Interim Security Measures for New Security Plan Format					Y	N	Y	Y
52	Security Assessment for Catawba Nuclear Facility April 23, 2002 Global Security Consultants		S000299	S000318	Specifications Bullet Proof Enclosures	Y	N	N	Y

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
53	50 Caliber Cartridge Identification and Specifications Internet Public (http://www.bighammer.net/barrett/fas)		This Document is Publicly Available			N	N	N	N
54	Stella Ammunition Description (http://www.stella.ksks.co.jp/film/ul752.htm)		This Document is Publicly Available			N	N	N	N
55	Tote Systems Australia (http://www.tote.com.au/nij.htm)		This Document is Publicly Available			N	N	N	N
56	Action Bullet Resistant (http://www.fedcenter.com/fedsites/Action_Bullet_Resistant/ratings.htm)		This Document is Publicly Available			N	N	N	N
57	Certificate of Compliance Order No. P02-01508	1/2/2003			Vendor Certifications for Bullet Proof Enclosures	Y	N	N	Y
58	Fax Protech --.50 AP M2	1/16/2003				Y	N	N	Y

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
59	Certificate of Compliance Order No. PO02-00900					Y	N	N	Y
60	Supplemental Response to April 29, 2003 Orders	4/27/2004			Duke Security Plan	Y	N	Y	Y
61	Request of Additional Information	6/8/2004				Y	N	Y	Y
62	Request of Additional Information	6/14/2004				Y	N	Y	Y
63	Order for Compensatory Measures related to Access Authorization, EA-02-261	1/7/2003			Post September 911 Orders	Y	N	Y	Y
64	Order for Compensatory Measures related to Training Enhancements of Tactical and Firearms Proficiency and Physical Fitness Applicable to Armed Nuclear Plant Security Force Personnel, EA-03-039	4/29/2003				Y	N	Y	Y
65	Order Requiring Compliance with Revised Design Basis Threat for Operating Power Reactors, EA-03-086	4/29/2003				Y	N	Y	Y

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
66	Order for Compensatory Measures Related to Fitness for Duty Enhancements Applicable to Nuclear Facility Security Force Personnel, EA-03-038	4/29/2003	This Document is Publicly Available			N	N	N	N
67	Armed Response Procedure Security Procedure 213				Security Procedures	Y	N	Y	Y
68	Security Conditions Security Procedure 401					Y	N	Y	Y
69	Multiple Loss of On-Site Communication , Security Procedure 404					Y	N	Y	Y
70	Personnel/Civil Disturbance, Security Procedure 406					Y	N	Y	Y
71	Discovery of Suspected Sabotage or Sabotage Device, Security Procedure 407					Y	N	Y	Y
72	Suspected or Confirmed Intrusion or Sabotage Attempt, Security Procedure 408					Y	N	Y	Y

Item No.	Document Description	Date of Document	Beginning Bates Number	Ending Bates Number	Responsive To	Protected Information	Privileged	Safeguard Status	Object to Production
73	Stated or Perceived Threat to Sabotage, Security Procedure 409					Y	N	Y	Y
74	Discovery of Breached Barrier, Security Procedure 410					Y	N	Y	Y
75	Significant Security Equipment Degradation Singularly and in Combination, Security Procedure 412					Y	N	Y	Y
76	Loss of Off-Site Communicaiton, Singly and in Combination, Security Procedure 413					Y	N	Y	Y
77	Protected Area Time Line Drawing		S000593	S000593	Response Time Line Drawings	Y	N	N	Y