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WINSTON & STRAWN LLP

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Letter

1400 L STREET, N.W., WASHINGTON DC 20005-3502
202-371-5700

35 W. WACKER DRIVE
CHICAGO IL 60601-9703
312-558-5900

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NEW YORK, NY 10166-4193
212-294-6700

38TH FLOOR, 333 SOUTH GRAND AVE
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415-691-1000

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1204 GENEVA, SWITZERLAND
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CITY POINT, 1 ROPEMAKER STREET
LONDON, ENGLAND EC2Y 9HT
44-207-183-1026

July 2, 2004

DOCKETED
USNRC

July 6, 2004 (1:30PM)

Antonio Fernández, Esq.
Susan L. Uttal, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

OFFICE OF SECRETARY
RULEMAKINGS AND
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SUBJ: **In the Matter of Duke Energy Corporation, Catawba Nuclear Station
Units 1 and 2 (Docket Nos. 50-413-OLA, 50-414-OLA)**

Dear Ms. Uttal and Mr. Fernández:

This letter is a follow up to my June 23, 2004 letter to you on behalf of Duke Energy Corporation ("Duke") relating to "need to know" determinations regarding security-related documents requested by intervenor Blue Ridge Environmental Defense League. As I noted in my previous letter in this proceeding, the Commission has made clear that "need to know" determinations involving protected NRC information, such as documents designated as Safeguards or Classified Information, should be made by the U.S. Nuclear Regulatory Commission Staff:

"[A]s is evident from the text of our regulations, it is appropriate for NRC Staff experts to make the initial 'need to know' decisions. When a licensee or intervenor disputes those decisions, licensing boards, while exercising their own judgment, should give considerable deference to the Staff's judgments. The Commission has confidence in our Staff, which is well trained and is experienced in NRC licensing and enforcement proceedings, and intimately familiar with both NRC safeguards regulations and the licensing or enforcement matter at hand."¹

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

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SECY-02

WINSTON & STRAWN LLP

Antonio Fernández, Esq.
Susan L. Uttal, Esq.
July 2, 2004
Page 2

In responding to Blue Ridge Environmental Defense League's First Set of Discovery Requests to Duke Energy Corporation Regarding Security Plan Submittal dated June 19, 2004, Duke has identified a number of documents which are designated as Safeguards Information by either Duke or the NRC Staff or which contain sensitive security information some of which could be utilized to determine elements of information designated by the NRC as Safeguards Information, *e.g.*, in security orders.

Duke has prepared a table, as Attachment 1 to Duke Energy Corporation's Response to Blue Ridge Environmental Defense League's First Document Production Request on BREDL Security Contention 5, which lists security-related documents responsive to BREDL's various requests. With regard to Document Nos. 12, 13, 26, 28, 30, 51, 52, 57-65, 67-76, and 77, of the table, Duke requests that the NRC Staff make a "need to know" determination prior to a decision on disclosure of such information to BREDL. It is Duke's position that a "need to know" does not exist to permit access by BREDL's counsel or consultant to these documents.

Documents for which a need to know determination is requested that are not already in the possession of the NRC will be sent under separate cover.

If you have any questions or would like to discuss this matter further, please let me know.

Very truly yours,



Mark J. Wetterhahn
Counsel for Duke Energy Corporation

cc: Service List

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
(Catawba Nuclear Station,) 50-414-OLA
Units 1 and 2))
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the documents listed below have been served on the following in the captioned proceeding by Federal Express, this 2nd day of July, 2004. Alternative service by hand delivery, as indicated by **, has also been made this 2nd day of July, 2004.

(1) "Duke Energy Corporation's Answers to Blue Ridge Environmental Defense League's First Set of Interrogatories on BREDL Security Contention 5" (SAFEGUARDS);

(2) "Duke Energy Corporation's Response to Blue Ridge Environmental Defense League's First Document Production Request on BREDL Security Contention 5;"

(3) "Status of Duke Energy Corporation Responses and Objections to Blue Ridge Environmental Defense League's Interrogatories and Document Production Requests on Security Contention 5;"

(4) July 2, 2004 letter to Antonio Fernandez, Esq., and Susan Uttal, Esq., from Mark J. Wetterhahn.

(5) "Duke Energy Corporation's Response to the NRC Staff's First Set Of Interrogatories and Request for Production of Documents to Duke Energy Corporation On The Admitted Security Contention."

Ann Marshall Young, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: AMY@nrc.gov)

Anthony J. Baratta
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: AJB5@nrc.gov)

Thomas S. Elleman
Administrative Judge
5207 Creedmoor Road, #101
Raleigh, NC 27612
(e-mail: elleman@eos.ncsu.edu)

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(Non-Safeguards Documents & Certificate
of Service only)

Susan L. Uttal, Esq.
Antonio Fernandez, Esq.
Margaret J. Bupp
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(e-mail: sluttal@nrc.gov)
(e-mail: axf2@nrc.gov)
(e-mail: mjb5@nrc.gov)

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemakings and Adjudications Staff
(original + two copies)
(e-mail: HEARINGDOCKET@nrc.gov)

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Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(Non-Safeguards Documents & Certificate
of Service only)

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


Mark J. Wetterhahn
Counsel for Duke Energy Corporation