

success.” (BREDL Response, at 4). Based on this rationale, BREDL has not responded to Duke Interrogatories 6 (with the exception of subsections 6.a, 6.t, 6.y, and 6.cc), 7, 10, 12,14, 15 (all parts), 16, 17 (all parts), 19, and 20 (first part).

This Motion to Compel does not specifically address all of the Duke discovery requests that BREDL has not responded to, other than to state that BREDL has insufficient information. However, regarding BREDL’s stated justification for not responding, Duke does not concede that BREDL requires access to the Catawba Security Plan (beyond those parts of the plan previously made available to BREDL because they are relevant to MOX fuel receipt and storage) to respond to discovery requests or to litigate BREDL’s Security Contention 5. An expert in nuclear security would have background in and knowledge of military tactics, covert operations, weaponry, and available measures of stealth and communication, as well as general knowledge of the design and layout of nuclear power plants and security forces at such facilities. Such an expert would be able to develop any credible and specific scenarios and vulnerabilities, with a timeline, by using this expert knowledge, public information on nuclear power plants, observations from outside the Protected Area and the significant details provided in the MOX-specific Safeguards Information already available to Dr. Lyman and BREDL. Further, we note that should BREDL be granted access to other parts of the Catawba Security Plan (or other responsive documents), it is under a duty to supplement its discovery responses. See 10 C.F.R. § 2.740(e).

Specific additional discovery requests for which Duke seeks a response from BREDL are addressed below.

II. DISCUSSION OF SPECIFIC REQUESTS TO COMPEL

Duke Interrogatory 9

Duke Interrogatory 9 states: "What maximum number of individuals does BREDL assert as constituting a "small group" under 10 CFR § 73.1(a)(2)?" BREDL's Response to Interrogatory 9 states: "We believe the definition of a small group is governed by NRC guidance on the subject, to which we lack access."

This Response is both evasive and incomplete. This interrogatory simply seeks to elicit the views of Dr. Lyman, who has been proffered as a nuclear security expert, as to his determination of the size of a "small group" within the meaning of Section 73.1(a)(2). This definition is critical to BREDL's assertions about various attack scenarios by intruders and/or insiders, as set forth in Security Contention 5. Accordingly, Duke requests that the Licensing Board direct BREDL to respond fully and completely to Interrogatory 9.

Duke Interrogatory 15

Duke Interrogatory 15 is a multi-part question that seeks to ascertain whether any of the scenarios that BREDL may have identified in response to Interrogatory 6 "contemplate the use of a helicopter for any purpose during the course of the attack." Sub-sections 15.a - 15.b.6 seek additional details relating to an attack scenario that involves the use of a helicopter. In response to Interrogatory 15, BREDL merely references its response to Interrogatory 6.a. (In its response to Interrogatory 6.a., BREDL stated, first, that "BREDL does not claim that any particular scenario can result in a successful theft or diversion of MOX fuel" from Catawba. Additionally, BREDL asserted that without access to Duke's security plan for Catawba, it could not identify any specific vulnerabilities in that security plan. See BREDL Response, at 4). BREDL's Response to Interrogatory 15 is both evasive and incomplete.

BREDL itself has raised the possibility of a helicopter-based attack on the plant in Security Contention 5.¹ In connection with BREDL's hypothetical attack scenario, Duke developed Interrogatory 15, which sought more information about this basis for BREDL's admitted security contention. BREDL's answer to Interrogatory 15 is unresponsive. Contrary to BREDL's response, Intervenor's ability to answer this interrogatory does *not* depend on whether or not Dr. Lyman has, or has not, been given access to the entire Catawba Security Plan. Rather, the answer merely requires elucidation of scenarios BREDL already is positing in Security Contention 5. It is BREDL's burden, not Duke's, to provide this information relating to BREDL's contention. Accordingly, Duke requests that the Licensing Board direct BREDL to respond fully and completely to Interrogatory 15.

Duke Interrogatory 21

Duke's Interrogatory 21 is a multi-part question that seeks the specific bases for BREDL's claim in Security Contention 5 that Duke's request for exemption submitted in connection with the MOX fuel lead assembly license amendment request ("LAR") is not authorized by law, constitutes an undue risk to the common defense and security, and will be inconsistent with the law and the public interest. In response to Interrogatories 21, 21.a, 21.b, and 21.c., BREDL states only that "The bases for BREDL's claim are stated in BREDL's security contentions." (BREDL Response, at 16). BREDL's Response to Interrogatory 21 is both evasive and incomplete.

It is BREDL's burden, not Duke's, to provide information relating to the asserted bases for BREDL's security contention. Accordingly, Duke requests that the Licensing Board

¹ See *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-10, ___ NRC ___ (April 12, 2004) (May 28, 2004 non-Safeguards redacted version, slip op. at p. 61).

direct BREDL to respond fully and completely to Interrogatory 21, by indicating precisely where in BREDL Security Contention 5 the information in question may be found.

Duke Interrogatory 27

Duke Interrogatory 27 is a two-part question relating to Sandia Report SAND97-8203 UC-700, "Proliferation Vulnerability Red Team Report" (the "Red Team Report"), which is cited in basis b of BREDL's Security Contention 5. Duke Interrogatory 27.a. states: "Provide the basis for BREDL's claim that the Red Team Report should apply to the NRC Staff's review of Duke's MOX fuel lead assembly license amendment request and related exemption request." In response to Interrogatory 27.a., BREDL states: "We rely on the Red Team Report for specific examples of methods that adversaries could use to steal MOX fuel assemblies from the Catawba nuclear plant." This answer is not responsive.

Interrogatory 27.a. asks for the basis (legal, regulatory, or otherwise) for BREDL's claim that this document should be used by the NRC Staff in its review of Duke's LAR. This interrogatory is not addressed in BREDL's response

Interrogatory 27.b asks that BREDL "explain how the Red Team Report specifically supports BREDL's assertion that the unirradiated MOX fuel assemblies will be 'vulnerable to theft' while in storage in the Catawba spent fuel pool." In response to Interrogatory 27.b, BREDL states: "See response to Interrogatory 27.a." (BREDL Response, at 18). Again, BREDL's answer is incomplete.

Accordingly, Duke asks that the Licensing Board direct BREDL to respond fully and completely to Interrogatory 27.a, and to indicate each of the specific portions of the Red Team Report it is relying on in response to Interrogatory 27.b.

Respectfully submitted,



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