

July 13, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

DOCKETED
USNRC

July 20, 2004 (10:39AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

DUKE ENERGY CORPORATION

Docket No's. 50-413-OLA,
50-414-OLA

(Catawba Nuclear Station, Units 1 and 2)

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S
REPLY TO DUKE ENERGY CORPORATION'S RESPONSE TO NRC STAFF
PETITION FOR REVIEW OF ASLB RULING ON
BREDL SECURITY EXPERT QUALIFICATIONS**

Blue Ridge Environmental Defense League ("BREDL") hereby replies to Duke Energy Corporation's Response to the NRC Staff's Appeal of the Licensing Board's Finding that Dr. Edwin S. Lyman is an Expert in Nuclear Power Plant Security (July 9, 2004) (hereinafter "Duke Response"). Duke fails to demonstrate that the U.S. Nuclear Regulatory Commission's ("NRC's" or "Commission's") petition should be granted.

Duke's principal argument is that the Atomic Safety and Licensing Board ("ASLB") erred by basing its ruling in part on Dr. Lyman's testimony regarding the content of various of his publications, without requiring BREDL to place those publications in the record. Duke Response at 5. At the outset, this argument must be rejected because it was not made before the ASLB.¹ *Sequoyah Fuels Corporation* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 221 (1997); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999). In any event, Duke does not cite any authority, nor is BREDL aware of any, for the proposition that an

¹ See transcript of June 25, 2004, oral argument at 1970, in which the ASLB asked if any party objected to proceeding with *voir dire*, and heard no objection.

expert's testimony regarding the content of his publications is insufficient to support a finding that he is qualified as an expert witness.

Duke also argues that BREDL's examination of Dr. Lyman shows "at most" that Dr. Lyman has general background knowledge regarding security policy matters. Duke Response at 6. In making this argument, Duke simply disregards the details provided by Dr. Lyman and recited by the ASLB in LBP-04-13, regarding his extensive experience with analysis of nuclear security issues. These details show that Dr. Lyman's expertise goes far beyond the policy behind nuclear security to the details of actual security measures. Given his high level of experience, it is not necessary for Dr. Lyman to have reviewed or prepared a security plan in order to provide a cogent analysis of the deficiencies in Duke's plan. In fact, BREDL's contentions themselves, which were prepared by Dr. Lyman, show that Dr. Lyman is capable of evaluating the adequacy of a security plan against NRC security regulations and guidance. Duke's mere disagreement with the ASLB does not constitute sufficient grounds for disturbing the ASLB's well-reasoned finding that Dr. Lyman has:

the "technical competence necessary to evaluate [relevant portions of a nuclear plant security] plan," and constitute "extensive training and experience" in fields that are closely related to nuclear plant security so as to enable him to "assess overall plant security with an appreciation for its interrelated aspects," as required, respectively . . .

Id., slip op. at 5-6.

In short, the Commission should decline Duke's invitation to "second-guess" a "plausible" ASLB decision. *Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant)*, CLI-01-11, 53 NRC 370, 382 (2001).

Respectfully submitted,



Diane Curran

Harmon, Curran, Spielberg, & Eisenberg, L.L.P.

1726 M Street N.W., Suite 600

Washington, D.C. 20036

202/328-3500

e-mail: dcurran@harmoncurran.com

July 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that on July 13, copies of the foregoing BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S REPLY TO DUKE ENERGY CORPORATION'S RESPONSE TO NRC STAFF PETITION FOR REVIEW OF ASLB RULING ON BREDL SECURITY EXPERT QUALIFICATIONS were served on the following by e-mail and/or first-class mail, as indicated below:

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

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

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

Thomas S. Elleman
Administrative Judge
Atomic Safety and Licensing Board
4760 East Country Villa Drive
Tucson, AZ 85718
E-mail: elleman@eos.ncsu.edu

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

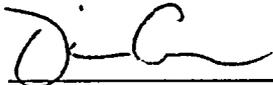
Susan L. Uttal, Esq.
Antonio Fernandez, Esq.
Margaret J. Bupp, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: slu@nrc.gov axf2@nrc.gov,
mjb@nrc.gov

Mary Olson
Southeast Office, Nuclear Information and
Resource Service
P.O. Box 7586
Asheville, NC 28802
E-mail: nirs.se@mindspring.com

Lisa F. Vaughn, Esq.
Timika Shafeek-Horton, Esq.
Legal Dept. (PBO5E)
Duke Energy Corporation
526 South Church Street (EC11X)
Charlotte, NC 28201-1006
E-mail: lfVaughn@duke-energy.com

Janet Marsh Zeller, Executive Director
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
E-mail: BREDL@skybest.com

<p>David A. Repka, Esq. Anne W. Cottingham, Esq. Mark J. Wetterhahan, Esq. Winston & Strawn, LLP 1400 L Street, N.W. Washington, D.C. 20005-3502 E-mail: drepka@winston.com acotting@winston.com mwetterhahn@winston.com</p>	
<p>Nils J. Diaz, Chairman U.S. Nuclear Regulatory Commission Washington, DC 20555 RAM@nrc.gov</p>	<p>Edward McGaffigan, Jr., Commissioner U.S. Nuclear Regulatory Commission Washington, DC 20555 E-mail: EXM@nrc.gov</p>
<p>Jeffrey S. Merrifield, Commissioner U.S. Nuclear Regulatory Commission Washington, DC 20555 JMER@nrc.gov</p>	



Diane Curran