

August 3, 2004

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1726 M Street, NW Suite 600
Washington, DC 20036

In the Matter of
DUKE ENERGY CORPORATION
(Catawba Nuclear Station Units 1 and 2)
Docket Nos. 50-413-OLA, 50-414-OLA

Dear Ms. Curran:

I am responding to your requests for need-to-know determinations regarding information and documents requested by the Blue Ridge Environmental Defense League (BREDL) in discovery requests served on Duke Energy Corporation (Duke). These requests relate to the following documents: (1) OSRE reports; (2) the Physical Security Plan for the Catawba Nuclear Station ("PSP"); (3) Order for Compensatory Measures related to Access Authorization, EA-02-261 ("Access Authorization Order"); (4) 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 ("Training and Qualification Order"); and (5) Order Requiring Compliance with Revised Design Basis Threat for Operating Power Reactors, EA-03-086 ("DBT Order"). The NRC staff (Staff) has determined that BREDL has a need-to-know regarding the OSRE report, selected portions of the Security Plan, and the Access Authorization Order. BREDL will be provided with access to the OSRE report, a redacted version of the Security Plan, and the Access Authorization Order. The Staff has determined that BREDL does not have a need-to-know regarding the information included in the Training and Qualification Order or the DBT Order.

This decision is based upon the Staff's interpretation of recent Commission decisions.¹ It is the Staff's position that nothing in either CLI-04-19 or CLI-04-21 changes the positions set out by the Commission in CLI-04-06. That decision was limited to a finding that BREDL had a need-to-know in relation only to "information [that was] indispensable to BREDL's opportunity to frame litigable contention." *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-06, 59 NRC 62, 67 (2004). However, CLI-04-06 was limited to the contention stage. At this stage of the hearing, the question becomes what information is indispensable to discovery. In making this determination, the Staff looks to two sources. First, the traditional discovery

¹ *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-06, 59 NRC 62 (2004); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-19, 59 NRC _ (2004); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 59 NRC _ (2004).

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standard, that information is discoverable if it is reasonably calculated to lead to admissible evidence.

Second, the Staff follows the Commission's admonition that "access to safeguards documents be as narrow as possible." *Catawba*, CLI-04-06, 59 NRC at 75.

In accordance with the above, the Staff had determined that BREDL does not have a need-to-know regarding the Training and Qualification Order or the DBT Order. Neither of these orders is currently in effect at Catawba, nor were they in effect at the time the LAR was submitted or the Staff's SE was drafted. Therefore, neither document is reasonably calculated to lead to admissible evidence. Both the Access Authorization Order and the PSP for Catawba are currently in effect. Therefore, examination of these documents may be reasonably calculated to lead to admissible evidence, and BREDL has a need-to-know in relation to these documents. Keeping in mind the Commission's order to keep access as narrow as possible, however, the PSP will be redacted so that the only portions released are those portions related to the exemptions requested by Duke and the additional security measures proposed in support of those exemptions.

Regarding the OSRE report, the Board found on June 28, 2004 that BREDL's request for the reports is reasonably calculated to lead to admissible evidence. Therefore, the Staff finds that BREDL also has a need-to-know regarding the OSRE reports.

Please contact me at 301-415-3722 or mjb5@nrc.gov to set up a time during which you can access the documents at NRC Headquarters in Rockville, Maryland.

Sincerely,

/RA/

Margaret J. Bupp
Counsel for NRC staff

cc: Service list

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Sincerely,

Margaret J. Bupp
Counsel for NRC staff

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