

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

RAS 8410

DOCKETED 09/03/04

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 09/03/04

Before Administrative Judges:

Ann Marshall Young, Chair  
Anthony J. Baratta  
Thomas S. Elleman

In the Matter of

DUKE ENERGY CORPORATION

(Catawba Nuclear Station, Units 1 and 2)

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

ASLBP No. 03-815-03-OLA

September 3, 2004

ORDER

(Confirming Deadlines Set at September 1, 2004, Closed Session)

During a closed session in this proceeding<sup>1</sup> held September 1, 2004, certain deadlines and other scheduling points were acknowledged and/or set, which we now confirm herein:

1. Unless by such date it is determined by the board that there is no need for it, based on all parties' notifications to such effect on the morning of September 8, on September 9, 2004, starting at 9:30 a.m. at Two White Flint in Rockville, another closed session will be held to address any pending security-related (or other) matters. (Any non-security-related matters considered may be discussed in an open portion of the session.) On September 9, if possible in light of recent developments described more fully below in paragraph 4, a decision will be

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<sup>1</sup>This proceeding involves Duke Energy Corporation's (Duke's) February 2003 application to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) lead test assemblies at the station, as part of the U.S.-Russian Federation nuclear nonproliferation program to dispose of surplus plutonium from nuclear weapons by converting it into MOX fuel, to be used in nuclear reactors. Letter from M.S. Tuckman, Executive Vice President, Duke Power, to NRC (Feb. 27, 2003). By Memoranda and Orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards Information; redacted version issued May 28, 2004), the Licensing Board granted Blue Ridge Environmental Defense League [BREDL]'s request for hearing and admitted various non-security-related and security-related contentions. LBP-04-4, 59 NRC 129 (2004); LBP-04-10, 59 NRC 296 (2004). The ruling herein relates to the one admitted security contention of BREDL.

made on the deadline for the second round of discovery requests, and the beginning of a period for the taking of expert depositions.

2. In addition, another closed session will be held on September 28, 2004, starting at 9:30 a.m., at Two White Flint in Rockville, to address any then-pending security-related (and other) matters.

3. Duke counsel was to have provided, by September 2, 2004, a list of which Catawba security procedures are active and which have been superseded.

4. The Staff was to have provided, along with Revision 15 to the Catawba security plan, a statement of whether the redactions it makes to this document are the same as those previously made by Duke on discovery documents 67 and 68, and to have flagged and provided explanations for any other redactions, by this date, September 3, 2004. In light of the information actually provided by the Staff on this date, raising potential questions about the matters described in paragraph 5 below, issues relating to the Staff's letter of this date, and any delays resulting therefrom, will be discussed during the scheduled September 9, 2004, closed session, absent indication of full agreement of all parties, by the morning of September 8, 2004, that these matters have been completely resolved.

5. Assuming Duke's provision of unredacted copies of discovery documents previously identified as documents 67 and 68, as agreed on September 1, BREDL will provide specific scenarios in response to Duke discovery questions, to the extent possible, by the week of September 6, 2004, as agreed between the two parties.

6. BREDL will file any motion to compel regarding a pending proposal on a new revision to the Catawba security plan by September 7, 2004. If possible, the responses of Duke and the Staff to any such motion may be made in oral argument on September 9; otherwise, Duke shall file any response to any such motion by September 17, the Staff shall file any response by

September 22, 2004, and oral argument on the matters argued in such motion and responses, and any related delays, shall be heard on September 28, 2004.

7. The Staff shall file its response to BREDL's request for need-to-know determination regarding two classified guidance documents discussed on September 1, by September 7, 2004.

8. Duke will provide updated material described in its August 31, 2004, letter regarding certain data currently listed in Table 15-4 of the Catawba Updated Final Safety Analysis Report (UFSAR), by September 10, 2004. Assuming all relevant information has been provided by September 10, BREDL and the Staff will provide responses by September 24, and if the Staff has not yet completed its review by such date, it shall by such date provide explanation of when it expects to complete such review, and the reason for such delay. Should this material be cause for any delay, including any rescheduling of discovery on these and related issues, this shall be addressed at the time all filings are in and the parties have had opportunity to make any necessary argument to the board on such issues.

9. Any necessary exceptions or revisions to the above times may be discussed during the September 9 session.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 3, 2004<sup>2</sup>

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<sup>2</sup>Copies of this Order were sent this date by e-mail to all participants or counsel for parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CONFIRMING DEADLINES SET AT SEPTEMBER 1, 2004, CLOSED SESSION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-413-OLA and 50-414-OLA  
LB ORDER (CONFIRMING DEADLINES SET  
AT SEPTEMBER 1, 2004, CLOSED SESSION)

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[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 3<sup>rd</sup> day of September 2004