

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

September 7, 2004

DOCKETED  
USNRC

September 17, 2004 (10:15AM)

In the Matter of

DUKE ENERGY CORPORATION

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

(Catawba Nuclear Station, Units 1 and 2)

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S  
MOTION TO COMPEL PRODUCTION OF REVISION 17 OF  
SECURITY PLAN FOR CATAWBA NUCLEAR POWER PLANT**

Pursuant to the schedule established in the Atomic Safety and Licensing Board's ("ASLB's") September 3, 2004, Order (Confirming Deadlines Set at September 1, 2004, Closed Session), Blue Ridge Environmental Defense League ("BREDL") hereby moves to compel the U.S. Nuclear Regulatory Commission ("NRC") Staff to produce Revision 17 of the Security Plan for the Catawba nuclear power plant that is now under review by the U.S. Nuclear Regulatory Commission ("NRC") Staff.<sup>1</sup>

**Factual Background**

By discovery request dated June 19, 2004, BREDL requested Duke to produce a copy of the security plan for the Catawba nuclear power plant. Blue Ridge Environmental Defense League's First Set of Discovery Requests to Duke Energy Corporation Regarding Security Plan Submittal at 11 (June 19, 2004). Duke objected to BREDL's request, and also requested the NRC Staff to make a need-to-know determination regarding the document. Duke Energy

<sup>1</sup> While the revised Security Plan is the property of Duke Power Corporation ("Duke"), the NRC Staff has assumed the role of making need-to-know determinations with respect to the Security Plan. Therefore, it is appropriate for BREDL to seek production of the document by the NRC Staff rather than Duke.

Corporation's Objections to Blue Ridge Environmental Defense League's First Discovery Request on BREDL's Security Contention at 11-14 (June 23, 2004); letter from Mark J. Wetterhahn to Antonio Fernández and Susan L. Uttal (June 23, 2004); letter from Mark J. Wetterhahn to Antonio Fernández and Susan L. Uttal (July 2, 2003).

By letter dated August 3, 2004, the NRC Staff reported its determination that BREDL has a need-to-know with respect to the Security Plan. Letter from Margaret J. Bupp to Diane Curran. A copy of the security plan was placed in the offices of Winston & Strawn.

Upon review of the plan, counsel for BREDL recognized that it consisted of revisions up through Revision 14 (dated July 10, 2003), and did not include any more recent revisions to the plan. Given that the Security Plan Submittal was numbered Revision 16, and given that Duke had submitted post-9/11 security plan revisions at the end of April 2004, BREDL reasonably surmised that Revision 14 was out of date. Therefore, on August 13, 2004, counsel for BREDL wrote to NRC Staff counsel Antonio Fernández, requesting production of Revision 15 and any subsequent revisions to the plan.

By letter dated August 27, 2004, Mr. Fernández responded that the Staff would make available Revision 15 (dated August 18, 2003), after redacting portions that the Staff considered to constitute safeguards information.<sup>2</sup> However, Mr. Fernández's letter did not mention any subsequent revisions to the Security Plan.

---

<sup>2</sup> Revision 15 was subsequently sent to the offices of Winston and Strawn, where counsel for BREDL and Dr. Lyman reviewed it on September 3, 2004.

At the oral argument on September 1, 2004, counsel for the Staff acknowledged that Duke has submitted Revision 17 to the Duke Security Plan, and it is now under review by the NRC Staff. Revision 17 constitutes Duke Power Corporations' response to the Commission's post-9/11 revision of the Design Basis Threat ("DBT") for sabotage against nuclear power plants. These revisions were imposed by order EA-03-86, which was published in the Federal Register at 68 Fed. Reg. 24,517 (May 7, 2003). The order specified that "[t]o address the [revised] DBT . . . all licensees must revise their physical security plans, safeguards contingency plans , and guard training and qualification plans." *Id.* at 24,518. EA-03-86 set a deadline of April 29, 2004, for the submission of revised security plans. 68 Fed. Reg. at 24,518. EA-03-086 also ordered that licensees must fully implement their revised security plans by October 29, 2004. *Id.*

At the September 1, 2004, oral argument, BREDL renewed its request for access to Revision 17 of the Catawba Security Plan. The Staff would not agree, however, to produce that revision of the plan in discovery.

## ARGUMENT

BREDL respectfully submits that Revision 17 of the Security Plan should be produced because it is relevant, and indeed indispensable, to the meaningful litigation of BREDL's Contention 5. Therefore, BREDL meets both the need-to-know standard established by the ASLB in its August 13, 2004, Memorandum and Order (Confirming August 10, 2004, Bench Ruling Finding Need to Know and Ordering Provision of Documents Sought by Intervenor in Discovery) and the higher need-to-know standard advocated by Duke. *See id.*, slip op. at 4.

The subject of this proceeding is the adequacy of Duke's Security Plan Submittal, in conjunction with Duke's existing Security Plan, to satisfy the DBT for theft and diversion if Duke is granted various requested exemptions from NRC regulations governing protection

and diversion of strategic special nuclear material ("SSNM"). Because Duke intends to rely for protection of the plutonium MOX fuel on the same security force that is in place to protect the Catawba nuclear plant against sabotage, it is crucial that BREDL be given access to the version of the Security Plan that will actually be in effect when plutonium MOX fuel is present at the Catawba site.

Given the Commission's order that the post-9/11 security plan revisions submitted by all licensees in late April 2004 must be implemented by October 29, 2004, it is virtually certain that Revision 17 will be in effect when plutonium MOX fuel is at the site of the Catawba nuclear power plant. The changes to Duke's Security Plan as a result of the Commission's revision of the DBT for sabotage will also affect Duke's ability to protect the Catawba nuclear plant against theft. For instance, given the high likelihood that the post-9/11 revised DBT is more severe than the previous DBT, it is likely that Revision 17 will reflect a larger and/or better equipped security force than Revision 15 of the Security Plan. In evaluating the vulnerability of the Catawba plant to theft of MOX fuel, it will be essential for BREDL to have a correct understanding of the size of the security force.<sup>3</sup>

BREDL understands that as a result of the NRC Staff's review, Revision 17 may be changed before it is finally approved by the NRC. Therefore, Revision 17 as it stands today may not ultimately be the precise version of the Security Plan that is in effect when MOX fuel is brought to the Catawba site. For purposes of ensuring that all relevant documents are produced

---

<sup>3</sup> In addition, in reviewing Duke's procedures for implementation of the Security Plan, BREDL has observed that some are dated April 29, 2004. Therefore, it appears that these procedures were intended to conform to Revision 17 of the Security Plan, which was submitted at the end of April 2004. BREDL has also observed significant inconsistencies between the substantive contents of the April 2004 procedures and the contents of Revision 15 of the Security Plan. Because the procedures contain important details regarding Duke's measures for carrying

in discovery, however, it is essential that BREDL be provided with the most up-to-date revisions of the Security Plan, so that BREDL can evaluate the adequacy of Duke's exemption application in light of the most likely security measures that will be in place.

Accordingly, BREDL requests the ASLB to order the Staff to produce Revision 17 of Duke's Security Plan. If the ASLB determines that Revision 17 should be withheld from disclosure, BREDL requests that the discovery process be suspended until Revision 17 is available. To require BREDL to respond to discovery requests based on an obsolete security plan would be grossly wasteful of BREDL's resources.

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

September 7, 2004

---

out the Security Plan, the discrepancies impede any meaningful review of the relationship between the Security Plan and its implementing procedures.

## CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2004, copies of Blue Ridge Environmental Defense League's Motion to Compel Production of Revision 17 of Security Plan for Catawba Nuclear Power Plant 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](mailto: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](mailto: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](mailto:elleman@eos.ncsu.edu)

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](mailto:slu@nrc.gov) [axf2@nrc.gov](mailto:axf2@nrc.gov),  
[mjb5@nrc.gov](mailto:mjb5@nrc.gov)

Mary Olson  
Southeast Office, Nuclear Information and  
Resource Service  
P.O. Box 7586  
Asheville, NC 28802  
E-mail: [nirs.se@mindspring.com](mailto: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](mailto: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](mailto:BREDL@skybest.com)

David A. Repka, Esq.  
Anne W. Cottingham, Esq.  
Mark J. Wetterhahn, Esq.  
Winston & Strawn, LLP  
1400 L Street, N.W.  
Washington, D.C. 20005-3502  
E-mail: [drepka@winston.com](mailto:drepka@winston.com)  
[acotting@winston.com](mailto:acotting@winston.com)  
[mwetterhahn@winston.com](mailto:mwetterhahn@winston.com)

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](mailto:HEARINGDOCKET@nrc.gov)



Diane Curran