

RAS 8497

**RELATED CORRESPONDENCE**

September 20, 2004

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

DOCKETED  
USNRC

In the Matter of

September 21, 2004 (9:12AM)

DUKE ENERGY CORPORATION

Docket No's. 50-413-OLA, OFFICE OF SECRETARY  
50-414-OLA RULEMAKINGS AND  
ADJUDICATIONS STAFF

(Catawba Nuclear Station, Units 1 and 2)

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S  
SECOND SET OF DISCOVERY REQUESTS TO NRC STAFF  
REGARDING SECURITY PLAN SUBMITTAL**

**I. INTRODUCTION**

Pursuant to the schedule established by the Atomic Safety and Licensing Board ("ASLB") in a prehearing conference on September 9, 2004, Blue Ridge Environmental Defense League ("BREDL") hereby requests the NRC Staff to answer the following interrogatories separately, fully, in writing, and under oath, and produce the documents requested below within the schedule established by the ASLB. These discovery requests pertain to BREDL's Security Contention 5, as admitted by the ASLB in its Memorandum and Order (Ruling on Security-Related Contentions) (April 12, 2004) and amended by LBP-04-12, the ASLB's June 12, 2004, Memorandum and Order (Ruling on BREDL "Amendments" to Security Contention 5).

Pursuant to 10 C.F.R. § 2.744, BREDL directs its documents production requests in Sections IV and V below to the Executive Director for Operations. As required by 10 C.F.R. § 2.744, the categories of document requests in those sections are described with reasonable particularity. Moreover, the requested documents are relevant to the litigation of Contention 5, because they seek the production of documents that the NRC Staff intends to rely on at the hearing on Contention 5, and because they seek relevant information regarding the Staff's

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evaluation of Duke Power Corporation's ("Duke's") request for an exemption from NRC security regulations governing Category I facilities.

## II. INSTRUCTIONS

A. Scope of Discovery. These discovery requests cover all information in the possession, custody and control of the U.S. Nuclear Regulatory Commission ("NRC") Staff, including information in the possession of employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by the NRC, or anyone else acting on the Staff's behalf or otherwise subject to its control. The discovery sought by this request encompasses material contained in, or which might be derived or ascertained from, the personal files of Staff employees, representatives, investigators, and agents.

B. Lack of Information. If you currently lack information to answer any Interrogatory completely, please state:

1. The responsive information currently available;
2. The responsive information currently unavailable;
3. Efforts which you intend to make to secure the information currently unavailable; and
4. When you anticipate receiving the information currently unavailable.

C. Supplemental Responses. Each of the following requests is a continuing one pursuant to 10 C.F.R. § 2.740(e) and BREDL hereby demands that, in the event that at any later date the Staff obtains or discovers any additional information which is responsive to these interrogatories and request for admissions and production of documents, the Staff shall supplement its responses to this request promptly and sufficiently.

Such supplementation shall include, but not be limited to:

1. the identity and location of persons having knowledge of discoverable matters;
2. the identity of each person expected to be called as an expert witness at any hearing, the subject matter on which she/he is expected to testify, and the substance of her/his testimony; and
3. new information which makes any response hereto incorrect.

D. Objections. If you object to or refuse to answer any interrogatory or document request under a claim of privilege, immunity, or for any other reason, please indicate the basis for asserting the objection, privilege, immunity or other reason, the person on whose behalf the objection, privilege, immunity, or other reason is asserted, and describe the factual basis for asserting the objection, privilege, immunity, or other reason in sufficient detail so as to permit the administrative judges in this matter to ascertain the validity of such assertion.

If you withhold any document covered by this request under a claim of privilege, immunity, or for any other reason, please furnish a list identifying each document for which the privilege, immunity, or other reason is asserted, together with the following information: date, author and affiliation, recipient and affiliation, persons to whom copies were furnished and the job title and affiliation of any such persons, the subject matter of the documents, the basis for asserting the privilege, immunity, or other reason, and the name of the person on whose behalf the privilege, immunity, or other reason is asserted.

E. Estimates. Interrogatories calling for numerical or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it should be identified as such together with the source of information underlying the estimate.

### III. DEFINITIONS

Each of the following definitions, unless otherwise indicated, applies to and shall be a part of each interrogatory and request for production which follows:

1. "NRC Staff," "Staff," "you," and "your" refers to the Staff of the NRC, including its employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by the Staff, or anyone else acting on its behalf or otherwise subject to their control.

2. The term "documents" means the originals as well as copies of all written, printed, typed, recorded, graphic, photographic, and sound reproduction matter however produced or reproduced and wherever located, over which you have custody or control or over which you have the ultimate right to custody or control. By way of illustration, but not limited thereto, said term includes: records, correspondence, telegrams, telexes, wiring instructions, diaries, notes, interoffice and intra-office communications, minutes of meetings, instructions, reports, demands, memoranda, data, schedules, notices, recordings, analyses, sketches, manuals, brochures, telephone minutes, calendars, accounting ledgers, invoices, charts, working papers, computer tapes, computer printout sheets, information stored in computers or other data storage or processing equipment, microfilm, microfiche, meeting minutes, blueprints, drawings, contracts and any other agreements, rough drafts, and all other writings and papers similar to any of the foregoing, however designated by you. If the document has been prepared and several copies or additional copies have been made that are not identical (or are no longer identical by reason of the subsequent addition of notations or other modifications), each non-identical copy is to be construed as a separate document.

3. "All documents referring or relating to" means all documents that in whole or in part constitute, contain, embody, reflect, identify, state, interpret, discuss, describe, explain, apply to, deal with, evidence, or are in any way pertinent to a given subject.

4. The words "describe" or "identify" shall have the following meanings:

(a) In connection with a person, the words "describe" or "identify" mean to state the name, last known home and business address, last known home and business telephone number, and last known place of employment and job title;

(b) In connection with a document, the words "describe" or "identify" mean to give a description of each document sufficient to uniquely identify it among all of the documents related to this matter, including, but not limited to, the name of the author of the document, the date, title, caption, or other style by which the document is headed, the name of each person and entity which is a signatory to the document, the date on which the document was prepared, signed, and/or executed, the person or persons having possession and/or copies thereof, the person or persons to whom the document was sent, all persons who reviewed the document, the substance and nature of the document, the present custodian of the document, and any other information necessary to adequately identify the document;

(c) In connection with an entity other than a natural person (*e.g.*, corporation, partnership, limited partnership, association, institution, etc.), the words "describe" or "identify" mean to state the full name, address and telephone number of the principal place of business of such entity.

(d) In connection with any activity, occurrence, or communication, the words "describe" or "identify" mean to describe the activity, occurrence, or communication, the date of its occurrence, the identify of each person alleged to have had any involvement with or knowledge

of the activity, occurrence, or communication, and the identity of any document recording or documenting such activity, occurrence, or communication.

5. "Date" shall mean the exact day, month, and year, if ascertainable, or if not, the best approximation thereof (including by relationship to other events), and the basis for such approximation.

6. The word "discussion" shall mean communication of any kind, including but not limited to, any spoken, written, or signed form of communication.

7. The word "person" shall include any individual, association, corporation, partnership, joint venture, or any other business or legal entity.

8. Words herein of any gender include all other genders, and the singular form of words encompasses the plural.

B. The words "and" and "or" include the conjunctive "and" as well as the disjunctive "or" and the words "and/or."

#### **IV. GENERAL DISCOVERY**

##### **A. GENERAL INTERROGATORIES**

GENERAL INTERROGATORY NO. 1. State the name, business address, and job title of each person who was consulted and/or who supplied information for responding to each of the interrogatories and requests for the production of documents posed by BREDL herein. Specifically note for which interrogatories and requests for production each such person was consulted and/or supplied information.

If the information or opinions of anyone who was consulted in connection with your response to an interrogatory or request for admission differs from your written answer to the discovery request, please describe in detail the differing information or opinions, and indicate why

such differing information or opinions are not your official position as expressed in your written answer to the request.

**B. GENERAL DOCUMENT PRODUCTION REQUESTS**

Please produce the following documents:

REQUEST NO 1. All documents in your possession, custody or control that are identified, referred to or used in any way in responding to all of the above general interrogatories and the following interrogatories relating to Contention 5.

**V. SPECIFIC DISCOVERY**

**A. SPECIFIC INTERROGATORIES**

INTERROGATORY NO. 1: In your August 20, 2004, supplemental response to BREDL's first set of interrogatories, Interrogatory 4.a., you stated that the term "potential adversaries" describes "anyone who may want to acquire nuclear material for unauthorized purposes with attributes up to and including the design basis threat described in 10 C.F.R. § 73.1(a)." Please answer the following follow-up questions regarding your response:

- a. How many people do you assume to constitute a "small group" as described in 10 C.F.R. § 73.1(a)(2)?
- b. What type of military training and skills do you assume, as described in 10 C.F.R. § 73.1(a)(2)(A)?
- c. What assumptions do you make about the role of the insider, i.e., what licensee staff position is occupied by the insider, and does the insider play an active and/or passive role?
- d. Precisely what weapons do you assume are used, as described in 10 C.F.R. § 73.1(a)(2)(C)?

e. Precisely what hand-carried equipment do you assume is used, as described in 10 C.F.R. § 73.1(a)(2)(D)?

f. Precisely what land vehicles do you assume are used, as described in 10 C.F.R. § 73.1(a)(2)(E)?

g. What is the maximum number of teams, as described in 10 C.F.R. § 73.1(a)(2)(F)?

INTERROGATORY NO. 2: Please describe any proposals or plans by the NRC Staff to revise the Design Basis Threat for theft of strategic special nuclear materials from the Catawba nuclear power plant, including the content of any such proposals and the existing or proposed schedule for implementation.

INTERROGATORY NO. 3: Please provide a comprehensive list of all types of information provided by the Staff and/or licensees to NRC specialized security contractors prior to their development of scenarios for use in force-on-force testing.

INTERROGATORY NO. 4: In response to questions from Congressional members during the September 14, 2004, hearing before the House Subcommittee on National Security, Emerging Threats, and International Relations, NRC officials Luis Reyes and Roy Zimmerman stated that the NRC considers security officers to be included in a “critical group” and that background checks for them were more rigorous than for other employees. Please indicate where in NRC regulations or guidance the distinction is made between a critical group of security officers and other personnel with unescorted access privileges, including where the additional background check requirements for critical groups can be found. In responding to this request, please provide the title(s), date(s) of the document(s), page number(s), and specific language of the document(s) on which you rely.

INTERROGATORY NO. 5: Has the Staff evaluated the effectiveness of Duke's protective strategy to defeat the scenario posed by BREDL in its First Supplemental Response to Duke Energy Corporation's First Set of Interrogatories and Requests for Production of Documents on BREDL Security Contention, Response to Interrogatory 6.a (September 10, 2004)? If so, please provide the Staff's analysis.

INTERROGATORY NO. 6: In the Staff's licensing review of Duke's LTA application, did the Staff evaluate scenarios for theft of MOX fuel from the Catawba nuclear power plant and the effectiveness of Duke's protective strategy to defeat those scenarios?

INTERROGATORY NO. 7: For each theft scenario that the Staff has evaluated, please provide the following information:

- a. What is the size of the attacking group?
- b. How many teams is the group composed of?
- c. Is the group assisted by an active insider? If so, please describe the information possessed by the insider and the role played by the insider.
- d. Is the group assisted by a passive insider? If so, please describe the information possessed by the insider and the role played by the insider.
- e. Please describe in detail the weapons and associated rounds of ammunition carried by each member of the group and by the insider, including the weight of each weapon and associated rounds of ammunition.
- f. Please describe the hand-carried equipment carried by each member of the group and by the insider, their weight and the specific purpose to which they would be put.
- g. Please describe all vehicles used by the group, the team members assigned to each, and the means by which they approach the plant.

h. Please describe the outcome of the scenario.

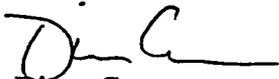
INTERROGATORY NO. 8: In the Staff's opinion, would Duke's strategy for protection of MOX fuel be adequate to protect against the design basis threat for theft as described in the classified guidance document that was provided by the Staff to Duke Cogema Stone and Webster by letter of March 13, 2000.

**B. SPECIFIC DOCUMENT PRODUCTION REQUESTS**

DOCUMENT PRODUCTION REQUEST NO. 1: Please provide access to the portions of the Security Plan which address devitalization during cold shutdown.

DOCUMENT PRODUCTION REQUEST NO. 2: Please provide the results of all OSREs conducted by the NRC at licensed nuclear facilities in the United States.

Respectfully submitted,



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September 20, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2004, copies of Blue Ridge Environmental Defense League's Second Set of Discovery Requests to Duke Energy Corporation Regarding Security Plan Submittal and Blue Ridge Environmental Defense League's Second Set of Discovery Requests to the NRC Staff Regarding Security Plan Submittal were served by hand or by Federal Express on all of the parties listed below, under the requirements of the Atomic Safety and Licensing Board's Protective Order of December 15, 2003:

<p>Ann Marshall Young, Chair Atomic Safety and Licensing Board 11545 Rockville Pike Rockville, MD 20852 (by hand) 301/415-7463</p> <p>Anthony J. Baratta Administrative Judge Atomic Safety and Licensing Board 11545 Rockville Pike Rockville, MD 20852 (by hand) 301/415-7463</p> <p>Thomas S. Elleman Administrative Judge Atomic Safety and Licensing Board 11545 Rockville Pike Rockville, MD 20852 (by hand) 301/415-7463</p> <p>Emile Julian Assistant for Rulemakings and Adjudications Office of the Secretary U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852 (by hand) 301/415-1966</p>	<p>Antonio Fernández, Esq. Office of the General Counsel Mail Stop - O-15 D21 U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852 (by hand) 301/415-7463</p> <p>Lisa F. Vaughn, Esq. Timika Shafeek-Horton, Esq. Legal Dept. (PBO5E) Duke Energy Corporation 526 South Church Street (EC11X) Charlotte, NC 28201-1006 (by Federal Express) 704/382-8134</p> <p>Mark J. Wetterhan, Esq. Anne W. Cottingham, Esq. David A. Repka, Esq. Winston &amp; Strawn, LLP 1400 L Street, N.W. Washington, D.C. 20005-3502 (by hand) 202/371-5726</p>
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In addition, I certify that a copy of Blue Ridge Environmental Defense League's Second Set of Discovery Requests to the NRC Staff Regarding Security Plan Submittal was served by first-class

and e-mail on Luis Reyes, Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; e-mail: [lar1@nrc.gov](mailto:lar1@nrc.gov).



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Diane Curran