

Before Administrative Judges:

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

<p>In the Matter of</p> <p>DUKE ENERGY CORPORATION</p> <p>(Catawba Nuclear Station, Units 1 and 2)</p>	<p>Docket No's. 50-413-OLA, 50-414-OLA</p> <p>ASLBP No. 03-815-03-OLA</p> <p>October 1, 2004</p>
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ORDER

(Confirming Scheduling and Other Matters Addressed at September 28, 2004, Closed Session)

During a closed session in this proceeding<sup>1</sup> held September 28, 2004, certain matters relating primarily to BREDL Security Contention 5, including the setting of certain deadlines and other scheduling points, were addressed. We now confirm herein relevant matters decided at and arising out of that closed session:

1. The Staff will, on October 4, 2004, notify the Board and the other parties of when it expects to be able to provide a statement of the Staff's view of the impact of certain updated information provided by Duke on September 20, 2004, on issues related to Safety Contention 1, or on any other matters involved in this proceeding in any way. BREDL will provide a statement of its view of the impact of this information by October 8, 2004. If BREDL wishes to submit any

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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).

late-filed contention based on the updated information, it shall do so by October 20, 2004, pursuant to our earlier-set general deadline of 30 days after the receipt of new information for the submission of late-filed contentions.

2. With regard to the late-filed contention submitted by BREDL on September 17, 2004, Duke and BREDL were to engage in discussion with a view to possible settlement of the dispute involved in this contention, and will provide notification of whether settlement of the contention is achievable as soon as possible.

3. The Staff will, by October 6, 2004, file responses to three questions as discussed in the September 28 closed sessions at Tr. 3543-45. Duke and BREDL will file responses to the information provided by the Staff by October 13, 2004.

4. The parties, their counsel, Judge Young, and Security Expert/Advisor Young will visit the Catawba plant site on October 7, 2004.<sup>2</sup>

5. Staff counsel agreed to attempt to determine whether an invitation may have been issued to Union of Concerned Scientists Staff Engineer David Lochbaum to observe a force-on-force exercise. Tr. 3399. Counsel, or any other person who may obtain relevant information on this should provide it as soon as possible, preferably by October 8, 2004.

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<sup>2</sup>With regard to the participation of the Board's security expert advisor, Mr. Francis Young, we have received Staff counsel's September 30 e-mail (following up on earlier e-mail communications from and to Judge Young concerning Mr. Young's participation), indicating the Staff's continuing objection to Mr. Young's providing any explanations to Judge Young during the tour of the plant. Although we note counsel's failure to address the points made earlier by Judge Young concerning the relevance of the relative sensitivity of various pieces of information in the context of security classification and safeguards to be observed as provided at 10 C.F.R. § 2.904, and reliance primarily on a "belief," we treat the Staff's statements as a request, which we grant in the interest of avoiding any further consumption of time on the issue, and in the interest of addressing a concern that may, although unstated, in fact be the Staff's true concern — that is, that any such explanations might, if they were to occur, somehow be observed by BREDL's counsel or expert in such a way as to disclose inadvertently information to which BREDL has not at this time been granted access. Although appropriate caution would obviously, as previously stated, have been taken to prevent any such disclosure, the nature of this concern itself is valid, however unlikely, and thus it is also to avoid even the possibility of any such disclosure that we grant the Staff's request. In the interest of general familiarization with the Catawba plant, however, as discussed in the September 28 closed session, Tr. 3369, 3374, 3567, Judge Young and Security Expert Advisor Young will participate in the site visit as observers, with which the Staff agrees and no other party has indicated any disagreement.

6. The parties will attempt to complete all further discovery by agreement, informally, as much as possible, in order to further the goals of both allowing for meaningful discovery and moving forward in this proceeding as expeditiously as possible. If the parties are unable, after good-faith efforts to achieve any desired discovery by agreement, they shall bring any disputes to the attention of the Board as soon as possible.

7. Another closed session will be held on October 25, 2004, starting at 8:30 a.m., to address any matters then pending and requiring the attention of the Board and parties. Prior to such time, the parties may, if they are unable to resolve issues by agreement, submit in writing any matters requiring the Board's attention, and a quorum of the Board will attempt to address them prior to October 25, if possible. Otherwise, all such issues will be taken up on October 25, with all parties being prepared to argue any such issues, and having present appropriate management personnel who have the authority to make any necessary determinations or commitments, in the interest of avoiding unnecessary delays.

8. Assuming all matters requiring resolution have been resolved, and all necessary discovery has been completed in a time frame that would allow it, the following schedule will be followed for the hearing on Security Contention 5:

- a. Simultaneous filing of all parties' prefiled direct testimony - December 3, 2004;
- b. Simultaneous filing of all parties' prefiled rebuttal testimony - December 10, 2004;
- c. Hearing on Security Contention 5 - December 13-17, 2004.
- d. Simultaneous filing of all parties' proposed findings of fact and conclusions of law - January 14, 2005.
- e. Simultaneous filing of all parties' responses to other parties' proposed findings of fact and conclusions of law - January 28, 2005.

The parties will notify the Board as soon as possible whether it appears that the preceding schedule will be possible to follow, and, if this has not been resolved prior thereto, the possibility of being able to meet this schedule will be addressed at the October 25 closed session.

9. If all matters requiring resolution have not been resolved, and all necessary discovery has not been completed, in a time frame that would allow for the above schedule, the following schedule will be followed for the hearing on Security Contention 5, absent unforeseen circumstances that would require reconsideration of any relevant dates:

- a. Simultaneous filing of all parties' prefiled direct testimony - December 17, 2004;
- b. Simultaneous filing of all parties' prefiled rebuttal testimony - January 7, 2005;
- c. Hearing on Security Contention 5 - January 10-14, 2005.
- d. Simultaneous filing of all parties' proposed findings of fact and conclusions of law - February 4, 2005.
- e. Simultaneous filing of all parties' responses to other parties' proposed findings of fact and conclusions of law - February 14, 2005.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

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Anthony J. Baratta  
ADMINISTRATIVE JUDGE

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Thomas S. Elleman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
October 1, 2004<sup>3</sup>

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<sup>3</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 )  
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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 SCHEDULING AND OTHER MATTERS ADDRESSED AT SEPTEMBER 28, 2004, CLOSED SESSION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Ann Marshall Young, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Thomas S. Elleman  
Atomic Safety and Licensing Board Panel  
5207 Creedmoor Rd., #101  
Raleigh, NC 27612

Susan L. Uttal, Esq.  
Antonio Fernández, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Henry B. Barron, Executive Vice President  
Nuclear Operations  
Duke Energy Corporation  
526 South Church Street  
P.O. Box 1006  
Charlotte, NC 28201-1006

Mary Olson  
Director of the Southeast Office  
Nuclear Information and Resource Service  
729 Haywood Road, 1-A  
P.O. Box 7586  
Asheville, NC 28802

Diane Curran, Esq.  
Harmon, Curran, Spielberg  
& Eisenberg, L.L.P.  
1726 M Street, NW, Suite 600  
Washington, DC 20036

Docket Nos. 50-413-OLA and 50-414-OLA  
LB ORDER (CONFIRMING SCHEDULING  
AND OTHER MATTERS ADDRESSED AT  
SEPTEMBER 28, 2004, CLOSED SESSION)

David A. Repka, Esq.  
Anne W. Cottingham, Esq.  
Mark J. Wetterhahn, Esq.  
Winston & Strawn LLP  
1400 L Street, NW  
Washington, DC 20005

Paul Gunter  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> St., NW, Suite 404  
Washington, DC 20036

Lisa F. Vaughn, Esq.  
Duke Energy Corporation  
Mail Code - PB05E  
422 South Church Street  
P.O. Box 1244  
Charlotte, NC 28201-1244

Timika Shafeek-Horton, Esq.  
Duke Energy Corporation  
Mail Code - PB05E  
422 South Church Street  
Charlotte, NC 28242

[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 1<sup>st</sup> day of October 2004