RAS 8595

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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

In the Matter of	Docket No's. 50-413-OLA, 50-414-OLA
DUKE ENERGY CORPORATION	ASLBP No. 03-815-03-OLA
(Catawba Nuclear Station, Units 1 and 2)	October 6, 2004

MEMORANDUM and ORDER
(Ruling on Objections of Duke and Staff to BREDL Discovery Requests)

We rule herein on objections of the NRC Staff and Duke Energy Corporation (Duke) to certain discovery requests of Blue Ridge Environmental Defense League (BREDL) for information that either is, or is related to, Safeguards Information (SGI) as defined at 10 C.F.R. § 73.2. Argument on these matters was heard during a closed session in this proceeding held September 28, 2004. There are four matters in dispute. One involves application of the deliberative process privilege; one involves a request for photographs of certain locations in the Catawba plant related to security at the plant; one involves a request to observe certain force-on-force security exercises at the plant; and one involves a request for diagrams showing the locations of certain security-related items at the plant.

Background

This proceeding involves 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.[1] By Memoranda and Orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards Information (SGI); redacted version issued May 28, 2004), the Licensing Board granted BREDL's request for hearing and admitted various non-security-related and security-related contentions.[2] An evidentiary hearing has already been held on the one remaining non-security-related contention in the proceeding.[3]

Our rulings herein relate to the one admitted security contention of BREDL,[4] on which

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[1]Letter from M.S. Tuckman, Executive Vice President, Duke Power, to NRC (Feb. 27, 2003).

[2]LBP-04-4, 59 NRC 129 (2004); LBP-04-10, 59 NRC 296 (2004); *see also* LBP-04-7, 59 NRC 259 (2004) (dismissing one contention admitted in LBP-04-4, on grounds of mootness); LBP-04-12, 59 NRC 388 (2004) (permitting Intervenor to utilize certain additional information in litigation of contention admitted in LBP-04-10).

[3]Tr. 2072-2708.

[4]Security Contention 5, the contention at issue with regard to the current need-to-know request, concerns a number of exemptions Duke seeks, as part of its application, from certain regulatory requirements, found in 10 C.F.R. Part 73, for the physical protection of formula quantities of special nuclear material. The contention in question, in the form we admitted it in LBP-04-10, states:

> Duke has failed to show, under 10 C.F.R. §§ 11.9 and 73.5, that the requested exemptions from 10 C.F.R. § 73.46, subsections (c)(1); (h)(3) and (b)(3)–(12); and (d)(9) are authorized by law, will not constitute an undue risk to the common defense and security, and otherwise would be consistent with law and in the public interest.

LBP-04-10, 59 NRC at 352. The cited provisions from which Duke seeks exemption have been summarized as follows:

> § 73.46(c)(1) requirements related to physical barriers for vital areas and Material Access Areas (MAAs);
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> § 73.46(h)(3) requirement to establish a Tactical Response Team, and associated requirements in Section 73.46(b)(3) through (b)(12) related to Tactical Response Team personnel assignment, weapons qualification, training, and physical fitness to the extent they exceed the current requirements in 10 C.F.R. 73.55; and
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> § 73.46(d)(9) requirements related to armed guards at MAA access points and search requirements for personnel and materials entering/exiting MAAs.

See Letter from M.S. Tuckman, Duke Energy Corporation, to Document Control Desk, NRC, Attachment 7, Request for Exemptions from Selected Regulations in 10 C.F.R. Part 11 and Part 73 (Sept. 15, 2003) at 9 [hereinafter Exemption Request] (SGI); [BREDL]'s Contentions on Duke's Security Plan Submittal (Mar. 3, 2004), at 15 [hereinafter BREDL Security Contentions] (citing Exemption Request at 9) (SGI); LBP-04-10, 59 NRC at 336.

the parties are now engaged in discovery. We address here the same sorts of "need-to-know" issues upon which we have previously ruled in this proceeding,[5] most of which have been in a discovery context,[6] and all but two of which[7] have concerned Safeguards Information. We note that during the September 28 session several of the objections were resolved, in whole or in part, and we thus rule herein on only those objections remaining at the close of the session.[8]

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[5]*See*, *e.g.*, LBP-04-21, 60 NRC ___ (Sept. 17, 2004); Memorandum and Order (Confirming August 10, 2004, Bench Ruling Finding Need to Know and Ordering Provision of Documents Sought by Intervenor in Discovery) (Aug. 13, 2004) [hereinafter 8/13/04 Memorandum and Order]; LBP-04-13, 60 NRC 33 (July 2, 2004), *aff'd*, CLI-04-21, 60 NRC 21 (2004); Memorandum (Providing Notice of Granting BREDL Motion for Need to Know Determination and Extension of Deadline for Filing Security-Related Contentions) (January 29, 2004) (unpublished) [hereinafter 1/29/04 Need-to-Know Ruling], *rev'd,* CLI-04-6, 59 NRC 62 (2004); Memorandum and Order (Ruling on BREDL Motion for Need to Know Determination Regarding Classified Documents) (Feb. 17, 2004) (unpublished) [hereinafter 2/17/04 Need-to-Know Ruling]; *see also* CLI-04-19, 60 NRC 5 (2004).

The regulatory requirement for such "need-to-know" determinations is found at 10 C.F.R. § 73.21(c), which provides that, "[e]xcept as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established 'need to know' for the information . . . ." The definition for "need to know" set forth at 10 C.F.R. § 73.2 states that this "means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment." The parties have agreed, in a protective order previously issued in this proceeding, that all disputes on need to know will be resolved by the Board. Memorandum and Order (Protective Order Governing [Duke]'s September 15, 2003 Security Plan Submittal) (Dec. 15, 2003) (unpublished), at 4.

[6]Our 1/29/04 Need-to-Know Ruling and 2/27/04 Need-to-Know Ruling both addressed need-to-know questions in the stage of this proceeding after BREDL had been admitted as a party, with one safety-related contention admitted, prior to submission or admission of any security-related contentions.

[7]2/27/04 Need-to-Know Ruling; LBP-04-21.

[8]BREDL and the Staff agreed, regarding the Staff's objection to BREDL's request in Document Request No. 1 for access to the portions of the Catawba security plan that address devitalization during cold shutdown, that the Staff will provide information in certain previously-redacted portions of the Catawba security plan that does not disclose any specific vital areas or specific target sets. BREDL withdrew its Document Production Request No. 2, the subject of the Staff's second objection. BREDL and the Staff also agreed to a resolution of the Staff's third objection, concerning BREDL's General Interrogatory No. 1. With regard to the Staff's final objection, regarding BREDL's Specific Interrogatory No. 3, the parties reached an accommodation consisting of the Staff's providing, by October 6, responses to the following three questions:

> 1. Whether all of the information provided in past OSRE reports (as discussed at the September 28 session) will continue to be provided to NRC contractors, and what if any additional information — stated with the same level of description provided in the past reports — will be provided;
> 2. What information, from the standpoint of NRC experts in the area, is an

(continued...)

With regard to the standard to apply in making need-to-know determinations in a discovery context, we start with the "necessity" standard set forth in the definition for "need to know" found at 10 C.F.R. § 73.2.[9] The Commission explained this standard in CLI-04-6, by noting that this requires more than a mere "desire" — "the touchstone for a demonstration of 'need to know' is whether the information is *indispensable*."[10] The Commission also stated, however, that "a party's need to know may be different at different stages of an adjudicatory proceeding, depending on the purpose of the request for information."[11] CLI-04-6 dealt with the stage of this proceeding after BREDL was admitted as a party, but prior to submission of its security contentions.

In contrast, at this point BREDL's Security Contention 5 has been admitted, and we are currently in the discovery stage of this proceeding on that contention, leading up to an evidentiary hearing on it in the near future.[12] As the Staff has observed, and we have agreed, in the discovery phase of a proceeding the need-to-know "indispensability" standard is

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[8](...continued)
insider assumed to have in force-on-force scenarios conducted in OSRE tests; and

3. What information, from the standpoint of NRC experts in the area, is an adversary team assumed to have in scenarios for force-on-force tests?

Tr. 3543-45 (SGI). If there are any disputes with regard to the Staff's responses to these questions, BREDL and Duke may submit their own responses to the Staff's submission by October 13. The remaining Staff objection was modified as described in the text of this decision, and is ruled on herein.

Several of the requests at issue in Duke's objections were resolved, or modified as described in the text, at or before the September 28 session. One, involving BREDL's Document Production Request No. 1, was resolved by Duke agreeing to provide BREDL with the bulk of certain implementing procedures by the end of October, with a schedule for production of any remaining procedures also to be provided.

[9]*See* note 5 *supra.*

[10]CLI-04-6, 59 NRC at 73.

[11]*Id.* at 72.

[12]*See* Order (Confirming Scheduling and Other Matters Addressed at September 28, 2004, Closed Session) (Oct. 1, 2004) (unpublished).

effectively *defined by* the discovery standard.[13] As we note in another Memorandum and Order issued today, this is appropriate in light of the purposes of discovery, including that of providing a means for parties to prepare their cases for hearing in an efficient and meaningful manner, which minimizes surprise at the hearing as well as the expenditure of additional time at that point to address concerns that may arise based on a party's presentation of evidence that it has failed to disclose earlier to an opposing party.[14]

Thus, as we noted in LBP-04-21, the discovery and need-to-know standards are effectively congruent and coextensive in the discovery stage of a proceeding, given that the traditional scope-of-discovery standard has come to define what is "necessary" and "indispensable" to a party in preparing for litigation on any cause or issue.[15] Both the "necessity/indispensability" need-to-know standard and the discovery standard involve a "delicate balancing" of concerns. With regard to the former, the concerns include security and the protection of the public, as well as the need of parties such as BREDL, as part of the public, for access to information in order to litigate contentions in NRC adjudicatory proceedings in a meaningful manner and thereby help the NRC discharge its mission of protecting the public.[16] In discovery rulings, the concerns to balance include relevance, whether information is "reasonably calculated to lead to the discovery of admissible evidence," as well as such factors

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[13]*See* LBP-04-21, 60 NRC at __ (slip op. at 10-12).

[14]As we have previously noted, Duke counsel has agreed that if Duke relied in the future on any such information, that "there exists the possibility that . . . at some point we'd have to give it to [BREDL]." Tr. 2931 (SGI); *see* 8/13/04 Memorandum and Order; LBP-04-21, 60 NRC __ (slip op. at 9 n.29).

[15]*See* LBP-04-21, 60 NRC at ___ (slip op. at 20).

[16]*See* LBP-04-21, 60 NRC at __ (slip op. at 19-20); CLI-04-06, 59 NRC at 73; CLI-04-21, 60 NRC at __ (slip op. at 9-10).

as "embarrassment, oppression, [and] undue burden or expense."[17] With these considerations in mind, we look now to the discovery matters currently in dispute.

Staff Objection to BREDL Specific Interrogatory No. 2; Deliberative Process Privilege

The portion of BREDL Specific Interrogatory No. 2, the subject of the Staff's third objection, that remains in dispute at this point concerns *whether* the Staff "is considering" or plans to revise the design basis threat (DBT) for Catawba with regard to theft of strategic special nuclear materials (SSNM), BREDL having withdrawn the request insofar as it asked for any substantive content of any such plans.[18] BREDL at one point during oral argument explained what it wished to know, with regard to what time period, by stating that BREDL is "concerned that the Staff may be planning to issue an enforcement order sometime between the end of the licensing proceeding and when MOX fuel is sent to the Catawba site, and we'd like to know if there's a plan to do that."[19] The Staff asserts that this information is protected by the deliberative process privilege,[20] but that to the extent any such action might be taken by the Staff, it would be to address a change in the threat environment.[21]

To the extent that this interrogatory seeks information concerning the internal, pre-decisional thought processes of Staff members, it may be protected under the deliberative process privilege, as asserted by the Staff.[22] The Commission, in the *Vogtle* case cited by the

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[17]*See* LBP-04-21, 60 NRC at __ (slip op. at 19-21).

[18]Tr. 3457.

[19]Tr. 3462; *see* Tr. 3461.

[20]NRC Staff's Objections to BREDL's Second Set of Discovery Requests to NRC Staff Regarding Security Contention 5 (Sept. 24, 2004), at 4 [hereinafter Staff Objections]; Tr. 3460.

[21]Tr. 3466

[22]The Staff cites the case of *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190 (1994), in support of its argument.

Staff, has noted that this privilege, which is one unique to the government, "protects inter- and intraagency communications 'reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'"[23] The privilege deals with information reflecting a consultative process — i.e., analysis, evaluation, recommendations, proposals or suggestions reflecting opinions rather than final official agency policy.[24] It serves the following purposes: to protect "creative debate and candid consideration of alternatives," and thereby to improve agency policy decisions; to protect the public from "confusion that would result from premature exposure to discussions occurring before policies affecting it had actually been settled upon"; and to protect the "integrity of the decision-making process."[25] Thus, a pre-decisional document prepared *before* the adoption of an agency position, specifically prepared to assist a decision-maker in arriving at a decision, may be covered by the privilege, provided it meets all relevant criteria, an exhaustive discussion of which is not necessary to resolve the issue before us.[26]

We do, however, find relevant the Commission's decision in *Vogtle*, and its statement therein of a two-part test that must be met in order to find that the deliberative process privilege applies — information covered by the privilege must be both (1) "predecisional," and (2) "deliberative."[27] Moreover, the Commission pointed out, in a litigation context, the

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[23] *Id.* at 197 (citations omitted).

[24] *Id.* at 198 (citing *Nat'l. Wildlife Fed'n. v. U.S. Forest Service*, 861 F.2d 1114, 1118-19 (9th Cir. 1988)).

[25] *Id.* at 197 (citing *Jordan v. Dep't of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

[26] *Id.* (citing *Renegotiation Bd. V. Grumman Aircraft Eng'g. Corp.*, 421 U.S. 168, 184 (1975)).

[27] *Id.* (citing *Petroleum Info. Corp. v. Dep't. of Interior*, 976 F.2d 1429, 1434 (D.C.Cir. 1992)).

deliberative process privilege is qualified, and not absolute — the government's interest must be balanced against a litigant's need for the information.[28]

In *Vogtle* the Commission found that the privilege applied to portions of a report at issue therein, noting that the two-part test cited above had been shown by the Staff with regard to those portions, and that the balance weighed in the Staff's favor on them because, among other things, premature release of such agency communications before issuance of a final report would harm the deliberative process, and no overriding interest had been shown by the licensee or intervenor.[29] The privilege was also applied by the Appeal Board in the *Shoreham* case, finding that the privilege applied to certain documents of the Federal Emergency Management Agency (FEMA) that contained evaluations, advisory opinions, recommendations and deliberations, balancing in FEMA's favor because the intervenor had not demonstrated that it could not obtain relevant information elsewhere.[30] The Appeal Board also, however, ruled that FEMA should make its witnesses available for deposition and cross-examination, to be examined as to the "soundness and reliability of the scientific assumptions or professional judgments underlying the FEMA findings"; emphasized the "narrowness of [its] holding"; and stated that if upon deposition or cross-examination of the witnesses (or review of documents voluntarily released) "good and sufficient reasons" appeared to warrant disclosure, then that might be ordered.[31] Examples of such "good and sufficient reasons" that the Board noted (indicating that there might also be others), were "significant differences of opinion" among the

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[28] *Id.* at 198 (citing, *inter alia*, *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 404-05 (D.C. Cir. 1984)).

[29] *Id.* at 199, 201-02.

[30] *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1340, 1343 (1984).

[31] *Id.* at 1343-44, 1348.

authors of the report in question that might affect the adequacy of the licensee's emergency plan, and the possibility that the witnesses were "unable to defend or explain adequately the underlying bases of FEMA's determinations or . . . that they have relied to an inordinate degree on the views of others."[32]

Finally, we note that the deliberative process privilege is among those that the Supreme Court has ruled are not to be "expansively construed, for they are in derogation of the search for truth."[33]

With regard to the question to which BREDL seeks an answer — whether the NRC Staff plans to revise the DBT for Catawba with regard to theft of SSNM — our decision is relatively simple and straightforward in light of the preceding standards. For the response sought at this point, narrowly read, would not appear to constitute *pre-decisional* information. The issue is simply *whether* the Staff has made a decision that it will revise the DBT for Catawba with regard to theft of SSNM, in any enforcement order, for example. If the Staff has at this point in fact *made a decision* that it will, at some point, revise the DBT for theft of SSNM from Catawba, then this information would not only be relevant to what security measures Duke would be required to take with regard to the subject matter of this proceeding, but also would *not* be "pre-decisional" and thus would not fall under the deliberative process privilege.

If, on the other hand, the Staff is currently deliberating on such a decision, based only on *potential changes* in the current threat environment, as stated by counsel, and does not now have any plan one way or the other as to whether or not to take any such action, then any such deliberations would be pre-decisional. As such, they would, we find, be covered by the privilege, because the mere possibility of one decision or another in this regard in the future,

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[32] *Id.* at 1348.

[33] *United States v. Nixon*, 418 U.S. 683, 710 (1974); *see id*. at 709.

based on unknown future changes in the threat environment, would not be particularly relevant to the issues in this proceeding — in the context, again, of Staff counsel's statements as an "officer of the court" that any such action would in fact address only such possible future change in the current threat environment.[34] Counsel have a responsibility to ascertain and report which of these is the actual situation at this point, indicating *whether* a decision has been made to revise the DBT for Catawba with regard to theft of SSNM, and to provide any supplemental responses as necessary.

Duke Objection to BREDL General Request for Inspection No. 1 - Photographs of Plant

The major portion of this request has been resolved through a planned site visit at which BREDL's counsel and expert will be permitted to tour the Catawba plant. The portion that remains of this request is BREDL's desire for photographs of various parts of the Catawba plant. Although BREDL counsel has said that BREDL still wishes to "take photographs," BREDL has also indicated that an acceptable way of obtaining photographs would be for Duke to take the photographs and provide BREDL with access to them.[35] Duke objects to this request, whatever approach would be used, based on the particular sensitivity of photographs of the plant site from a tactical security perspective.[36] The Staff objected to such photographs, arguing that BREDL has no "need to know" with regard to any photograph that would reveal

[34]We note BREDL's statement that its understanding, based on assertions by Staff, is that the current standard against which the application at issue is being judged by the Staff is a pre-9/11 standard. Tr. 3466 (SGI). Based on Staff counsel's response during the September 28 oral argument, *see* Tr. 3467-68, this is not true, and the standard used by the Staff does take into account the post-9/11 threat environment. Of course, if there is any need to revise the current representations, this would be a subject for a supplemental discovery response.

[35]*See* Tr. 3357, 3375 (SGI).

[36]*See* Tr. 3360-61 (SGI); *see also* [Duke]'s Objections to [BREDL]'s Second Set of Discovery Requests to [Duke] Regarding Security Plan Submittal (Sept. 24, 2004), at 2-3 [hereinafter Duke Objections].

sensitive equipment or areas of the plant, distinguishing other situations involving the taking of photographs as not being on so broad a scale as that sought by BREDL herein.[37]

In view of the planned site visit and the possibility of future such visits, we find, at this point, that neither the taking nor providing of photographs is necessary or indispensable, notwithstanding some degree of relevance of such photographs. If, however, it becomes appropriate during the hearing portion of the proceeding to conduct an on-the-record site visit, with a court reporter in attendance, as agreed by all parties,[38] and/or if it appears that photographs would be relevant and desirable in order to complete the record for possible appeal, then we will reconsider this ruling at that time. In addition, if prior to the hearing BREDL wishes to make another site visit to refresh memory as to particular locations that might illustrate issues regarding Duke's security for the Catawba plant and MOX fuel, which might thus be relevant for the creation of the scenarios Duke has requested BREDL provide, then Duke shall make arrangements for any such visit(s). If Duke should decide in the alternative to provide access to photographs that it takes, then it may do so, in accordance with procedures approved by the Staff.

Duke Objection to BREDL General Request for Inspection No. 2 and Interrogatory No. 4 - Observation of Security Exercises

BREDL requests in General Request for Inspection No. 2 to observe "any security drill(s), table-tops or exercise(s) that Duke plans to conduct during the discovery period." In Specific Interrogatory No. 4, BREDL asks whether Duke plans to conduct any force-on-force exercises at Catawba in the future, and if so, when they will be conducted and what is the nature of any such planned exercises. Duke argues among other things that these requests

[37]Tr. 3362-63 (SGI).

[38]*See* Tr. 3367, 3373-74 (SGI).

are unduly burdensome, intrusive, and disruptive of operations and security at Catawba.[39] Duke has agreed to provide the results of any exercises that it conducts itself,[40] including field notes,[41] and to provide a general time frame and scenarios, if developed at the time, for any full-scale exercises.[42] BREDL still wishes, however, to attend and observe any exercises that are conducted by the NRC at Catawba,[43] arguing that other outsiders have observed such exercises, including congressional representatives and foreign officials (although this may have been at a "pilot exercise").[44] The Staff objects to this aspect or portion of the request, but has agreed to the provision by Duke of the results of such tests.[45] During discussion of this objection, BREDL referred to a possible NRC invitation to David Lochbaum, of the Union of Concerned Scientists, to attend and observe a force-on-force exercise, and Staff Counsel agreed to attempt to learn the particulars of any such invitation.[46]

Upon balancing the relevant interests of the parties, we find that providing BREDL with the results and field notes from any exercises or force-on-force tests is sufficient at this time. After the Staff has provided further information on the possible invitation of Mr. Lochbaum, we will revisit these issues, at and after our scheduled October 25 closed session as necessary (or prior thereto if possible in light of the availability of a quorum of the Board), unless the parties on their own are able to resolve the matter.

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[39]Duke Objections at 3-4.

[40]*Id.* at 4.

[41]Tr. 3381 (SGI).

[42]Tr. 3385 (SGI).

[43]Tr. 3383-94 (SGI).

[44]Tr. 3380, 3382 (SGI).

[45]Tr. 3392, 3393-94 (SGI).

[46]Tr. 3399 (SGI).

Duke Objection to BREDL Document Production Request No. 3

In this request, BREDL asks for "any and all diagrams that show the numbering of the microwave locations, the numbering of the controlled access doors, and the numbering of the CCTV cameras at the Catawba nuclear power plant."[47] Duke objects to providing such diagrams, citing the sensitive nature of such diagrams.[48] BREDL seeks the information in question in order to clarify, or "decode," the meaning of certain items in other documents Duke has already provided to it in response to discovery requests.[49]

[47][BREDL]'s Second Set of Discovery Requests to [Duke] Regarding Security Plan Submittal (Sept. 20, 2004) (SGI), at 12.

[48]Tr. 3421-22 (SGI).

[49]Tr. 3421 (SGI).

We find that the information that is sought, insofar as it consists of a means of "decoding" information in documents to which BREDL has already been granted access, is relevant, necessary and indispensable in planning BREDL's scenarios for the hearing of Security Contention 5, and thus meets the discovery/need-to-know standard that we have previously developed in LBP-04-21.[50] However, in order to accommodate the security interests at issue, Duke may provide this information in whatever reasonable manner it chooses, so long as usable information is provided to BREDL so that it can make meaningful use of the documents already provided to it.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

_____
Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

_____
Anthony J. Baratta
ADMINISTRATIVE JUDGE

/RA/

_____
Thomas S. Elleman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 6, 2004[51]

[50]*See* LBP-04-21, 60 NRC at ___ (slip op. at 19-21).

[51]Copies of this document were sent this date by internet e-mail to counsel for all 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 MEMORANDUM AND ORDER (RULING ON OBJECTIONS OF DUKE AND STAFF TO BREDL DISCOVERY REQUESTS) 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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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of October 2004