

October 5, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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

INTRODUCTION

On September 20, 2004, the Blue Ridge Environmental Defense League (BREDL) filed the Blue Ridge Environmental Defense League's Second Set of Discovery Requests to NRC Staff Regarding Security Plan Submittal (Request) in the above-captioned matter. In its Request, BREDL filed one general interrogatory, one general request for document production, eight specific interrogatories, and two specific document requests. The NRC Staff (Staff) filed its objections to BREDL's Request on September 24, 2004. The Staff hereby reiterates and renews each of its objections to BREDL's Request set forth in the Staff's Objection. Without waiving these objections, the Staff hereby responds voluntarily to BREDL's interrogatories and voluntarily provides responses to BREDL's requests for production of documents. By answering BREDL's interrogatories and by providing documents in response to BREDL's Request, the Staff is not conceding that any of the answers or documents provided are material to, relevant to or within the scope of the proceeding. The Staff reserves the right to object to the introduction of any of these answers at hearing on the grounds that they are immaterial, irrelevant or outside the scope of the proceeding. In addition, the

Staff reserves the right to amend its discovery responses through supplements as new information becomes available.

RESPONSES

I. 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.

STAFF RESPONSE:

The following individuals were consulted and/or supplied information in response to the discovery requests:

1. Sherri L. Cross, Senior Safeguards Technical Analyst in the Fuel Cycle and Special Security Programs Section, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Rockville Maryland, was consulted on all General and Specific Requests for the Production of Documents and on all Specific Interrogatories.
2. Albert G. Garrett, Senior Security Specialist in the Fuel Cycle and Special Security Programs Section, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Rockville Maryland, was

consulted on all General and Specific Requests for the Production of Documents and on all Specific Interrogatories.

B. GENERAL DOCUMENT PRODUCTION REQUESTS

GENERAL 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.

STAFF RESPONSE:

Please see the attached Listing of Responsive Documents.¹ As a general matter the staff notes that, while some documents may be responsive to more than one request, each document is listed only once. By providing documents in response to this request or any other portion of BREDL's Request, the Staff is not conceding that any of the answers or documents provided are material to the admitted contentions. The Staff reserves the right to object to the introduction of any of these documents at hearing on the grounds that they are immaterial, irrelevant or outside the scope of the proceeding.

II SPECIFIC DISCOVERY

A. SPECIFIC INTERROGATORIES

SPECIFIC 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)?

¹ This document is Attachment A, "Listing of Responsive Documents for NRC Staff's Response to the Blue Ridge Environmental Defense League's Second Set of Discovery Requests to NRC Staff Regarding Security Plan Submittal."

- 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)?

STAFF RESPONSE:

In accordance with the "Review Plan for Evaluating the Physical Security Protection Measures Needed for Mixed Oxide Fuel and Its Use in Commercial Nuclear Power Reactors", dated January 29, 2004 (Review Plan), based on the composition and form of the material, the staff made no assumptions regarding these specific questions. However, generic adversary characteristics are provided in NUREG-0459, "Generic Adversary Characteristics Summary Report," which has been provided to BREDL.

SPECIFIC 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.

STAFF RESPONSE:

The Staff filed an objection to this interrogatory on September 24, 2004. The objection is currently pending before the Licensing Board.

SPECIFIC 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.

STAFF RESPONSE:

During a closed session held on September 28, 2004, the Board and BREDL expanded and further clarified Specific Interrogatory 3 to encompass three additional questions. First, a request that the Staff describe the types of information provided to NRC contractors or Staff beyond the information described in the OSRE report that the NRC made available to BREDL concerning Catawba and whether the information described therein was currently provided to contractors and Staff. Second, a description of the information that the NRC assumes an insider has. Third, a description of the information that an adversary team has in preparing for a force-on-force exercise. The Staff herein responds to the Board and BREDL's expanded requests.

First, the type of information provided to NRC contractors or staff during the current force-on-force (FOF) program is not significantly different than what was provided during the OSRE program.

Second, the insider is assumed to have all of the information that his or her job title would lend and any information that his or her respective access level would allow. The non-security insider would be expected to have expert knowledge in his or her job function. This would be coupled with any knowledge of the licensee's protective strategy based on any interface with security personnel and general knowledge of security features based on observations during working tours of the facility. On the other hand, a security insider would have specific knowledge, expected to be gained over time, of the protective strategy and may have only general knowledge of other aspects of the site. However, on occasion, an insider has both a security and operations background.

Third, the mock adversary team develops its attack plan based on information: (a) gleaned from publicly available site information; (b) gathered from owner-controlled area surveillance; (c) acquired from the insider; (d) developed from their military training and skills; and, (d) provided from the NRC related to potential site vulnerabilities.

SPECIFIC INTERROGATORY 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.

STAFF RESPONSE:

The Staff's response is provided in a separate document containing safeguards information.

SPECIFIC 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.

STAFF RESPONSE:

No evaluation has been done as of this date.

SPECIFIC 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?

STAFF RESPONSE:

No. The staff followed the Review Plan in evaluating the license application.

SPECIFIC 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.

STAFF RESPONSE:

No specific theft scenarios were evaluated by the staff in review of the license application.

SPECIFIC INTERROGATORY 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.

STAFF RESPONSE:

As stated in the Review Plan and "Supplement 1 to Safety Evaluation for Proposed Amendments to the Facility Operating License and Technical Specifications to Allow Insertion of Mixed Oxide Fuel Lead Assemblies (TAC NOS. MC0824 and MC0825)", dated May 5, 2004 (SE), the staff does not consider the MOX fuel a theft target. Additionally, the Staff did not rely on the aforementioned classified document in the performance of its review; therefore, the Staff does not have an opinion as to Duke's proposal in relation to that document. Moreover, disclosure of the Staff's opinion on whether any particular measures proposed by Duke are adequate to meet guidance reflected in the aforementioned classified document could potentially disclose National Security Information, on which the Commission has not made a final need-to-know determination.

B. SPECIFIC DOCUMENT REQUESTS

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

STAFF RESPONSE:

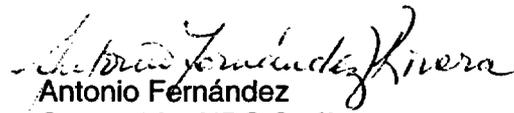
The Staff has already granted BREDL access to the aforementioned portions of the Physical Security Plan. By providing access to these portions of the Plan in response to this request or any other portion of BREDL's Request, the Staff is not conceding that any of the answers or documents (or portions thereof) are material to the admitted contentions. The Staff reserves the right to object to the introduction of any of these documents at hearing on the grounds that they are immaterial, irrelevant or outside the scope of the proceeding.

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

STAFF RESPONSE:

The instant request was withdrawn by BREDL.

Respectfully submitted,


Antonio Fernández
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of October, 2004

Attachment A

Listing of Responsive Documents for NRC Staff's Response to the Blue Ridge Environmental Defense League's First Set of Discovery Requests to the NRC Staff

Letter, J.W. Shea, NRC, to G.M. Tracy, NRC, "Review Plan for Evaluating the Physical Security Protection Measures Needed for Mixed Oxide Fuel and Its Use in Commercial Nuclear Power Reactors", dated January 29, 2004. (ADAMS ML033560532)

Letter, R.E. Martin, NRC, to H.B. Barron, Duke, "Supplement 1 to Safety Evaluation for Proposed Amendments to the Facility Operating License and Technical Specifications to Allow Insertion of Mixed Oxide Fuel Lead Assemblies (TAC NOS. MC0824 and MC0825)", dated May 5, 2004. (ADAMS ML041260544 - SGI Attachment)

NUREG-0459, "Generic Adversary Characteristics Summary Report"

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(Catawba Nuclear Station) 50-414-OLA
Units 1 and 2)

SUPPLEMENTAL AFFIDAVIT OF ALBERT G. GARRETT

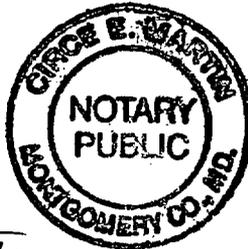
COUNTY OF MONTGOMERY)
STATE OF MARYLAND) SS:

Albert G. Garrett, having first been duly sworn, does hereby state as follows:

1. I am employed as a Senior Security Specialist in the Fuel Cycle and Special Security Programs Section, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission in Rockville Maryland. A statement of my professional qualifications was previously provided in the above-captioned proceeding.

2. I have reviewed the foregoing "NRC Staff's Response to the Blue Ridge Environmental Defense League's Second Set of Discovery Requests to NRC Staff Regarding Security Plan Submittal" of the NRC Staff, in general and in particularity as it pertains to the Specific Interrogatories, and verify that the responses are true and correct to the best of my information and belief.

Sworn to before me this
5th day of October, 2004



Albert G. Garrett
Albert G. Garrett

Circe E. Martin
Notary Public
My commission expires: *March, 1st 2007*

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Units 1 and 2)

SUPPLEMENTAL AFFIDAVIT OF SHERRI L CROSS

COUNTY OF MONTGOMERY)
STATE OF MARYLAND) SS:

Sherri L. Cross, having first been duly sworn, does hereby state as follows:

1. I am employed as a Senior Safeguards Technical Analyst in the Fuel Cycle and Special Security Programs Section, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission in Rockville Maryland. A statement of my professional qualifications was previously provided in the above-captioned proceeding.

2. I have reviewed the foregoing "NRC Staff's Response to the Blue Ridge Environmental Defense League's Second Set of Discovery Requests to NRC Staff Regarding Security Plan Submittal" of the NRC Staff, in general and in particularity as it pertains to the Specific Interrogatories, and verify that the responses are true and correct to the best of my information and belief.

Sworn to before me this
5th day of October, 2004



Circe E. Martin

Notary Public
My commission expires: March 4, 2007

Sherri L. Cross

Sherri L. Cross