

November 5, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

November 10, 2004 (10:40AM)

In the Matter of

DUKE ENERGY CORPORATION

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

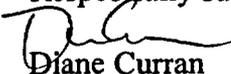
(Catawba Nuclear Station, Units 1 and 2)

**MOTION FOR APPROVAL OF CONSENT ORDER  
REGARDING DOCUMENT DISCOVERY**

On behalf of itself, Duke Energy Corporation, and the Staff of the U.S. Nuclear Regulatory Commission ("NRC"), Blue Ridge Environmental Defense League ("BREDL") hereby moves for approval of the attached consent order regarding interim measures to compensate for the unavailability of the NRC's Agencywide Document Access and Management System ("ADAMS") during this proceeding. The terms of the consent order have been agreed to by the parties.

Additional measures sought by BREDL, which were not agreed to by all parties, are the subject of a separate motion by BREDL.

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

November 5, 2004

November \_\_, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

---

In the Matter of

DUKE ENERGY CORPORATION

(Catawba Nuclear Station, Units 1 and 2)

---

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

**CONSENT ORDER REGARDING DOCUMENT DISCOVERY**

By letter dated October 25, 2004, counsel for the Staff of the U.S. Nuclear Regulatory Commission ("NRC") notified the Atomic Safety and Licensing Board ("ASLB") and the parties to this proceeding that the Staff has blocked public access to the NRC's Agencywide Document Access and Management System ("ADAMS") "related to, among other things, this proceeding." As further clarified on the NRC's website, [www.nrc.com](http://www.nrc.com), ADAMS has been rendered completely inaccessible to the public. Therefore, for an undetermined period of time, it will not be possible for any party, including Duke Energy Corporation ("Duke"), the Applicant in this proceeding, or Blue Ridge Environmental Defense League ("BREDL"), the Intervenor in this proceeding, to use ADAMS to identify or retrieve correspondence, reports, or other documents from that system.

As a result, Duke and the NRC Staff have agreed to take the following measures:

- (a) Duke and the NRC Staff shall continue to send BREDL's counsel copies of their outgoing correspondence that relates to the license amendment request. If the correspondence has an attachment that clearly is relevant to BREDL Security

Contention 5 but does not contain Safeguards Information, Classified Information, or Official Use Only information, the attachment shall be included.

(b) Duke and the NRC Staff shall continue to send BREDL's counsel copies of their outgoing correspondence between them that relates to security at the Catawba Nuclear Station, including generic correspondence that the Staff sends to Duke. If the correspondence has an attachment that clearly is relevant to Contention 5 but does not contain Safeguards Information, Classified

Information, or Official Use Only information the attachment shall be included.

BREDL agrees that it will make timely requests for need-to-know determinations regarding any Safeguards or Classified documents that are identified through the above-listed measures.

These measures shall be binding on the parties until the issuance of a final Commission decision relating to Security Contention 5 or until one week after ADAMS is restored, whichever date is sooner.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

---

Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

---

Anthony J. Baratta  
ADMINISTRATIVE JUDGE

---

Thomas S. Elleman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November \_\_, 2004

November 5, 2004

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

---

In the Matter of

DUKE ENERGY CORPORATION

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

(Catawba Nuclear Station, Units 1 and 2)

---

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S  
MOTION FOR IMPOSITION OF INTERIM DISCOVERY MEASURES  
TO COMPENSATE FOR UNAVAILABILITY OF ADAMS**

Blue Ridge Environmental Defense League ("BREDL") hereby moves for the imposition of discovery measures needed to compensate for the unavailability of the U.S. Nuclear Regulatory Commission's ("NRC's" or "Commission's") Agencywide Document Access and Management System ("ADAMS"). Duke Energy Corporation ("Duke") and the NRC Staff have agreed to some compensatory discovery measures, which are set forth in a proposed Consent Order that has been filed simultaneously with this Motion. The parties were unable to reach an accommodation, however, on two measures that BREDL considers necessary for adequate access to NRC documents. Those measures that are proposed in this Motion.

**Factual Background**

By letter dated October 25, 2004, counsel for the NRC Staff notified the Atomic Safety and Licensing Board ("ASLB") and the parties to this proceeding that the Staff has blocked public access to ADAMS for purposes "related to, among other things, this proceeding." As further clarified on the NRC's website, [www.nrc.com](http://www.nrc.com), ADAMS has been rendered completely inaccessible to the public. Therefore, for an undetermined period of time, it will not be possible

for BREDL to use ADAMS to identify or retrieve correspondence, reports, or other documents from that system.

### **Argument**

BREDL's lack of access to the NRC's collection of public documents threatens to seriously hamper BREDL's ability to participate in this proceeding in a meaningful way. While BREDL has posed document discovery requests to the other parties, those requests may not encompass all documents that are relevant to BREDL's security contention. For instance, NRC correspondence with licensees other than Duke regarding security issues similar to the issues at Catawba may prove to be relevant to this case. BREDL now has no way of identifying those documents. In addition, BREDL has also used ADAMS to identify important documents that should have been provided in discovery but were not, such as Revision 2 to Duke's Security Plan.

Duke and the Staff have cooperated with BREDL in an effort to address this problem by agreeing to several compensatory measures designed to compensate for BREDL's lack of access to ADAMS. As reflected in the Consent Order that is being filed simultaneously with this motion, they have committed to providing BREDL with copies of their correspondence related to the instant license amendment request, as well as correspondence related to site-specific and generic security issues.

BREDL and the Staff have not been able to agree, however, on a request by BREDL for copies of any NRC Staff correspondence, reports or notices relating to Category I facilities. While the Staff agreed to provide documents of which the Staff members assigned to the Catawba case happened to be aware, it would not commit to taking steps to assure that relevant documents are identified. This is not a sufficient assurance that relevant documents will be

identified. Because Catawba will become a Category I facility if and when it possesses plutonium MOX fuel, such documents clearly are relevant and should be identified to BREDL.<sup>1</sup>

Therefore, BREDL requests the ASLB to impose such a requirement on the Staff, as follows:

(c) The NRC Staff shall send BREDL's counsel copies of all generic correspondence, reports, and notices that relate to security at Category I facilities. If any piece of correspondence, report, or notice contains Safeguards Information, Classified Information, or Official Use Only information, the Staff shall send BREDL the cover page or some other document that is sufficient to alert BREDL to the existence and the general content of the piece of correspondence, report, or notice.

The parties have also been unable to agree on the question of whether the hearing should be delayed pending the resumption of ADAMS accessibility. BREDL respectfully submits that during the period between October 25 (when ADAMS was shut down) and the start of the hearing it is likely that the NRC Staff or licensees other than Duke may generate relevant security-related documents that will not be identified under the Consent Order. BREDL should be given a reasonable opportunity to review ADAMS for such relevant documents and request access to them before the hearing. Therefore, BREDL requests the ASLB to order that the hearing on Contention 5 will not commence until ADAMS has been fully restored for at least two weeks.

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

November 5, 2004

---

<sup>1</sup> Whether or not BREDL is later determined to have a "need to know" with respect to these documents is a separate question that should not be confused with the relevance standard. BREDL is entitled to know of their existence so that it can request access to them.

## CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2004, copies of Motion for Approval of Consent Order Regarding Document Discovery, Consent Order, and Blue Ridge Environmental Defense League's Motion for Imposition of Interim Discovery Measures, Etc. 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)

Timika Shafeek-Horton, Esq.  
Lisa F. Vaughn, Esq.  
Legal Dept. (EC-07H)  
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