

RAS 8972

**HARMON, CURRAN, SPIELBERG & EISENBERG, LLP**

1726 M Street, NW, Suite 600 Washington, DC 20036

(202) 328-3500 (202) 328-6918 fax

December 9, 2004

DOCKETED  
USNRC

Ann Marshall Young, Chair  
Anthony J. Baratta, Administrative Judge  
Thomas S. Elleman, Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

December 10, 2004 (4:45pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

SUBJECT: *Need-to-Know Appeal*

Dear Administrative Judges,

This is to let you know that on behalf of Blue Ridge Environmental Defense League ("BREDL"), I am planning to file an appeal of the NRC Staff's December 3, 2004, adverse need-to-know determination regarding SECY-03-0215, "Insider Threat Mitigation by Licensees."<sup>1</sup> I expect to be able to file the appeal by tomorrow afternoon, after I have had an opportunity to review a relevant discovery document that was not available to me today.

I would like to request that if at all possible, the ASLB make its decision on BREDL's appeal based on the written pleadings rather than holding an oral argument. I believe the issues that will be raised by the appeal are quite straightforward, and can be resolved by the ASLB without need for oral argument. If necessary, the Board can also review the disputed document and make its own judgment.

Moreover, I am very concerned that an oral argument on Monday afternoon will take valuable time away from Dr. Lyman's task of preparing his testimony, which is due next Friday. We would like to ensure that Dr. Lyman has as much opportunity as possible to review discovery documents and prepare his testimony. This process is quite a bit more time-consuming and cumbersome than usual, because we can only review documents at the offices of counsel for Duke and the NRC Staff. In addition, although the Williams deposition and the site tour were very helpful to us in clarifying the issues in the case, they took up two days in which Dr. Lyman otherwise would have been preparing his testimony. At this point, we would like to focus as much time and attention as possible on preparation of Dr. Lyman's testimony.

Therefore, BREDL wishes to waive oral argument on its prospective need-to-know appeal. We request that the ASLB give the NRC Staff an opportunity to reply to

---

<sup>1</sup> BREDL does not intend to appeal the Staff's denial of access to NRC RIS 2002-12-A, "Power Reactors NRC Threat Advisory and Protective Measures Systems."

Template = SECY-043

SECY-02

ASLB Judges  
December 9, 2004  
Page 2

BREDL's appeal in writing, and make its determination based on the pleadings and/or SECY-03-215 itself.

I recognize that the Board may not be in a position to decide whether to forego oral argument until it has had a chance to review BREDL's need-to-know appeal. Therefore, I will make every effort to submit the appeal as early in the afternoon as possible.

I am not aware of any other outstanding issues for which an oral argument is needed.

Thank you very much for your consideration.

Sincerely,

  
Diane Curran

Cc: Service list