

December 15, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

In the Matter of

December 21, 2004 (10:41am)

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)

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S MOTION
TO AMEND PROTECTIVE ORDER**

Blue Ridge Environmental Defense League ("BREDL") hereby moves to further amend the Atomic Safety and Licensing Board's Protective Order Governing Duke Energy Corporation's September 15, 2003, Security Plan Submittal (December 15, 2003), as amended. BREDL seeks an additional amendment to the Protective Order for the sole purpose of allowing BREDL to store exhibits to pre-filed testimony under appropriate protective measures in BREDL's counsel's office between December 17, 2004, and February 4, 2004. This change to the Protective Order is necessary to allow BREDL a sufficient opportunity to review exhibits in preparation for the hearing on January 10-14, 2005, and to prepare proposed findings of fact and conclusions of law.

Factual Background

Under the standing Protective Order in this case, BREDL's attorney and expert may only obtain access to Duke Energy Corporation's Security Plan Submittal and related discovery documents at the offices of Winston & Strawn or the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff. In a recent telephone conference with the ASLB, undersigned counsel for BREDL expressed the wish to be

able to keep any exhibits to the parties' testimony at her office, under appropriate protective measures, so that she and BREDL's expert, Dr. Edwin S. Lyman, could more effectively prepare cross-examination questions and rebuttal testimony for the upcoming hearing. The parties agreed to discuss the matter and see if they could come to an agreement.

On or about December 9 2004, counsel for the Staff, Antonio Fernández, called BREDL's counsel to inform her that in order to be allowed to store the requested safeguards documents at her office, she would have to undergo a two-hour inspection of her office by a member of the NRC Staff. Although counsel for BREDL was concerned that such an inspection would take valuable time away from work with Dr. Lyman on his prefiled testimony, she reasoned that it was very important to be able to participate in the hearing as effectively as possible by getting the NRC Staff's approval to store safeguards exhibits at her office. Therefore, she agreed to an inspection between 8 a.m. and 10 a.m. on December 13, 2004.

Bernard Stapleton, a member of the NRC Staff, came to undersigned counsel's office at 8 a.m. on December 13 and spent a full hour and a half inspecting her filing cabinet and lock, safeguards documents, safeguards document log, computer, and printer. At the end of the inspection, he stated that undersigned counsel's measures for protecting safeguards documents were adequate, and that he would tell his superiors that there was no reason to deny her permission to have the requested exhibits in her office. He said he expected to have his report finished by noon, and that he expected she would hear from the Staff by the end of the day.

Although counsel for BREDL left several telephone messages with the Staff on Monday December 13th and Tuesday December 14th, counsel for the Staff did not contact undersigned counsel for BREDL until late in the afternoon on December 14. In that conversation, Susan Uttal informed undersigned counsel that the Staff was unwilling to agree to allow her to have any safeguards exhibits in her office. The sole reason Ms. Uttal gave was that the Protective Order required that the safeguards documents be kept at the offices of Winston & Strawn or the NRC Staff. She did not explain why the result of Mr. Stapleton's inspection apparently had been overruled or ignored.

Argument

Throughout this proceeding, BREDL has followed the requirement of the Protective Order that all safeguards documents other than pleadings must be reviewed at the offices of Duke or NRC Staff counsel. The process has been cumbersome. Not only must BREDL's counsel and expert travel to Duke's and the Staff's offices to examine documents; but they must either prepare pleadings in Duke's and the Staff's offices, without benefit of all of the reference documents that are kept at their offices; or they must laboriously copy information or commit it to memory so that they can use it when they return to BREDL's counsel's office.

Given the compressed time frame of the upcoming hearing, BREDL is concerned that BREDL's counsel and expert will not be able to do an adequate job of preparing cross-examination questions, rebuttal testimony and proposed findings of fact and conclusions of law if their access to exhibits is restricted to the offices of Duke and NRC Staff counsel. Therefore, BREDL requests leave to store exhibits in a locked file cabinet at the offices of counsel for BREDL, under the requirements of the Protective Order,

between December 17, 2004 (the due date for direct pre-filed testimony), and February 4, 2005 (the due date for reply findings of fact). As Mr. Stapleton concluded, BREDL has provided all measures necessary for the adequate protection of the documents during this limited time period, including adequate security at the entrances to counsel's building and office, regulation-required file cabinet and lock, appropriate computer equipment, and a log of safeguards documents.

BREDL also requests that in entertaining any opposition to this motion that may be filed by the NRC Staff, the ASLB take into account Mr. Stapleton's conclusion, as the Staff's own security expert, that BREDL's counsel has provided adequate measures for the safe storage of safeguards documents.

Finally, BREDL requests that the ASLB find the Staff acted in bad faith by misleading undersigned counsel into believing that Staff would not oppose counsel's request to store safeguards documents at her office if Mr. Stapleton found that she met Staff requirements for safe storage of the documents. BREDL's counsel would never have devoted her limited time to such an inspection had she known that the NRC Staff had no intention of honoring Mr. Stapleton's conclusion. BREDL should not be required to bear the financial costs of the Staff's misleading behavior. Instead, the ASLB should sanction the Staff by ordering it to compensate BREDL for the time undersigned counsel spent preparing for Mr. Stapleton's inspection, undergoing the inspection, and preparing this motion.

Respectfully submitted,



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December 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2004, copies of (a) Blue Ridge Environmental Defense League's Motion for Leave to Reply to NRC Staff's Response to Need-to-Know Appeal, (b) Blue Ridge Environmental Defense League's Reply to NRC Staff's Response to Need-to-Know Appeal, and (c) Blue Ridge Environmental Defense League's Motion to Amend Protective Order were served on the following by e-mail and/or first-class mail, as indicated below.

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