

administrative matters relating to Protected Information in this proceeding. A copy of the required affidavit executed by Ms. John is attached to this motion.²

Respectfully submitted,



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ATTORNEYS FOR DUKE ENERGY
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Dated in Washington, District of Columbia
This 31st day of January, 2005

² Ms. Susan Uttal, counsel for the NRC, indicated no objection to the grant of this motion. Ms. Diane Curran, counsel for BREDL, could not be reached by telephone today.

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Appendix A

NONDISCLOSURE AFFIDAVIT

I, Kelley M. John, being duly sworn, state:

1. As used in this Nondisclosure Affidavit,

(a) "Protected Information" is (1) the September 15, 2003, submittal of Duke Energy Corporation ("Duke") to the NRC, Docket Nos. 50-369, 50-370, 50-413, and 50-414, which includes revision 16 to the Duke Energy Corporation Nuclear Security and Contingency Plan and a related request for exemption from certain NRC requirements in 10 C.F.R. Parts 11 and 73 (the "Security Plan Submittal"), or any supplements or amendments thereto, including Requests for Additional Information ("RAIs") or responses to RAIs relating to that submittal; and (2) any information obtained, developed, or created by virtue of these proceedings, in any form, that is not otherwise a matter of public record and that deals with or describes details of the Security Plan Submittal.

(b) An "Authorized Person" is (i) an employee, consultant or contractor of the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") entitled to access to the Protected Information described herein; (ii) a person authorized to have access under the Atomic Safety and Licensing Board ("Licensing Board") December 15, 2003, Protective Order and who has executed a copy of this affidavit, which has been transmitted to the Licensing Board and Duke Energy Corporation counsel; or (iii) a person employed by or on behalf of Duke and authorized by it in accordance with 10 C.F.R. § 73.21(c)(1) to have access to the Protected Information.

(c) A "Document" means any audio or video tape recording or digital or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the Protective Order issued by the Licensing Board in this proceeding on December 15, 2003, and will comply in all respects with its terms and conditions regarding the Protected Information produced in connection therewith. I will safeguard Protected Information in accordance with the terms of this affidavit.

3. I will not disclose Protected Information to anyone except an Authorized Person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard Documents containing Protected Information in written or recorded form (including any portions of transcripts of *in camera* hearings, filed testimony or any other documents that contain such information), so that the Protected Information contained therein remains at all times under the control of an Authorized Person and is not disclosed to anyone else.

4. I will not reproduce or copy any Protected Information by any means except to the minimum extent necessary consistent with need in accordance with 10 C.F.R. § 73.21(f)(1). I will only destroy Protected Information by methods that assure complete destruction of the Protected Information in accordance with 10 C.F.R. § 73.21(f)(2). I understand that I may take

notes concerning such Protected Information, subject, however, to the terms of this affidavit and the Licensing Board's December 15, 2003, Protective Order. So long as I possess Protected Information, I will continue to take these precautions until further order of the Licensing Board or the Commission.

5. I will safeguard and hold in confidence any data, notes, or copies of Protected Information and all other papers that contain any Protected Information in accordance with 10 C.F.R. Part 73.

(a) Access to the Security Plan Submittal will be at a facility provided for use by designated counsel, representatives, and consultants in (1) a designated Duke facility or (2) an office of the NRC Staff in Rockville, MD. Any such facility is to be located in a controlled access building which is either attended around the clock or locked at night, or as otherwise specified in 10 C.F.R. § 73.2 ("Security Storage Containers").

(b) When not under my direct control or the direct control of another Authorized Person, I will keep and safeguard all Documents containing Protected Information (including, without limitation, any notes that I may take) in a Security Storage Container as defined in 10 C.F.R. 73.2 in a controlled access building that is either attended around the clock or locked at night. Access to the Security Storage Container will be positively controlled by use of keys or other comparable means. Keys and/or knowledge of lock combinations protecting Protected Information shall be limited to Authorized Persons.

(c) Any secretarial or administrative work performed at my request or under my supervision to participate in this case, including preparation of

Documents, will be performed only by personnel authorized pursuant to paragraph B of the Licensing Board's December 15, 2003, Protective Order, who have executed a Nondisclosure Affidavit and agreed to abide by the terms of the order and affidavit.

(d) Protected Information shall not be discussed by telephone or communicated by email or facsimile transmission unless the Protected Information is transmitted through the use of an encryption system that the National Institute of Standards and Technology has validated as conforming either to Federal Information Processing Standard 140-1 or to Federal Information Processing Standard 140-2, or as otherwise acceptable to the NRC.

(e) If Protected Information is processed on or with automated data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored Protected Information. If use of an entry code is not feasible, Protected Information may be processed on, but shall not be stored in, such equipment. Additionally, any such word processing equipment, data processing equipment, or computer that is used to process or store Protected Information shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network (LAN) or Wide Area Network (WAN) or other data-sharing system in accordance with 10 C.F.R. § 73.21(h). Further, if any Protected Information is backed up or stored on a computer hard drive or other device, that drive or device shall be capable of being removed and shall be stored in the security storage container referred to in paragraph 5(b) above, when not in use. If a typewriter is used to process

Protected Information, the ribbon to the typewriter shall be stored and safeguarded as Protected Information in accordance with this affidavit, or promptly destroyed pursuant to 10 C.F. R. § 73.21(f)(2).

(f) Each document that has been determined by the NRC to contain Safeguards Information, as defined in 10 C.F.R. § 73.2, shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of Protected Information, as set forth in 10 C.F.R. § 73.21(e).

(g) To the extent any portion of the Security Plan Submittal is determined not to constitute Safeguards Information, and is readily segregable from Safeguards Information, paragraphs 5(a), 5(b), 5(d), and 5(e) shall not apply to such portions of the Protected Information that is not Safeguards Information. All other conditions and limitations of this Nondisclosure Affidavit shall continue to apply to any such information. Additionally, the parties shall comply with Section H. (1), (2), and (3) and Section I of the Protective Order in transmitting pleadings and correspondence containing or referring to these portions of the Security Plan Submittal.

6. I shall use Protected Information only for the purpose of preparation for any proceedings in this case dealing with Duke's Security Plan Submittal, and for no other purpose.

7. I shall keep a record of all Documents containing Protected Information in my possession, including any copies of those Documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding, I shall account to the Licensing Board or the Commission, or to a Commission employee designated by the Board or the Commission, for all the Documents or other materials containing Protected Information in my possession and

deliver them as provided herein. When I have finished using the Protected Information they contain, but in no event later than the conclusion of this proceeding (including any related Commission or judicial appeals), I shall deliver those Documents and materials for disposal or safekeeping, as may be determined to be appropriate by the Licensing Board or the Commission, to (a) the Licensing Board or the Commission, (b) a Commission employee designated by the Licensing Board or the Commission, or (c) a person authorized to receive Protected Information on behalf of Duke.

8. I make this agreement with the following understandings:

(a) I do not waive any objections that any other person may have to executing an affidavit such as this one;

(b) I do not waive any objections that I may have or raise at a subsequent time in this proceeding, concerning a consultant's qualifications to testify concerning security plan issues; and

(c) I will not publicly discuss or disclose any Protected Information that I receive by virtue of this proceeding, and will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using Protected Information, or my knowledge thereof, gained through the hearing process.

9. I acknowledge that any violation of the terms of this Nondisclosure Affidavit or the Licensing Board's December 15, 2003, Protective Order, which incorporates the terms of this affidavit, may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate disciplinary authorities. I further acknowledge that any unauthorized disclosure of Protected Information or breach of the Protective Order issued in this proceeding may be grounds for

damages or injunctive relief from state or federal courts or for the imposition of civil and/or criminal penalties by the NRC, as set forth in 10 C.F.R. § 2.744(e) and sections 223 and 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2273, 2282.

WHEREFORE,

I do solemnly agree to safeguard such Protected Information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

Kenny M. John
(Name)

Subscribed to and sworn before me
this 31st day of January, 2005

Valerie T. Beverly
Notary Public

My commission expires My Commission Expires April 14, 2007
VALERIE T. BEVERLY
Notary Public District of Columbia