

**RAS 9535**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION    **DOCKETED 03/10/05**

ATOMIC SAFETY AND LICENSING BOARD PANEL

**SERVED 03/10/05**

Before Administrative Judges:

Ann Marshall Young, Chair  
Anthony J. Baratta  
Thomas S. Elleman

In the Matter of

DUKE ENERGY CORPORATION

(Catawba Nuclear Station, Units 1 and 2)

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

ASLBP No. 03-815-03-OLA

March 10, 2005

**NOTICE of FINAL PARTIAL INITIAL DECISION**  
**(Issues Relating to BREDL Security Contention 5)**

The Licensing Board in this proceeding — involving Duke Energy Corporation's application to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) fuel lead test assemblies at the station, and related request for exemption from certain NRC security regulations, and Petitioner Blue Ridge Environmental Defense League's challenge to the application and exemptions in a contention earlier admitted for litigation in this proceeding — hereby gives notice that today it issued a Final Partial Initial Decision in the matter, resolving the last remaining issues before us for our consideration.

After considering the parties' evidence and argument on the matters at issue, we find, subject to Duke's fulfillment of certain conditions described in today's decision, that Duke has met its burden of showing by a preponderance of the evidence that its requested exemptions from the requirements of 10 C.F.R. Parts 11 and 73 are appropriate under 10 C.F.R. §§ 11.9 and 73.5, and that its physical protection system, with the requested exemptions, will, during the time MOX fuel at Catawba would be subject to certain security requirements as strategic

special nuclear material (SSNM), provide high assurance that activities involving the MOX fuel will not be inimical to the common defense and security nor constitute an unreasonable risk to the public health and safety, as required at 10 C.F.R. § 73.20(a).<sup>1</sup>

The Board also in its decision rules on three pending matters, two involving evidentiary questions remaining at the conclusion of the January 11-14, 2005, hearing in this matter, and one involving a BREDL motion to reopen the record in the proceeding in order to consider certain additional evidence.

The Board's decision is sealed and is not being made public at this time because it contains Safeguards information, i.e.,

. . . information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

10 C.F.R. § 73.2; see also 10 C.F.R. § 73.21. The Board plans in the near future, after consultation with the parties, to issue a redacted version of the decision, making public appropriate portions thereof.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 10, 2005<sup>2</sup>

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<sup>1</sup>The requirements of Section 73.20 are applicable to any licensee that "possesses or uses formula quantities of [SSNM]." Section 73.2 defines "[s]trategic special nuclear material" as "uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium"; and "[f]ormula quantity" as strategic special nuclear material in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium)."

<sup>2</sup>Copies of this document were sent this date by internet e-mail to counsel for all parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF FINAL INITIAL DECISION (ISSUES RELATING TO BREDL SECURITY CONTENTION 5) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-413-OLA and 50-414-OLA  
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(ISSUES RELATING TO BREDL  
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[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 10<sup>th</sup> day of March 2005