

May 13, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

May 18, 2005 (3:15pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
DUKE ENERGY CORPORATION)
)
(Catawba Nuclear Station,)
Units 1 and 2))
)
)
)

Docket Nos. 50-413-OLA
50-414-OLA

DUKE ENERGY CORPORATION'S OPPOSITION TO BLUE RIDGE ENVIRONMENTAL
DEFENSE LEAGUE'S MOTION TO EXCEED PAGE LIMITATION

On May 6, 2005, Blue Ridge Environmental Defense League ("BREDL") filed a 14-page reply brief addressing the question raised by the Commission in its Memorandum and Order, CLI-05-10, dated April 21, 2005. Because reply briefs were expressly limited to 10 pages, BREDL included with its reply a Motion to exceed the page limit.¹ BREDL's request, however, is completely unjustified and Duke Energy Corporation ("Duke") opposes the Motion. In effect, BREDL has reversed the traditional order of briefing — leaving its principal arguments on the matter raised by the Commission to its reply brief, thereby depriving Duke and the NRC Staff of a legitimate opportunity for a direct reply.

BREDL's primary basis for its Motion is that BREDL somehow could not, in its initial brief, anticipate Duke's and the NRC Staff's merits-based arguments on the necessity of the license conditions, and cannot now contain a response within ten pages in reply. Motion, at

¹ "Blue Ridge Environmental Defense League's Motion to Exceed Page Limitation," dated May 6, 2005 ("Motion").

1-2. This argument is sheer rhetoric. In fact, the issues raised by CLI-05-10 were clear from the outset and should have been addressed on the briefing schedule (and within the ample page limits) established by the Commission. BREDL's related argument that — absent the relief requested — it would be denied a "reasonable and fair" opportunity to be heard is also baseless.² BREDL simply squandered the opportunity provided by the Commission.³

The Atomic Safety and Licensing Appeal Board has pointed out, in denying requests for enlargement of the page limit on appellate briefs, that NRC tribunals "expect advocates to cull the issues and arguments to be pursued on appeal." "Equally important," emphasized the Appeal Board, "the number of pages contained in . . . appellate briefs does not bear any necessary relationship to the substance of the issues raised."⁴ In analogous situations,

² BREDL cites *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979) to support its claim that a longer brief is necessary. That case involved review of the licensing board's ruling that petitioners to intervene would not be allowed to present oral arguments (to supplement their written positions) on their proposed contentions at a prehearing conference, except to respond to questions. (There were "well over fifty" intervention petitions pending.) The Appeal Board commented that the "cardinal rule" of fairness is that "each side must be heard," and expressed concern that the petitioners would not be "heard" sufficiently by filing proposed contentions. *Id.*, at 524. Obviously, the posture of this case and the equities of BREDL's position are completely different than those in *Allen's Creek*, and BREDL's rote citation adds nothing to its argument.

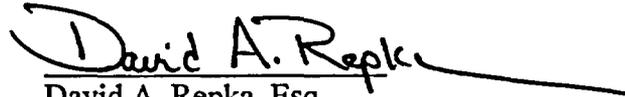
³ See *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-115, 6 AEC 257 (1973) (Appeal Board refused to accept a supplemental submission — which it viewed as a "post-argument brief" — filed after the Appeal Board had heard oral argument on exceptions to the licensing board's initial decision. Even if intervenors had included the necessary motion for permission to file, noted the Appeal Board, it was "far from clear" that the motion would have been granted because petitioners failed to show "good reasons" why the substance of the submission could not have been furnished to the tribunal in a more timely fashion.).

⁴ *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-827, 23 NRC 9, 11 (1986) (Appeal Board denied intervenors' request for "further enlargement of the page limit" in their appeal from a licensing board decision on emergency planning issues, after it had previously granted an earlier request).

NRC tribunals have also exercised their discretion to discount or strike parties' supplemental briefs when such submittals have not been requested or where (as here) those submittals did not otherwise meet the tribunal's specifications and were not "of particular value" in the disposition of the proceeding.⁵

For these reasons, the Motion should be denied.

Respectfully submitted,



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Dated in Washington, District of Columbia
This 13th day of May, 2005

⁵ See *Consumers Power Co. (Big Rock Point Nuclear Plant)*, ALAB-636, 13 NRC 312, 321-22 (1981) (Appeal Board struck from the record as impermissible a "supplemental argument" submitted after oral argument).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "DUKE ENERGY CORPORATION'S OPPOSITION TO BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S MOTION TO EXCEED PAGE LIMITATION" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 13th day of May, 2005. Additional e-mail service, designated by *, has been made this same day, as shown below.

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