

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Dockets No. 52-018, 52-019
Duke Energy Carolinas)	
Combined License Application)	October 10, 2011
For William States Lee III Units 1 and 2)	
)	
)	

INTERVENOR’S REPLY TO DUKE ENERGY MOTION TO STRIKE

Pursuant to 10 C.F.R. § 2.323, the Blue Ridge Environmental Defense League (øIntervenorö) hereby replies to Duke Energy’s Motion to Strike (øMotionö).¹ Two issues raised by Duke are addressed herein: 1) Timeliness and 2) Scope.

Timeliness

The Intervenor’s Reply² in question was indeed filed on September 19, 2011. However, there is good cause for allowing the Reply. First, although Intervenor’s filing was late, it was clearly submitted as such. The Certificate of Service reflected this in red lettering across the title. Second, the Intervenor had no knowledge that the VeriSign electronic signature was no longer valid until after business hours on September 13, 2011. This was not a lack of diligence on the part of the Intervenor; in fact, the computer used to file the Reply indicated that the Intervenor’s signature was valid. The only explanation for this may be that because the Intervenor had recently installed a new computer and transferred the electronic signature along with other files, it was

¹ Deadline for response ten days after øDuke Energy’s Motion to Strikeö was Saturday, October 8, 2011. Intervenor’s Reply is filed Monday, October 10th, the next business day.

² øIntervenor’s Memorandum in Reply to Oppositions to Admission of New Contention,ö dated September 13, 2011 and filed September 19, 2011, hereinafter øIntervenor’s Replyö).

invalidated. Third, Intervenor contacted the NRC the next day, September 14, and steps were initiated to install a new certificate. Intervenor sent an email³ reflecting this to the NRC Secretary, Office of General Counsel, and Appellate Adjudication. During the next two days, the NRC technical staff did succeed in getting a new certificate installed for the Intervenor, but not before late in the afternoon on Friday, September 16. The Reply was filed the next business day, Monday, September 19. Fourth, during this whole episode, the *pro se* legal representative for the Intervenor was taking care of his wife who has recently been diagnosed with lung cancer. This care included chemotherapy, requiring him to take frequent trips to the hospital and pharmacy in a town 25 miles from home. Legally blind, his wife has requires assistance with many daily tasks, and the side effects of chemotherapy disrupted sleep patterns and meal preparation for both persons.

³ **From:** bredl
Sent: Wednesday, September 14, 2011 3:39 PM
To: hearing.docket@nrc.gov
Cc: NRC Appellate Adjudication ; NRC Office of the Secretary ; NRC OGC ; NRC Secretary
Subject: Urgent Request for new digital ID

TO: NRC Hearing Docket
FROM: Louis A. Zeller
RE: Digital ID
DATE: September 14, 2011
CC: Appellate Adjudication, Office of the Secretary, OGC

I write to request a new digital ID certificate. I learned of the failure of my existing account yesterday, September 13th, when I attempted without success to file documents in the following dockets: 52-018, 52-019, 52-025, 52-026, 52-017, 52-014 and 52-015. My digital ID has not expired; all indications from my desktop show my VeriSign ID to be working properly. However, I called the help desk today and learned that my recent installation of a new computer may be the cause of the failure. I am working to correct this today. Please contact me as soon as possible.

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Founded in 1984, [BREDL also has offices in Roanoke, Virginia; Graham and Raleigh, North Carolina; and Augusta, Georgia.](#)

NRC rules of procedure have no provision for *pro se* intervenors, even those who have no family obligations. NRC's practices and procedures most often find the NRC Staff taking positions against intervenors, and *pro se* intervenors are no exception. In fact, Duke's Motion to Strike is supported by the NRC staff. The legal maxim here is *Impossibile nulla obligatio est*. The law compels no man to impossible things. Intervenor's filed in accord with the Board's direction, albeit in an untimely fashion, contacted NRC as soon as possible, and served the parties.

Scope

Intervenor's Reply was predicated on Intervenor's "Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report," and supporting declarations submitted on August 11, 2011 ("Intervenor's Contention").

In its move to strike, Duke states, "The Commission has squarely ruled that a reply to an answer may not be used to add new bases for or supplement an otherwise deficient contention." Motion at 2. However, Intervenor presented neither "entirely new arguments" nor "various new claims." *Id.* The reply is clearly based upon the Intervenor's Contention, *viz.*: "As stated in BREDL's August 11 motion, the ER is incomplete regarding this geological and environmental phenomenon. On July 12th, the NRC Task Force recommended that licensees reevaluate flooding and seismic hazards. This specific recommendation and order would presumably include Duke and the Lee plant. This is the nexus of the BREDL contention's timeliness and relevance to the extant proceeding." Intervenor's Reply at 2 (emphasis added). The point of the

contention is that the NRC Task Force recommendation for licensees to reevaluate seismic and flooding hazards applies to Duke.

Further, in citing *Palisades*⁴, Duke cites Commission precedent which is not analogous to and therefore misapplied to this case. In 2006, upholding the order of the Atomic Safety and Licensing Board, the Commission stated: “Unlike their proposed Contention 1, Petitioners’ Combined Reply included citations to documents and disputed portions of the application.” CLI-06-17 at 4 (emphasis added). As opposed to *Palisades*, Intervenor’s Reply cited to documents which had already been put forth in the proposed contention and declarations.

As noted above, Intervenor filed this action *pro se*. In such cases, there is a differential which this Board may apply: “An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims.” *Forshey v. Principi*, 284 F.3d 1335, 1354-55 (Fed. Cir. 2002). In such administrative law situations involving *pro se* representatives, the courts have repeatedly used a more liberal, less demanding standard in the interest of fairness.

Conclusion

Intervenor opposes Duke’s Motion to Strike and respectfully request that the contentions be admitted by the Board so that a hearing can be held.

Respectfully,

_____ signed electronically _____
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October 10, 2011

⁴ *Palisades*, CLI-06-17, 63 N.R.C. at 732

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Signed in Glendale Springs,
October 10, 2011

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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