

## ATOMIC SAFETY AND LICENSING BOARD PANEL

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

November 10, 2004

ORDER(Approving Proposed Agreed Consent Order)

By letter dated October 25, 2004, counsel for the Staff of the U.S. Nuclear Regulatory Commission ("NRC") notified the Atomic Safety and Licensing Board ("ASLB") and the parties to this proceeding<sup>1</sup> that the Staff has blocked public access to the NRC's Agencywide

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<sup>1</sup>This proceeding involves Duke's February 2003 application to amend the operating license for its Catawba Nuclear Station to allow the use of four mixed oxide (MOX) lead test assemblies at the station, as part of the U.S.-Russian Federation nuclear nonproliferation program to dispose of surplus plutonium from nuclear weapons by converting it into MOX fuel to be used in nuclear reactors. Letter from M.S. Tuckman, Executive Vice President, Duke Power, to NRC (Feb. 27, 2003). In memoranda and orders dated March 5 and April 12, 2004 (the latter sealed as Safeguards Information (SGI); redacted version issued May 28, 2004), the Licensing Board granted BREDL's request for hearing and admitted various non-security-related and security-related contentions. LBP-04-4, 59 NRC 129 (2004); LBP-04-10, 59 NRC 296 (2004); see also LBP-04-7, 59 NRC 259 (2004) (dismissing one contention admitted in LBP-04-4, on grounds of mootness); LBP-04-12, 59 NRC 388 (2004) (permitting Intervenor to utilize certain additional information in litigation of contention admitted in LBP-04-10). An evidentiary hearing has already been held on the one remaining non-security-related contention in the proceeding. Tr. 2072-2708.

The matters addressed herein relate to the one admitted security contention of BREDL, Security Contention 5, which concerns a number of exemptions Duke seeks, as part of its application, from certain regulatory requirements found in 10 C.F.R. Part 73 for the physical protection of formula quantities of special nuclear material. The contention in question, in the form we admitted it in LBP-04-10, states:

Duke has failed to show, under 10 C.F.R. §§ 11.9 and 73.5, that the requested exemptions from 10 C.F.R. § 73.46, subsections (c)(1); (h)(3) and (b)(3)–(12); and (d)(9) are authorized by law, will not constitute an undue risk to the common defense and security, and otherwise would be consistent with law and in the public interest. LBP-04-10, 59 NRC at 352.

Document Access and Management System (“ADAMS”) “related to, among other things, this proceeding.” As further clarified on the NRC’s website, [www.nrc.com](http://www.nrc.com), ADAMS has been rendered completely inaccessible to the public. Therefore, for an undetermined period of time, it will not be possible for any party, including Duke Energy Corporation (“Duke”), the Applicant in this proceeding, or Blue Ridge Environmental Defense League (“BREDL”), the Intervenor in this proceeding, to use ADAMS to identify or retrieve correspondence, reports, or other documents from that system.

As a result, the parties have filed a joint Motion for Approval of Consent Order Regarding Document Discovery,<sup>2</sup> pursuant to which Duke and the NRC Staff have agreed to take the following measures:

(a) Duke and the NRC Staff shall continue to send BREDL’s counsel copies of their outgoing correspondence that relates to the license amendment request. If the correspondence has an attachment that clearly is relevant to BREDL Security Contention 5 but does not contain Safeguards Information, Classified Information, or Official Use Only information, the attachment shall be included.

(b) Duke and the NRC Staff shall continue to send BREDL’s counsel copies of their outgoing correspondence between them that relates to security at the Catawba Nuclear Station, including generic correspondence that the Staff sends to Duke. If the correspondence has an attachment that clearly is relevant to Contention 5 but does not contain Safeguards Information, Classified Information, or Official Use Only information the attachment shall be included.

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<sup>2</sup>See Motion for Approval of Consent Order Regarding Document Discovery, and attached Consent Order (Nov. 5, 2004), filed by BREDL counsel on behalf of all parties.

BREDL agrees that it will make timely requests for need-to-know determinations regarding any Safeguards or Classified documents that are identified through the above-listed measures.

These measures shall be binding on the parties until the issuance of a final Commission decision relating to Security Contention 5 or until one week after ADAMS is restored, whichever date is sooner.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>3</sup>

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Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

*/RA/*

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Anthony J. Baratta  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 10, 2004<sup>4</sup>

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<sup>3</sup>Judge Elleman was not available to sign or approve signing of this order, but was, prior to becoming unavailable, in agreement with the action taken herein by the quorum of the board consisting of Judges Young and Baratta.

<sup>4</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

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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 ORDER (APPROVING PROPOSED AGREED CONSENT ORDER) 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  
LB ORDER (APPROVING PROPOSED AGREED  
CONSENT ORDER)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 10<sup>th</sup> day of November 2004