

RAS 8974

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**DOCKETED 12/13/04
SERVED 12/13/04**

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

December 13, 2004

ORDER

(Cancelling December 13, 2004, Closed Session)

Based on the agreement of all parties in this proceeding¹ a closed session previously scheduled for December 13, 2004, is hereby CANCELLED.

¹This 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.

In addition, with regard to a December 10, 2004, BREDL appeal of a December 3, 2004, Staff need-to-know determination, the Staff, and Duke, if it so wishes, shall file a response by 12:00 noon on Wednesday, December 15, 2004. Any reply shall be filed no later than 12:00 noon Thursday, December 16, 2004. During an informal telephone conference held December 9, 2004, to address the need for the December 13 closed session, all parties waived oral argument on BREDL's appeal.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 13, 2004²

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

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NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CANCELLING DECEMBER 13, 2004, CLOSED SESSION) 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 (CANCELLING DECEMBER 13, 2004,
CLOSED SESSION)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of December 2004