

# WINSTON & STRAWN LLP

Washington, DC

1400 L STREET, N.W., WASHINGTON DC 20005-3502  
202-371-5700

35 W. WACKER DRIVE  
CHICAGO IL 60601-9703  
312-558-5600

200 PARK AVENUE  
NEW YORK, NY 10166-4193  
212-294-6700

36TH FLOOR, 333 SOUTH GRAND AVE  
LOS ANGELES, CA 90071-1543  
213-615-1700

101 CALIFORNIA STREET  
SAN FRANCISCO CA 94111-5694  
415-591-1000

43 RUE DU RHONE  
1204 GENEVA, SWITZERLAND  
41-22-317-75-75

21 AVENUE VICTOR HUGO  
75116 PARIS, FRANCE  
33-1-53-64-82-82

BUCKLEBURY HOUSE  
3 QUEEN VICTORIA STREET  
LONDON, ENGLAND EC4N 8NH  
44-20-7429-0000

December 6, 2004

DOCKETED  
USNRC

## VIA ELECTRONIC MAIL

December 14, 2004 (12:52pm)

Annette Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20005

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**Re: In the Matter of Duke Energy Corporation  
Catawba Nuclear Station, Units 1 and 2  
Docket Nos. 50-413-OLA, 50-414-OLA**

Dear Ms. Cook:

This letter provides additional information that Duke Energy Corporation ("Duke") considers directly pertinent to an important matter pending before the Commission. On October 28, 2004, Duke Energy Corporation ("Duke") filed a response to Blue Ridge Environmental Defense League's ("BREDL") motion for reconsideration of CLI-04-29 in the captioned matter. In Section D of that response, Duke asked the Commission to provide further specific guidance on the design basis threat ("DBT") to be utilized in the ongoing proceeding relating to the licensing of mixed oxide lead assemblies. As a basis for this request, Duke stated:

[A]s this proceeding has unfolded, it has become increasingly clear to Duke that the Commission must set the specific adversary characteristics that make up the DBT for theft and diversion to be applied to Catawba during the interim between receipt of the MOX fuel assemblies at the site and insertion of these assemblies into the reactor. It is untenable for Duke, a private entity, to address that issue. Moreover, the Licensing Board - which is not privy to classified threat information - cannot reasonably be left to make significant policy determinations on security in an individual case.

Duke further recommended that, in addressing the matter before it, the Commission should be more specific as to the DBT to assure an efficient and timely resolution of this case:

Annette Vietti-Cook  
December 6, 2004  
Page 2

Duke recommends, however, that in addressing the current Motion, the Commission be even more specific to assure an efficient and timely resolution of this case. The Commission can and should weigh the relevant factors and state any specific changes (the "increment") from the 10 C.F.R. Part 50 DBT for radiological sabotage that will apply to Catawba, including any changes with respect to the number of attackers, the weaponry to be utilized, and the role of insider assistance. Duke maintains that the applicable Part 50 DBT and relevant Staff positions should apply.

On December 3, 2004, BREDL filed three supplemental discovery responses which set forth the size and other attributes of the DBT it would have the Atomic Safety and Licensing Board consider in this proceeding. These responses, which are filed on the docket but involve Safeguards Information, are directly relevant to and illustrate the importance of defining an appropriate DBT. Duke believes BREDL's filings provide even more impetus for the Commission to act on Duke's request for supervisory guidance.

The Commission is undoubtedly aware that a timely ruling in this case is needed to enable loading the four MOX fuel lead assemblies in Catawba this spring, thereby avoiding a one year delay in the qualification of MOX fuel for the plutonium disposition program. Duke respectfully requests that the Commission review the BREDL supplemental discovery responses and consider them in its deliberation on the pending motion.

Sincerely,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive, slightly slanted style. A horizontal line extends from the end of the signature to the right.

David A. Repka  
Counsel for Duke Energy Corporation

cc: Service List

DAR/kmj