

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter Lyons

In the Matter of)
)

DUKE ENERGY CORPORATION)

(Catawba Nuclear Station,)
Units 1 and 2))

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

CLI-05-10

MEMORANDUM AND ORDER

This proceeding arises from Duke Energy Corporation's application for a license amendment to authorize the use of four lead test assemblies of mixed oxide (MOX) fuel in one of its Catawba nuclear reactors. On March 10, 2005, the Licensing Board issued its final partial initial decision¹ on the security contention brought by the Blue Ridge Environmental Defense League ("BREDL") to challenge certain exemptions Duke Energy Corporation sought for its Catawba facility during testing of MOX assemblies. Because it contains safeguards information, the order has not been made public. The Board did, however, issue a public notice of the decision, indicating that, *subject to certain conditions*, Duke had met its burden to show that its requested exemptions from the requirements of 10 C.F.R. Parts 11 and 73 are appropriate and that its physical protection system will "provide high assurance that activities involving the MOX

¹ See *Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2)*, unpublished "Final Partial Initial Decision (Issues Relating to BREDL Security Contention 5)" (Mar. 10, 2005).

fuel will not be inimical to the common defense and security nor constitute an unreasonable risk to the public health and safety.”²

The March 10 order was the Board’s final order in this case, and none of the parties sought review of it. Nevertheless, the Commission has decided to review the Board’s order pursuant to 10 C.F.R. § 2.786(a).³ Before proceeding further, the Commission specifically requests the parties to brief the issue of the necessity of the conditions the Board imposed for purposes of receipt of the MOX lead test assemblies.

The briefs should not exceed 25 pages and should be filed for receipt by the Commission by close of business on May 2, 2005. Parties may file reply briefs, limited to 10 pages and consisting only of rebuttal, for receipt by the Commission by May 9, 2005. The parties are reminded of the importance of compliance with the procedures regarding submission of safeguards information.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of April, 2005.

²See “Notice of Final Partial Initial Decision (Issues Relating to BREDL Security Contention 5)” (Mar. 10, 2005).

³The Commission’s new adjudicatory rules do not apply to this case, which began before their promulgation. See Final Rule: “Changes to Adjudicatory Process,” 69 Fed. Reg. 2182 (Jan. 14, 2004).