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Title: Duke Energy Corporation: McGuire Nuclear Station Units 1 & 2; Catawba Nuclear Station Units 1 & 2 - Teleconference

Docket Number: 50-413-LR, 50-414-LR, 50-369-LR, 50-370-LR

Location: (Telephone Conference)

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 LICENSING RENEWAL

6 TELEPHONE CONFERENCE ON MOTION FOR EXTENSION

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9 In the matter of : Docket Nos

10 DUKE ENERGY CORPORATION : 50-413-LR

11 (McGuire Nuclear Station, : 50-414-LR

12 Units 1 & 2, Catawba Nuclear : 50-369-LR

13 Station, Units 1 & 2 : 50-370-LR

14 ----------x

15 Wednesday,

16 November 7, 2001

17

18 The above-entitled matter came on for hearing,

19 pursuant to notice, at 9:30 a.m.

20 BEFORE:

21 THE HONORABLE ANN MARSHALL YOUNG, Chair

22 THE HONORABLE CHARLES N. KELBER

23 THE HONORABLE LESTER S. RUBENSTEIN

24

25

1 APPEARANCES:

2 On Behalf of the Intervenor:

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1 On Behalf of the Blue Ridge Environmental
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13 of: U.S. Nuclear Regulatory Commission
14 Washington, D.C. 20555-0001
15
16 ALSO PRESENT:
17 BOB GILL, Duke Energy Corp.
18 BILL MILLER, Duke Energy Corp.
19
20
21
22
23
24
25

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:42 a.m.)

3 JUDGE YOUNG: Just for the record we have
4 Paul Gunter and Mary Olson present on behalf of
5 Nuclear Information Resource Service; David Repka,
6 Bill Miller, Bob Gill -- none of you are lawyers,
7 correct, but Lisa Vaughn is a lawyer, right?
8 MR. GILL: Yes ma'am, that's correct and
9 Lisa is here now too. I'm a licensing engineering.
10 I'm a licenser on the project and Bill Miller is an
11 environmental engineer.
12 JUDGE YOUNG: Okay, and then Susan Uttal
13 is present on behalf of the staff. Is there anyone
14 else present with you?
15 MS. UTTAL: Yes, Your Honor. Antonio
16 Fernandez, an attorney with OGC is with me.
17 JUDGE YOUNG: Okay. Right now, just for
18 the record I want to summarize our discussion before
19 we went on the record and that was that I asked Mr.
20 Gunter and Ms. Olson whether they had had any contact
21 with Blue Ridge Environmental Defense League or Ms.
22 Zeller and Ms. Olson said that she had had written
23 interactions, I believe, but not verbal ones, that she
24 had suggested that Mr. Moniak file a Notice of
25 Appearance. Her understanding was that Ms. Zeller was

1 out of town. Ms. Olson said that based on their
2 communications the Blue Ridge Environmental Defense
3 League was aware that they were expected to meet
4 deadlines in this case and I think I noted that the
5 order of October 31st was served on them.
6 Since Ms. Zeller is apparently out of town
7 we -- I suggested and Ms. Olson agreed to see if she
8 could contact Mr. Moniak to see if he could take part
9 in this telephone conference.
10 Have I left anything out?
11 (No response.)
12 And she will get back on the line with us
13 in a moment and we'll continue.
14 MR. MONIAK: This is Don Moniak from Blue
15 Ridge Environmental Defense League.
16 JUDGE YOUNG: Very good. And Ms. Olson
17 are you back there?
18 MR. MONIAK: And I appreciate the effort.
19 JUDGE YOUNG: Okay. And I'm assuming Ms.
20 Zeller has authorized you to be present on behalf of
21 --
22 MR. MONIAK: Yes, I was just filing my
23 Notice of Appearance, just working on it actually.
24 JUDGE YOUNG: Okay.
25 MR. MONIAK: Finally.

1 MS. OLSON: I have returned also.

2 JUDGE YOUNG: Okay, very good. This
3 conference was set to really discuss the facts of the
4 case and talk about the progress that all participants
5 have made in trying to obtain and/or provide access
6 documents that the Petitioners need to prepare their
7 contentions and bases. And for the record, yesterday
8 Mr. Gunter filed an affidavit of David Lochbaum and
9 this morning filed his own affidavit and I don't think
10 anything else has been filed other than Mr. Gunter's
11 Notice of Appearance.

12 You can proceed in the order in which you
13 have raised the issues or in any order which would
14 make best sense for all of you. I think what Judge
15 Kelber and Judge Rubenstein and I want to hear from
16 you is a very practical and specific accounting from
17 all sides of efforts have been made at this point
18 which they have been successful and the degree to
19 which if they have been successful, a specific
20 recounting of that.

21 So since NIRS, for the court reporter,
22 that's N-I-R-S, all caps, has filed these two
23 affidavits, I presume you may have some problem that
24 you want to describe to us, but before we get to that
25 why don't you tell us what you have done and have you

1 been able to get access to.

2 MR. GUNTER: Thank you, Your Honor. This

3 is Paul Gunter. I'm Director of the Reactor Watchdog

4 Project and I have been assisting Mary Olson, my

5 colleague, in preparation. I am under some

6 restrictions with regard to my contribution because of

7 caring leave, but basically our concerns arise out of

8 the extraordinary circumstances resulting from the

9 information restrictions beginning -- well, actually

10 prior to October 10th when the website was shut down.

11 JUDGE YOUNG: Mr. Gunter?

12 MR. GUNTER: Yes ma'am.

13 JUDGE YOUNG: Let me interrupt you here.

14 You weren't here with us last time.

15 MR. GUNTER: Yes ma'am.

16 JUDGE YOUNG: But we did discuss that

17 whole issue last time and to the degree we need to

18 again, we will, but I don't want to start out with

19 that.

20 MR. GUNTER: Okay.

21 JUDGE YOUNG: The way we left it was that

22 because of the unavailability of the website, we

23 granted a 3-week extension and the first thing we want

24 to hear, not just from the Petitioners, but also from

25 the staff and the Applicant is what efforts have been

1 made since our last conference on obtaining documents
2 and information and from the staff and the Applicant
3 standpoint on providing those. We've encouraged the
4 parties, the participants to work together and
5 cooperate to try to make this go more smoothly and
6 deal with the obvious problems presented by the
7 website being taken down. But as I said, that
8 extension has been granted, so we want to hear
9 practical, specific recounting of what has happened.
10 MS. OLSON: Your Honor, this is Mary Olson
11 and perhaps I should preface what Paul has to say
12 because I think we still come down to the daily event
13 reports and the inspection manuals as being key, but
14 I would like to notice and appreciate the fact that I
15 have been able to get on ADAMS. I have been able to
16 access key documents like the Generic Aging Lessons
17 Learned document that we were discussing last week and
18 some of the other --
19 JUDGE YOUNG: You just said "General
20 Aging" --
21 MS. OLSON: Lessons Learned.
22 JUDGE YOUNG: Lessons Learned.
23 MS. OLSON: Otherwise known as GALL.
24 JUDGE YOUNG: Right, okay.
25 MS. OLSON: And some of the other

1 supporting materials, NUREGs and such, so I concur
2 that there is access to a range of documents that when
3 ADAMS was unaccessible to me were not available and
4 although I must also comment, however, that the link
5 off of the NRC webpage to ADAMS, even though it's
6 there, has not been working for most of this time
7 since our last call. So although I got another way in
8 finally, the general public perhaps doesn't know how
9 to do that and still doesn't have access. And I think
10 that's important to note.
11 But I know we're concentrating on
12 ourselves and the final thing I would just like to add
13 before I stop is I appreciate the call from Winston
14 and Strawn yesterday and I regret deeply that I didn't
15 manage to call back. I had said I needed to speak to
16 them after talking to Paul Gunter. You're dealing
17 with actually two new categories here and I had an
18 unforeseeable event in my family yesterday and never
19 did return the call during business hours and I
20 appreciate that they took the initiative to contact us
21 and so we are having the conversation here and I again
22 apologize that I did not have the time yesterday to
23 return that call.
24 JUDGE YOUNG: As I understood what you
25 said you have gotten the GALL report. You have gotten

1 access to some NUREGs. The two categories of
2 materials that you have not gotten access to are the
3 daily event reports and some inspection manuals.
4 Were there any other?
5 MS. OLSON: Yes, and I think I'll leave
6 this to Paul Gunter to speak to if you're ready for
7 that portion.
8 MR. GUNTER: Well, basically we have our
9 declaration focuses on the daily event reports and as
10 Mr. Lochbaum has identified, again the daily event
11 reports, the inspection manuals and various generic
12 correspondence which were formally up on the website
13 which remains a handicap to us. I think that's in
14 brief.
15 JUDGE YOUNG: Okay, so in addition to the
16 daily event reports and the inspection manuals, you
17 refer to various correspondence. Can you -- the NRC
18 bulletins in Mr. Lochbaum's affidavit or declaration,
19 NRC bulletins, circulars and information previously
20 available on the website, but not presently available.
21 And I think he refers to 1000 notices between June
22 1985 and April 1998. Those were previously on the
23 website?
24 MS. OLSON: Yes.
25 ARBITRATOR BUTLER: All right now, what

1 effort was made to obtain -- we have three categories
2 of material now. That's all that you are wanting, but
3 do not have, correct?
4 MS. OLSON: Correct.
5 ARBITRATOR BUTLER: And what efforts have
6 you made to obtain those three types?
7 MS. OLSON: This is Mary Olson. I
8 established through the PDR librarians that, in fact,
9 the daily event reports were not available to me
10 through them.
11 JUDGE YOUNG: What about -- you said you
12 did get a call from Winston and Strawn and you were
13 not able to return it.
14 Mr. Repka, why don't you share with us, if
15 you -- unless it's somehow -- why don't you just share
16 with us what your communication was to have been?
17 MR. REPKA: Okay, Judge Young, I should
18 point out that with me is Ann Cunningham in my office.
19 JUDGE YOUNG: Thank you.
20 MR. REPKA: Yesterday, Ms. Cunningham did
21 call Ms. Olson as she alluded to and spoke with her
22 and basically asked whether there were any Duke-
23 specific documents that NIRS had identified in which
24 they needed our assistance to get access to. And the
25 response was noncommittal. So no documents were

1 identified at that time.

2 JUDGE KELBER: Not even the daily event

3 reports?

4 MR. REPKA: No sir. But with respect to

5 the daily event reports, those are not Duke documents.

6 Those are NRC documents based on red phone calls

7 pursuant to 50.72. So that's not something that's

8 specifically a Duke document.

9 JUDGE YOUNG: Weren't they generated by

10 Duke?

11 MR. REPKA: Certainly the call is

12 generated. It's a phone call. There may be a record

13 in logs or in operator logs that support the

14 information that's passed on.

15 JUDGE KELBER: You say there's no written

16 record at Duke?

17 MR. REPKA: There's certainly not a file

18 of daily event reports.

19 JUDGE KELBER: I see, thank you.

20 JUDGE RUBENSTEIN: What about the LERs,

21 this is Judge Rubenstein.

22 MR. REPKA: LERs, of course, are written

23 documents and are available through the various NRC

24 systems, including BRS, but those certainly are

25 available.

1 JUDGE RUBENSTEIN: To what degree of
2 detail does your log reflect the information in the
3 DERs?
4 MR. REPKA: I think we don't -- I don't
5 know the answer to that question. I think again, we
6 talked about it this morning, what we had available,
7 and at this point we don't even know how burdensome it
8 would be to try to track back and find what 50.72
9 reports may have been made and what record might
10 exist.
11 JUDGE YOUNG: But when you talked, did
12 that include talking with Mr. Miller and Mr. Gill?
13 Can they provide any elucidation on what documents you
14 have with regard to daily event reports?
15 MR. REPKA: It certainly did include those
16 discussions, but I'm happy if Mr. Gill would like to
17 amplify.
18 MR. GILL: This is Bob Gill and I'm on the
19 license renewal project and have been dealing with
20 licensing for over 20 years.
21 There are records available when the
22 operators do anything and there are operator logs.
23 Most of them end up in archive sources, either
24 microfilmed or in the vault or something. They're not
25 kept on a bookshelf. So it's not easy to get to all

1 that stuff, particularly going back several years.
2 Licensee event reports are hard copy documents and
3 they can be obtained with some effort. Again, we
4 don't have them sitting on a bookshelf through that
5 can be readily obtained.
6 I have not gone in and seen how hard it is
7 to get them all though.
8 JUDGE YOUNG: Mr. Gill, let me interrupt
9 you for a second. Ms. Olson and Mr. Gunter, you have
10 the LERs?
11 MR. GUNTER: Your Honor, our concern is
12 that the daily event reports do not always generate
13 LERs.
14 JUDGE YOUNG: Mr. Gunter?
15 MR. GUNTER: Yes ma'am.
16 JUDGE YOUNG: My question was simply you
17 have the LERs, correct?
18 MR. GUNTER: Yes ma'am.
19 JUDGE YOUNG: Okay.
20 MR. GUNTER: LERs are available through
21 the Bibliographical Retrieval System and ADAMS.
22 JUDGE YOUNG: Mr. Gunter, thank you. We
23 don't need to discuss LERs in terms of what -- whether
24 they're available, Mr. Gill, because that's not the
25 issue. The issue is the daily event report.

1 Let me ask Mr. Gunter and Ms. Olson again,
2 were those daily event reports that you now want, were
3 those previously available on the website?
4 MR. GUNTER: Yes ma'am.
5 JUDGE YOUNG: Okay. And what is your
6 understanding with regard to Duke having had them
7 prior to their being taken off the website?
8 MR. GUNTER: I'm sorry, could you repeat
9 the question?
10 JUDGE YOUNG: I'm assuming that in the
11 discussions with Duke counsel that those discussions
12 have included addressing the subject of the daily
13 event reports because that was a large part of our
14 discussion at our last conference. So what, if any,
15 is the disagreement between the parties on whether and
16 the extent to which those could be gotten from Duke?
17 And then I'm going to go to the staff in
18 a minute and ask them the same question.
19 MS. OLSON: Your Honor, this is Mary
20 Olson.
21 JUDGE YOUNG: Yes.
22 MS. OLSON: I understood clearly from our
23 last call that daily event reports were NRC documents
24 and under the purview of NRC to make available or not
25 at this time.

1 JUDGE YOUNG: Okay, so then maybe we don't
2 need to talk any further with Mr. Gill who I
3 understand to be saying that they're just not easily
4 available. Would that correct? I interrupted you,
5 Mr. Gill.
6 MR. GILL: Let me go back and try to
7 restate. We do not maintain daily event reports, so
8 that's the result of a communication between probably
9 the control room or perhaps even a resident inspector
10 with the Emergency Operation Center in Washington, so
11 that particular record we will not have. I don't have
12 it in hand. I'm not sure exactly what we would have
13 in the plant records that would be correlatable even
14 to this thing.
15 JUDGE YOUNG: Okay. So thank you all.
16 MR. GILL: Okay.
17 JUDGE YOUNG: Daily event reports then
18 would be generated actually by the NRC in response to
19 a call from a plant. Is that correct?
20 MS. UTTAL: That's correct, Your Honor.
21 This is Susan Uttal.
22 JUDGE YOUNG: Okay, Ms. Uttal, in terms of
23 the daily event reports, I'm assuming you don't
24 disagree that they were previously available on the
25 website?

1 MS. UTTAL: They were previously available
2 on the website as a convenience. They're not required
3 to be on the website. They're not required to be
4 public, as far as I know.
5 JUDGE YOUNG: But they were previously
6 available?
7 MS. UTTAL: Yes, they were.
8 MR. REPKA: Judge Young, this is David
9 Repka. I'd like to amplify that because yes, they
10 were previously available, but they were not complete
11 historic archives, was not previously available. I'm
12 not sure what the start date as to their availability
13 was, but it was certainly not a complete archive.
14 JUDGE YOUNG: How far back did they go,
15 Ms. Uttal, do you know?
16 MS. UTTAL: I don't know, Your Honor.
17 I don't imagine that they pre-date the genesis of the
18 web itself, but I don't know when they started on the
19 web.
20 JUDGE YOUNG: And what was the genesis of
21 the web, what date was that?
22 MS. UTTAL: I'm sorry, I don't know. Just
23 a couple years ago.
24 JUDGE YOUNG: Now Ms. Olson and Mr.
25 Gunter, is it your understanding -- is your

1 understanding consistent with Ms. Uttal's statement
2 that the daily event reports would have been available
3 back to the inception of the website?
4 MS. UTTAL: Your Honor, I don't think that
5 I said that they would have been. I said I don't
6 think they would have gone further than that. I don't
7 know when they started up on the web.
8 JUDGE YOUNG: Ms. Olson and Mr. Gunter,
9 what is your understanding of when -- of the earliest
10 date the daily event reports would have been on the
11 website?
12 MR. GUNTER: Well, obviously at the
13 inception of the website. However, it's my
14 understanding that the daily event reports have been
15 provided to the NRC from the licensees in accordance
16 with 10 CFR 50.72, 50.73. So these are -- we would
17 contend that these have always been a matter of public
18 record.
19 It was -- certainly, there's no contesting
20 the convenience that was provided through the NRC
21 website and the search capabilities that came with
22 that convenience, but these reports are and have been
23 up until today, up until the 10th of October, a matter
24 of public record and accessible either through Freedom
25 of Information Act prior to the web, I would imagine,

1 but certainly with the inception of the web they were
2 provided to the public as a matter of the record.
3 JUDGE YOUNG: Okay, then my question to
4 you is what -- if you know they were a matter of
5 public record, I assume in a public documents room
6 here, what efforts, if any, have you made to obtain
7 them there?
8 MS. OLSON: This is Mary Olson. I
9 contacted the librarians at the Center Public Document
10 Room and inquired whether there was any form of access
11 to these documents at this time and they said no.
12 Maybe there's more ways to ask the question, I did ask
13 it in several different manners in terms of microfilm,
14 hard copy, etcetera. The answer was no.
15 JUDGE YOUNG: Okay, the second category of
16 materials were inspection manuals and the third were
17 various generic correspondence relating to aging
18 issues, I believe, you said.
19 What efforts have you made to obtain those
20 and what degree of success have you had and try to be
21 specific in what you've actually done, what -- who
22 you've talked to and so forth.
23 MS. OLSON: I admit that from my
24 perspective I have been less interested in the generic
25 correspondence and only found out from David Lochbaum

1 with his written declaration, he's not at this point
2 committed to being a expert witness, but he's
3 certainly a resource to nuclear information and
4 resource and service in our development of contentions
5 and hopefully in the defense of them, but I'm not able
6 to commit him totally to that role. So I respect and
7 rely upon on his statement that those documents are
8 important to the work that he would be contributing.
9 They have been less of interest to me. Since I was
10 unaware of his interest in them, in this relatively
11 collapsed time frame, again I haven't made an effort
12 myself to obtain them.
13 JUDGE YOUNG: What about the inspection
14 manuals?
15 MS. OLSON: The inspection manuals I sent
16 an e-mail to the Public Document Room. I received a
17 response to other questions that were in the same
18 e-mail and did not receive a response on that. And I
19 have to admit that again it sort of fell through the
20 cracks in the last day or so. I don't know if Paul
21 Gunter has made an effort.
22 JUDGE YOUNG: What we're getting down to
23 again is it sounds like the daily event reports are
24 the big issue.
25 MR. GUNTER: Well, Your Honor, the purpose

1 of the inspection manuals is, in fact, to get a feel
2 for the regulatory umbrella and to address the things
3 that the NRC looks at and we have that understanding.
4 The issue here is that simultaneous
5 through the creation of the web, the Nuclear
6 Regulatory Commission has been closing local Public
7 Document Rooms which would have been available to Ms.
8 Olson and I think our concern here is that with the
9 constriction of information and the closing of the
10 Public Document Rooms, we've been placed at a
11 disadvantage and a handicap with this proceeding.
12 JUDGE YOUNG: Mr. Gunter --
13 MR. GUNTER: Yes ma'am.
14 JUDGE YOUNG: What have you done? Ms.
15 Olson said she has not done anything other than send
16 one e-mail and when there was no response, did not
17 follow up on it. What have you done since October
18 16th when we set the original deadline to obtain the
19 inspection manuals?
20 MR. GUNTER: I have not made an effort to
21 go after the inspection manual.
22 JUDGE YOUNG: Okay, so --
23 MR. GUNTER: But again, I'm not the lead
24 on this particular proceeding.
25 JUDGE YOUNG: Okay. From NIRS standpoint

1 then that has been discussed last week and which
2 everyone knew about and which NIRS has made efforts to
3 obtain are the daily event reports and my
4 understanding at this point is that the NRC was --
5 they were generated by the NRC in response to
6 telephone calls from the plants.
7 Now could you, Ms. Olson and Mr. Gunter,
8 explain the reason that you want.
9 MR. GUNTER: Well, as I've prepared in my
10 affidavit, as well as amplified in the affidavit of
11 Mr. Lochbaum with the Union of Concerned Scientists,
12 the daily event reports reflect not only plant
13 conditions, but the licensee's ability to keep the
14 plant in an analyzed condition, perform within
15 compliance and to do so without personnel error.
16 JUDGE YOUNG: Mr. Gunter?
17 MR. GUNTER: Yes ma'am.
18 JUDGE YOUNG: In what condition?
19 MR. GUNTER: A whole variety of plant
20 conditions are reflected in the daily event reports
21 excluding the safeguarded information.
22 JUDGE YOUNG: Mr. Gunter, what was the
23 word you used earlier? Analyst?
24 MR. GUNTER: Analyzed condition.
25 JUDGE YOUNG: Analyzed?

1 MR. GUNTER: Condition. Yes ma'am.

2 JUDGE RUBENSTEIN: Mr. Gunter? This is

3 Judge Rubenstein.

4 MR. GUNTER: Yes sir.

5 JUDGE RUBENSTEIN: If the plant were not

6 in an analyzed position this would be a violation of

7 the tech specs and generate an LER would it not?

8 MR. GUNTER: As again I've pointed out in

9 --

10 JUDGE RUBENSTEIN: Specifically, if you

11 were not -- if the plant was outside the tech specs,

12 this would generate an LER?

13 MR. GUNTER: Again, Your Honor, to the

14 best of our knowledge and capability under the current

15 extraordinary circumstances, our finding is that not

16 only daily event reports generated LERs.

17 JUDGE RUBENSTEIN: I didn't ask that. I

18 said if it was outside the current condition where it

19 violated a tech spec, would it not, in fact, generate

20 an LER?

21 MR. GUNTER: I don't know that I can

22 answer that, sir.

23 JUDGE RUBENSTEIN: I was picking up on

24 what you were saying.

25 MR. GUNTER: I know. Again, the examples

1 that we provided in the affidavit do indicate that the
2 daily event report documented unanalyzed conditions at
3 the plant, but did not again to the best of our
4 capability, did not generate an LER. I don't know how
5 to respond to your question.
6 JUDGE RUBENSTEIN: The unanalyzed event
7 perhaps didn't meet the threshold of a violation of a
8 tech spec and that's why they didn't go to an LER?
9 MR. GUNTER: Perhaps the NRC might be able
10 to elucidate on that more clearly in terms of
11 providing, if the Office of General Counsel might be
12 able to respond as to what particular threshold is
13 established between the DER and an LER.
14 JUDGE KELBER: Excuse me, this is Judge
15 Kelber. I don't think we need to get a response on
16 that.
17 JUDGE RUBENSTEIN: Okay.
18 JUDGE KELBER: The requirements for
19 generating a licensee event report are laid out very
20 specifically in 10 CFR 50.73.
21 JUDGE RUBENSTEIN: Exactly.
22 JUDGE KELBER: I assume, Mr. Gunter,
23 you're familiar with that?
24 MR. GUNTER: Yes sir.
25 JUDGE KELBER: Okay. I don't think we

1 need to burden people with going through that. It's
2 a very extensive list.
3 JUDGE YOUNG: What I would like to
4 understand, this is Judge Young, I would like to
5 understand though your reasoning for meeting the daily
6 event report given that you have the licensee event
7 report. You're obviously saying that there's
8 information in those that may not be reflected in the
9 licensee event report, so could you explain that a
10 little bit further?
11 MR. GUNTER: Well, I think what's at issue
12 here is the daily event reports provide us with
13 insights into the licensee surveillance programs. And
14 the issue here, I think is germane to the license
15 extension application.
16 MS. OLSON: Just a moment, this is Mary
17 Olson. I want to clarify by surveillance, he means
18 aging not security.
19 MR. GUNTER: Correct. Well, a whole host
20 of issues, I mean more than just aging, but also in
21 terms of environmental conditions created around the
22 plant as well. DERs provide us with insights into
23 those conditions.
24 JUDGE YOUNG: Let me hear from the staff
25 what is the staff's response to why the daily event

1 reports are not currently available.

2 MS. UTTAL: Your Honor, this is Susan

3 Uttal, as I explained last week, they were taken off

4 the website to be reviewed and we don't know when or

5 if they will ever be returned to the website.

6 JUDGE YOUNG: Can you provide them through

7 NIRS for the purpose of this proceeding?

8 MS. UTTAL: I don't have the authority to

9 do that, Your Honor.

10 Your Honor, I'd like to say something

11 about what Mr. Gunter has said previously. What he

12 has described is information regarding current

13 operating conditions which is beyond the scope of this

14 proceeding which has to do with renewal and which

15 scope is limited by the Commission's order to aging

16 management issues and various environmental issues and

17 last week Ms. Olson was advised that she could get the

18 information regarding releases into the water from the

19 State where they were filed.

20 So I think this is kind of a red herring.

21 I don't think these reports are essential to them

22 creating their contention because what they are

23 supposed to be -- I can't them what they're supposed

24 to be doing, but what this proceeding is about is the

25 licensee's application and therefore they have to show

1 that they have a issue and controversy with the
2 application.
3 JUDGE YOUNG: Given that the Commission
4 has said that the scope of the proceeding is discrete
5 safety and environmental issues which encompass the
6 review of the plant structures and components that
7 will require an aging management review, and the plant
8 systems, structures and components that are subject to
9 an evaluated time-limited aging analyses, can you
10 actually say that the daily event reports would
11 provide absolutely no information on either of those,
12 any of those issues?
13 MR. REPKA: Judge Young, this is Dave
14 Repka, may I respond to that?
15 JUDGE YOUNG: Sure.
16 MR. REPKA: Number one, again, I just want
17 to -- I agree with Ms. Uttal and I want to repeat
18 something that I said last week which is that I don't
19 think that the daily event reports should be viewed as
20 the sine qua non of drafting contentions.
21 JUDGE YOUNG: I don't think that's the
22 standard here. What I asked was can you say that
23 there's absolutely no connection, no possible use of
24 those in preparing contentions on the issues that the
25 Commission has defined for this proceeding.

1 MR. REPKA: I believe that's true, for two
2 reasons. Number one, to the extent it has any
3 relevance, that information would be captured in the
4 licensee event report. And the LERs are available.
5 I take issue with something that Mr. Gunter said which
6 is that there might be more information. An LER will
7 have far more information than the verbal report on
8 the red phone. The LER will go into causes,
9 contributing factors, preventive, corrective actions
10 related to an event in the written report. So the
11 LER, to the extent an event even rises to a level of
12 that meets NRC reporting requirements, there will be
13 an LER and the LER will have much more discussion of
14 the event.
15 JUDGE YOUNG: Let me ask you a question.
16 MR. REPKA: May I make my second point?
17 JUDGE YOUNG: No, let me ask you a
18 question about your first point.
19 MR. REPKA: Okay.
20 JUDGE YOUNG: Because I understand that it
21 is your position that whenever something rises to the
22 level such that it would require a licensee event
23 report, that that would be done. But I think you can
24 see that there's sort of an implicit conclusion in
25 that statement and that you're assuming that there are

1 no daily event reports out there that would have risen
2 to the level that would warrant a licensee event
3 report, but did not generate one.
4 MR. REPKA: There may be daily event
5 reports that do not generate an LER, that's correct.
6 JUDGE YOUNG: And you are assuming by
7 saying that the LER reflects every event that
8 warranted an LER, that absolutely nothing was left out
9 or overlooked or there was nothing that was in a daily
10 event report on which reasonable minds could differ as
11 to whether it rose to the level requiring an LER.
12 MR. REPKA: I think reasonable minds might
13 differ as to whether something requires an LER, but I
14 think that the potential for that involving something
15 that might be relevant to this --
16 JUDGE YOUNG: Excuse me, Mr. Repka, you
17 are sort of -- your voice disappears from time to time
18 because someone is rustling papers and we just lose
19 you. So could you repeat what you just said?
20 MR. REPKA: I think the idea that there
21 might -- that an event reported in a daily event
22 report might have generated or should have generated
23 an LER, but didn't and therefore created the potential
24 that there's something in there relevant to license
25 renewal and therefore is required and essential to

1 writing a contention. I think that's a very strange
2 logic and a very low probability event that there's
3 some information might escape review that could be the
4 basis of a contention. I dispute that.
5 JUDGE YOUNG: Mr. Repka, let me ask you a
6 question. In analyzing this, I've looked at it from
7 the following standpoint and we've had some discussion
8 among Judge Kelber and Judge Rubenstein about how
9 should we be looking at this? Because if we're under
10 the time line set by the Commission, this would
11 probably be something that would warrant an extension.
12 Given that, what we're talking about is more sort of
13 an analogy of a library being closed that was
14 previously open, rather than applying some discovery
15 standard which we have determined is not the correct
16 standard.
17 If I were a lawyer representing someone,
18 I wanted to know all of the case law on an issue and
19 I did not have access to the complete library or the
20 complete research tools to find all of those cases,
21 but had to accept my opponents characterizations of
22 which ones were relevant for my preparing of a
23 complaint, I think I would dispute that and I think in
24 a way you're sort of making that same argument.
25 We're not talking about the standard for

1 discovery or for what contentions should be based on.
2 We're talking about petitioners who previously had
3 information and now they don't.
4 Judge Kelber, do you want to --
5 JUDGE KELBER: A daily event report
6 requires a licensee event report to be followed -- to
7 follow it up. And if there is no licensee event
8 report, is that not a violation?
9 MR. REPKA: No, that wouldn't necessarily
10 be a violation. The Commission encourages
11 conservative reporting. What that leads to is
12 sometimes making a report under 50.72 as a
13 conservative call and then a decision is later made
14 that the threshold for reporting hasn't been met, so
15 no LER is generated.
16 JUDGE KELBER: You have the reverse side
17 of it. I said if the daily event report did require
18 a licensee event report, because of the seriousness,
19 then it would be a violation, would it not?
20 MR. REPKA: That would be true.
21 JUDGE KELBER: Thank you.
22 MR. REPKA: Just to respond to Judge Young
23 again, that the library closing analogy, number one,
24 remember not all historic archives of daily event
25 reports were ever on the web, so the library that has

1 closed is quite so vast as might have been
2 characterized here.
3 JUDGE YOUNG: Which ones were on the
4 website?
5 MR. REPKA: I think from the time frame of
6 when -- after the website was initiated and at
7 whatever point in time that the NRC decided to put
8 daily event reports on the web. I can't pinpoint that
9 other than to say it's my understanding that would be
10 the late 1990s.
11 JUDGE YOUNG: Okay,and so those are what
12 we need is -- or those are what we need to talk about
13 is the daily event reports starting in the late 1990s
14 that were previously available on the website. That's
15 what we're down to basically, as I understand it.
16 MR. GUNTER: Your Honor, this is Paul
17 Gunter. It is my understanding that prior to the
18 website those reports were available through the
19 Public Document Room per request.
20 JUDGE YOUNG: Ms. Olson, did you say that
21 those were no longer available in the Public Documents
22 Room?
23 MS. OLSON: Yes.
24 JUDGE YOUNG: Okay. Ms. Uttal, I think we
25 really do need to hear from you at this point because

1 at least I think it may be arguable that for the
2 reason that Judge Kelber just -- based on the analysis
3 that Judge Kelber just went through, these daily event
4 reports might be relevant. Certainly would be within
5 the category of materials that would be useful or
6 possibly would be within the category of materials
7 that would be useful in drafting contentions.
8 What can you do in terms of telling us how
9 they might be made available to the Petitioners in
10 preparing their contentions?
11 MS. UTTAL: Your Honor, first of all, I'd
12 like to address one thing. Events reports, the DERs,
13 require an LER to be -- we assume that the appropriate
14 LERs are filed, otherwise it would be a violation.
15 Second of all, there is no showing that
16 this material will be relevant in any way. As Mr.
17 Gunter described it he is looking for operational
18 material, things related to daily operations.
19 JUDGE YOUNG: I thought that he and Ms.
20 Olson said that they were also talking about
21 surveillance related to aging issues.
22 MS. UTTAL: I'm sorry, I didn't hear that.
23 JUDGE YOUNG: Correct me if I'm wrong, Ms.
24 Olson or Mr. Gunter?
25 MR. GUNTER: Yes, we're interested in the

1 daily event reports as they would reflect unanalyzed
2 conditions that then reflected on the licensee
3 surveillance program of a host of plant conditions
4 including aging.
5 JUDGE YOUNG: Well, we're limited in our
6 scope, of course, to what this Commission has stated
7 in its October 4th, I believe, order. Yes, October
8 4th, environmental issues encompassing the review of
9 plant structures and components that will require an
10 aging management review for the period of extended
11 operation and the plant systems, structures and
12 components that are subject to an evaluation of time
13 limited aging analyses.
14 So limit your comments to those issues.
15 Did I hear you correctly before? Why don't you repeat
16 what you said before, Ms. Olson?
17 MS. OLSON: Actually, I think it was Mr.
18 Gunter who was speaking, but we were clarifying that
19 when we say surveillance, we're talking about
20 surveillance in the sense of the GALL report, not --
21 I didn't want there to be a confusion that we were
22 talking about reactor safeguards and security and the
23 kinds of issues that NRC is closing the website.
24 That's not the focus of wanting to be ERs. We have
25 raised concerns about security in this proceeding, but

1 I want to emphasize that it is the aging related
2 surveillance that Mr. Gunter was referring when he
3 used that word.
4 JUDGE YOUNG: That's the clarification
5 that I wanted you to repeat.
6 So --
7 JUDGE KELBER: Excuse me, Mr. Gunter?
8 MR. GUNTER: Yes sir.
9 JUDGE KELBER: You said -- you used the
10 term unanalyzed condition with respect to the daily
11 event report.
12 I want to read to you from 50.73(a)(2)(A)
13 under Roman numeral II. This is licensee shall report
14 (a) in an unanalyzed condition that significantly
15 compromises plant safety. So there is a licensee
16 event report for such condition.
17 MR. GUNTER: Yes, that could be captured,
18 but again as I pointed out in our affidavit that there
19 are unanalyzed conditions that could or may be in
20 dispute that are not generating LERs.
21 MR. MONIAK: Could you repeat 50.73?
22 JUDGE KELBER: Who's --
23 MR. MONIAK: This is Don Moniak.
24 JUDGE KELBER: Yes, if you look under
25 Section parentheses little a, then go to --

1 MR. MONIAK: Okay, I have it. I have it.

2 JUDGE KELBER: Then go to "the licensee

3 shall report"?

4 MR. MONIAK: Yes. I just wanted to make

5 sure I had the very one.

6 JUDGE KELBER: Then you look under Roman

7 numeral II.

8 MR. MONIAK: Yes.

9 JUDGE KELBER: And capital A. You're

10 saying that oral reports that are written down by the

11 emergency center to NRC and then stored away, Mr.

12 Gunter, you're saying that such reports furnish a

13 basis for judging whether or not a violation has

14 occurred?

15 MR. GUNTER: I'm saying that they have the

16 ability to indicate the licensees compliance and

17 holding to a surveillance program.

18 JUDGE KELBER: Could you give us an

19 example, a made up example, Mr. Gunter, of the type of

20 thing you mean?

21 MR. GUNTER: Well, I've provided three

22 daily event reports that -- in our affidavit that

23 indicate where either personal error or failure to

24 provide notation or perform technical specification

25 logging affected unit systems. And these two examples

1 here did not generate LERs to the best of our
2 knowledge, but they certainly had what we -- as best
3 as we could identify adverse impact on the plant and
4 upon the technical specification logging.
5 MR. REPKA: Judge Young, this is Dave
6 Repka. I'd like to respond to that briefly, just to
7 reiterate the point that we are in the context of
8 license renewal which involved a narrower scope of
9 review.
10 The three event reports that Mr. Gunter
11 raises that he's identified are all related to the
12 emergency diesel generators which is actually a system
13 which is not even in the scope of license renewal
14 because it's an active component. So I think that's
15 an example of how with these DERs we're really chasing
16 up the wrong tree.
17 MS. OLSON: Your Honor, this is Mary
18 Olson. May I respond to that?
19 JUDGE YOUNG: Yes, but let me ask Mr.
20 Repka, could there be other similar examples that
21 would be related to aging?
22 MR. REPKA: Would there be other daily
23 event reports that have aging?
24 JUDGE YOUNG: Have to do with the --
25 MR. REPKA: In scope? Yes, there could

1 be. But are the daily event reports not captured in
2 LERs? Were those daily event reports previously
3 available on the web? I don't know. But I think it's
4 a very narrow -- the -- I just think we're overplaying
5 the importance of the daily event reports to drafting
6 contentions, given the information that is available.
7 JUDGE YOUNG: But what I understand these
8 examples that Mr. Gunter has provided to do is state
9 that there were potential problems reported in daily
10 event reports that did not result in licensee event
11 reports and if there were similar examples of that,
12 with regard to surveillance of age-related -- related
13 to aging components that there could conceivably be a
14 daily event that was not captured and that did not
15 generate a licensee event report.
16 And you're saying that that's very narrow,
17 but as I understand it, you're agreeing that it's
18 possible that that could occur?
19 MR. REPKA: I'm sorry, I lost you, Judge
20 Young. Can there be daily event reports related to
21 aging? Yes, I would agree with that, but I won't
22 agree that that's information that's necessary to
23 drafting contentions.
24 JUDGE YOUNG: My question was given that
25 Mr. Gunter has provided examples of daily event

1 reports that did not produce licensee event reports in
2 another context, is it not reasonable that it would
3 follow from that that similar examples might be found
4 with regard to surveillance of components related to
5 aging?
6 MR. REPKA: There may be other daily event
7 reports where there was no LER filed because the LER
8 criteria were not met because the event turned out to
9 be a nonevent. There are lots of reasons why an LER
10 might not have --
11 JUDGE YOUNG: Right, and we're not talking
12 about the reasons. We're just talking about whether
13 it would be possible that there might be those out
14 there.
15 MR. REPKA: And what the focus needs to be
16 on is the LER because that's the more meaningful
17 document. That's the document that meets the
18 Commission's threshold. That's the document based
19 upon a 30-day review.
20 JUDGE YOUNG: I understand your argument.
21 I guess I was trying to get you to focus in on the
22 specific examples that I posed.
23 MS. UTTAL: Your Honor, this is Susan
24 Uttal.
25 JUDGE YOUNG: Ms. Olson first wanted to

1 respond. I'm going to let her and then you, Ms.
2 Uttal.
3 MS. OLSON: Thank you, Your Honor. I just
4 want to clarify. You stated most of what I was going
5 to say about the particular circumstances of these
6 daily event reports, but again it's a case of no
7 notice on the removal of the website as a resource so
8 Mr. Gunter, you know, referred to his hard drive of
9 his computer for previous research that was done in
10 the context in this case of the Y2K issue and again,
11 just as you stated, offered them as an example of this
12 disconnect between daily event reports and licensee
13 event reports, not as substantive to our contentions
14 in this case in terms of diesel generators.
15 JUDGE YOUNG: Excuse me, did we miss the
16 last of what you said?
17 MS. OLSON: Well, I'm just clarifying that
18 diesel generators were the focus of a previous
19 research and therefore on Mr. Gunter's hard drive as
20 an example of information generated, but are not a
21 focus of our current research.
22 JUDGE YOUNG: Okay, and Ms. Uttal, go
23 ahead.
24 MS. UTTAL: Your Honor, I think this
25 information might be available in the application.

1 The licensee is required in the application to report
2 operating events relating to aging and aging matters
3 that an operating experience in that area, even if
4 they don't rise to the level of LERs or DERs. So they
5 would be required to report all such related
6 information in the application and that's where the
7 potential Intervenors can look for it.
8 MR. GUNTER: Your Honor, this is Paul
9 Gunter. However, there are as well events that could
10 be generated subsequent to the submission of the
11 application.
12 MS. OLSON: And this is Mary Olson, if I
13 may also add that it's our job in this proceeding to
14 assess the adequacy and completeness of that
15 application so asking us to use the application to
16 make that assessment is not meaningful.
17 JUDGE KELBER: This is Judge Kelber. Let
18 me try a different tack. Suppose you had all the DERs
19 available to you in some optimum way. What would you
20 look for?
21 MR. GUNTER: Well, we would begin --
22 JUDGE KELBER: What are the key words, for
23 example, would you be looking for?
24 MR. GUNTER: Well, we would be looking for
25 such examples as unanalyzed condition, as I mentioned

1 earlier. We would be looking for various plant
2 conditions that were entered that are relevant to the
3 surveillance of age-related degradation and match that
4 to the licensee's application.
5 JUDGE KELBER: Okay, unanalyzed conditions
6 we've gone through before. That leads to an LER. If
7 it didn't lead to an LER it's a violation, so we're
8 not focused on conditions related to age-related
9 degradation.
10 What type of conditions?
11 MR. GUNTER: Well, I think one key example
12 might be to look at the Oconee situation where Oconee
13 Plant apparently went through the GALL process without
14 identifying the control run drive mechanism, diesel
15 head penetration cracking. Certainly we would be
16 looking for similar events to that with regard to
17 McGuire and Catawba. I think those would be -- again,
18 we would be looking for daily reports that would
19 capture age-related degradation, that would basically
20 provide us with a thread to begin to pull on.
21 MS. UTTAL: Your Honor, this is Susan
22 Uttal. A couple of things are wrong with what Mr.
23 Gunter has just said. First of all, the aging effect
24 that he described was identified, just corrosion
25 cracking was identified in the application.

1 In addition, the GALL system was not in
2 effect at that time. It came into effect after Oconee
3 applied.
4 JUDGE YOUNG: I think he was answering the
5 question as an example of the type of thing that you
6 would look for.
7 Let me ask you this, Ms. Uttal and Mr.
8 Repka, you can respond also.
9 Ms. Olson, in response to Ms. Uttal's
10 saying that anything in effect relevant to aging
11 issues would be in the application. Ms. Olson said
12 well, what we're called upon to do is point out any
13 problems with the application and to look to the
14 application itself to see what may be missing from the
15 application would not elucidate what would be missing
16 from the application.
17 If I misunderstood her argument, please
18 correct me. But what's your response to that
19 argument?
20 MR. REPKA: Are you asking the licensee
21 that question?
22 JUDGE YOUNG: I directed that to Ms. Uttal
23 and then Mr. Repka, you can also respond to it as
24 well.
25 MS. UTTAL: Your Honor, I think what she's

1 asking for is discovery and that's a step beyond where
2 we are now.
3 JUDGE YOUNG: I think that brings up a
4 very good point because we're not in discovery.
5 You're absolutely right and the question becomes if
6 the standard is not discovery, what is the standard
7 and I think what you're arguing is that the standard
8 should be a stricter standard than discovery and
9 instead we are the point where normally a whole
10 library, the analogy we used before, would be
11 available and the library that encompassed the website
12 and the NRC Public Documents Room to the extent that
13 they included daily event reports no longer has those
14 available.
15 MR. REPKA: Judge Young, this is Dave
16 Repka.
17 JUDGE YOUNG: Yes.
18 MR. REPKA: Again, the library analogy is
19 failing us. What's missing here is not a library but
20 maybe a book in the library. What we need to look at
21 is what information is available in which to frame a
22 contention? For framing a contention you don't -- no
23 Intervenor, no Petitioner would ever have access to
24 all of the information that might exist on a subject.
25 What we have available --

1 JUDGE YOUNG: Let's keep our discussion to
2 the daily event reports because I think we've pretty
3 much narrowed it down. No?
4 JUDGE KELBER: Let me interject. This is
5 Judge Kelber. I think we're talking about the
6 licensee event reports which everybody agrees are
7 available and also the daily event reports. And the
8 question is does searching the daily event reports
9 yield more information than searching the LERs as to
10 this case?
11 JUDGE RUBENSTEIN: Excuse me, this is
12 Judge Rubenstein. To carry on further what Judge
13 Kelber is asking or is stating, it appears to me that
14 the basis for the discussion on DERs by Mr. Gunter is
15 that the Commission's regulations in 50.73 and the
16 threshold for the licensee event reports are
17 inadequate and that they really want to compare the
18 daily event reports for these four plants to the LERs
19 and it's their contention that they find them
20 deficient in surfacing or safety-significant items
21 which would be report in the LERs.
22 Would you please address that?
23 JUDGE YOUNG: You're saying that what
24 they're asserting is that the possibility that the
25 LERs might be deficient in encompassing everything.

1 Is that right?

2 JUDGE RUBENSTEIN: I think, in essence,
3 they're saying two things. They're challenging the
4 breadth and scope of the LER reporting requirements
5 and whatever subjective information is put into them
6 in meeting those thresholds. In effect, I think
7 they're saying we will look at the daily event
8 reports, specific to aging. We will say these have
9 safety significance and they have not met the
10 threshold that the Commission established in the
11 licensee event report standards.

12 MS. OLSON: Your Honor, this is Mary
13 Olson. May I speak to that?

14 JUDGE YOUNG: Go ahead.

15 MS. OLSON: Our case is not on DERs versus
16 LERs. The presentation of the difference between DERs
17 and LERs is to be illustrative of the difference in
18 the data available and the reason that this is
19 important is because we're not operating that reactor.
20 We're not even going to it every day and sitting down
21 and talking about it. The only access we have to what
22 I last characterized as in the flesh or the footprint
23 of the operation is to really look over that data.
24 And of course, if there's a DER that generates an LER
25 we should fully look at the LER and have looked at

1 LERs in relation, but I still contend that there's an
2 aspect to seeing whether there's a real issue at these
3 specific reactors versus an abstract hypothetical
4 statement that we could make.
5 JUDGE RUBENSTEIN: Judge Rubenstein again.
6 MR. MONIAK: Your Honor, this is Don
7 Moniak. I have a specific example from Catawba on
8 daily event reports that might clarify some of this.
9 JUDGE YOUNG: Yes, but just a second. I
10 think Judge Rubenstein wanted to say something.
11 MR. MONIAK: Okay.
12 JUDGE RUBENSTEIN: Let him go and then
13 I'll ask again.
14 JUDGE YOUNG: Okay.
15 MR. MONIAK: Okay, I routinely saved the
16 daily event reports whenever I was in the office
17 because they are very difficult to access afterwards
18 until October 11th. And on September 19th, there was
19 a notification from Catawba Unit 2 degraded condition
20 under 50.72(b) and there was a board residue buildup
21 in which the visual inspection of Unit 2 steam
22 generator lower head bowl drain during current
23 refueling outage indicated boil out residue build up
24 on the half inch piping immediately below the steam
25 generator. The boron residue was approximately one

1 cubic inch. The origin appears to be the partial
2 penetration of a weld between the reducing coupling in
3 the lower head shelf. Exact location could not be
4 conclusory determined and additional inspection will
5 be conducted.
6 Visual inspection of the other three SGs,
7 steam generators, right, was also conducted and no
8 indications of leakage were identified. State and
9 local officials will be given a courtesy call and I
10 just want to point out this is clearly age-related.
11 JUDGE RUBENSTEIN: And it was of
12 sufficient safety significance to treat the
13 Commission's threshold on LERs?
14 MR. MONIAK: I don't know. I haven't --
15 I'm just pointing out this is one and it's recent.
16 JUDGE RUBENSTEIN: The daily event reports
17 capture more of aging significant safety than the
18 LERs.
19 MR. MONIAK: I don't know the answer to
20 that a specific example that involves aging that would
21 not have an LER right now because it's such a recent
22 event too. And they're still analyzing it and there
23 may be other more recent events too in the last two
24 years. I think 50.73 says an LER doesn't have to
25 filed for up to 3 years.

1 JUDGE RUBENSTEIN: Is there not a 30-day
2 lag time on the LERs? You're saying you only want
3 DERs in that 30 days?
4 MR. MONIAK: I have LERs going back about
5 a year, but not every day.
6 JUDGE RUBENSTEIN: I'm saying the daily
7 event reports which have enough significance to meet
8 the Commission's threshold to become an LER because of
9 the time lag would only involve about 30 days.
10 MR. MONIAK: I don't know. I was just
11 pointing out one specific example that I hoped might
12 clarify the issue.
13 JUDGE RUBENSTEIN: You say you don't know
14 if an LER has been generated and I say LERs which meet
15 the Commission's standards would have to be generated
16 in approximately 30 days.
17 MR. MONIAK: Yeah. I don't know whether
18 this one did or not. So --
19 JUDGE RUBENSTEIN: But I'm talking to the
20 timeliness of the DER.
21 MR. MONIAK: Yes.
22 JUDGE RUBENSTEIN: And you would only have
23 a lag time of approximately 30 days if the DER did, in
24 fact, generate an LER.
25 MR. MONIAK: Okay. If it did, yeah. I

1 would point out earlier that somebody was saying that
2 one of those very applicable is that there's a lot of
3 -- when it comes to threshold for LER, I know that
4 within any organization there's debate as to something
5 triggers an LER or not and so I would simply argue
6 that the presence or absence of an LER is somewhat
7 irrelevant because it may have been right. It met the
8 threshold, but not beyond that.
9 JUDGE RUBENSTEIN: That would give me a
10 little trouble because the licensee would have to be
11 in compliance with the LER and --
12 MR. MONIAK: I just naturally assumed that
13 licensees seek to not create more work for themselves
14 and if they can evade it, just barely, they will, but
15 that's my attitude.
16 JUDGE KELBER: Whether or not they do --
17 let me ask, this conversation has been going along
18 this path long enough.
19 Let me ask this, Ms. Olson and Mr. Gunter,
20 this question. Looking at the LERs, have you found
21 what you consider the basis for a dismissable
22 contention even though the basis may not be as
23 complete as you like?
24 MR. GUNTER: That work is not completed
25 yet.

1 JUDGE KELBER: The answer is you don't
2 know?
3 MR. GUNTER: Correct.
4 JUDGE KELBER: Okay, thank you.
5 MS. UTTAL: Your Honor, this is Susan
6 Uttal. I think we're getting bogged down int he
7 DER/LER conversation and I'd like to point to the
8 Catawba case from 1983 that states that in drafting
9 contention Intervenors should look at the public
10 record and examine the public record. And I think in
11 this case what the Intervenors have to do is examine
12 the record that it's public, submit their contentions
13 and if something becomes public later on then they
14 could supplement or move to file late file contentions
15 and see how that goes, but there is plenty available
16 in the public record regarding renewal and regarding
17 this application and there is no reason to extend
18 their obligation to file contentions any further
19 beyond the three weeks that they've already been
20 given.
21 JUDGE YOUNG: Ms. Uttal, what's the cite
22 for the case you just mentioned?
23 MS. UTTAL: I don't have the case cite in
24 the NRC but I think it's CLI 8319.
25 JUDGE YOUNG: 8319?

1 MS. UTTAL: Yes.

2 JUDGE YOUNG: Okay, with regard to the
3 standard as you interpreted it from that case, which
4 is that contentions are to be based on material in the
5 public record, prior to October 11th when the website
6 was taken down and the Public Documents Room made a
7 determination not to make the DERs available, prior to
8 that time the DERs would have been part of the public
9 record, correct?

10 MS. UTTAL: That is correct, Your Honor,
11 but they're not available now. They're not part of
12 the public record now.

13 JUDGE YOUNG: And as I understand it --

14 MR. MONIAK: Yes, they are.

15 JUDGE YOUNG: Who said "yes, they are"?

16 MR. MONIAK: This is Don Moniak. They are
17 part of the public record, not at this very moment,
18 but they are part of the public record because they're
19 not classified information.

20 JUDGE YOUNG: Okay --

21 MR. MONIAK: Just because they're not
22 publicly available does not mean that it's not part of
23 the public record.

24 JUDGE YOUNG: What I was trying to get at
25 Ms. Uttal, I understand the Petitioners to be arguing

1 that however we define public records, these would
2 have been publicly available, but for the taking down
3 of the website and making things that were previously
4 in the Public Documents Room unavailable based on the
5 events of September 11th.
6 MS. UTTAL: I don't think that has
7 anything to do with what's going on here. They are
8 required to look at the public record as it exists
9 today and if things are taken off or put on, they have
10 to go with the public record as it exists and if
11 things become available later, they can move to
12 supplement.
13 JUDGE YOUNG: But Ms. Uttal, I don't think
14 you've answered my question. And my question is I
15 understand the argument is to be the very thing you're
16 saying which is that things that were in the public
17 record that were publicly available previously are not
18 now publicly available because of the events of
19 September 11th and the subsequent --
20 MS. UTTAL: I'm sorry, Judge, we missed
21 everything that you said due to some interference. It
22 sounded like a helicopter.
23 JUDGE YOUNG: Okay. Ms. Uttal, the
24 argument I understand you to be making is that
25 Petitioners under the CLI 8319, Petitioners are to

1 draft contentions based on the public record. What I
2 understand the Petitioners to be saying is that prior
3 to the taking out of the publicly available record of
4 materials the DERs from both the website and the
5 Public Documents Room has resulted in their not having
6 access to things that they would otherwise have access
7 to based on the events of September 11th which formed
8 the unavoidable and extreme circumstances that we
9 based our decision to grant a 3-week extension on.
10 Now if there are still materials that are
11 not available and that would reasonably be usable in
12 drafting contentions, why would not the same rationale
13 apply for either the staff in some way making these
14 particular DERs available to the Petitioners or
15 explaining on what basis they are not available to the
16 Petitioners, what legal basis -- what's your response
17 to that?
18 MS. UTTAL: Your Honor, we think that they
19 can make their contentions based on the public record.
20 We will continue to look into trying to make things
21 available, but right now they're available,
22 unavailable for the foreseeable future and to
23 indefinitely delay this proceeding for the certain
24 subset of documents that are not directly related to
25 renewal, there's no cause for that. There's no

1 avoidable and extreme circumstances related to that.
2 They have all the renewal documents that are in the
3 public record and they have access to all the other
4 documents that they have raised.
5 JUDGE YOUNG: What is the reason for the
6 DERs not presently being in the public record defining
7 public record to mean what is publicly available?
8 What is the reason for their not being there now?
9 MR. MONIAK: Because they address
10 safeguard deficiencies?
11 MS. UTTAL: Your Honor, they've been
12 removed because they may contain information relating
13 to sensitive information relating to plant conditions
14 and plant vulnerability.
15 MR. REPKA: Judge Rubenstein, this is Dave
16 Repka. That would not be limited to just safeguards.
17 That would be plant status, generally.
18 JUDGE RUBENSTEIN: Okay.
19 JUDGE YOUNG: And the reason that they
20 were taken out of the public record or out of what was
21 publicly available was what?
22 MS. UTTAL: Because they may contain
23 sensitive material relating to plant conditions and
24 vulnerability.
25 JUDGE YOUNG: And the reason that they

1 were not taken out prior to October 11th or prior to
2 September 11th is what?
3 MR. MONIAK: Because they did not contain
4 that information. This is Don Moniak. I apologize
5 for interrupting. The question is, the fact is I have
6 hundreds of these. Does that mean that I may have
7 sensitive information?
8 MR. REPKA: This is Dave Repka. They were
9 taken out for security reasons based upon the events
10 of September 11th. The reason historic DERs would not
11 be taken out is because they don't know the present
12 plant conditions and plant status. It's the present
13 plant status that is of interest and --
14 MR. GUNTER: This is Paul Gunter and I
15 would also note though that part of our concern is
16 that the scope of the current withholding of the DERs
17 is beyond that of 10 CFR 73.21 which is requirements
18 for protection of safeguard information, but it may,
19 in fact, at some point be restored or restored in
20 total with what was current, the observation of 10 CFR
21 73.21 or it may be returned in a modified format, but
22 we -- our contention remains that we have been
23 handicapped in the process.
24 MR. REPKA: This is Dave Repka. And yes,
25 there may be a handicap, but the Board has already

1 granted 3 weeks. I concur with Ms. Uttal, the public
2 record is a dynamic thing. It's never been defined.
3 It's probably never been perfect, but there is a vast
4 amount of information out there and on aging, on
5 operating experience, on LERs and there certainly is
6 ample information in which to draft contentions and
7 get on with the proceeding. There simply -- the fact
8 that a very narrow band of information may have been
9 taken off the web for reasons related to September
10 11th, is simply -- there's no more we can do but get
11 on with the proceeding because waiting until
12 information is some day may be possibly restored to
13 the web is not an option here.
14 JUDGE YOUNG: Okay, Mr. Repka, I'm going
15 to ask you to address this just briefly and concisely,
16 the issue of if the standard for what contentions are
17 to be based on is the public record and the reason for
18 the public record now not containing the DERs that
19 were previously there is the events of September 11th
20 and they're still not available why is not the
21 September 11th events, the situation involving the
22 September 11 events not still a reason for extension
23 under the standard set in Catawba, CLI 8319, as
24 summarized by Ms. Uttal.
25 MR. REPKA: But CLI 8319 says is you base

1 your contentions on the public record today and if
2 some further information becomes available down the
3 road, then that information becomes available and
4 either becomes additional evidence --
5 JUDGE YOUNG: Mr. Repka, I understand
6 that. I think you're evading my question. You're
7 engaging in a circular argument.
8 MR. REPKA: Well, if I was doing that, I
9 apologize.
10 JUDGE YOUNG: Then let me ask my question
11 again. Let me try to make it clearer.
12 If the standard for drafting contentions
13 is that they are based on information in the public
14 record and the only reason that certain information is
15 not in the public record is the situation surrounding
16 the events of September 11, why is not the situation
17 surrounding the events of September 11 still a valid,
18 an unavoidable and extreme circumstance warranting an
19 extension in this case?
20 MR. REPKA: Because the impact of the
21 unavailable information is not extreme and
22 unavoidable.
23 JUDGE YOUNG: Okay, so now -- but you're
24 changing the focus there to be relevant to the nature
25 of the information and we've already discussed that

1 and that's not what the question was directed to.

2 MR. REPKA: Because it's not extreme and

3 unavoidable because of the existing public record.

4 The public record is what it is. We have

5 to take the public record as we find it under the

6 circumstances of today, the post-September 11 world.

7 That's reality.

8 JUDGE YOUNG: Okay, let me ask another

9 question and that is I'm looking at the Commission's

10 order, CLI 0120 of October 4th. The next milestone

11 after a decision on petitions and contentions was the

12 issuance of the final SER and FES, Final --

13 MR. REPKA: Safety Evaluation Report and

14 Environmental Impact Statement.

15 JUDGE YOUNG: FES. What does F as in

16 Frank E-S stand for?

17 MS. UTTAL: Final Environmental Statement.

18 JUDGE YOUNG: Okay. When does the staff

19 anticipate that those will be complete?

20 MS. UTTAL: My understanding it's 585 days

21 from submittal of the application.

22 JUDGE YOUNG: Since what? Submittal of

23 the application. That is applications were submitted

24 on June 13th so that would mean some time near the end

25 of 2002?

1 MR. MONIAK: Beginning of 2003 is what
2 we've been told, yes. Don Moniak again.
3 JUDGE YOUNG: Ms. Uttal, could you address
4 and Mr. Repka can also address it, if you wish, what
5 in view of the time line for the SER and FES being
6 late 2002, what is the impact of granting a further
7 extension at this point based on the removal from the
8 public records of certain documents following
9 September 11th event, what would be the impact of the
10 extension at this point, given the late 2002 time line
11 for the SER and FES?
12 MS. UTTAL: Well, Your Honor, I believe
13 it's the Commissioner's direction that these matters
14 be heard under this type of schedule. In addition,
15 there is, as we stated before, there is no reason to
16 delay this because of the unavailability of the subset
17 of documents. There is ample information for them to
18 couch their contentions and if information becomes
19 available later on, there are remedies that the
20 Intervenors can seek.
21 JUDGE YOUNG: I don't think you answered
22 my question though. What is the practical impact of -
23 - what would be the practical impact of a further
24 extension given the time line for the SER and FES?
25 MS. UTTAL: Well, Your Honor, it would be

1 delay in the identification of the issues and there
2 would also be a delay in commencement of discovery
3 against the applicant.
4 JUDGE YOUNG: And what would the impact
5 be, given the time line we're talking about?
6 MS. UTTAL: Those are the impacts, Your
7 Honor.
8 JUDGE YOUNG: You're saying that it would
9 make a significant difference in the next year or so?
10 MS. UTTAL: Your Honor, the Commission set
11 up this particular procedure to govern license renewal
12 actions. And the Commission, I believe, believes that
13 this delay would be a problem.
14 JUDGE YOUNG: We don't know what the
15 Commission thinks except that they have said that no
16 extensions without -- unless there are extreme and
17 unavoidable circumstances and the Petitioner now is
18 arguing, as I understand it, unavoidable and extreme
19 circumstances are the taking out of the public record
20 certain materials, namely the DERs, that were
21 previously available based on the events of September
22 11th.
23 MS. UTTAL: And we disagree with them. We
24 do not believe that that is so. They have all the
25 documents related to license renewal. We only

1 consented or agreed to a 3-week extension based on the
2 unavailability of the GEIS which is major renewal
3 documents.
4 JUDGE YOUNG: I think we're getting down
5 to a couple of issues here. The staff and the
6 licensee disagree that the DERs would be in any way
7 useful as part of the public record in drafting
8 contentions. They would have been available prior to
9 October 11th. They are not available at this point.
10 I think what Judge Kelber and Judge
11 Rubenstein and I are going to have to do is consider
12 your arguments on the nature of the DERs and how they
13 fall under the standard of the public record that
14 could -- and I'm going to add this, arguably be useful
15 in drafting contentions related to aging and the
16 subject matter scope of this defined by the Commission
17 as well as I think we need to look at what the staff
18 can do in terms of one, providing the daily event
19 reports and two, providing a legal argument for any
20 basis for not providing this to Petitioners. In other
21 words, not simply that they've been taken off for
22 security reasons, but the legal basis for not
23 providing them at this point to these Petitioners in
24 this case because they would have previously been
25 available to them.

1 So I really think that we need to confer
2 and I think it would be appropriate if the staff could
3 let us file something in writing by the end of
4 tomorrow, letting us know your position on providing
5 those daily event reports and if not, what the legal
6 basis for not providing them would be.
7 MR. MONIAK: Your Honor, this is Don
8 Moniak. I had two other types of documents I was
9 going to mention when it came my time.
10 MS. UTTAL: Your Honor, he has no motion
11 pending.
12 MR. MONIAK: Okay, I didn't know that --
13 I thought you were just soliciting information.
14 JUDGE YOUNG: Well, we have gotten a
15 motion from NIRS and we have not gotten a motion from
16 you and obviously we did want you to attend, if
17 possible, but I think we're limited to discussing the
18 daily event reports at this point.
19 MR. MONIAK: Okay, that's fine.
20 JUDGE KELBER: I want to raise one
21 possibility that the staff may want to look into as
22 quickly as they can and that is is it possible that
23 the daily event reports will never be made publicly
24 available again? That possibility has entered my mind
25 because these are records of a conversation between a

1 plant operator of one level or the other and the
2 emergency room here at NRC headquarters and they may -
3 - the judgment may be that it would be wiser not to
4 make them publicly available. I don't know whether
5 it's premature to ask that question, but if there is
6 an answer to that question, we should find out.
7 JUDGE YOUNG: I think she said earlier
8 that that might be a possible outcome and so it would
9 be helpful to know what the legal basis for doing that
10 or for not making them available now would be.
11 MR. GUNTER: Your Honor, this is Paul
12 Gunter. Can I just reiterate that the -- while we had
13 the opportunity to monitor the daily event report that
14 10 CFR 73.21 did apply and so safeguard information
15 was duly considered and that information was not
16 included in any detail in the daily event report.
17 JUDGE KELBER: Mr. Gunter, let's change
18 the subject slightly. From June 13th until October
19 10th, I believe was the action date, the daily event
20 reports were available to NIRS --
21 MR. GUNTER: I'm sorry, sir. I missed
22 your last sentence.
23 JUDGE KELBER: Did you make use of them?
24 MR. GUNTER: Yes sir.
25 JUDGE KELBER: You did make use of them?

1 MR. GUNTER: Yes sir.

2 MS. OLSON: But we did not save them to

3 our hard drives beaches they were available on an

4 on-going basis.

5 MR. GUNTER: The daily event report, part

6 of the usefulness for the public record was the word

7 search capability that was available.

8 JUDGE KELBER: I understand all that, Mr.

9 Gunter, but the question I'm asking is you did make

10 use of them. Did you feel that they would supply a

11 basis for an admissible contention?

12 MR. GUNTER: We've monitored them on a

13 broad basis throughout the entire plant population.

14 JUDGE KELBER: It requires a yes or no.

15 JUDGE YOUNG: Let him explain though. Yes

16 or no, did you anticipate using them to draft

17 contentions and then explain what you wanted to say.

18 MR. GUNTER: Again, the application of the

19 DERs was a -- we did not necessarily search them for

20 the construction of contention at that time because it

21 was our understanding that they were available as

22 through word search capability. So the --

23 JUDGE YOUNG: Did you anticipate that you

24 might ever use them in drafting contentions?

25 MR. GUNTER: Yes.

1 JUDGE KELBER: Did you actually start to
2 draft such a contention?
3 MS. OLSON: Your Honor, this is Mary
4 Olson. I made the motion, petition to intervene in
5 part based on Paul Gunter's work reflected in the
6 report that has been public under the title "License
7 to Kill" part of our concern, certainly not all of
8 them pertain to aging impacts on the environment in
9 relation to the once through cooling system at
10 McGuire. Yes, we have been pursuing alternate means
11 to get data from the State, but the daily event
12 reports also contained relevant information on that
13 and yes, we were looking at them and anticipating
14 using them.
15 JUDGE KELBER: Thank you.
16 JUDGE YOUNG: Do you see anything else
17 that we --
18 JUDGE KELBER: I think we've covered the
19 ballpark.
20 JUDGE RUBENSTEIN: I'm satisfied for
21 today.
22 MS. UTTAL: Your Honor, can you just
23 describe the parameters of what the Board is ordering
24 staff to do today?
25 JUDGE YOUNG: We would like to hear from

1 you, go back and consult with whoever you need to
2 consult with about the possibility of providing the
3 daily event reports to the Petitioners in this case,
4 possibly, if necessary, under some protective order.
5 If so, what the terms of that would be.
6 I want you to explore the reality and the actual
7 practical situation with regard to whether and the
8 degree to which you could provide them and under what
9 conditions and second, to provide your legal basis for
10 any limitations or refusal or inability to provide
11 them. And then once we have that we can issue a
12 decision on what I am taking to be a request for a
13 further -- actually, that brings to mind, Ms. Olson,
14 you made the original motion. To what extent are you
15 requesting additional extensions?
16 MS. OLSON: I am most certainly requesting
17 additional extensions based on unavailability of this
18 data.
19 JUDGE YOUNG: I said to what extent.
20 MS. OLSON: Oh, for how long?
21 JUDGE YOUNG: Right, for how long?
22 MS. OLSON: Well, given the fact that we
23 have it in absence since October 11th continuously, I
24 think that the minimum should be replacement of that
25 time from the point at which it is restored.

1 JUDGE YOUNG: Let me ask you another
2 question and this gets back to something Judge Kelber
3 had raised earlier and it occurs to me that maybe we
4 need to explore it a little bit more before we hang up
5 and that is to what extent do you think that you could
6 submit contentions at this point based on what you
7 have now, if it were left open that you could submit
8 additional contentions depending upon future
9 availability of the DERs.
10 MS. OLSON: Well, let me ask you a
11 concomitant question if I might be so bold, to what
12 extent are you going to set aside some of the
13 requirements for substantiating contentions?
14 JUDGE YOUNG: I guess my question, my
15 question to you was to what extent do you believe that
16 you could draft contentions at this point that would
17 be admissible under the rules, with what you have,
18 with the possibility of additional contentions to be
19 submitted later based upon the possible, future
20 availability of the DERs.
21 MS. OLSON: On the front of both the
22 questions of the once through cooling and also on the
23 question of age-related degradation, particularly
24 focused on reactor vessels, I have from the
25 consultants that I'm working with a very strong

1 statement that they would not be able to provide the
2 level of referencing and indication that they would
3 have been able to for concerns that we seek to raise
4 without the daily event report.
5 JUDGE YOUNG: And were there any other
6 concerns that you did not -- you said cooling and
7 age-related degradation of -- primarily with regard to
8 the reactor vessel. Were there any other issues?
9 MS. OLSON: I am pausing because we've had
10 a somewhat collapsed time schedule here and various
11 individuals and leave time have been overlapping and
12 I have to admit that I have not been able to contact
13 Dr. Edwin Lyman who is also consulting with me. So
14 I'm pausing because I honestly don't know whether I
15 should be identifying a third area there in relation
16 to the DERs. I mean in other words, we're working on
17 broader contentions, but in terms of whether there's
18 a link there, I don't know.
19 JUDGE YOUNG: All right, then Ms. Uttal,
20 could you to us by the end of tomorrow whatever you
21 can learn from consultation with staff and other parts
22 of the NRC as to what you can make availability and
23 under what conditions, as I said before, and then to
24 the degree you feel that you're not able to make them
25 available, the legal basis for that. And then we will

1 issue a decision in the near future.

2 Just in practical terms, we are going to

3 have to try to get out an order on that probably next

4 week because we've had to change travel plans to

5 accommodate schedule and again, we have to make other

6 changes.

7 But I do want to emphasize that all

8 parties, just for speed, the Petitioners should

9 proceed with preparation of your contentions pending

10 a ruling and don't assume that we will grant an

11 additional extension. At this point, the deadline is

12 still as it would set before which was November 27th.

13 If after receiving the staff's submittal tomorrow and

14 consulting with each other we see reason to grant an

15 additional extension we will do that in a written

16 issuance.

17 Is there anything that either Judge Kelber

18 or Judge Rubenstein or any person wants to add before

19 we --

20 JUDGE KELBER: This is Judge Kelber. Ms.

21 Uttal, I would urge you to pay attention to one phrase

22 that Judge Young used, "protective order." It may

23 very well be possible that a limited amount of access

24 could be granted under a protective order.

25 MS. UTTAL: Yes sir.

1 JUDGE KELBER: It's something that
2 probably you and the General Counsel will have to
3 worry about, but it might be a resolution.
4 MS. UTTAL: Thank you, Judge.
5 JUDGE YOUNG: Anything from anyone else,
6 any questions, comments, issues that we've overlooked?
7 MR. MONIAK: This is Don Moniak. I just
8 want to add the fact that there are other things
9 missing to -- I think the conversation focused on
10 daily event reports, but just for everybody's
11 information, the Part 21 reports and the notification,
12 preliminary notification of occurrences also is not
13 available any more and the inspection reports --
14 JUDGE KELBER: Have you tried for any of
15 these through ADAMS, Mr. Moniak?
16 MR. MONIAK: Yes, some of those are
17 available on Adams, but I'm just saying ADAMS isn't
18 accessible all the time either. I tried getting into
19 it earlier and couldn't.
20 JUDGE KELBER: I'm not defender of ADAMS.
21 MR. MONIAK: I know that.
22 JUDGE KELBER: I think it's the best thing
23 we've got.
24 MR. MONIAK: Yes. I think some of them
25 are. I can't say whether they all are. All I know is

1 that on the website they had a nice tidy list. It was
2 very accessible and I had all those bookmarked. I'm
3 just pointing this out that there are other things
4 missing. It's not just --
5 JUDGE KELBER: Thank you, sir.
6 MR. MONIAK: Thank you.
7 JUDGE YOUNG: Okay, again, I want everyone
8 to understand we're still under the same deadlines set
9 in our order of October 31st at this point, so don't
10 operate on the assumption that we may change that and
11 we will make a decision on that after we have
12 conferred and received the filing of the staff.
13 All right, if there's nothing else then,
14 that concludes this conference and if we see the need
15 for another one we will notify you in the next order
16 that we issue.
17 MR. MONIAK: Thank you.
18 MS. OLSON: Thank you.
19 MS. UTTAL: Thank you, Your Honor.
20 MR. GUNTER: Thank you.
21 (Whereupon, at 11:22 a.m., the
22 teleconference was concluded.)
23
24
25

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Duke Energy Corporation

Docket Number: 50-413-LR, 50-414-LR, 50-369-LR, 50-370-LR

Location: (Telephone Conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Stefen Styrsky
Official Reporter
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