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

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

Location: (telephone conference)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

LICENSING RENEWAL

TELEPHONE CONFERENCE ON MOTION FOR EXTENSION

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| In the matter of | : | Docket Nos |
| DUKE ENERGY CORPORATION | : | 50-413-LR |
| (McGuire Nuclear Station, | : | 50-414-LR |
| Units 1 & 2, Catawba Nuclear | : | 50-369-LR |
| Station, Units 1 & 2 | : | 50-370-LR |

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Wednesday,
November 14, 2001

The above-entitled matter came on for hearing,
pursuant to notice, at 4:08 p.m.

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair
 THE HONORABLE CHARLES N. KELBER
 THE HONORABLE LESTER S. RUBENSTEIN

1 APPEARANCES:

2 On Behalf of the Intervenor:

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8 On Behalf of the Agency:

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11 Office of the General Counsel

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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.

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

4:08 P.M.

1
2
3 JUDGE YOUNG: I think that's everyone. Of
4 those present, are you expecting anyone else to be
5 calling in?

6 MS. OLSON: Is Paul Gunter on the line?

7 MR. GUNTER: Yes, I am. Paul Gunter,
8 here. Nuclear Information and Resource Service.

9 JUDGE YOUNG: Is Ms. Uttal going to be
10 calling in?

11 MS. UTTAL: She's here with us, Judge.

12 JUDGE YOUNG: Okay, great. And then I
13 think we had Mr. Repka, Ms. Cunningham, Ms. Vaughn and
14 Mr. Gill.

15 MR. REPKA: Yes, we do. And we're at all
16 different locations, so I apologize for that in
17 advance.

18 JUDGE YOUNG: That's fine. And I think we
19 have Mr. Moniak.

20 MR. MONIAK: Yes.

21 JUDGE YOUNG: All right, first, the Court
22 Reporter, did you go over what I just said on the
23 record?

24 Did you include that on the record?

25 MR. REPKA: Yes ma'am, I have.

1 JUDGE YOUNG: Great. We're starting with
2 page 150 today, I believe.

3 MS. OLSON: The same service list as
4 October 30 and November 7th?

5 JUDGE YOUNG: Okay?

6 MR. REPKA: Okay.

7 JUDGE YOUNG: Let me just start out by
8 saying a few things. Judge Rubenstein and I have some
9 time to talk both yesterday and today and when I first
10 go over some items that -- circumstances --

11 MR. GUNTER: Judge, you're breaking up.

12 JUDGE YOUNG: Okay, if anyone is rustling
13 papers, try to restrain from doing that because I know
14 in the past sometimes if anyone rustles papers that
15 causes everyone to break up.

16 Can you hear me now?

17 MS. OLSON: Yes ma'am.

18 JUDGE YOUNG: The first thing I want to do
19 is go over some items that were not going to be
20 addressing absent compelling circumstances that we
21 should, based on our discussion yesterday and today.

22 First of all, looking first at the NIRS
23 reply, the reference to the Petitioner recognizing
24 that the licensing board and the staff acknowledged
25 that these documents rightfully belong in the public

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1 domain and I think both of the responses from the
2 staff and Duke argued we did not make any finding with
3 regard to what does not belong in the public domain so
4 that may not be assumed.

5 With regard to the clarification that NIRS
6 wishes to have the daily vent report generated by all
7 operating pressurized water reactors, including those
8 of the same design model as Catawba and McGuire units,
9 we will not be granting that request as to the
10 compelling circumstances to the contrary and prior to
11 our conference, I did go through the entire transcript
12 and looked to see where these event reports were
13 mentioned and on October 30th I believe that Ms. Olson
14 had said that you did mention that the key thing was
15 daily event reports, you did not specify anything
16 outside the context of the Duke, the four units that
17 are at issue in this case.

18 And on November 7th, on page 89 of the
19 transcript there was a discussion by Mr. Repka with
20 Judge Kelber about the daily event reports not being
21 Duke documents. And it was obvious that the context
22 that was being discussed was daily event reports
23 relating to Duke and there never was any effort to
24 indicate that anything more than that was warranted.

25 Again on page 92 there's a reference to

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1 the extent to which the daily events reports could be
2 gotten from Duke. Ms. Olson said that she understood
3 that the daily event reports were NRC documents, but
4 did not make any indication that those, that you
5 wanted anything more than the Duke daily event reports
6 relating to the four Dukes units.

7 There are other references on page 99 when
8 asked by myself what the reason for wanting the daily
9 event reports was. Mr. Gunter said that the daily
10 event reports reflect not only plant conditions but
11 the licensee's ability to keep the plant in an
12 analyzed condition to perform within compliance and to
13 do so without personnel error, with no indication of
14 wanting anything further than the licensee daily event
15 reports.

16 There's another reference on page 102 to
17 environmental conditions created around the plant and
18 that DER is to provide us with insights into those
19 conditions.

20 On pages 110 and 111, Mr. Gunter is saying
21 yes, we're interested in the daily event reports as
22 they are in unanalyzed conditions that then reflected
23 on the licensee surveillance program of a host plant
24 conditions including aging.

25 Again, on pages 118 and 119 -- then on

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1 page 119, you gave the Oconee example and then you
2 said certainly we would be looking for similar events
3 to that with regard to McGuire and Catawba. We would
4 be looking for daily reports that would cause capture
5 age related degradation that would basically provide
6 us with a threat to pull on.

7 At the top of that same page, we'd be
8 looking for various plant conditions. And so at last
9 we can provide us with something that we missed, that
10 is not something that we are inclined to consider,
11 granting any relief on.

12 MR. GUNTER: Judge Young?

13 JUDGE YOUNG: Yes.

14 MR. GUNTER: This is Paul Gunter, Nuclear
15 Information Resource Service?

16 JUDGE YOUNG: Yes.

17 MR. GUNTER: I appreciate your analysis
18 here. Although I could read in any of those
19 statements that we were not excluding other plants.
20 I think that there -- that consistent through the
21 transcript, what I hear is a broad general addressing
22 of the daily event reports as they would impact plant
23 conditions to include the McGuire and Catawba units.
24 But clearly as we have seen the pressurized water
25 reactor fleet has an experience record that relates to

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1 various plant specific conditions and this is what we
2 were intending to speak to and I think that as the
3 general references to the daily event reports
4 throughout the transcript infer that, in fact, we're
5 looking for a broader set of daily event reports than
6 just those constraints to the Catawba and McGuire
7 units.

8 JUDGE YOUNG: I think you're probably the
9 only ones that read it that way from my understanding
10 at this point. I don't think that we see how plant
11 conditions at other plants would be relevant and so
12 when you're talking about plant conditions, I think
13 that it was assumed by everyone again and no
14 clarification was made when there were statements that
15 did make specific reference to the Duke Plant. So
16 we'll take your argument into consideration, but I
17 think you've got a steep uphill battle on that one.

18 MR. GUNTER: Judge Young?

19 JUDGE YOUNG: Yes.

20 MR. GUNTER: I would just add that that we
21 were not specific to the Duke Plant, McGuire and
22 Catawba translates into a broader set of daily reports
23 that we were seeking.

24 JUDGE YOUNG: And some of the context, you
25 might have an argument, but in the context of the

1 hearing on four specific plant units, again, if I'm
2 not speaking correctly for Judge Rubenstein and Judge
3 Kelber, I'm sure they'll say so, but I don't think
4 that we read it that way and I think that if that's
5 what you wanted that should have been clearly
6 specified from the start and we don't see that that
7 was specified. Normally, the only thing that's
8 relevant with regard to a particular plant are events
9 related to that plant and if you want to bring in
10 something relating to another plant that would be
11 unusual that you would have to show the basis for
12 doing that.

13 All right, if there's nothing else on
14 that, I think what we want to get down to what
15 actually happened with regard to the daily event
16 reports that were sent, those relating to the four
17 Duke units.

18 Was that somebody else coming in?

19 (Pause.)

20 We've read the responses and with regard
21 to the timing of when materials were sent where, we
22 would like to hear more from both the staff and Ms.
23 Olson and Mr. Gunter on what actually occurred with
24 regard to this. So Ms. Olson, you were the one who
25 asked for the additional time. Why don't you start?

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1 MS. OLSON: Yes. Thank you. On Thursday,
2 we received the e-mail announcing that overnight
3 delivery of the daily event reports for Catawba and
4 McGuire would be forthcoming. On Friday, we received
5 your order affirming that that should happen. We
6 weren't quite clear from the e-mail on Thursday
7 whether the material would be sent to both offices,
8 the one in D.C. and the one in Ashville, North
9 Carolina. Or one of them. We weren't entirely clear
10 whether they were originating on Thursday or
11 subsequent to the order, so on Friday, nothing had
12 arrived in either office. We were a little bit
13 unhappy because we work on weekends, often. But we
14 understand that we're talking about business days and
15 so we waited until Monday. Monday was a holiday for
16 some aspects --

17 JUDGE YOUNG: Excuse me, did you make any
18 attempt to contact staff counsel to find out what had
19 happened on Friday?

20 MS. OLSON: I was not available to do
21 that, myself, but basically about 4 o'clock realized
22 that that was an opportunity and couldn't get through
23 on the switchboard.

24 On Monday, it was a holiday and --

25 JUDGE YOUNG: Excuse me, you're saying

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1 that you did try on 4 o'clock on Friday?

2 JUDGE KELBER: Did you contact Mr. Gunter?

3 MS. OLSON: Yes, I had been in contact
4 with Mr. Gunter on Friday. And he had not received
5 anything, nor had -- I mean, he's on parent leave, so
6 we actually have free physical locations we're dealing
7 with and the main office in D.C. had not received
8 anything.

9 JUDGE KELBER: The office being -- where
10 located?

11 MS. OLSON: 1424 16th Street, N.W., No.
12 404.

13 JUDGE KELBER: And it had not received the
14 package at 11:35 a.m. on the 9th?

15 MS. OLSON: It had not received the
16 package at any time on the 9th?

17 COURT REPORTER: Excuse me, this is the
18 Court Reporter. Can I just break in and ask people
19 to identify themselves when they're speaking?

20 JUDGE KELBER: I'm Judge Kelber.

21 MR. GUNTER: This is Paul Gunter, Nuclear
22 Information Resource Service. I can affirm that we
23 did not receive the package on the 9th. Subsequently,
24 our office was closed on Monday, the 12th.

25 JUDGE YOUNG: Mr. Gunter?

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1 MR. GUNTER: Yes.

2 JUDGE YOUNG: Were you in the office on
3 the 9th?

4 MR. GUNTER: Yes ma'am.

5 JUDGE YOUNG: At 11:35?

6 MR. GUNTER: Yes ma'am.

7 JUDGE YOUNG: For the whole day?

8 MR. GUNTER: Through the whole day? Well,
9 actually, I was at an ACRS meeting in the morning,
10 regarding -- so I was actually at One White -- Two
11 White Flint on Friday morning.

12 JUDGE KELBER: Was somebody in the office
13 at 11:35?

14 MR. GUNTER: I believe so, yes sir.

15 JUDGE YOUNG: Was there notice left?

16 MR. GUNTER: To my knowledge, no ma'am.
17 We did -- I have subsequently found a voice message
18 that was left on my machine on Monday 12th, by Federal
19 Express saying that they had a package and they were
20 looking for a delivery address.

21 JUDGE KELBER: Because according to the
22 staff reply, it says they say according to Federal
23 Express the first attempt was made to deliver the
24 package on November 9th at 11:35 a.m., but the
25 customer was not available or the business was closed.

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1 This is Judge Kelber.

2 May I ask Mr. Fernandez or Ms. Uttal,
3 whoever is there, you got this work from Federal
4 Express?

5 MR. FERNANDEZ: Judge Kelber, this is
6 Antonio Fernandez for the staff. Yes, Federal Express
7 keeps a website where you can track all shipments
8 through a tracking number given to each individual
9 shipment and some of the packages were sent to the
10 Federal Express and does state on that website and
11 through a subsequent phone call that I personally made
12 to Federal Express with regards to the status of the
13 packages that they did attempt to deliver it on Friday
14 at 11:35 and according to FedEx, it wasn't deliverable
15 because nobody was at the location or the business was
16 closed.

17 JUDGE KELBER: That was the 16th Street
18 address?

19 MR. FERNANDEZ: Yes, Your Honor.

20 MS. OLSON: Your Honor, this is Mary
21 Olson.

22 JUDGE YOUNG: Go ahead.

23 MS. OLSON: I absolutely confirm that
24 there was nothing delivered to me on Friday and I
25 understand that we're dealing with lots of constraints

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1 in the world, but indeed, it wasn't until after 3
2 o'clock on Monday, although mail was being put into
3 boxes here in Ashville, I checked it up until 3
4 o'clock and gave up at that point. It's a Post Office
5 box. And so it was delivered into Ashville on Monday,
6 but after 3 p.m.

7 JUDGE KELBER: Did you get the DERs on
8 Tuesday?

9 MS. OLSON: I did get them on Tuesday.

10 JUDGE KELBER: Thank you very much.

11 MS. OLSON: I would like to add one more
12 comment.

13 JUDGE YOUNG: Go ahead.

14 MS. OLSON: We were rather amazed to
15 receive the DERs electronically and quite frankly my
16 mind is a blank. Was it this morning or yesterday
17 afternoon, which would have resolved all of this so
18 much more quickly.

19 JUDGE KELBER: But you do have the DERs
20 now.

21 MS. OLSON: Both hard copy and
22 electronically.

23 JUDGE KELBER: Very fine. Is there
24 anything more to discuss today?

25 MS. OLSON: I have two other items I

1 wanted to ask about.

2 JUDGE YOUNG: Go ahead.

3 MR. FERNANDEZ: Your Honor, this is
4 Antonio Fernandez for the staff again. Before we
5 proceed, the staff just wanted to clarify whether
6 either of the people that have made appearances on
7 this case for BREDL are on the line and if they're
8 not, why hasn't Mr. Moniak filed a notice of
9 appearance?

10 JUDGE KELBER: Mr. Moniak is on the line,
11 I believe.

12 JUDGE KELBER: Are you there, Mr. Moniak?

13 MR. MONIAK: Yes, I am. I am filing a
14 notice of appearance.

15 JUDGE YOUNG: Is Ms. Vella still
16 unavailable?

17 MR. MONIAK: Yes, and the situation is
18 that -- the situation is that we're not being given
19 enough time. They're often out in the field. I'm out
20 in the field and getting an e-mail saying you're going
21 to have a conference call the next day at this time
22 doesn't provide for people's schedules at all. I
23 think there has to be a little bit more leeway in the
24 scheduling of these.

25 JUDGE YOUNG: Well, I think once the

1 Commission issued its October 4th order, everybody was
2 on notice that we were under a very tight time line
3 here and we're trying to comply with those, obviously,
4 everybody has to -- we arranged our schedules and
5 previously traveled around the holidays in order to
6 accommodate the case and obviously, all parties are
7 expected to do what is necessary to see that they can
8 meet deadlines. And if they don't and they do have
9 unavoidable and extreme circumstances, I believe the
10 original order that I issued provided that you needed
11 to file a request for extension 3 days in advance of
12 the relevant deadline and I don't think anyone from
13 BREDL did that.

14 MR. MONIAK: We have not filed an
15 extension for request -- a request for an extension
16 yet.

17 JUDGE YOUNG: Right.

18 MR. MONIAK: And we failed to write in
19 support of NIRS, even though we do support their
20 request and we thank you for giving us the 3-week
21 request. We were going to and then NIRS did and then
22 when we got the 3 weeks decide not to.

23 JUDGE YOUNG: Okay.

24 MR. MONIAK: However, is it still an
25 option to request an additional extension on our

1 behalf, right?

2 JUDGE YOUNG: Well, you sort of missed the
3 first extension request deadline.

4 MR. MONIAK: Oh.

5 JUDGE YOUNG: You got the benefit of NIRS.

6 MR. MONIAK: Okay. Well, we're going to
7 live with the deadline as is.

8 JUDGE YOUNG: I think the message is and
9 as I've repeated in most of the orders, if not all of
10 it I've issued, all parties are directed to assume
11 that we would keep that November 27th deadline and
12 operate on that assumption and so obviously when
13 you're getting ready for a case in any context, people
14 are expected to do what's necessary to get ready.

15 And if there are unavoidable and extreme
16 circumstances warranting an extension to timely make
17 a request for that. Now, the reason we're here today
18 and I think what we've really sort of narrowed it down
19 to at this point is the cause for the delay of several
20 days in getting the daily event reports after November
21 8th when I think the staff indicated they were going
22 to provide them.

23 I have a couple of questions for the staff
24 and that is, Ms. Olson before and I think Mr. Moniak
25 said what he said. I think Ms. Olson was asking about

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1 why weren't they send by e-mail and also to be fair,
2 I also as I was reading through the transcript, looked
3 back to see what statements had been made about the
4 relative capacities of Ms. Olson and Mr. Gunter with
5 regard to their representation and I do believe that
6 Mr. Gunter on page 84 indicated that he was assisting
7 Ms. Olson and that he was under some restrictions
8 because of his -- it says caring leave, but I think I
9 recall he said parental leave.

10 So I guess my question for you is did you
11 try to send them to Ms. Olson or try to do them by
12 e-mail on the 8th?

13 MR. FERNANDEZ: Your Honor, this is
14 Antonio Fernandez again for the staff. We sent them
15 to all the recipients on the 8th by mail, physical
16 copies. We did not have permission from the staff at
17 the time to forward electronic versions of the
18 documents. The versions that were sent were sent to
19 everybody, like I said, at the same time.

20 JUDGE YOUNG: And everyone on what list?

21 MR. FERNANDEZ: On any list, to the
22 recipients, Your Honor, to the two representatives
23 from NIRS.

24 JUDGE YOUNG: You said you did send them
25 overnight to Ms. Olson on the 8th?

1 MR. FERNANDEZ: Yes, Your Honor. It was
2 delivered today at 1:23 p.m. as reported by United
3 States Postal Service.com. I'm sorry, yesterday, at
4 1:23 p.m. in Ashville, North Carolina.

5 JUDGE YOUNG: You're saying that was a
6 postal problem?

7 MR. FERNANDEZ: Yes, Your Honor.

8 JUDGE YOUNG: Okay.

9 MS. OLSON: Your Honor?

10 JUDGE YOUNG: Yes.

11 MS. OLSON: I understand -- this is Mary
12 Olson. I understand that we are somehow bound by a
13 previous decision at a different level about schedule
14 in this case and I really don't understand all the ins
15 and outs about it, but I would like to go back to my
16 point that I made in my appeal just briefly that if
17 the website had never gone away which obviously it
18 did, but if it had not, and you take your original
19 order delineating time and you count up the number of
20 business days that NIRS would have had access to this
21 library of documents, and then you compare that to
22 where we are on the current time line and our access
23 to these documents, it's cut in half in terms of the
24 remaining time. And to me that's a substantial issue
25 and I want to go on record with that fact.

1 JUDGE YOUNG: How many days would you have
2 had -- well --

3 MS. OLSON: At this point I would have 20
4 days.

5 JUDGE KELBER: Counting from June 12th,
6 Ms. Olson, how many days would you have had?

7 MS. OLSON: I'm going on the order from
8 the Court.

9 JUDGE KELBER: Counting from June 12th,
10 Ms. Olson, how many days would you have had?

11 MS. OLSON: Perhaps you know the answer to
12 that question, since I don't have a calendar in front
13 of me.

14 JUDGE YOUNG: My question for you, Ms.
15 Olson, was had you gotten them on the 9th, that would
16 have given you what 15 days? Am I counting correctly?

17 MS. OLSON: If I had gotten them on the
18 9th, I was only counting business days, I would have
19 had two additional business days if you allow that I
20 would have had it Friday and Tuesday and counting
21 those days.

22 JUDGE YOUNG: Well, I think as you said
23 earlier, you work on weekends. I work on weekends.
24 A lot of us work on weekends, especially when gearing
25 up for a case.

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1 MS. OLSON: Then I would have had even
2 more days because there were holidays in your original
3 schedule, so I was being big to only count the
4 business days. I could go back and count again, but
5 I know that it would be even more days. I was being
6 modest in my request.

7 JUDGE YOUNG: Okay, here's the situation.
8 If we give you -- if we were to -- I think we are
9 going to need to confer, but if we were to decide to
10 give you some additional time because you did not have
11 it last week as of the date of our order, which --
12 recognize that you had not had these quite as long as
13 you had had the other materials that we discussed on
14 October 30th, but also, I think, recognize or at least
15 in looking back at the October 30th transcript, there
16 was not much emphasis placed on the daily event
17 reports and I think that you even said something to
18 the effect that even though you were raising those
19 that you really couldn't talk that much about them
20 yourself.

21 So if we were to give you an extra week or
22 a little more than a week, what that would do is put
23 the hearing between Christmas and New Years. I don't
24 know what -- we're willing to do that. We can do
25 that.

1 JUDGE KELBER: Some of us are. I am not.

2 JUDGE YOUNG: If that's what it comes down
3 to, we may -- that's something that we could look at
4 in terms of that being subject to travel availability
5 and room availability and so forth. I don't know what
6 the other parties feel about that.

7 MR. FERNANDEZ: Your Honor --

8 MS. OLSON: I'd like to say too. I'll
9 wait.

10 JUDGE YOUNG: But I think that what we
11 need to really look at here is reasonableness. And
12 we've gotten indications that you have not begun, I
13 think in the last November 7th, there was a reference
14 to not having started working on the writing the
15 contentions. I think Mr. Gunter was asked a question
16 and answered it to that effect.

17 And so --

18 MS. OLSON: Your Honor?

19 JUDGE YOUNG: I don't know that we're
20 going to get into an automatic counting of day for
21 day. What we need to deal with is the reality of the
22 situation and what you can and cannot accomplish, not
23 sort of a mechanical counting of days. So what I'd
24 like to hear from NIRS is what your circumstances are
25 now. What you have done to this point. What are your

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1 practical/pragmatic problems that would prevent you
2 from being able to get your amended and supplemented
3 petition done by the 27th and then I would like to
4 hear from all parties in terms of the practical
5 situation of rescheduling a hearing, should that be
6 called for.

7 MS. OLSON: Your Honor, this is Mary
8 Olson.

9 JUDGE YOUNG: Yes, go ahead.

10 MS. OLSON: Okay, at this time, I'd like
11 to clarify that we most certainly have started on
12 contentions. I think that answer was in relation to
13 that particular -- I think it was in relation to that
14 particular line of questioning and the daily event
15 reports in particular. Not all our contentions are
16 based on needing access to daily event reports. So
17 I'd like to clarify that NIRS is certainly in progress
18 on contentions.

19 JUDGE YOUNG: Okay.

20 MS. OLSON: And I would also like to say
21 that in view of the scheduling difficulty, I would ask
22 the consideration of the Panel for a 48-hour extension
23 in part due to Mr. Gunter's previously scheduled
24 travel that we did not anticipate as running into this
25 schedule, so I'm not saying the travel is the issue,

1 but I'm saying that at this point it would relieve the
2 NIRS filing tremendously if we had the opportunity to
3 finalize the filing after his return which is on the
4 27th and I'd like to commend to this the fact that we
5 have to file by paper and I had wanted to add to
6 today's discussion, a note at the end on housekeeping
7 about clarifying that process because of all these
8 delays and --

9 JUDGE YOUNG: Okay, actually, Ms. Birdsong
10 from the Secretary's Office let me know that you had
11 asked about filing and that was one of the things I
12 wanted to talk about, but what I hear you saying is
13 that you could live with a 48-hour extension from a
14 practical standpoint which would bring it to November
15 29th.

16 MS. OLSON: Yes.

17 JUDGE RUBENSTEIN: I guess the next
18 question, this is Judge Rubenstein, is could the staff
19 respond in a reduced time period so that the staff's
20 responses would be on time?

21 MR. FERNANDEZ: Your Honor, this is
22 Antonio Fernandez for the staff. I wish that the
23 Board would keep in mind that the staff would be
24 working and responding to two sets of documents
25 instead of only generating one set of documents. The

1 obligation on the staff, I believe, is maximized
2 because of the number of parties that we'd have to
3 respond to and in responding to that, shortening the
4 staff's time, I think would be very detrimental to the
5 response from the staff.

6 JUDGE RUBENSTEIN: If you consider the
7 alternative of directing them to Christmas week, do
8 you think you could make that kind of an effort?

9 MR. FERNANDEZ: I think we wouldn't be
10 willing to do that, given that our position is that no
11 extensions should be given because NIRS has not proven
12 the standard that the Commission ordered and the
13 referral order to the Board. I believe the staff
14 position is that there has been no showing of an
15 unavoidable and extreme circumstances in this case.

16 JUDGE YOUNG: Mr. Fernandez, this is Judge
17 Young. I think we've all been feeding on the -- and
18 there was some discussion of this on November 7th and
19 at least the Board has been proceeding on the
20 assumption that the unavoidable and extreme
21 circumstances were the continuing unavailability of
22 the daily event reports due to the events of September
23 11th and that subsequent taking down of the NRC public
24 website, so at least that's -- that has been the
25 assumption. So from a practical standpoint, we've

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1 heard NIRS say that they could live with November
2 29th. If we -- and Judge Rubenstein asked you, could
3 you -- that would shorten your time by two days. It
4 would shorten your time from 14 days to 12 days, as
5 I'm counting, unless I'm not counting correctly.

6 Now I think what the Board needs is to
7 have these, your responses in advance early enough
8 that we can make good use of them. I think what Judge
9 Rubenstein was asking you was what kind of
10 accommodation are you willing to make to try to avoid
11 having everyone have to move into -- possibly have to
12 move into the week of Christmas.

13 MR. FERNANDEZ: Your Honor, again, if we
14 take it as a foregone conclusion that NIRS will be
15 getting an extension, we would be willing to file a
16 response by the 13th.

17 JUDGE RUBENSTEIN: This is Judge
18 Rubenstein. Thank you, that's very considerate.

19 JUDGE YOUNG: Okay, does anyone want to
20 say anything else? Because I think at this point what
21 we need to do is confer and then back with you in a
22 few minutes.

23 Judge Rubenstein, I can call you at your
24 regular number or you can give me your cell phone
25 number, whichever way you prefer it?

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1 JUDGE RUBENSTEIN: Why don't I give you my
2 cell phone and then I won't disconnect from the call.

3 JUDGE YOUNG: Okay, and then everyone
4 else, if you'd --

5 JUDGE RUBENSTEIN: It's 1-520-390-1521.

6 JUDGE YOUNG: Okay. I will leave the
7 room. Everyone else will remain on the phone and
8 we'll be back with you in a few minutes.

9 (Off the record.)

10 JUDGE YOUNG: Okay, we're back. First of
11 all, I think we want to commend the parties on being
12 open to trying to work together to resolve this issue
13 and based on the fact that NIRS did not get the
14 materials on the 8th or the 9th and there was a
15 several days' delay and their willingness to accept
16 the 48-hour extension under the circumstances, we
17 think that that is appropriate and would grant the
18 same additional two days to the staff.

19 Now there are a couple of other just
20 little minor --

21 MR. REPKA: Judge Young?

22 JUDGE YOUNG: Yes.

23 MR. REPKA: May I ask if that two days
24 would apply to the Duke Energy response as well? I
25 see no reason it should not.

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1 JUDGE YOUNG: Right, that was actually one
2 of the next things that I was going to get into, the
3 extent to which we want to have every body on the
4 schedule. To some degree, that makes things simpler
5 and any of you can speak to that. That's one of the
6 things that I wanted to address.

7 Let's just go in order. Mr. Gunter, was
8 that you?

9 MR. REPKA: That was David Repka for Duke
10 Energy.

11 JUDGE YOUNG: Yes.

12 MR. REPKA: Our position would be, for all
13 the reasons we've already said, no extension is
14 necessary, but recognizing that we're beyond that we
15 would just ask that it be like extension for all the
16 dates, going from the 11th to the 13th for our
17 response wouldn't push us into the next week and it
18 wouldn't jeopardize the pre-hearing schedule.

19 JUDGE YOUNG: And I'm assuming when you
20 said for all dates that you would include BREDL, B-R-
21 E-D-L, an acronym for the Court Reporter, in the
22 extension as well or they didn't actually ask for it,
23 but for simplicity's sake, were you also suggesting
24 that?

25 MR. REPKA: As the proposed extension

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1 schedule, the 29th? We have no objection to that. I
2 was just keeping the dates together.

3 JUDGE YOUNG: Unless I hear another
4 objection, I think that probably would simplify
5 things.

6 What we would like to address next is the
7 issue raised on Ms. Olson earlier and also the timing
8 of these. I believe in our original order and I'm
9 trying to reach down into the stack here to get it in
10 front of me, we did set out some guidelines for
11 service which I think -- I've got it.

12 Okay, No. 5 of the October 16th order, all
13 filing should be served so as to ensure receipt on or
14 before the filing deadline. And then a deadline of
15 midnight on the date due is set.

16 We were going to make the deadline for
17 both of those be close of business so that -- and
18 again, here we're really thinking selfishly to some
19 degree because we want to have full opportunity to
20 read the responses prior to flying down to North
21 Carolina on the 17th.

22 So was there any concern that anything
23 could not be filed by e-mail?

24 MS. OLSON: Yes, Your Honor, this is Mary
25 Olson.

1 JUDGE YOUNG: And which things were you
2 talking about?

3 MS. OLSON: Well, it's my understanding
4 that we need to include supporting documents. Maybe
5 I'm confused on that point, but we have documents that
6 are not electronic and I don't have a scanner or a way
7 to make that happen between now and then and meet the
8 deadline.

9 JUDGE YOUNG: What about a fax machine?

10 MS. OLSON: Mr. Gunter, what do you think
11 about that? I don't know how big these are.

12 MR. GUNTER: Faxing might present a
13 problem. I mean it's my understanding we were going
14 to try to do some of this by paper. But I think that
15 we would -- and frankly, right at this point I don't
16 know the size of the filing considering the exhibits
17 that we're planning to attach. It may be too large to
18 fax.

19 MR. REPKA: Certainly coming from
20 Washington, it's going to be hand carried over to our
21 offices for Duke Energy and to the NRC.

22 MS. OLSON: And Your Honor, this is Mary
23 Olson. The 48-hour extension allows us to consider
24 that option. Previously, when I filed that query to
25 the Secretary's Office I believe Mr. Gunter was going

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1 to be out of the country at that time, but his
2 presence in Washington will assist that greatly.

3 MS. CUNNINGHAM: Your Honor, this is Anne
4 Cunningham. Might I ask if it would be possible for
5 the Petitioners to file the text of their proposed
6 contentions electronically so as to ensure receipt on
7 the 13th and perhaps provide the supplements or other
8 documents in the best way possible, but that would at
9 least ensure that we have the text of the proposed
10 contentions in hand.

11 JUDGE YOUNG: Well, you're thinking right
12 along the same lines I was thinking. Obviously,
13 anything that can be filed electronically, file it
14 electronically. We're going to make the deadline for
15 that the close of business 5 o'clock Eastern on each
16 of the dates, November 9th and December 13th.

17 What I would suggest with regard to the
18 other documents is that you have a pretty good idea of
19 what they are going to be. So I would expect that it
20 would have been able to -- that you would be able
21 either to have Mr. Gunter hand deliver them to
22 everyone in the Washington area by the close of
23 business on the 29th or you would know well enough
24 what they were going to be that you could mail those
25 overnight a day ahead of time. At least, they'd have

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1 those when they got the electronic text of your
2 supplemented and amended. Does that make sense?

3 MS. OLSON: Let me just clarify this.
4 This is Mary Olson. A clarifying question. Am I
5 understanding that we should file what can be filed
6 electronically as a courtesy to all in that manner and
7 that supporting documents could be delivered to those
8 in the Washington area. Is a postmark sufficient for
9 the others on the service list of the supporting
10 documents or do we have to FedEx them for arrival to
11 all on the date of the 29th?

12 JUDGE YOUNG: I think the ones that really
13 need to get it are the three of us, three Judges and
14 obviously, you're going to need to mail them to
15 Arizona. And the parties. I don't actually -- I
16 think I would do a courtesy e-mail filing with the
17 Secretary's Office, probably that a postmark with
18 everything else, with the written, the paper copy, a
19 postmark of the November 29th before 5 o'clock would
20 work to get it to the Secretary's Office.

21 So give them the courtesy e-mail filing,
22 but I don't think that they would need as much as we
23 would to have the paper documents in hand.

24 MS. UTTAL: Your Honor, this is Susan
25 Uttal representing the staff. There's been a

1 reference to the e-mail filings as courtesy copies.
2 I believe that under the Commission's order and also
3 the Board's order that they're actually required and
4 they're not courtesy copies. They are the filings.

5 JUDGE YOUNG: You know, that's an
6 interesting issue because I know that there is a rule,
7 I think, in progress at this point. I don't know that
8 we can -- I don't know that we need to actually
9 quibble over what we call them.

10 What we're requiring is that you file the
11 e-mail, that you do the e-mail, get the e-mail copies
12 to us. Get e-mail or paper copies to us by close of
13 business, 5 o'clock on the days in question.

14 In terms of filing it with the Secretary's
15 Office, I suggest you also do the e-mail filing,
16 delivery, whatever you want to call it, accompanied by
17 paper filing posted the same date.

18 And obviously, we would like to get paper
19 filings mailed to us, but as long as we have the
20 e-mail ones on the deadline date, that's fine.

21 JUDGE KELBER: I would like to point out
22 that anything sent by overnight mail to us here at the
23 NRC does not go to the Post Office box address. The
24 instructions, I believe, are in the order.

25 JUDGE YOUNG: They are and actually I want

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1 to encourage everyone to look at that order. Re-read
2 the October 16th order because it does go into a fair
3 amount of detail, not only on service, but on crafting
4 of contentions and what's required with regard to that
5 and read that carefully and try to follow that in
6 drafting all your filings.

7 All right. I think that leaves us hearing
8 the case on December 18th and 19th. Is there anything
9 else that we need to address today?

10 JUDGE KELBER: This is Judge Kelber. I'd
11 like to suggest to the Petitioners that they read Part
12 51 subpart A very carefully and where it is at all
13 possible, direct our attention to that part of subpart
14 A, you are discussing in your contentions. It helps
15 us a great deal.

16 JUDGE YOUNG: And obviously, also, don't
17 overlook the Commission's direction in its referral
18 order in which it defines the scope of the proceeding.

19 Okay, anything else?

20 MR. MONIAK: I have one question.

21 JUDGE YOUNG: Yes.

22 MR. MONIAK: This is Don Moniak with Blue
23 Ridge.

24 JUDGE YOUNG: Yes.

25 MR. MONIAK: I just downloaded today on

1 ADAMS a document about telecommunication with Duke
2 Energy Corporation, the NRC staff to discuss
3 information in the license renewal application and
4 fire protection systems and in which they discussed at
5 length what was within the scope of the -- what was
6 within the scope and what should be within the scope
7 of the application. I thought what was supposed to be
8 within the scope of the application by the licensee is
9 supposed to be established long before we have to file
10 contentions.

11 JUDGE KELBER: I believe it has been
12 established by the rules.

13 MR. MONIAK: Okay.

14 JUDGE KELBER: That's why I mentioned Part
15 51 subpart A.

16 MR. MONIAK: Okay. I'll take a look at
17 it. Thank you.

18 JUDGE YOUNG: And you'll also want to look
19 back at the Commission's referral order on this.

20 MR. MONIAK: Yes.

21 JUDGE YOUNG: And whatever communications
22 there have been between the staff and Duke, I don't
23 think the Board has any participation in that, so I'm
24 not sure --

25 MR. MONIAK: I'm just curious. If these

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1 teleconferences are functioning as requests for
2 additional information --

3 JUDGE KELBER: You can't base a contention
4 on a request for additional information, Mr. Moniak.

5 MR. MONIAK: I know you cannot base a
6 request on that, a contention on that. However, the
7 question I was going to ask, Judge Kelber, is whether
8 or not we're supposed to be provided that information
9 or do we have to hunt it down?

10 If it functions as a request for
11 additional information, wouldn't Petitioners be
12 provided a copy of that request?

13 JUDGE KELBER: I don't know of any such
14 case.

15 MR. MONIAK: Okay, because we've been --

16 JUDGE KELBER: Excuse me, Mr. Moniak.

17 MR. MONIAK: Yes.

18 JUDGE KELBER: I know of the instance
19 you're referring to because of your participation in
20 another case on which I am sitting as well.

21 MR. MONIAK: Yes.

22 JUDGE KELBER: In the absence of an active
23 website, I suggest that periodically, going to ADAMS
24 and check what's in the dockets, in the date range
25 from the last time you checked to the current dates,

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1 whatever it is.

2 MR. MONIAK: Yes.

3 JUDGE KELBER: That's your best way of
4 keeping in touch.

5 MR. MONIAK: Okay, well I have been doing
6 that.

7 JUDGE KELBER: It's the way I do it.

8 MR. MONIAK: Okay.

9 JUDGE YOUNG: Okay, anything else?

10 MS. OLSON: This will certainly come out
11 in our amended petition, but just to mention, this is
12 Mary Olson mentioning that we have an additional
13 member of Nuclear Information and Resource Service who
14 was not available at the time we filed our original
15 petition to intervene who is going to be joining the
16 case, Mr. Jeff Riley, so that will be reflected in our
17 filing, but I thought I'd mention it today.

18 JUDGE YOUNG: Do you want to give us his
19 contact information and have us add him to the service
20 list?

21 MS. OLSON: No, he's a Nuclear Information
22 and Resource Service member who we will be
23 representing.

24 JUDGE YOUNG: So you and Mr. Gunter are
25 the two representatives who are on the service list?

1 MS. OLSON: Yes.

2 JUDGE YOUNG: And I think everybody else
3 has been getting things from us anyway that needs to
4 get them. Am I correct or do we need to add anyone,
5 change anyone?

6 (No response.)

7 I'll assume we're right then. Thank you
8 all.

9 (Whereupon, at 5:09 p.m., the telephone
10 conference was concluded.)

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CERTIFICATE

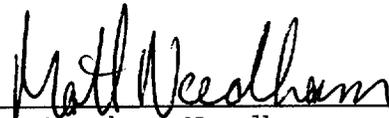
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

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.



Matthew Needham
Official Reporter
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