

Official Transcript of Proceedings

2002 FEB 19 AM 11:03

NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

Docket Numbers: 50-369-LR, 50-370-LR, 50-413-LR
& 50-414-LR

Location: (telephone conference)

Date: Tuesday, February 12, 2002

Work Order No.: NRC-241

Pages 653-704

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

LICENSING RENEWAL

TELEPHONE STATUS CONFERENCE

+ + + + +

-----X

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

-----X

Tuesday,

February 12, 2002

The above-entitled matter came on for hearing,
pursuant to notice, at 3:00 p.m.

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE CHARLES N. KELBER

THE HONORABLE LESTER S. RUBENSTEIN

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 APPEARANCES:

2 On Behalf of the Intervenor:

3 MARY OLSON, Director, Southeast Office

4 PAUL GUNTER, Washington, D.C. Office

5 of: Nuclear Information and Resource Service

6 729 Haywood Road, 1-A

7 P.O. Box 7586

8 Ashville, North Carolina 28802

9

10 On Behalf of Duke Energy Corp.:

11 DAVID A. REPKA, ESQ.

12 ANNE W. COTTINGHAM, ESQ.

13 of: Winston & Strawn

14 1400 L Street, N.W.

15 Washington, D.C. 20005

16

17 LISA F. VAUGHN, ESQ.

18 of: Duke Energy Corporation

19 422 South Church Street

20 Charlotte, North Carolina 28202

21

22

23

24

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 APPEARANCES: (CONT.)

2 On Behalf of the Blue Ridge Environmental
3 Defense League

4 PAUL MONIAK

5 Blue Ridge Environmental Defense League

6 P.O. Box 3487

7 Aiken, South Carolina 29802

8
9 On Behalf of the Agency:

10 SUSAN L. UTTAL, ESQ.

11 ANTONIO FERNANDEZ, ESQ.

12 Office of the General Counsel

13 Mail Stop-0-14D21

14 of: U.S. Nuclear Regulatory Commission

15 Washington, D.C. 20555-0001

16
17 ALSO PRESENT:

18 DUNCAN BREWER, Duke Energy Corp.

19 SKIP COPP, Duke Energy Corp.

20 ROBERT GILL, Duke Energy Corp.

21 GREG ROBINSON, Duke Energy Corp.

22 MICHAEL S. TUCKMAN, Duke Energy Corp.

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

(3:15 p.m.)

CHAIRPERSON YOUNG: Okay. Just to recap discussions that we held before the court reporter went on the record, or before we told him to go on the record, we had discussions about the need for all parties to comply with the ex parte rules; in other words, the rule that requires that no party contact any board member without including all other parties in the communication, whether that be written, e-mail, verbal, whatever.

We also discussed, let's see, whether either Petitioner might be represented by counsel. Ms. Olson indicated that NIRS had an attorney that they were consulting with and hoped to be able to get them more involved in the case. And we discussed the importance of making sure that any attorney be kept up to speed on developments in the case, because if an attorney comes in at a later date, although they would of course be allowed to participate, it would not be good grounds to grant a delay or continuance or extension because the lawyer had not had time to prepare, given that we understand at this point what's involved.

There was one other issue that we talked

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about, wasn't there? Was there anything else that any
2 of the parties that recall that we need to recount for
3 the record? Hearing no response, I'm assuming that
4 that pretty much covers what we talked about before.

5 As I was saying, then there is one
6 remaining issue that was sort of left hanging from our
7 conference in Charlotte, and that is the issue of the
8 document availability. I encouraged you to try to
9 work with each other than that. What do you have to
10 report to me in terms of how you've been able to work
11 that out between yourselves?

12 MS. OLSON: This is Mary Olson, and I'd
13 like to report that I haven't yet made an effort on
14 that front, because we were waiting to get the ruling,
15 and I admit that my previously scheduled work was
16 piled up in the intervening time. But I think there's
17 also a big question in our mind, at this point, a, how
18 important the FSAR is at this juncture for our work,
19 and, b, if it is important, the implications of
20 signing the confidentiality agreement.

21 And so I need to get a little bit clearer
22 from my team as to what all the questions are and the
23 concerns are about that before engaging in a
24 conversation with NRC staff. So that's why it has not
25 started yet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON YOUNG: What about -- let's
2 bring Mr. Moniak in now.

3 MR. MONIAK: I would say the same thing,
4 that I have not made an effort because we thought we'd
5 wait until the ruling came out, and then we have the
6 appeal that we're responding to now. And the issue
7 that I raised at the pre-hearing is that there are
8 FSARs available for other reactors, complete ones,
9 particularly Turkey Point, and if it's still the
10 position of the staff that the FSAR availability to it
11 has to be accompanied by a nondisclosure agreement,
12 given the fact that there are other FSARs for spent
13 fuel and reactors that are available in the public
14 record.

15 CHAIRPERSON YOUNG: Mr. Moniak?

16 MR. MONIAK: Yes.

17 CHAIRPERSON YOUNG: I don't want to cut
18 you off too abruptly, but if there has not been any
19 communications between --

20 MR. MONIAK: Yes.

21 CHAIRPERSON YOUNG: -- all of you, I'm not
22 sure that it's a very efficient use of our time at
23 this point.

24 MR. MONIAK: We can go on then.

25 CHAIRPERSON YOUNG: One thing I want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 encourage with regard to things like this, with regard
2 to discovery, any other problems that arise between
3 the parties--

4 MS. UTTAL: Your Honor?

5 CHAIRPERSON YOUNG: Yes?

6 MS. UTTAL: This is Susan Uttal. I do
7 have something to report about the FSAR.

8 CHAIRPERSON YOUNG: Okay. Do you want --
9 let me finish my sentence, and then I'll be glad to
10 hear what you have to report, okay?

11 MS. UTTAL: All right.

12 CHAIRPERSON YOUNG: If I can remember
13 where I was. Right, thank you. With regard to issues
14 like this discovery or any other issues on which
15 disputes arise between the parties, many courts and
16 the office that I previously worked in have rules that
17 require good faith efforts to resolve disputes between
18 the parties before bringing it to the attention of the
19 judges. The reason for this is both efficiency and
20 avoidance of delays that can be occasioned by not
21 making those efforts in advance and also to encourage
22 parties to try to work together, to whatever degree
23 they can, to accomplish substantive and that are
24 satisfactory to everyone.

25 So with that said, I want to emphasize

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that for all parties benefit and then, Ms. Uttal, you
2 had something to say further about the FSARs. And,
3 Court Reporter, that's F, as in Frank, S, as in Sam,
4 A-R-S.

5 MS. OLSON: Your Honor, I've been informed
6 by the staff that the Catawba and McGuire FSARs will
7 be available in redacted form from the PDR probably by
8 close of business this Friday.

9 CHAIRPERSON YOUNG: Okay. Then what I
10 would encourage is for BREDL and NIRS to look at
11 what's there, and then if there are any issues
12 regarding any redacted portions, try to work with the
13 staff on that. And I think that probably an efficient
14 and satisfactory way of proceeding in this case will
15 be to hold periodic status conferences, and we can
16 schedule one and then have this raised again at that
17 point, depending upon what happens.

18 MS. OLSON: Your Honor, this is Mary
19 Olson.

20 CHAIRPERSON YOUNG: Yes.

21 MS. OLSON: I would just like to
22 appreciate NRC if there was any effort to prioritize
23 those reactors that that effort was made or in any
24 case that that information is returning to the PDR in
25 some form or another. We appreciate that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON YOUNG: Okay.

2 MS. OLSON: It's our preferred route.

3 CHAIRPERSON YOUNG: Okay, great.

4 MR. REPKA: This is Paul Repka. Can I
5 just have a clarification on the format that the FSAR
6 will be made available through?

7 CHAIRPERSON YOUNG: I think it will be on
8 CDs.

9 MR. REPKA: Thank you.

10 CHAIRPERSON YOUNG: Okay. The other items
11 on the agenda get more into the procedural aspects of
12 this case and how to proceed from this point.
13 Obviously, we all know that appeals have been filed
14 that are presenting pending with the Commission and
15 that the Commission has also entered an order
16 indicating--or setting a briefing schedule on the
17 terrorism issue that we certified to them.

18 My understanding of the normal procedure
19 in cases here is that we will go forward with our
20 schedule in the interest of efficient handling of the
21 case, and that if the Commission, for example, issues
22 a stay, then we would call a halt to any proceedings
23 that were ongoing. But in the absence of that, that
24 the normal process would be to move forward.

25 So with that understanding, I would like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to sort of just go through the remaining items on this
2 list, not necessarily in the order listed, but to talk
3 about some time frames. One thing that we did in our
4 order was indicate that there might be -- it might be
5 appropriate to hold an early hearing just on the MOX
6 issue, and that would be a hearing -- and let me
7 actually find the exact language.

8 As indicated on Page 69 of the Slip
9 opinion, at that hearing, all parties may present
10 evidence to establish whether or not the contention
11 should be sustained on the merits, which would
12 determine whether MOX fuels use must be addressed in
13 the SEIS and the application. Once that determination
14 has been made, assuming we go forward with that, then
15 either we would move forward without any further
16 consideration of MOX fuel or we would move forward
17 with the MOX fuel issue being something that would
18 need to be addressed in the SEIS and await the
19 issuance of the SEIS for further hearing on the merits
20 of the whole case. That might also be occasion to
21 further lay documentation.

22 That is something that we suggested
23 because we thought that that would be more efficient
24 than waiting until issuance of the SEIS when the whole
25 issue was whether or not the MOX issue should be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 included in the SEIS. It's somewhat of a complex
2 issue, but I think that that's something that we need
3 to discuss in terms of scheduling. That brings into
4 play issues of discovery and the filing of summary
5 disposition motions.

6 MR. REPKA: Judge Young?

7 CHAIRPERSON YOUNG: Yes.

8 MR. REPKA: This is Dave Repka. May I go
9 first?

10 CHAIRPERSON YOUNG: Please.

11 MR. REPKA: On the issue of -- I think
12 maybe we should focus first on the issue of the MOX
13 contention, because the issues may be slightly
14 different on the schedule between the two contentions.
15 With respect to MOX, we do understand the issue as you
16 framed it, and I think not only Page 69 but Page 68 of
17 your order is instructive where it states that it's a
18 combined fact in law issue on whether the future
19 anticipated use of MOX fuel in the Duke Plants are
20 sufficiently definite to constitute a proposal under
21 the law with a connection, cumulative impacts,
22 interdependence or similar relationship to matters at
23 issue. In the Moore proceeding, Moore is being
24 addressed in the SEIS.

25 CHAIRPERSON YOUNG: Right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. REPKA: Now, given that that's the
2 issue, which is a mixed issue of law and fact, but I
3 think largely an issue of law, the it doesn't make
4 sense to wait for the SEIS to address that issue,
5 because the SEIS, as currently contemplated, wouldn't
6 be addressing MOX anyway, since there is no MOX
7 proposal the NRC in which to include it in the SEIS.
8 So we're prepared to go forward on that narrow issue
9 in the manner that the board seems to contemplate in
10 its decision, and given a schedule, I think, in the
11 SEIS somewhere around the May -- middle of the year
12 time frame, we don't think it's necessary to wait till
13 that time to get started.

14 CHAIRPERSON YOUNG: Excuse me. Now, what
15 did you say? Given the schedule in the SEIS for May?
16 I didn't follow that.

17 MR. REPKA: We understand the staff
18 schedule for the SEIS to be approximately May of this
19 year.

20 CHAIRPERSON YOUNG: Completed?

21 MS. OLSON: No, Judge. That's the draft
22 SEIS.

23 CHAIRPERSON YOUNG: I thought we had heard
24 earlier that it would be the end of the year or early
25 2003.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. OLSON: That is correct. The
2 schedule, as it now stands, for the final SEIS is
3 January 17, 2003.

4 MR. MONIAK: When is the draft? This is
5 Don.

6 MS. OLSON: Draft is May for McGuire and
7 June for Catawba, 2002.

8 MR. REPKA: Given that schedule and given
9 the Board's decision, I think that we're prepared to
10 move forward. And to the extent it's a narrow issue
11 not addressing the nature of MOX impacts in all the
12 details of the MOX analyses that, quite frankly,
13 haven't been done because there's no application
14 that's been submitted yet, particularly with respect
15 to vast quantities of MOX, we would move forward on
16 that.

17 So I think that what it means is that to
18 the extent there needs to be discovery on this issue,
19 we should schedule that discovery period and then
20 schedule this interim evidentiary hearing on the issue
21 that's been admitted. I think the discovery period
22 could be fairly brief, given the nature of the issues,
23 which is one of interdependence and cumulative
24 impacts, the kinds of legal conclusions that we've all
25 discussed in our papers to the Commission in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 particular.

2 CHAIRPERSON YOUNG: I think that you've
3 fairly accurately stated what's going on and what
4 needs to occur at this point. I guess the one thing
5 that I would add, just for the benefit of all parties,
6 is a recounting of the various cases in our order
7 spells out some of the various fact situations that
8 courts have addressed. And Mr. Repka is absolutely
9 right, this early hearing would not cover the impact
10 of the use of MOX fuel in a plant. The hearing would
11 cover issues similar to those addressed by the courts
12 in those cases having to do with how definite plans
13 are such that they would be called a, quote,
14 "proposal," such that they are, quote,
15 "interdependent," such that it would be wise to
16 consider them together, et cetera, and you can read
17 what all the courts have said about that.

18 And indeed our view of it was to go
19 forward with that so that there would not be any
20 wasted effort or duplicated effort in terms of the
21 staff not having the results of that to consider until
22 after they'd already done the SEIS. And I think that
23 you're right, we probably better go ahead and start on
24 discovery on that issue at least so that we can
25 schedule a timely hearing on the cumulative impacts,

1 et cetera, issue relating to plans for MOX use --
2 plans for possible anticipated use of MOX fuel in the
3 plants.

4 MS. OLSON: Judge Young, this is Mary
5 Olson.

6 CHAIRPERSON YOUNG: Yes.

7 MS. OLSON: I am following where we are
8 at. I'm wondering if I might -- if you might
9 entertain a couple of questions of a hypothetical
10 nature?

11 CHAIRPERSON YOUNG: Try them out, let's
12 see.

13 MS. OLSON: Okay. I mean I understand
14 that this hearing would be held and very likely no
15 matter which way your panel made a decision, very
16 likely, anyway, one or the other party would appeal
17 it, and it would go back to the Commission. But I'm
18 wondering in this process we have the matter of the
19 SEIS, but we also have the matter of the aging
20 analyses. Is that question coming into this initial
21 evidentiary hearing or only the SEIS questions?

22 CHAIRPERSON YOUNG: I guess when Mr. Repka
23 was just making that point, I did not see how the
24 aging issues would come in. Now, obviously, to the
25 degree that they might be relevant to whether it would

1 be wise to consider the two proposals together, they
2 might be peripherally relevant to that degree, but in
3 terms of the actual merits of those, I think Mr.
4 Repka's probably right, that the primary issues would
5 be the nature of the relationship between or
6 anticipated, I think the word has been used, use of
7 MOX fuel in the plants and the license renewal and
8 related aging and environmental issues.

9 MS. OLSON: So it would be all analyses,
10 not only the environmental analyses.

11 CHAIRPERSON YOUNG: Pardon?

12 MS. OLSON: So this would take into
13 question doing any analysis of MOX, not only the
14 environmental analysis of MOX. I'm just trying to --

15 MR. REPKA: Mr. Olson, I think you're --
16 it's a very complex legal question that's involved,
17 and that is whether it belongs in the SEIS. The rest
18 of that direct, substantive business is outside this
19 question.

20 CHAIRPERSON YOUNG: The only way it would
21 come in, as I said, would be if there were certain
22 factors related to the use of MOX fuel that would
23 cause--one of the standards that one of the courts,
24 several of the courts discussed is whether it would be
25 wise to consider them together or unwise to consider

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 them separately. I'm not looking at the language
2 right now.

3 And, you know, I guess one of the things
4 that I could say that might be of assistance to the
5 parties is that we're all aware, I think, of the other
6 case that's going on with regard to the MOX fuel
7 facility, and obviously judges in this office are
8 aware to pay judicial notice, if nothing else, of
9 things that are going on in other cases in the office.

10 What we're mainly -- what this hearing is
11 mainly intended to address is the nature of the
12 relationship between the possible or antiquated use of
13 MOX fuel in these fuels and the license renewal
14 application and process. And anything that would be
15 relevant to that would come in. To go into an in-
16 depth discussion of how MOX would affect aging is not
17 part of this, except to the degree it relates to this
18 main issue that we're going to be discussing.

19 MR. FERNANDEZ: Your Honor? This is
20 Antonio Fernandez from the staff, and I'd like to make
21 a couple of points.

22 CHAIRPERSON YOUNG: Please, go ahead.

23 MR. FERNANDEZ: First of all, for the
24 benefit of clarifying this issue for the staff, as we
25 understand it currently, the Board envisioned this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evidentiary hearing to be held for the sole purpose of
2 determining whether the MOX Program is currently a
3 proposal before the Commission, and once that
4 threshold question is resolved, whether that proposal
5 should be analyzed in the EIS for license renewal as
6 a cumulative impact. Is that correct?

7 CHAIRPERSON YOUNG: Wee, I'm not sure I'd
8 phrase it exactly as you've phrased it, but, yes,
9 substantially, the recounting of the various cases in
10 which courts have looked at similar issues, all of
11 which were cases that were cited to us by either Duke
12 or the staff or in the Commission's order denying
13 BREDL's earlier motion, the courts discussed various
14 tests or standards for deciding whether something is
15 connected, interdependent, has a cumulative impact, is
16 a proposal, has independent utility. There are any
17 number of concepts and language that are used to
18 describe the collection of issues related to
19 cumulative impact, which all boil down to whether
20 under any of these issues the MOX issue should be
21 considered together with the license renewal
22 proceeding, such that it should be included in the
23 SEIS. And the nature of those relationships and
24 connections would be what this hearing would be about.

25 If the resolution of that hearing, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evidence presented at the hearing and the argument and
2 the briefing presented as a result of that, if the
3 result is that we decide that the tests are not met
4 such that MOX fuel does not need to be addressed --
5 the use of MOX fuel does not need to be addressed in
6 the SEIS, then we move forward from that point with no
7 further consideration of that, absent reversal on
8 appeal. If, on the other hand, the decision is that
9 there would be a cumulative impact or there is
10 interdependence or it would be wise to consider them
11 together or irrational to consider them separately,
12 then what would happen at that point is that the use
13 of MOX fuel would be considered in the SEIS, absent
14 reversal on appeal.

15 At that point, if there were any further
16 issues that came out, late-filed contentions, we would
17 consider those at that point.

18 MS. OLSON: Your Honor, this is Mary
19 Olson.

20 CHAIRPERSON YOUNG: Go ahead.

21 MS. OLSON: I am following that we're
22 talking about a decision on whether to do an analysis
23 or not, so I'm not suggesting the analysis is for this
24 immediate hearing. But reading the consolidated
25 contention, I'm still a little puzzled that both

1 Duke's representatives, NRC staff's representative and
2 you are limiting this question as to whether that
3 analysis would be in the SEIS. I mean the SEIS is of
4 our concern, absolutely, but the consolidated
5 contention references aging and it also references
6 license renewal application. And so I guess I had
7 understood that if the concerns about the aging
8 analyses were, this hearing, to result in a final
9 decision that there was a reason to do a MOX analysis,
10 would result in not only SEIS inclusion but also in
11 the aging analysis. Am I incorrect in that reading?

12 CHAIRPERSON YOUNG: I think we said that
13 it would also be addressed in the license renewal
14 application, so to the extent -- yes, we did not
15 exclude aging analyses. I think the case law centers
16 around the NEPA cumulative impact test, and we
17 consolidated the two contentions together for more
18 efficient handling of the case before us.

19 MS. OLSON: Right, and I understand that
20 most likely the test of whether or not it is a
21 proposal would give a red light or a green light to
22 either of those analyses. I'm simply pointing out
23 that I view them as not one in the same, and yet I've
24 heard in this discussion only the SEIS reference. And
25 so I want to be clear that if there was a green light

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 being included in the overall proceeding, that we
2 would understand it would be included in both those
3 areas.

4 CHAIRPERSON YOUNG: I think you're
5 probably right to bring that out and clarify that. If
6 anyone else has anything to say on that, you're free
7 to. And, obviously, that's something that could also
8 be argued at that hearing is the degree to which MOX
9 fuel use would be considered to favor petitioners on
10 the cumulative impact test. It would be considered in
11 the SEIS, and you can make whatever argument at that
12 time you want to about -- we also mentioned in the
13 license renewal application -- the parties can address
14 at that time what you are asking to be considered or
15 not to be considered in the remainder of this
16 proceeding with regard to MOX fuel.

17 MS. OLSON: Thank you.

18 MR. MONIAK: This is Don Moniak. I just
19 want to confirm what Mary Olson is that it does say on
20 Page 71 and 72 that it does include the license
21 renewal application, so I'm glad that's been
22 clarified.

23 PARTICIPANT: Your Honor, I want --

24 MR. MONIAK: Excuse me, can I finish? I
25 wanted to add that in regard to this, and also any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contention, as far as establishing any kind of
2 schedule, is that possible, given the fact that the
3 reading's under appeal in the Commission, still have
4 to issue an order?

5 CHAIRPERSON YOUNG: That's what I
6 mentioned before, and that is that the general process
7 here is that we go forward, we set our schedule. If
8 any party files a motion to the Commission to stay any
9 part of these proceedings and the Commission ordered
10 that these proceedings be stayed pending the
11 resolution of the appeal, then certainly that would
12 stop everything, but at this point, in the interest of
13 the efficient handling of the case, I think we'll go
14 along with the general process, which is to move
15 forward until we hear differently from the Commission.

16 MR. MONIAK: And my second question was,
17 in the mixed oxide fuel fabrication facility process,
18 the staff issued a report on the results of scoping,
19 the scoping meetings under NEPA, and does the staff
20 have any intentions of doing that in this case,
21 because there hasn't been one issued yet is the reason
22 I ask. Because that would define whether or not the
23 staff decided or not, based upon interest in the
24 public as to whether MOX should be addressed in the
25 SEIS.

1 MR. REPKA: This is Dave Repka. I would
2 just point out that with respect to use of MOX there
3 has been no application, so therefore there could be
4 no scoping process.

5 MR. MONIAK: There has been a scoping
6 process on license renewal in which the public was
7 asked to comment on what should be within the scope of
8 that license renewal.

9 MR. REPKA: That's true.

10 MR. MONIAK: It's fully within the purview
11 of the NRC to decide that the use of MOX of, say, as
12 a reasonable alternative should be within the purview
13 of that, and we have not heard whether that decision
14 has been made or not. If that decision has been made
15 --

16 MR. FERNANDEZ: Your Honor, this is
17 Antonio Fernandez.

18 MR. MONIAK: -- it would resolve certain
19 issues.

20 CHAIRPERSON YOUNG: One at a time.

21 MR. MONIAK: Please, Mr. Fernandez, let me
22 finish.

23 CHAIRPERSON YOUNG: What was the last
24 thing you said, Mr. Moniak, and then --

25 MR. MONIAK: If the staff had made this

1 decision or not, it would just help in this
2 discussion.

3 CHAIRPERSON YOUNG: Mr. Fernandez?

4 MR. FERNANDEZ: Your Honor, the staff will
5 be releasing a scoping summary report for the scoping
6 process for both environmental reviews. It's under
7 review right now in the staff and will be released
8 soon. We don't know yet a specific date, but it will
9 be released.

10 I need to go back to a point that I was
11 trying to make earlier with regard to the evidentiary
12 hearing. Currently, the staff is willing and able to
13 participate in an evidentiary hearing to address
14 whether the MOX issue is currently a proposal before
15 the staff. However, given the staff's position that
16 the issue is not a proposal before the Agency, we
17 would not be able to support any analysis to answer a
18 question of whether these two programs with relation
19 to license renewal are interrelated, how their impacts
20 affect a cumulative impacts analysis or anything of
21 that sort.

22 On the staff side, a little bit different
23 from what the licensee stated. We would be able to
24 address the merely the proposal question but nothing
25 else.

1 CHAIRPERSON YOUNG: Well, I think that,
2 assuming we go forward with this hearing, the whole
3 collection of legal standards that the court has
4 defined in situations like this, including in the
5 cases that were cited by the staff, would be open for
6 argument and for the presentation of evidence. And
7 the courts have defined them in various ways. There
8 are a couple of decisions that summarize various
9 approaches, but any of that would be open to be
10 addressed at this hearing. To the degree any party
11 chose not to present any evidence or argument on an
12 issue, then obviously you'd be subjecting yourself to
13 not having your point of view considered to that
14 degree.

15 MR. FERNANDEZ: I agree, Your Honor. I'm
16 just saying what the staff currently has information
17 on we'll only be able to answer the question of
18 whether we have a proposal before us. If the Board
19 chooses to proceed as to what the impacts are from
20 burning MOX fuel in a reactor core, I mean as far as
21 I know from the staff, that is not something that
22 you're going to be able to get discovery from the
23 staff on.

24 CHAIRPERSON YOUNG: Well, I'm not seeking
25 discovery from staff.

1 MR. FERNANDEZ: Well, I'm saying that's
2 not something that the parties will be able to have
3 discovery on.

4 CHAIRPERSON YOUNG: So that's something
5 that will need to be worked out, obviously. In any
6 event, does anyone have anything -- I think Mr. Repka
7 started us out here and appropriately said this is
8 something that we need to go forward with so that the
9 issue can be resolved and everyone will know, as a
10 result of that, depending upon what happens with
11 various appeals, where we go from there. Does anyone
12 have anything further to say before we get into
13 talking about an actual schedule for discovery on this
14 and setting a potential hearing date for it?

15 MS. OLSON: This is Mary Olson.

16 CHAIRPERSON YOUNG: Yes.

17 MS. OLSON: You might direct me to where
18 I could read about this or you might give me a short
19 definition of the summary disposition motion you
20 mentioned, what it is and --

21 CHAIRPERSON YOUNG: Okay. Summary
22 disposition motions are motions that a party files in
23 which they say, "Here are the facts. These facts are
24 undisputed. Based upon these undisputed facts, we are
25 entitled -- as a matter of law, under relevant rules,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 laws, case law, et cetera, we are entitled to judgment
2 in our favor." When a person files a motion for
3 summary disposition, when a party files a motion for
4 summary disposition, in addition to making a legal
5 argument, they're accompanied by affidavits setting
6 forth the facts that the party making the motion
7 contends to be undisputed.

8 The party against whom such a motion is
9 filed would then file a response to that motion, also
10 accompanied by affidavits, setting forth any disputes
11 that it saw with regard to the facts or the inferences
12 to be drawn from those facts, and then a ruling would
13 be made, either granting the motion for summary
14 position or denying it. If the motion is granted,
15 then that would resolve that issue without any further
16 hearing. If the motion is denied, the hearing would
17 go forward in the same manner as it ordinarily would.

18 MR. FERNANDEZ: Your Honor?

19 CHAIRPERSON YOUNG: Yes.

20 MR. FERNANDEZ: Just for purposes of the
21 record and --

22 CHAIRPERSON YOUNG: Mr. Fernandez?

23 MR. FERNANDEZ: Yes.

24 CHAIRPERSON YOUNG: Yes?

25 MR. FERNANDEZ: Oh, I'm sorry, Your Honor.

1 I thought you were going to say something. Just for
2 purposes of the record, I just wanted to make clear
3 that the staff would object to having an evidentiary
4 hearing on anything besides the proposal requirement.
5 Aside from that issue, we believe none of the other
6 issues would be currently allowable under the
7 Commission's order, as far as the conduct of the
8 proceeding.

9 CHAIRPERSON YOUNG: Okay. Mr. Fernandez,
10 each time you say that, each time you make a reference
11 to whether it's a proposal, I'm not clear on whether
12 you are including that -- whether you're using the
13 word "proposal" as shorthand for the various tests and
14 standards that the court has set forth in the case
15 law, including the case law that you argued in your
16 response to the Petitioner's contention. But,
17 certainly, any hearing that goes forward, as suggested
18 by Mr. Repka and as envisioned in our order, any
19 hearing that goes forward would obviously include any
20 evidence and argument that was relevant to any of
21 these tests in so far as any party argued that they
22 were or were not applicable in this case.

23 So I'm not all together clear what you're
24 referring to when you say you're objecting to anything
25 other than whether it's a proposal. Are you objecting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to anything relating to the other standards and tests
2 used by cumulative impact, et cetera, or are you
3 objecting to an ultimate ruling on the merits of
4 whether MOX fuel use should be -- what effect it
5 should have on the license renewal? I'm not clear on
6 what you're saying.

7 MR. FERNANDEZ: Basically, just for the
8 sake of clarity, the only legal test that the staff
9 thinks is relevant right now is whether there is a
10 quote, unquote, "proposal" as a term of art in NEPA
11 jurisprudence regardless of whether that proposal
12 causes you to analyze cumulative impact. It is the
13 staff's decision that it is a threshold question of
14 whether a proposal exists, and once that issue is
15 resolved, then you can move on to decide how that
16 affects your environmental analysis. The staff's
17 decision is that anything beyond eliciting evidence
18 regarding whether a proposal currently exists is
19 unacceptable at this point in time.

20 CHAIRPERSON YOUNG: Okay. Let me see if
21 I can clarify here. I'm not sure what you mean by the
22 staff's decision, but the issue for this hearing,
23 which I think Mr. Repka understands and I think Ms.
24 Olson and Mr. Moniak seem to understand, that I think
25 we're all on the same page on, except, and that's what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I need to clarify with you, is that the collection of
2 standards used by courts to determine whether there is
3 a connection or a cumulative impact or an
4 interdependent or independent utility or any of these
5 standards used by the courts, including in the cases
6 that were cited by the staff, whether any of those
7 standards have or have not been met would be the
8 subject for this hearing. Anything relevant to any of
9 those standards would come in. Anything that's not
10 would not. The result of this hearing would be a
11 decision on whether there was a connection, cumulative
12 impact, interdependent, et cetera, such that MOX fuel
13 issue had to be considered in this proceeding and
14 addressed in the SEIS. Does that make -- let me just,
15 before we get back to you, Mr. Fernandez, Mr. Repka,
16 did you follow that?

17 MR. REPKA: I did follow that and was
18 prepared to proceed on that.

19 CHAIRPERSON YOUNG: And Mr. Moniak, did
20 you follow that?

21 MR. MONIAK: Yes.

22 CHAIRPERSON YOUNG: Ms. Olson, did you
23 follow that?

24 MS. OLSON: Yes.

25 CHAIRPERSON YOUNG: Mr. Fernandez, did you

1 follow that?

2 MR. FERNANDEZ: Yes, and I believe we
3 disagree with the Board.

4 CHAIRPERSON YOUNG: Okay. Well, given
5 that everyone else seems to be clear on what we would
6 be going forward with, we'll note your objection, but
7 I think we'll go forward as indicated in our previous
8 order, unless a stay is issued by the Commission. And
9 what we need to do at this point is we need to look at
10 hearing dates and times for discovery. Judge Kelber
11 --

12 JUDGE KELBER: Does that Monday look good?

13 CHAIRPERSON YOUNG: Except that -- let me
14 just, before you go through it, the first suggestion
15 you were making is a hearing in mid-May, and right now
16 I have scheduled --

17 JUDGE KELBER: No, I'm thinking July.

18 CHAIRPERSON YOUNG: Oh, okay. Okay.

19 JUDGE KELBER: Let me give a tentative
20 schedule to get comments. I'm proposing 45 days for
21 discovery, followed by time for summary disposition at
22 roughly 15 days after the close of discovery for the
23 licensee, ten days following that -- these are working
24 days -- for the intervenors and ten days after that
25 for the staff.

1 CHAIRPERSON YOUNG: Ten days for the
2 response for the --

3 JUDGE KELBER: Yes.

4 CHAIRPERSON YOUNG: -- intervenors and
5 then ten more --

6 JUDGE KELBER: Ten more working days for
7 the staff. Then I figure 15 days after that for a
8 hearing or a ruling.

9 CHAIRPERSON YOUNG: For a ruling, then we
10 need to give some more time.

11 JUDGE KELBER: So I would think that a
12 hearing wouldn't happen about -- until sometime early
13 July. Now, Judge Young is going to have to go over
14 this together with the Commission order in mind to get
15 the dates straight, but this is a tentative schedule
16 I've gone up, aiming at a hearing sometime in the
17 first part of July.

18 MS. OLSON: Your Honors, this is Mary
19 Olson.

20 CHAIRPERSON YOUNG: Yes.

21 MS. OLSON: I heard a brief mention to
22 working days, and I would make a very strong request
23 that we count them that way in this schedule.

24 JUDGE KELBER: We always do, Ms. Olson.

25 MS. OLSON: Okay. Thank you.

1 CHAIRPERSON YOUNG: Let me -- what I was
2 going to say is that right now, unless it changes, I
3 have three weeks of hearings scheduled for May, so
4 that pretty much takes -- or actually starting in late
5 April and then going through mid-May, so that takes up
6 some time. But I want to look up and make sure that
7 we have -- that we're clear on the amount of time
8 that's allowed for a response to motions for summary
9 dispositions, because I think that that may be
10 different.

11 JUDGE KELBER: This is why I said it's
12 tentative. Well, while Judge Young is looking up some
13 of the matters, does anyone have a conflict with the
14 hearing date sometime in early July?

15 MR. REPKA: Judge Kelber, this is Dave
16 Repka. May I respond?

17 JUDGE KELBER: Of course.

18 CHAIRPERSON YOUNG: Yes. Before you do,
19 I think the response deadline for motions of summary
20 disposition is 20 days, so we would need to add that
21 into the mix. Go ahead, Mr. Repka, and then meanwhile
22 let's all be sort of looking at our calendars and see
23 what looks reasonable. Go ahead.

24 MR. REPKA: Okay. First, with respect to
25 the schedule, that's right along the lines of what we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were charting out here, so that sounds generally fine.
2 I think if you look at kind of the beginning dates,
3 without trying to interpolate all the between dates,
4 it would discovery ending somewhere around the end of
5 March, March 30, and a hearing in July, we would focus
6 on the week of July 15 because of some other license
7 renewal activities that are scheduled the week before
8 and after that week. So July 15 is a week that we
9 would definitely target as a hearing week.

10 The interim dates, summary disposition and
11 testimony dates, I think there's enough time in there
12 to accommodate those dates consistent with the rules,
13 and we haven't tried to sketch all those out. I would
14 emphasize, though, the rules -- there was a discussion
15 of how many days for responses. The rules really
16 don't contemplate working days. They contemplate ten
17 days, and then if the last date doesn't fall on a
18 working day, it goes over. It's the ways rules
19 contemplate calculating days.

20 CHAIRPERSON YOUNG: Right. And I think
21 that the difference was that, in contrast to other
22 motions for which the deadline for responses is ten
23 days, it's 20 days for responding to motions for
24 summary disposition, I believe.

25 Now, with that said, a motion for summary

1 disposition, the Commission has recognized in its eyes
2 on the conduct of adjudicatory hearings that summary
3 dispositions do not always speed things along,
4 sometimes they slow things down. So we're not
5 necessarily encouraging them to be filed. I think
6 that the July date that you mentioned sounds
7 reasonable. I think that another way to sort of keep
8 us on track is to have periodic status conferences to
9 sort of see where we are, make sure everyone's
10 progressing along the time schedule that we have set
11 forth and provide any new information that comes up
12 that might affect that.

13 MR. REPKA: I think as far as summary
14 disposition --

15 CHAIRPERSON YOUNG: Go ahead.

16 MR. REPKA: -- I think it's appropriate to
17 have a date in there. Certainly, it can be an
18 optional date, and if a party chooses not to file,
19 including ourselves, we would simply not file and we
20 would go forward toward the hearing date of July 15.

21 CHAIRPERSON YOUNG: That's fine.

22 MR. REPKA: I think the other -- if you
23 back up from the July 15 hearing date, I guess the
24 rules contemplate pre-trial testimony at least 15 days
25 prior to that. Given weekends and all of that, I

1 think you're really talking about testimony then being
2 filed along about, consulting my calendar here, June
3 28 would probably be the last working day in June, so
4 that makes a logical day for testimony. But I think
5 there's enough time in that schedule between now and,
6 say, a March 30 end of discovery period to accommodate
7 all those interim dates.

8 CHAIRPERSON YOUNG: What I'd like to do
9 before we all hang up is get everyone's schedule for
10 the general July time period, June/July time period so
11 that once we get the transcript back and start working
12 on an order to issue as a follow-up to this
13 conference, we can -- Judge Rubenstein, Jude Kelber
14 and I can come up with a schedule that makes sense and
15 doesn't overlook anything that we need to make sure we
16 cover.

17 So as I said, from Judge Kelber's and my
18 standpoint, the middle of July would work, but just to
19 give us a little bit of leeway, my calendar, at this
20 point, I'm fairly open for most of July. Let's just
21 find out, starting with you, Mr. Repka, are you --

22 MR. REPKA: Our schedule, in terms of Duke
23 Energy, again, the weeks that are not good for the
24 license renewal team are the week of July 8 and the
25 week of July 22. So that's why we're targeting the

1 15th. My own personal schedule, which perhaps isn't
2 as important, is I'll be on vacation the 4th of July
3 week, which is June 30 through --

4 CHAIRPERSON YOUNG: I think a lot of
5 people probably will, so I think --

6 MR. REPKA: Right. So I was looking to
7 get testimony filed before that date and then the
8 hearing after that date, obviously.

9 JUDGE KELBER: By the way, before we check
10 with anyone else, how much discovery do we need? Is
11 30 days enough?

12 MR. REPKA: I think given the focused
13 nature of the issues, and in fact here we're talking
14 not just MOX but I think SAMA perhaps as well, I think
15 30 days should be ample.

16 CHAIRPERSON YOUNG: Well, now wait a
17 minute. On SAMA, let's -- I think we were just
18 talking about the MOX issue at this point.

19 MR. REPKA: That's fine.

20 CHAIRPERSON YOUNG: Let's --

21 MR. REPKA: Thirty days for MOX is fine.

22 CHAIRPERSON YOUNG: Let's hear from the
23 other parties, but before we do, assuming there's a
24 problem with the week of the 15th, would you be
25 available on the week of the 29th or in last June?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. REPKA: I'm polling the room here. I
2 think late July is fine and late June is fine.

3 CHAIRPERSON YOUNG: Okay. Okay. Let's go
4 to the staff. We've got late June, late July and the
5 week of the July 15 as being sort of a presumptive
6 preference. What's your situation with regard to
7 those dates?

8 MS. UTTAL: I'm available during all of
9 those times.

10 COURT REPORTER: Excuse me, ma'am.

11 CHAIRPERSON YOUNG: Yes.

12 COURT REPORTER: As you're going through
13 these people, can you have them identify themselves as
14 they go along, or else I'm going to lose track of it.
15 This is the court reporter.

16 CHAIRPERSON YOUNG: Please feel free to
17 interrupt. That was Ms. Uttal, correct?

18 COURT REPORTER: Okay. Thank you.

19 MS. UTTAL: As I was saying, I'm available
20 on all relevant dates. I can't speak for the staff,
21 because I don't know who, if anyone, will be needed at
22 that point.

23 CHAIRPERSON YOUNG: Ms. Olson?

24 MS. OLSON: My calendar is flexible, but
25 the sooner I know the better, because I have to move

1 that month.

2 CHAIRPERSON YOUNG: Okay. And, Mr.
3 Moniak?

4 MR. MONIAK: I am flexible.

5 CHAIRPERSON YOUNG: Okay. Let me just
6 tell you my situation. I am going to be taking off
7 starting this Friday afternoon to replace Christmas
8 and New Year's. In any event, when I get back, I
9 assume the transcript will be here. At that point,
10 the last week in February I should be able to get
11 together with Judge Kelber and Judge Rubenstein and
12 pull together a schedule and issue that during that
13 last week in February, I would think. So between now
14 and then if anyone has any further considerations for,
15 say, mid to late June to late July, just notify all
16 parties and us in writing with e-mail service as well,
17 and that way we can sort of stay on track on that.
18 And then with regard to the time for discovery, if
19 there is sufficient time in that schedule to allow for
20 more discovery time, we will. We'll just look at, and
21 I don't want to cut anyone else off from making any
22 arguments today, but one thing that I think does need
23 to be made clear is that Mr. Moniak and Ms. Olson
24 since you're not lawyers you do need to read Subpart
25 G of Part 2 of 10 CFR --

1 MR. MONIAK: Ten CFR 2.

2 CHAIRPERSON YOUNG: -- 10 CFR Part 2,
3 Subpart G. And there are provisions in there
4 regarding discovery, summary disposition and so forth.
5 You need to make your discovery request early during
6 the discovery time period so that you can get your
7 responses within the time allowed and if any disputes
8 arise so you can bring those to our attention such
9 that they can be resolved satisfactorily and timely.

10 With all that said, does anyone else have
11 anything to add about this --

12 MR. REPKA: Judge Young?

13 CHAIRPERSON YOUNG: Yes.

14 MR. REPKA: This is Dave Repka. One point
15 of procedure or perhaps clarification, on this
16 particular MOX issue, I want to point out that it is
17 a NIRS contention.

18 CHAIRPERSON YOUNG: Right.

19 MR. REPKA: I don't know if the Board is
20 contemplating discovery from BREDL on this contention.

21 MR. MONIAK: We will not be submitting
22 discovery.

23 CHAIRPERSON YOUNG: You're absolutely
24 right. Thank you for bringing that to my attention.
25 This would -- actually, although certainly BREDL is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not prohibited from appearing at the hearing, this is
2 a NIRS contention, so this would be something that
3 would involve NIRS, the staff and Duke primarily.

4 MS. OLSON: Your Honor, this is Mary
5 Olson.

6 CHAIRPERSON YOUNG: Yes.

7 MS. OLSON: I don't want to ask for
8 anything out of the usual because of my inexperience,
9 but because of my inexperience, I would ask that
10 collapsing time frames not be given a priority unless
11 there's a dire need for that. So in other words, we
12 started talking about 45 days, and it went to 30.
13 Well, you know, is there a rule that it has to be 30
14 or 45? I mean if it crunches down to 40, that still
15 gives me not quite such an acceleration while I'm also
16 learning. So I'm just saying if there's a possibility
17 to not collapse time frames, I appreciate it very
18 much.

19 CHAIRPERSON YOUNG: We'll try to give as
20 much as is reasonably doable within the time period,
21 and I think Mr. Repka was right. I haven't analyzed
22 it in detail, but between now and mid-July does give
23 us a certain amount of leeway. It's not a whole lot
24 but some, so I think probably we can give some leeway
25 there. Now, obviously, since I'm not going to be able

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to issue an order on this until the last week of
2 February, that would get us probably into April on
3 discovery rather than March 30. But we will try to
4 take all these concerns into account in coming up with
5 a reasonable schedule. And as I say, if anyone has
6 anything further to add between now and February 25,
7 which is -- well, the 26th, which is when I'll be back
8 into the office, please feel free to let everyone know
9 in writing and via e-mail.

10 Okay. Moving on, I do think that having
11 periodic status conferences is very helpful to keep us
12 on track. So let's look at a date, say, in mid-March,
13 about a month from now, to touch base on where we are
14 on all these issues. The week of March 11.

15 MS. UTTAL: Your Honor, regarding the week
16 of March 11, I think that there's something due to the
17 Commission on March 12, so if we could have it after
18 that.

19 CHAIRPERSON YOUNG: Okay. Would the 13th
20 or 14th work?

21 MS. UTTAL: Yes. It would work for the
22 staff, and I also have a second request. If we could
23 schedule this a little earlier in the day, because my
24 work hours usually end at three.

25 CHAIRPERSON YOUNG: Oh, sure, yes.

1 MR. REPKA: Judge Young?

2 CHAIRPERSON YOUNG: Yes.

3 MR. REPKA: Wednesday or Friday would be
4 better if they want it in the morning.

5 CHAIRPERSON YOUNG: Okay. How about the
6 13th? We need to remember that Judge Rubenstein is
7 out in Arizona, so we need to take into account his
8 schedule. But the 13th in the morning at ten o'clock?

9 MR. REPKA: Terrific. That works for
10 Duke.

11 CHAIRPERSON YOUNG: Okay. March 13 at ten
12 o'clock. I will put this in my order, but, everyone,
13 go ahead and put it on your calendars now. We'll hold
14 a status conference and address the parties' progress
15 on all of these issues that are listed in the agenda
16 today, as well as if we know anything further from the
17 Commission by that point that may assist us in doing
18 further work.

19 Okay. I don't think we need to look at
20 any proof consolidation issues at this point for this
21 particular part of the evidentiary hearing. And I
22 don't think, at this point, there's probably any need
23 to consider anything having to do with late-filed
24 contentions, limited appearance statements, et cetera.
25 I'd like to ask the parties to tell us whether you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 think there's any chance at all of settling any parts
2 of this proceeding?

3 MR. REPKA: This is Dave Repka for Duke
4 Energy. We're certainly open to exploring that.
5 Whether there's any chance, I can't say. I certainly
6 would hope with respect to the SAMA issue provided
7 additional information, which as you could probably
8 tell from our appeal brief, we feel satisfies the
9 issue. However, with respect to both issues, we're
10 certainly willing to have discussions. And there have
11 been no discussions to date, but that's something we
12 can consider and pursue if the parties are interested.

13 CHAIRPERSON YOUNG: And I would,
14 especially on the SAMA issue, encourage the parties to
15 talk with each other in terms of the new information.
16 Judge Kelber?

17 JUDGE KELBER: Yes. I have reviewed that
18 material, and, well, one can differ as to the extent
19 to which the issue has been mooted. I do think it is
20 a reasonable basis, and I would encourage the parties
21 to consider whether or not -- a reasonable basis for
22 discussion. And I would encourage the parties to
23 think in terms of proposing settlement of that issue.

24 MS. OLSON: This is Mary Olson.

25 JUDGE RUBENSTEIN: This is Judge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Rubenstein. This is clearly my understanding of the
2 issue also.

3 MS. OLSON: This is Mary Olson.

4 CHAIRPERSON YOUNG: Yes?

5 MS. OLSON: I have to admit that sometimes
6 my e-mail is very delayed in arriving, and because
7 it's difficult to see a late arrival in a large, full
8 in-box, I missed the electronic delivery that came of
9 Duke's response to additional information and only
10 yesterday became aware of it. So we have not yet
11 analyzed the contents of that.

12 JUDGE KELBER: We're not telling you to do
13 anything. What we're suggesting is that you take a
14 look --

15 MS. OLSON: We are.

16 JUDGE KELBER: And if you feel that
17 there's something ripe to discuss settlement, please
18 it's our function to encourage to do that.

19 MS. OLSON: Okay. I understand.

20 CHAIRPERSON YOUNG: Okay. And given that
21 it sounds as though all parties -- I didn't hear from
22 Mr. Moniak.

23 MR. MONIAK: Yes. We have not had much of
24 a chance to look at this information considering the
25 fact there's an appeal on the table and we're having

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to work on that.

2 CHAIRPERSON YOUNG: Well, take a look at it.

3 MR. MONIAK: Yes, we will after we finish
4 to responding to this. We only have ten days to
5 respond to this. And I'm looking at it in the context
6 of responding to this, but --

7 MR. REPKA: And I would just point out I
8 would welcome Ms. Olson or Mr. Moniak to contact me if
9 they pursue that.

10 MS. OLSON: Thank you.

11 CHAIRPERSON YOUNG: And that's something
12 that we'd like you to do between now and March 13 so
13 that you can report back to us on your progress on
14 that.

15 MR. MONIAK: Okay.

16 CHAIRPERSON YOUNG: At this point, given
17 that there has been new information provided, I don't
18 think we need to get into discussion of lead parties
19 and so forth on that issue. I think that we have gone
20 through most everything on the list. Is there
21 anything anyone else would like to raise?

22 MR. MONIAK: Your Honor? As far as lead
23 parties go --

24 JUDGE KELBER: Identify yourself for the
25 court reporter.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MONIAK: This is Don Moniak. And as
2 far as lead parties go, the contention has been
3 consolidated. Therefore, we intended -- let me back
4 up. Any kind of a settlement would require agreement
5 by both parties, right?

6 CHAIRPERSON YOUNG: Right.

7 JUDGE KELBER: Absolutely.

8 CHAIRPERSON YOUNG: You're not required to
9 settle anything, and, obviously, one party could
10 settle, another party might not settle.

11 MR. MONIAK: Oh, okay.

12 CHAIRPERSON YOUNG: Assuming that you
13 don't settle, at that point we would want to discuss
14 lead parties. At that point, I think you should look
15 seriously, in fact we've encouraged you to look
16 seriously as soon as possible, at the issue of
17 representation. But I think these matters are things
18 that we can put off until the next status conference,
19 given that new information's been provided and you
20 have things that you can discuss between now and March
21 13.

22 MR. REPKA: Judge Young?

23 CHAIRPERSON YOUNG: Yes.

24 MR. REPKA: Dave Repka. May I clarify?
25 Is that -- what you're suggesting is that we would not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 schedule anything further on SAMA until the March 13
2 call, other than to have discussions?

3 CHAIRPERSON YOUNG: That's what I thought.
4 Now, if you want to make --

5 MR. REPKA: No, that's fine. We're happy
6 with that, but I just wanted to make sure I was
7 understanding you correctly.

8 CHAIRPERSON YOUNG: Yes, you were. And I
9 think given that the most pressing issue to resolve
10 was, as you recognized, the issue of the evidentiary
11 hearing on the MOX, and given that there has been new
12 information provided that might possibly lead to
13 discussion, it doesn't necessarily seem very efficient
14 to set a schedule on the SAMA issue at this point.

15 MR. REPKA: Perhaps, Judge Young, if
16 nothing else, I suppose, consistent with the March 13
17 date, we could set a schedule for dispositive motions
18 on that issue. If we can't reach settlement perhaps
19 by March 13, we shortly thereafter would entertain
20 either call it a motion to dismiss based on mootness
21 or summary disposition or whatever but some for of
22 dispositive motion.

23 CHAIRPERSON YOUNG: You know, we can
24 probably do that. I'm a little hesitant to go
25 straight into setting a deadline for that without at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 least further consideration of whether it can be
2 resolved and whether we need to set some kind of
3 discovery for that issue. And we may know more about
4 that at that point. I'd be hesitant to set an
5 extremely early date for dispositive motions on that
6 without at least talking about the need for discovery
7 on it.

8 MR. REPKA: I think we would like to
9 target. If for some reason we need to go to hearing
10 on this issue, we would go to hearing at the same time
11 as the MOX issue. So whatever window that is.

12 CHAIRPERSON YOUNG: Now, when you say go
13 to hearing, go to hearing on what? A motion for
14 summary disposition or --

15 MR. REPKA: No. On the assumption that
16 for some reason a dispositive motion were not granted
17 and the Board was going to have a hearing on the SAMA
18 issue. It certainly would be our intent to not have
19 that any later than the MOX hearing, that they would
20 be at the same time. Obviously, we don't think it
21 should get there, but if it were to get to a hearing,
22 we would want to have one hearing, I guess is what I
23 want to say.

24 CHAIRPERSON YOUNG: Well, if everyone were
25 to agree to that, that's one thing, but I think the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 normal process would be to not hold a hearing until
2 after the SEIS is issued. So that's in accordance
3 with the Commission schedule. So unless there were
4 circumstances that would suggest that we should not
5 follow that -- doing the MOX hearing early is sort of,
6 as recognized, I think, somewhat unusual. We're doing
7 it somewhat early in order to facilitate the more
8 efficient resolution of all the issues. But in terms
9 of an ultimate evidentiary hearing on admitted
10 contentions, that would not normally take place until
11 after the SEIS is issued.

12 MR. MONIAK: Your Honor, this is Don
13 Moniak, and thank you for pointing that out. And I
14 just want to point out also that during the scoping
15 meetings for the license renewal, the NEPA part of it,
16 the staff consistently pointed out that and showed
17 timelines that the hearings would occur after both the
18 EIS is issued and also the safety evaluation report,
19 I believe. And they always showed the hearing process
20 being much later than what is --

21 CHAIRPERSON YOUNG: Okay.

22 MR. MONIAK: And I would like to see the
23 schedule adhered to, because I also want to ask is the
24 issue of scheduling late contentions also going to be
25 discussed today or has that been passed upon?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON YOUNG: I think that what I
2 had said earlier was that in view of the posture we're
3 in in terms of trying to set some dates with regard to
4 the MOX issue and encouraging the parties to talk with
5 each other to see whether any or all of the SAMA
6 issues related to Contention 2 could possibly be
7 settled and then to report back on that on March 13,
8 that we could leave further scheduling with regard to
9 things related to the Contention 2 issues, let's call
10 them, until March 13.

11 MR. MONIAK: Okay. And what about filing
12 the late contentions based on the draft environmental
13 impact statement?

14 CHAIRPERSON YOUNG: Well, that --

15 MR. MONIAK: That is always an option, I
16 assume.

17 CHAIRPERSON YOUNG: That's something that
18 I think we can address at a later date also.

19 MR. MONIAK: Okay.

20 CHAIRPERSON YOUNG: But, certainly, any
21 time you become aware of information -- of new
22 information, then unless deadlines have been set, you
23 want to start thinking in terms of filing whatever you
24 have to file within a timely period. One of the
25 purposes for having periodic status conferences is to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 keep everyone on track and make sure that any issues
2 that arise don't fall between the cracks and then come
3 back to bite someone later.

4 Anything else that any party sees that we
5 need to address today? Then I think we've kept Ms.
6 Uttal here quite late, and we will adjourn for today,
7 reconvene on March 13 at ten o'clock eastern time, and
8 we'll let you know what call number or pass code to
9 give when you call in. The telephone numbers will
10 remain the same; the pass code we'll notify you of
11 prior to the conference, and should get an order out
12 confirming the matters discussed today the last week
13 in February.

14 COURT REPORTER: Your Honor?

15 CHAIRPERSON YOUNG: Yes.

16 COURT REPORTER: Could I just have
17 everyone stay on the line after you're done just for
18 a couple of minutes, just so I can make sure I've got
19 everybody and who they're affiliated with?

20 CHAIRPERSON YOUNG: Okay. Then unless
21 anyone raises any objection, let's go ahead and
22 adjourn now, and go ahead and ask whatever questions
23 you need to ask.

24 (Whereupon, at 4:25 p.m., the Telephone
25 Status Conference was concluded.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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: 50-369-LR, 50-370-LR,
50-413-LR, 50-414-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.



Jonathan Zilinski
Official Reporter
Neal R. Gross & Co., Inc.