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NUCLEAR REGULATORY COMMISSION

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

Docket Number: 50-369-LR et al.

Location: (telephone conference)

Date: Wednesday, April 10, 2002

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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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

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Wednesday,
April 10, 2002

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

BEFORE:

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

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APPEARANCES: (CONT.)

On Behalf of the Nuclear Regulatory Commission:

SUSAN L. UTTAL, ESQ.
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Office of the General Counsel
Mail Stop-0-14D21
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ALSO PRESENT:

JARED HECK, NRC
MIKE TUCKMAN, Duke Energy Corp.

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

10:05 a.m.

1
2
3 JUDGE YOUNG: Ms. Olson, what I was saying
4 just a minute ago was I assume from your being present
5 without anyone with you that you do not at this point
6 have counsel representing you.

7 MS. OLSON: That is correct. I'm still
8 working on it, but I understand the direction in your
9 order.

10 JUDGE YOUNG: Okay. All right. I think
11 we went over who was present before, so that should
12 show up on the transcript, unless we need to go over
13 that again.

14 COURT REPORTER: We were not on the
15 record, Judge.

16 JUDGE YOUNG: Pardon? I know we weren't.
17 I said I assume that that would show up on the
18 transcripts just at the beginning where you indicate
19 who was present.

20 COURT REPORTER: Very well.

21 JUDGE YOUNG: Or do we need to go through
22 them again? Maybe that would --

23 COURT REPORTER: No, ma'am.

24 JUDGE YOUNG: Did you get everyone?

25 COURT REPORTER: Yes.

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1 JUDGE YOUNG: Okay.

2 MR. REPKA: Judge, this is Dave Repka. I
3 should say that I'm in Charlotte with a group from
4 Duke Energy, and I would just identify Lisa Vaughn as
5 co-counsel, who is also with me. I'm not sure it's
6 necessary to identify everybody else here.

7 JUDGE YOUNG: Okay. And there was one
8 other person from Duke at the very beginning who
9 introduced himself. Who was that again?

10 MR. TUCKMAN: My name is Mike Tuckman, T-
11 U-C-K-M-A-N. I'm Executive Vice President. And I am
12 not in the offices with the other Duke folks.

13 JUDGE YOUNG: All right. Just looking at
14 our list of items to address, the obvious is the
15 discovery, disputes that remain after you have talked
16 with each other. And we have Mr. Repka's e-mail of
17 April 8, which you lay out very well which issues seem
18 to remain, and we want to go over all of those.

19 We also need to talk about a hearing date,
20 hear an update from the staff on the SEIS and SR
21 progress, as well as a progress report on the parties'
22 efforts at settling Contention 2. And then related to
23 that, Dr. Kelber, Judge Kelber would like to hear what
24 the progress is on a related issue having to do with
25 the --

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1 JUDGE KELBER: Generic Safety Issue 189,
2 control of hydrogen and MOx 3BWRs and ice condensor
3 plants.

4 JUDGE YOUNG: So we can -- first, I guess,
5 let me ask, are there any other items that we need to
6 add to the agenda for today?

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

9 JUDGE YOUNG: Yes.

10 MS. OLSON: And I regret to report that
11 I'm not at my office. I'm in Indiana on a family
12 medical emergency and tried to very hard to be able to
13 issue an e-mail yesterday, but I just was unable
14 because of logistics and medical appointments and
15 things like that, to respond to a very few issues that
16 NIRS has with the interrogatories and request for
17 admission that Duke issued to us Friday, late
18 afternoon. And it's relatively brief, but I was
19 unable to give you the written statement that was
20 requested, and I apologize about that.

21 JUDGE YOUNG: Well, we'll discuss that
22 after we discuss the request that you've made to Duke
23 that --

24 MS. OLSON: Yes. I just wanted to let you
25 know that that was the case so that you would know

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1 that.

2 JUDGE YOUNG: All right. Any other items
3 that we need to add to the agenda? Okay.

4 MS. UTTAL: Judge? This is Susan Uttal.
5 While she hasn't as yet made any discovery requests
6 upon the other parties, we will be requesting that she
7 does provide us with copies of the exchange between
8 each other, whether formally or informally, and I'll
9 be sending a formal request for that.

10 JUDGE YOUNG: Ms. Uttal, you're sort of
11 breaking up. I didn't catch everything you said.
12 You're going to be making a request for all the --

13 MS. UTTAL: All the documents and answers
14 to interrogatories that the parties are exchanging,
15 that NIRS and Duke are exchanging between each other,
16 the request for admissions, et cetera. We would be
17 requesting formally later today that we be provided
18 with copies of everything that the parties have
19 exchanged with each other, including all documents.

20 JUDGE YOUNG: I'm not sure that a formal
21 request for that is necessary. Does either party have
22 any objection to providing that?

23 MR. REPKA: No objection from Duke; we
24 would have done that anyway.

25 MS. OLSON: No objection from NIRS; we're

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1 glad to do it.

2 JUDGE YOUNG: So there's no need to do a
3 formal request. It's now on the record that they're
4 going to provide those to you.

5 MS. UTTAL: Okay. There's one other
6 thing. I see that there has been an exchange of the
7 contract between the parties. I don't have that, and
8 I would like to get a copy of that from one of them.

9 MR. REPKA: This is Dave Repka. We
10 actually -- there has been no exchange of documents.
11 We're reached some agreements, as reflected in the
12 matrix I provided as to what would and wouldn't be
13 provided. To the extent we are turning anything over,
14 we're happy to do that.

15 MS. OLSON: And this is Mary Olson. I
16 would be glad to provide staff with the contract
17 materials that I already have. They did not get them
18 from Duke. I got them through other sources while
19 they were still available some time ago.

20 MS. UTTAL: I would appreciate that.
21 Thank you very much.

22 JUDGE YOUNG: Anything else before we get
23 started here? All right.

24 Again, this is Judge Young. Looking at
25 Mr. Repka's charter, or matrix, it looks as though the

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1 first set of discovery requests, requests for
2 production, that are remaining in dispute -- actually,
3 I was going to say request for production 2(a), 2(b),
4 2(d) and 2(e), but I do note that you say issue
5 remains, subject to further discussion. Does that
6 mean that you think you can work that out or do we
7 need to discuss them today?

8 MS. OLSON: I think -- Your Honor, this is
9 Mary Olson. I think that we have a disagreement that
10 cuts directly to the language in the order about scope
11 that we probably need to go back over. It's a
12 confusion that I really did not resolve in our last
13 call, and so I think that if we came to some
14 understanding of -- I think it's mostly Section B of
15 the criteria.

16 JUDGE YOUNG: Okay. And let me just back
17 up. Did you say 1(b) we needed to discuss?

18 MR. REPKA: No.

19 JUDGE YOUNG: Okay.

20 MR. REPKA: I would just clarify that 2(e)
21 is not something we need to discuss. I agree that we
22 need to discuss 2(a), 2(b) and 2(d). Two E I think we
23 reached an agreement with NIRS.

24 COURT REPORTER: I'm sorry, this is the
25 court reporter. I need a name.

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1 MR. REPKA: Dave Repka.

2 MS. OLSON: And we're referring to a
3 document issues by Duke as a graph or a table, rather.

4 JUDGE YOUNG: Okay. So 2(a), 2(b) and
5 2(c) -- I'm sorry, and 2(d) we need to discuss. So,
6 Ms. Olson, you indicated that you need some
7 clarification. Why don't both you and Mr. Repka, as
8 appropriate, let us know sort of where you are, and
9 then, Ms. Olson, what it is you would like
10 clarification on. And then we would like to hear from
11 you -- we'd like to basically hear from both of you as
12 to what the dispute is and then, Ms. Olson, why you
13 believe that you need the material. Which one of you
14 would like to summarize your discussion on these
15 three? I'm assuming we can talk about them all
16 together or to whatever degree we need to talk about
17 them separately feel free.

18 MR. REPKA: I think perhaps -- this is
19 Dave Repka. I'm happy to go first, and I think
20 perhaps it's best to start with 2(a). And I would
21 start by trying to describe a little bit about what
22 the mission reactor system modification plan is, and
23 I think that will allow a springboard to discussion of
24 the dispute, and I think then that will be applicable
25 to the others as well. But if we start in the context

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1 of a specific request, it may make more sense.

2 The mission reactor system modification
3 plan that's the subject of 2(a) is a document that
4 Duke prepared under the DOE contract. It relates
5 directly the use of MOx fuel and the future approval
6 of MOx fuel use by the NRC and really doesn't relate
7 to the specific threshold issue that the Board has
8 admitted right now.

9 What the document does is it reflects the
10 results of a review of reactor systems and facilities
11 at McGuire and Catawba to identify any specific
12 modifications necessary to support the use of MOx
13 fuel. It's a system-by-system review as well as other
14 evaluations of plant impacts. And it identifies, for
15 example, a conceptual and preliminary modification,
16 again, that would relate more to the -- not more,
17 completely to the issue of using MOx fuel and involves
18 changes like the transition to operation with enriched
19 soluble boron, relates to changes in fuel handling,
20 any changes in security, any potential changes to
21 reactor protection and control systems. So it really
22 -- and these are all changes that, in all likelihood,
23 don't specifically in and of themselves require NRC
24 approval. They're simply ancillary plant changes and
25 procedure changes related to using MOx fuel.

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1 Again, our position is that this is a
2 downstream issue that if it's relevant anywhere, it's
3 relevant to the actual amendments to use MOx fuel. We
4 don't see any connection to the narrow issue the Board
5 has admitted right now.

6 JUDGE YOUNG: Ms. Olson?

7 MS. OLSON: Well, I want to first say that
8 I appreciate that Mr. Repka says that anything
9 pertaining to schedule in these documents they may be
10 willing to provide, and that's all of the ones in this
11 section, and I appreciate that as being a specific
12 slice that certainly meets the scope of what we're
13 talking about in terms of thresholds.

14 My concern and confusion lies in the
15 ability to talk about something being cumulative or
16 synergistic without being able to talk about
17 substance. Perhaps you all have used those words only
18 in terms of case law, but the reason that I didn't
19 read it that way is because of the use of the word
20 "or" after the second clause of that sentence. So it
21 seems to me that we are talking about the substantive
22 issues to some degree as they relate to the question
23 of expending the operations of this reactor. Am I
24 mistaken about that?

25 MR. REPKA: Well, this is Dave Repka. I

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1 would respond to that. The issue of cumulative or
2 synergistic or interdependence really relates to the
3 interdependence of the MOx fuel license amendment that
4 may or may not be filed one day and license renewal.
5 the MOx fuel license amendment is -- these
6 modifications described in the modification plan are
7 only ancillary to that. They're not -- they don't go
8 to specific -- I mean there really is no basis to say
9 that they're interdependent in any way with license
10 renewal. Their dependency is to the MOx fuel
11 amendment, so I think we're really -- we're at an
12 additional degree of separation between the two. And
13 we, of course -- our position is there's no connection
14 or no dependence between license renewal and MOx fuel.
15 But this is one step even further removed.

16 JUDGE YOUNG: Ms. Olson, the phrases that
17 we use in defining that part of the issue that would
18 be considered by hearing -- the phrases are taken from
19 the case law, and our order -- ruling on standing and
20 contention contains a discussion of a great deal of
21 that case law. Obviously, there's other case law out
22 there, but that discusses quite a few of the cases
23 that have addressed these issues.

24 MS. OLSON: Right. I read it.

25 JUDGE YOUNG: But what you need to be able

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1 to do is make an argument to us as to why what you
2 need, what you're asking for is how you would argue
3 that what you're asking for would be information that
4 would be relevant to whether the impact of the use of
5 MOx fuel would be cumulative or synergistic,
6 interdependent, et cetera, et cetera, et cetera. I am
7 hesitant to define that for you because at this point
8 it's your burden, in effect, to argue to us why the
9 information you're seeking would fall within that. So
10 why don't you make your argument?

11 MS. OLSON: Okay. As far as we're
12 concerned, the two key questions under cumulative or
13 synergistic, that are substantive in the same way that
14 the issues weighed in cases that you cited have
15 substantive elements in order to come to those
16 conclusions, have to do with the impact that using MOx
17 fuel would have on the aging of reactor components and
18 the ways in which using MOx fuel would cause a
19 departure from the assumptions in both the GEIS on
20 license renewal and any supplemental EIS that would be
21 done specifically for these reactors, both. And in
22 order to make that case, it, I believe, is very
23 important for us to see what Duke has at this point in
24 terms of information about those two things.

25 And I'm -- you know, we've been willing to

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1 sort of narrow it down to things that are in play,
2 obviously stated in documents, like the DOE contract
3 is where I got the list of these particular documents,
4 and I have understood -- and we'll get to the larger,
5 broader request, and NIRS has agreed to make them more
6 specific -- that we're not having the whole litigation
7 on MOx use at this point. But if we bring our case
8 based on independent information, then Duke's just
9 going to say, well, that's not their information. So,
10 you know, I need to look at what they've got.

11 JUDGE YOUNG: Okay. What I understood you
12 to say, and I was taking a few notes, is that one way
13 in which you would argue that there might be a
14 cumulative or a synergistic impact would be that using
15 MOx fuel would have -- would be the impact that the
16 use of MOx fuel would have on the aging of components.

17 MS. OLSON: Right.

18 JUDGE YOUNG: Cumulative or synergistic
19 effect.

20 MS. OLSON: Right.

21 JUDGE YOUNG: And then the second thing
22 you said with regard to that I was not quite as clear
23 on, and that is the way that use of MOx fuel would
24 change assumptions in the EIS. I'm not as clear on
25 what you mean by that. So I would like to hear a

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1 little further explanation on the second part there
2 relating to the EIS.

3 And then a little further explanation on
4 why you think that, with regard to 2(a), the mission
5 reactor system modification plan, or plans, would be
6 reasonably calculated to produce the information
7 relevant to the impact of aging on -- the impact of
8 the use of MOx fuel on aging of components. And then
9 also with regard to the second part of your argument,
10 which I would like to hear some clarification on.

11 Judge Kelber or Judge Rubenstein, anything
12 you'd like to add in terms of asking?

13 JUDGE KELBER: This is Judge Kelber. I
14 believe that the gentleman summarized the problem very
15 well.

16 JUDGE YOUNG: Okay. Ms. Olson, did that
17 make sense to you?

18 MS. OLSON: Yes, it did. In terms of
19 clarifying more about the environmental impact
20 statement, you'll forgive me I don't have my documents
21 before me, but in the generic environmental impact
22 statement on license renewal, there is a whole section
23 that says that it assumes the use of low-enriched
24 uranium as a caveat, and it says that if low-enriched
25 uranium is not in use, then the section which includes

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1 things like the off-site committed dose, et cetera --
2 and I can't recite to you what all is in there, and I
3 apologize -- those assumptions cannot be made. And
4 that has to be included in the supplemental EIS.

5 And from our perspective, the use of a
6 different type of fuel will impact every form of
7 discharge from the reactor. We don't know to what
8 degree, but it will impact it. And when I say
9 discharge, I not only mean to air, water, sewage, so-
10 called low-level waste, worker exposure and high-level
11 waste. And if I've left anything out, it probably
12 impacts that too, in terms of decommissioning.

13 So what our other questions further down
14 are going towards is a very limited recital of, well,
15 what is the difference if you have projected data? We
16 understand they have not used any MOx yet, though it's
17 projected, but, you know, what are the differences?
18 And then to what degree would an assessment based only
19 on low-enriched uranium fuel use be accurate or
20 relevant should during the next 40 years -- and by the
21 way, I want to make a little note.

22 In your order, you have listed additional
23 20-year periods that don't correspond to what the
24 license renewal application says, which is that it
25 would be 40 years from whenever the renewal was

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1 granted or up to these dates, whichever came first.

2 JUDGE YOUNG: I think I just drew that
3 from the original notice of hearing that was published
4 we got the case. I could mistaken about that.

5 MS. OLSON: Yes. I think they made that
6 mistake back then, and I didn't say anything about it.
7 But, anyway, I just want to note it now.

8 The point here is that, you know, there
9 could be well be a mechanism for revisiting all of
10 these parameters that I'm talking about in some other
11 process, but the question is what difference it would
12 make in this process? And so in order to show that,
13 we are requesting the documents that DOE requested
14 because it, in our view, would give us information as
15 to what is known about the likely changes to the
16 overall changes.

17 So in terms of the reactor modification
18 plan -- I hope I have that in front of me right --
19 reactor system modification plan, it is, to some
20 degree, a step out in so far as there no doubt are
21 plans to change the reactor to attempt to mitigate
22 some of the impacts that MOx fuel would have that
23 would be different than LEU. However, those plans
24 therefore reflect what those differences likely are
25 and puts us all on the same page in terms of what

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1 we're talking about. We haven't seen these materials;
2 we don't know what's in them. I can't tell you
3 exactly why it's going to help me to see them, but
4 it's relevant, I believe, to the question of how does
5 MOx change the system sufficiently that changes must
6 be made?

7 JUDGE YOUNG: Mr. Repka --

8 MR. REPKA: Yes. May I respond?

9 JUDGE YOUNG: Yes.

10 MR. REPKA: I hear everything that Ms.
11 Olson is saying. The problem I have is that the
12 modification plan doesn't do any of those things. It
13 doesn't address any of those issues that she says it
14 addresses or that she says are relevant. Without
15 agreeing that those items are relevant, the mods here
16 simply don't do that. These mods don't address aging
17 effects, they don't address source terms for
18 environmental impact, they don't, I think she used the
19 word -- she talked about mitigating the effects of use
20 of MOx fuel.

21 . That's not what these modifications do.
22 These are modifications that are simply secondary
23 ancillary to using MOx fuel related to things like the
24 reactor protection system and the core
25 characteristics, the fuel handling procedures,

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1 security procedures. Quite simply, the modifications
2 that are the subject of the plan don't go to the
3 issues that Ms. Olson thinks they do, and I think that
4 it's really just a fishing expedition that really more
5 accurately goes to the merits of any contentions they
6 might one day have on MOx fuel use.

7 Beyond that, I think Ms. Olson talks about
8 needing to see whatever it is that Duke has prepared
9 because DOE has requested it. The short answer to
10 that is that DOE has requested a lot of things that go
11 beyond the scope of NIRS' contention. And so
12 therefore that alone doesn't make it relevant here.

13 JUDGE YOUNG: One question I have, Mr.
14 Repka, is -- this is Judge Young -- Ms. Olson's
15 explanation of the second part of her argument with
16 regard to cumulative or synergistic effects or impacts
17 had to do with differences in -- correct me if I'm
18 using a different term -- but the concept that I got
19 was differences in releases of radiation and the
20 impact on the -- did I understand that correctly?

21 MS. OLSON: Yes. That's fine.

22 JUDGE YOUNG: And so, Mr. Repka, am I
23 understanding you correctly to say that the
24 modifications in -- and when I was taking notes when
25 you were talking earlier, I wrote down modification --

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1 review of systems to identify any modifications
2 necessary to support use of MOx fuel and
3 identification of conceptual and preliminary
4 modifications relating to the issue of using MOx fuel.
5 How do those relate to possibility of changes in the
6 releases that might affect the environment? It would
7 -- as I understand Ms. Olson to be arguing.

8 MR. REPKA: The short answer, Judge Young,
9 is they really don't relate to that issue. I would
10 characterize these as ancillary operational changes.
11 The changes with respect to source term and
12 environmental releases, those stem directly from the
13 use of MOx fuel. This document -- and are addressed
14 in whatever documents might address that. And we can
15 argue as to whether that's within scope. But this
16 modification plan relates to other operational
17 changes, and it really has no bearing upon aging or
18 environmental releases or impacts.

19 JUDGE YOUNG: Has nothing to do with
20 changing anything, any components related to releases
21 or --

22 JUDGE KELBER: Releases.

23 JUDGE YOUNG: Pardon?

24 JUDGE KELBER: Mitigating releases.

25 JUDGE YOUNG: Or mitigating --

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1 MR. REPKA: The answer is no.

2 JUDGE YOUNG: Ms. Olson, anything further
3 on 2(a) and then we may want to ask Mr. Repka to
4 provide us a little bit more description of what the
5 mission reactor licensing plan and irradiation plan --

6 MS. OLSON: Your Honor, this is Mary
7 Olson. I would imagine that 2(a), reactor system
8 modification plan, and 2(b), mission reactor
9 irradiation plan, would in fact address more closely
10 our concern, if indirectly, but nonetheless I think
11 2(d), more directly, our concerns about reactor
12 component aging, not so much that they necessarily
13 have a header or a title that says, "Impact on
14 Component Aging," but in terms of the technical
15 aspects that intersect with already understood and
16 known aging phenomenons from LEU, but chapters that
17 would alter what is going on in the reactor if they
18 were using MOx fuel. So I'm not suggesting that we're
19 only interested in something that has a title --

20 JUDGE YOUNG: Ms. Olson, I missed a word
21 there. Factors that would alter what?

22 MS. OLSON: By using MOx fuel, that the
23 use of MOx fuel might alter those same known and
24 understood factors. And so, for instance, the
25 irradiation plan I think goes directly to some of our

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1 concerns.

2 JUDGE YOUNG: Ms. Olson, let's hold off on
3 the irradiation plan at this --

4 MS. OLSON: Okay.

5 JUDGE YOUNG: What I understood you to say
6 is that you agree that the mission reactor licensing
7 plan would not be relevant to the issues that you want
8 to raise in terms of cumulative or synergistic
9 impacts, that 2(d), the irradiation plan, may be the
10 most relevant. And I sort of heard you conceding that
11 the mission reactor system modification plans may not
12 be as relevant. I'd like to limit the discussion
13 right at this moment to the mission reactor system
14 modification plans. Mr. Repka has said that they do
15 not have to do with anything relating to releases, and
16 I don't think that --

17 MS. OLSON: I was trying to clarify that
18 I think it's the aging issue there. And the reason I
19 spoke to the environmental issue is because you had
20 asked for greater detail, and then I went to
21 addressing the other question without perhaps
22 introducing the aging concern there.

23 JUDGE RUBENSTEIN: This is Judge
24 Rubenstein. I'm having a little difficulty where
25 we're wandering. I was hoping that in your discussion

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1 you would show how this information that you wanted
2 derived from this discovery could be used to
3 demonstrate that MOx is certain, probably or
4 reasonably foreseeable for that use or otherwise
5 definite enough, as we laid out in our phased
6 contention. While much of what I'm listening to is I
7 hear much of the thrust talks to the effects, but
8 we're in sort of a narrower scope right now. So would
9 you address how this discovery would be to the
10 certainty or the probable or the synergistic use or
11 the interdependent use of MOx?

12 JUDGE YOUNG: And before you answer, what
13 I was trying to get you to do was let's stick to 2(a)
14 at this point and go through these one by one, because
15 what I heard you saying was -- it sounded as if you
16 were saying the primary one is the mission reactor
17 irradiation plan that you would argue would have
18 relevant information. But right now we're talking
19 about the reactor system modification plan, and I
20 would like to get further clarification in the same
21 line as Judge Rubenstein was mentioning on how what is
22 in those plans, based on what Mr. Repka has told us,
23 would relate to the certainty issues and the
24 cumulative or synergistic impact issue.

25 MS. OLSON: Thank you, Your Honor. This

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1 is Mary Olson. I was trying to -- yes? Hello?

2 JUDGE RUBENSTEIN: This is Judge
3 Rubenstein. Let me help you focus on that. In other
4 words, are you looking for things in these
5 modification plans which deal with schedule or
6 contractual or policy details, which would talk to
7 these, Judge Young said, in terms of certainty and
8 interdependence? That's really where I'm coming from,
9 particularly, say, 2(a) as an example. So it may save
10 time when looking at the additional items.

11 JUDGE YOUNG: And I think didn't Mr. Repka
12 say, or didn't one of you say, that Duke has already
13 agreed to give all the material relating to schedule,
14 right?

15 MR. REPKA: This is Dave Repka. We agreed
16 on 2(b) and 2(d) with respect to schedule. On 2(a),
17 there is schedule information related to the specific
18 mods, but it doesn't relate to the project schedule
19 itself, which is, I think, what's more accurately at
20 issue here. So we have not agreed on 2(a) to provide
21 schedule information. With respect to the licensing
22 plan and the irradiation plan, that's something we can
23 talk about, however.

24 MS. OLSON: I will speak to the question
25 before me, but first I'd like to make the

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1 clarification that I was trying to say that our
2 concern with reactor system modification was not only
3 discharges but also aging.

4 With that clarification made, I will say
5 that not every item of our discovery will address
6 every single issue of the criteria. It's my
7 understanding that we can bring a body of evidence,
8 not ask each and every piece of it to fulfill every
9 aspect of criteria A and criteria B. I believe that's
10 correct. Is that okay? I mean I've never done any of
11 this before, so tell me if I'm really wrong.

12 JUDGE YOUNG: What we are trying to
13 understand from you is what you expect you will get
14 through your request for production 2(a), at this
15 point is what we're talking about, that would be
16 relevant to the issues having to do with the
17 certainty, for shorthand, for that set of issues and
18 cumulative or synergistic impacts with regard to that
19 set of issues. What do you expect that you can get
20 from your request for production 2(a) relating to
21 those issues? What makes you believe that it's
22 reasonably to be expected that the mission reactor
23 system modification plans would contain anything
24 relevant to those issues?

25 MS. OLSON: Right, and this comes back to

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1 the question of whether the word "cumulative" or
2 "synergistic" is only going to be applied in terms of
3 case law and the application for license renewal and
4 any prospective application for MOx use or whether in
5 fact we will be able to talk about the results of such
6 actions as being cumulative or synergistic.

7 JUDGE YOUNG: When you say the results of
8 such actions --

9 MS. OLSON: The use of MOx fuel on issues
10 of license renewal.

11 JUDGE YOUNG: Okay. I think we're sort of
12 starting to go around in circles.

13 MS. OLSON: Well, I had that feeling
14 myself.

15 JUDGE YOUNG: Okay. Ms. Olson, earlier I
16 said what argument do you want to make that
17 information would be relevant to the issue of -- I
18 think we're all pretty clear on what would be relevant
19 to certainty. That has to do with schedule issues and
20 how definite the use of MOx fuel is, et cetera, et
21 cetera.

22 MS. OLSON: Right.

23 JUDGE YOUNG: That's somewhat
24 oversimplified. But the issue of cumulative or
25 synergistic impact, interdependence, et cetera, that

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1 collection of issues, I asked you what argument you
2 would make, and the two arguments you made was that
3 there could be a cumulative or synergistic impact, and
4 maybe I'm -- well, I am paraphrasing, and correct me
5 if I'm paraphrasing incorrectly -- but I understood
6 you to say that you're arguing that the use of MOx
7 fuel could lead to a cumulative or synergistic impact
8 on aging of components and that, similarly, that it
9 might have the same kind of effects on releases into
10 the environment.

11 And so taking those as the two areas of
12 your argument on the cumulative or synergistic issue,
13 what I'm asking you to tell us is how do you -- what
14 in the mission reactor system modification plans do
15 you expect will be relevant --

16 MS. OLSON: Okay. I get it?

17 JUDGE YOUNG: Those two issues.

18 MS. OLSON: Specifically, we're concerned
19 about changes in the neutron profile and going to
20 soluble boron is an element of a response to that
21 profile.

22 JUDGE YOUNG: And is that something that's
23 contained -- that you believe is contained in the
24 mission reactor system modification plans, the use of
25 boron?

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1 MS. OLSON: Mr. Repka said so a few
2 minutes ago, but I have no idea what's in the document
3 because I've never seen it.

4 JUDGE YOUNG: I guess I missed the word
5 "boron," but --

6 MR. REPKA: This is Dave Repka. One of
7 the, as an example, the types of mods that are
8 considered in there would be the use of enriched,
9 soluble boron as an operational changed related to
10 using MOx fuel.

11 JUDGE RUBENSTEIN: This is replacing just
12 ordinary boron? You used soluble boron until now.

13 MR. REPKA: That's correct.

14 (Pause.)

15 MR. REPKA: There's an increase in boron
16 and is the kind of modification that's discussed.

17 JUDGE KELBER: Let me ask you, Mr. Repka
18 -- this is Judge Kelber. Mr. Repka, do any of these
19 modifications require a license amendment?

20 MR. REPKA: Our preliminary view is, no,
21 they do not.

22 JUDGE KELBER: Thank you.

23 JUDGE YOUNG: And I guess what I was
24 trying to understand about the boron issue was how do
25 they or do they not, and depending upon whether it's

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1 Mr. Repka or Ms. Olson answering, do they or do they
2 not, the change in the boron concentration, relate to
3 any aging effects or changes in releases?

4 MR. REPKA: I will answer that question,
5 Judge Young. The answer is it does not. It does not
6 changes releases, it does not change aging impacts.
7 Those issues are, again, more related to the merits of
8 use of MOx fuel and not to the specific ancillary
9 modifications.

10 MS. OLSON: Judge Young, I have a comment.

11 JUDGE YOUNG: Go ahead.

12 MS. OLSON: This is Mary Olson. There is
13 evidence that changing the coolant chemistry has
14 impacted aging of some reactor components. Now, I
15 cannot say that I am a technical expert to say
16 definitively that this includes reactor vessels, but
17 I also have not seen the document, so it's --

18 MR. REPKA: Well, the answer to that is
19 that there is no change in chemistry contemplated.

20 JUDGE RUBENSTEIN: I agree.

21 JUDGE YOUNG: Ms. Olson, you're saying
22 that there is evidence that a change in the
23 concentration of boron could have an effect on aging.
24 Please explain that.

25 MS. OLSON: Well, my own knowledge of it

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1 is not in relation to reactor vessels, so I'm pleading
2 that I can't make the full case myself right now.
3 But, certainly, in terms of the history of steam
4 generators and other components that are made of
5 similar materials, changes in boron concentration in
6 other locations has been associated with an
7 accelerated aging.

8 JUDGE KELBER: This is Judge Kelber. The
9 reason I asked the previous question, and the reason
10 that Mr. Repka said that the chemistry has not
11 changed, is that it's not the amount of boron that is
12 changing, it is the isotopic compensation of the boron
13 that is changing.

14 MS. OLSON: Okay.

15 JUDGE YOUNG: That has an effect on the
16 aging.

17 JUDGE KELBER: That does not have an
18 effect on coolant chemistry.

19 MS. OLSON: I accept it if it's a change
20 in the isotopic concentration and not in the overall
21 concentration. I accept that.

22 JUDGE YOUNG: But if it's a change in
23 isotopic concentration --

24 JUDGE KELBER: No. That's a fact.

25 MR. REPKA: And this is Dave Repka. I'll

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1 just say that Judge Kelber's got it exactly right,
2 from our perspective.

3 JUDGE KELBER: I mean I fail to see the
4 effect of a change in isotopic aging since --

5 MS. OLSON: I have agreed with you.

6 COURT REPORTER: Excuse me, this is the
7 court reporter. I missed your last sentence there.
8 You were breaking up.

9 JUDGE KELBER: I'm sorry. I fail to see
10 the effects of the change in isotopic composition on
11 aging since coolant chemistry remains the same
12 regardless how much boron-10 is present with respect
13 to the total boron.

14 MS. OLSON: And this is Mary Olson. I
15 have no quarrel with that.

16 JUDGE KELBER: Okay.

17 JUDGE YOUNG: So by saying you have no
18 quarrel with that, does that mean that you're
19 withdrawing your request with regard to 2(a)?

20 MS. OLSON: Well, I don't want to go on
21 unduly long, but we're talking about one narrow little
22 piece of this document that I don't know what's in it.
23 So it's a bit frustrating to categorically say that
24 resolves the concern.

25 JUDGE KELBER: This is Judge Kelber.

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1 Since none of these modifications are perceived to
2 need a license amendment, do any of these
3 modifications in any way pertain to the systems which
4 control releases of radiation or radioactive effluent
5 from the plant? Mr. Repka?

6 MR. REPKA: The answer is, no, they do not
7 affect those systems that involve releases or
8 radioactive effluent.

9 JUDGE KELBER: Thank you.

10 MR. ZELLER: This is Lou Zeller. I just
11 might add that the decision to go for a license
12 amendment has not been made. It cannot be made yet.
13 And that in Mr. Repka's phrasing or preliminary views
14 that no license amendment is needed, we don't know the
15 basis for that view yet, and it's too early to know
16 some of those things, whether a license amendment
17 would actually be needed. And I would submit that it
18 could change with subsequent review.

19 JUDGE KELBER: Mr. Zeller, this is Judge
20 Kelber. We're talking just about the modifications,
21 not the possibility of use of --

22 MR. ZELLER: I understand that the
23 comments are particular to the isotopic changes in
24 boron and whatnot, but I'll stand by what I said.

25 JUDGE KELBER: Okay.

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1 JUDGE YOUNG: I'm not clear myself -- this
2 is Judge Young -- on the issue of whether something
3 would require a license amendment or not is
4 necessarily -- how that's related to the discovery
5 standard. I want to just give you one last chance to
6 give your argument on this one, and, again, I'm going
7 to have to repeat, I understand you have a medical
8 emergency, but I'm going to have to repeat when we
9 have these conferences you need to be able to have
10 whoever you need with you in order to address the
11 issues that we're going to be discussing at any given
12 time.

13 So at this point, based on everything I've
14 heard, it does sound like a fishing expedition,
15 because you've indicated that you don't really have
16 any idea what would be in that particular document
17 that would be relevant. The boron issue you raised as
18 an area of relevance to the aging increase.

19 MS. OLSON: In response to your question
20 as to what Mr. Repka has said about the document, I
21 must admit that I would have to have somebody either
22 Duke or DOE to have more information about what was in
23 these documents, and I don't.

24 JUDGE YOUNG: All right. Let me explain
25 a couple of things. You have the right to conduct

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1 discovery. One of the means of this conducting
2 discovery is depositions, as I'm sure you know. When
3 there's an objection to discovery, the standard that
4 we need to apply is whether something is reasonably
5 calculated to lead a discovery of admissible evidence.
6 And so you need to be able to tell us why getting
7 access or seeing the mission reactor system
8 modification plans is reasonably calculated to lead to
9 the discovery of --

10 As I was saying a minute ago, you raised
11 the boron issue. That's the only thing I heard that
12 sounded like it might be -- that sounded like it might
13 go to whether the modification plans, having those,
14 would be reasonably calculated to lead to the
15 discovery of admissible evidence. Judge Kelber
16 pointed out that that did not appear to be relevant,
17 and you agreed with him, and I asked you what then
18 remains for those plans to calculate would be likely
19 to lead to the discovery of admissible evidence? You
20 can get that information through whatever means there
21 are. You could ask an interrogatory, but you still
22 need to be able to, in response to an objection, tell
23 us why a document is reasonably calculated to lead to
24 discovery of admissible evidence.

25 I'm repeating myself a little bit, but I

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1 want to try to make that clear so you understand what
2 you need to be able to tell us. If you can't tell us
3 how something -- how you calculate that something may
4 lead to the discovery of admissible evidence, then we
5 would tend to go with Duke's argument that something
6 --

7 COURT REPORTER: Judge, I've lost you, I'm
8 sorry, that last sentence.

9 JUDGE YOUNG: If Ms. Olson cannot tell us
10 how a particular document is reasonably calculated to
11 lead to the discovery of admissible evidence, and any
12 particulars, then we would tend, I think, to conclude
13 that with regard to that document you're on a fishing
14 expedition. If you have asked interrogatories that
15 produced information that show such reasonably
16 calculation, that's a different story.

17 MS. OLSON: Your Honor, I am willing and
18 content to issue some interrogatories that cut
19 directly to the questions that we have rather than
20 asking for the document on this case.

21 JUDGE YOUNG: Okay. So then at this point
22 you would withdraw 2(a)?

23 MS. OLSON: Yes.

24 JUDGE YOUNG: What about 2(b)? I think
25 you referred to it.

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1 MS. OLSON: Sorry?

2 JUDGE YOUNG: I got the impression that
3 the mission reactor licensing plans you did not view
4 as being quite as relevant.

5 MS. OLSON: Well, I think that the
6 scheduling portion of that certainly is. And that I
7 believe Duke notes here that they are providing.

8 JUDGE YOUNG: Right. So that's not in
9 dispute.

10 MS. OLSON: Right.

11 JUDGE YOUNG: So is there anything
12 remaining in dispute on 2(b)?

13 MR. REPKA: No. This is Dave Repka. I
14 think the answer is no, and I think we are wiling to
15 provide the scheduling information with the -- I do
16 want to put the caveat on the record that it is -- the
17 schedule information in that document is out of date,
18 but we will provide it.

19 JUDGE YOUNG: So does that take care of
20 2(b), Ms. Olson, with regard to any arguments you want
21 to make?

22 MS. OLSON: Except for insofar as it may
23 mention license renewal.

24 JUDGE YOUNG: How is that not part of the
25 scheduling?

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1 MS. OLSON: I don't know, but, you know,
2 if there's any intersection other than schedule with
3 license renewal, I would certainly want to see that
4 portion of that document.

5 MR. REPKA: And we can do that.

6 MS. OLSON: Okay.

7 JUDGE YOUNG: Okay. So now we're down to
8 2(d), which is the mission reactor radiation plan and
9 Duke has agreed to provide non-proprietary elements of
10 the plan related to schedule. The issue remains
11 subject to further discussion. Is that something that
12 would warrant our attention here today? I think
13 earlier Mr. Repka said possibly it did. Why don't --

14 MR. REPKA: This is Dave Repka. It
15 requires discussion only to the extent that NIRS
16 doesn't agree that schedule information is sufficient.
17 We can provide the schedule. Again, it's out of date.
18 The proprietary information we would redact relates to
19 outage dates for McGuire and Catawba, which are
20 treated as proprietary commercial information. But
21 beyond that, the schedule for -- that's in there, the
22 out-of-date schedule for MOx fuel use, is something we
23 can provide.

24 JUDGE YOUNG: And, Ms. Olson, then what
25 remains that you want that you are not getting that

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1 you would argue is relevant to the issues that we've
2 gone through before, and I don't think I need to
3 repeat them again?

4 MS. OLSON: Well, this one is -- by its
5 title suggests, anyway, that there would be
6 information about the loading of, or intended loading,
7 projected loading, of MOx fuel as a partial core and
8 the manner in which it would be loaded. And this
9 definitely pertains to the degree to which the impact
10 of MOx on aging -- this is the question of using MOx,
11 and this question of aging the reactor, and then
12 there's the question of MOx and aging the reactor.
13 And then you have to know what's the plan for putting
14 this fuel in as a partial core in order to be able to
15 make some educated projections about that impact of
16 the intersection of aging and MOx. Of the plans
17 listed, appears to have some bearing on those
18 questions.

19 MR. REPKA: This is Dave Repka again. The
20 plan relates to through-put of fuel for planning
21 purposes. As I said, we can provide -- there's a
22 table that talks about the fuel loading plan. Other
23 than that, it does not go to aging effects or the
24 kinds of issues that Ms. Olson is talking about. In
25 terms of strictly scheduling through-put of fuel,

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1 that's what --

2 JUDGE KELBER: This is Judge Kelber. Mr.
3 Repka, you're saying that this plan is simply a
4 schedule for deliverables?

5 MR. REPKA: The schedule is prepared for
6 DOE for planning purposes, in terms of providing MOx
7 fuel and when it would be used. It really reflects
8 how that's used in the core designs for subsequent
9 cycles, and so therefore there's a plan laid out for
10 when MOx fuel assemblies would be included in
11 particular cores. So the purpose of it is really
12 through-put. It does relate to core design for future
13 core loads. Again, it's out of date, but it's not
14 intended to address aging type of issues or those
15 kinds of issues.

16 JUDGE KELBER: Does it address where the
17 fuel would be loaded in the core?

18 MR. REPKA: Yes.

19 JUDGE KELBER: It tells when.

20 MR. REPKA: Yes. In general terms, that's
21 correct.

22 JUDGE RUBENSTEIN: This is Judge
23 Rubenstein. Are we talking about a schedule which
24 talks about how to retain the equilibrium cycle in the
25 use of MOx fuel?

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1 MR. REPKA: Yes.

2 JUDGE RUBENSTEIN: Okay. So the start
3 date would be germane to our discussion for admittance
4 of this type of contention that we were considering.
5 But the process could be started at any given time,
6 the initial core loading.

7 MR. REPKA: That's correct, Judge
8 Rubenstein. And as I said, the schedule here, the
9 specific schedule I've laid out, is not up to date,
10 because the project schedule has split, so --

11 JUDGE RUBENSTEIN: So I'm trying to get a
12 sense here so you could explain to them that the
13 difference between a schedule which says this is the
14 initial loading of MOx and we'll go through three
15 cycles and we'll attain the equilibrium cycle and this
16 is what will carry on through for a number of years,
17 is quite different than saying we will start the
18 initial loading, and this is the schedule for that,
19 and these are the things we have to do to set the
20 reactor properly so that we can start the initial
21 loading. I'm trying to distinguish between these two
22 schedules.

23 MR. REPKA: Yes. And, actually, the
24 schedule that's included in this plan is both. It
25 does include an initial start date that is not up to

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1 date, and then it also addresses the number of fuel
2 assemblies that would be loaded, how many would be
3 high LEU, how many would be low LEU, those kinds of
4 things. So it addresses both, and we have agreed to
5 provide it, redacting only the specific outage dates.

6 MS. OLSON: If you're going to include the
7 fuel loading plan with that, we're happy about that.

8 MR. REPKA: I'm not sure what you mean by
9 --

10 MS. OLSON: You said that there's a table.

11 JUDGE YOUNG: Right. I was going to ask
12 you the same thing, to describe that table again, what
13 that provides.

14 MR. REPKA: We're caucusing here for just
15 a second.

16 (Pause.)

17 MR. REPKA: I'm not sure where Ms. Olson
18 -- what it is she's looking for. The first thing I
19 was describing was a cycle-by-cycle fuel loading plan
20 that's included in here, and that's the schedule I
21 referred to, and I have no objection to turning that
22 over with the redaction of the outage dates that are
23 proprietary.

24 There are also in this document particular
25 core load maps, typical core load maps. Is that --

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1 I'm not sure if that's what -- when Ms. Olson refers
2 to the fact that she's interested in the core loading
3 plan, is that what she's referring to?

4 MS. OLSON: Yes.

5 MR. REPKA: A core loading pattern.

6 JUDGE RUBENSTEIN: Ms. Olson then, how
7 would your knowledge of core loading maps, the
8 distribution of MOx-containing sub-assemblies, lead to
9 some sort of a demonstration that the potential use of
10 MOx is certain. If in fact he's already giving you a
11 schedule, this is a detail which should probably be
12 discussed on the merits if the contention were
13 admitted. So I think this is a little further detail,
14 at least in my mind, that goes beyond establishing the
15 potential use of MOx is certain or reasonable or
16 foreseeable.

17 JUDGE YOUNG: Let me just interject here.
18 I thought I -- before we got to that point, I thought
19 I understood what sounded like a resolution of this in
20 the table that Mr. Repka said could be provided. Ms.
21 Olson, did that satisfy you with regard to what you
22 want?

23 MS. OLSON: Yes. The schedule and the
24 actual outline I think cuts to the ability to talk
25 about cumulative or synergistic impacts. And I'm

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1 assuming that we have a right to request and make a
2 case for documents that fulfill part of the
3 requirements, but not each and every document has to
4 fulfill both parts.

5 JUDGE YOUNG: Ms. Olson?

6 MS. OLSON: Yes.

7 JUDGE YOUNG: If I understood that there's
8 a resolution of this -- arguing unless there remains
9 something in dispute.

10 MS. OLSON: Only that Judge Rubenstein
11 appears to be saying that I couldn't ask for it.

12 JUDGE RUBENSTEIN: No. I asked for you to
13 establish a basis to show that the information
14 described from the core distribution of plutonium
15 would be used to demonstrate that the potential use of
16 MOx is certain, probable or reasonably foreseeable or
17 otherwise definite enough under appropriate case law
18 to warrant consideration in our proceeding. I'm not
19 disputing the fact that if the contention were
20 admitted this would not be important to talk about
21 radiation effects.

22 JUDGE YOUNG: I think they've already
23 agreed that the core map, if I'm using the right term,
24 will be provided, and I'm assuming that that's related
25 to the allegedly cumulative or synergistic aging.

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1 MR. REPKA: I think, Judge Young -- this
2 is Dave Repka -- I think there's two different things,
3 I want to be clear. One is a cycle-by-cycle fuel
4 loading plan, and that's what I think we've agreed on.
5 The second thing is the typical core loading pattern
6 showing where in the core specific assemblies go. I
7 think that we have not agreed on that, and I think
8 that's what Judge Rubenstein's question was going to
9 as to why that's relevant. And I'm not sure I see the
10 relevance of that.

11 JUDGE YOUNG: I must have misunderstood.
12 I thought you said that you would be willing to
13 provide the table.

14 MR. REPKA: The table, yes, yes. The
15 table is the loading plan which is the schedule.

16 JUDGE YOUNG: You mentioned also something
17 related to the core map.

18 MR. REPKA: Yes. And that's a completely
19 separate thing.

20 JUDGE YOUNG: I thought I understood you
21 to say that you would provide that and then that makes
22 --

23 MR. REPKA: I don't think we said that on
24 the map. I think there's a legitimate question as to
25 what is the relevance of that information?

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1 MS. OLSON: This is Ms. Olson. The
2 relevance, in our view, is tradeoffs that may be made
3 about neutron impacts on vessel aging. And, you're
4 right, if in the second case of a MOx application, but
5 in our view it's very difficult to talk about
6 cumulative or synergistic impacts if we're just using
7 generic information that has nothing to do with what
8 you're planning.

9 JUDGE YOUNG: Hold on for just a second.

10 (Pause.)

11 JUDGE YOUNG: Okay. Ms. Olson, why don't
12 you conclude your argument with regard to the core
13 map. I think it was the only remaining thing, and I
14 guess I misunderstood earlier what Duke was offering.
15 And then Judge Kelber and Judge Rubenstein and I will
16 discuss this one afterwards and make a ruling on that.

17 MS. OLSON: Well, my final statement is
18 that of all of the deliverables in the DOE documents,
19 Dr. Ed Lyman, who is working with the Nuclear
20 Information Resource Service on this contention, said
21 that this is the one that may include information
22 pertaining to factors that --

23 JUDGE YOUNG: I'm sorry, pertaining to
24 what?

25 MS. OLSON: To known aging factors,

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1 mechanisms, and the differences that placing MOx fuel
2 assemblies might result in. And unless you know where
3 the assemblies are, it's very difficult to make a
4 credible statement, even in general terms, which we
5 would be making in this case, because it's my sense
6 when we talk about cumulative or synergistic we're not
7 going to be talking about how many angels sit on the
8 head of a pin, we're going to be talking about is this
9 something big enough that it really warrants
10 consideration in this proceeding. And so we can talk
11 generally from documents that don't have the details
12 of what Duke is planning, but unless we have that
13 information it's going to be easily said, "Well,
14 that's not what we're planning." So we believe that
15 if we actually see what they're planning, we're going
16 to have a much better ability to make statements that
17 are relevant and prudent.

18 JUDGE YOUNG: That's on the core map as it
19 would be relevant to the cumulative or synergistic
20 impact that using MOx fuel would have on the aging of
21 components.

22 MS. OLSON: Yes.

23 JUDGE YOUNG: We can put that aside.
24 That's the only I see that we need to make a ruling on
25 so far.

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1 MS. OLSON: Okay.

2 JUDGE YOUNG: And either Judge Kelber or
3 Judge Rubenstein and I can take a recess and come back
4 to you or do that afterwards.

5 I think, Mr. Repka, you said that you're
6 talking on 2(e) and that that's something that you all
7 expect you're going to be able to resolve. Did I hear
8 that correctly? And, Ms. Olson, do you agree?

9 MR. REPKA: Well, where I think we are on
10 2(e) is that Ms. Olson agrees it's overbroad, and to
11 the extent she wants to pursue it she would be more
12 specific. So I don't think there's any further
13 discussion warranted, it's just we would just -- the
14 ball is really in Ms. Olson's court.

15 MS. OLSON: I agree.

16 JUDGE YOUNG: Okay. Very good. Then
17 3(a), NIRS has also agreed to be more specific on this
18 one --

19 MS. OLSON: Yes.

20 JUDGE YOUNG: -- so we don't need to worry
21 about that one. Moving over to 4(d), (e), (f) and
22 (g), have you made any additional progress since we
23 got this document? And if not, I guess we can -- I
24 guess the first question I have is can these be
25 discussed together or do we need to discuss these

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1 separately?

2 MR. REPKA: I think that, a, we have had
3 no further discussions this week on these, and, b, I
4 think they probably can be discussed together. I
5 think in a nutshell, from our, Duke's Energy's,
6 standpoint, these really all relate to the merits of
7 any environmental or safety review related to the MOx
8 fuel contention or MOx fuel amendments, should those
9 amendments ever be filed. They don't go to the issue
10 of concreteness of the proposal or the interdependence
11 of MOx and license renewal. They don't relate to the
12 certainty or the independent utility of MOx fuel and
13 license renewal. They're really technical merits
14 arguments related to MOx fuel in and of itself. They
15 have nothing to do with license renewal. So our
16 position is that they are just beyond scope.

17 JUDGE YOUNG: Let me see if I can sort of
18 short circuit this just a little bit. Mr. Repka, I
19 would predict with a fairly high degree of certainty
20 that Ms. Olson is going to argue that these things
21 relate to the impact use on aging. And that is in
22 this collection of issues that we're going to be -- so
23 you could address whatever you want to say on the
24 cumulative or synergistic impact, and then I want to
25 hear from Ms. Olson.

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1 MR. REPKA: Your Honor, I think the issue
2 is to the extent that they do address aging at all,
3 that does not alone bring them within scope. I think
4 we discussed very similar issues directly on the last
5 conference call, and I think the Board was clear that
6 the matters went to matters related to flux and
7 fission yield, and related issues went to the
8 technical merits, not the initial threshold issue.

9 With respect to cumulative or synergistic
10 impacts, the issue is, is there any synergism with
11 license renewal, and these documents really don't go
12 to that at all. They don't go to the question of
13 whether or not the combination of license renewal and
14 MOx fuel is somehow synergistic.

15 JUDGE YOUNG: Mr. Repka, I want to back up
16 a minute. You made a characterization of what we did
17 at the last conference call, and I'm not clear that
18 your characterization is correct. I think that the
19 tension here that we really need to look at
20 straightforwardly is that to some degree there may be
21 some difficulty in separating out which things go to
22 the ultimate merits and which could arguably be
23 related to cumulative or synergistic impact of MOx
24 fuel on aging. And so that's what I think we need to
25 look at here. It may be that we can go to Ms. Olson,

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1 but let's be careful about characterizing what we have
2 done without giving a little bit more specific
3 reference than that.

4 MS. OLSON: Your Honor, I think that you
5 have paraphrased my earlier argument that our concern
6 is the synergism between MOx fuel use and reactor
7 aging and the ability to look at documents that Duke
8 has either generated or relied upon in their own
9 assessments. I mean there certainly is a huge
10 universe of MOx documents out there, and I have
11 certainly looked at many of them, although I'm sure
12 not as many as someone like Judge Kelber or Judge
13 Rubenstein has looked at. So we were trying to not be
14 -- I admitted to Mr. Repka that I would have preferred
15 to put some pruning shears on some of these requests,
16 but because I was somewhat confused by our last
17 conversation, I felt it appropriate to go ahead and
18 make these requests and have this discussion.

19 JUDGE YOUNG: Okay. And what you need to
20 do, again, is -- what you need to do is tell us how
21 you view these specific documents that you're asking
22 for as being reasonably calculated to lead to the
23 discovery of admissible evidence on the issue of
24 whether MOx fuel use would have a cumulative or
25 synergistic impact on aging which is what I've

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1 understood your argument to be. And then the second
2 part of that is the cumulative or synergistic impact
3 on environmental release. So if you could direct your
4 arguments specifically to how you calculate that these
5 --

6 MS. OLSON: Well, the two key concerns, in
7 broadest cut, for aging reactor components are heat
8 and neutron bombardment. And so both the fission
9 yield, which pertains more directly to heat, and the
10 neutron flux, which relates more directly to
11 bombardment, are the key things that we have to look
12 at in terms of the aging, which is ongoing, and any
13 additional cumulative or synergistic impact that MOx
14 fuel use will have on that process. So the ability to
15 look at the documents which Duke has relied upon for
16 these considerations is what we're asking for.

17 JUDGE KELBER: This is Judge Kelber. Ms.
18 Olson, fission yield, of course, is public knowledge,
19 and you know you can find it out as well as anybody
20 can. By neutron flux, do you mean the energy spectrum
21 of the neutrons?

22 MS. OLSON: Yes.

23 JUDGE KELBER: I see. It would have
24 helped me if you had said so.

25 MS. OLSON: I thought by using the term

1 "bombardment," it might bring that in.

2 JUDGE KELBER: Well, you want to know, in
3 other words, all documents pertaining to the
4 anticipated neutron flux incident on the vessel.

5 MS. OLSON: Yes, although we said used by
6 Duke or consulted by Duke. We're not asking for the
7 whole library, we're asking for the documents that
8 they are relying upon.

9 JUDGE RUBENSTEIN: This is Judge
10 Rubenstein. With the view for concluding what: a,
11 that it has effects, which should be adjudicated if
12 the contention is admitted, or to demonstrate that the
13 contention should be admitted? See, that's where I'm
14 having trouble when you start to get into the aging
15 effects specifically or the irradiation effects
16 specifically.

17 MS. OLSON: It's part of why I've been
18 telling the Commission, Judge Rubenstein, that I
19 really wish that they would tell Duke that they should
20 make their decision about plutonium fuel and then do
21 license renewal in the light of which fuel we're going
22 to use, because I agree with you, this is a mess. And
23 I know that's not the answer you're looking for, but
24 it's the answer I've consistently given when it comes
25 to questions of process.

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1 JUDGE RUBENSTEIN: I guess that our order
2 sort of constrains --

3 MS. OLSON: I know.

4 JUDGE RUBENSTEIN: -- discussion.

5 MS. OLSON: We're stuck with a mess.

6 JUDGE RUBENSTEIN: Okay. I don't want to
7 appear to be negative, but I keep trying to bring your
8 focus back to demonstrating that we should adjudicate
9 this.

10 MS. OLSON: Right.

11 JUDGE YOUNG: Ms. Olson, one thing that
12 would be helpful for me, and maybe for the whole
13 Board, is in 4(d), you're fairly specific there in
14 asking for documents on the fission yield and neutron
15 flux that were used or consulted by Duke. And then
16 the request becomes exceedingly more broad and
17 general. Could you do this for us with regard to (e),
18 (f) and (g) in terms of how you calculate documents as
19 you describe them are reasonably calculated to lead to
20 the discovery of admissible evidence? It's just so
21 broad that to some degree they might be characterized
22 as a fishing expedition.

23 COURT REPORTER: Judge, I'm sorry, I lost
24 you again on that last sentence.

25 JUDGE YOUNG: What's the last thing you

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1 heard?

2 COURT REPORTER: At this point, I'm not
3 even sure, but it broke up pretty bad.

4 JUDGE YOUNG: Okay. I'll start over. Ms.
5 Olson?

6 MS. OLSON: Yes.

7 JUDGE YOUNG: In 4(d), your request for
8 production in 4(d) is fairly specific. You're asking
9 for the documents used or consulted by Duke related to
10 fission yield and neutron flux of weapons grade
11 plutonium and reactor grade plutonium. The request in
12 4(e), (f) and (g) becomes successively more general
13 and less specific, and I would like to hear from you
14 your argument on how your request, as they're
15 presently written in 4(e), (f) and (g), are reasonably
16 calculated to lead to the discovery of admissible
17 evidence and do not fall into the category of a more
18 general fishing expedition; in other words, you're
19 just wanting to throw your line out and see what you
20 come up with.

21 For example, "All documents concerning the
22 feasibility of using mixed oxide fuel as a light water
23 reactor fuel, in general, as evidence at Catawba and
24 McGuire," the part especially, "in general," is fairly
25 broad.

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1 MS. OLSON: I agree with you, Your Honor,
2 on that one. Let me speak to 4(e) first, if I may.

3 JUDGE YOUNG: Go ahead.

4 MS. OLSON: I think it's likely that any
5 array on 4(d) -- the documents on 4(d) and 4(e) would
6 have a wide intersection. The issue there is that we
7 wanted to ensure that any information that has been
8 generated specifically on our question, which is the
9 aging of these components, that that's included, even
10 if it does not include specifics on fission yield or
11 neutron flux, you know? I mean those two are sort of
12 -- could have been put together in the same question,
13 but that's not how it's written.

14 JUDGE YOUNG: Okay. four (d) and 4(e),
15 you've explained 4(d), and 4(e) specifically uses the
16 word "aging."

17 MS. OLSON: Right.

18 JUDGE YOUNG: Four (f) --

19 MS. OLSON: Four (f), I think if we get
20 answers to the interrogatories that they also object
21 to, we would withdraw 4(f). But we'll leave the
22 interrogatories until we get there, so maybe we could
23 just sort of say let's talk about 4(f) with the
24 interrogatories.

25 JUDGE YOUNG: What about 4(g)?

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1 MS. OLSON: Four (g), I agree with you, is
2 not written as it should be, and I'm willing to
3 withdraw 4(g) at this time.

4 JUDGE YOUNG: Okay. So you're withdrawing
5 4(f) and (g).

6 MS. OLSON: No. I want to table 4(f)
7 until we talk about the interrogatories. Or we could
8 talk about them now. I don't know how you want to go.

9 JUDGE YOUNG: Okay. Anything more, then,
10 before we move on, on (d) and (e), and Judge Kelber,
11 did you have something else on these? Judge Kelber
12 also has a question.

13 JUDGE KELBER: Ms. Olson, if I wanted to
14 respond to 4(d), for example, suppose I were an
15 applicant, I might respond I used (e) and (d) of B-5.
16 Would that help you?

17 MS. OLSON: Not me personally, it might
18 help somebody on my team.

19 JUDGE KELBER: But it's a public document.

20 MS. OLSON: Okay. But identifying that
21 fact would help, yes.

22 JUDGE KELBER: There are very few public
23 documents. There's that one and they're general. I
24 believe that's all.

25 MS. OLSON: Okay. But knowing that would

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1 help.

2 JUDGE KELBER: It would help.

3 MS. OLSON: Sure.

4 JUDGE KELBER: Okay.

5 JUDGE YOUNG: Anything further then on
6 4(d) and (e)? You indicated something to the effect
7 that you could combine those?

8 MS. OLSON: Well, I think it could have
9 been written as one request for production. It's
10 currently written as two, but I just trying to say
11 that we're not interested -- the interest in the first
12 case pertains to aging, but it's very narrow and
13 specific and too narrow perhaps to encompass some
14 documents that might have been generated or relied
15 upon. And I'm willing to say it should be limited
16 here to being used or consulted by Duke in 4(e). I'm
17 not asking for the entire library on 4(e). So that
18 should be limited in the same way that 4(d) is.

19 JUDGE KELBER: Are you asking -- this is
20 Judge Kelber -- are you asking for documents which
21 contain the results of calculations?

22 MS. OLSON: Yes.

23 JUDGE YOUNG: Anything further on 4(d) and
24 (e), with 4(f) being tabled and 4(g) withdrawn?
25 Anything further on those? I guess let's go to you,

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1 Mr. Repka, at this point.

2 MR. REPKA: Yes. I'd just like to say on
3 4(d) and 4(e) I continue to believe that these are
4 very broad, very general, and invoking aging effects
5 as a way to bring this broad swath in I think is very
6 troublesome, because I think that the aging effects
7 really do go to the merits of a second phase issue,
8 not the first phase. And just to say that they're
9 somehow related to aging brings them within the scope
10 of cumulative and synergistic I think is too
11 simplistic. I think that -- you know, the fact that
12 there may be second-order changes in neutron flux of
13 fission yield it almost goes without saying.
14 Realistically, it becomes is that enough to bring it
15 within the scope of the license renewal environmental
16 report?

17 I think that that's an issue that can be
18 addressed as a matter of law, that we don't need to
19 get into this discovery of all these secondary
20 documents related to aging just because in some way
21 the document might prove an aging effect, that there
22 is at least the potential for aging effects that we
23 could stipulate at this point. I really do think
24 we're opening a can of worms that is very broad, very
25 troublesome, very onerous discovery, and I remain

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1 troubled by 4(d) and 4(e).

2 JUDGE YOUNG: Mr. Repka, you said that you
3 might be able to enter into a stipulation. I think
4 that if you can, obviously --

5 COURT REPORTER: Lost you again, Judge.

6 JUDGE YOUNG: I don't know why you're not
7 getting me.

8 MS. OLSON: It's breaking up for me as
9 well, Judge Young.

10 COURT REPORTER: Judge, I think what it is
11 is the speakerphone.

12 JUDGE YOUNG: Well, we've got two people
13 sitting here. So let me try again. Mr. Repka, you
14 mentioned something about the possibility of
15 stipulating certain things related to aging, and I
16 assume you were including within that cumulative or
17 synergistic impact of the use of MOx fuel on aging.
18 We encourage any stipulations that would move us along
19 and make the proceeding more efficient for all
20 concerned. And so, certainly, please talk with each
21 other about the possibility of stipulating facts with
22 regard -- okay. Did you get what I said so far, Court
23 Reporter?

24 COURT REPORTER: No, ma'am. We missed
25 almost that entire thing from a computer noise.

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1 JUDGE YOUNG: Okay. I'm going to try
2 again. I will lift up the phone and talk into the
3 receiver, and then I will put it back down again so
4 Judge Kelber and I can hear the responses.

5 All right. Mr. Repka, you indicated that
6 there was a possibility of arriving at some
7 stipulation on any cumulative or synergistic impacts
8 of using MOx fuel on the aging of reactor components,
9 at least that's what I thought I understood you to
10 say.

11 MR. REPKA: Judge --

12 JUDGE YOUNG: Pardon me.

13 MR. REPKA: -- may I reply to that before
14 we go too far? What I said was that there -- I have
15 not discussed this with --

16 JUDGE YOUNG: Hold on just a second. Back
17 on speaker. It might be better if you would just let
18 me finish what I have to say, and then you can clarify
19 whatever stipulation you were talking about in a
20 minute.

21 MR. REPKA: Okay.

22 JUDGE YOUNG: All right. Off speaker
23 again. See if I can get my thought out and the court
24 reporter can get it down without us breaking up. It
25 is difficult with speakerphones.

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1 I understood you to indicate that you
2 might be able to enter into some stipulation with
3 regard to aging and the use of MOx fuel. You can
4 clarify the specifics of what you intended to say
5 after I put you back on speakerphone so that Judge
6 Kelber can also hear what you have to say. What I
7 have also said, and I'll say it again, we encourage
8 any stipulations that you're able to enter into,
9 because obviously that would make for a more efficient
10 proceeding.

11 The difficulty here, and I understand that
12 you're troubled by it, but the difficulty here is that
13 the case law talks about interdependence and
14 cumulative or synergistic impacts. And I think that
15 we all understand that there is some relationship
16 between the use of MOx fuel and aging. There appears
17 to be some general consensus that there is some
18 relationship. I have not understood Duke to say that
19 there is no relationship to aging.

20 The question becomes whether the
21 relationship is cumulative or synergistic such that it
22 should be considered in this license renewal
23 proceeding? And that necessarily opens up the
24 question of the extent to which the use of MOx fuel
25 would have an impact on aging. I don't think that we

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1 can completely cut that out and say that's solely
2 merits-related. And so when you continue to make that
3 argument, you're sort of skipping over an issue that
4 I think that we have to look at, and that is can it be
5 argued that there is such a cumulative or synergistic
6 or independent impact that the use of MOx fuel would
7 have on the aging of reactor components that it's
8 appropriate for consideration in this license renewal
9 proceeding?

10 The reason I'm trying to summarize that is
11 because I sense that you want to stay away from that
12 issue, and obviously, to some degree, when we get into
13 the details, that is an issue for the merits. But we
14 can't completely exclude the aging effects and the
15 extent of them such that we can determine whether
16 they're cumulative or synergistic or interdependent.

17 So I'm offering this as sort of an
18 indication of at least my thinking, and to some degree
19 we've discussed this in the Board, and it's an issue
20 that we're all struggling with, but I think we would
21 appreciate some further clarification from you on why
22 you don't think -- which things you don't think are
23 related to the question of cumulative or synergistic
24 impact and interdependence and why you don't think
25 that they're related, rather than just saying they are

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1 relevant to the merits. Because the fact that they're
2 relevant to the merits does not necessarily exclude
3 them from our consideration at this point. It's a
4 line drawing thing that's not very simple, but I think
5 we would like to hear from you a little bit more on
6 how you distinguish where that line should be drawn.

7 I'm going to put you back on speaker now.
8 And then I want to hear from Ms. Olson as well.

9 MR. REPKA: Our view is that the quantity
10 and character of aging effects, based upon fission
11 yield, neutron flux, fuel characteristics, the kinds
12 of things that are mentioned in 4(d) and 4(e), are
13 merit issues. With respect to this license renewal
14 proceeding, the issue is, are the aging effects
15 cumulative or synergistic with license renewal?

16 Now, the quantity and character of those
17 effects don't directly go to the question of whether
18 or not there's a correlation with license renewal.

19 JUDGE YOUNG: Mr. Repka? Mr. Repka, let
20 me stop you right there, because the use of the word
21 "cumulative" to me suggests that you are automatically
22 looking at issues of quantity. "Synergistic" suggests
23 to me an interrelationship, that the two things affect
24 each other. And "interdependent" suggests to me that
25 they are so closely related -- or whether they are so

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1 closely related that they should -- as I recall the
2 case law, that they should be considered together.

3 So just moving back to cumulative, can you
4 address how quantitative issues would not be relevant
5 to the issue of whether there is a cumulative impact?

6 MR. REPKA: The quantitative issues
7 related solely to use of MOx fuel are related to MOx
8 fuel. The issue of cumulative is one of, are the two
9 projects cumulative? Do they go together in any way?
10 So to the extent that something is MOx fuel and
11 license renewal cumulative, it may be relevant. To
12 the extent it's simply related to MOx fuel, and the
13 amount of affects over the period of use of MOx fuel,
14 that has nothing to do with license renewal. That's
15 a MOx fuel issue.

16 JUDGE YOUNG: Mr. Repka, let me stop you.
17 I think the issue that Ms. Olson has raised, and that
18 I have been thinking of in this discussion of the
19 discovery, and that we sort of, in the course of the
20 last couple of conferences, we sort of clarified as we
21 sort of -- as we went, the issues that we needed to
22 define, that we needed to address in the July hearing.

23 If the use of MOx fuel has an impact on
24 aging, and it's a great enough impact that it could be
25 said to be a cumulative impact or a synergistic impact

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1 on aging, such that you cannot reasonably discuss
2 aging questions related to license renewal without
3 discussing MOx fuel use, then that's where you get
4 into looking at whether it needs to be considered in
5 this proceeding.

6 Obviously, the certainty is the other part
7 of that. But I think what you're not addressing is
8 the impact of MOx fuel use on aging, which is one of
9 the primary issues that we have to look at in any
10 license renewal proceeding.

11 MR. REPKA: The issue is whether or not
12 the aging impacts of MOx fuel are among many others,
13 and cumulative or synergistic is just one of many
14 standards. And I'm not -- I don't want to suggest in
15 any way it's the dispositive or determinative
16 standard. But to the extent that it's one of the
17 standards, the issue is not the degree of the aging
18 effects. The question is whether those aging
19 effects are cumulative or synergistic to license
20 renewal -- with license renewal.

21 Again, we have to talk about the congruent
22 projects, not just MOx fuel use in isolation. That's
23 a MOx fuel merit issue.

24 And now backing up to the question of what
25 I --

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1 JUDGE YOUNG: Before you move on -- and I
2 really want to get -- I really want to understand you
3 here, because the use of the word "cumulative" to me
4 necessarily implies looking at amount. Things
5 accumulate in amount.

6 And so when you're talking about the
7 impact of MOx fuel use on aging, and whether it's
8 cumulative -- and, obviously, there are several tests,
9 but that's one of them that seems to -- that's the one
10 that Ms. Olson has raised, and the one that seems to
11 be more relevant when you're looking at affects of the
12 fuel use on aging.

13 I'm having a hard time seeing how
14 cumulative impact does not necessarily imply some
15 degree of looking at quantities and how they
16 accumulate to make a -- do or do not accumulate to
17 make a cumulative affect that's so great that they
18 need to be -- that they do or do not need to be
19 decided or looked at together.

20 MR. REPKA: But to the extent that those
21 affects are cumulative to license renewal, that would
22 be true. Now, and then what -- having said that, what
23 I've said before was that we could stipulate to the
24 fact that there might be second order aging effects as
25 a result of changes in neutron fluxes or fission

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1 yields.

2 The question then becomes not the degree
3 per se of that, but whether or not there's any linkage
4 between license renewal. And backing up, I think you
5 characterized what I said earlier as being stipulation
6 that the effects are cumulative or synergistic, and I
7 never intended to say that.

8 If I, in fact, did say that, what I
9 intended to say was that we could look at pursuing
10 perhaps some statement or stipulation with respect to
11 the effects of MOx fuel use. Then, we could use that
12 statement or agreement to discuss the legal
13 significance in relationship to environmental review
14 of the license renewal application.

15 That was the clarification I wanted to
16 make, and I think that all of this discussion -- one
17 of the key points is we're focused on whether or not
18 environmental review of license renewal and MOx fuel
19 need to be linked. And so, therefore, the question
20 has to focus on relationship between the two. Whether
21 that relationship is quantitative or qualitative, the
22 fact is it has to have a relationship.

23 JUDGE YOUNG: And I think that maybe we
24 need -- maybe you need to clarify again. But I
25 understood you to be saying that you might be able to

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1 enter into a stipulation on facts that would be
2 relevant to whether the impact of using MOx fuel has
3 a cumulative or synergistic impact on aging.

4 You would not be drawing any conclusion as
5 to whether it does, but it would be relevant to that
6 in that the stipulation would encompass the degree to
7 which aging mechanisms might be impacted by the use of
8 MOx fuel.

9 Now, does that represent a fair statement
10 of what you were talking about? Or am I
11 misunderstanding again?

12 MR. REPKA: Again, our focus would be on
13 aging effects, not on whether or not they're
14 cumulative or synergistic. That would be an issue
15 of --

16 JUDGE YOUNG: And that's why I said I
17 don't expect the stipulation would encompass any
18 conclusions as to whether there's a cumulative or
19 synergistic impact. That's why I -- let me pick up
20 the phone, so -- in case you're missing some words, I
21 can be clear here.

22 I understood that you might be able to
23 enter into a stipulation as to facts regarding the
24 degree or extent to which the use of MOx fuel would
25 have an effect on aging, not that you would make any

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1 conclusions about whether those affects would be
2 cumulative or synergistic, but that the facts that you
3 would stipulate to would be relevant to that issue,
4 such that we might draw a conclusion on whether
5 they're cumulative or synergistic.

6 If you can get together and talk about
7 what all of the effects are, such that just as far as
8 the basic facts are concerned, those don't need to be
9 litigated, and we can take your stipulation and then
10 draw our legal conclusion. Obviously, that would move
11 the proceeding along in a much more efficient manner
12 and be a lot quicker for all of us.

13 I don't know the degree to which you might
14 be able to enter into such a factual stipulation, but
15 we encourage that.

16 MR. REPKA: And I will say if that's as an
17 alternative to trying to respond to 4(d) and 4(e),
18 that's -- we would certainly rather pursue trying to
19 do that than trying to respond to these fairly open-
20 ended requests for production.

21 JUDGE YOUNG: And that, Ms. Olson,
22 obviously would take communication back and forth
23 between not just you but probably Dr. Lyman, who is
24 your expert I understand you to say --

25 MS. OLSON: Yes.

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1 JUDGE YOUNG: -- and the Duke expert, and
2 do you agree that that's a possible area of inquiry
3 rather than getting into all of the documents, and so
4 forth?

5 MS. OLSON: Well, I agree that we are
6 willing to pursue this. Certainly, it would have to
7 be satisfactory to us as well as them. However, I
8 also think that I'm not willing to cancel the earlier
9 conversation about the deliverables to DOE,
10 particularly 2(d), and your prospective ruling on
11 that, which we certainly will respect. But that's the
12 type of document that would enable us to more fully
13 participate in arriving at a stipulation that was
14 based on something that we were on equal footing in
15 creating.

16 MR. REPKA: Judge Young, I think where we
17 ought to go on 4(d) and 4(e) is to leave it for Ms.
18 Olson and myself to discuss it. Perhaps if not a
19 stipulation, then perhaps some specific documents we
20 can identify.

21 So I think that there are probably other
22 approaches to resolving this issue with the
23 understanding that these fall in a gray area that's
24 potentially overbroad, and we can try to see further
25 whether there's a way, including possibly a

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1 stipulation, possibly some discrete set of documents
2 -- who knows? -- another way to resolve this.

3 JUDGE YOUNG: Ms. Olson, are you open to
4 that? I think that would be a good way to proceed on
5 this, that you do get into discussions with each
6 other. You know, you can obviously look at the
7 publicly available material. It may be that after
8 looking at that a little bit further -- pardon me?

9 MS. OLSON: That was someone sneezing. It
10 wasn't a comment.

11 JUDGE YOUNG: It may be that Dr. Lyman, in
12 talking with the Duke people, through you and Mr.
13 Repka and however you want to arrange that, would be
14 able to narrow down. Well, look, what are the basic
15 facts here? So that we don't have to get into a long
16 litigation over numbers and -- and I'm not sure
17 exactly what the right words to use are, but the
18 numbers related to fission yield and neutroflux and
19 bombardment, etcetera, etcetera.

20 MS. OLSON: I am willing to engage with
21 this process, yes.

22 JUDGE YOUNG: Great. Well, why don't you
23 do that. Move along with it as quickly as possible,
24 and then we'll set another time to talk about this
25 further, obviously. So --

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1 MS. OLSON: Before we're all done, though,
2 I mean --

3 JUDGE YOUNG: We still have several others
4 to go through.

5 MS. OLSON: Okay. All right. I didn't
6 know how much of this we were tabling.

7 MS. UTTAL: Your Honor, this is Susan
8 Uttal, representing the staff. To the extent that the
9 two parties agree on a stipulation, the staff is still
10 a party to this proceeding, and we're making no
11 representations that we would agree to a stipulation
12 of facts.

13 JUDGE YOUNG: Any parties may or may not
14 stipulate, and the affect of Duke and NIRS stipulating
15 that they agree that the facts are X, Y, Z, obviously,
16 if the staff does not agree to that, the staff can
17 present different facts. But I think probably a
18 stipulation between Duke and NIRS would be fairly
19 persuasive on the facts that they agree to.

20 But certainly no party has to agree to
21 anything they don't want to agree to. The degree that
22 this can be resolved through discussion, such that
23 there is not a need to litigate these fairly detailed
24 and specific scientific issues, that we encourage.

25 Okay. So that takes care of, for now

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1 anyway, 4(d) through (g). Moving on to 8 through 13,
2 I guess, we've discussed this -- Judge Rubenstein and
3 Judge Kelber and I -- and we are wondering to what
4 degree --

5 MS. OLSON: I want to make a
6 clarification, if I could, just briefly. This is Mary
7 Olson. Seven and eight, I think there was a
8 misunderstanding between me and Mr. Repka when we
9 spoke, because I'm not challenging that. It says that
10 I didn't concede, but the communications with NRC,
11 seeing Adams, I did not have a problem with that.
12 That was just a miscommunication.

13 JUDGE YOUNG: But number eight, you agree
14 on number eight?

15 MR. REPKA: I'm sorry. Ms. Olson, are you
16 referring to requests for production number 7 and
17 number 8, which is over on page 8? That's skipping --
18 that's the identify communications between Duke and
19 the NRC.

20 MS. OLSON: Yes.

21 JUDGE YOUNG: I'm talking about the
22 interrogatories. I'm sorry if I said --

23 MS. OLSON: Okay. Well, I just want to
24 clarify that the communications from and to NRC, it
25 says on this table that we did not concede, but I do.

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1 JUDGE YOUNG: On requests for production 7
2 and 8, you worked those out.

3 MS. OLSON: Right.

4 JUDGE YOUNG: Okay.

5 MR. REPKA: Which I understand to mean
6 that NIRS will pursue that through the public --

7 MS. OLSON: Right.

8 MR. REPKA: -- document process. Thank
9 you.

10 JUDGE YOUNG: Okay. So, then, moving back
11 to the interrogatories, 8, 9, 10, 11, 12, and 13, I
12 think, Judge Kelber, you thought that those might be
13 available in public --

14 JUDGE KELBER: No. I believe -- this is
15 Judge Kelber. Some of the material is available, and
16 Judge Rubenstein will have to -- will have to supply
17 the exact citation. But some of the detail is
18 available in the final safety analysis report, which
19 I believe you have.

20 MS. OLSON: You know, I'm going to have to
21 come to grips with why I don't have it. We certainly
22 ordered it, and I do not yet have it in my hands. But
23 it's truly a procedural matter, not any other problem.

24 JUDGE KELBER: Okay. For the -- let me
25 ask you, what would you do with these numbers if you

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1 had them?

2 MS. OLSON: Well, I think it's a broad cut
3 at being able to talk about the concerns about
4 discharges to the environment. You know, without
5 having to go into all of the gory details, it's just
6 sort of a --

7 JUDGE KELBER: I must say, I fail to see
8 the -- I agree that it's a very broad cut, and I fail
9 to see the object of the verb. I mean, in other
10 words, I don't see the logical connection.

11 MS. OLSON: It's demonstrating that there
12 is a difference in the outcomes of the -- what is
13 produced in the process of fission.

14 JUDGE KELBER: Well, but I think that's
15 all available in the public documents. So I don't
16 understand the need for this immense amount of detail.

17 MS. OLSON: I'm happy to withdraw 8 and 9
18 as being in the FSAR. I don't know that I would find
19 10 in there yet.

20 JUDGE KELBER: Well, as a matter of fact,
21 I think in the FSAR you will find answers to
22 interrogatory 12 and 13. I'm not sure about the
23 others.

24 MS. OLSON: Okay.

25 JUDGE YOUNG: So that leaves, it sounds

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1 like, 10 and 11 --

2 MS. OLSON: 8, 9, 10, and 11.

3 JUDGE YOUNG: Oh. I thought you said that
4 you --

5 MS. OLSON: I thought it -- I misread my
6 own numbers. I'm sorry. I was flipping notes, so
7 it's -- the -- it's the fuel -- it's the numbers of
8 assemblies is -- 12 and 13 will be in the FSAR. The
9 profiles of the fuel likely are not.

10 JUDGE RUBENSTEIN: This is Judge
11 Rubenstein. Section 4.2 talks to the fuel.

12 MS. OLSON: Okay.

13 JUDGE RUBENSTEIN: I mean, I'm going to --

14 MS. OLSON: Except for number 10.

15 JUDGE RUBENSTEIN: -- stipulate that there
16 would be no change in the special arrangement. The
17 array of the fuel or perhaps in the cladding or -- is
18 considered, but the number of rods in the
19 subassemblies, that type of thing, probably will not
20 change.

21 JUDGE YOUNG: So you're saying that --
22 Judge Rubenstein, you're saying that 8, 9, 10, 11, 12,
23 13, are all --

24 MS. OLSON: Well, not 10 and 11, because
25 those are specific to MOx.

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1 JUDGE RUBENSTEIN: MOx.

2 MS. OLSON: And they are, I don't think,
3 in the FSAR.

4 JUDGE RUBENSTEIN: But the fuel design
5 changes would be very temporal. In other words, the
6 16 by 16 array, that type of thing --

7 MS. OLSON: Okay.

8 JUDGE RUBENSTEIN: -- would probably not
9 provide much linkage to the effects of MOx.

10 MS. OLSON: Right. But 10 and 11 are kind
11 of the same question as the source term, only -- which
12 is why I tabled that one until here, because, you
13 know, this is just a more microscope-specific way of
14 asking a question about source term.

15 JUDGE RUBENSTEIN: Yes.

16 JUDGE YOUNG: So we're down to 10 and 11.

17 MS. OLSON: Right.

18 JUDGE YOUNG: And --

19 MS. OLSON: And these are obviously
20 projections, because as far as I know they haven't
21 done it yet, right? So the question is: can they
22 provide an answer to their projections?

23 JUDGE YOUNG: Mr. Repka, do you know, have
24 those projections been made?

25 MR. REPKA: I think Ms. Olson will have to

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1 repeat the question. I think I missed that. I'm
2 sorry.

3 MS. OLSON: Interrogatories 10 and 11 are,
4 as I just stated, sort of using a microscope to ask
5 the question about source term. And so that's why I
6 had tabled the request for production about source
7 term, because I would be happy with either -- either
8 -- which one is that? I've got too many different
9 pages here.

10 I think it was 4(f) -- for these
11 interrogatories. They would -- either one would be
12 okay. Yes, it was 4(f) for request of production or
13 interrogatories 10 and 11.

14 MR. REPKA: I think that the answer to the
15 specific question is is do we have that information?
16 And I think the answer is, yes, we have that
17 information based upon current projections. The real
18 issue is, what is the relevance of that information?
19 Number one.

20 And, number two, is that we actually
21 understand from interactions with Dr. Lyman that he
22 has done calculations of this variety, and he has that
23 information.

24 MS. OLSON: Well, I think the purpose of
25 it is being sure that we're all on the same page with

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1 that information, and so I don't know for a fact that
2 his calculations and your calculations agree, and they
3 may never agree.

4 But if we're going to talk in the broad
5 term about the potential for environmental impact,
6 which I'm not saying that knowing source term tells us
7 that there is environmental impact. I'm not saying
8 that. But knowing differences in source term reflects
9 the possibility of differences in impact.

10 And so, again, if we bring in independent
11 information, okay, but then it's very easy to say, ah,
12 but that's not the information that is relevant. And
13 so we would prefer to have the relevant information.

14 JUDGE YOUNG: One thing that you can talk
15 with each other about, and possibly enter into a
16 stipulation if Dr. Lyman has done calculations, you
17 can share those and determine the degree to which you
18 agree on those, narrow the area of dispute at least.

19 MR. REPKA: I'm willing to discuss this
20 one further, or interrogatory 10 and 11 further.
21 Obviously, it's not something we would be able to
22 respond to on the 14-day response schedule that has us
23 due to respond tomorrow. But I'm still not sure I see
24 the relevance of 10 and 11.

25 And just the fact that there might be a

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1 difference in source term or a difference in potential
2 environmental impact, that's very much like the aging
3 effect. That does not, then, make the degree or
4 quality or character of that difference relevant to
5 the particular issue that's before us right now, which
6 is, do the two environmental reports have to be
7 linked?

8 So, I mean, I do -- I continue to have a
9 fundamental relevancy/materiality objection to 10 and
10 11.

11 JUDGE YOUNG: Ms. Olson?

12 MS. OLSON: I guess from my point of view,
13 we have no guarantee that the environmental data would
14 be reevaluated in the future. And so if, in fact, the
15 decision to extend into expanded operations could be
16 based on LEU fuel data that is, in fact, not
17 representative of what MOx fuel use would do, then I
18 think talking about the potential for a different
19 impact is important.

20 JUDGE YOUNG: MOx relevant to what?

21 MS. OLSON: Just the issue to the -- to
22 whether or not an environmental impact analysis based
23 on low enriched uranium is sufficient or relevant to
24 MOx fuel use, and whether MOx fuel use would render
25 that analysis no longer credible and accurate.

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1 JUDGE YOUNG: That relate to the issues
2 that we have to decide as a result of the July
3 hearing.

4 MS. OLSON: Right.

5 MR. REPKA: I mean, we have always said,
6 going back --

7 JUDGE YOUNG: Let me just get an answer
8 from Ms. Olson on that.

9 MS. OLSON: I didn't understand that as a
10 question. Could you restate it?

11 JUDGE YOUNG: Yes. How does that relate
12 to the issues that we have to decide as a result of
13 the July hearing?

14 MS. OLSON: Well, in our view, just as the
15 question exists as to whether MOx will impact the
16 reactor itself, the question exists as to whether the
17 use of MOx fuel will change the manner in which the
18 reactor operation impacts the environment. And being
19 able to talk about the difference between the fission
20 yields and the activation products, and things like
21 the plutonium and actinide profile, in an already
22 irradiated fuel rod is very substantial to being able
23 to talk about the potential for environmental impacts
24 throughout the fuel cycle.

25 JUDGE YOUNG: Okay. Again, I want to get

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1 you back to the issues that we have to -- that we are
2 looking at with regard to this July hearing. And what
3 we're looking at are the certainty issue and the
4 impact issue as -- whether an impact is cumulative or
5 synergistic, interdependent, so interdependent that it
6 would be unwise or irrational to proceed with the
7 license renewal proceeding without considering it, or
8 otherwise appropriately connected or related under
9 appropriate case law standards, to license renewal,
10 aging, and environmental issues in this proceeding so
11 as to warrant such consideration.

12 MS. OLSON: Right.

13 JUDGE YOUNG: You have to do more than
14 show that there's a difference, that there's a change.
15 You have to show that that difference or change is so
16 cumulative and synergistic or interdependent that it
17 rises to such a level that it would be unwise or
18 irrational to proceed.

19 And I'm not going to repeat all those
20 standards again, but a mere change on its own is not
21 enough. I --

22 MS. OLSON: Okay. The concerns that we
23 have go from worker exposures to concentrations and
24 overall quantities of plutonium and actinide, in terms
25 of their longevity in so-called low-level waste

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1 production. The mechanisms and impacts that high-
2 level waste storage would have on the immediate
3 environment because of changes that MOx fuel might
4 cause and the ways in which that irradiated fuel has
5 to be handled on site.

6 Then, there is all of the concerns that
7 stem -- both coming on and off the site in terms of
8 the offsite committed -- in the generation of this
9 fuel and the impact on long-term things like nuclear
10 waste disposal for high-level waste. And then there
11 is all of the array of what may be discharged from the
12 reactor on an ongoing basis into air and water and
13 sewage.

14 And if we have at least the information to
15 talk about, you know, what is the comparison between
16 these two, then we are on a much more solid basis to
17 talk about what the relative impacts might be in terms
18 of whether they are great enough to warrant the
19 concern in this consideration, whether, in fact, the
20 environmental impact statements done based on low
21 enriched uranium is sufficient or not to encompass the
22 concerns that would be raised by the generation of
23 elements from a different type of fuel.

24 JUDGE YOUNG: Well, I'm not sure that the
25 sufficiency of issue is what we need to look at. What

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1 we need to look at is what the courts have told us we
2 need to look at, and those are the standards that are
3 discussed in the case law. Cumulative or synergistic
4 is so interdependent that it would be unwise to
5 consider them separately, and you really do need to
6 direct your arguments towards those standards.

7 To create a new one that says whether just
8 looking at the traditional uranium fuel use would be
9 -- is sufficient, I don't know that -- I don't know of
10 any standard that uses the word "sufficient." We need
11 to look at the concepts that have been developed in
12 the case law, and you need to direct your arguments to
13 that.

14 MS. OLSON: The cumulative buildup of
15 plutonium in a so-called low level waste dump at a
16 higher level -- I'm not required to -- when it comes
17 to the environmental impact statement considerations,
18 we are not bound by what is considered meeting
19 regulation standards as being a reason to not consider
20 it. We are considering environmental impacts.

21 . And if there is more plutonium that will
22 be dumped into the Barnwell so-called low level waste
23 facility, because of the shift to MOx fuel, well,
24 we're not going all the way to that point in this
25 proceeding in our discovery. We're saying let's just

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1 talk about the difference in source terms to see if
2 that raises that concern. Okay?

3 And if we just need to take the general
4 information that is currently available and make the
5 case for that, okay, I will do that. That's why we're
6 asking for the --

7 JUDGE RUBENSTEIN: This is Judge
8 Rubenstein. I think you have to provide a
9 relationship as -- and a demonstration for an argument
10 to show that it would be unwise or irrational to
11 proceed without considering it in our license review
12 proceeding. And the things you're saying would come
13 into a merit argument.

14 JUDGE YOUNG: Let me back up for a second.

15 JUDGE RUBENSTEIN: Have some argument that
16 I could get my hands on to demonstrate that the
17 potential use of MOx, absent these effects, would be
18 unwise or irrational to proceed within our license
19 renewal proceeding. And I'm not hearing those kinds
20 of things.

21 MS. OLSON: Well --

22 JUDGE YOUNG: Let me back us up for a
23 minute, please. Ms. Olson, when you started talking
24 about all of this, that was in the context, as I
25 recall, of a discussion of whether you might get Dr.

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1 Lyman together with the Duke people, you and Mr. Repka
2 could work together to see how close the calculations
3 are that Dr. Lyman has done, and that Duke -- where
4 Duke might differ with them.

5 Now, we encourage you to do that, and we
6 were on that train, and we got off on this tangent.
7 At least that's how I recall our discussion was going.
8 We encouraged those discussions.

9 MS. OLSON: And we agreed to it.

10 JUDGE YOUNG: All right.

11 MS. OLSON: But somebody asked me to
12 justify why we wanted the information, and then asked
13 me to justify it again. So I have been answering your
14 questions.

15 JUDGE YOUNG: Okay. Okay. What I'm
16 encouraging you to do is talk with each other. And
17 then to the degree that you have differences, we will
18 discuss them at the next conference call that we have.
19 To the degree that you have differences, they should
20 become clear by virtue of your discussion.

21 Mr. Repka, do you see any problem with
22 proceeding in that manner?

23 MR. REPKA: No, I'm willing to discuss
24 this issue.

25 JUDGE YOUNG: Okay.

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1 MR. REPKA: I said that before, although
2 I -- as I said, I still have a relevancy concern, but
3 I'm willing to discuss the issue.

4 JUDGE YOUNG: Okay. And let me just say
5 I am going to be pretty unavailable starting next
6 Friday, and then for three weeks after that I have a
7 hearing in another case. I would be available on I
8 think probably Monday, April 29th, although not here,
9 if necessary. But we may need to set a time in mid
10 May to talk about these things. And if you have
11 anything that comes up quickly, to get in touch with
12 us by midweek of next week. Okay.

13 JUDGE KELBER: I'd like to -- this is
14 Judge Kelber. I'd like to add something to Ms. Olson.
15 If at the hearing in July you present estimates of the
16 impact of MOx use based upon your own knowledge, and
17 Duke differs with that assessment, they will then have
18 to produce their own estimates. You don't all have to
19 have used the same set of calculations.

20 MS. OLSON: I appreciate that, Judge
21 Kelber.

22 JUDGE KELBER: That would --

23 MS. OLSON: I have simply made my career
24 on using indisputable information as the basis, but
25 I'm willing to expand my career.

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1 (Laughter.)

2 JUDGE KELBER: Dr. Lyman is your expert,
3 I believe?

4 MS. OLSON: Yes, he is.

5 JUDGE KELBER: I'm sure that he is --
6 since he has already published material, that he is
7 capable of producing estimates that would be a fit
8 subject for discussion.

9 MS. OLSON: Thank you.

10 JUDGE YOUNG: I think we're down to the
11 last two, requests for production 11 and 12. And I'll
12 just say at the outset I think that these look a bit
13 broad. And so, Ms. Olson, I want to hear from you how
14 these two requests are reasonably calculated to lead
15 to the discovery of admissible evidence on the issues
16 we've been discussing.

17 MS. OLSON: Let me find -- I think I'm
18 lost in my own paper.

19 JUDGE YOUNG: It's all the -- it's the
20 documents that have been --

21 MS. OLSON: I see it.

22 JUDGE YOUNG: -- exchanged to and from the
23 NEI concerning mixed oxide fuel.

24 MS. OLSON: Right. Although I believe
25 that -- okay. All right. I got it. I believe that

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1 we should make this more narrow, but the reason that
2 this is still left for discussion is because when we
3 spoke about it, Mr. Repka just sort of categorically
4 said that they objected, and it wasn't based on how
5 wide it was.

6 I agree it's too wide, and that we should
7 be more specific. But if they're going to
8 categorically object to that at all, then I suppose
9 they should say that.

10 MR. REPKA: Well, I'll respond to that.
11 On the first level is, yes, we don't see how any
12 interactions with NEI is important or significant. So
13 that's number one on this issue. My colleagues laugh
14 here, but on this issue -- interactions with NEI.

15 Number two, if somehow they could be
16 construed as an issue, I think that the next question
17 is is do those discussions with NEI have anything to
18 do with license renewal or the use of MOx fuel at the
19 emission reactors Catawba and McGuire. I think that
20 related to the broad request concerning mixed oxide
21 fuel brings in any discussions related to the policy
22 of plutonium disposition in DOE's programs. And I
23 think all of that is very clearly outside the scope.

24 So I think number one is the relevance of
25 discussions with NEI. And number two is -- it goes to

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1 the nature of those discussions. They would clearly
2 have to be narrowed down to things that are more
3 germane to this particular proceeding.

4 MS. OLSON: And I don't dispute that. I
5 think we should be more specific.

6 JUDGE YOUNG: So I suggest that you do be
7 more specific. And with regard to the relevance
8 issue, do you want to address that? Or would you
9 address that? I guess I should say. How would
10 documents going back and forth between Duke and NEI be
11 relevant in this case? I mean, that's a pretty wide
12 open --

13 JUDGE RUBENSTEIN: Could that be handled
14 with an interrogatory?

15 MS. OLSON: Yes, I think that's perhaps
16 another approach, and I will consider it. I will just
17 state that back in the early phases of DOE's decision
18 about plutonium disposition, Duke and Commonwealth
19 Edison were actively engaged with a process that
20 included the Nuclear Energy Institute and the NRC in
21 developing this whole process.

22 And I think it's just now more in the
23 question of concrete certain probable, reasonably
24 foreseeable, those -- that range of our criteria that
25 we're interested in any communication that Duke and

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1 NEI may have with regard to MOx and license renewal.
2 And so that's where I think we would get much more
3 focused than the whole shebang.

4 And I just want to comment that I'm really
5 not interested in having to build a warehouse, so if
6 it seems like my inexperience is resulting in that,
7 that's where I'm attempting to be cooperative and come
8 up with, you know, a better magnifying glass than that
9 approach, because I'm -- I, too, do not want to see
10 that happen. So --

11 MR. REPKA: I would respond again, though,
12 that the broad topic of plutonium disposition really
13 doesn't go to the concreteness of the particular
14 proposal. And on that issue, I would point to the
15 fact that there are other interrogatories which we
16 agree -- have agreements on that go to much more
17 germane information.

18 For example, I think it's three. One of
19 these talks about the current timetable, and we agreed
20 that we would provide the most current timetable on
21 the MOx fuel use amendments that have been discussed
22 with the NRC. And I think that that -- that
23 information is clearly much more germane than anything
24 that might come out of discussing plutonium
25 disposition generally with NEI. So --

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1 MS. OLSON: No. Excuse me, Mr. Repka. I
2 was saying that the specificity would be any
3 discussion of MOx and license renewal for Catawba and
4 McGuire with NEI. But that's what I'm likely to come
5 back to.

6 MR. REPKA: And if you ask us in an
7 interrogatory on that, we would respond.

8 MS. OLSON: Okay.

9 JUDGE YOUNG: I think we've only got one
10 thing that we need to rule on, then, and that is two
11 -- request for production 2(d). And we will discuss
12 that and give you a ruling.

13 The next thing I think we needed to talk
14 about --

15 MR. REPKA: Judge Young, I think we -- we
16 missed number 6 back there.

17 JUDGE YOUNG: Six?

18 MR. REPKA: Request for production 6,
19 which was the state generation annual resource
20 planning reports. And we had agreed that, at a
21 minimum, we would limit it to '96 on, but we had not
22 agreed that those reports are something we need to
23 provide.

24 I would point out we have confirmed since
25 my last discussion with Ms. Olson on this issue that

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1 those reports are filed annually with the state
2 commissions in North Carolina and South Carolina.
3 They are public documents. They're available through
4 the state commissions. And given that, I think that
5 they could be pursued through that avenue.

6 JUDGE YOUNG: Do you agree with that, Ms.
7 Olson?

8 MS. OLSON: Yes. But before we move too
9 far on, I have to raise a couple of items on their
10 request to me.

11 JUDGE YOUNG: All right. So which of
12 Duke's -- I have Duke's first set of interrogatories,
13 request for admission, and document production
14 request.

15 MS. OLSON: And, again, I regret that I
16 have not given you this in writing. Basically, all of
17 the interrogatories we will respond to, and request
18 for production 1 we will respond to. The request for
19 admission that -- we have a concern that a number of
20 these are actually legal questions rather than factual
21 ones. And in some cases, I mean, we can provide the
22 language of the regulations or the citations, I
23 suppose, as our response. But that would seem to be
24 all we could do.

25 In the factual realm, we will respond to

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1 4 and 5(c), (d), (e), (f), (g), and 6. Those are all
2 things we can respond to. But the others seem to us
3 to be legal questions. So I don't know if we want to
4 go into that today or if we should issue something in
5 writing and then take it up at the next call, or how
6 we want to do that.

7 MR. REPKA: My recommendation to that is
8 that you should respond, and in the course of your
9 response explain what it is you feel that you can't
10 admit to because it's a legal issue. And we'll deal
11 with it as appropriate at that time.

12 MS. OLSON: Okay.

13 JUDGE YOUNG: Sounds like a good course.
14 Very good.

15 Okay. Does that take care of all the
16 discovery issues at this point?

17 MS. OLSON: All that I have.

18 JUDGE YOUNG: Very good. What kind of
19 progress are you making on contention 2? And this
20 brings in Mr. Zeller as well.

21 MR. REPKA: This is Dave Repka. Mr.
22 Zeller and I have spoken, and I think it's fair to say
23 we have not made any progress. At this point, I think
24 the assumption is we're proceeding on that contention.
25 We continue to believe we've addressed the substance

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1 of the contention and put that information on the
2 docket, and we remain open if there's any specific
3 deficiencies that BREDL fields or NIRS fields exist.

4 And what we've put on the docket on the
5 two issues that are the subject of the contention --
6 we're happy to listen to that -- those deficiencies
7 and try to address that. But at this point we've made
8 no progress.

9 JUDGE YOUNG: Thank you. We encourage you
10 to continue your discussions, narrow down the
11 discussions to the areas of disagreement.

12 And, Mr. Zeller, I assume you heard that,
13 what Mr. Repka said.

14 MR. ZELLER: Yes, Judge Young. And it's
15 true that we have had some discussions, and -- but I
16 would characterize it as being that the documents that
17 we would request would probably -- or that we need --

18 JUDGE YOUNG: Hold on for just a second.
19 Before we start talking about requesting documents --

20 MR. ZELLER: Certainly.

21 JUDGE YOUNG: I think what we're talking
22 about now is the possibility of settlement based on
23 the new information that Duke has provided in requests
24 -- in reply to requests for additional information.
25 And I understood Mr. Repka to say if you would be more

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1 specific in the concerns that you have, that you still
2 have after reading Duke's responses, that they're
3 known so that they can address them, and you can, you
4 know, continue to narrow down the issues in dispute
5 and see how far you can get in resolving them between
6 the two of you.

7 In that context, Judge Kelber raised this
8 issue of the Generic Safety Issue 189, and the
9 Commission's and the staff's ongoing work on this.
10 And perhaps at this point Judge Kelber can speak to
11 that.

12 But we also want to hear from the staff on
13 that. And I don't think we have yet gotten an update
14 from the staff on the -- are the dates the same with
15 regard to SEIS and -- or the SES and the SER?

16 MS. UTTAL: This is Susan Uttal. As far
17 as I know, the dates discussed previously still stand.
18 There might be a change in dates for the public
19 meetings to discuss the SEIS, but I think the
20 projected dates for staff documents are about the
21 same.

22 JUDGE KELBER: January.

23 MS. UTTAL: January for the final SEIS.
24 Draft SEIS is due out in May and June.

25 JUDGE YOUNG: And then the SER would be on

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1 the same schedule?

2 MS. UTTAL: The SER is projected to be
3 issued looks like February -- in the January/February
4 area.

5 JUDGE YOUNG: Because, obviously, in the
6 Commission's referral order a lot of our schedule is
7 tied to the issuance of the SES and the SER. So, all
8 right. We've got that information.

9 Now let's step back into the discussion of
10 contention 2. And, Judge Kelber, maybe you can
11 explain more about the relevance of the Generic Safety
12 Issue.

13 JUDGE KELBER: Yes. This is Judge Kelber.
14 Generic Safety Issue 189 is -- deals with the measures
15 for control of hydrogen in Mark III BWRs and ice
16 condenser plants. At the Commission briefing on
17 March 19th, Commissioner McGaffigan had a dialogue
18 with Mr. Thadani, who is the Director of the Office of
19 Nuclear Regulatory Research, as to the schedule for
20 completing work on this topic.

21 And the impression I get from that
22 dialogue is that it's a matter of a few months. I was
23 just wondering whether the staff has any more concrete
24 knowledge of the proposed schedule.

25 MS. UTTAL: Your Honor, I have no

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1 knowledge of this issue or the discussion between
2 Commissioner McGaffigan and Mr. Thadani, nor any
3 information regarding the scheduling.

4 JUDGE KELBER: I think it might be useful
5 to know, because that certainly has a bearing on the
6 resolution of contention 2.

7 MS. UTTAL: Well, I'll find out and at the
8 next phone conference provide more information.

9 JUDGE KELBER: Mr. Zeller?

10 MR. ZELLER: Yes?

11 JUDGE KELBER: Do you see specific topics
12 that are an impediment to settlement on contention 2?

13 MR. ZELLER: Yes, we do. I have read the
14 responses to the request for additional information,
15 which have been provided to us.

16 JUDGE YOUNG: Is there a more recent one?

17 MR. ZELLER: Yes, there was one under I
18 guess March 14th or March 20th, depending on which
19 cover letter you look at. For example, from -- Jim
20 Wilson here had in a memo to file regarding the
21 responses to additional information or requests for
22 additional information.

23 For example, there is documentation --

24 JUDGE KELBER: Well, Mr. Zeller, I want to
25 know, do you see specific impediments to a settlement?

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1 MR. ZELLER: Impediments to settlement?

2 JUDGE KELBER: Are there some topics that
3 you feel that you cannot resolve?

4 MR. ZELLER: Yes. We are unable to fully
5 assess the situation without the complete updated
6 Catawba and McGuire probabilistic risk assessments.
7 There is a new version, Version 2B I understand, as
8 well as documentation of the cost-benefit calculations
9 of the SAMA and the health effects calculations.

10 JUDGE KELBER: Mr. Repka?

11 MR. REPKA: Mr. Zeller brought this up
12 yesterday, that he wanted to see the entire PRA. My
13 response to that was that in terms of a request for
14 all of the PRA and the supporting models that we would
15 want to think about that and deal with that through
16 the discovery process.

17 I'm not sure that it's necessary to review
18 what's been put on the docket with respect to the
19 particular contention that's at issue here. I think
20 the request for -- is, in all likelihood, far
21 overbroad.

22 At this point, I just was not inclined to
23 go into discovery before we even got to that phase of
24 the case. I think there is sufficient information on
25 the docket to address whether or not there are

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1 additional considerations that BREDL believes need to
2 be addressed.

3 JUDGE YOUNG: I think it would be worth
4 carrying on -- it sounds as though before you said
5 that you thought it might be worth carrying on
6 additional discussions to narrow down the areas of
7 dispute, and then see where you can go on those.

8 MR. REPKA: Well, again, what I was
9 focused on is, are there any particular things that we
10 have not addressed in responding to the staff's
11 questions that are germane to the two issues that the
12 Board admitted on the SAMA evaluation.

13 JUDGE KELBER: That's what I was trying to
14 find out.

15 MR. REPKA: And the answer I got was, "I
16 don't know the answer unless I have the entire PRA."
17 And, again, I have not fully considered that request,
18 but at this point I felt like that was a -- really a
19 premature discovery request, and I -- I don't believe
20 it's necessary to try to narrow any areas in the --
21 with respect to the contention and the information on
22 the docket.

23 So, I mean, I remain open to consider --
24 if there's particular areas where further discussion
25 is necessary, I can pursue that. But I have not heard

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1 any.

2 JUDGE YOUNG: By referring to the entire
3 PRA, does that mean that you would be willing to, in
4 the context of discussions about particular issues
5 related to contention 2, to discuss portions of the
6 PRA?

7 MR. REPKA: That's not something we've
8 discussed internally here at Duke Energy, whether
9 that's even possible. That's something that we can
10 discuss and will discuss. And if there's any basis
11 for further discussions with Mr. Zeller on that point,
12 I can pursue that as well.

13 But I think at this point it's -- it
14 really is incumbent upon Mr. Zeller to give me a
15 little more specificity as well.

16 MR. ZELLER: Yes. There are -- this is
17 Lou Zeller, and the impacts on safety-related systems,
18 structures, and components, the design basis events,
19 and other information regarding integrity of reactor
20 coolant pressure boundaries, capability of shutdown,
21 reactor shutdown --

22 JUDGE KELBER: Mr. Zeller, you're going
23 very far afield, aren't you? Contention 2 I think is
24 quite limited.

25 MR. ZELLER: Well, it has to do with

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1 mitigation of accident consequences and potential
2 offsite exposures.

3 JUDGE KELBER: It's a good deal more
4 limited than that, Mr. Zeller. I suggest that you
5 reread it and just -- I want to reiterate what I said
6 last time, that there are a lot of experts required to
7 discuss this intelligently. I expect them to be
8 produced.

9 MR. REPKA: Dave Repka again. I would add
10 that while that discussion was going on I was
11 consulting offline here. And my experts tell me that
12 there is sufficient information on what is on the
13 docket in order to do independent assessment of the
14 specific calculations and the specific issues that are
15 in contention 2. So our view is that there is
16 sufficient information already in the public domain.

17 JUDGE YOUNG: Mr. Zeller, who is your
18 expert?

19 MR. ZELLER: We're working with Dr. Edwin
20 Lyman and Jesse Riley.

21 JUDGE YOUNG: Let me just try to set --
22 give you a little context here. I think you really do
23 need to get into specific discussions, including Dr.
24 Lyman to the degree possible, with Duke about this
25 contention and be able to address with Duke specific

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1 problems that you have that are a lot narrower than you
2 seem to be looking at it.

3 Now, obviously, you don't -- you can do
4 whatever you want to do with regard to these
5 discussions, and you're not required to settle
6 anything. But if at an appropriate time Duke comes
7 back with a motion for summary disposition, and sets
8 forth a number of facts that you're not, then, able to
9 respond to with differing facts of your own that would
10 raise issues such that summary disposition should be
11 denied, then that would be something that you might
12 not be in as good a position to respond to as if you
13 tried to approach as much as possible on the front
14 end. Did that make sense to you?

15 MR. ZELLER: I understand what you say,
16 Judge Young. And I guess that the -- like I said, the
17 responses that we've gotten to the RAI are extremely
18 limited. There is some data here, but there are a
19 series of assumptions implicit within these responses
20 which reveal that it makes them an inadequate response
21 to even the issues raised by the Judges themselves,
22 for example, in determining the risk impact based on
23 the lack of consideration for NUREG CR-6427.

24 JUDGE YOUNG: Okay. Let me stop you
25 there. We don't want to hear all your negotiations.

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1 The purpose of our discussion of this at this point is
2 simply to encourage you to -- to get into specific
3 discussions including, to the degree necessary, your
4 expert, if there's any chance of resolution of this.
5 Also, take a look at what the Commission and the staff
6 are doing, Generic Safety Issue 189.

7 And I can't tell completely, but if
8 there's any temptation to sort of hang tough on
9 principles, you might want to just think more in terms
10 of, look, are there any area where we can agree on?
11 Are there -- can we narrow down what we're in
12 disagreement on? And it may be that you've done that.
13 It may be that you haven't. If you haven't, try a
14 little harder on it.

15 We're mainly looking at contention 1 now,
16 in terms of litigation, discovery, etcetera, etcetera.
17 But we -- the Commission is looking at this itself
18 now. See what progress you can make on a holistic
19 level through bringing your expert into the
20 discussions, if you haven't done it yet. Okay?

21 MR. ZELLER: Very well.

22 JUDGE KELBER: Just remember, sir, that
23 the contention was written carefully and is quite
24 limited in scope.

25 MR. ZELLER: Yes, I understand.

1 JUDGE KELBER: That was not apparent to me
2 from what you said earlier. Your understanding was
3 not apparent to me from what you said earlier. I
4 advise you to look it over very carefully.

5 MR. ZELLER: Well, I have done that, of
6 course. And I think that, you know, we would be
7 amenable to any suggestions that the panel would have
8 in that. So I will take those all into consideration,
9 of course.

10 But what I'm saying is that in preparation
11 for today's teleconference, and based on the rather
12 brief discussion which I did have with Mr. Repka, and
13 also -- and, more importantly, the discussions with
14 Dr. Lyman, that the need for the provision of the
15 probabilistic risk assessment and the analyses, the
16 cost-benefit analyses that I mentioned, I think is
17 inescapable. So I think we have done a lot of this up
18 to this point.

19 I would, you know, take any advice that
20 you have in terms of how this would look in the future
21 when we ultimately come to the hearing. But we have
22 looked at these details, I assure you.

23 JUDGE YOUNG: Okay. Well, obviously, we
24 -- as Judge Kelber was saying, we're not trying to
25 force you to do anything, but -- especially in view of

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1 the fact that the Commission is looking at these kinds
2 of issues. See where you can go with it, and then
3 report back to us.

4 Is there anything else that any of you
5 think we would do well to discuss today?

6 MR. ZELLER: Oh. There is one question
7 that I had here, and I think it's relatively easy to
8 deal with. I wondered if within contention 1 that --
9 the order says all parties can argue, and the orders
10 are based, in part, on -- we believe that the order is
11 based, in part, on BREDL's petition to dismiss.

12 My question is -- and NIRS -- and Mary
13 Olson, of course, on -- the lead on this, and we're
14 very happy with that. My question has to do --

15 JUDGE YOUNG: Mr. Zeller?

16 MR. ZELLER: -- with what BREDL's role is
17 in contention 1.

18 JUDGE YOUNG: Mr. Zeller, you are
19 mistaken. BREDL did not file anything related to
20 contention 1. You did in your motion to dismiss, but
21 that was not to us.

22 MR. ZELLER: Right. The order says that
23 all parties can argue, though, correct?

24 JUDGE YOUNG: I don't know what order
25 you're talking about. You'll have to direct me to a

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1 specific order and a specific page.

2 MR. ZELLER: Well, I'm sure I can find
3 that. It's right here some place.

4 JUDGE YOUNG: You're not one of the
5 petitioners -- just to cut this through here.
6 Obviously, the staff is a party. The staff may have
7 something to say on -- as to contention 1, assuming we
8 go forward with the hearing. And we're not going to
9 exclude you from any participation whatsoever. But
10 you are not a petitioner on contention 1, so your
11 participation would be limited.

12 We have not -- as we get closer to the
13 hearing, we can hear from all of you on what form and
14 extent that participation would take. But I think
15 that I can state for the Board that we did not
16 anticipate that your participation on contention 1
17 would be very great at all, that it would be quite
18 limited in view of the fact that you did not file a
19 contention on this subject.

20 MS. OLSON: Your Honor, this is Mary
21 Olson. I believe it's in the March 1st order where
22 there is the line that states -- but I don't have the
23 order in front of me -- that all parties will argue,
24 but it's not clear what it's referring to.

25 But the same order says that limited

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1 appearance is possible. So certainly at the very
2 least BREDL could do a limited appearance. Is that
3 correct?

4 JUDGE YOUNG: I must confess I'm not clear
5 on what you're looking at. Certainly, there -- I hear
6 a limited appearance statement, but I'm not really
7 clear what you're talking about.

8 MS. OLSON: Okay. Perhaps we can find it
9 and make a written question. I don't know. What do
10 you call that?

11 MR. ZELLER: Should we put this in written
12 form, Your Honor? All we need is -- all I'm asking
13 for is some clarification on that.

14 JUDGE YOUNG: What is it that you want,
15 Mr. Zeller? I mean, NIRS is the Petitioner on
16 contention 1. What is it that you don't think NIRS
17 can do that you feel you need to do?

18 MR. ZELLER: I just was asking for a
19 clarification of all parties can argue. I mean, we
20 are happy with NIRS or Mary Olson in one bit, and so
21 I don't want that to be misconstrued. All that we're
22 looking for here is just some clarification of what
23 you meant.

24 JUDGE YOUNG: And I just told you a minute
25 ago that I think that I can speak for the Board in

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1 saying that we would expect that BREDL's role would be
2 very limited with regard to contention 1. So if you
3 have any specific things that you would like to
4 present with regard to it, let us know, and we can
5 talk about that. But further than that, I don't see
6 any need for us to discuss it today, unless you want
7 to clarify something that we're not understanding.

8 MR. ZELLER: No. I'll let it go at that,
9 Your Honor. Thank you very much.

10 JUDGE YOUNG: All right. Anything else
11 besides choosing a date for our next status
12 conference? We're looking at May 14th or 15th. how
13 would that -- either of those dates work for the rest
14 of you?

15 MS. OLSON: I have a question about that.
16 The date is fine, but my question is that our
17 discovery period ends before then, and this was to be
18 a status on whether we're having any further problems
19 with some of discovery or not?

20 JUDGE YOUNG: You're right. I'm sorry, I
21 was. -- now, as I said, I'm going to be out -- I'm
22 going to be out of town doing another hearing,
23 although I would probably be able to make myself
24 available at a phone on May -- on April 29th, say the
25 afternoon of April 29th.

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1 MS. OLSON: Fine for me.

2 MR. REPKA: That works for me.

3 MR. ZELLER: April 29 is good.

4 MS. OLSON: Judge, do you know what day of
5 the week that is?

6 MR. ZELLER: Monday.

7 JUDGE YOUNG: Monday.

8 MS. OLSON: Monday?

9 JUDGE YOUNG: Say 1:00 p.m.? Because on
10 Mondays I am definitely not available after 2:45.

11 MS. OLSON: Oh. By then we'll have chewed
12 it all over so well it'll be short, huh?

13 JUDGE YOUNG: Yes. We can make it a
14 little earlier than that if you wish. How -- what
15 time do you suggest?

16 MS. OLSON: If we can get it done within
17 an hour and 45 minutes, then I have no problem with
18 1:00. But if there's some question, then perhaps we
19 should start at 12:30.

20 JUDGE YOUNG: Or even 12:00, if people can
21 take an early lunch.

22 MS. OLSON: I have no objection.

23 MR. REPKA: I'm happy with any of the
24 above.

25 MR. ZELLER: Fine.

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1 JUDGE YOUNG: All right. Then, we will
2 set that for 12:00 noon eastern time, April 29th.

3 Judge Rubenstein, you said that was all
4 right with you, right?

5 JUDGE RUBENSTEIN: Yes, I did.

6 JUDGE YOUNG: Great. Okay. And we will
7 get an order out by next week ruling on the last --
8 right, on 2(d).

9 And if anything comes up within the next
10 week or so in which you need our assistance, such that
11 it would resolve something quickly rather than waiting
12 until April 29th -- I have something else next
13 Tuesday, but I think I've given you the rest of my
14 schedule. Absent that, we'll see -- we'll talk on
15 April 29th.

16 MS. OLSON: Thank you, Your Honor.

17 JUDGE YOUNG: That's all.

18 (Whereupon, the proceedings went off the
19 record at 12:46 p.m.)

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CERTIFICATE

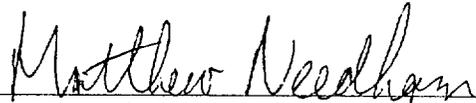
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Duke Energy Corporation

Docket Number: 50-369-LR et al.

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.



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