

Official Transcript of Proceedings

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, November 6, 2002

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

LICENSING RENEWAL

TELEPHONE CONFERENCE CALL

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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,

November 5, 2002

The above-entitled matter came on for hearing,
pursuant to notice, at 1:00 p.m.

BEFORE:

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

1 APPEARANCES:2 On Behalf of the Licensee, Duke Energy Corp.:

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4 ANNE W. COTTINGHAM, ESQ.

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9 (202) 371-5700

10 AND

11 LISA F. VAUGHN, ESQ.

12 Of: Duke Energy Corporation

13 422 South Church Street

14 Charlotte, NC 28202

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16 On Behalf of the Nuclear Regulatory Commission:

17 SUSAN L. UTTAL, ESQ.

18 U.S. Nuclear Regulatory Commission

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1 APPEARANCES: (cont.)

2 On Behalf of the Intervenors:

3 DIANE CURRAN, ESQ.

4 Washington, D.C.

5

6 MARY OLSON, Director Southeast Office

7 Of: Nuclear Information and Resource Service

8 729 Haywood Road, 1-A

9 P.O. Box 7586

10 Asheville, NC 28802

11

12 ALSO PRESENT:

13 Michael Barrett, Duke Energy

14 Duncan Brewer, Duke Energy

15 Ken Canady, Duke Energy

16 Bob Gill, Duke Energy

17 Greg Robison, Duke Energy

18

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

1:00 p.m.

1
2
3 JUDGE YOUNG: All Right. This is Judge
4 Young and I have Judge Kelber her with me in Rockville
5 and Judge Rubenstein is out in Arizona. Let's just go
6 through and have everyone for the record state their
7 names. And we'll start with the Licensee in
8 Charlotte, Ms. Vaughn.

9 MS. VAUGHN: This is Lisa Vaughn for Duke
10 Energy. With me is Greg Robinson, Michael Barrett,
11 Bob Gill, and Mike Tugman.

12 JUDGE YOUNG: Thank you. And if you could
13 spell your names for the court reporter.

14 THE COURT REPORTER: I have them.

15 JUDGE YOUNG: Thank you. And then Mr.
16 Repka.

17 MR. REPKA: This is David Repka at Winston
18 and Strawn in Washington. And with me is Anne
19 Cottingham.

20 JUDGE YOUNG: All right. And then Ms.
21 Curran.

22 MS. CURRAN: This is Diane Curran
23 representing Blue Ridge Environmental Defense League.

24 JUDGE YOUNG: And we may or may not have
25 someone else joining us.

1 MS. CURRAN: Right Lou Zeller and Mary
2 Olson were aware of the call but I don't know if they
3 are joining the conference.

4 JUDGE YOUNG: Okay. And then we also may
5 be joined by Mr. Brewer from Duke Energy and Mr.
6 Palla, P-A-L-L-A, from the NRC. Do you need their
7 first names?

8 THE COURT REPORTER: I believe I do.

9 JUDGE YOUNG: We had set this date the last
10 time we talked and we thought it would be a good time
11 to touch base and see where we are. We may not need
12 to spend very long at all on this conference call.
13 And we don't want to get into any issues that are
14 currently pending before the Commission. There are
15 some things that would be unaffected by the Commission
16 order and if there is anything that we can do to
17 assist the parties and facilitate progress on matters
18 as much as possible we are here to do that. We would
19 like to get an update from you all on anything --
20 pardon me.

21 (Brief pause.)

22 JUDGE YOUNG: That's a long one; excuse
23 me.

24 MS. UTTAL: What's that sound?

25 JUDGE YOUNG: That's a clock. Excuse me.

1 MS. UTTAL: I just had to ask.

2 JUDGE YOUNG: Right before we went on the
3 record, I was just about to mention that we had
4 received Ms. Uttal's letter of October 31st notifying
5 everyone about the ACRS subcommittee meeting
6 yesterday, and the ACRS meeting tomorrow, at which
7 Generic Safety Issue 189 will be considered. And
8 then, we also received -- a stack of documents to
9 update the case file. Is there anything that needs to
10 be discuss about those items, and Ms. Uttal, can you
11 give us anymore of an update -- or anyone else, for
12 that matter -- on Generic Safety Issue 189?

13 MR. REPKA: Judge Young, this is Dave
14 Repka. Would you like me to go first from Duke's
15 perspective, or do you want to hear from Ms. Uttal?

16 JUDGE YOUNG: Either one. And basically,
17 all we would like to hear from you is what, if
18 anything, new has happened (inaudible) on the argument
19 or discussion of the merits of any of the issues that
20 are before the Commission, but sort of let us know
21 where we are.

22 MR. REPKA: Okay. Again, Dave Repka.
23 Essentially, nothing has happened in the proceeding
24 with respect to the issues that are before the
25 Commission. We know that the board has held it prior

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1 rulings in abeyance, and we think that's appropriate
2 until the commission makes whatever determination it
3 makes.

4 With respect to GSI 189, I would just
5 mention that in the stack of documents that the staff
6 sent to update the hearing file, there are two letters
7 that I had previously -- or we had previously served
8 on the Board, dated August 2nd, 2002 and, I believe,
9 August 8, 2002; one on the McGuire docket and one on
10 the Catawba docket, related to GSI 189. Those
11 represent the latest submittals by Duke on the merits
12 of that issue and --

13 JUDGE YOUNG: Are those --

14 MR. REPKA: -- yes, go ahead.

15 JUDGE YOUNG: Are those numbers one --
16 document --

17 MR. REPKA: Let me just confirm that I'm
18 giving you the right docket -- document numbers.

19 JUDGE YOUNG: Document number 120 and 122.

20 MR. REPKA: 120 is definitely the one on
21 the Catawba docket, and the correct letter on the
22 McGuire docket is document 125, dated August 19th.

23 JUDGE YOUNG: That looks like 120, also.

24 MR. REPKA: There are letters that are
25 comments on the SEIS, and then there's a second letter

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1 on each docket that relates more particularly to
2 SAMIS. So, all of those, 120 and the analog on the
3 other docket, would have been previously served by us
4 on the board, as well. But the documents that I
5 wanted to specifically highlight were those related to
6 the assessment of the SAMIS that the staff is
7 currently undertaking.

8 JUDGE YOUNG: So we have another ACRS
9 meeting on license renewal. We don't know whether --
10 I don't know whether any of you attended that, but we
11 realize that there are other meetings going on and
12 presume that all of you know that, as well.

13 MR. REPKA: And I would add to that -- I
14 believe the ACRS, and I think Mr. Gill can correct me
15 if I'm wrong -- the ACRS meeting transcript is on
16 ADAMS. But that relates to the license renewal
17 application generally.

18 The other thing I would point out is that
19 with respect to Consolidated Contention 2, which is
20 the contention still before the Board, we have
21 indicated in the past that we -- Duke is always
22 interested in discussing at least the possibility of
23 settling that contention in whatever way might be
24 appropriate, regardless of what the scope of the
25 contention might be or regardless of what the parties

1 and the Board's position might be on our argument that
2 the contention is moot.

3 We still think that the GSI 189, as a
4 result of that, the whole issue has moved considerably
5 beyond the SAMA contention, and I think there would be
6 a basis to -- hopefully would be a basis to resolve
7 that. I've made that representation before. I made
8 that again to Ms. Curran just today. And so, if
9 there's a way to pursue that, we're always interested
10 in looking for ways to resolve this.

11 JUDGE YOUNG: If the parties would like,
12 we can ask to have a mediator or a mediation judge
13 assigned, and that would be a completely separate
14 track from us. If you all say the word, I can request
15 the chief judge assign a mediator or a mediation
16 judge, so just let us know on that. Of course, we
17 always encourage settlement if the parties think they
18 can see any ground for that. And it may be that in
19 some of the new information that's coming out, there
20 may be (inaudible) state an opinion one way or
21 another.

22 Let me just say another couple things. On
23 this certification order and holding things in
24 abeyance, we did receive (inaudible), and we do want
25 to just let all the parties know that the

1 certification order was issues, as stated, to ensure
2 better management of the case so that it would save
3 all parties replowing the same ground several times
4 and extra time and expense.

5 I presume from the fact that no one --
6 from what Mr. Repka has said and that no one has
7 indicated anything different that there are no
8 arguments scheduled and that there have not been any
9 new proceedings that we would not know about before
10 the Commission. Is that correct?

11 MR. REPKA: Dave Repka for Duke. No, none
12 that we're aware of. We didn't respond to Mr.
13 Zeller's filing and didn't believe any response was
14 necessary or appropriate. It didn't appear to be
15 asking for any --

16 JUDGE YOUNG: No, I'm not suggesting that
17 it was. I was just making a statement.

18 MR. REPKA: Right. We're not aware of
19 anything else.

20 JUDGE YOUNG: One other thing that we did
21 want to ask about is the final SEIS and SER. Ms.
22 Uttal, could you give us a status report on that.

23 MS. UTTAL: Well, it's proceeding along,
24 Judge. It's still -- the schedules still hold that it
25 will be issued to the EPA in mid January.

1 JUDGE YOUNG: One thing that occurred to
2 us was that it might be a good idea to set some
3 deadlines -- not date deadlines but 30-day deadlines
4 after the issuance of the final SDIS and final SER,
5 and 30 days after receipt of any other new information
6 for that matter for the filing of any late filed
7 contentions based on those. We felt that doing that
8 would probably serve to avoid some confusion that we
9 got into earlier about what was timely and what was
10 not timely. So, if anyone would like to speak to
11 that, now would be a good time to do that.

12 MS. CURRAN: Thirty days sounds reasonable
13 to me. This is Diane Curran.

14 JUDGE YOUNG: So, we will put that -- was
15 there anything, Judge Kelber or Judge Rubenstein,
16 about the deadline that I've left out?

17 (No response.)

18 JUDGE YOUNG: We'll put that in an order
19 that I'll issue after the conference.

20 One other thing. On the status of the
21 intervenor's withdrawal, we're not sure how any future
22 rulings by the Commission or us might affect this, but
23 we did want to know that there did appear to be some
24 lack of clarity for the basis of the withdraw because
25 of some flaws in the transcript. And we don't see any

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1 need to address that now, but we just want to note
2 that as a possible thing that might come up later.

3 In formal discovery was one thing in
4 addition to the -- any settlement negotiations between
5 the parties that you might be undertaking. Judge
6 Kelber, did you want to speak to that?

7 JUDGE KELBER: Well, several times in the
8 past, the intervenors have indicated a desire to
9 review the PRAs. The point is that I bring to your
10 attention is that they are publicly available; not on
11 ADAMS, however, but on NewDocs, the older NRC document
12 management system. The staff, in one of their more
13 recent filings, did refer to the initial PRA or in-
14 plant examination and to Division 1, which also
15 included external events.

16 In addition, I have verified that revision
17 2, which is referred to but not by that name in the
18 draft SEIS, is also in NewDocs. One simply looks for
19 the accession number by putting in the docket and the
20 date, which is in the reference in the SEIS as March
21 8, 1998, and exactly one document comes up, and that's
22 revision 2.

23 Now, as you're aware, in NewDocs, you gain
24 access by going to a public document room, and in New
25 DOCS, the documents are on microfiche. The microfiche

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1 occasionally have illegible pages or partially
2 illegible pages, particularly if it's a complex
3 diagram. In a case like that, it would be possible,
4 I think, to -- if the page is identified, to get it
5 through the staff's help, with the staff's help, or
6 the licensee's help, accurate copies of the pages.

7 MS. CURRAN: So, Judge Kelber, this is
8 Diane Curran. You're saying the entire PRA, with all
9 the revisions -- and I frankly can't remember right
10 now how many revisions there are -- is in NewDocs?

11 JUDGE KELBER: Through revision 2. As I
12 understand it, and Mr. Repka will correct me if I'm
13 wrong, revision 3 has not yet been submitted. Is that
14 correct, sir?

15 MR. REPKA: I believe that's correct, but
16 I'd ask Charlie to confirm that. Bob, do you know
17 that?

18 What I do know is that, as I have said
19 before, in the original SAMA analyses submitted with
20 the environmental reports, there was -- each one
21 referenced a number of documents that were filed with
22 the NRC that are a matter of public record on the IPE
23 and the IPEEE, as well as the PRA. So, those
24 documents all should be part of the public record, as
25 you say, Judge Kelber.

1 MR. BARRETT: This is Mike Barrett from
2 Duke. I just want to add, what is out there for
3 McGuire is through revision 2, a summary report of the
4 PRA was what was submitted on the docket.

5 MS. UTTAL: So it isn't the PRA itself?
6 It's a summary of it?

7 MR. BARRETT: Yeah. It's a summary of how
8 the analysis was done, some of the major results and
9 conclusions, some discussion about the various system
10 models. But it's not, you know, every single
11 calculation that goes into the PRA.

12 JUDGE YOUNG: You're talking about the
13 NewDocs version?

14 MR. GILL: Give nthe time of when those
15 were submitted, that probably would be NewDocs.
16 Whehter that's NewDocs or BRS or which particular
17 system it's available in, I can't say definitively.
18 It would be prior to ADAMS, though.

19 JUDGE YOUNG: But what I was trying to get
20 to was whether he was saying that what is on NewDocs
21 is only a summary.

22 MR. GILL: It's what's referred to as a
23 summary report. It's a substantial document.

24 JUDGE KELBER: It occupies one full cart
25 of microfiche plus an extra page. I verified that

1 myself, so it's not insubstantial.

2 MR. GILL: Yeah, I just want to -- the
3 summary report that we submitted, it's probably an 1-
4 1/2 inches thick stack of paper. It's not just a two-
5 page summary. I mean, there is a lot of information
6 there. As I said, it's certainly not an entire PRA,
7 but there is substantial information in it.

8 JUDGE YOUNG: In any event, I think we --
9 in raising the issue of informal discovery, even
10 though we have delayed formal discovery until the
11 motion for clarification, Mandor (sp.) reconsideration
12 has been resolved, there are things, as Judge Kelber
13 said, that are available publicly that the parties
14 could be looking at during this time period.

15 MS. CURRAN: Judge, this is Diane Curran.
16 I just want to clarify. I think my clients have known
17 for a while about the summary documents, and I'm sorry
18 I don't have Dr. Lyman with me on the phone, but I
19 think the issue here has been that they would like to
20 see more of the details.

21 JUDGE YOUNG: Do they have the summary
22 documents already?

23 MS. CURRAN: I think so. I think they're
24 -- I think they've looked at them, yes.

25 JUDGE YOUNG: Are there any other issues -

1 - I'm just looking down my checklist. Are there any
2 other issues or new information that we should be
3 aware of that you would like to share with each other
4 at this time?

5 (No response.)

6 JUDGE YOUNG: Is there anything that
7 anyone would like to request of us, and would you like
8 for me to ask the Chief Judge to appoint a mediation
9 judge?

10 MS. CURRAN: This is -- Judge, this is
11 Diane Curran. Dave Repka and I talked a little while
12 on the phone today, and I said I would have another
13 look and give some thought to whether any of the new
14 information that's coming out about the generic safety
15 issue might give us some basis for talking and I would
16 get back to him. So, it seems to me that until we
17 make that evaluation, it would be premature to call in
18 a settlement judge.

19 JUDGE YOUNG: That's fine. And obviously,
20 we don't want to be putting pressure on you; no one
21 has to settle, obviously. But if you would like to
22 ask that a mediation judge be appointed, just contact
23 me jointly, and I will pass that request on to the
24 Chief Judge and you would be notified of who it is.
25 Actually, it's been done in (inaudible) before, as

1 well. So, we'll just leave that in your hands, and if
2 you want it, make a joint request to that effect.

3 MS. CURRAN: Okay. Thank you.

4 JUDGE YOUNG: And then the staff, to
5 whatever degree the staff wants to take part in that,
6 could be included or (inaudible) to whatever degree
7 the staff finds appropriate, if that were to occur.

8 Judge Kelber, Judge Rubenstein, apart from
9 possibly setting another time to touch base in
10 December, I think that that's all that I had on my
11 list to go over.

12 JUDGE RUBENSTEIN: This is Judge
13 Rubenstein. You pretty well covered my list.

14 JUDGE YOUNG: Let me hear from the
15 parties, then, or let us hear from the parties. I
16 think it would be -- the only reason I was sort of
17 thinking about the possibility of setting a date for
18 another status conference is that, if we don't set a
19 date and then we need to get together, we're getting
20 towards that time of year when sometimes people
21 schedules aren't going to work. So, if you think it
22 would be worthwhile, we had talked and we had thought
23 that December 13th or 16th -- was it, Judge
24 Rubenstein?

25 JUDGE RUBENSTEIN: Yes.

1 JUDGE YOUNG: Judge Kelber -- I think
2 those were the two dates that we're looking at.

3 MR. REPKA: This is Dave Repka. I think
4 the idea of setting a date is probably a good one,
5 given schedules. Perhaps there should be a
6 recognition that if the commission acts in the
7 meantime, we would set an earlier date, if that was
8 possible or appropriate, or if there was any reason
9 to, based on what the Commission said.

10 But I've just - the 13th or 16th are fine
11 by my schedule. The first week of December is a
12 possibility. But I would have to hear from Ms. Vaughn
13 about the group in Charlotte.

14 JUDGE YOUNG: Let's hear from everybody
15 else. Ms. Vaughn, Ms. Curran.

16 MS. UTTAL: Those dates are fine for
17 counsel. If it's just for a status conference, then
18 I will not need staff particularly, and I don't know
19 what the availability is without looking at their
20 calendars.

21 MS. CURRAN: This is Diane Curran. I'm in
22 the same spot as Susan is because Dr. Lyman is out of
23 the country right now. I think he'll be back next
24 week, but we could set a date and if there's some
25 problem, I could let you know.

1 JUDGE YOUNG: Okay. And then, Ms. Vaughn,
2 I think we're waiting to hear from you also, down in -
3 -

4 MS. VAUGHN: The 13th would be a strong
5 preference, but we could probably work with either,
6 with the proviso that we would need to check with
7 Brewer and determine his availability.

8 JUDGE RUBENSTEIN: This is Judge
9 Rubenstein. I think the 13th would be a strong
10 preference for me, too -- Friday the 13th.

11 (Laughter.)

12 JUDGE YOUNG: Look at it as having an
13 opposite -- oh, that causes a problem for Judge
14 Kelber. Is the 16th okay for you?

15 Judge Kelber can't do it on the 13th, but
16 can on the 16th. Judge Rubenstein, is that all right
17 with you?

18 JUDGE RUBENSTEIN: Yes. We would have to
19 start after lunch, but that would be okay -- lunch
20 your time.

21 JUDGE YOUNG: Is the time we started today
22 all right?

23 JUDGE RUBENSTEIN: That's perfect.

24 JUDGE YOUNG: Okay. So, one o'clock on
25 the 16th. Can everyone else work with that?

1 MR. SCOTT: Yes.

2 MR. REPKA: One o'clock's good.

3 JUDGE YOUNG: Okay. And, as Dave Repka
4 said, obviously, if anything does come up earlier that
5 would cause you to have an earlier conference,
6 certainly, we can communicate with each other by email
7 to try to narrow down a date and time and set one up
8 as soon as possible. But otherwise, we have this date
9 down, just December 16th at one o'clock. And I'll
10 just, in very short order, confirm what we did today
11 and give you one last chance -- is there anything else
12 that anyone would like to bring up that we have not
13 covered?

14 (No response.)

15 JUDGE YOUNG: All right. Well, then, I
16 look forward to talking with you all on the 16th, if
17 not before, and we all thank you.

18 Anything else, Judge Kelber?

19 JUDGE KELBER: No.

20 JUDGE YOUNG: Judge Rubenstein?

21 JUDGE RUBENSTEIN: No. I think it's
22 great.

23 JUDGE YOUNG: Great. Thank you all.

24 MS. CURRAN: Thank you.

25 MR. REPKA: Thank you.

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(Whereupon, the telephone conference was
concluded.)

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
McGuire Nuclear Station
Units 1 & 2, Catawba Nuclear
Station Units 1 & 2
Docket Number: 50-369
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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