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## NUCLEAR REGULATORY COMMISSION

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OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Title: Duke Energy Corporation: McGuire Nuclear Station; Catawba Nuclear Station

Docket Number: 50-369-LR et al.

Location: (Telephone Conference)

Date: Friday, January 31, 2003

Work Order No.: NRC-732

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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

-----X

Friday,  
January 31, 2003

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

1     APPEARANCES:

2

3             On Behalf of the Licensee, Duke Energy Corp.:

4                     DAVID A. REPKA, ESQ.

5                     ANNE W. COTTINGHAM, ESQ.

6             Of:     Winston & Strawn

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11             AND

12                    LISA F. VAUGHN, ESQ.

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15                    Charlotte, NC 28202

16

17             On Behalf of the Nuclear Regulatory Commission:

18                    SUSAN L. UTTAL, ESQ.

19                    ANTONIO FERNANDEZ, ESQ.

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1     APPEARANCES: (cont.)

2

3             On Behalf of the Intervenors:

4                     DIANE CURRAN, ESQ.

5             Of:     Harmon, Curran, Spielberg & Eisenberg

6                     Suite 600

7                     1726 M Street, N.W.

8                     Washington, D.C. 20036

9             AND

10                    MARY OLSON, Director Southeast Office

11             Of:     Nuclear Information and Resource Service

12                    729 Haywood Road, 1-A

13                    P.O. Box 7586

14                    Asheville, NC 28802

15

16             ALSO PRESENT:

17                    LOUIS ZELLER

18                    Blue Ridge Environmental Defense League

19                    P.O. Box 88

20                    Glendale Springs, NC 28629

21

22                    DR. EDWIN LYMAN

23                    Nuclear Control Institute

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ALSO PRESENT:

Michael Barrett, Duke Energy

Duncan Brewer, Duke Energy

Bob Gill, Duke Energy

Greg Robinson, Duke Energy

Michael S. Tuckman, Duke Energy

Rani Franovich, NRC

Robert Palla, NRC

Brooke Smith, NRC

James Wilson, NRC

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

10:01 a.m.

1  
2  
3 CHAIRPERSON YOUNG: This is Judge Young,  
4 and I have Judge Kelber with me, and I heard Judge  
5 Rubenstein earlier. I'm going start with the staff.

6 MS. UTTAL: Good morning. This is Susan  
7 Uttal. I'm here with Antonio Fernandez, co-counsel of  
8 Brooke Smith, who's a member of OGC, and Robert Palla,  
9 who's a staff member.

10 CHAIRPERSON YOUNG: And, let's see, for  
11 Duke?

12 MR. REPKA: This is David Repka and I'm  
13 here in Charlotte with a number of people: Lisa  
14 Vaughn, Michael Tuckman, Duncan Brewer, Michael  
15 Barrett, Greg Robinson and Bob Gill. I think all the  
16 names and spellings and titles are probably on the  
17 record previously. I can go through that if you'd  
18 like. And in addition, we have, as I think Ms.  
19 Cottingham noted, Ms. Cottingham in my office in  
20 Washington.

21 CHAIRPERSON YOUNG: I think, court  
22 reporter, you have all the names and spellings  
23 already, don't you, or do you any more -- any of them?

24 COURT REPORTER: I have most of them but  
25 I can go over them at the end if you'd rather.

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1 CHAIRPERSON YOUNG: Okay. And then Ms.  
2 Curran?

3 MS. CURRAN: Hi. This is Diane Curran,  
4 and I was hoping that Dr. Lyman and Lou Zeller would  
5 be on the phone, but I'm not sure they are.

6 MS. OLSON: And Mary Olson is on the line.

7 CHAIRPERSON YOUNG: Okay. Well, I think  
8 we can go ahead and get started on some things. The  
9 Board really was thinking that we wouldn't get into  
10 any substantive issues today. Did someone else just  
11 join us?

12 MR. ZELLER: Yes. This is Lou Zeller.

13 CHAIRPERSON YOUNG: Okay. Hi. I was just  
14 saying the Board, in discussing the case, we do not  
15 anticipate getting into any substantive issues today,  
16 but we thought that we should substantively talk about  
17 some procedural issues, scheduling issues.

18 The first thing that we have on our agenda  
19 is that we have read all the parties' submissions with  
20 regard to Duke's Motion to Dismiss and given the  
21 responses in light of the Commission's order in LI-02-  
22 28, that's LI-02-28, we will grant Duke's motion to  
23 dismiss the original Contention 2, and we will  
24 memorialize this in an order following up on this  
25 conference.

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1                   Before moving on to the other two items  
2                   that the Commission has directed us to resolve, which  
3                   would be the amended contention and discovery, we  
4                   would like to ask the parties whether there are any  
5                   other issues that you would like us to address anymore  
6                   late filed contentions expected? I guess we presume  
7                   not since I think the -- it's been more than 30 days  
8                   since the final SEIS, I'm not quite sure about the  
9                   SERs. But is there anything else besides the amended  
10                  contention and discovery that any of you would like to  
11                  raise?

12                  MS. CURRAN: This is Diane Curran. I  
13                  don't have anything else to raise.

14                  MR. REPKA: And this is Dave Repka. We  
15                  have nothing to raise at Duke, although we certainly  
16                  would like to discuss the other two issues.

17                  MS. UTTAL: This is the staff, Susan  
18                  Uttal. We have nothing else to raise.

19                  CHAIRPERSON YOUNG: All right. First of  
20                  all, on discovery, in discussing this among ourselves,  
21                  we see this as being something that we would not need  
22                  to resolve until after we've ruled on the amended  
23                  contention.

24                  (Bird singing in background.)

25                  CHAIRPERSON YOUNG: Excuse us, it will



1 stop in a minute.

2 MS. CURRAN: Sounds like a tufted-  
3 titmouse.

4 CHAIRPERSON YOUNG: I'm not sure what it  
5 is.

6 MR. REPKA: It's not me.

7 (Laughter.)

8 CHAIRPERSON YOUNG: Okay. As I was  
9 saying, we considered that we would not need to make  
10 any rulings on discovery until after we had ruled on  
11 the amended contention. Does any party disagree with  
12 that or see that there's anything that we would need  
13 to resolve at this point?

14 MR. REPKA: This is Dave Repka. No, we  
15 don't disagree with that at all. I think that's  
16 consistent with the Commission's view that the issue  
17 of admissibility of contentions comes first.

18 MS. CURRAN: This is Diane Curran. We  
19 would agree with that.

20 MS. UTTAL: Staff agrees also, Your Honor.

21 CHAIRPERSON YOUNG: Okay. Then we're  
22 through talking -- did someone else just join us?

23 MR. LYMAN: This is Ed Lyman from Nuclear  
24 Control Institute.

25 CHAIRPERSON YOUNG: This is Judge Young.

1 We're just about to start talking about the amended  
2 contention. I believe it's -- I can't remember the  
3 exact date, but I believe we had gotten through half  
4 -- the first four parts of the A part amended  
5 contention when we held oral argument on the  
6 telephone. And, obviously, in light of the  
7 Commission's recent order, there may be some other  
8 considerations that might apply to all parts of the  
9 amended contention.

10 We would like to hear what the parties  
11 have to say about further oral arguments, how and  
12 where to conduct that. Have you discussed this among  
13 yourselves? If not, go one by one and tell us what --  
14 Ms. Curran, maybe we could start with you since if  
15 you're representing your party.

16 MS. CURRAN: We haven't discussed this,  
17 and we think it's appropriate to go ahead and finish  
18 the oral argument. And we had previously asked if we  
19 could do that in person, because it is difficult to do  
20 it over the telephone, and we would repeat the  
21 request.

22 MR. REPKA: This is Dave Repka for Duke.  
23 We were certainly prepared today to go ahead and have  
24 that argument on the amended contention. With respect  
25 to the first four that we've already had argument, I

1 think that the Commission's decision in LI-02-28 and  
2 the fact that the SEIS has issued put even the first  
3 four that we've previously argued in a whole new  
4 light, and I think there is an overarching issue of  
5 the continuing validity of any of the amended  
6 contentions related to this --

7 (Phone problems.)

8 CHAIRPERSON YOUNG: Hello? Mr. Repka, we  
9 lost you somewhere in there. Does someone maybe have  
10 the phone out? There's some noise that's in it that's  
11 --

12 MS. CURRAN: Did that help? This is Diane  
13 Curran. I was using a headphone. I wonder if that  
14 might have --

15 CHAIRPERSON YOUNG: Oh, I don't know. It  
16 seems to have gone.

17 MS. CURRAN: Okay.

18 CHAIRPERSON YOUNG: So it might help.

19 MR. REPKA: I guess -- this is Dave Repka  
20 again. What I was saying is we were prepared to argue  
21 the contentions today, the issue of the viability of  
22 the amended contentions. I think that the issuance of  
23 the Commission's decision and the SEIS in the last few  
24 weeks or so put even the original four contentions  
25 that we already argued in a new light. It raises

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1 questions about their continuing viability -- the  
2 continuing viability of any of the eight proposed  
3 amended contentions. So I think that those are  
4 arguments that need to be heard.

5 As I said, we were prepared to do that  
6 today, and I don't think that argument is restricted  
7 to the last four is the point I want to make. We  
8 believe that to the extent that any of the amended  
9 contentions are addressing the same evaluation of the  
10 issue first identified in NUREG-66427, those issues  
11 are moot just to Contention 2, so I think we want to  
12 have an opportunity to make that argument.

13 CHAIRPERSON YOUNG: The Board anticipates  
14 we would hear some additional argument on the first  
15 four parts of the contention as well, and,  
16 specifically, now might be a good time to mention that  
17 we would like to brief the sort of  
18 reasonableness/sufficient care issue prior to oral  
19 argument; that is, how should the term, "sufficient  
20 care," be interpreted and applied in this case as it  
21 used in the following phrase from the Commission's  
22 order: "Hearing petitioners have an, quote, 'iron  
23 clad obligation' to examine the publicly available  
24 documentary materials pertaining the facility in  
25 question with sufficient care," and those are the

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1 operative words, "to enable the petitioner to uncover  
2 any information that could serve as the foundation for  
3 a specific contention."

4 So we would like to have the parties read  
5 that and provide any supporting authority on that  
6 prior to hearing oral arguments so that we can get as  
7 full as possible an understanding of how that should  
8 be applied in this case.

9 Let me just ask, Ms. Curran, you indicated  
10 you'd like to have oral argument and, first, do you  
11 have a -- are you requesting that that be done here,  
12 in North Carolina?

13 MS. CURRAN: I think we would prefer North  
14 Carolina, but we realize the Board has some practical  
15 considerations. In the past, we've just found it  
16 difficult with so many different participants in these  
17 telephone conferences, so I think our preference would  
18 be North Carolina. We'd also be willing to do it in  
19 Washington, D.C.

20 CHAIRPERSON YOUNG: Assuming we do in-  
21 person oral argument, we understand your concerns, it  
22 is difficult with so many people on a telephone  
23 conference, I can tell you that we can probably do  
24 them earlier if we do them in Washington.

25 MS. CURRAN: Well, in terms of timing,

1 here's another suggestion that may affect that. I  
2 guess we would like to see -- if Duke believes that  
3 the amended contentions have been mooted by the  
4 issuance of the final EIS or the Commission's decision  
5 or something that's happened since the amended  
6 contentions were filed, we would like to see that in  
7 writing so that we can respond to it in writing.

8 CHAIRPERSON YOUNG: We can set deadlines  
9 for briefing on any issues that the parties would like  
10 to address in addition to the sufficient care issue.  
11 I think we didn't hear from the staff before. Ms.  
12 Uttal?

13 MS. UTTAL: Well, Your Honor, we were  
14 prepared to argue the amended contention today. We  
15 agree with the Licensee that most of this, if not all  
16 of the amended contention, has been mooted out and is  
17 untimely. We are in what is called critical path  
18 right now. The staff documents have been completed,  
19 the staff is meeting with the ACRS, I believe, next  
20 week, so that the only proceeding relating to this  
21 license application will be this proceeding. So we  
22 would ask that if we are going to have subsequent  
23 hearings and filings, that they be done sooner rather  
24 than later so that the Agency may proceed regarding  
25 the license renewal application.

1 CHAIRPERSON YOUNG: There's still some  
2 noise coming over the phone. I don't -- is someone  
3 moving things? Okay. If anyone is moving papers  
4 around or breathing into the phone, it sort of cuts  
5 into the -- being able to hear everyone.

6 Apart from the sufficient  
7 care/reasonableness issue and the mootness issue based  
8 on the Commission's order, are there any other issues  
9 the parties know will be arising such that we might  
10 benefit from briefing prior to oral arguments?

11 MR. REPKA: This is Dave Repka. I think  
12 the issue before us is one of the admissibility of the  
13 amended contentions, and, certainly, we're happy to  
14 address any issue that hasn't already been addressed  
15 related to why we believe the amended contention  
16 shouldn't be admitted. And Ms. Curran has invited to  
17 do that, we're happy to do that. But I think it's  
18 important to recognize the burden is not on us at this  
19 point. The burden is on the Intervenors to  
20 demonstrate an admissible issue. And that's got to  
21 satisfy at least three tests. One --

22 CHAIRPERSON YOUNG: Mr. Repka?

23 MR. REPKA: Yes.

24 CHAIRPERSON YOUNG: My question was simply  
25 does anyone see any additional issues that it would be

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1 helpful to have briefed prior to oral argument? That  
2 was my question.

3 MR. REPKA: And my response is that we  
4 would be happy to brief any issue related to the  
5 admissibility of the contentions. I think that the  
6 effect of the Commission's decision is one. Any  
7 insights the Commission's decision might have on  
8 evaluating the timeliness of the proposed amended  
9 contentions is another. And the third is any effect  
10 that the Commission's decision might have as to  
11 whether there's a viable basis for the amended  
12 contention is something that would be addressed. All  
13 of that would be perhaps new information that we  
14 didn't have in front of us back in July of last year,  
15 so I think the issue to be addressed is one of,  
16 broadly speaking, the admissibility of the  
17 contentions.

18 CHAIRPERSON YOUNG: Well, everything could  
19 be obviously viewed as coming under that rubric. Any  
20 other issues besides the sufficient  
21 care/reasonableness, all of which goes to timeliness,  
22 or the mootness or viability of the contentions in  
23 light of the Commission's order? Any other issues  
24 that any party sees that would be helpful to have  
25 briefed prior to oral argument?

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1 All right, then. We would like to get  
2 briefed on these issues, and we can probably do oral  
3 arguments more quickly if we do it in Washington.  
4 Maybe if everyone could get out your calendars.  
5 February 22 through March 7 I'm going out of town next  
6 week and won't be back until the end of the following  
7 week. The week of February 18 I have a hearing out of  
8 town the week of March 10, will be back March 18. So,  
9 Judge Rubenstein, what were your times?

10 JUDGE RUBENSTEIN: The week of March the  
11 17th works for me -- oh, no, excuse me, probably  
12 starting the 19th through the 21st probably works for  
13 me.

14 CHAIRPERSON YOUNG: What about March 19 to  
15 20 for the parties?

16 MR. ZELLER: That's not good. It's Lou  
17 Zeller.

18 MR. REPKA: Judge Young, this is Dave  
19 Repka. We're consulting here, if you could just give  
20 us a second.

21 MS. UTTAL: Judge, this is Susan Uttal.  
22 What about February 19 and 20, just to move this along  
23 quicker?

24 CHAIRPERSON YOUNG: Who was it that was  
25 not available to do it then? Oh, Judge Rubenstein,

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1 you had --

2 JUDGE RUBENSTEIN: Oh, no, I'm okay in  
3 February.

4 CHAIRPERSON YOUNG: Okay.

5 MS. CURRAN: Lou Zeller is not available  
6 in February, right?

7 MR. ZELLER: February 19 and 20 is out,  
8 right.

9 CHAIRPERSON YOUNG: What about the 21st,  
10 which is a Friday?

11 JUDGE RUBENSTEIN: I'd prefer any Monday,  
12 Tuesday and Wednesday in February. This is Judge  
13 Rubenstein.

14 MR. REPKA: This is Dave Repka. I think  
15 any Monday, Tuesday or Wednesday in February we will  
16 be available, and we do believe February is the right  
17 time to do this.

18 CHAIRPERSON YOUNG: What about February  
19 17?

20 MS. CURRAN: That's a federal holiday,  
21 isn't it?

22 CHAIRPERSON YOUNG: Oh.

23 JUDGE RUBENSTEIN: Or the 18th.

24 CHAIRPERSON YOUNG: The 18th would work?

25 MS. UTTAL: That's available, Your Honor.

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1 CHAIRPERSON YOUNG: All right.

2 MS. UTTAL: Are you available then, Lou?

3 MR. ZELLER: Yes.

4 MR. REPKA: February 18 works for Duke.

5 MS. UTTAL: Ed, are you available then?

6 MR. LYMAN: February 18, I believe so.

7 MS. CURRAN: I'm available that day.

8 CHAIRPERSON YOUNG: Okay. February 18  
9 then, oral argument in Washington in our courtroom.  
10 We're going to have to probably specify some security  
11 procedures that are different than they have been in  
12 the past. We may have to have escorts for people, but  
13 we can work that out. With regards to briefs, we --

14 MR. ZELLER: Judge Young, I'm sorry, this  
15 is Lou Zeller again. The 18th is problematic because  
16 the meeting on the 19th is in North Carolina early in  
17 the morning.

18 CHAIRPERSON YOUNG: Well, you can fly back  
19 the night of the 18th. It's obvious that we're going  
20 to have difficulty finding a time that doesn't  
21 inconvenience someone to some degree, but you can fly  
22 back the night of the 18th.

23 With regard to the briefs, we can give you  
24 until the -- well, what about filing briefs on the 6th  
25 or 7th and responses on the 12th, which would give

1 everyone a little bit of time to read them prior to  
2 oral arguments? Does the 6th or 7th make any  
3 difference to people?

4 MS. CURRAN: The 7th is better for us.

5 CHAIRPERSON YOUNG: Okay. February 7 for  
6 briefs and February 12 for responses. And these  
7 briefs will cover the issues of timeliness and whether  
8 the Petitioner's exercised sufficient care in  
9 examining publicly available documentary materials  
10 pertaining to the facility, whether they could have  
11 done that earlier than they did with sufficient care,  
12 and also whether the Commission's order has rendered  
13 moot or otherwise non-viable any of the bases for the  
14 eight parts of the amended contention, and the SEIS  
15 and SER, I guess, also.

16 Then there will be some issues that we'll  
17 cover -- will be things that we will want to ask and  
18 that you all will be addressing with regard to all  
19 parts of the amended contention. But with regard to  
20 the last four parts, since we didn't have any oral  
21 argument on those before, we'll probably allow for  
22 more time on those. And I don't know that we have any  
23 preference. It might be better to consider the  
24 broader issues first with regard to all the parts and  
25 then go into specific argument on the last four parts.

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1 And if there are any other issues that any party would  
2 like to brief, according to the schedule we've just  
3 given, you can feel free to do that.

4 Then we will convene on February 18 at  
5 nine o'clock and take as long as we need. We'll  
6 finish by the close of business that day. Any  
7 questions or other issues that any party would like to  
8 raise?

9 MR. REPKA: This is Dave Repka for Duke.  
10 I'd just like to raise one other question or point.  
11 You know, we do agree with Ms. Uttal that this process  
12 is now on critical path, and I guess the question  
13 would be whether the Board will -- the original  
14 Commission delegation order set a schedule of mile  
15 posts for the license renewal proceeding, and I think  
16 one of those mile posts is that 50 days after the SER  
17 comes out there would be any ruling on any late-filed  
18 contentions. And I guess our question would be if  
19 it's the Board intent to try to maintain that  
20 schedule?

21 CHAIRPERSON YOUNG: Well, at this point  
22 I'm not sure it's possible. I'm not recalling the  
23 exact dates when those were issued, but, obviously,  
24 this case has taken a somewhat unusual turn or turns,  
25 I should probably say, so obviously the Board will try

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1 to be as timely as it possibly can. Any other --

2 MS. UTTAL: Your Honor, this is Susan  
3 Uttal. I believe that I e-mailed the questions of the  
4 SER on January 9, if I'm not mistaken.

5 CHAIRPERSON YOUNG: Other questions? All  
6 right, then. We will issue an order confirming the  
7 matters discussed today, and we will look forward to  
8 receiving your briefs and responses and to holding --  
9 actually, I'd better check before we hang up to make  
10 sure about the courtroom.

11 JUDGE KELBER: While Judge Young is making  
12 sure about the courtroom, this is Judge Kelber, I  
13 would just like to ask that the topic be addressed  
14 also in connection some of the late-filed or amended  
15 contention parts of what circumstances indicate that  
16 the Licensee should depart from regulatory guidance?

17 MS. CURRAN: Could you explain that a  
18 little more, Judge Kelber? This is Diane Curran.

19 JUDGE KELBER: Well, in preparing their  
20 environmental report, the Licensee had substantial  
21 regulatory guidance from a variety of documents, and  
22 I'd just like to know some of the late-filed amended  
23 contention parts indicate a possible departure from  
24 such guidance, and I'd like to know what circumstances  
25 indicate that that should be done. Judge Young is

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1 just back.

2 CHAIRPERSON YOUNG: Someone is checking on  
3 the courtroom. We should hear in a moment. Any other  
4 issues?

5 MR. REPKA: Dave Repka again. Just I  
6 mentioned the delegation order earlier. Just for the  
7 record, I want to say it's DOI-01-20, issued on  
8 October 4, 2001.

9 CHAIRPERSON YOUNG: We have that. The  
10 courtroom is available, so we will be getting out an  
11 order as soon as possible. If there's nothing else,  
12 does the court reporter need anything spelled?

13 COURT REPORTER: Yes, please.

14 (Whereupon, at 10:30 a.m., the Telephone  
15 Conference Call was concluded.)

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CERTIFICATE

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

Name of Proceeding: Duke Energy Corporation:  
McGuire Nuclear Station;  
Catawba Nuclear Station  
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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Douglas Wilson  
Official Reporter  
Neal R. Gross & Co., Inc.

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