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NUCLEAR REGULATORY COMMISSION

2003 FEB -4 AM 11: 26

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

Pages 1182-1203

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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

-----X

IN THE MATTER OF : Docket Nos.

DUKE ENERGY CORPORATION : 50-369-LR

(McGuire Nuclear Station, : 50-370-LR

Units 1 & 2, Catawba Nuclear : 50-413-LR

Station, Units 1 & 2) : 50-414-LR

-----X

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

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1 APPEARANCES:

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

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5 ANNE W. COTTINGHAM, ESQ.

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11 AND

12 LISA F. VAUGHN, ESQ.

13 Of: Duke Energy Corporation

14 422 South Church Street

15 Charlotte, NC 28202

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17 On Behalf of the Nuclear Regulatory Commission:

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19 ANTONIO FERNANDEZ, ESQ.

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1 APPEARANCES: (cont.)

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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

24
25
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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.

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

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

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

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

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

COURT REPORTER: I have most of them but 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

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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.

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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 Intervenor 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

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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,
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