

RAS 6910

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

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Catawba Nuclear Station, Units 1 & 2  
Pre-Hearing Conference

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13 Bernard Stapleton, Office of Nuclear Security  
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15 Cheryl Stone, Office of Nuclear Security and  
16 Incident Response  
17 Glen Tracey, Office of Nuclear Security and  
18 Incident Response  
19 Ralph Wayne, Office of Nuclear Security and  
20 Incident Response  
21 Diane Boies, Duke Energy  
22 Louis Zeller, Blue Ridge Environmental League  
23  
24  
25

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

10:09 a.m.

1  
2  
3 JUDGE YOUNG: Let's all introduce  
4 ourselves for the record and at the end, if we need to  
5 spell names for the court reporter, stay on, but as we  
6 go it might be helpful for the court reporter to spell  
7 your name.

8 Let's start with the Staff.

9 MR. FERNANDEZ: Your Honor, with me I have  
10 Bob Martin, who is the project manager for this  
11 license amendment request. We also have Cheryl Stone  
12 from the Division of Nuclear Security. Ralph Way from  
13 Nuclear Security Operations.

14 JUDGE YOUNG: How do you spell the last  
15 name?

16 MR. FERNANDEZ: W-A-Y.

17 JUDGE YOUNG: Okay.

18 MR. FERNANDEZ: Bernard Stapleton from the  
19 Information Security Section and Glen Tracey, Division  
20 Director of the Division of Nuclear Security.

21 All of these people are from the Office of  
22 Nuclear Security and Incident Response.

23 JUDGE YOUNG: I think you need to  
24 introduce yourself also?

25 MR. FERNANDEZ: Yes, this is Antonio

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1 Fernandez, Counsel for the Staff and also we have  
2 Susan Uttal, Counsel for the Staff and Kathleen  
3 Kannler, Counsel for the Staff.

4 JUDGE YOUNG: All right, and then the  
5 Petitioner?

6 MS. CURRAN: This is Diane Curran, C-U-R-  
7 R-A-N, representing Blue Ridge Environmental Defense  
8 League.

9 JUDGE YOUNG: Anyone else for the  
10 Petitioner?

11 MS. CURRAN: I guess Mr. Zeller is not on  
12 the phone.

13 JUDGE YOUNG: Mr. Repka and Ms. Vaughn for  
14 Duke Energy, do you have anyone else with you and do  
15 you want to go ahead and introduce yourselves?

16 MR. REPKA: This is David Repka, that's R-  
17 E-P-K-A. And I'm in Washington, D.C. today. Located  
18 in Charlotte is Lisa Vaughn, V-A-U-G-H-N. And Lisa,  
19 with you, I believe is Mr. Steve Nesbit, N-E-S-B-I-T.  
20 Are you guys there?

21 MS. VAUGHN: Yes. And we also have Dana  
22 Boies.

23 JUDGE YOUNG: Boyd?

24 MS. VAUGHN: B-O-I-E-S.

25 JUDGE YOUNG: Is anyone else present who

1 hasn't introduced themselves?

2 All right, then just to start off, we want  
3 to emphasize that we congratulate you on resolving  
4 your difference in presenting something to us that  
5 you've all agreed on and we want to emphasize that we  
6 don't want to withhold anything from anyone who needs  
7 it and we certainly recognize the need of the parties  
8 to deal with these materials.

9 However, we did want to make sure that we  
10 were all on the same page about security issues and  
11 make sure that the proposed agreed order and non-  
12 disclosure affidavit covered all the bases and so I  
13 guess I would start by asking the Staff, Mr.  
14 Stapleton, I've dealt with another case involving  
15 security issues, any of you, have you read the  
16 proposed protective non-disclosure agreement and does  
17 it meet with your approval?

18 Are there any other issues that we need to  
19 address in it or maybe just talk about?

20 MR. FERNANDEZ: Your Honor, this is  
21 Antonio Fernandez from the Staff. I'm going to have  
22 to apologize. I have been just notified by the Senior  
23 Managers in the Office of Nuclear Security and  
24 Incident Response that although they have previously  
25 looked at the affidavit, and it is tailored on the

1 affidavits for the PSS proceeding, there may be some  
2 concern that they are not ready today to give you a  
3 final decision on the issues that you're requesting to  
4 be briefed on today.

5 I was not aware of this yesterday. If I  
6 would have been aware, I would have notified the Board  
7 of this information. I just found out about this as  
8 we joined the call right now when everybody walked  
9 into the room.

10 I apologize for this. All I can say is  
11 that we will have a determination for the Board as  
12 promptly as possible and notify the parties as soon as  
13 we can of when the staff will be available to have  
14 this same conference or hopefully at the beginning of  
15 next week.

16 JUDGE YOUNG: Maybe we can, in the  
17 meantime, maybe we can go ahead and talk about some  
18 issues, in any event.

19 Did someone else just come on line?

20 MS. OLSON: Yes, this is Mary Olson, Judge  
21 Young. I apologize, but I just now opened the e-mail.  
22 I was out of town yesterday.

23 JUDGE YOUNG: We knew you were out of  
24 town. We weren't sure when you were coming back.  
25 Welcome to the conference call.



1 I'd like to come from the security people  
2 in terms of what we can talk about today. I don't  
3 know what degree this issue is of concern to the  
4 Security Staff, but in my experience lawyers to become  
5 licensed generally have to go through a fairly  
6 significant screening --

7 MS. UTTAL: Excuse me, Judge, this is  
8 Susan Uttal. We're losing every other word that  
9 you're saying, so we're not getting a complete  
10 picture.

11 JUDGE BARATTA: This is Judge Baratta, B-  
12 A-R-A-T-T-A.

13 What Judge Young was saying -- can you  
14 hear me okay?

15 MS. UTTAL: No, we're still losing half of  
16 what you're saying. It sounds like somebody is  
17 breathing into the phone or something that's perking  
18 everybody up.

19 JUDGE YOUNG: I am going to pick up the  
20 receiver and talk into it and then put it down so  
21 Judge Baratta can hear the responses. If anyone is  
22 holding the phone close to your mouth, maybe move it  
23 away from your mouth because that does cause things to  
24 break up.

25 What -- can people hear me now that I'm on

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1 the regular phone?

2 MR. FERNANDEZ: Yes, Your Honor.

3 JUDGE YOUNG: Okay. What I was saying was  
4 that while I'm aware that lawyers to become licensed  
5 have to go through a screening, fingerprinting and so  
6 forth, so we have less concern about your agreement in  
7 that regard. I would presume that Dr. Lymand, given  
8 the number of cases that he's involved in, has  
9 probably been through some kind of screening to get  
10 access to similar materials in other cases.

11 But we didn't know exactly what the  
12 situation was with the secretaries and we thought that  
13 that was something that would be appropriate to  
14 address.

15 Also from another case involving security  
16 issues that I've been involved in, we know that there  
17 a lot of electronic security issues in terms of what  
18 kinds of computers you use and I know you addressed  
19 this in your non-disclosure agreement, but I thought  
20 it might be helpful to have Security Staff sort of  
21 brief us on the practicalities of that as well.

22 And I understand that the Staff, Mr.  
23 Fernandez, you've just said that you're not ready to  
24 make a report. It might still be helpful to just have  
25 some discussion today about security issues to the

1 degree that Mr. Stapleton and Ms. Stone and the other  
2 people there, Mr. Tracey and I think Mr. Way, you  
3 mentioned, and then finally, pardon me.

4 Finally, we have discussed what to do  
5 about the scheduled oral argument in North Carolina.  
6 That would -- we anticipate going ahead with that, but  
7 since that's not in our courtroom, we are thinking  
8 that that would have to be only non-safeguards  
9 information that we would be talking about there,  
10 unless security people can tell us differently.

11 So we would like to hear from the parties  
12 about the degree to which security issues and non-  
13 security issues can be separated. And then also if  
14 the security people could brief us on -- is it  
15 possible to get a quick criminal history background  
16 check of people like the secretaries and then I think  
17 we mentioned before the electronic security issues and  
18 also special handling issues, mailing and so forth as  
19 opposed to carrying things?

20 Those are sort of our issues. I can  
21 repeat them if necessary, but since I'm holding the  
22 receiver now, I wanted to just say everything. I'm  
23 going to put it down now and just ask the parties to  
24 speak up on these issues, the separability of the  
25 security issues for the oral argument that we've

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1 scheduled and also whether the Staff's possible delay  
2 here is going to upset our schedule and practical  
3 security issues, all of the things that I've  
4 mentioned. I'm going to put the phone down now.

5 One more thing. Right, if we go ahead and  
6 do non-security issues in Charlotte that we would then  
7 anticipate doing a separate hearing here in our  
8 courtroom on any security issues, unless there's some  
9 way we can do that differently or unless the parties  
10 have talked and have a different view that we can  
11 discuss today.

12 Go ahead, why don't you start with the  
13 Staff and then Duke and then let us know your views on  
14 these things. If we want to go ahead and start with  
15 the security people, how about it?

16 MR. FERNANDEZ: Your Honor, yes, we'll  
17 start. I just want -- this is Antonio Fernandez from  
18 the Staff. I just want to have one caveat that what  
19 the Staff tells you today with regards to anything  
20 that's specific to the litigation may change once the  
21 senior management in the Office of Nuclear Security  
22 and Incident Response may change the nexus -- I mean,  
23 if we keep it in generalities then, yes, I think I  
24 feel comfortable with letting Mr. Stapleton address  
25 the Board today. But if we get too specific into the

1 nature of the litigation, I think we will run the risk  
2 of getting information that may change probably even  
3 later on today. With that one caveat I'm going to let  
4 Mr. Stapleton go ahead and address your issues with  
5 regards to separability of the information and the use  
6 of electronic devices when handling safeguards  
7 information.

8 JUDGE YOUNG: Before you do that, I just  
9 want to emphasize one thing. This does appear that  
10 you may be putting some delay into the proceedings and  
11 so I think I want all parties to address that because  
12 obviously it would have been better to have this  
13 already addressed, but we understand, we need to be  
14 reasonable, but we need to be precise about what delay  
15 may be entailed by this.

16 Let's see, okay, I'm going to put you back  
17 on speaker.

18 Go ahead.

19 MR. STAPLETON: Your Honor, this is  
20 Bernard Stapleton.

21 JUDGE YOUNG: Hi.

22 MR. STAPLETON: The biggest issue facing  
23 us from an information security standpoint at this  
24 juncture is there have been on-going discussions  
25 between the Staff and Duke about whether the

1 provisions of a Category 1 facility would apply or  
2 whether safeguards information would apply in terms of  
3 protection measures.

4 JUDGE YOUNG: Can you explain the  
5 difference?

6 MR. STAPLETON: A Category 1 facility  
7 means that there are formula quantities of strategic  
8 special nuclear material involved, therefore, the  
9 physical security measures to protect that material  
10 would likely be classified.

11 Duke has submitted exemptions which have  
12 not been fully analyzed by the Staff to non-comply  
13 with certain sections of the Category 1 facility.  
14 Their proposal briefly says that with the addition of  
15 certain security measures, they would be able to  
16 protect the information under the requirements of 7321  
17 safeguards information and those physical security  
18 measures designed to protect a commercial nuclear  
19 reactor, but not necessarily a Category 1 facility.  
20 That decision hasn't been reached by senior management  
21 as to whether or not it is a classified information  
22 facility or whether it would be handled under  
23 safeguards information. That is the first big level  
24 issue that we have.

25 If it is decided that it's classified that

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1 will put restrictions on who can receive the  
2 information. It would require in-depth background  
3 checks.

4 JUDGE YOUNG: Mr. Stapleton, just to  
5 interrupt for one minute. Does what you're saying  
6 apply to the information that is the subject of  
7 protective orders?

8 MR. FERNANDEZ: Your Honor, this is  
9 Antonio Fernandez. I think we're now getting into  
10 that realm that we discussed before, specific to this  
11 proceeding, where I would advise that the Staff is not  
12 going to respond to that question right now because  
13 they're not ready to do that right now.

14 JUDGE YOUNG: What I'm asking here and  
15 this is a real practical question in terms of the  
16 timing of this proceeding, because if there's a  
17 possibility that the issue of Category 1 facility  
18 materials, by materials I mean documents. If there's  
19 a possibility that that could refer to any of the  
20 materials that BREDL has asked for, then it would seem  
21 we are looking at a delay that would be caused by this  
22 need to make that determination.

23 If you know, in fact, that it does not  
24 involve those materials, that would be another  
25 situation. It sounds as though the likelihood is that

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1 that determination will affect the classification  
2 level of some of the material that is asked for and by  
3 the way, court reporter, BREDL is all caps, B-R-E-D-L.

4 And so I really want to get some kind of  
5 an idea today, I think we need that, as to what the  
6 impact, the need to make further determinations, is.

7 MR. FERNANDEZ: Your Honor, this is  
8 Antonio Fernandez for the Staff again. I think what  
9 we're ready to tell you today is that yes, the  
10 classification of the information could cause a delay  
11 in the proceedings because of the security  
12 requirements that would be triggered with regards to  
13 access to that information.

14 And I think what we're telling you today  
15 is that we expect to give you a better estimate of  
16 probably what time delay that would be later on next  
17 week, but not today. Depending on the classification  
18 of the information, that would be what kind of delay  
19 would occur because it would impact what type of  
20 background check and what kind of trustworthiness  
21 review for the individuals that want access to the  
22 information would be done.

23 JUDGE YOUNG: Mr. Fernandez, I'm also  
24 talking about the delay entailed in making the  
25 determination, whether the parties can fill, stay with

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1 the previous deadlines and want to hold off on making  
2 this determination.

3 MR. FERNANDEZ: Are you referring to the  
4 deadline for the filing of the contentions, Your  
5 Honor?

6 JUDGE YOUNG: Right.

7 MR. FERNANDEZ: I think right now what we  
8 would argue is that there would be a delay with  
9 regards to the security portion of the contentions if  
10 this were to be true of anything but safeguards  
11 information, but the Staff would have the position  
12 that if here today or by the beginning of next week a  
13 determination is made that it's only safeguards  
14 information, then the Intervenors would have  
15 sufficient access to the information in a timely  
16 fashion in a way that they could look at it and file  
17 contentions by the time that you have ordered with the  
18 extensions that they have requested.

19 JUDGE YOUNG: We'll hear from Ms. Curran  
20 on  
21 on that. Let's go back to Mr. Stapleton for now and  
22 get to the rest of the issues that you can discuss  
23 with us today.

24 MR. FERNANDEZ: And I think we may have  
25 just covered delay which you had asked for, Your

1 Honor, and maybe now we're missing the separability of  
2 the information and then the security issues regarding  
3 use of electronic devices. Is that correct?

4 JUDGE YOUNG: Those along with any other  
5 considerations that Mr. Stapleton or the other parties  
6 --

7 MS. UTTAL: Judge, this is Susan Uttal.  
8 We're losing you again and we just missed everything.

9 JUDGE YOUNG: Is anyone on a hand phone?  
10 If anyone is on a hand phone if you could move the  
11 speaker away from your mouth because I think the  
12 breathing is breaking us up.

13 Okay, what I was asking was if we could  
14 just go ahead and hear whatever the security people  
15 can tell us that we need to be thinking about today  
16 and then we'll get back to the delay and scheduling  
17 issues in a minute.

18 I'm going to hand the phone to Judge  
19 Baratta right now before we put you on speaker again.

20 JUDGE BARATTA: Hello, this is Judge  
21 Baratta. I want to just make sure that there is not  
22 an issue with respect to the question of whether or  
23 not the parties involved could have access. It's  
24 merely what requirements that have to be met in order  
25 for them to handle the material because under 10 CFR

1 73.21 which is -- it does allow individuals to whom  
2 disclosure is ordered to have such access. I just  
3 want to make sure that that is not in dispute.

4 Give me a second to put the phone back  
5 down.

6 Okay?

7 JUDGE YOUNG: Is everyone still on?

8 MR. FERNANDEZ: Yes, Your Honor. Just one  
9 second so I can respond to Judge Baratta's question.  
10 I am conferring with the staff now. One second.

11 MR. ZELLER: Judge Young, while they're  
12 talking, this is Lou Zeller. I joined the call a  
13 little late.

14 JUDGE YOUNG: Thank you.

15 MR. FERNANDEZ: Just one clarification to  
16 Judge Baratta's point is that although what he stated  
17 is true for safeguards information and the way that  
18 it's been treated in the past, if we are dealing with  
19 classified national security information, if an  
20 individual were to fail the trustworthiness review,  
21 i.e., a background check, they would not be able to  
22 receive that information.

23 However, Your Honor, that's really not an  
24 issue in this case since as I understand it or it's a  
25 very small issue in this case, I should say. As I

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1 understand it, Dr. Lymand has already completed such  
2 a background check for the MOx fuel proceeding, and  
3 although I can't speak for Ms. Kern, I know she is  
4 currently in process of receiving that background  
5 check.

6 So if we were to reach that issue, we  
7 could address it at that time, but I don't think it  
8 would be an issue.

9 JUDGE YOUNG: Mr. Repka, do you have  
10 clearance?

11 MR. REPKA: Not at this time. So our  
12 assumption was that we would operate under the  
13 protective order until we could get clearance through  
14 Duke, if that were necessary.

15 JUDGE YOUNG: And that depends, I guess,  
16 in part on the classification that --

17 MR. REPKA: Our assumption is that if this  
18 is safeguards information, then we would not need  
19 that. We would be subject to the protective order.  
20 Of course, today is the first time we've heard that  
21 there's a possibility of a higher classification.

22 JUDGE YOUNG: Okay, well, obviously these  
23 things are going to need to be worked out. In  
24 conjunction with talking about what they do to the  
25 schedule, but back to Mr. Stapleton, are there any

1 other issues that you or the other security people can  
2 share with us today in terms of what we need to be  
3 thinking about and expecting?

4 MR. STAPLETON: Yes, Your Honor. In terms  
5 of taking the classified issue aside, if it were  
6 determined to be safeguards information, the two major  
7 requirements that we would want to see prior to  
8 information being given is one, that there clearly was  
9 established a need to know the information; and  
10 secondly, nuclear power reactors, before they get  
11 access to safeguards information, must perform an FBI  
12 fingerprint check, essentially a type of background  
13 check.

14 And the Staff would like to have something  
15 similar in place for people given access to this power  
16 reactor information.

17 JUDGE YOUNG: Mr. Stapleton, let me  
18 interrupt at this point. Just a practical question.  
19 I think, as I said before, from my knowledge, lawyers  
20 will have had to go through that and it sounds as  
21 though Dr. Lymand has gone through a check. So that  
22 leaves the secretaries. As a practical matter, it  
23 seems like I recall when I got licensed I just went  
24 down to the police station, got fingerprinted and it  
25 was very quick.

1                   Is that a very quick and easy procedure to  
2 go through or does that entail any delay these days?

3                   MR. STAPLETON: Your Honor, once second,  
4 Your Honor.

5                   (Pause.)

6                   JUDGE YOUNG: That was just a practical  
7 question to Mr. Stapleton based on his experience in  
8 security or any of the other security people. And  
9 we're talking about for the secretaries here it sounds  
10 like.

11                   MR. STAPLETON: Your Honor, I'm going to  
12 have Cheryl Stone from the Division of Nuclear  
13 Security answer your question.

14                   MS. STONE: Your Honor, yes, we can do the  
15 fingerprint checks and it can go to the police station  
16 and get the card and send them to us and then we get  
17 them. It takes us about a week to get the results  
18 back.

19                   JUDGE YOUNG: Okay, while we're on that  
20 subject, let me just ask quickly, Mr. Repka and Ms.  
21 Curran, do you have any problem with your secretaries  
22 doing that?

23                   MR. REPKA: This is Dave Repka. We have  
24 no problem doing that if that's what's necessary. I  
25 want to -- I'm not sure I understand whether that

1 would be required for safeguards or just if this  
2 information is determined to be classified. I'm not  
3 sure where we are on that issue, but we have no  
4 objection, if that's the procedure. We defer to the  
5 NRC completely on what's required.

6 JUDGE YOUNG: Let me see if I understand  
7 correctly. I'm understanding that that would be --  
8 that the Staff would like that to occur with regard to  
9 safeguards and that if we're talking about classified,  
10 then there's a lot more involved.

11 MR. STAPLETON: That's correct, Your  
12 Honor.

13 JUDGE YOUNG: Ms. Curran, do you have any  
14 problem with your secretaries doing that?

15 MS. CURRAN: No, we don't. And I just  
16 wanted to clarify our situation with respect to  
17 security clearances. Dr. Lymand and I both applied  
18 for Level L clearances, I believe it was in July in  
19 connection with a MOx proceeding. And I put in a  
20 call, I think it was you, Cheryl --

21 MS. STONE: Yes.

22 MS. CURRAN: Yesterday to check on the  
23 status of that. Do you happen to know?

24 MS. STONE: I don't know the status, but  
25 I did pass the phone call along to Michael who is the

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1 one that is processing your paperwork.

2 MS. CURRAN: I'm sorry, what did you say?  
3 I couldn't hear you?

4 MS. STONE: I did receive your phone call  
5 and I passed it along to Michael Bowden because he's  
6 the individual that is processing your paperwork.

7 MS. CURRAN: Okay, well, he did leave a  
8 message with me this morning and I couldn't return the  
9 call, so I'll try to find out what is the status of  
10 that if -- we both put in our Singletons, so that's  
11 been done. That's a moot point for both of us. I  
12 honestly don't remember doing that when I was admitted  
13 to the bar, but it was such a long time ago.

14 (Laughter.)

15 At any rate, I'm hoping that won't be an  
16 obstacle because it has been some time since we put  
17 those applications in.

18 MS. STONE: Unfortunately, they are taking  
19 longer these days. They usually take about 9 to 12  
20 months. But we can check on it.

21 MS. CURRAN: Okay.

22 MS. STONE: And I will call Michael this  
23 morning after we get out of the meeting and make sure  
24 he calls you back with the status.

25 MS. CURRAN: Thank you.



1 JUDGE YOUNG: That was Cheryl Stone and  
2 Diane Curran.

3 Okay, this is Judge Young again. All  
4 right, are there any other security issues that -- and  
5 while we have the security Staff, and by the way I  
6 just want to say I really appreciate your taking the  
7 time to be here and help us out here because we want  
8 to make sure that we do everything correctly. I want  
9 to hear from counsel after you're finished on the  
10 delay issue because I think that needs to be clarified  
11 in terms of the effect, both of the delays and find  
12 out and then should it be determined that classified  
13 information is involved any delays occasioned by that.

14 But before we go to counsel, are there any  
15 other security issues that any of you from the  
16 Security Division think we need to be looking at from  
17 a practical standpoint because I know in preparation  
18 for the Maine Yankee proceedings, I learned a lot that  
19 I was not aware of before -- just as a practical  
20 matter and so while we have you, I'd like to make use  
21 of you and get your advice on these types of things  
22 that we need to think about and expect.

23 MR. STAPLETON: If we're talking about  
24 classified information or safeguards information, Your  
25 Honor, generally there would be requirements in place

1 concerning storage of such information. It's a fairly  
2 high level storage requirement. It's a fairly  
3 substantial security container that would be required  
4 to store safeguards information and/or classified,  
5 obviously, the non-disclosure which would be treated  
6 in your affidavit. There are requirements concerning  
7 discussion over telephone lines or any kind of  
8 electronic transmission. You cannot disclose either  
9 safeguards information or classified information over  
10 an unprotected telephone circuit. The same type of  
11 restriction applies to the transmission of information  
12 in terms of a computer. There would be encryption  
13 required. Most people tend to use a stand-alone  
14 machine so that there is no shadow or backup file  
15 saved on a hard drive of a computer that might be  
16 hooked up to the internet.

17 We could provide documentation vetting out  
18 all those types of requirements and restrictions to  
19 the legal counsel here.

20 JUDGE YOUNG: I think that would be very  
21 helpful and then also when you finish if they have any  
22 questions for you I think that would be helpful as  
23 well.

24 Yes, if you could get the other package of  
25 all these practical considerations. I know Cindy

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1 Harbal mentioned to me one that I hadn't thought of  
2 and that is just carrying things around. Sometimes  
3 it's better to mail them with the double envelope of  
4 course than just take them on the Metro, for example,  
5 because you might be more likely to lose something on  
6 the Metro than if you send them Federal Express double  
7 enveloped and so forth. But go ahead, in terms of  
8 sharing those types of things with us.

9 MR. STAPLETON: There are actually just so  
10 many little details that could occur but I think we  
11 could provide to the legal counsel here details of  
12 transmission, protection, brief reduction,  
13 destruction, monitoring. There is truly a myriad of  
14 different requirements, but we could put that down in  
15 writing so that people could review it and we'd be  
16 happy to address any questions at that point.

17 MR. FERNANDEZ: Your Honor, I think it  
18 would probably be very useful for us to have the final  
19 determination from the Staff, the category of the  
20 information and once we've done that we are committed  
21 to giving the Board and the parties some sort of  
22 outline that would give people something, a quick  
23 reference so they can -- if there's any questions with  
24 regards to how they should be handling the  
25 information.

1                   Of course, I should also remind the  
2 parties that if there ever is a question of how  
3 something should be done or whether something they're  
4 doing should be done in a different way, if by  
5 contacting me I can quickly contact any of the members  
6 of the Security Staff and quickly answer any of those  
7 questions if there's any issues.

8                   JUDGE YOUNG: Is there any person at  
9 Security that people can call directly, for example,  
10 if you're not available such as when Ms. Curran called  
11 Ms. Stone?

12                   MR. FERNANDEZ: Your Honor, I would like  
13 it if the parties were going to contact the Staff in  
14 the middle of a proceeding that they go through  
15 counsel. If I'm not here, we always make sure that  
16 either Ms. Kannler or Ms. Uttal are here and I believe  
17 all those parties are contact information and calling  
18 those three of us or any of the three of us. Then we  
19 can go on and contact the Security Staff.

20                   JUDGE YOUNG: Okay, anything else, Mr.  
21 Stapleton or Ms. Stone or the other people that are  
22 from Security that we need to be thinking about at  
23 this point?

24                   MR. STAPLETON: No, Your Honor.

25                   JUDGE YOUNG: Okay, while we have the

1 security people here, Ms. Curran, Mr. Repka or anyone  
2 else, do you have any questions of them?

3 Ms. Olson, you just joined us and Ms.  
4 Curran had said that you had not requested any  
5 material that would have any safeguards or otherwise  
6 confidential material in it and so I'm assuming that  
7 anything that you raise would be at least at this  
8 point we expect that it would not involve security  
9 issues. If that's incorrect, let us know and let's  
10 try to get everything out on the table in terms of  
11 notifications today as possible.

12 MS. OLSON: Judge Young, this is Mary  
13 Olson in response to that. I'm going to confirm that  
14 mainly because of resource issues, Nuclear Information  
15 Resource Service will not be bringing security-related  
16 contention in this proceeding. However, it doesn't  
17 mean we do not share those concerns and support  
18 BREDL's pursuit of them. But it is a resource issue  
19 for us.

20 JUDGE YOUNG: One thing I should probably  
21 tell you and that is at whatever point we need to hold  
22 oral argument or a hearing at which any type of  
23 safeguards or otherwise classified material would be  
24 discussed, those types of hearings would be closed  
25 except for people who do have the requisite clearance

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1 or permission, depending upon the level of  
2 classification.

3 So that is something that you need to be  
4 aware of. Anything else from counsel for the parties?  
5 Any questions of security people?

6 MS. CURRAN: This is Diane Curran. Judge  
7 Young, just a couple comments. First of all, we  
8 realize that the security-related information has to  
9 be protected and we're certainly interested in  
10 cooperating with that and we are going to be looking  
11 for an equal level of security and care from the  
12 Staff, and due to the securities provision through its  
13 nuclear facility. We think we all have to do that.

14 I also would -- in each written filing  
15 that's publicly released and in each oral argument  
16 that's public, at least be able to say on the record  
17 separately we have raised security concerns. We  
18 cannot discuss them publicly, but this is a serious  
19 concern of ours so that the entire security issue  
20 doesn't completely disappear from view. Because we  
21 think it's important for the public to at least know  
22 these are concerns that these arenas have and that  
23 they're pursuing them in the case.

24 JUDGE YOUNG: I think a brief statement  
25 like that is okay, as long as there's no reference to

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1 actual safeguards material.

2 MS. CURRAN: Right. And then the other  
3 thing I wanted to address was the question of delay.  
4 As I stated in our motion for an extension, Dr. Lymand  
5 has been out of town and he's coming back next Tuesday  
6 and we are going to have about a week to work in  
7 earnest on our contentions and I had thought that we'd  
8 have the security materials by then.

9 If we don't, I think it seems to me the  
10 Commission's regulations provide for our having a  
11 reasonable amount of time to submit contentions after  
12 we get this material. So to me, this doesn't seem to  
13 me that it should prevent us from going ahead with the  
14 other issues or having the oral argument in December.  
15 It's just that the security issues may need to be  
16 delayed somewhat.

17 JUDGE YOUNG: Yes, and I think that's  
18 we're thinking as well. But you don't see any problem  
19 with the non-security issues, sticking to the previous  
20 schedule and going ahead and holding oral argument on  
21 those as scheduled on December 31st.

22 Judge Elleman, by the way, do you agree  
23 with that as well?

24 JUDGE ELLEMAN: Yes.

25 JUDGE YOUNG: Okay. And Ms. Curran, you

1 don't see any problem with the non-security issues?

2 MS. CURRAN: No, especially since it's  
3 unlikely that we're going to be able to discuss them  
4 in that courtroom anyway.

5 JUDGE YOUNG: I'm sorry, I didn't follow.

6 MS. CURRAN: Because -- it's unlikely that  
7 we're going to be able to discuss security issues in  
8 the courtroom in Charlotte. That's what we have said  
9 earlier.

10 JUDGE YOUNG: Oh right.

11 MS. CURRAN: That you still are going to  
12 have to set up a separate argument in an NRC facility,  
13 if you decide to have oral argument on the security  
14 issues.

15 So to me, it doesn't seem that it makes  
16 sense to hold up the rest of the case.

17 JUDGE YOUNG: Okay, so we can all -- we  
18 can go ahead with the non-security issues as scheduled  
19 and then Mr. Repka, do you agree with that?

20 MR. REPKA: Yes, I do. Let me make this  
21 a general response. As I said before, we defer  
22 completely to the NRC with respect to the question of  
23 what requirements we have to follow to protect the  
24 information and that's a given.

25 Beyond that, however, it should also be



1 obvious that there is a schedule for this proposed  
2 license amendment and so we have to keep that in mind  
3 and try to move forward as expeditiously as we can on  
4 those contentions that we can move forward on.

5 With respect to security, I think what's  
6 still out there as a Staff determination as to whether  
7 or not this is safeguards information, it's not  
8 classified information and if that decision, that  
9 determination can be made in the near term to support  
10 the current schedule that would be certainly the best  
11 from our view. And we would certainly ask the Staff  
12 to move forward with all deliberate speed to make the  
13 determination that it needs to make.

14 And if by early next week we know that the  
15 protective order would be sufficient or a protective  
16 order with some additional provisions or whatever it  
17 might be, we would like to know that and if we could  
18 go forward to support the current schedule, then for  
19 all aspects of the contentions, then we should.

20 Additionally, as a practical matter, I  
21 can't say that I know, but if we have a pre-hearing  
22 conference in December 3rd and 4th in Charlotte and we  
23 could support an in camera session at that pre-hearing  
24 conference related to security that is also something  
25 we would support, whether -- assuming that that -- the

1 building, the facility meets NRC's requirements.

2 JUDGE YOUNG: Could the security people  
3 address that? Is it possible to hold a hearing? This  
4 would be in a Federal Courthouse where they have some  
5 level of security. Is it possible to hold a closed  
6 hearing that would meet security requirements there.  
7 Obviously, we have a general practice of trying to  
8 hold proceedings like this in the location of  
9 facilities, if at all possible and to the degree  
10 possible, so I think we should probably try to plan to  
11 at least do that on security issues there. But should  
12 we be ready on some security issues, is it possible to  
13 hold the hearing sufficiently in a Federal Courthouse?

14 MR. FERNANDEZ: Your Honor, this is  
15 Antonio Fernandez for the Staff. Let me address both  
16 of the issues that we're talking about; the first  
17 issue that you just raised and then the issue of  
18 delay.

19 First, let me say that regarding  
20 classified information, we could maybe hold the  
21 security portion of the hearing there, but if the  
22 classification level is above safeguards, then we may  
23 not be able to have the hearing regarding the security  
24 issues there. It would have to be at an unsecured  
25 facility.

1                   Secondly, the delay issue, the Staff is  
2                   committing by the beginning half of next week to get  
3                   the Board a schedule on when it expects to resolve the  
4                   issues regarding the classification of the  
5                   information.

6                   JUDGE YOUNG: Okay, it sounds like unless  
7                   -- it sounds as though we're all right on the  
8                   nonsecurity issues, but that unless we can get the  
9                   security issues resolved by basically Tuesday morning  
10                  that it sounds as though the need for this further  
11                  consultation among the Staff is going to cause some  
12                  delay with regard to the security issue.

13                  Should we schedule a time to talk about  
14                  this further some time next week?

15                  MR. FERNANDEZ: Your Honor, Antonio  
16                  Fernandez for the Staff again. I think what we would  
17                  be willing to do is give a communication to the Board  
18                  as to by when the final determination will be made and  
19                  then at that time maybe it would be appropriate to  
20                  have further discussion.

21                  JUDGE YOUNG: So then from what I hear you  
22                  saying, I guess it sounds as though we're not going to  
23                  be ready at all necessarily next week because you're  
24                  telling me that you'll tell us next week when you'll  
25                  have it resolved.

1 MR. FERNANDEZ: That is correct, Your  
2 Honor.

3 JUDGE YOUNG: Well, I think probably it  
4 sounds as though there's not going to be any way to  
5 get the materials in question to Ms. Curran in time  
6 for her to use them next week. Am I wrong on that or  
7 not?

8 MR. FERNANDEZ: It does not seem likely,  
9 Your Honor.

10 JUDGE YOUNG: It does not seem likely.

11 MR. REPKA: Judge Young, this is Dave  
12 Repka again and you know, I'm a little concerned about  
13 that Staff commitment because as I think you observed,  
14 it's very open-ended and we do have a strong interest  
15 in at least determining what the rules we're going to  
16 play by are as soon as possible.

17 JUDGE YOUNG: I agree. I agree. And  
18 that's why I just wanted to confirm. Mr. Fernandez,  
19 you did say it does not seem likely, right?

20 MR. FERNANDEZ: That is correct, Your  
21 Honor.

22 JUDGE YOUNG: I think that at this point  
23 from a procedural standpoint, Judge Baratta and I are  
24 conferring in writing, we really cannot grant the  
25 motion at this point and so we sort of have to put the

1 security issues on hold, but I agree with Mr. Repka  
2 that we need to get those out.

3 And in the meantime, I would suggest that  
4 both Mr. Repka and Ms. Curran go ahead and get your  
5 secretaries started on the fingerprinting procedure  
6 and maybe Ms. Curran can facilitate that process up,  
7 if possible.

8 But by telling us that you're willing to  
9 give us a report next week, is there a time that you  
10 cannot commit to a date to talk about this until  
11 you've had a chance to put your report together?

12 MR. FERNANDEZ: That is correct, Your  
13 Honor. I think that the Staff right now is not ready  
14 to tell the Board when and what the determination is  
15 and when it does so, then the staff feels that it will  
16 be -- it will have all the information that needs to  
17 brief the Board on that issue.

18 JUDGE YOUNG: By what date can you tell us  
19 when you're going to be ready to give us a report and  
20 discuss it further with counsel and all parties?

21 MR. FERNANDEZ: I think the Staff can  
22 initially commit to next Wednesday, Your Honor, to  
23 give you a determination on that particular issue.

24 JUDGE YOUNG: Okay, by October 15th, the  
25 Staff will give the Board and all parties a report on

1 when you expect to make a determination on these  
2 classification issues.

3 MR. FERNANDEZ: That is correct, Your  
4 Honor.

5 JUDGE YOUNG: Thereafter, we will set  
6 another telephone conference to discuss these issues.  
7 It will be helpful to have security people present and  
8 then in the meantime, we will go ahead with the  
9 schedule for non-security issues.

10 Does anyone disagree with that statement?

11 MR. FERNANDEZ: No, Your Honor. That's  
12 exactly what we meant to say.

13 JUDGE YOUNG: Am I breaking up or did you  
14 get all that and does everyone agree with that?

15 MR. REPKA: This is Dave Repka. I think  
16 we got that and we agree.

17 I would like to be clear though with  
18 respect to the Staff's expectations when we hear them.  
19 If this is determined to be safeguards information,  
20 not higher classification on a separate question which  
21 is the question I believe you, Judge Young, asked in  
22 your order whether the background checks are truly  
23 necessary because certainly it was our understanding  
24 as of yesterday that they were not, so I would like to  
25 make sure that that issue is on the table as well.

1 JUDGE YOUNG: Maybe we can get that  
2 clarified. I thought I understood Mr. Stapleton to  
3 say that it would be better to have the background  
4 safeguards than if it were sudden, and then we're  
5 talking about a lot more.

6 Did I understand you correctly?

7 MR. STAPLETON: Yes, Your Honor, that's  
8 correct.

9 JUDGE YOUNG: I think no matter what, you  
10 need to go ahead and get your secretaries on that  
11 process, which is supposed to take only a week, so I  
12 mean go ahead and get that process started.

13 MS. CURRAN: Judge Young, this is Diane  
14 Curran. I think it was Mr. Stapleton who offered to  
15 make an itemized list any requirements that we're  
16 going to be required to meet depending on how the  
17 documents are classified. And I think it would be  
18 really helpful to have it spelled out, not just a  
19 general reference as to regulation and perhaps some  
20 explanation of what some of these things mean.

21 Already, I learned some things about, for  
22 instance, what you have to do with a typewriter ribbon  
23 and all. If it weren't spelled out for me, I'm not  
24 sure I would have understood it.

25 MR. FERNANDEZ: Your Honor, this is

1 Antonio Fernandez for the Staff. I just want to be  
2 clear as to what Mr. Stapleton is offering. With  
3 regard to what the requirements are under Part 33, the  
4 regulations are what guides us and we will not be  
5 providing anything that will describe what the  
6 requirements are.

7 What we would give the parties would be a  
8 guide on good practices on dealing with classified or  
9 safeguards information. This would be almost like a  
10 how to guide on how to handle all this type of  
11 information, but just for the sake of clarity I just  
12 want to make sure that we understand that we will not  
13 providing the parties some sort of regulatory  
14 requirements or interpretation of Part 33 with regard  
15 to what the parties should and should not do to  
16 protect the information.

17 JUDGE YOUNG: I think even understanding  
18 it as guidelines it would be helpful. Is that going  
19 to be something that you could wait on until you make  
20 the determination of which level of classification or  
21 can you give us a date when we could get that from  
22 you, Mr. Stapleton?

23 MR. FERNANDEZ: Your Honor, I have just  
24 been notified that this is something that may be  
25 readily available to the Staff, so as soon as



1 possible, the Staff will communicate to the parties  
2 what to do when handling protected information.

3 I would say though that at this point it  
4 doesn't seem like that type of information would  
5 really be helpful until the Staff makes a  
6 determination of what level they're going to be  
7 protecting the information. So what I would ask the  
8 Board to do is to wait until the Staff has made it's  
9 final classification determination and once all that's  
10 done we will provide such a guide so that everybody  
11 knows and we're all on the same page on how we should  
12 be protecting the information.

13 JUDGE YOUNG: Whenever we can get it that  
14 would be helpful. One thing that I would say is to  
15 the degree that this involves and I think even for  
16 safeguards material to the degree that it involves  
17 having certain types of equipment or certain  
18 preparations to equipment, given that once we get the  
19 actual determination on classification, we may need to  
20 sort of get moving at that point. Any information  
21 that could be provided sooner to help the parties  
22 prepare with regard to such things as to the equipment  
23 questions, I think would be helpful.

24 I would encourage anything that could be  
25 provided sooner. That would be helpful and then if

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1 you need to add to that later. I want to conduct this  
2 proceeding in such a way that we avoid delay as much  
3 as possible and facilitate moving things along by  
4 helping the parties out and understanding what's going  
5 to be required of them and us as well, obviously.

6 Hearing silence, I guess everybody agrees  
7 with that.

8 Are there any other issues that we need to  
9 talk about today?

10 MR. FERNANDEZ: Your Honor, I'm sorry, I  
11 didn't hear anything you said. Apparently, I hit the  
12 wrong button and we were disconnected.

13 JUDGE YOUNG: Okay, I'm going to pick up  
14 the phone. What I said was I think that it would be  
15 helpful to provide whatever information is possible to  
16 provide as soon as possible because once the  
17 classification is made, then things are going to start  
18 moving or not depending upon what the classification  
19 is. But I don't want the parties to be in the  
20 position of at that point being told, for example, you  
21 need to have a certain type of equipment or do certain  
22 things to your equipment. If they could get as much  
23 information as possible on considerations like that,  
24 so that they can be prepared when the determination is  
25 made, I think that would help move this proceeding

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1 along.

2 MR. FERNANDEZ: Your Honor, we agree with  
3 you and we will try to get you that information as  
4 soon as possible.

5 JUDGE YOUNG: Great, thank you. Okay,  
6 with that said, do we still have everyone?

7 JUDGE ELLEMAN: Ann, this is Tom Elleman.  
8 You've commented on the need for proceeding in a  
9 timely way. I'm wondering if there wouldn't be an  
10 advantage to identifying now several possible times  
11 that follow next Wednesday for a telephone conference  
12 call so that we at that time can quickly reconvene  
13 knowing what the schedule is going to look like?

14 JUDGE YOUNG: Good idea. Mr. Fernandez,  
15 can you give us a ballpark on when might we can start  
16 looking at dates for us to talk again?

17 MR. FERNANDEZ: One second, Your Honor,  
18 we're conferring right now.

19 (Pause.)

20 MR. FERNANDEZ: Your Honor, we're back.  
21 I think the Staff is ready to commit to the 24th for  
22 a telephone call, however prior to the telephone call  
23 the Staff realizes that it cannot meet that date by  
24 the 30th of October would probably be the latest date  
25 that we anticipate are getting back to the Board and

1 the parties.

2 JUDGE YOUNG: I am not going to be in the  
3 office on the 24th. Let's look at the week of -- you  
4 say the 30th at the latest?

5 MR. FERNANDEZ: Yes, Your Honor.

6 JUDGE YOUNG: Can we discuss the 30th?

7 MR. FERNANDEZ: That would be amenable to  
8 the Staff.

9 JUDGE YOUNG: Do we want to hold up on the  
10 27th also?

11 MR. FERNANDEZ: The 30th would be fine  
12 with us, if it's okay with all the other parties.

13 JUDGE YOUNG: The 30th?

14 MS. CURRAN: What day of the week is that?

15 JUDGE YOUNG: Thursday.

16 MS. CURRAN: I think that's fine for me.

17 MR. REPKA: The 30th is fine for me, I  
18 just wonder if the 24th date is hard and fast and if  
19 there's any chance we can do it on the 23rd.

20 JUDGE YOUNG: I would be available on the  
21 23rd. Is it possible, Mr. Fernandez, that you might  
22 have it done by the 2nd?

23 MR. FERNANDEZ: Your Honor, like I said  
24 initially, we'll try to do it by the 23rd. We will  
25 work towards that and if we can't meet that, then we

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1 will notify the Board as soon as we can and then have  
2 the 30th, if all the parties agree on that date as the  
3 fallback date.

4 JUDGE YOUNG: Then let's set 10 o'clock on  
5 the morning of the 23rd and the 30th. If we can't  
6 make it on the 23rd, we'll have the 30th as a  
7 fallback.

8 Does everyone agree to that?

9 JUDGE ELLEMAN: Ann, Tom Elleman again.  
10 I have a question. We've talked about two things.  
11 We've talked about determining a schedule as to when  
12 the classification will be known and then we've talked  
13 actually identifying what the classification will be.

14 I'm presuming that the actual knowing of  
15 the classification will occur by this 23rd date. Am  
16 I correct?

17 JUDGE YOUNG: I think my understand is  
18 that if it has been, then we'll go on the 23rd. If  
19 not, we'll wait until the 30th.

20 JUDGE ELLEMAN: So it's not the schedule,  
21 it's the determining of the classification that would  
22 identify.

23 JUDGE YOUNG: Is that right, Mr.  
24 Fernandez?

25 MR. FERNANDEZ: That's correct, Your

1 Honor, and like we said earlier in the telephone  
2 conversation, hopefully by this coming Wednesday,  
3 we'll be able to tell you which of those two dates we  
4 can meet.

5 JUDGE YOUNG: Okay, is everyone all right  
6 with holding both of those dates and the time is 10  
7 o'clock a.m. on both the 23rd and the 30th until we  
8 hear further?

9 MR. REPKA: Yes, that's fine with Duke.

10 MS. OLSON: Judge Young, this is Mary  
11 Olson. And I'm not available on the 30th, but I don't  
12 think that should impede the process.

13 JUDGE YOUNG: Security information, there  
14 would not be a need to be there and so thank you and  
15 we'll go ahead and set those two dates.

16 All right, is there anything else that  
17 anyone thinks we need to talk about today?

18 Is that a no?

19 (No response.)

20 Thank you very much everyone. All right,  
21 then we would go ahead and conclude, but before we do  
22 I just want to again thank the security people who  
23 have made themselves available to us this morning. We  
24 really appreciate that and I hope that we will have  
25 you with us at our next conference, whether that's the

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1 23rd or the 30th or at least some of you so that we  
2 can again get any clarification we need from you and  
3 thank you for your help.

4 I think the Court Reporter maybe needs us  
5 to stay on the line to spell any names. With that  
6 said, I'll go ahead and adjourn and go off the record  
7 now.

8 (Whereupon, at 11:09 a.m., the conference  
9 call was concluded.)

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before the United States Nuclear Regulatory Commission  
in the matter of:

Name of Proceeding: Duke Energy Corporation

Catawba Nuclear Station

Units 1 and 2

Pre-Hearing Conference

Docket Number: 50-413-OLA and 50-414-OLA

Location: telephone conference

were held as herein appears, and that this is the  
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