

RAS 6956

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

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

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

Location: (telephone conference)

DOCKETED  
USNRC

October 29, 2003 (3:34PM)

Date: Thursday, October 23, 2003

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Work Order No.: NRC-1148

Pages 47-70

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

(10:06 a.m.)

1  
2  
3 JUDGE YOUNG: This is Judge Young. Why  
4 don't we have everyone introduce themselves for the  
5 record.

6 MR. FERNANDEZ: Your Honor, this is  
7 Antonio Fernandez for the staff. I also have with me  
8 Susan Uttal, counsel for the staff; Kathleen Kannler,  
9 counsel for the staff; Robert Martin, Project Manager,  
10 NRR; Bernard Stapleton, Information Security  
11 Specialist, from the Office of the Nuclear Security  
12 and Incidence Response; and Cheryl Stone, Section  
13 Chief, in the Fuel Cycle and Special Program Section,  
14 in the Office of Nuclear Security and Incidence  
15 Response.

16 JUDGE YOUNG: Thank you. Let's see, Mr.  
17 Cottingham and Mr. Repka.

18 MR. REPKA: Yes, this is Dave Repka, and  
19 I am in Charlotte, North Carolina, with Ms. Lisa  
20 Vaughn, and also with me are a number of individuals  
21 associated with the Duke MOX team, including Mr. Steve  
22 Nesbit, Mr. Skip Copp, Mr. Robert Gill, and Ms. Rose  
23 Cummings.

24 And then on a separate line from  
25 Washington is Ms. Anne Cottingham, who is counsel for

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1 Duke as well.

2 JUDGE YOUNG: Thank you. And let's see,  
3 Ms. Curran.

4 MS. CURRAN: This is Diane Curran for Blue  
5 Ridge Environmental Defense League, and I believe that  
6 Dr. Liman is also on the phone.

7 DR. LIMAN: Yes.

8 JUDGE YOUNG: And Mr. Gunter.

9 MR. GUNTER: Yes, Paul Gunter, with  
10 Nuclear Information and Resource Service, and I will  
11 be standing in for Mary Olsen, also with NIRS.

12 JUDGE YOUNG: Thank you. Is there anyone  
13 else present who has not identified themselves? Thank  
14 you. All right. Depending upon what the parties have  
15 to tell us, we don't expect this conference to take  
16 very long.

17 And before we move into security related  
18 issues, just to sort of make sure that we are on track  
19 on the non-security issues, we have received the  
20 supplemental petition from both BREDL and NIRS, and  
21 also someone in my office received a call yesterday  
22 from Utah about the November 11th deadline for the  
23 responses, pointing out that November 11th is a  
24 holiday for the Federal Government.

25 And I don't know whether you wanted to ask

1 to have that moved forward a day, or however you want  
2 to deal with that. You can make a request now if you  
3 would like.

4 MS. CURRAN: Well, Judge, I was just  
5 calling to point it out. I believe that the rules say  
6 if it falls on a holiday, it would be due the next  
7 day. I plan to get it in before that.

8 JUDGE YOUNG: Okay. So no problem then?

9 MS. CURRAN: No, I have no problem right  
10 now. I am calling for informational purposes only.

11 JUDGE YOUNG: All right.

12 MR. REPKA: Judge, this is Dave Repka.  
13 Let me just say something about that. Certainly we  
14 would plan to file on the 11th, and have no problem  
15 with that date, and certainly we can do the electronic  
16 filing.

17 The only problem that I foresee would be  
18 with respect to the conforming service, and I would  
19 assume that there is no postal delivery on that day,  
20 and we could put it in the post and I am not sure  
21 whether it would carry the November 11th postmark, or  
22 go over to the 12th, or what.

23 But from our perspective, we plan to make  
24 an electronic filing by the deadline, which I think  
25 the electronic filing is midnight on the 11th. And

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1 with the understanding that if we can't get it into  
2 the mail to the next day with a conforming copy.

3 JUDGE YOUNG: That sounds fine. Does  
4 anyone have any objections? No? All right. That  
5 should be fine. Judge Baratta, do you want to go  
6 ahead with the security issues?

7 JUDGE BARATTA: Yes. I was looking  
8 through the various documents that we received, and I  
9 noted a couple of things. First off, I am concerned  
10 that we realize that the proceedings are really or  
11 cannot be concluded until of course we address the  
12 security issue.

13 And therefore we are essentially in a day  
14 for day slippage because of the uncertainty over the  
15 appropriate treatment of material, whether it be  
16 placards or -- and I noted that in the motion for a  
17 protective order that it was mentioned that there was  
18 some sort of exemption requested to Parts 11 and 73  
19 related to security.

20 And my question was if that was the case,  
21 why did we wait until this telephone time to realize  
22 that --

23 JUDGE YOUNG: Excuse me, Judge Baratta,  
24 but you are fading in and out.

25 JUDGE BARATTA: Thanks. Is this any

1 better? Thank you. My concern is again that we are  
2 in a day-for-day slippage on resolving this issue  
3 because of the security issue, and I was trying to  
4 determine if the staff and the applicant had -- and  
5 because there was a mention of an exemption request to  
6 Parts 11 and 73, if there was -- that at that point  
7 why wasn't this raised earlier because of this  
8 slippage that we are experiencing now. Does the staff  
9 want to comment on that?

10 MR. FERNANDEZ: I don't think we have any  
11 comment about that, Your Honor.

12 JUDGE BARATTA: Okay. Does Duke wish to  
13 comment on that?

14 MR. REPKA: Yes. This is David Repka.  
15 Just a brief comment. First, I want the record to be  
16 very clear that Duke did make every effort to address  
17 this issue earlier. In fact, many times we had  
18 requested that the NRC staff meet to confer on the  
19 issues raised by the exemption and other security  
20 related matters.

21 In addition, with respect to the motion  
22 for a protective order, I think that should have been  
23 very clear on the face of that motion that Duke had  
24 conferred with the NRC staff prior to that filing, and  
25 it was certainly our understanding at the time that it

1 was filed that it was the staff's position that the  
2 protective order would be sufficient to meet all NRC  
3 requirements.

4 The first that we heard that there would  
5 be a problem was on the call, the call in which that  
6 matter was discussed. So we are not in the game of  
7 assigning blame, but we do want the record to  
8 accurately reflect what transpired here.

9 And in that regard, we were a little  
10 concerned that the characterization in the Board's  
11 last order which addressed the reason for the delay on  
12 security matters.

13 I think we simply want the record to be  
14 very clear that we have made every effort to address  
15 these questions in a timely fashion, even before the  
16 request was filed.

17 JUDGE BARATTA: Okay. Thank you for that  
18 point. Again, I am not trying to assign blame. I  
19 just want to get to the next point, which is that in  
20 order for us to meet the December 5th date, and are  
21 there any steps that can be identified that are in the  
22 process and we can obtain a sort of commitment date on  
23 when those steps will be taken so that the court can  
24 more or less chart or monitor the progress to  
25 hopefully help in achieving that December 5th date.

1                   The question I guess is more for the  
2 staff, and if anyone has any comments.

3                   MR. FERNANDEZ:     Your Honor, this is  
4 Antonio Fernandez from the staff. At this point in  
5 time the staff believes that its internal process will  
6 follow its course and at the time that a decision is  
7 reached by the staff, it will be communicated by the  
8 Board, or it will be communicated to the Board.

9                   And we in that process don't foresee  
10 needing any assistance from the board in helping the  
11 staff achieve its goals of delivering an opinion to  
12 the board on or about December 5th.

13                   JUDGE YOUNG: This is Judge Young. One  
14 thing that I would just add is that I think that the -  
15 - and just to emphasize something that we as a board  
16 feel fairly strongly about, and that is that we do  
17 need to move this along in a timely fashion, and in  
18 order to do that, whenever the parties try to work out  
19 agreements between themselves, I think it really is  
20 sort of incumbent on whatever parties are involved in  
21 that to make sure that there are no ambiguities that  
22 can come back and bite us later, because I think we  
23 all have the same interests in moving things along as  
24 efficiently as possible, while at the same time not  
25 ignoring any issues that are needed.

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1                   And I think the Board -- and I think I can  
2 speak for all of us, that we are keenly aware of the  
3 need to be alert to any security issues, and welcome  
4 the security assistance here.

5                   And if you should be able to report  
6 anything to us earlier that would be helpful to us in  
7 terms of planning. Another thing that we would like  
8 to ask is that when we are in Charlotte for oral  
9 arguments on the non-security issues that if we could  
10 have someone there who will be able to help us be  
11 alert in the event that anything arises that we need  
12 to be careful about.

13                   We are attorneys, some of us, and whatever  
14 assistance we can get, we appreciate. While at the  
15 same time of course recognizing that all parties can  
16 make whatever arguments that you want to make on the  
17 issues that do arise.

18                   Just a question before we move on. We did  
19 talk last time about starting the process to get  
20 screenings done so that assuming we don't get into the  
21 Category I issue, at least the screening that is  
22 necessary for safeguards I think was the level that we  
23 were talking about.

24                   At least those are sort of on track. Have  
25 Duke and the -- well, I don't know -- well, is NIRS

1 wanting to get involved into the security issues?

2 MR. GUNTER: Mary Olson has expressed that  
3 she will not seek screenings for the safeguards.

4 JUDGE YOUNG: And does that apply to you  
5 as well?

6 MR. GUNTER: Yes, Ma'am.

7 JUDGE YOUNG: Okay. Then really we are  
8 talking about Duke and BREDL. Do you all have those  
9 things sort of started up, and moving along so that  
10 once we hear from the staff, or sooner if we are able,  
11 on the security issues?

12 MR. REPKA: This is Dave Repka for Duke.  
13 With respect to safeguard level clearance, yes, we are  
14 looking into that process and pursuing that process.  
15 With respect to if we needed to go to a higher level  
16 of L clearance, the technical people at Duke, Mr.  
17 Nesbit and Mr. Copp, are already L cleared, and so we  
18 have that much already accomplished.

19 MS. CURRAN: Judge Young, this is Diane  
20 Curran. Dr Liman and I have applied for Level L  
21 clearances, and we also have these fingerprint forms  
22 for our secretaries and I just need to prepare them  
23 and send them in. I guess I talked to Mr. Fernandez  
24 about how to submit those.

25 JUDGE YOUNG: I think that Ms. Stone had

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1 helped us on that last time. Was that right?

2 MR. FERNANDEZ: Yes, the staff had talked  
3 to Ms. Stone about that.

4 JUDGE YOUNG: Do we need to get things  
5 clarified or can that be done outside the context?

6 MR. FERNANDEZ: Well, at the present time  
7 we have not received anything in this proceeding with  
8 regards to Mr. Liman and Ms. Curran.

9 MS. CURRAN: Well, it is in a different  
10 proceeding, but I would assume that the clearance  
11 would apply.

12 MR. FERNANDEZ: Yes, once the clearances  
13 are granted, if they are granted, you would have to go  
14 on to establish whether the parties have identified an  
15 appropriate need to know the information. We are not  
16 there yet. As far as I know the clearances have not  
17 been granted.

18 MS. CURRAN: Right. But they have not  
19 been denied. They are pending.

20 MR. FERNANDEZ: Right.

21 JUDGE BARATTA: This is Judge Baratta.  
22 Ms. Curran, I would suggest that you also initiate the  
23 process for the background check for the safeguards  
24 material, because while your clearance does involve  
25 many of the same steps, that clearance could possibly

1 not come for a couple of months.

2 But with the fingerprinting, I guess you  
3 have to submit them, and I think that Mr. Stapleton or  
4 Ms. Stone can probably clarify that. But I would  
5 encourage you to do that separately as if the L  
6 clearance was not even going on.

7 MS. CURRAN: Okay. That sounds like a  
8 good idea and I will.

9 JUDGE YOUNG: Ms. Stone, did you tell us  
10 last time that -- and I think you said that once the  
11 fingerprints got in that you thought that would be  
12 about a week's turnaround? Are we still on that  
13 schedule?

14 MS. STONE: Yes, Judge, that's correct.

15 JUDGE YOUNG: Thanks a lot. And is there  
16 anything else that needs to be done?

17 MS. STONE: As far as the fingerprints are  
18 concerned you mean?

19 JUDGE YOUNG: As far as the safeguards  
20 people.

21 MS. STONE: Right. Just submitting the  
22 fingerprints, and then it will take us about a week to  
23 get the responses back.

24 JUDGE YOUNG: Okay. Great.

25 MS. STONE: And that is all that we need

1 for the safeguards.

2 JUDGE YOUNG: So I think that it sounds  
3 like everybody is on track on that. Does the staff,  
4 Mr. Stapleton and Ms. Stone, I think that Mr. Martin  
5 is not a security person; am I right or am I wrong?

6 MS. STONE: That is correct. He is a  
7 project manager for this license amendment.

8 JUDGE YOUNG: Okay. Is there any other  
9 updates or information that Ms. Stone or Mr. Stapleton  
10 want to be aware of?

11 MR. FERNANDEZ: Your Honor, the one thing  
12 that we wanted to add was that we are trying to get to  
13 the board as soon as possible the information that the  
14 board had requested with regards to the handling of  
15 safeguards and classified information.

16 JUDGE YOUNG: Anything else on security  
17 issues from the security people or any other parties?

18 MR. FERNANDEZ: No, Your Honor.

19 MR. REPKA: Not from Duke.

20 MS. CURRAN: Not from BREDL.

21 JUDGE YOUNG: Okay. I have separately  
22 talked with or made a request I guess to Cynthia  
23 Harbaugh, who generally helps us with security at  
24 hearings, such as we will be having in Charlotte, and  
25 so I am assuming that we will have some form of

1 security there.

2 I am not sure exactly what that will be.  
3 If we learn that it is anything out of the ordinary,  
4 we will notify people. But the issues we expect to be  
5 addressed on security issues, it shouldn't be outside  
6 the ordinary type of security that would be at any NRC  
7 hearing.

8 We will be in the same courtroom as we  
9 were on the other Duke case. I don't know how many  
10 people are expected to be there, but it seemed like  
11 the audience section there was large enough to  
12 accommodate a fair number. Any other security issues  
13 that we need to address?

14 MR. REPKA: This is Dave Repka. I have a  
15 question on security that comes up from the staff  
16 here, and that is with respect to nuclear clearances  
17 that Duke personnel have there. L Clearance is from  
18 DOE, and I guess there is a clarification needed from  
19 the NRC as to whether or not that is equivalent to an  
20 NRC L clearance, or whether some further equivalency  
21 process needs to be followed.

22 I don't think we need an answer to that  
23 today, but that is the question that does arise in the  
24 security arena.

25 JUDGE YOUNG: I guess one other question -

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JUDGE BARATTA: This is Judge Baratta. Could we get someone from -- Mr. Stapleton, I guess, could you agree to -- and maybe not today, but at some time in the near future, respond to Mr. Repka's question there, or somebody in that office?

MR. FERNANDEZ: Your Honor, it wouldn't be Mr. Stapleton. I think it would probably be Ms. Stone that would be responding to that and I think that she may have something to add.

MS. STONE: Yes. As long as the investigation is current within 5 years, and they have done the appropriate investigation that the NRC requires, the L clearances are reciprocally accepted between the government agencies.

JUDGE BARATTA: And what does Mr. Repka need to do then to --

MR. FERNANDEZ: We lost that, Your Honor. We didn't hear you.

JUDGE BARATTA: What does Mr. Repka need to do to have you confirm that they are okay?

MS. STONE: He can send a visit certification, or have DOE send a visit certification form over to our security office and that way we can verify his clearance, and we do accept DOE visit

1 certification forms.

2 JUDGE BARATTA: Okay. Thank you.

3 JUDGE YOUNG: Just one other question. It  
4 occurred to me, Mr. Fernandez, that when you were  
5 talking earlier that you mentioned the issue of the  
6 need to know, and I guess that might be a good thing  
7 to talk about on how that determination is made.

8 I think that we were proceeding on the  
9 assumption that information related to this hearing,  
10 depending upon the level, would be the kind of thing  
11 that we would generally think there would be a need to  
12 know, within the context of this proceeding. When you  
13 made reference to that were you making reference to  
14 some other determination?

15 MR. FERNANDEZ: Your Honor, this is  
16 Antonio Fernandez. If the intervenors, or the  
17 petitioners in this case, were to seek information  
18 from us or the applicant, at that point in time the  
19 holders of the protected information were required by  
20 the regulations to look at their request and determine  
21 whether that particular piece of information is  
22 something that they have a need to know.

23 Those obligations are imposed by Part 73,  
24 and that is independent of the trustworthiness review  
25 that these are people that should receive that type of

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1 information.

2 JUDGE YOUNG: Which section of 73 are you  
3 talking about?

4 JUDGE BARATTA: Part 73.

5 JUDGE YOUNG: Yes, Part 73 are you talking  
6 about?

7 MR. FERNANDEZ: I think it is -- hold on  
8 one second.

9 (Brief Pause.)

10 MR. FERNANDEZ: Your Honor, if you go to  
11 73.21, and you go to (c) (1) (i), or (c) (1), I'm sorry,  
12 access to safeguard information, it says, "Except as  
13 the commission may otherwise authorize, no person may  
14 have access to safeguards information unless the  
15 person has an established need to know." And if you  
16 go to 73.2, need to know is defined.

17 JUDGE YOUNG: What I was trying to get at  
18 was the message of determination, and really there is  
19 no issue unless there is disagreement between the  
20 parties.

21 If there are any issues that arise in that  
22 vain, such as any of the parties are in disagreement,  
23 we encourage you to bring those to us as soon as  
24 possible.

25 MS. CURRAN: Judge Young, this is Diane

1 Curran. I am trying to find the regulation, but I  
2 think that there is a regulation in Part 2 that speaks  
3 to this, and I just can't find it right now, but I  
4 certainly would be happy to send it to you, because I  
5 looked at this in the MOX case, and the licensing  
6 board does get involved.

7 JUDGE YOUNG: And 2.44 talks about the  
8 presiding officers, and that was a section under which  
9 the action was submitted to us. In any event the  
10 point being made is bring any and all Duke such issues  
11 to us sooner rather than obviously later.

12 (Discussion off the record.)

13 JUDGE YOUNG: What I was saying is that he  
14 main point that we want to make here is of course try  
15 to work out all of these things among yourselves as  
16 much as possible. If any disputes arise and you are  
17 not making progress between yourselves, and you need  
18 our intervention, please bring those to our attention  
19 as soon as possible.

20 And we are moving into the holiday season,  
21 and I don't know what the schedules are, but we want  
22 to ensure that we try to catch any of these issues  
23 sooner rather than later is the point that I was  
24 making. Judge Baratta, did you have anything to add,  
25 or Judge Elleman?

1 JUDGE BARATTA: Judge Young, I have  
2 nothing to add.

3 JUDGE ELLEMAN: Judge Young, I have  
4 nothing to add.

5 JUDGE YOUNG: All right. Are there other  
6 issues where it would be helpful to discuss today? I  
7 have just been taking notes, and I don't think  
8 anything else is called for by the order at this  
9 point. Anything that anyone wants to add to day that  
10 would be of assistance to the parties or to us?

11 DR. LIMAN: This is Ed Liman, and can I  
12 say something?

13 JUDGE YOUNG: Go ahead.

14 DR. LIMAN: I would just like to make the  
15 point that I think BREDL, or at least I would be very  
16 surprised if this proceeding didn't involve classified  
17 information, because we do know that the Category I  
18 design basis threat is classified, and that is the  
19 reason why we sought a security clearance in the MOX  
20 fabrication plant case.

21 So I am actually not sure why it is going  
22 to take the staff so long to make this determination,  
23 but we would expect and anticipate that a security  
24 clearance would be required.

25 JUDGE YOUNG: Thank you, and again we will

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1 assume that everyone is moving with -- we will assume  
2 that everyone is moving as expeditiously as possible  
3 on all these issues.

4 Okay then, with regard to the non-security  
5 issues, everyone is on track. Absent something  
6 arising before that time, we will see you on December  
7 3rd in Charlotte, and should we have any additional  
8 information that we need to share with you about that,  
9 we will send that to you.

10 I know as I said that I had mentioned to  
11 Ms. Harbaugh and had raised with her the issue of  
12 security for the actual hearing. Does the staff  
13 intend to have someone there in addition to sort of  
14 keep us on -- to be alert to whether any security  
15 information pops up that we need to watch for?

16 MR. FERNANDEZ: Your Honor, this is  
17 Antonio Fernandez for the staff. We had not  
18 previously anticipated asking a member of the security  
19 organization to be at the proceedings since there  
20 wasn't go to be -- I mean, we had anticipated that  
21 security issues were not going to be involved in the  
22 prehearing conference.

23 If the Board so requests, we will endeavor  
24 to make somebody available during that time.

25 JUDGE BARATTA: This is Judge Baratta.

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1 The Board is concerned that we may inadvertently stray  
2 into those areas, and would suggest that it might be  
3 desirable to have somebody there to advise if the  
4 proceedings are headed that way so that we can change  
5 course and avoid any problems.

6 So I think if it is acceptable to Judge  
7 Young and Judge Elleman that we would probably take  
8 you up on your proposal to have someone there.

9 JUDGE YOUNG: That would be acceptable to  
10 me. This is Judge Young.

11 JUDGE ELLEMAN: Yes, this is Judge  
12 Elleman, and I think our problem is that we do not  
13 know what the boundaries are between safeguards and  
14 non-safeguards issues, and that is where we are going  
15 to need the help.

16 MR. FERNANDEZ: Your Honor, given your  
17 request, I will communicate with my clients and I will  
18 let them know that the board has requested that a  
19 member of the security organization be there, and I  
20 anticipate that they will one person or persons  
21 available.

22 JUDGE YOUNG: Thank you. I guess one  
23 other question that we were sort of wondering, and I  
24 don't know that there is any connection to the  
25 December 5th date following one day after our

1 prehearing conference, I guess we were wondering  
2 whether there was any connection between those two.  
3 Maybe not.

4 MR. FERNANDEZ: I don't think so, Your  
5 Honor.

6 JUDGE YOUNG: Okay. Thank you. Judge  
7 Baratta or Judge Elleman, are there any other subjects  
8 to discuss with the participants?

9 JUDGE ELLEMAN: I have none.

10 JUDGE YOUNG: And do the parties have any  
11 issues that they would like to raise with us?

12 MS. CURRAN: None from BREDL.

13 MR. GUNTER: Not from NIRS.

14 MR. REPKA: Nothing from Duke.

15 MS. STONE: Nothing from the staff.

16 JUDGE YOUNG: Thank you all very much.  
17 Judge Elleman, if you could stay on the line after  
18 everyone else hangs up. Thank you, everyone.

19 (Whereupon, at 10:39 a.m., the conference  
20 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  
Catawba Nuclear Station,  
Units 1 and 2  
Docket Number: 50-413-OLA and 50-414-OLA  
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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Alex Patton  
Official Reporter  
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