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P R O C E E D I N G S

(1:37:35 p.m.)

1
2
3 JUDGE YOUNG: This is Ann Marshall Young,
4 Chair of the Board, and I have with me here Judge
5 Thomas Elleman and Judge Anthony Baratta. Starting
6 with the Staff, let's have everyone introduce
7 themselves. And counsel, you can indicate who else is
8 with you from the respective parties.

9 MS. UTTAL: Your Honor, this is Susan
10 Uttal. I'm losing about every other word that you're
11 saying.

12 JUDGE YOUNG: Okay. We're on a speaker
13 phone and we've got all three of us here together
14 today, so we're going to try to make that work. One
15 thing that is going to be required is that everyone is
16 going to have to be very quiet when other people are
17 speaking, because I think when it blanks out is when
18 there are two speaker phones, where noise is coming
19 into the line.

20 What I asked was to have counsel for each
21 party introduce yourself and everyone else who is with
22 you from your party, from your respective parties.

23 MS. UTTAL: Starting with the Staff, Susan
24 Uttal, Counsel for the NRC Staff. I'm here with
25 Margaret Bupp, Counsel for the NRC Staff, and Mr.

1 Fernandez will be joining us in a moment.

2 JUDGE YOUNG: Let's go to BREDL.

3 MS. CURRAN: This is Diane Curran,
4 representing Blue Ridge Environmental Defense League.
5 And on another line is Dr. Edwin Lyman.

6 JUDGE YOUNG: And for the court reporter,
7 BREDL is an acronym for Blue Ridge Environmental
8 Defense League. And Duke?

9 MR. REPKA: This is David Repka, R-E-P-K-
10 A, counsel for Duke Energy. With me are Mr. Mark
11 Wetterhahn and Ms. Anne Cottingham. And then on a
12 separate line from Charlotte are Ms. Lisa Vaughn,
13 counsel for Duke, as well as Mr. Steve Nesbit, and
14 Mr. Mike Cash. And I would just ask Mr. Nesbit if
15 that's correct, if there's anybody else there.

16 MR. NESBIT: That's it. Everybody is here
17 and that's all there is.

18 JUDGE YOUNG: All right. Anyone else?
19 Okay. As I indicated before we went on the record,
20 the Thursday hearing will be in our hearing room which
21 is usable this week, and we will start at 9:00. I
22 issued an order this morning giving some basic
23 information that you need to provide as we've done
24 before. And when you arrive they'll call up and
25 someone will come down to escort you up to the hearing

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1 room, all those who have been listed and are cleared
2 for the closed hearing on Thursday. Are there any
3 issues about Thursday's hearing that we need to
4 discuss today?

5 MS. UTTAL: Your Honor, just to make
6 clear, will the staff have to be escorted? I mean,
7 we're all badged.

8 JUDGE YOUNG: No, I don't think the staff
9 will.

10 MS. UTTAL: Okay. Thank you.

11 JUDGE YOUNG: Last time there was a
12 possibility of classified information and so there
13 were heightened requirements for safeguards, and I
14 think that we're treating this one more as a safeguard
15 level proceeding, unless any of you think that we
16 should be prepared for classified.

17 MS. UTTAL: The staff doesn't think so,
18 Your Honor.

19 JUDGE YOUNG: Okay. And we will have our
20 assistant there to keep us on track if we stray into
21 any areas we should not be proceeding in. And since
22 we haven't received the responses yet, we don't know
23 completely the extent of the argument. We don't
24 anticipate that we will need the whole day, but
25 depending upon what responses come in, it may be

1 longer or shorter. Are there any other security
2 issues while we're on that? Are there any other
3 security-related issues that we need to address, or
4 that any party anticipates that we can discuss in this
5 non-safeguards environment, or in a way that would be
6 acceptable?

7 MS. CURRAN: This is Diane Curran. I just
8 want to confirm with counsel for Duke that Dr. Lyman
9 and I can come to their offices some time in the next
10 day or two to look at the RAI responses.

11 MR. REPKA: Yes. As I mentioned last
12 week, that would be fine. Just let us know, if you
13 could call Ms. Cottingham.

14 MS. CURRAN: Okay, I will. Thank you.

15 JUDGE YOUNG: And actually that was one
16 thing on our list. Will this be the first time, or
17 have you been to Winston & Strawn before now to look
18 at materials? I assume you have.

19 MS. CURRAN: Yes. Dr. Lyman has been
20 once.

21 JUDGE YOUNG: So that's working fine for
22 both of you, for both BREDL and Duke counsel?

23 MS. CURRAN: Well, we would still prefer
24 to be able to get copies of the documents for the
25 reasons that we stated. This is certainly better than

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1 going to Rockville, but we would like to continue and
2 renew our request that we be able to get copies of the
3 documents. And we'd request that there be copies of
4 the RAI responses available in the hearing room on
5 Thursday morning.

6 JUDGE YOUNG: I don't see any problem with
7 having copies available at the hearing room on
8 Thursday. With regard to your other argument, we can
9 take that up Thursday, as well. Does anyone have any
10 problem with having the RAI responses there?

11 MR. REPKA: This is Dave Repka. We will
12 have a copy of the RAI response there. I would say
13 that to the extent we hear new argument on new
14 contentions based on the RAI response, we would like
15 the opportunity to respond in writing.

16 JUDGE YOUNG: Well, actually, that was my
17 next question; do we anticipate any new contentions
18 based on those? And if so, in the context of our 30-
19 day deadline, when would that be?

20 MS. CURRAN: Judge Young, this is Diane
21 Curran. We haven't looked at the RAI responses yet,
22 and we'll probably be able to tell you on Thursday
23 whether we plan to file any contentions. And it would
24 be within 30 days from when it became available to us.

25 JUDGE YOUNG: That's what I was actually

1 trying to get to.

2 MS. CURRAN: I'm not sure, but I got a
3 letter from the staff - I don't remember the date, but
4 that's when I would mark it from.

5 MS. UTTAL: I believe it was the 9th, Your
6 Honor.

7 JUDGE YOUNG: Pardon?

8 MS. UTTAL: It was the 9th.

9 JUDGE YOUNG: October 9th, and that was
10 when it was --

11 MS. UTTAL: No, March 9th.

12 JUDGE YOUNG: Pardon me. I don't know
13 where I -- March 9th.

14 MS. CURRAN: So we'd be filing new
15 contentions before April 8th.

16 JUDGE YOUNG: Okay. So you'll --

17 MS. CURRAN: We can at least give you a
18 sense of whether we think that's likely.

19 JUDGE YOUNG: Okay. Any other issues
20 related to any of the security questions that would be
21 helpful to at least touch on here and now?

22 MS. CURRAN: I don't have anything. Do
23 you, Dr. Lyman?

24 DR. LYMAN: No, I don't.

25 JUDGE YOUNG: Okay. Then I think the main

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1 thing that we want to get into today, apart from any
2 issues that any of the parties have, are scheduling
3 and timing issues. We have received Duke's two
4 filings, and I guess before moving into the scheduling
5 question - on Duke's motion regarding Contention 3,
6 let me just ask Ms. Curran if you could tell me what
7 the --

8 MS. CURRAN: Someone just got on the line.

9 DR. LYMAN: Hi, it's Ed Lyman rejoining.
10 I got disconnected. Sorry.

11 MS. CURRAN: Oh.

12 JUDGE YOUNG: Okay. Ms. Curran, do you --
13 what is your response to Duke's motion on Contention
14 3? Are you intending to file a response, are you just
15 going to file a new contention as Duke is suggesting,
16 or what do you anticipate -- how do you anticipate
17 responding to this?

18 MS. CURRAN: I don't know yet. I just
19 haven't had a chance to determine what we are going to
20 do.

21 JUDGE YOUNG: Okay. I don't have a copy
22 of my rules here with me, but I believe that there's
23 generally a 10-day deadline for that. If you're going
24 to file a new contention, I think it would helpful to
25 -- the normal deadline would be 30 days from any new

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1 information. And, Mr. Repka, what would your position
2 be with regard to the timing of a new contention?

3 MR. REPKA: I don't believe that a 30-day
4 deadline would be -- from availability of the RAI
5 response would be an accurate assumption in this case.
6 The information about feasibility of Oconee as an
7 alternative has been on the record since the oral
8 argument on this issue back in, I believe it was
9 December, oral argument, so nothing in the RAI
10 response would have been particularly surprising, or
11 should have been. But given that, I think that the
12 RAI response itself was made available last week. I
13 think that it would be appropriate for the Board to
14 set a deadline of some allowable amount of time,
15 perhaps 15 days from the service of the RAI response.

16 JUDGE YOUNG: What was that date?

17 MR. REPKA: I'll get back to you on that.
18 I believe it was March 11th. I will look it up.

19 MR. NESBIT: This is Steve Nesbit. It was
20 March 1st.

21 MR. REPKA: That would have been the date
22 for the response itself, actually, which would have
23 been served on BREDL at the time that it was filed, so
24 that would be one possible date. It was sent to the
25 Licensing Board on March 11th.

1 JUDGE YOUNG: Ms. Curran, when did you get
2 it?

3 MS. CURRAN: I'm going to have to figure
4 that out.

5 MR. REPKA: It would have been served by
6 Duke electronically on the day it was sent to the NRC.

7 MS. CURRAN: So what day was that?

8 MR. REPKA: March 1st.

9 MS. CURRAN: Did Mike Cash send it?

10 MR. REPKA: That would be correct I
11 believe, Steve?

12 MR. NESBIT: I think so.

13 MS. CURRAN: Let me see if I got -- all
14 right. I have -- yes, it came in on the 1st. I've
15 been assuming that we have a 30-day rule of thumb for
16 doing these things. We also have a discovery deadline
17 coming up on the 19th. I have more than one thing to
18 do here. I have an oral argument on the 18th, a
19 discovery deadline on the 19th. I have a telephone
20 conference with the Licensing Board on the 25th. I'd
21 like to have our 30 days.

22 JUDGE YOUNG: So 30 days would take you to
23 -- actually, I think about two weeks from today. I
24 don't have my calendar.

25 MS. CURRAN: March 30th.

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1 JUDGE YOUNG: March 30th. Is that a
2 Monday?

3 MS. CURRAN: That's a Tuesday.

4 JUDGE YOUNG: Tuesday. Which would be
5 about two weeks from today, so that would probably be
6 appropriate. I guess the reason I asked you if you
7 were going to file any other response, and we're going
8 to move into more timing, is obviously if they are
9 going to be a lot of filings, that's not going to work
10 towards moving this proceeding forward in an
11 expeditious manner. And if it would be of any help,
12 this characterization of the contention - I'm trying
13 to find a copy of the actual Contention 3 - hold on
14 one second - does generally fit the Commission's
15 approach to Contentions of Omission, so it might be
16 best to just move forward with filing a new contention
17 by March 30th.

18 Certainly, you're not cut off from filing
19 any response, but I think unless there's any strong
20 objection that would persuade us otherwise, we would
21 go ahead and set March 30th as the deadline for new or
22 amended contentions regarding the Oconee alternative.

23 MS. CURRAN: Okay.

24 JUDGE YOUNG: Okay. In Duke's appeal to
25 the Commission, which is obviously not before us, we

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1 have noted, however, Duke's reference on pages 2 and
2 3 of its notice of appeal - Mr. Repka, you appear to
3 be changing your stance somewhat with regard to the
4 schedule and avoidance of delay in this proceeding,
5 and so I think given that everyone will be planning
6 their own schedules for the next several months, in
7 the summer it would be helpful to, in addition to
8 specific dates that we set in our March 5th order on
9 deadlines and scheduling issues, to get the parties'
10 positions on whether we are still going to make an
11 effort to get an order out -- I hear someone rustling
12 papers. I don't know whether that's cutting us off,
13 but I know that's the type of thing that does cut
14 people's voices out, so if you could try to avoid
15 that, that might be helpful.

16 Why don't we just start with Duke. Is
17 your position -- obviously, your position on the
18 merits of the contentions as set forth in your appeal,
19 and that being sent to the Commission and whatever
20 the Commission does on that, that's up to the
21 Commission. And we would need to continue forward
22 until we hear anything differently on a parallel basis
23 to that. But I think we would like to hear from you,
24 Mr. Repka, on what it is that you're saying there in
25 your notice of appeal, and what your position is on

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1 the issue of scheduling at this point, and hear from
2 the other parties, as well.

3 MR. REPKA: Okay. This is Dave Repka.
4 First, our position on the importance of the schedule
5 and the specific schedule which Duke has asked for NRC
6 action has not changed. We continue to believe that
7 expeditious Commission action and review of the
8 license amendment request is important to meeting the
9 scheduled objective of August of this year.

10 Having said that, however, based on the
11 contentions as admitted for the reasons discussed in
12 our appeal, we're not confident that we could conduct
13 discovery and litigation of the omitted contentions,
14 at least Contentions 1 and 2, in an efficient and
15 appropriately bounded way that would meet the schedule
16 objective in this proceeding. So given that, what we
17 propose and what we believe is the most efficient, and
18 hopefully the most expeditious resolution of the
19 proceeding, in addition to seeking the Commission's
20 expedited review would be to in the near term proceed
21 ahead with the security issues, and devote our energy
22 to resolving those issues, as well as Contention 3.
23 The motion to dismiss could be considered, and if
24 there's some new contention narrowly addressed to the
25 information on the feasibility of the Oconee

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1 alternative, we can proceed with that and potential
2 resolution of that issue.

3 With respect to Contentions 1 and 2, we
4 are disinclined to proceed with discovery in the near
5 term on those two issues. We don't believe it would
6 be possible to do that efficiently without a clearer
7 definition of what the issues are.

8 Having said all that with respect to the
9 specific dates that were previously set out, I believe
10 that the date certainly for testimony on security
11 issues should still stand, the dates that we're
12 holding for hearings can stand for security issues.
13 And to the extent that we need to and can conduct any
14 hearings on Contention 3, it's possible that that
15 could be resolved in those dates.

16 I don't think it's realistic, and I don't
17 think that Duke is asking that we hold those dates for
18 Contentions 1 and 2 as admitted.

19 JUDGE YOUNG: Let me see if I understand
20 you. You want to move forward on the security-related
21 contentions, and on anything that comes out on
22 Contention 3, but you're saying that you do not want
23 discovery on Contentions 1 and 2 until you get a
24 ruling from the Commission. Is that what you're
25 saying?

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1 MR. REPKA: That's correct. And we think
2 the better way to go on Contentions 1 and 2, to the
3 extent the Commission upholds the admission of any
4 issues, we have - all the parties have what the Board
5 believes has admitted as contentions right now, and
6 can be preparing to engage in discovery promptly upon
7 a Commission decision. And assuming there's any
8 issues left, I think what we would propose is that
9 discovery request be filed promptly after the date of
10 the Commission order, and we would suggest seven days
11 after the Commission order, any discovery request on
12 any admitted contentions be filed, and that any
13 responses be filed 14 days thereafter. So the idea
14 is, at that point we would have a hopefully clear
15 direction, and we could engage in prompt discovery,
16 and then proceed immediately to testimony and hearings
17 on a schedule to be determined at that time, depending
18 upon the date of the Commission's order.

19 JUDGE YOUNG: And your view is that it
20 would be possible to meet the August deadline
21 proceeding in that fashion?

22 MR. REPKA: I cannot say one way or the
23 other, given that the Commission schedule is not
24 something we can predict. I think our point is that
25 we should simply prepare to move as quickly as

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1 possible after a Commission decision. And by setting
2 prompt dates for discovery right after a Commission
3 order, that would be the most efficient, the most
4 expeditious path forward from here.

5 JUDGE YOUNG: Well, I think we need to
6 make something very clear here; and that is, there has
7 been no stay, so if what you're asking for is that we
8 essentially stay all proceedings on Contentions 1 and
9 2, should the Commission do anything other than
10 reverse us on Contentions 1 and 2, I frankly don't see
11 how we could possibly meet the August deadline
12 proceeding in the way that you're suggesting, because
13 what you're suggesting is delaying everything on
14 Contentions 1 and 2, and that the practical impact of
15 what you're saying seems to be that it's more
16 important for you to get a Commission ruling, than it
17 is to move forward everything, and try to keep to our
18 time line so that there would be a possibility of
19 meeting the August deadline. Do you disagree?

20 MR. REPKA: Well, certainly if we proceed
21 forward on the time line as established in the Board's
22 prior ruling and engage in discovery, that would be
23 the only way to get to a hearing on Contentions 1 and
24 2 in June. I understand that fully, but I don't think
25 that we are confident that we could meaningfully

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1 engage in discovery without devolving to a series of
2 disputes as to what the scope of the contentions are,
3 and what the scope of appropriate discovery is. And,
4 therefore, even on that schedule, given the
5 contentions that were admitted, we think it's very
6 unlikely at best that we could support a hearing on
7 the dates in the prior decision. So our approach, we
8 think, is all things considered, the most efficient
9 and the most expeditious way to proceed on Contentions
10 1 and 2.

11 JUDGE YOUNG: So just again to make sure
12 that I understand what you're saying - what you're
13 saying is that if we tried to keep to the schedule
14 that we had previously set, you would be making
15 objections to discovery. I presume if we ruled
16 against you on any of your objections, you would be
17 seeking interlocutory review, because otherwise I
18 don't necessarily follow what you're saying in terms
19 of there being delays that would make it impossible to
20 proceed expeditiously in the context of the schedule
21 that we set, so I think we need to make it very clear
22 here that what you seem to be saying is that you want
23 to have essentially discovery stayed, and that you
24 recognize that that's going to keep you in your August
25 deadline if the Commission were to do anything other

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1 than reverse us on Contentions 1 and 2.

2 MR. REPKA: Backing up, I certainly did
3 not say anything about seeking interlocutory appeal on
4 discovery rulings. But having said that; yes, what we
5 are saying would in effect be a stay of discovery
6 pending Commission action. I do not know when the
7 Commission will rule, so whether or not we can meet an
8 August decision date following a Commission decision,
9 I frankly don't know the answer to that. But we think
10 that the most efficient, and in the end hopefully the
11 most expeditious path forward would be to stay
12 discovery on Contentions 1 and 2, until promptly after
13 the Commission issues a ruling on the appeal.

14 JUDGE YOUNG: I understand that you want
15 a stay. I'm not sure that I understand how it would
16 be more efficient and expeditious to delay discovery,
17 and I think that that needs to be very clear.

18 MR. REPKA: Well, I think our position on
19 that is two-fold. Number one, there would inevitably
20 be, we believe, discovery disputes. And number two,
21 we believe the contentions as admitted are too broad,
22 if admissible at all. And, of course, we believe that
23 they're inadmissible for the reasons stated in the
24 appeal. We are disinclined and do not see it as
25 efficient to proceed with discovery based upon

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1 contentions of that nature.

2 JUDGE YOUNG: I'm sorry. Excuse me. I
3 was distracted. Say that over again, the last thing
4 you said.

5 MR. REPKA: We are not inclined to engage
6 in discovery against Duke on contentions that are
7 inappropriately broad, or inappropriately admitted.

8 JUDGE YOUNG: Well, that's the subject of
9 your appeal, and what you're wanting is you're wanting
10 to stay discovery until the appeal has been decided.

11 MR. REPKA: That's correct.

12 JUDGE YOUNG: Okay. Let's move for a
13 moment to another party. What is the Staff's position
14 on attempting to meet the August time line that Duke
15 had originally requested? It sounds as though Duke is
16 indicating that -- it's pretty much resting the
17 ability to meet that time line on the Commission's
18 actions on its appeal. And by asking for a stay of
19 discovery and all proceedings on Contentions 1 and 2
20 until after that, recognizing that if the Commission
21 does anything other than reverse us, that we're not
22 going to meet the August deadline or time line that we
23 had previously set as a goal. What's the Staff's
24 position, and is there any review sought by the Staff
25 still outstanding, any review to the Commission still

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1 outstanding? There's not, is there?

2 MS. UTTAL: There's nothing outstanding at
3 this point, although we will be filing a response to
4 the appeal filed by the licensee.

5 JUDGE YOUNG: Okay. What's your position
6 on the timeliness and efficient conduct of the
7 proceedings?

8 MS. UTTAL: Well, the Staff agrees with
9 the licensee regarding the efficiency of the conduct.
10 The Staff's position that the Contentions 1 and 2 as
11 admitted are so broad and open-ended that it would be
12 problematic to limit discovery against the Staff, or
13 against any of the other parties. Therefore, the door
14 would be open to just about anything. We don't think
15 that this is an efficient way for the proceedings to
16 go on.

17 JUDGE YOUNG: I guess you're presuming
18 what our rulings would be, so in other words, you
19 agree that there's really no way to meet the August
20 goal if we proceeded as you wish, which would be to
21 stay all proceedings related to Contentions 1 and 2
22 until the Commission rules. And if the Commission
23 does leave open or alive in either of those two
24 contentions, that we would then be -- that there's a
25 likely inability to meet the August time line.

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1 MS. UTTAL: Your Honor, I don't think that
2 that is the Staff's position. We can't say one way or
3 the other whether we will be able to meet the August
4 deadline, but the Staff will make every effort to move
5 in an expeditious fashion and cooperate to whatever
6 extent we can to have this case move along with the
7 hopeful goal of meeting the August deadline.

8 JUDGE YOUNG: When we talked last, I
9 believe that we had set -- in our March 5th order on
10 scheduling, we set the weeks of May 17th and June 14th
11 for an evidentiary hearing on the non-security-related
12 contentions, and just looking at the practicality of
13 the matter -- we had also, just to back up, we had
14 also indicated that initial discovery requests on the
15 non-security-related contentions should be filed by
16 March 19th. And I think everyone was in pretty much
17 agreement that starting the discovery immediately upon
18 issuance of our order on March 5th would be the only
19 way that we could meet the dates that we had
20 previously set. And March 19th is four days from now,
21 and it would seem that it's extremely unlikely that
22 we're going to get any action by the Commission in the
23 next four days, so there would be a necessary delay of
24 these hearing dates should anything remain open on
25 those contentions, which would, in effect, make it as

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1 a practical matter impossible to get this proceeding
2 finished by August, would you not agree?

3 MS. UTTAL: I'm sorry, Your Honor. Was
4 that a question to me?

5 JUDGE YOUNG: Yes.

6 MS. UTTAL: I missed the last part of what
7 you said.

8 JUDGE YOUNG: Would you not agree?

9 MS. UTTAL: Agree that any delay in the
10 discovery schedule will necessarily delay the hearing?
11 I think that if we forget about the May 17th date,
12 which is probably unworkable, and keep the June 14th
13 date for the non-security contentions, we could see
14 what happens with the Commission, and see whether we
15 can make that. We can also move up the date for
16 filing of pre-filed testimony, 15 days before that
17 date, so that would give a little leeway. But I can't
18 predict whether the other dates will be met.

19 JUDGE YOUNG: When does the Staff intend
20 -- or do you still intend to issue the SER and
21 whatever environmental document you're going to issue,
22 I think you said by - was it early April?

23 MS. UTTAL: Yes. Yes, as far as I know.

24 JUDGE YOUNG: Do you know at this point
25 whether it's going to be an EIS or an Environment

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1 Assessment?

2 MS. UTTAL: No, I'm sorry.

3 JUDGE YOUNG: Okay. So I do read you as
4 supporting Duke on its request that we delay discovery
5 on Contentions 1 and 2 and, in effect, all the non-
6 security-related contentions.

7 MS. UTTAL: That's correct, but I would
8 like to see if there's a new Contention 3 that comes
9 in before commenting on that. But for Contentions 1
10 and 2, yes, we support Duke's motion to stay
11 discovery.

12 JUDGE YOUNG: What's your position on
13 Duke's motion with regard to Contention 3?

14 MS. UTTAL: I haven't had a chance to
15 discuss it with the Staff, Your Honor. I don't have
16 a position yet.

17 JUDGE YOUNG: Let's move to Ms. Curran.
18 What's your position on everything that you've heard
19 to this point on scheduling and timing issues.

20 MS. CURRAN: I think BREDL agrees as a
21 practical matter with Mr. Repka's suggestion for
22 different reasons. The concern that I was going to
23 raise this morning is that the schedule for litigating
24 the safety contentions is too tight to give us a
25 meaningful opportunity to conduct discovery and

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1 prepare our case.

2 JUDGE YOUNG: Let me interrupt you for a
3 second.

4 MS. CURRAN: Yes.

5 JUDGE YOUNG: You say schedule for the
6 safety contentions. Do you mean the non-security-
7 related --

8 MS. CURRAN: That's what I mean, yes.

9 JUDGE YOUNG: Okay.

10 MS. CURRAN: Right now we have a discovery
11 deadline of the 19th, and a deadline of May 5th for
12 filing testimony. And what I would like -- I think
13 what we need here is we need to be able to do two
14 rounds of interrogatories and a period for taking
15 depositions, and then a reasonable period for
16 preparing testimony based on that. And, of course,
17 some of this discovery period needs to follow whenever
18 the Staff issues its environmental document and its
19 safety evaluation report.

20 I'm very concerned because we have the
21 Contentions 1 and 2, let's not even talk about
22 Contention 3 right now, but Contentions 1 and 2 raise
23 complex safety issues that we're going to need some
24 time to develop. At the same time, it's difficult for
25 me to see how we can go forward and do a good job on

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1 those under the schedule we have, and also prepare to
2 file testimony on the security issues, which is
3 another set of complex issue that's further
4 complicated by the fact that we don't have easy access
5 to documents. So to me, what makes sense is -- what
6 I was going to suggest this morning or this afternoon
7 was a longer period for discovery and that the
8 hearings on Contentions 1, 2, and 3 take place in mid-
9 June. And a separate hearing be held later in the
10 summer or in the fall if the Board can't do it, on the
11 security contentions.

12 At this point, hearing what Mr. Repka said
13 today, it makes sense to me to go forward with the
14 security contentions, and have the hearing on those in
15 mid-June. I don't see how -- if we suspend discovery
16 now on the safety contentions --

17 JUDGE YOUNG: Excuse me.

18 MS. CURRAN: Yes.

19 JUDGE YOUNG: You keep saying safety, and
20 I just --

21 MS. CURRAN: Yes, I'm sorry. The non-
22 security contentions.

23 JUDGE YOUNG: Okay. I just want the
24 record to be clear.

25 MS. CURRAN: I'll try.

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1 JUDGE YOUNG: You're not meaning to
2 exclude any environmental.

3 MS. CURRAN: That's right, I don't mean to
4 exclude the environmental. I'm thinking primarily of
5 Contentions 1 and 2, but there's also the
6 environmental contention, Contention 3. So we're just
7 very concerned about being able to do what we need to
8 do to prepare our case, to do a good job on discovery
9 and prepare good testimony under the schedule that's
10 established by the Board, or that was proposed by the
11 Board in its most recent order. And to me what makes
12 sense, having heard what I've heard today, is to go
13 ahead with the security contentions now, and plan to
14 have a hearing in mid-June on those.

15 I just wanted to mention one more thing.
16 If and when -- if the Commission -- and I have to
17 admit, I got Duke's brief this morning, the appeal,
18 and I haven't had a chance to read it. I just note
19 it's 52 pages long, so that's going to be a major task
20 for us to respond to that very lengthy Memorandum of
21 Law.

22 If the Commission leaves Contentions 1 and
23 2 in place or some part of them, it makes sense to me
24 that discovery on those contentions could be going on
25 while we're preparing our case on the security

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1 contention. And I do think we need 14 days after the
2 Commission's order to put in discovery requests. I
3 think having filed a 50-page motion to dismiss
4 Contentions 1 and 2, that Duke should have to take the
5 bitter with the sweet. And I would prefer not to
6 spend a lot of time preparing discovery on contentions
7 that I have no idea are going to survive.

8 I think it's fair to give us 14 days after
9 the Commission issues any order that restores the
10 contentions or says go ahead with these contentions,
11 and we can carry on discovery while we're preparing
12 the case on the security contentions. But the task of
13 putting together testimony on contentions is very time
14 consuming, and to say that by May 5th that BREDL would
15 be able to prepare and submit testimony on two safety
16 contentions, one environmental contention, and several
17 security contentions is just more than is feasible,
18 reasonably doable for us. That's our position.

19 JUDGE YOUNG: Okay. It sounds as though
20 all of you for different reasons don't think we're
21 going to be able to meet the time lines that we had
22 set earlier, and I just want to indicate, I think we
23 had been planning to sort of schedule our personal
24 time around this case so that we could meet that time
25 line. At this point, it seems rather more open, and

1 so I guess we'll all just have to do the best we can.
2 And unless everything proceeds exceedingly quickly and
3 smoothly with no unanticipated motions or other
4 things, it's beginning to seem unlikely that we're
5 going to be able to meet the August deadline,
6 especially if any of the non-security-related
7 contentions stay alive.

8 We want to confer before we make any
9 rulings. I think we have already agreed that any new
10 contention on the Oconee alternative based on the RAI
11 response that you got on the 1st, your deadline for
12 that is the 30th. Correct?

13 MS. CURRAN: Yes.

14 JUDGE YOUNG: All right.

15 MR. REPKA: Judge Young, this is Dave
16 Repka. May I make one more suggestion?

17 JUDGE YOUNG: Go ahead.

18 MR. REPKA: I think that in the spirit of
19 locking in schedules that people can build around, I
20 think that was an excellent idea with respect to the
21 weeks in June. I think perhaps we should consider
22 something similar for July on the chance that we could
23 get to Contentions 1 and 2 in July, if we at least
24 identify weeks now that the Board would be available,
25 the parties would know those dates, and we could be

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1 prepared to move expeditiously.

2 The only other reaction I have to some of
3 what Ms. Curran said is with respect to preparing
4 testimony. I do believe and presume that all parties
5 can use this time to prepare their case between now
6 and the time of the Commission appeal, and that would
7 include -- presumably, BREDL knows what it wants to
8 say with respect to its own contentions, and can
9 certainly use the time now to at least begin preparing
10 its case. But I think targeting dates in the summer
11 would be a good and prudent thing to do.

12 JUDGE YOUNG: Well, I guess a couple of
13 things on your comment about preparing the case;
14 obviously, the lack of discovery is going to hold that
15 up to a very significant degree.

16 With regard to scheduling dates in the
17 summer, I think that sounds good from one standpoint,
18 but theoretically, we could schedule dates on into the
19 future and I'm not sure that we can just sort of keep
20 all the oncoming months set aside for you not knowing
21 when things would proceed if we hold off on the non-
22 security-related contentions.

23 Let's look at -- now keeping in mind that
24 we haven't gotten the responses on the security
25 contention, we haven't heard the argument on it, we

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1 haven't done our ruling on it. We're going to try to
2 get a ruling out as quick as possible, but we don't
3 know how quickly we'll be able to do that, not having
4 heard the arguments or gotten any responses at this
5 point. And certainly, while we're going to try to
6 drastically shorten our general rule of thumb 60-day
7 time in the interest of moving the proceeding along,
8 I don't know that we can -- I don't know how definite
9 any of us can be on dates for a hearing on the
10 security-related contentions, but I think I heard Ms.
11 Curran say mid-June. We had originally set aside June
12 1 through 4 for that, and I think I hear everyone
13 saying that the week of May 17th - that no one thinks
14 you're going to be ready for the week of May 17th, or
15 for filing any pre-filed direct testimony on May 5th.

16 MR. REPKA: This is Dave Repka. We did
17 not say that. We believe that all of those dates are
18 viable for security, and believe that we should stick
19 to the -- if not May 17th for security, we should
20 certainly stick to the June 1 through 4 dates, as
21 previously ordered. And that we would use the other
22 dates, if possible, for any issue that arises in
23 connection with Contention 3, or any additional issues
24 that arise on security with respect to the RAI
25 responses.

1 JUDGE YOUNG: Are you saying that you
2 think we can use the week of May 17th for anything?

3 MR. REPKA: It certainly could be
4 possible. At this point, I'm not willing to throw
5 away any weeks in which we know we have the parties
6 scheduled.

7 JUDGE YOUNG: All right. If we get the
8 Amended Contention 3 by March 30th, that would be
9 about six weeks after that, the week of May 17th -
10 would start about six weeks after that. That would be
11 a pretty tight schedule on that for discovery and
12 filing of pre-filed testimony. Let me hear from all
13 parties on that, as to whether there's any chance that
14 we would be able to go forward on -- I mean, certainly
15 it would compress the schedule much more than we had
16 anticipated before.

17 MR. REPKA: With respect to discovery on
18 security, we would foresee it as being very limited,
19 given that the materials have actually been made
20 available up front.

21 JUDGE YOUNG: Mr. Repka, I'm talking about
22 Contention 3 now.

23 MR. REPKA: All right. With respect to
24 Contention 3, again the issue is the feasibility of
25 Oconee as an alternative, and that's a fairly limited

1 issue with limited discovery, presumably.

2 MS. CURRAN: This is Diane Curran. Just
3 taking a practical look at this, if we put the
4 contention in on the 30th, the other parties have 10
5 days to respond, and I think the Staff may even get
6 more, so that puts it into, I don't know, the first
7 week of April, the first full week of April some time.
8 And then the Board's got to rule, so I don't think
9 we're looking at a decision to admit the contention
10 until mid-April. And to say that we're going to do
11 two rounds of discovery and have time for depositions,
12 and then have pre-filed testimony filed on May 5th, it
13 just doesn't seem realistic to me. You'd have to have
14 an extraordinarily abbreviated schedule. It wouldn't
15 be feasible.

16 MR. REPKA: Well, I would see that as a
17 fairly extraordinarily broad view of discovery on that
18 particular issue.

19 MS. CURRAN: Well, you know, to me an
20 example of really restricted discovery is Subpart K of
21 the Commission's rules. That's expedited. That's the
22 fastest that the Commission has gone in the past, and
23 there's -- my experience has been there's been 60 days
24 for discovery. And that goes fast.

25 What you're talking about is, I don't

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1 know, two weeks. I don't think that's -- you cannot
2 -- with interrogatories, you need to be able to
3 follow-up with follow-up questions. You need to be
4 able to get some documents and ask questions about the
5 documents. You need to be able to sit down with a
6 witness and ask questions. I don't see how you can
7 call it discovery to have one party get a chance to
8 ask a few interrogatories. That's not meaningful
9 discovery in my view.

10 JUDGE YOUNG: I think it might be a good
11 idea - I'm not sure that we're going to give you a
12 ruling today. We are going to be meeting again in a
13 couple of days, and then we have another conference
14 set for next week. And I think we need to hear from
15 all of you, but I'd like for us to have a few minutes
16 to confer here. And before we do that, is there
17 anything else that any of you would like to say, and
18 then we might take about a five minute break, stay on
19 the phone but just put everyone on mute. Does anyone
20 have anything further to say on any of these timing
21 issues that we've been discussing?

22 MS. CURRAN: This is Diane Curran. I
23 don't have anything to add.

24 MR. REPKA: And nothing from me.

25 MS. UTTAL: And the Staff has nothing to

1 add.

2 JUDGE YOUNG: Okay. We're going to put
3 you on mute, and we'll be back with you in about five
4 minutes.

5 (Judges confer.)

6 JUDGE YOUNG: All right. Hello.

7 MR. REPKA: Yes, we're here.

8 JUDGE YOUNG: It took a little bit longer
9 than we anticipated. We're going to be getting the
10 responses to the security contentions by the end of
11 today. Thursday we're going to be hearing argument on
12 those. After that point, I think we'll have a better
13 sense, all of us will have a better sense, when is the
14 earliest that we might do a hearing -- well, that's
15 assuming that we were to admit any. And we're going
16 to have to be working on our rulings. Obviously,
17 we're going to cut back our 60-day rule of thumb
18 drastically, but still we will take some time to issue
19 our ruling. Then we're going to be looking at
20 discovery, pre-filed testimony, hearings, proposed
21 findings of fact and conclusions of law.

22 At this point, except for the -- well, let
23 me back up. That's on security-related contentions.
24 On Contention 3, we get in an Amended Contention 3 on
25 March 30th, a response. Just assuming that we gave

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1 two weeks, that would be the middle of April, and then
2 we would have to have oral argument if we did that the
3 following week. We would, obviously, try to get a
4 ruling out that as soon as possible. Then we would
5 need to have discovery, pre-filed testimony, a
6 hearing, and time for proposed findings of fact and
7 conclusions of law on that. And then on Contentions
8 1 and 2, assuming that all parties agree that we wait
9 to hear from the Commission on Contentions 1 and 2,
10 and in effect stay proceedings on that until we get
11 that ruling, which is what Duke is basically asking
12 for, and which I think all parties in effect have
13 agreed to.

14 Then after that ruling, if anything
15 remains of Contentions 1 and 2, there would be
16 discovery on that, pre-filed testimony deadline, a
17 hearing, deadlines for proposed findings of fact and
18 conclusions of law.

19 Those are a lot of blanks that need to be
20 filled. Incidentally, I guess everyone is with us.
21 Am I correct?

22 MS. CURRAN: Yes.

23 MS. UTTAL: The Staff is here.

24 MR. REPKA: Duke is here, as far as I
25 know.

1 JUDGE YOUNG: Okay. Great. What we would
2 like you to do is to be thinking about a calendar for
3 all of those events that I've just gone through. And
4 we have another, as I said, we have another conference
5 call scheduled for the 25th. If we have any time at
6 the end of oral argument on the security contentions
7 on the 18th, that would profitably be spent talking
8 about this. We can certainly do that at that time;
9 however, if we do want to move along on the security
10 contentions, I think we need to concentrate on our
11 ruling on the security contention, so that it might be
12 best to sort of think about talking about dates
13 further on the 25th.

14 Pending that, we're going to leave
15 everything as it stands now, except that the March
16 19th deadline for initial discovery requests on non-
17 security-related contentions would be set aside based
18 on Duke's request to that effect, the Staff's and
19 BREDL's agreement to that, as I understood it before.

20 Depending upon the time that we have in
21 the context of ruling on the security-related
22 contentions, I may try to get an order out setting out
23 all of the events that we need to have dates for, to
24 the extent that we can even make them at this point,
25 because we don't have rulings on everything, either

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1 from us or the Commission. But I may just count on
2 all parties to use this transcript as a guide to
3 thinking about dates. And I think I've gone through
4 all the different things that we need to think about
5 on security contentions, Amended Contention 3, and
6 then Contentions 1 and 2.

7 I think that the Board is pretty much in
8 agreement that if at all possible, we'll try to keep
9 to or as close to our original schedule on the
10 security-related contentions as possible, and we will
11 know more after we get the responses, and after we
12 hear the argument whether that will be met. And in
13 our ruling on them, we would probably do something
14 similar to what we did in our last ruling in terms of
15 setting dates at that point for discovery and pre-
16 filed testimony and hearing. And if we can keep the
17 July 1-4 deadline or dates for that, then --

18 MS. CURRAN: July? I'm sorry, Judge
19 Young. You said July.

20 JUDGE YOUNG: I'm sorry. June 1 through
21 4 dates for that, then we'll try to do that. And
22 since the current schedule stands, we're going to keep
23 the times that we've set aside at this point.

24 With regard to setting aside dates in
25 July, there are a couple of problematic aspects of

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1 that. If we set aside dates in July for a hearing,
2 the parties have the right to file, and it's very
3 helpful to us to have the parties file proposed
4 findings of fact and conclusions of law after any
5 evidentiary hearing. As a practical matter, setting
6 a hearing in July would make it virtually impossible
7 to get this proceeding finished by August.

8 Judge Baratta already has another hearing
9 scheduled for early July, and having a hearing,
10 getting proposed findings of fact and conclusions of
11 law, and then getting a ruling by the end of July is
12 not very practicable, and would require beyond
13 superhuman capacities on the part of several of us,
14 I'm sure. That's not to say that we're not willing
15 to, as we have indicated all throughout here, to move
16 things along as expeditiously as possible, but I think
17 that we, and we are encouraging all parties to look at
18 the practical reality, the practical possibility of
19 meeting the August deadline in light of the discussion
20 we've had today. And in light of that, trying to put
21 some dates to all the various items that I listed
22 earlier, and be ready to discuss those on March 25th.

23 Is there anything that I've left out, or
24 Judge Baratta, Judge Elleman.

25 JUDGE BARATTA: No.

1 JUDGE YOUNG: Anything that any of the
2 parties would like to say with regard to these
3 scheduling issues?

4 MS. CURRAN: Judge Young, this is Diane
5 Curran. I'd just like to say that it's going to be
6 very difficult for us to comment on what kind of a
7 schedule that we should have for litigating the
8 security contentions until we see how many of them, if
9 any, are admitted, and whether the RAI response is
10 going to lead to further contentions, so if you
11 haven't ruled on the security contentions on the 25th,
12 I'd just like to suggest that the best time to really
13 set a schedule for the litigation is once we know what
14 the scope of the hearing is. And also, in light of
15 that, to ask the Board to continue to hold the middle
16 week of June as a possible hearing date, just
17 depending on what the scope of the hearing is, because
18 we already know that the first week of June and the
19 week of the 14th, all the parties are free. And it
20 seems to me it's reasonable to say okay, until we know
21 a little more about what the scope of this hearing is,
22 we should save both those weeks.

23 JUDGE YOUNG: We are saving those weeks,
24 and we're encouraging everyone to save them. As I
25 said, the only thing we're knocking out of the current

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1 schedule as set forth in our March 5th order, is the
2 March 19th deadline for initial discovery requests on
3 non-security-related contentions. Everything else
4 stands. The likelihood of our being able to use the
5 May date seems, at this point, to be slim, because
6 those we had set aside for non-security-related. But
7 let's everyone hold everything that we have set aside
8 now, and we'll talk further about the timing on the
9 25th.

10 If for some reason we don't have our
11 rulings on the security-related contentions issued by
12 that date, then we might need to set a date the
13 following week to talk further about scheduling
14 issues. But certainly we'll make every effort to get
15 it out by then. Without knowing further what kind of
16 issues are going to be argued, I don't know that we
17 can say anything further on that.

18 Anything else from any of the parties?

19 MR. REPKA: Dave Repka. Just one point,
20 and I don't recall, and I didn't write it down, if we
21 resolved the issue of a date for any further
22 contentions on security based upon the RAI responses.
23 I think we had a discussion that it would be following
24 when that was available, and we talked about March 9th
25 being the date, but did we specify a particular date?

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1 JUDGE YOUNG: Let's see.

2 MS. UTTAL: This is the Staff, Your Honor.
3 I believe Ms. Curran proposed a date of April 8th,
4 since the RAI's were made available to her as of March
5 9th.

6 JUDGE YOUNG: You're right. Okay. So
7 April 8th for any security contentions based on the
8 security RAI responses. March 30th for any Amended
9 Contention 3 based on the Oconee alternative March 1st
10 RAI response. And then we want all of you to be
11 thinking about realistic time lines. To the extent
12 that you can, we don't have or know when various
13 precursors will be forthcoming with regard to the
14 various issues. There are three sets of issues; the
15 security contentions, Amended Contention 3, and then
16 Contention 1 and 2.

17 JUDGE ELLEMAN: Ms. Uttal, this is Judge
18 Elleman. I had the impression from your earlier
19 comments that there can be additional questions coming
20 from the Staff which is going to produce additional
21 responses from Duke that will be forthcoming in the
22 future. Is that correct?

23 MS. UTTAL: Judge, I don't anticipate any
24 more RAIs coming out.

25 JUDGE ELLEMAN: Okay. So the group we are

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1 now discussing you believe to likely be the complete
2 set of RAIs.

3 MS. UTTAL: Probably. Nothing can be
4 guaranteed, but I don't, like I said, anticipate any
5 further ones.

6 JUDGE ELLEMAN: Thank you.

7 JUDGE YOUNG: Anything else from anyone?
8 Okay. Well, then let's be prepared on the 25th to
9 discuss all we can at that point. We hope that we'll
10 be in a position to have already issued the ruling on
11 security contentions at that time. We cannot
12 guarantee that. Obviously, that is extreme speed on
13 a number of contentions that we're sure are going to
14 be argued strongly on both sides.

15 Would it be helpful to set another date
16 the following week in the event we need it? What do
17 you think? No, we'll just hold off on that for now.
18 And if we need to set another date, we'll do that at
19 that time. And I will try to get an order out setting
20 the April 8th and March 30th deadlines, and indicating
21 that pending further proceedings and discussion on
22 deadlines, that our previous order remains in place,
23 with the exception of the March 19th deadline for
24 discovery.

25 All right. Thank you all.

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MS. CURRAN: Thank you.

(Whereupon, the proceedings in the above-entitled matter went off the record at 3:01 p.m.)

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 Corporationa

Docket Number: 50-413-OLA;

ASLBP No. 03-815-03-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.



Rebecca Davis
Official Reporter
Neal R. Gross & Co., Inc.