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NUCLEAR REGULATORY COMMISSION

Title: Duke Energy Corporation

Docket Number: 50-413/414-OLA; ASLBP No. 03-815-03-OLA

Location: (telephone conference)

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

(ASLB)

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TELECONFERENCE

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In the Matter of: :

DUKE ENERGY CORPORATION : Docket Nos. 50-413-OLA

: 50-414-OLA

Catawba Nuclear Station : ASLBP No. 03-815-03-OLA

Units 1 and 2 :

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Thursday,  
March 25, 2004

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:07 a.m.

BEFORE:

- ANN MARSHALL YOUNG, Chairperson
- ANTHONY J. BARATTA, Administrative Law Judge
- THOMAS S. ELLEMAN, Administrative Law Judge

1           APPEARANCES:

2                   On behalf of the Licensee:

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19                ALSO PRESENT:

20                       MICHAEL T. CASH, Duke Energy

21                       EDWIN S. LYMAN, Ph.D.

22                       STEPHEN NESBIT, Duke Energy

23

24

25

P R O C E E D I N G S

(9:38 a.m.)

1  
2  
3 CHAIRPERSON YOUNG: We can go on the  
4 record.

5 We're mainly here today to talk about  
6 scheduling issues, and we have looked at calendars and  
7 come up with a schedule for discovery, but we are  
8 going to need to ask a few questions.

9 Before we get on to that, before I start  
10 asking my questions, is there anything new that we  
11 need to know about from any party that would assist us  
12 in our discussion today?

13 I guess one thing I should ask. Has Duke  
14 filed for any stay with the commission?

15 MR. REPKA: Judge Young, this is Steve  
16 Repka.

17 Let me address that. The answer is that  
18 Duke has chosen not to seek a stay from the Commission  
19 on proceeding on Contentions 1 and 2 at this time. We  
20 continue to believe that the appeal filed with the  
21 Commission -- and I want the record to be clear on  
22 that -- is a good and valid appeal and are continuing  
23 to seek a Commission ruling on the appeal.

24 But given the Board's statements last week  
25 on the record at the end of the security discussions,

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1 we do appreciate the Board's statements regarding the  
2 scope of the admitted contentions, and we also  
3 appreciate the clear commitment to trying to meet the  
4 schedule that Duke and the Department of Energy have  
5 requested.

6 So in light of those developments we are  
7 prepared to proceed on a schedule that the Board will  
8 establish.

9 CHAIRPERSON YOUNG: All right.

10 MS. CURRAN: Judge Young.

11 CHAIRPERSON YOUNG: Yes.

12 MS. CURRAN: Diane Curran.

13 I just want to point out that BREDL's  
14 response to Duke's appeal and also Duke's motion to  
15 dismiss Contention 3 are due today. So we are busy  
16 with those.

17 CHAIRPERSON YOUNG: Okay. Actually that  
18 was the next thing I was going to get to.  
19 Specifically with regard to amended Contention 3, I  
20 was trying to recall when the motion -- when was  
21 Duke's motion to dismiss filed?

22 MR. REPKA: it was the same day as the  
23 appeal. I'm looking at a calendar. I believe that  
24 was --

25 MS. CURRAN: The 15th. It was March 15th.

1 CHAIRPERSON YOUNG: Okay. So do I gather  
2 correctly from what you said, Ms. Curran, that you are  
3 going to file a response to the motion?

4 Well, let me ask you: as an alternative  
5 to or in addition to filing an amended Contention 3,  
6 which I think the deadline for that was the 30th?

7 MS. CURRAN: At the moment I'm not  
8 planning to file another contention, but I'm not 100  
9 percent certain of that.

10 CHAIRPERSON YOUNG: But am I understanding  
11 you correctly you are going file a response to the  
12 motion to dismiss?

13 MS. CURRAN: Yes.

14 CHAIRPERSON YOUNG: Okay.

15 MS. CURRAN: Yes.

16 CHAIRPERSON YOUNG: Well, that is good to  
17 know.

18 All right. Are there any other  
19 proceedings going on, parallel proceedings or  
20 anticipated appeals or anything? I can't, quite  
21 frankly, recall whether there is anything that would  
22 be subject to that, but just to make sure we have  
23 everything out on the table, is there anything else  
24 that we're not aware of that the parties need to tell  
25 us about?

1 MS. UTTAL: Judge, this is Susan Uttal for  
2 the staff.

3 We'll be filing a response to this appeal  
4 today. Our response to Duke's motion to dismiss  
5 Contention 3 would not be due until next week, but the  
6 staff will not be opposing Duke's motion. I can file  
7 something short early next week.

8 CHAIRPERSON YOUNG: All right. I'm just  
9 taking notes here because I'm not sure. We're trying  
10 to get the transcripts on a one-day turnaround. We  
11 obviously cannot get that when we have security  
12 information. Anyway, so I'm trying to take a little  
13 bit better notes.

14 We're not talking about security  
15 information today, but we will.

16 Okay. Are there any issues regarding  
17 access to information by BREDL? Are there any new  
18 developments or problems that we need to be aware of  
19 on that?

20 MS. CURRAN: Not that I know of, Judge  
21 Young. This is Diane Curran.

22 CHAIRPERSON YOUNG: Okay.

23 MR. REPKA: And for Duke, I'm not aware of  
24 any.

25 CHAIRPERSON YOUNG: Okay. We had a



1 meeting yesterday to discuss our new rules, and one of  
2 the subjects that came up was motions for summary  
3 disposition. Does anybody anticipate filing any  
4 motion for summary disposition in this proceeding?

5 MR. REPKA: This is Dave Repka for Duke.

6 We do not on the contentions as we know  
7 them right now. With respect to Contention 3,  
8 obviously we filed our motion to dismiss. I'm not  
9 sure I can fully anticipate what may evolve on that  
10 issue, but with respect to Contentions 1 and 2 we do  
11 not.

12 CHAIRPERSON YOUNG: Okay, and I'm assuming  
13 the staff is not either.

14 MS. UTTAL: Well, Judge, I can't really  
15 answer that question right now. I want to see how  
16 discovery goes and then I will be able to better  
17 answer.

18 CHAIRPERSON YOUNG: Okay. I would say  
19 this. One of the things that we were discussing  
20 yesterday and that are already in the rules is the  
21 issue of whether or not ruling on a motion for summary  
22 disposition could cause delay and the potential for  
23 that being a good reason not to consider it, and that  
24 might well be our inclination if any were filed in  
25 this case, as long as we are proceeding along a road

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1 of trying to move things along expeditiously.

2 So just to let everyone know, that's  
3 obviously not to prejudge anything, but in light of  
4 the time issues, I thought that was best to let you  
5 know that.

6 All right. On discovery, the schedule  
7 that we have come up with, let's see. All right.  
8 Let's start with the initial. What we have done is  
9 planned for two rounds of written discovery and then  
10 depositions, which I think it had been mentioned  
11 earlier by BREDL counsel, I believe.

12 We would start with the deadline for  
13 initial written discovery requests, so all kinds, and  
14 I'm not going to get into an exhaustive list; any  
15 written discovery request would be Monday, March 29th.  
16 I think we indicated that it would either be the 26th  
17 or the 29th.

18 And what that will start is a schedule in  
19 which most of the deadlines that we're going to be  
20 setting here will fall on Monday. So that will give  
21 all parties the weekend each time to give you a little  
22 bit of extra time to prepare the items to which the  
23 deadlines apply.

24 The next deadline would be the following  
25 Monday, April 5th, and that would be a deadline for

1 any motions to quash, any objections, any motions for  
2 protective order, anything that the recipient of the  
3 discovery request wants to file challenging in any way  
4 the request or any portion of it.

5 No exceptions. Any discovery related  
6 motion that in any way challenges or objects to the  
7 request that was made the previous Monday.

8 The next deadline would fall on the next  
9 Monday, which would be April 12th, and that would be  
10 for the responses to the March 29th request.

11 MS. CURRAN: Judge Young, this is Diane  
12 Curran.

13 If someone files a motion for protective  
14 order on April 5th, when is it supposed to be  
15 answered?

16 CHAIRPERSON YOUNG: Good question. I  
17 would say -- we're talking about expedited  
18 discovery -- I would say two days later, April 7th, or  
19 we can move back the objection deadline to the Friday  
20 before and make it April 6th.

21 Thank you for pointing out we needed to  
22 put that in there. I didn't give time for responses.

23 On discovery motions, my general  
24 experience is that it's very possible sometimes those  
25 are even done over the phone on an immediate kind of

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1 basis. So I don't anticipate that we would need to  
2 get into extensive briefing and argument. I think  
3 probably everybody knows what your positions are going  
4 to be on things.

5 So if any of you would like to state a  
6 preference as to whether it would be better to have  
7 the objections come a little earlier so that you have  
8 a little bit more time to do the responses or whether  
9 the April 5th and April 7th for responses two days  
10 later would work better for you.

11 MS. CURRAN: Judge Young, this is Diane  
12 Curran.

13 I guess I'd like to hear what the overall  
14 projection is, but I guess I don't understand what the  
15 goal is. I'm really concerned about meeting such a  
16 draconian schedule. I'm really concerned about being  
17 able to prepare discovery questions by Monday.

18 I'm working on a response to a 50-page  
19 appeal today, and it takes a little while to prepare  
20 these questions. Is it that if we go at breakneck  
21 speed we're going to be able to have a hearing in June  
22 on everything?

23 I guess I'd like a better sense of where  
24 this whole thing is heading and whether it's feasible  
25 to hear all of our contentions so quickly.

1 CHAIRPERSON YOUNG: All right. Where it  
2 is headed is there has been a request that we try to  
3 finish this proceeding by August, and I don't know  
4 that we've ever given -- do you want to hear the  
5 answer?

6 MS. CURRAN: Yes.

7 CHAIRPERSON YOUNG: All right. I don't  
8 know whether we've ever been given a specific date in  
9 August.

10 Mr. Repka, do you know the specific date  
11 in August?

12 MR. REPKA: I do not, and I believe that  
13 date is classified.

14 CHAIRPERSON YOUNG: Okay. Is it possible  
15 to tell us whether it's early or late, whether we have  
16 any leeway into August, just out of curiosity?

17 MR. REPKA: I do not know.

18 CHAIRPERSON YOUNG: Okay. All right. We  
19 are making an effort to meet that deadline, in other  
20 words, get out all of our orders, initial decisions on  
21 all contentions by the end of July. That's our goal.

22 We realize that things may come up that  
23 may cause delay in that. One of the big items that  
24 may cause delay in that is the staff's project on the  
25 SER and whatever environmental documents that staff

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1 decides to issue on that.

2 I think everybody recognizes that, and  
3 there may be other reasons that come up on any party's  
4 part. And if there are things that come up  
5 unexpectedly that create a real unanticipated, severe  
6 circumstance, then that would obviously be something  
7 that we would take into account.

8 We gave you the dates that we were setting  
9 aside some time back, and we are still keeping those  
10 dates. The likelihood of our being able to use the  
11 middle week of May for a hearing seems probably  
12 unlikely, but I think we want you to keep the dates,  
13 those that have been previously set out. They are the  
14 weeks of May 17th and June 14th and June 1 through 4.

15 We do not know whether we are going to be  
16 able to do that or not, but if there is going to be  
17 any chance of getting proposed findings of fact and  
18 conclusions of law from the parties and then getting  
19 a decision out by the end of July, we think that we  
20 will probably need to use those dates.

21 Whether there is any sliding room there is  
22 something that will obviously be determined as actual  
23 time goes by.

24 In order to do that, in addition to  
25 setting those dates that everyone is going to hold,

1 one of the things I did yesterday was try to look at  
2 the time period between now and then and how best to  
3 structure a discovery schedule that would be easiest  
4 on everyone involved.

5 I understand that it takes time to write  
6 requests, but, on the other hand, I think everyone  
7 pretty much knows at least with regard to the non-  
8 security contentions, and that's what I'm talking  
9 about at this point, what the issues are, and you  
10 probably have some forms, interrogatories and requests  
11 for production and so forth, that you can use as a  
12 sort of format to start with.

13 So the reason for setting most of the  
14 deadlines on Monday, as I said, was to give you that  
15 extra time.

16 We understand, and actually I have a great  
17 deal of sympathy for you because I understand that you  
18 have other cases and that you are very overloaded, and  
19 I wish that we could accommodate that. Unfortunately,  
20 that's a burden that to some degree, while we have  
21 sympathy for it, it is not really a valid reason.

22 A lawyer has a responsibility not to take  
23 on more than they can handle. So we are going to put  
24 this schedule in place, and if particular problems  
25 come up such that you just simply cannot meet a

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1 particular deadline, talk to the other parties first,  
2 and I encourage all of you to be cooperative with each  
3 other in accommodating things that come up as we go.

4 If you can't get a response from the other  
5 parties or if they won't agree with whatever it is you  
6 want, bring it to our attention as soon as possible.  
7 There are going to be certain occasions on which  
8 various of us are going to be unavailable for a few  
9 days at a time, and we can let you know when those  
10 are, but I think the way we want to approach discovery  
11 is to move it along and to bring issues to our  
12 attention as quickly as possible.

13 If something comes up and you don't want  
14 to take the time to write it down and you want to make  
15 a phone call and we can set up a telephone conference  
16 quickly to hear everybody's position on something,  
17 that might be a way to deal with things. It would put  
18 it on the record, and it would be a way to deal with  
19 issues that arise without requiring a lot of paper  
20 work by parties.

21 Are there any questions on that general  
22 approach, anything I haven't thought of?

23 And, Ms. Curran, I thank you for pointing  
24 out that I hadn't thought of time for responses  
25 earlier, but --



1 MR. REPKA: Judge, this is Dave Repka.

2 CHAIRPERSON YOUNG: Yes.

3 MR. REPKA: Getting back to the question  
4 of the discovery and the responses, can I make a  
5 suggestion on that, that if the initial written  
6 discovery requests are March 29th, we move the  
7 objections to the Friday before April 5th, which I  
8 believe is the 2nd, and then rather than dealing with  
9 written responses to objections, maybe we could then  
10 on the 5th or 6th, whatever works for the Board, just  
11 have a call to resolve those disputes so they can be  
12 resolved expeditiously.

13 So only the objections would be in  
14 writing, and then a reply to the rejections would  
15 then --

16 CHAIRPERSON YOUNG: You mean only --  
17 right, right. Only the objections would be in  
18 writing. Then the responses to the objections would  
19 be verbal in the telephone.

20 MR. REPKA: Right.

21 MS. CURRAN: My concern about that, and  
22 I'm just anticipating here; I don't know what's going  
23 to happen, but it's an educated guess that we're going  
24 to get objections to our discovery request to Duke  
25 because Duke in its appeal says that the contentions

1 that are admitted are over broad.

2 And so I'm worried that we are going to  
3 have to respond to a lot of objections, and we just  
4 cannot do that at the drop of a hat. We have to have  
5 a little bit to prepare a response, and it's useful if  
6 you can do something in writing.

7 It just -- could I have a sense of what  
8 the length of the entire discovery period is? That  
9 would help me.

10 CHAIRPERSON YOUNG: Okay. Let's do that,  
11 but let me just say this. I think you're right in  
12 anticipating objections from Duke, and I think that we  
13 probably all have a general sense of what kinds of  
14 issues are going to come up on discovery, and I think  
15 we probably all have a general sense of the kind of  
16 arguments that are going to be made.

17 One reason that I emphasize the standards  
18 for discovery in the verbal statement in the  
19 proceeding last week was to remind everybody of what  
20 those standards were and what the grounds for  
21 objection, what the standards for ruling on objections  
22 are.

23 With that said and leaving open Mr.  
24 Repka's suggestion, which actually I think that might  
25 be a good way to deal with it; that way it would save

1 the time of putting in formal written form and you  
2 could use the time rather to collect your notes and  
3 responses, and this is all parties to each other, and  
4 state them to us verbally.

5 MS. CURRAN: And how much time would that  
6 be?

7 CHAIRPERSON YOUNG: Leaving that aside for  
8 the moment, his suggestion was to have the objections  
9 be the Friday after the Monday of the request.

10 MS. CURRAN: Then when would we talk?

11 CHAIRPERSON YOUNG: Then we would talk the  
12 following -- we could call the following Monday or  
13 Tuesday.

14 MS. CURRAN: But weren't the responses due  
15 then?

16 CHAIRPERSON YOUNG: No. The responses are  
17 due two weeks from the request.

18 MS. CURRAN: I see.

19 CHAIRPERSON YOUNG: And then at the next  
20 deadline after that would be any motion to compel. In  
21 other words, if the party to whom discovery is  
22 directed has any objections and knows what they are,  
23 they need to file those objections at the time, by the  
24 deadline for the objections.

25 They don't wait and then in their

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1 responses say, "We don't want to answer this question  
2 because X, Y, Z."

3 The responses are to provide actual  
4 responses, and this means that we don't want to get  
5 responses that contain within them, "We're not  
6 answering this question because X, Y, Z," or something  
7 of that nature.

8 On the other hand, if you get a response  
9 that's not as complete as you want, and this involves  
10 good faith on all parties' part because we all know  
11 that discovery is a field that is quite easy to be  
12 subject to a lot of abuses in all different  
13 directions; so in the hopes that everyone can proceed  
14 in good faith, if the proponent of the discovery  
15 request gets the response that you think is  
16 inadequate, then the deadline for a motion to compel  
17 on that would be two days after you got the response,  
18 all right, which would be a Wednesday.

19 And then we would deal with any responses  
20 to that. We might actually do that in the same way  
21 that Mr. Repka suggested.

22 Then the second round of discovery, if you  
23 want to have two rounds of written discovery --

24 MS. CURRAN: Could I back up with a  
25 question?

1 CHAIRPERSON YOUNG: Yes.

2 MS. CURRAN: I'm just confused.

3 CHAIRPERSON YOUNG: I'm trying to give you  
4 the overall schedule.

5 MS. CURRAN: Yes, and I just want to make  
6 sure i Understand. A lot of dates are going by.  
7 March 29th, discovery, April 2nd?

8 CHAIRPERSON YOUNG: That's the suggestion.  
9 Basically let me -- before we talk about the objection  
10 deadlines --

11 MS. CURRAN: Would you tell me what they  
12 are?

13 CHAIRPERSON YOUNG: The first discovery  
14 request would be March 29th. The responses to those  
15 would be April 12th. The second round of discovery  
16 requests would be April 26th. The responses would be  
17 May 10th, two weeks later. In other words, we're  
18 shortening the time for the responses to two weeks.

19 In between those four deadlines, we want  
20 to put in specific deadlines for objections and  
21 explain to you what we mean by those so that all  
22 issues can get resolved as quickly as possible and we  
23 don't save the objections to be posed in the  
24 responses.

25 Now, another thing that would need to come

1 in with regard to the objections would be motions for  
2 a protective order, for example, and protective orders  
3 can be achieved. When you make a motion for a  
4 protective order -- and this would mainly come from  
5 Duke -- I would expect that your motion would have a  
6 proposed order that you would have tried to have  
7 talked to all of the parties about so that everybody  
8 knows what's going on.

9 In any event, the intervening weeks would  
10 be for the objections, responses, motion for a  
11 protective order -- I'm sorry; not responses --  
12 objections, motions for a protective order, motions to  
13 quash, and so forth.

14 The intervening week after the responses  
15 would be for motions to compel and responses to that.  
16 Then that would take up two months.

17 If we were to go ahead with a hearing in  
18 the middle of May, that would leave two weeks for  
19 depositions. So everyone would know at the outset  
20 that the first two weeks of -- I'm sorry. That  
21 wouldn't.

22 If we go with a hearing the first week of  
23 June, that would leave the last two weeks of May for  
24 depositions, although depositions could obviously  
25 start sooner than that. So that's the overall

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1 schedule.

2 Now, in terms of the objections and  
3 responses, it strikes me that Mr. Repka's idea is a  
4 good one and that we could handle motions to compel  
5 the same way and we could just put in dates for  
6 telephone conferences to deal with these discovery  
7 disputes as they arise on the four deadlines that  
8 there would be for objections, motions to compel, the  
9 first round objections, motions to compel, the second  
10 round.

11 And it does make sense to me, and I want  
12 to hear in the context of what we're talking about  
13 from everybody on this, and then, of course, I'm going  
14 to want to hear from the staff what your position is  
15 on discovery against the staff.

16 But getting back to Mr. Repka's suggestion  
17 to having the objections, motion for protective order,  
18 et cetera, after the request would be on April 2nd,  
19 and then set a telephone conference for the following,  
20 oh, probably Tuesday would give a little more time.

21 Then the same thing with the motions to  
22 compel. Well, actually, I think we said the motions  
23 to compel -- by that time all of the issues should be  
24 clear to people. So the motions to compel could be  
25 two days after the responses come in, and then we

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1 could set an earlier date depending on everyone's  
2 schedule for telephone calls on any motions to compel.

3 So that's the overall picture. Are there  
4 any comments that anyone wants to make on that at this  
5 point in terms of anything, either general or things  
6 that you know are happening, that would cause any  
7 problems with regard to that?

8 MS. CURRAN: Judge Young.

9 CHAIRPERSON YOUNG: Yes.

10 MS. CURRAN: This is Diane Curran.

11 I see from your schedule that what it  
12 appears to do is the first round the answers are due  
13 on the 12th, and then we get two weeks to review those  
14 answers before a new set of discovery request is due.

15 CHAIRPERSON YOUNG: Right.

16 MS. CURRAN: And what I'd like to propose,  
17 I know because I've talked to Dr. Lyman that we can't  
18 make the Monday date this Monday for our first set of  
19 discovery requests. But what I'd like to propose for  
20 this first round is that we would basically sacrifice  
21 a part of that two weeks in between the 12th and the  
22 26th in order that we could do a good job on our first  
23 set of discovery requests.

24 What I would like to do is request that  
25 our discovery requests, the first set would be due on



1 the 31st. Can you do the 31st, Ed?

2 DR. LYMAN: Yes.

3 MS. CURRAN: And then two weeks after that  
4 would be the 14th. So that would still leave time to  
5 work out if we had to do a motion to compel. We could  
6 do that by the 16th. We could discuss it or whatever,  
7 however it was resolved, early the next week so that  
8 it would cut back on our time a little bit.

9 CHAIRPERSON YOUNG: For the first round,  
10 but then you could get started on the second round on  
11 time.

12 MS. CURRAN: Yes.

13 CHAIRPERSON YOUNG: Okay. That sounds  
14 reasonable to me. Anyone have any response to that?

15 MR. REPKA: I don't have any real  
16 objection to that. I guess the only thing I question  
17 is the two rounds plus depositions. If we were to do  
18 one round, including the motions to compel and all of  
19 that, and then had depositions earlier than the last  
20 two weeks of May, which strikes me as kind of late,  
21 given that testimony will need to be prepared, any  
22 follow-up could be done in depositions.

23 So what we would have is an initial round  
24 of written discovery, resolution of any disputes of  
25 any of the materials that are turned over are turned

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1 over, and then go to depositions in the last half of  
2 April perhaps or whatever the schedule was, would  
3 dictate and then allow time for testimony.

4 CHAIRPERSON YOUNG: Ms. Curran, that would  
5 give you a little bit more leeway if everyone were to  
6 agree to one round of written discovery and then all  
7 of the follow-up being done through the deposition.

8 Now, again, obviously, you know, we're  
9 going to have to work from good faith, and one of the  
10 reasons for putting in these deadlines for the  
11 objections and motions to compel and talking real  
12 specifically about what we expect those to encompass  
13 and include, that should allow the disputes to be  
14 worked out in a reasonable fashion.

15 How do you feel about cutting down to one  
16 round of written and then giving you a little bit more  
17 leeway or time, I guess, is the issue? Would you feel  
18 more comfortable with that?

19 MS. CURRAN: I'm not ready at this point  
20 to give up the second round of written discovery. I'd  
21 like to at least see how we do on the first round  
22 because I often find it's the second round where  
23 you're able to pinpoint things, and also my experience  
24 in the past is that I don't know how many witnesses  
25 Duke is going to identify, but we might not be able to

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1 afford to depose everyone. So written discovery can  
2 be very important.

3 CHAIRPERSON YOUNG: What about the idea of  
4 having depositions take place during the same period  
5 as the second round of written discovery is occurring?  
6 That would address Duke's concern about the  
7 depositions and it would address your concern about  
8 the expense of depositions and the alternative of  
9 doing written interrogatories instead for him.

10 MS. CURRAN: As long as the burden of  
11 preparing interrogatory answers and preparing for a  
12 deposition wasn't too onerous. You know, we'd have to  
13 maybe judge it as we went along to see. We have to  
14 make sure that if we have gotten a lot of discovery  
15 requests we have time to answer them and do not have  
16 to be preparing for a deposition. That's all I'm  
17 worried about really with that.

18 CHAIRPERSON YOUNG: Okay. Well, then  
19 directing it to you and Mr. Repka, and I'm sort of not  
20 bringing in the staff as much because I expect the  
21 staff is -- maybe now would be a good time to just ask  
22 the staff.

23 What is your position in terms of  
24 discovery against the staff at this point? Ms. Uttal,  
25 why don't you just respond to that?

1 MS. UTTAL: Okay. Regarding the safety  
2 issues, I think the staff will be able to answer  
3 discovery with regard to safety issues.

4 Regarding environmental issues, I don't  
5 think that the staff is still -- I don't think we will  
6 be able to answer discovery until the environmental  
7 documents are completed.

8 CHAIRPERSON YOUNG: Okay. Well, that's  
9 good to hear about the safety anyway, and we realize  
10 with regard to the third issue, security issues, that  
11 until we issue our ruling the parties are going to not  
12 really be able to speak to that.

13 JUDGE BARATTA: This is Judge Baratta.

14 Could I ask when the staff anticipates  
15 when those documents would be complete?

16 CHAIRPERSON YOUNG: Good question.

17 MS. UTTAL: I'm hoping for some time in  
18 April on the environmental documents.

19 CHAIRPERSON YOUNG: I think you did say  
20 early April at one point, didn't you?

21 MS. UTTAL: Yeah, but as with everything  
22 else, sometimes dates slip. It still look like April,  
23 but I don't think I can hold to early April. I have  
24 to talk to the environmental staff regarding that.

25 MS. CURRAN: Judge Young.

1 CHAIRPERSON YOUNG: Yes.

2 MS. CURRAN: I guess there's another piece  
3 of this that I'm wondering about, which is the  
4 security issues. If your goal is to issue a decision  
5 by the end of July, I'm having trouble seeing. This  
6 schedule is pretty tight here just to do the non-  
7 security issues. Are you planning to overlay  
8 discovery on the security issues over this so that  
9 we'll be doing expedited discovery on all of these  
10 issues throughout April and early May and going to  
11 hearing on everything some time in June?

12 CHAIRPERSON YOUNG: Yes, I think that  
13 would be our hope that that could be accomplished.  
14 So, you know, what it will involve is once we come up  
15 with these dates, is really trying to get a set  
16 schedule in our minds so that one of the things I  
17 think that happens is when you don't have a schedule  
18 is that it's harder to plan, and it makes it more  
19 difficult to move things along, whereas if you know  
20 what dates are coming along and you know the things  
21 that are going to be plugged into them, it's easier  
22 to, as least in my experience, with lawyers over the  
23 last decades or however long it has been, if you know  
24 it's deadlines, it makes it easier to work to those.

25 MS. CURRAN: Oh, I think that you're

1 absolutely right about that. My concern is that  
2 because of the date a request by Duke that there be a  
3 decision in August, that we have gone to really what  
4 I consider a draconian schedule that I'm not sure  
5 BREDL can get a fair hearing under such a tight  
6 schedule.

7 And one thing I wonder is is this August  
8 deadline still valid. Is it still important? A lot  
9 of things have happened. The U.S.-Russian agreement  
10 is in a state of disarray from what I can tell because  
11 a lot of things are going on in Russia right now,  
12 changes there.

13 There has been a change in the schedule  
14 for construction of the Mocks facility. You know,  
15 we're all basically putting ourselves through the  
16 ringer for an August date that I would like to see  
17 some more confirmation that this date is really  
18 essential.

19 CHAIRPERSON YOUNG: Okay. Let me just  
20 address a couple of things that you have mentioned for  
21 everybody's benefit.

22 I, and I think all of us, have a strong  
23 commitment to providing a fair hearing in this  
24 proceeding, and if it becomes apparent that that  
25 cannot be done under the schedule that we are setting

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1 here, then it cannot be done, and that should be  
2 clear.

3 Also, I expect, and I think we all expect,  
4 Duke to keep us informed of any scheduling issues such  
5 that we're not working to a deadline that's not really  
6 necessary -- if there are real indications that the  
7 August events are not going to be occurring in August  
8 or that anything else would play into the scheduling  
9 of this, then we expect to be kept informed of that.

10 What we are talking about now though is  
11 discovery, and what I would like to accomplish by this  
12 is to make it more possible to have a fair hearing,  
13 and generally the types of issues from my experience  
14 which, granted, after NRC is limited to a few years,  
15 but also in my general experience the types of issues  
16 that are more likely to arise are requests to Duke to  
17 which Duke objects, and by providing for expedited  
18 responses and specific dates and schedules for  
19 resolving those disputes as quickly as possible, that  
20 should assist in providing a fair hearing to BREDL.

21 The same applies with regard to all  
22 parties, discovery of each other, but that's one of  
23 the reasons that I and we on the Board have taken some  
24 time to develop the schedule, to discuss with you  
25 today so that we could all sort of get something in

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1 place that would allow us to move on and get all of  
2 the information out there so that you can prepare  
3 adequately and that we can hold a hearing that's fair  
4 and meaningful and have sufficient time to make a fair  
5 and meaningful decision.

6 That's the goal. We're not inclined to  
7 give up that goal. We're not inclined to not attempt  
8 to meet it by setting the schedule. If something  
9 develops that really is a reason to alter anything, we  
10 expect to be informed of any issues, have any disputes  
11 brought to our attention so that these can be resolved  
12 for all parties' benefit.

13 So with regard to general statements about  
14 fairness, I think we need to get specific on those  
15 types of issues, and we need to try to work within  
16 this.

17 Now, the last specific thing that we were  
18 talking about was the question of a second round of  
19 written discovery requests and depositions, and from  
20 what both Duke and BREDL were saying, it strikes me  
21 that to have depositions occurring at the same time as  
22 the second round of written discovery requests which  
23 will be less onerous, I expect and which will allow  
24 BREDL to do some written discovery as an alternative  
25 to depositions, if that's a money issue, but which

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1 would allow Duke to go ahead with your depositions  
2 sooner.

3 It sounds like a good idea to me. So any  
4 other comments on that general idea?

5 And I guess what that would mean is if we  
6 kept the schedule the same, the depositions could  
7 start the end of April and go through May. If the  
8 parties would feel more comfortable, we could move  
9 that date to start the second round and depositions  
10 during the same time period back a little bit to give  
11 some leeway there.

12 MR. REPKA: This is Dave Repka.

13 If we start from the back and work  
14 forward, I think that may help. If you look at a June  
15 1st hearing date on the non-security issues, I think  
16 we could project something along the lines of  
17 submitting initial testimony around about May 14th  
18 with perhaps some follow-up rebuttal testimony around  
19 May 25th.

20 CHAIRPERSON YOUNG: Let me interrupt you  
21 there. I think that the May 14th date sounds like a  
22 good idea. We can talk about the specifics, but do  
23 the parties really feel strongly about rebuttal? I'm  
24 not sure that that is written rebuttal testimony. I'm  
25 not sure myself whether that is of that much

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1 assistance to that many of the parties and whether it  
2 might not be more efficient to just have one round of  
3 simultaneous pre-filed direct testimony with all cross  
4 examination to be verbal and rebuttal to be verbal.

5 MR. REPKA: As the party with the burden  
6 of proof, we would request some rebuttal. Whether  
7 that be in writing or live is perhaps not as  
8 important.

9 CHAIRPERSON YOUNG: Right.

10 MR. REPKA: As long as there is that  
11 opportunity.

12 CHAIRPERSON YOUNG: Right.

13 MR. REPKA: But we would be willing to do  
14 written rebuttal on a quick turnaround following an  
15 initial testimony date. So that's something I think,  
16 you know, if it's a matter of a quick turnaround where  
17 we would be willing to do that to get at least  
18 something in in writing first within additional  
19 questioning during the hearing possible

20 CHAIRPERSON YOUNG: Any other reactions to  
21 those suggestions?

22 MS. CURRAN: This is Diane Curran.

23 I would just like to point out that under  
24 your schedule, the deadlines are responding the second  
25 round of discovery, written discovery would be May

1 10th, and we would need -- if all we're able to do is  
2 written discovery, we would need to wait for those  
3 answers and have an opportunity to prepare testimony  
4 based on those answers.

5 And I think two weeks is the minimum  
6 amount of time that we would need, and we probably  
7 would want to wait for the answers to the second round  
8 before doing depositions.

9 So to me it seems that I think that  
10 testimony should be due at the end of May and that we  
11 should be looking at mid-June, the week that we set  
12 aside in mid-June, for the hearing.

13 CHAIRPERSON YOUNG: Well, we may need more  
14 than that week. I do think it -- staff, fee free to  
15 interrupt if you have any issues of concern on this.  
16 I'm not asking you as many questions because I tend to  
17 think that, one, you're probably not as concerned with  
18 some of these issues that we're talking about at this  
19 point and, two, if you have something you want to say,  
20 you'll speak up and say it.

21 MS. UTTAL: Well, Judge, I do have two  
22 things that I'd like to say. Staff has a burden of  
23 proof on the environment on their environmental  
24 documents.

25 CHAIRPERSON YOUNG: Pardon?

1 MS. UTTAL: The staff has the burden of  
2 proof on their environmental documents, and the staff  
3 position is that we would like an opportunity for  
4 written rebuttal prior to the hearing at least on the  
5 environmental issues.

6 Secondly, we agree with Ms. Curran  
7 regarding the dates of the hearing. It was my  
8 understanding that the 14th was being set aside for  
9 the non-security hearing and the 1st was being set  
10 aside for the security issues.

11 CHAIRPERSON YOUNG: That's right.

12 I don't know. The first week in June was  
13 for the security here, and then the week of the 14th  
14 was going to North Carolina for the non-security  
15 contention.

16 I think it makes sense to move the pre-  
17 filed testimony date later, and in terms of Duke has  
18 said that they will do either written or live rebuttal  
19 testimony, and when you say, Ms. Uttal, that you want  
20 to do rebuttal on environmental, does that mean you  
21 want to do written rebuttal or is verbal enough for  
22 you?

23 MS. UTTAL: Oh, we prefer written  
24 rebuttal, Your Honor.

25 CHAIRPERSON YOUNG: And are you willing,

1 as Duke suggests, to do that on a very quick  
2 turnaround?

3 MS. UTTAL: Yes.

4 CHAIRPERSON YOUNG: Okay. All right.  
5 then moving backward in time --

6 MS. CURRAN: Judge Young, this is Diane  
7 Curran.

8 If you're asking about a quick turnaround  
9 for rebuttal, I don't know if BREDL can do that.

10 CHAIRPERSON YOUNG: Well, let's say we  
11 approached rebuttal in this way: that there would be  
12 a quick deadline for written rebuttal, but that that  
13 would not foreclose any party from choosing not to  
14 submit written rebuttal and to present it in the live  
15 testimony.

16 I mean, a lot of these things sort of  
17 overlap each other as a practical matter.

18 MR. REPKA: I think it's crucial that  
19 whichever procedure we adopt on that, that the party  
20 with the burden of proof have the last word.

21 CHAIRPERSON YOUNG: That's something that  
22 will play itself out during the oral testimony, and  
23 obviously the party with the burden of proof has the  
24 right to rebuttal. We will be looking to get our  
25 questions answered, and I think everyone has an

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1 interest to make sure that everyone gets all of the  
2 information out there in the record so that we can  
3 make an effective decision.

4 So that I don't think we need to worry  
5 about that. At this point everyone is going to have  
6 full opportunity to present your cases. In terms of  
7 a pre-filed testimony deadline and the short  
8 turnaround for any written rebuttal testimony that  
9 anyone wants to provide, it strikes me that we could  
10 move that later in May, those dates until later in  
11 May, and I still haven't heard anything that would  
12 suggest to me or haven't heard any request from anyone  
13 to start the second round of written discovery and  
14 allowing for depositions to be started during that  
15 same period that would cause me to think that we  
16 should do anything other than use the original dates  
17 that we've been talking about.

18 I think Ms. Curran's suggestion to move  
19 the dates for the first round two days later and then  
20 still start the second round on April 26th is probably  
21 reasonable and would allow us to fit all of the  
22 requisite dates in between those times.

23 Anything else before we start nailing  
24 these down so that I can issue an order with these  
25 dates in them?

1 MR. REPKA: This is Dave Repka.

2 I just am not sure I understand where we  
3 are, but I think it is better to get the depositions  
4 contemporaneous with any second round so that the  
5 depositions can be in lieu of a second round, and it  
6 just seems to me getting that deposition period into  
7 the last week of April and maybe extending into the  
8 first week of May, if necessary, would be as late as  
9 that really could be.

10 CHAIRPERSON YOUNG: Well, I think that  
11 probably there wouldn't be any problem with -- and  
12 this is going to be something that may require us all  
13 to get on the phone several times -- but any problem  
14 with allowing the depositions to start with the second  
15 round of written discovery, but allowing them to  
16 continue after it is finished so that there would be  
17 a fairly long period in there for everyone to get all  
18 of your depositions done.

19 So anything else before we start just  
20 going through and finalizing this schedule?

21 MS. CURRAN: Judge, this is Diane Curran.

22 I'd like to propose I'm willing to do  
23 depositions simultaneously with the second round of  
24 discovery, but would like to extend the time for doing  
25 depositions through the week of May 10th, ending on

1 the 14th, and then take the following two weeks, which  
2 includes one day which is a holiday and a holiday  
3 weekend, and have testimony due the 28th of May, and  
4 then rebuttal testimony, if there is written rebuttal,  
5 could be due, say, the second week of June before the  
6 hearing starts.

7 CHAIRPERSON YOUNG: Mr. Repka, I'll hear  
8 from you on her suggestion.

9 MR. REPKA: With respect to -- well, I'm  
10 not sure that --

11 CHAIRPERSON YOUNG: Well, let's talk first  
12 about the pre-filed testimony. We're talking about  
13 the non-security contentions at this point.

14 I still see a potential problem developing  
15 potentially with the security contentions, but since  
16 we had set aside the first week in June for those and  
17 since we have not issued our order on those, with the  
18 warning that we may, as I said earlier, want to  
19 incorporate some of these deadlines into --  
20 incorporate the discovery schedule for security  
21 related contentions into this schedule to some degree,  
22 it strikes me that maybe some time between May 14th  
23 and May 28th would be a good time for pre-filed  
24 testimony and then a quick turnaround on rebuttal

25 The main thing I wanted to hear from you,



1 Mr. Repka was on the pre-filed testimony.

2 MR. REPKA: I think the idea of some time  
3 between May 14th and May 28th with a quick turnaround  
4 for rebuttal sounds about right. I think the  
5 particular date in there --

6 CHAIRPERSON YOUNG: When you say "quick  
7 turnaround," what is in your mind when you say that?  
8 Two days?

9 MR. REPKA: I think that --

10 CHAIRPERSON YOUNG: Three days? Or how  
11 about if we set the deadline for pre-filed testimony  
12 as May 26th and for rebuttal as June? Well, June 1st,  
13 that would be the first day of the security  
14 contentions hearing if we were able to do that.

15 MR. REPKA: Yeah, I would think that  
16 something along the lines of about three or four days  
17 in the middle of the week at --

18 CHAIRPERSON YOUNG: The 25th and the 28th?

19 MR. REPKA: Yeah, we could do that or we  
20 could do the 21st and the 28th.

21 CHAIRPERSON YOUNG: Ms. Curran, could you  
22 live with either the 21st or 25th -- I'm sorry.  
23 That's not an American holiday.

24 MS. CURRAN: Oh, I'm looking at the wrong  
25 weekend.

1 CHAIRPERSON YOUNG: Somewhere between the  
2 21st and the 25th for pre-filed testimony and then the  
3 28th for rebuttal?

4 MS. CURRAN: If that's all I've got to  
5 worry about, I might be able to do it. It's extremely  
6 short. It's because if we go -- if we get our last  
7 written discovery response on the 10th, if we take  
8 depositions that week, then we're talking about less  
9 than a week to prepare testimony based on that  
10 information. That's very, very little time.

11 CHAIRPERSON YOUNG: Now, what was the  
12 thing that happened the week before? I'm sorry.  
13 You --

14 MS. CURRAN: The second round of discovery  
15 responses is due on the 10th. If the time for taking  
16 depositions stays open that week between the 11th and  
17 the 14th, then what you're proposing is to give us  
18 less than a week or maybe just a week to prepare our  
19 testimony.

20 CHAIRPERSON YOUNG: If you saved all of  
21 your depositions up until the last minute, but if you  
22 could start those at the end of April and continue  
23 them all the way through May --

24 MS. CURRAN: But I've got the --

25 CHAIRPERSON YOUNG: -- you would have the

1 situation that you would not leave them all right to  
2 the end.

3 MS. CURRAN: Well, I'm not going to do  
4 that many. I mean I've got a client that's a public  
5 interest group that's got a budget.

6 CHAIRPERSON YOUNG: I understand.

7 MS. CURRAN: And I'm not going to do that  
8 many, and I'm going to have to collect as much  
9 information as I can to educate myself as much as  
10 possible before going to the expense of taking an oral  
11 deposition. So my experience is you use a written  
12 deposition, written discovery to educate yourself  
13 about the other side's position. Then you use a  
14 deposition to really go deep.

15 If you take your deposition before you do  
16 you written discovery, it sort of undermines the  
17 purpose of the written discovery.

18 CHAIRPERSON YOUNG: Okay. Well, let's get  
19 back to the overview. We're talking about a first  
20 round of written discovery, and I think that if Judge  
21 Baratta and Judge Elleman and I need to talk, we can  
22 do that. But if we were to allow you the times that  
23 you requested, March 31st for the request, April 14th  
24 for the responses, and then fit the objections and  
25 motions to compel in there, and then you've got some

1 good discovery requests out there during that time,  
2 and then starting on April 26th you could start with  
3 both your second written round and your depositions,  
4 from what I'm hearing from both of you it sounds like  
5 the best thing that would accommodate both of your  
6 interests would be to make the deadlines for pre-filed  
7 testimony be the 24th or the 25th, and any rebuttal  
8 that any party wanted to file in writing the 28th.

9 MS. CURRAN: But let's say the deadline  
10 for the initial pre-filed testimony is May 25th and  
11 rebuttal is the 28th with the understanding that there  
12 would be an opportunity for oral rebuttal at the  
13 hearing because three days isn't very long to prepare  
14 rebuttal.

15 MR. REPKA: And not to be too difficult,  
16 but I would say the 24th is better for initial  
17 testimony with the 28th for rebuttal just to provide  
18 an extra day for rebuttal.

19 And I think that backing up from the 24th  
20 two weeks to prepare take you back to the 10th, and I  
21 think the 10th just needs to be a hard date for all.  
22 All discovery should be complete and in by the 10th,  
23 including depositions.

24 MS. CURRAN: Well, we've already discussed  
25 that. We don't agree with that. I think the Judge

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1 has to decide.

2 CHAIRPERSON YOUNG: Okay, all right. If  
3 we say midnight of May 24th for pre-filed testimony,  
4 that would give you the benefit of the weekend and  
5 that whole day until late in the day on the 24th, and  
6 then the responses on the 28th.

7 If we go with the schedule that we were  
8 talking about, the final responses would be due on May  
9 10th, but if there were any motions to compel, which  
10 I would hope we would not need to have that happen at  
11 that point because the objection would have been filed  
12 on May 3rd, and also I would expect that if there's  
13 any indication of game playing or avoidance, well, I  
14 would expect there wouldn't be any of that, and that  
15 if there was any indication that that was occurring  
16 that that would manifest itself much earlier so that  
17 we really wouldn't have a whole lot of disputes pop up  
18 near the end of this long schedule that we're talking  
19 about, but would not foreclose allowing the motions to  
20 compel on May 12th as we had talked about or maybe set  
21 a telephone conference, as Mr. Repka has suggested,  
22 rather than deadlines for the -- well, no, I'm sorry.  
23 May 12th would be motions to compel and then set a  
24 telephone conference after that.

25 All right. Anything else?

1                   And then what I want to ask Judge Baratta  
2                   and Judge Elleman: do we need to confer for a minute?  
3                   You sort of hear us, what we're going through. Do you  
4                   think we need to confer on that or can we go ahead and  
5                   start setting some of these dates?

6                   JUDGE ELLEMAN: This is Judge Elleman.

7                   At the end of the conversation I think we  
8                   should confer, yes. And I don't know that you're  
9                   going to get anymore input at this point from the  
10                  parties. I think it would just be helpful because I  
11                  lost a couple of those dates in between.

12                 CHAIRPERSON YOUNG: Okay.

13                 MS. UTTAL: Judge.

14                 CHAIRPERSON YOUNG: Yes.

15                 MS. UTTAL: This is Susan Uttal.

16                 From the standpoint of view, I think May  
17                 24th for the pre-filed testimony is a little  
18                 ambitious. I was kind of tending towards the 28th as  
19                 being more realistic for the staff.

20                 CHAIRPERSON YOUNG: Any responses to that?

21                 MS. CURRAN: Well, that's BREDL's  
22                 position.

23                 MR. REPKA: I really have no response.

24                 CHAIRPERSON YOUNG: Okay. Well, I mean,  
25                 we are talking about non-security contentions here,

1 and we are talking about the middle of June for that  
2 hearing. So with the understanding that we're going  
3 to have to fit in security somewhere, we can talk  
4 about that.

5 What I think might be helpful at this  
6 point is to ask just as a logistical matter would it  
7 be helpful for us -- let me suggest this. Let's ask  
8 everyone to bear with us a minute and hold on, and I'm  
9 going to go into Judge Baratta's office, and we're  
10 going to call Judge Elleman separately and then get  
11 back to you.

12 But I think in terms of working out this  
13 schedule, I would like to sort of have input from the  
14 parties so that we don't impose something on you that  
15 we haven't given you a chance to deal with the  
16 specifics of in such a way that if there are any  
17 issues they get fleshed out right now rather than  
18 later. So --

19 JUDGE ELLEMAN: Judge Young, this is Judge  
20 Elleman.

21 I can give you a second line to call me on  
22 so that the parties can stay on this line.

23 CHAIRPERSON YOUNG: Oh, they can stay on,  
24 right. Okay, and if you want to leave that open, I'm  
25 assuming if we hang up, we can call back in, but

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1 what's your second line?

2 JUDGE ELLEMAN: (919) 782-7975.

3 CHAIRPERSON YOUNG: Okay. All right.  
4 Then I'm just going to lay my phone down, and go into  
5 Judge Baratta's office, and we're going to take a few  
6 minutes to confer and then get back with you.

7 JUDGE BARATTA: All right. In order for  
8 me to call, I'm going to put it on hold a second.

9 CHAIRPERSON YOUNG: Actually -- okay.  
10 That's fine. Okay, good.

11 (Whereupon, the foregoing matter went off  
12 the record at 10:43 a.m. and went back on  
13 the record at 10:54 a.m.)

14 CHAIRPERSON YOUNG: All right. To start  
15 back, it strikes me that Ms. Curran's request that the  
16 March 31st deadline for the initial written discovery  
17 request makes sense. So unless either Judge Baratta  
18 or Judge Elleman has any problem with that or if there  
19 are any other significant problems anyone else has  
20 that come to mind that you couldn't think of earlier,  
21 they would have to be pretty significant. We're going  
22 to go ahead and set that for March 31st.

23 The responses would then be due two weeks  
24 after that or, let's see, April 14th. The objections,  
25 if we set March 31st -- hello?



1 JUDGE ELLEMAN: This is Judge Elleman. My  
2 contact had broken off.

3 CHAIRPERSON YOUNG: Oh, sorry. Okay. I  
4 was just starting with the March 31st date for the  
5 initial discovery request going out.

6 Can everyone hear?

7 That was all right with you, Judge  
8 Elleman?

9 JUDGE ELLEMAN: Yes.

10 CHAIRPERSON YOUNG: All right. With the  
11 initial discovery request being March 31st, if we  
12 could get objections, motions for protective order,  
13 motions to quash, anything of that nature whatsoever,  
14 by the 5th of April, I mean, if we could do it by the  
15 2nd, that would be fine, too, but let me hear from you  
16 all on that. Is the 2nd or the 5th better for you  
17 all? For the parties?

18 MR. REPKA: Are you speaking to Judge  
19 Baratta and Judge Elleman or --

20 CHAIRPERSON YOUNG: To anyone. Mainly to  
21 the parties in terms of the objection.

22 MS. CURRAN: This is Diane Curran. I  
23 thought we settled on the 2nd.

24 CHAIRPERSON YOUNG: Okay. The 2nd?

25 MR. REPKA: The 2nd is fine.

1 CHAIRPERSON YOUNG: The 2nd is fine. All  
2 right then.

3 The next thing would be to set a telephone  
4 conference to discuss the objections. The 6th, would  
5 that work for people?

6 MS. CURRAN: What did you say?

7 CHAIRPERSON YOUNG: April 6th.

8 MS. CURRAN: That's fine.

9 CHAIRPERSON YOUNG: Judge Baratta and  
10 Judge Elleman, April 6th work?

11 JUDGE BARATTA: That's fine with Judge  
12 Baratta.

13 CHAIRPERSON YOUNG: Any -- Judge Elleman?

14 JUDGE ELLEMAN: I'm checking. I'm taking  
15 a look right now.

16 That will be fine.

17 CHAIRPERSON YOUNG: Any particular time  
18 better for people?

19 MS. CURRAN: Is ten o'clock all right?MR.

20 REPKA: Ten o'clock is fine.

21 MS. UTTAL: Ten o'clock is fine with the  
22 staff.

23 CHAIRPERSON YOUNG: Okay. Responses then  
24 would be the 14th, and then motions to compel the  
25 16th, and then any conference all on that the 19th or

1 20th. Judge Baratta and Judge Elleman, do you have  
2 any preference on the 19th or 20th and are you  
3 available on both of those days I guess I should ask  
4 first?

5 JUDGE BARATTA: I have only a slight  
6 preference for the 20th over the 19th, but either one  
7 could be accommodated.

8 CHAIRPERSON YOUNG: Judge Elleman?

9 JUDGE ELLEMAN: No, either one.

10 CHAIRPERSON YOUNG: All right. Then let's  
11 say 4/20 and let's say again at ten o'clock.

12 JUDGE ELLEMAN: Did you say 20?

13 CHAIRPERSON YOUNG: Right.

14 JUDGE ELLEMAN: That's fine.

15 CHAIRPERSON YOUNG: Okay. Then the second  
16 round of written discovery, the first request would be  
17 due on Monday, the 26th. As we discussed earlier,  
18 then the objections, we might set for the 30th.

19 MS. CURRAN: That sounds reasonable.

20 CHAIRPERSON YOUNG: And then a conference  
21 call, we should have been -- it seems like maybe May  
22 4th.

23 MR. REPKA: That would be fine.

24 CHAIRPERSON YOUNG: Okay. Then the  
25 responses would be due on May 10th. Motions to

1 compel, May 12th; a conference call, May 14th.

2 MS. CURRAN: Judge Young.

3 CHAIRPERSON YOUNG: Un-huh.

4 MS. CURRAN: This is Diane Curran.

5 Did you set a time to talk about any  
6 objections to discovery requests that might be filed  
7 on the 30th.

8 CHAIRPERSON YOUNG: May 4th.

9 MS. CURRAN: May 4th?

10 CHAIRPERSON YOUNG: Let's say ten o'clock,  
11 and that was just suggested that 4th for responses to  
12 any motions to compel.

13 MR. REPKA: That's fine.

14 CHAIRPERSON YOUNG: Okay. The depositions  
15 would also start on April 26th and go through, if we  
16 set the pre-filed testimony, I think the staff had  
17 indicated that the 24th was bad for you. How about  
18 midnight the 25th with any rebuttal written testimony  
19 that any party wants to file on the 28th?

20 MS. UTTAL: That's still kind of short,  
21 but it's better than the 24th.

22 CHAIRPERSON YOUNG: Okay. Well, we'll say  
23 midnight.

24 Now, obviously all of these things since  
25 we are in non-security here would need to be filed

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1 electronically, and if there's any documents that you  
2 need to provide, the previous requirement that  
3 anything that needs to be filed has to be received by  
4 everyone by that date is the operative requirement.

5 Okay. So the pre-filed testimony, direct,  
6 on May 25th; any rebuttal on May 28th.

7 All parties have a continuing duty to  
8 supplement, and by that I mean if it would be a  
9 response that you should have given to the original  
10 question when you had it, you have a duty to  
11 supplement your responses with any information that  
12 would have been encompassed in your original response  
13 if you had the information at that time.

14 And that would continue up through the  
15 hearing. If you've become aware of anything that  
16 would change any circumstance or provide any  
17 additional information on any relevant issues, you  
18 would have that continuing duty.

19 Now, I was not thinking of setting a  
20 deadline for summary disposition motions because I  
21 think the staff was the only one who indicated that  
22 there was a possibility on that, and it may be that we  
23 need to set a date, but at this point that may not be  
24 was necessary as some of the other dates that we've  
25 been talking about.

1                   Now, these are all on non-security related  
2 issues, and this would be assuming that that would be  
3 heard -- those would be heard the week of June 14th in  
4 Charlotte.

5                   MS. CURRAN: The non-security issues?

6                   CHAIRPERSON YOUNG: I'm sorry. Non-  
7 security. Thank you.

8                   MS. CURRAN: Okay.

9                   CHAIRPERSON YOUNG: Let's see. We're  
10 expecting BREDL's response to Duke's motion to  
11 dismiss, and that's the only thing that's coming to us  
12 today, and you don't know whether you're going to file  
13 an amended contention or not, but that's already been  
14 set for March 30th.

15                   Are there any other dates that I've left  
16 out or that anyone is not clear about?

17                   JUDGE ELLEMAN: Judge Young, this is Judge  
18 Elleman.

19                   Could you confirm times for the conference  
20 calls so I can protect those?

21                   CHAIRPERSON YOUNG: I was just following  
22 suit from the first one and setting all of those for  
23 ten o'clock.

24                   JUDGE ELLEMAN: Well, could we go back  
25 over them individually and let me check those, please?

1 CHAIRPERSON YOUNG: Okay. The first one  
2 would be on April 6th at ten o'clock, and the next one  
3 would be on, let's see, April 20th, I believe is the  
4 next one at ten o'clock.

5 The next one would be May 4th at ten  
6 o'clock, and the next one would be May 14th at ten  
7 o'clock.

8 I will also try to get us back on using  
9 the same pass code number. Some of the operators let  
10 us do that, and it's easier that way to keep  
11 everything the same. Some of them don't. Some of  
12 them let us call in a little early. Sometimes we  
13 can't, but we'll try to make that go as smoothly as  
14 possible.

15 Anything I've overlooked that anyone wants  
16 to -- Judge Baratta?

17 JUDGE BARATTA: No. I believe that's  
18 everything.

19 CHAIRPERSON YOUNG: Judge Elleman?

20 JUDGE ELLEMAN: That's fine.

21 CHAIRPERSON YOUNG: Ms. Curran?

22 MS. CURRAN: I just have a request. I  
23 know that soon we'll be getting a ruling from the  
24 Board on our security contentions, and there will be  
25 scheduling issues there. I think it would help if the

1 Board could do some kind of a draft proposed schedule,  
2 what you're thinking of in writing. If we can be  
3 looking at something on paper, I think it might make  
4 the discussion go more quickly to see how everything  
5 fits together.

6 Because I think it is going to be  
7 difficult, and it would certainly help me to have a  
8 road map of your thinking about the scheduling if  
9 we're going to have another conversation.

10 CHAIRPERSON YOUNG: Let's see. The next  
11 time we have scheduled to talk is the 6th at ten  
12 o'clock. We're obviously going to try to get this  
13 order out as soon as possible. We have some  
14 logistical issues there, obviously, but unless we set  
15 something sooner, I'd say let's count on that one  
16 being longer to talk about dates.

17 If we can accommodate you on setting out  
18 a proposed schedule in writing, we'll certainly try to  
19 do that, but I think to the degree that -- well, let  
20 me just ask the parties.

21 Do you all have any preference? Does it  
22 make it easier for you to keep things all on the same  
23 series of dates so that they're easier to keep up  
24 with? For me that would be easier because then I  
25 wouldn't have to be remembering various deadlines in

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1 between. I'd have fewer deadlines to remember, and I  
2 would know that I had to do everything by X deadline.

3 Do the parties have any preference whether  
4 we use existing deadlines and fit the security int  
5 that as much as possible or whether different  
6 deadlines be set?

7 MR. REPKA: This is Duke.

8 We have no strong preferences. I think  
9 your idea to try to keep on the same deadlines makes  
10 sense to the maximum extent possible.

11 CHAIRPERSON YOUNG: Ms. Curran?

12 MS. CURRAN: It's too abstract for me at  
13 this point, Judge Young. I just need to get a sense  
14 of when the contentions will be admitted and how much  
15 time will there be for discovery. My only point there  
16 was to say there's a lot of things to be coordinated  
17 here, and I just find that, you know, we've talked  
18 through a lot of things. I feel like I could have  
19 responded to you more effectively if I had had a sense  
20 up front what the overall thinking was on the  
21 schedule.

22 And that's true -- I think that will be  
23 also true for the security issues.

24 CHAIRPERSON YOUNG: Okay. Well, --

25 MS. UTTAL: Judge.

1 CHAIRPERSON YOUNG: Yeah.

2 MS. UTTAL: From the staff's point of  
3 view, there a whole different set of witnesses, and I  
4 haven't had the opportunity to coordinate. I have  
5 their calendars, but I haven't had the opportunity to  
6 think about when they're going to be available. So I  
7 can't say for sure.

8 CHAIRPERSON YOUNG: Okay. One thing I was  
9 going to say about this, staff, by the way, was that  
10 the deadlines that we just set from what I understood  
11 Ms. Uttal to say earlier, would apply to the staff  
12 with regard to the non-security safety contention, and  
13 that we'll fit the environmental issues in as soon as  
14 SER or as soon as you know when it's going to be  
15 issued, as soon as we can, as a practical matter plug  
16 those dates in.

17 On the security ones, we'll do our best to  
18 get dates to you, and obviously we'll do our best to  
19 get the order issued as soon as possible, but did you,  
20 Ms. Curran or Ms. Uttal, did either of you want to  
21 indicate a preference to the general principle of  
22 keeping the deadlines on the same dates or having them  
23 interspersed.

24 MS. UTTAL: I feel that trying to  
25 coordinate things, perhaps interspersed. I just -- I

1 have to sit down with the security people's schedules  
2 and see who's going to be available. There is a lot  
3 of time when they seem not to be available

4 MS. CURRAN: Judge Young.

5 CHAIRPERSON YOUNG: Un-huh.

6 MS. CURRAN: This is Diane Curran. Again,  
7 it's still very abstract for us because we don't know  
8 how many contentions will be admitted or which  
9 contentions will be admitted, but I can tell you right  
10 now that if you admit security contentions on  
11 Friday --

12 CHAIRPERSON YOUNG: Tomorrow?

13 MS. CURRAN: Yes.

14 CHAIRPERSON YOUNG: That's not going to  
15 happen.

16 MS. CURRAN: Well, I don't foresee being  
17 able to prepare discovery requests by next Wednesday.  
18 So in terms of keeping with --

19 CHAIRPERSON YOUNG: Oh, right, right.

20 MS. CURRAN: -- this schedule, I don't  
21 think that's going to work for us.

22 CHAIRPERSON YOUNG: Within a rule of  
23 reason. I'm not necessarily saying you'd start on  
24 that date, but that we might plug in the initial one  
25 on the date that is the same for, say, responses,

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1 something like that.

2 MS. CURRAN: I think I'd just rather wait  
3 and see your ruling and try to figure something out at  
4 that point.

5 CHAIRPERSON YOUNG: All right. Then if we  
6 don't set a time to talk earlier, we can talk on the  
7 6th. Would it be helpful -- well, let's just leave it  
8 that way, and if we need to set something earlier, we  
9 can just try to do that, but I think the 6th is  
10 probably a reasonable date to plan to attempt, if  
11 we've been able to get the order done by then, to  
12 talk about some of the security issues, and maybe the  
13 staff will have a better idea also on the SER at that  
14 point.

15 Okay. Well, we've done a lot today. I  
16 appreciate everyone's --

17 MR. REPKA: I have one more.

18 CHAIRPERSON YOUNG: Go ahead.

19 MR. REPKA: I have one more issue, Judge,  
20 if I may.

21 On depositions, the only thing I didn't  
22 hear, and maybe it was intentional, but was April 26th  
23 but no end date.

24 CHAIRPERSON YOUNG: You're right. You  
25 didn't. Let's see. If the pre-filed direct is due

1 May 25th, would a week prior to that give everybody  
2 enough time both to do your depositions and to prepare  
3 your pre-filed?

4 MS. CURRAN: So you say depositions would  
5 close on the 17th or the 18th?

6 CHAIRPERSON YOUNG: That's a question,  
7 yeah.

8 MR. REPKA: I think I would like a little  
9 more time. As the fact of the matter, I would expect  
10 we would only be doing one deposition, but I'd hate to  
11 have that put off because the time period extended to  
12 that time, to the 17th or 18th because we will have to  
13 prepare testimony. So I'd like to see it earlier than  
14 that.

15 CHAIRPERSON YOUNG: May 14th?

16 MS. CURRAN: That's fine.

17 CHAIRPERSON YOUNG: Okay. Okay. All  
18 right. Now, can I just ask the court reporter? Do  
19 you know whether -- this should have been ordered on  
20 one-day turnaround. Do you know whether that was  
21 accomplished?

22 THE REPORTER: To my knowledge, yes.

23 CHAIRPERSON YOUNG: Okay, great. All  
24 right. We'll try to get an order out on this tomorrow  
25 or Monday at the latest, but assuming everyone has

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1 kept notes, hopefully we're all on the same page, and  
2 I do appreciate everyone's cooperation, and I think if  
3 we can continue to try to work together like this, we  
4 will be able to achieve all parties' or address all  
5 parties' needs and be more likely to have an efficient  
6 and also fair hearing.

7 Thank you all.

8 (Whereupon, at 11:13 a.m., the  
9 teleconference in the above-entitled matter was  
10 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 Corporationa

Docket Number: 50-413-OLA;

ASLBP No. 03-815-03-OLA

Location: teleconference

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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Tobias Walter  
Official Reporter  
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