

RAS 7780

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Duke Energy Corporation

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

Location: U.S. NRC  
Two White Flint North  
11545 Rockville Pike  
Rockville, Maryland 20852

DOCKETED  
USNRC

May 18, 2004 (2:17PM)

Date: Friday, May 14, 2004

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Work Order No.: NRC-1478

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1 UNITED STATES OF AMERICA  
 2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD (ASLB)

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9 IN THE MATTER OF:                   :  
 10 DUKE ENERGY CORPORATION         : Docket No. 50-413-OLA  
 11 Catawba Nuclear Station          : Docket No. 50-414-OLA  
 12 Units 1 and 2                     : ASLBP NO. 03-815-03-OLA

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14  
 15 Friday, May 14, 2004

16 U.S. NRC

17 Two White Flint North

18 11545 Rockville Pike

19 Rockville, Maryland 20852

20 The above-entitled matter came on for  
 21 hearing, pursuant to notice, at 10:00 a.m.

22 BEFORE:

23 ANN MARSHALL YOUNG, Chair

24 ANTHONY J. BARATTA, Administrative Judge

25 THOMAS S. ELLEMAN, Administrative Judge

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 WASHINGTON, D.C. 20005-3701

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P R O C E E D I N G S

(10:00 a.m.)

1  
2  
3 CHAIR YOUNG: On the record. By the way,  
4 when we set the schedule for anything further on the  
5 redactions, either of these two documents, the direct  
6 transmittal or the RIS document, anything in there  
7 that anyone does think is relevant, feel free to point  
8 that out to us, too.

9 Okay. On the schedule. You, all were  
10 talking together. Do you have anything you want to  
11 report?

12 MR. REPKA: I think we are close to agreeing  
13 on an approach. Mr. Nesbitt is making one call to  
14 check on the availability of some of our witnesses.

15 CHAIR YOUNG: Does it include hearing dates?

16 MR. REPKA: Yes. What we're talking about  
17 would actually maintain the June 14th hearing date on  
18 Contention 1.

19 CHAIR YOUNG: That would work. The only  
20 thing is, I just got assigned to another case, and  
21 part of the thing that we were trying to --

22 MR. REPKA: That case should be a secondary  
23 priority. It's not one of my cases, is it?

24 (Laughter.)

25 CHAIR YOUNG: You're right. I may have to

1 go back and reconsider some things.

2 MR. REPKA: Let me try to summarize this,  
3 and then Ms. Curran and Ms. Uttal can make any  
4 revisions that are necessary.

5 Obviously, Duke has a strong interest in  
6 trying to maintain the schedule to the maximum extent  
7 possible. We are sympathetic to the circumstances and  
8 are trying to make reasonable accommodations  
9 consistent with the need to go forward with the  
10 process and the program.

11 We have had preliminary discussions, and I  
12 think we have some confidence we can reach a  
13 resolution on Contention 2. Obviously, we have not  
14 reached a resolution yet, but we have some confidence  
15 that there may be a basis to do that. And what we  
16 would propose would be in the next two weeks to pursue  
17 that resolution, with the hope that we can finalize a  
18 resolution of Contention 2 in that two-week period.

19 At the same time, recognizing that that  
20 would significantly reduce the workload for hearing in  
21 June, we would maintain the June 14th hearing date --  
22 actually, I think the 15th was the hearing date for  
23 Contention 1. There are two outstanding discovery  
24 issues on Contention 1. One is the Staff's request  
25 for a deposition of Dr. Lyman, and the second is

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1 Duke's second set of interrogatories to BREDL that  
2 need responses, and the Staff's second set.

3 Now, to meet the June 14th -- June 15th  
4 hearing date on Contention 1, the Staff and Duke have  
5 agreed to dispense with the deposition if we can meet  
6 the -- as a basis to continue to meet the hearing  
7 date. We would then look for some certain relaxations  
8 on the interim dates before June 15th. And I have not  
9 come up with a date for a response to the pending  
10 discovery requests, so that's one I think we have not  
11 built in.

12 We would also relax the testimony dates, and  
13 I think that was one of the things Mr. Nesbitt was  
14 just confirming, but I think we would be looking at  
15 filing testimony on Contention 1 on June 2nd, and with  
16 rebuttal testimony then on -- did we say June 7th? Is  
17 that what we said?

18 MS. CURRAN: Yes. If the hearing doesn't  
19 start until the 15th, could we make that the 8th?

20 MR. REPKA: That's fine.

21 ADMIN. JUDGE BARATTA: So you're saying  
22 rebuttal at that time would begin June 8th?

23 MR. REPKA: June 2nd for direct testimony,  
24 June 8th for rebuttal, hearing on June 15th. So then  
25 we would just need a date prior to June for discovery

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1 responses, something sufficiently prior to June 2nd  
2 for those responses, but with enough time for Dr.  
3 Lyman to get back to work and to do that. All that  
4 would be on Contention 1.

5 And then on Contention 2, I think what we  
6 would like is to set a contingency date if for some  
7 reason we can't get the settlement resolution in the  
8 next two weeks on Contention 2. Ideally, that date  
9 should be as early as possible. July would be our  
10 target, but we understand the Board has had scheduling  
11 in the past on July. We were hopeful that if it was  
12 just a one-day target, that might facilitate that, but  
13 that would be the goal.

14 CHAIR YOUNG: Just on Contention 2.

15 MR. REPKA: Just on Contention 2.

16 CHAIR YOUNG: So we'd keep the 15th, 16th  
17 and 17th -- well, we probably won't need it all, but  
18 keep that time, and we would add in an opportunity for  
19 limited appearance statements when we're down in  
20 Charlotte on Contention 2. Are you agreed on where  
21 the hearing would be -- if that was just a one-day  
22 thing, could we do that here?

23 MR. REPKA: Certainly, if that would  
24 accommodate the Board, we are happy to do that.

25 MS. CURRAN: If that would make it possible



1 for the Board to do -- of course, we'd like to have it  
2 in North Carolina, but -- first of all, I'd just like  
3 to say, we appreciate the extent to which the other  
4 parties have tried to accommodate us. It's really  
5 unfortunate what happened to Dr. Lyman and his family,  
6 and we appreciate that you have all been so  
7 cooperative. So, if that would make it easier to have  
8 that second hearing -- because we realize -- I've  
9 gotten a sense that you all are very busy in July --

10 CHAIR YOUNG: Well, Judge Baratta has other  
11 responsibilities and, as I said, I just got assigned  
12 to a new case -- and we realize that nothing was  
13 final, but it sounded as if you all were in agreement  
14 on changing the June date, so -- and, meanwhile, I'm  
15 trying to figure out whether I can change some plans  
16 I had for vacation and when that could be, when would  
17 be the best time to do that. Let's assume we do one  
18 day, we need the one day and we do the one day --

19 ADMIN. JUDGE BARATTA: We already have a  
20 security hearing scheduled for the 15th, July 15th.

21 CHAIR YOUNG: Right.

22 ADMIN. JUDGE BARATTA: So, would something -

23 -

24 CHAIR YOUNG: You're coming back on the  
25 13th, could you get here by the 15th?

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1 ADMIN. JUDGE ELLEMAN: I'm coming back on  
2 Tuesday, what date is --

3 CHAIR YOUNG: The 13th.

4 ADMIN. JUDGE BARATTA: The 15th is Thursday

5

6 CHAIR YOUNG: We had the 15th set for a  
7 closed hearing on any security discovery or other  
8 issues, so -- Judge Elleman is going to be out of town  
9 through the 13th, through Tuesday -- is that right?

10 ADMIN. JUDGE ELLEMAN: That's correct, I'm  
11 coming back Tuesday afternoon.

12 CHAIR YOUNG: So he was planning to come up  
13 here for that closed hearing on the 15th, if we could  
14 combine that with a hearing on Contention 2 --

15 MS. CURRAN: I don't think we could get them  
16 both done.

17 CHAIR YOUNG: Maybe not on the one date, but  
18 carrying it over to Friday, the 16th.

19 MS. UTTAL: I lose one of my witnesses on  
20 the 16th that I would for Contention 2.

21 ADMIN. JUDGE BARATTA: Well, maybe we could  
22 switch, do the security on Friday and the hearing on  
23 Thursday.

24 MS. UTTAL: Judge Elleman won't be here on  
25 the 14th. Okay. If we have the security argument on

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1 the 16th and have the Contention 2 on the 15th, then  
2 I can do it.

3 MR. REPKA: Those dates work for us, the  
4 15th and 16th are good dates.

5 CHAIR YOUNG: And this is just a potential  
6 hearing on Contention 2. So, if we need to move --  
7 assuming we do Contention 2, we would move the closed  
8 hearing to the 16th. If we don't do Contention 2, we  
9 would keep the closed hearing on the 15th.

10 MS. CURRAN: I just have one little  
11 modification that occurs to me. If we had set aside  
12 the 15th, 16th, and 17th for hearing in Charlotte --  
13 I'm just trying to give Dr. Lyman as much time as he  
14 can to prepare and, again, I don't know what his  
15 situation is going to be. I'm making a good faith  
16 effort here to set up a schedule. I just don't know  
17 if he's going to be in a position to do this, but I  
18 think it's reasonable to anticipate that he will. But  
19 what I'd like to propose is setting aside the 16th of  
20 June and maybe the 17th, if we need to go over on  
21 Contention 1, and then push the deadline for testimony  
22 back by a day -- what do you do, push it forward or  
23 backwards, I get confused -- to the 3rd and the 9th of  
24 June.

25 ADMIN. JUDGE BARATTA: I would like to try -

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1 - I'd like really to try to shoot for that June 15th  
2 date because we have a problem that's developing on  
3 something else that may necessitate my not being  
4 available on the 16th, but --

5 CHAIR YOUNG: On the 17th.

6 ADMIN. JUDGE BARATTA: I'm sorry -- the  
7 17th. I understand that Dr. Lyman's situation takes  
8 precedence but, again, I'd like to try to shoot for  
9 the 15th.

10 CHAIR YOUNG: So we'll keep it the 2nd and  
11 the 8th and the 15th. Now, what we thought we would  
12 do in terms of -- you weren't part of this discussion,  
13 but we were talking about limited appearance  
14 statements -- is set aside an hour or two at the end  
15 of one day for those, and when we do the Notice of  
16 Hearing, require anyone who wants to give a statement  
17 to notify us. In any event, we would need to set  
18 aside some time on one of the days for that, and  
19 probably the best would be to do that earlier rather  
20 than later, so that if we have any finishing up  
21 problems, that wouldn't interfere with that. So, we  
22 could set that for the 15th.

23 MS. CURRAN: Judge Young, I'd just like to  
24 suggest that you set aside at least some evening hours  
25 -- early evening is fine -- but a lot of people work

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1 and they can't come during the day.

2 CHAIR YOUNG: Okay.

3 ADMIN. JUDGE BARATTA: I think maybe 7:00 to  
4 9:00.

5 MS. CURRAN: That sounds reasonable.

6 MR. FERNANDEZ: Finding that the facility we  
7 normally use down there may not be available.

8 ADMIN. JUDGE BARATTA: The limited  
9 appearances do not necessarily have to be in that  
10 facility, though. We may be able to find an  
11 alternative site.

12 CHAIR YOUNG: Right, we have to leave the  
13 courtroom at 5:00 or 5:30, I can't remember which it  
14 is.

15 ADMIN. JUDGE BARATTA: We can check on that.

16 MS. UTTAL: Judge, we should set dates for  
17 filing testimony. Although I have given up the idea  
18 of having a deposition on Contention 1, if we go  
19 forward with Contention 2, I will want to take Dr.  
20 Lyman's deposition. So, we need dates for those  
21 things.

22 CHAIR YOUNG: Can you talk about a date for  
23 that at this point?

24 MR. REPKA: Well, let's go backwards here.  
25 On Contention 1, we needed a date for filing the

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1 discovery responses, BREDL's discovery responses, and  
2 if testimony is due on the 2nd, at least a week before  
3 that would seem appropriate, at least. So, I would  
4 propose Monday the 24th, that's a week and a day,  
5 which is tight, but we want to give Dr. Lyman time --

6 MS. UTTAL: We're going up against a  
7 holiday weekend, so I would prefer the Monday because  
8 I would like to spend some time with the children.

9 MS. CURRAN: We'll try. I guess I'll just  
10 have to get back to you on whether we can do it.

11 CHAIR YOUNG: So, 5/24, unless further  
12 problems -- was there anything else on Contention 1?

13 MR. REPKA: I think that should take care of  
14 Contention 1, and then we just need -- we probably  
15 should set a date in there on Contention 2 -- well,  
16 two weeks from today, in which we would report to the  
17 Board on successful resolution.

18 CHAIR YOUNG: I'm sorry, I was writing. May  
19 28th for what?

20 MR. REPKA: A report to the Board on the  
21 outcome of settlement discussions on Contention 2. As  
22 I said, hopefully a report on a successful resolution.  
23 Then we would need dates for a --

24 MS. UTTAL: Deposition.

25 MR. REPKA: Susan, do you want to propose

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1 something on a deposition date?

2 MS. UTTAL: July 7th.

3 CHAIR YOUNG: July 7th, is that --

4 MS. UTTAL: Yes.

5 MS. CURRAN: For what?

6 MS. UTTAL: For the deposition.

7 MS. CURRAN: No, that's too late.

8 MS. UTTAL: You're right.

9 MS. CURRAN: That's probably when you want  
10 rebuttal testimony.

11 MS. UTTAL: Absolutely. We've got to go  
12 back to June.

13 MS. CURRAN: Maybe we should work backwards  
14 from -- what if we say rebuttal testimony on the 8th,  
15 initial testimony on the 1st, and work backwards that  
16 way. And then you want discovery to close maybe a  
17 week before that, a week before the 1st, which would  
18 be the 24th of June, last deposition?

19 MS. UTTAL: One of my people that I want to  
20 bring to deposition is not available.

21 MS. CURRAN: In June?

22 MS. UTTAL: The third week of June.

23 MS. CURRAN: What about the second week of  
24 June?

25 MS. UTTAL: Could we keep that open until I

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1 talk to him?

2 MS. CURRAN: It seems like we'll be able to  
3 work out a date for the deposition.

4 MS. UTTAL: I hope so. Okay. And then  
5 testimony --

6 CHAIR YOUNG: She said July 1st and 8th for  
7 the direct and rebuttal.

8 MS. UTTAL: Okay, 1st and 8th.

9 CHAIR YOUNG: So the only thing that remains  
10 open is the deposition date. Now, on -- if there are  
11 any disputes on discovery, I'm wondering whether we  
12 need to go ahead and try to find a date to talk in  
13 case there are. If the deadline for the responses is  
14 the 24th, you're out that week of the 24th, right?

15 ADMIN. JUDGE ELLEMAN: Right.

16 CHAIR YOUNG: Are you going to be accessible  
17 to a phone?

18 ADMIN. JUDGE ELLEMAN: I'll be back in on  
19 the 28th.

20 MS. UTTAL: Why don't we do that on the  
21 28th?

22 CHAIR YOUNG: The 28th --

23 MS. UTTAL: Because we may not need it.

24 CHAIR YOUNG: Okay. 9:30?

25 MR. REPKA: Is this June?



1 (Simultaneous discussion.)

2 MS. CURRAN: What time did you say?

3 CHAIR YOUNG: 9:30 on May 28th, we'll just  
4 set a telephone conference. Anything else? So, all  
5 other deadlines and dates that have been previously  
6 set will remain.

7 MR. REPKA: All other dates would relate to  
8 security, and they would be unchanged. I think we've  
9 changed everything else.

10 CHAIR YOUNG: Well, I think there are still  
11 proposed findings.

12 MR. REPKA: Oh, everything after the  
13 hearing, that would be correct.

14 CHAIR YOUNG: All right. Well, that was  
15 relatively easy. Anything else that we need to talk  
16 about today? Did you want to bring up anything?

17 ADMIN. JUDGE ELLEMAN: Well, let me pursue  
18 my question that I was going to ask. This is on the  
19 protective order, and since there is not disagreement  
20 on it, I guess this is for my edification only, and I  
21 had a question when I looked over the May 11th Duke  
22 Energy Corporation Motion to Modify Protective Order,  
23 and on the second page of that is the proposed  
24 revision to the protective order which is worded  
25 "BREDL agrees that any threatened or existing

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1 violation of this agreement would cause Duke" -- and  
2 then it goes on related to subcontractors. And that  
3 wording seemed more severe to me than the original  
4 protective order requirement or the confidential and  
5 nondisclosure agreements that were a part of that.

6 And so I was curious where this came from  
7 and what a threatened violation might consist of.

8 MR. REPKA: I don't have that in front of  
9 me, and so I can't compare one-to-one. It should not  
10 be different. It should be -- the paragraph 4 should  
11 be the same as the paragraph taken from the form  
12 attached to the original -- I believe it was April 8th  
13 protective order -- which would be the form, paragraph  
14 4 of the form, not the protective order itself. And  
15 I believe we just literally took the wordprocessor and  
16 cut and --

17 ADMIN. JUDGE ELLEMAN: Okay. I see what's  
18 happened here. You're right, it starts out the same  
19 way, and it's simply been expanded to include the  
20 specified subcontractors and other corporate --

21 MR. REPKA: Right. So, it's the form.

22 ADMIN. JUDGE ELLEMAN: Okay. That addresses  
23 that question I had.

24 CHAIR YOUNG: Okay. Now I don't understand  
25 that. I'm sorry. The modification is to --

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1 MR. REPKA: It's to the form that's  
2 incorporated as part of the protective order.

3 CHAIR YOUNG: Right.

4 MR. REPKA: Not to the order itself, but to  
5 the form of the nondisclosure agreement that the  
6 protective order --

7 CHAIR YOUNG: Does the existing paragraph  
8 form leave out something?

9 MR. REPKA: Does the existing form -- the  
10 difference is that it adds Duke's contractors. That's  
11 the word that is in there fourtimes.

12 CHAIR YOUNG: It just adds the words "Duke's  
13 contractors", otherwise, it's the same.

14 MR. REPKA: Four times, in one paragraph.

15 CHAIR YOUNG: Okay. So, basically --

16 MR. REPKA: The form covers Westinghouse in  
17 the future, but we thought there may be an amendment  
18 to the already executed nondisclosure agreement.

19 CHAIR YOUNG: So all you want me to do is  
20 sign addendum number --

21 MR. REPKA: Addendum No. 1.

22 CHAIR YOUNG: Didn't we already have one  
23 addendum --

24 MR. REPKA: I believe that was to security.

25 CHAIR YOUNG: That was a separate one.

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1 Right, that was the other one. Okay.

2 ADMIN. JUDGE ELLEMAN: That was all.

3 CHAIR YOUNG: All right. Then we're going  
4 to hear from you in two weeks about Contention 2.  
5 We're going to hear from you in one week about any  
6 additional comments on redactions, and then after that  
7 we will provide a way of allowing the Staff or anyone  
8 else to make any objections to anything that we may  
9 choose to de-redact or not to redact as argued by the  
10 Staff in the manner that we described earlier.

11 If there's nothing else, then I think that  
12 would conclude. Thank you, all.

13 (Whereupon, at 1:49 p.m., the proceedings in  
14 the above-entitled matter were concluded.)  
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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:


Name of Proceeding: Duke Energy Corporation

Docket Number: 50-413-OLA;

ASLBP No. 03-815-03-OLA

Location: Rockville, MD

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.



---

Alex Patton  
Official Reporter  
Neal R. Gross & Co., Inc.