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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: : Docket Nos. 50-413-OLA,
: 50-414-OLA
DUKE ENERGY CORPORATION : ASLBP No. 03-815-03-OLA
Catawba Nuclear Station, :
Units 1 and 2 :

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Friday, May 28, 2004

The above-entitled matter came on for
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:
ANN MARSHALL YOUNG Chair
ANTHONY J. BARATTA Administrative Law Judge
THOMAS S. ELLEMAN Administrative Law Judge

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1 On Behalf of the Nuclear Regulatory

2 Commission:

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10

11 Also Present:

12 Robert Martin, NRC

13 Stephen Nesbitt, Duke Energy

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P R O C E E D I N G S

(9:32 a.m.)

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2
3 JUDGE YOUNG: All right. Let's go ahead
4 and go on the record and just identify everyone who is
5 present for the record. This is Judge Young. Judge
6 Baratta and Judge Elleman, you're both present.

7 JUDGE ELLEMAN: Yes.

8 JUDGE BARATTA: Yes.

9 JUDGE YOUNG: And then the Staff.

10 MS. UTTAL: This is Susan Uttal, Staff
11 Counsel. I'm with Margaret Bupp, also Staff Counsel,
12 and Robert Martin, who is the project manager.

13 JUDGE YOUNG: And Mr. Repka.

14 MR. REPKA: Yes. This is Dave Repka, and
15 I'm here with Mark Wetterhahn and Ann Cottingham. And
16 then also Duke Counsel, and then on the separate line,
17 as you know, is Mr. Nesbitt, who is the Duke MOX Fuel
18 Project Manager.

19 JUDGE YOUNG: And Ms. Curran, you're on
20 your own.

21 MS. CURRAN: Yes. This is Diane Curran
22 representing Blue Ridge Environmental Defense League,
23 also known as BREDL. And I am by myself today;
24 although, if we need Dr. Lyman, he's given me his cell
25 phone number. I can give him a call. He's in New York

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1 with his family.

2 JUDGE YOUNG: Okay. All right. I made a
3 little list of things to go over today, and I guess
4 the first thing is BREDL's notice of withdrawing
5 Contention 2, and motion to change the schedule. And
6 you should have my May 25th order. And the only thing
7 that I think is left open in terms of the schedule at
8 this point, unless I'm missing something, would be the
9 actual time for the limited appearance statement
10 session or sessions, and the time for the July
11 hearing. All the other dates -- did anyone have any
12 issues with any of the other dates? Did they
13 correctly state what all the parties understood? And
14 I realize there's a series of orders that have dates
15 in them.

16 JUDGE ELLEMAN: Maybe you could summarize
17 the key dates. Would that be possible, Judge Young?

18 JUDGE YOUNG: Okay. Let's see. I'm going
19 to go back to -- on May 18th there was an order issued
20 dealing with the proposed redactions starting after
21 today. Let's see. The paragraph relating to the non-
22 security contentions are no longer relevant, so I'll
23 go back to an April 28th order, which I think
24 addresses the security issues. Let's see. The
25 initial discovery request, June 21st. Objections to

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1 those, June 23rd. Closed session to address discovery
2 issues, June 25th at 1 p.m. in our hearing room here.
3 Responses to initial security discovery requests on
4 July 2nd. Motions to compel on initial security
5 discovery requests, July 7th. Closed session was
6 originally on July 15th, and I believe we changed that
7 to July 16th at 10:00. Let me just make sure on the
8 time of that. Is that what everyone has on your
9 calendars? Let's see. July 15th at 1 --

10 JUDGE ELLEMAN: Your May 18th notice
11 confirms that on page 3.

12 JUDGE YOUNG: Okay.

13 JUDGE ELLEMAN: July 16th, 10 a.m.

14 JUDGE YOUNG: 10 a.m. Okay. Let's see.

15 And then written requests for second round of written
16 discovery on security issues, July 19th. And
17 depositions, July 19th through August 9th. Objections
18 to second round of written discovery requests, July
19 22nd. Closed session in our hearing room, July 27th at
20 1 p.m. Responses to the second round of written
21 discovery requests on security issues, August 2nd.
22 Motions to compel, August 6th. Closed session, August
23 10th at 10 a.m. Pre-filed written direct testimony,
24 August 20th. Pre-filed rebuttal testimony, August
25 27th. And the hearing, September 8th and 9th. Then

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1 proposed findings of fact, September 20th. Responses,
2 September 30th on security issues.

3 Then on the May 25th order, remaining
4 discovery responses from BREDL, June 8th. And the
5 deposition of Dr. Lyman, June 11th.

6 On our limited appearance session, I
7 wanted to hear from the parties. Judge Bollwerk here
8 had suggested that we might want to have an afternoon
9 session because there's some people, for example,
10 retired people who might go out during the day but not
11 in the evening. But then there are working people who
12 would only be able to come in the evening. And since
13 the day was opened up, we were thinking about doing a
14 session in the afternoon, and another session in the
15 evening, so that the session in the afternoon could be
16 3:30 to 5:30, and then an evening session from 7 to 9.
17 Does anyone see any reason that another schedule would
18 work better? For example, going straight through.

19 Ms. Curran, you had said that some people
20 prefer coming out -- or people who work, obviously it
21 would be better for them in the evening.

22 MS. CURRAN: Judge Young, that sounds like
23 a reasonable schedule to me.

24 JUDGE YOUNG: What about Staff and Duke,
25 does that sound reasonable to you?

1 MS. UTTAL: It sounds reasonable to the
2 staff, Your Honor.

3 MR. REPKA: It sounds reasonable to Duke.
4 I don't see any reason to go straight through. I think
5 the two sessions --

6 JUDGE YOUNG: Okay. Then 3:30 to 5:30,
7 and 7 to 9.

8 JUDGE ELLEMAN: And the date of that would
9 be?

10 JUDGE YOUNG: June 15th.

11 JUDGE ELLEMAN: Okay.

12 MS. CURRAN: Judge Young, I have a matter
13 related to that to bring up.

14 JUDGE YOUNG: Okay.

15 MS. CURRAN: If it's acceptable to the
16 Board, we'd like to have Janet and Lou Zeller
17 represent BREDL at that proceeding, which I understand
18 means just sitting at the table and listening. It's
19 extremely expensive for them to fly me down there.

20 JUDGE YOUNG: Sure.

21 MS. CURRAN: And if there's no
22 presentation to be made, they would like to play that
23 role.

24 JUDGE YOUNG: Sure. We're going to have -
25 - actually, it's going to be at the Omni Hotel, and

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1 we're going to have -- we're not going to have counsel
2 tables set up as they normally would be. We're going
3 to have one table sort of on the side of the room
4 between the Board's table and the audience, and
5 another table on the other side so they can just sit
6 on one of the side tables, and the Staff and Duke can
7 sit on the other side, or wherever you want. I mean,
8 obviously there's not going to be any formal
9 presentations from the parties. No one objects to
10 that, I assume.

11 MR. REPKA: There's no objection from
12 Duke. And I'm not sure who will represent Duke at
13 this point, but somebody will be there.

14 JUDGE YOUNG: Okay.

15 MS. UTTAL: No objection from the Staff,
16 Your Honor.

17 JUDGE YOUNG: All right. I am going to
18 try to issue this amended notice of hearing. The
19 earlier one was published on Wednesday, and I actually
20 saw some little news blurb about it in one of the
21 electronic newsletters, I think. But the public
22 affairs and people here know that an amended one is
23 going to be issued, so presumably they'll put out a
24 press release on that.

25 The other issue on the schedule was --

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1 let's get back to that. Well, just going back to the
2 schedule, on July 1st pre-filed written direct
3 testimony on Contention 1. July 8th, pre-filed
4 rebuttal testimony on Contention 1. And then the
5 hearing on July 14th and 15th. We're going to start at
6 1 p.m. on the 14th, because Judge Elleman is going to
7 be coming back into his home late the night before and
8 won't be able to get here until late morning on July
9 14th.

10 I have arranged with the security people
11 to have someone present as late as 9 p.m. on both the
12 14th and the 15th, and the public will be able to
13 attend. In the notice of hearing, I'm just going to
14 indicate that they need to come to Two White Flint,
15 and that they'll then be directed to the hearing room.

16 I think we will still have an escort
17 requirement, but that should not hinder the public
18 from attending. We'll just have to make sure that we
19 have people to go down and bring them up, and take
20 them down again like we usually do with all the
21 parties. Anything on that part of the schedule?

22 MS. UTTAL: Judge, on the 15th, when will
23 we start?

24 JUDGE YOUNG: 9:00, so 9 to 9 on the 15th.

25 MS. UTTAL: Okay.

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1 JUDGE YOUNG: Obviously, we'll take breaks
2 as necessary.

3 MS. UTTAL: Have you taken under
4 consideration my suggestion that we put reasonable
5 time limits on the examination of the panels?

6 JUDGE YOUNG: I think that's probably a
7 reasonable thing to do. As soon as we know -- as a
8 matter of fact, you all could go ahead and tell us
9 now, if you know, how many witnesses and panels you're
10 going to have. I presume BREDL will just have Dr.
11 Lyman. Are you going to have anyone else besides him?

12 MS. CURRAN: No.

13 JUDGE YOUNG: What about the Staff?

14 MS. UTTAL: We're going to have one panel,
15 and it's three, possibly four people.

16 JUDGE YOUNG: All on the same panel.

17 MS. UTTAL: Yes.

18 JUDGE YOUNG: So there will only be one --
19 there won't be any other individual witnesses.

20 MS. UTTAL: No.

21 JUDGE YOUNG: Okay. And what about Duke?

22 MR. REPKA: Right now we anticipate one
23 panel comprised of three witnesses.

24 JUDGE YOUNG: Okay. That would be what we
25 would normally do, so we'll try to schedule that so

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1 that there won't be any problem fitting everything in.
2 Anything else on the Contention 1 hearing?

3 MS. UTTAL: I just want to emphasize from
4 the Staff's viewpoint, and I know you know this, Judge
5 Young. One of my witnesses will not be available on
6 the 16th. He is a critical witness, and I can't
7 proceed without him, and I can't do any part of the
8 hearing without him. He's also going to be advising
9 me.

10 JUDGE YOUNG: Well, that's why we made
11 arrangements for the 9:00 going late.

12 MS. UTTAL: I really appreciate that.
13 Thank you very much.

14 JUDGE YOUNG: And no one sees any problem
15 with that time schedule, not being able to complete
16 everything during that time schedule, do you? That
17 should be enough time.

18 MS. CURRAN: This is Diane Curran. It
19 seems adequate to us.

20 MR. REPKA: And Dave Repka. I agree, it
21 should be plenty of time.

22 JUDGE YOUNG: You know, obviously we don't
23 need to plan to fill the whole time, but we just
24 needed to make arrangements so that should we need it,
25 that we will have people here so that the parties and

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1 the public can stay after hours.

2 All right. Let me get back to my list.
3 On the schedule there's one other issue that came up
4 based on actually an article in *Nuclear Fuel*. I don't
5 know if all of you have seen it, but it has to do with
6 a story about Duke planning to use another type of
7 fuel at Catawba. And there was some references to the
8 schedule for the Staff's review in that article. Is
9 everyone familiar with that?

10 MS. CURRAN: Judge Young, this is Diane
11 Curran. No, I'm not. What date is the article?

12 JUDGE YOUNG: I think it's May 24th.

13 MS. UTTAL: I believe that has to do with
14 the next generation fuel, the LTAs.

15 JUDGE YOUNG: Right.

16 MS. UTTAL: I think we're all aware of the
17 issue. I'm not aware of the article, though.

18 MR. REPKA: And this is Dave Repka. We're
19 certainly aware of the issue.

20 JUDGE YOUNG: I think there's a reference
21 to -- excuse me. I'm sorry. I think there is a
22 reference to Dr. Lyman being an ACRS meeting, but that
23 had to do with the schedule. I'm not sure if it had
24 to do with the next generation fuel.

25 MR. REPKA: Judge Young, there was an ACRS

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1 meeting on the MOX fuel lead assemblies. A
2 subcommittee meeting, I believe April 21st, and then
3 a full ACRS Committee Meeting on May 5th or so. And
4 Dr. Lyman was at both of those meetings, and the next
5 generation fuel issue was discussed at both of those
6 meetings, as to whether there was any bearing upon the
7 MOX fuel lead assemblies, so that is an issue that's
8 been around and been discussed.

9 JUDGE YOUNG: Okay. Judge Elleman, we
10 were discussing the schedule issue, and I think you
11 had a question about the Staff schedule and how that
12 might affect this proceeding. Maybe you can
13 articulate that better than I can, and then we can
14 hear from the Staff on that.

15 JUDGE ELLEMAN: The question I raised
16 related to a statement on the top of page 7 of the
17 *Nuclear Fuel* article, and it refers to a quote from
18 Mr. Hackett of NRC. And it says, "Hackett said he
19 hoped NRC would be able to maintain the planned
20 schedule for review of the Duke application." And I
21 found that I wasn't completely sure of what the NRC
22 schedule is, and I wondered if you could acquaint us
23 with what your schedule is for completion of that
24 review.

25 MS. UTTAL: Judge, it's my understanding

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1 that there are RAI answers due from Duke on June 4th,
2 and that the Staff review ought to be completed soon
3 after that.

4 JUDGE ELLEMAN: Does that also imply that
5 a decision would be made soon after that on the LTA
6 assembly use?

7 MS. UTTAL: I don't understand what you're
8 referring to. There will be a supplement probably to
9 the safety evaluation.

10 JUDGE ELLEMAN: Well, again, I guess I'm
11 referring to another paragraph here. "NRC spokesman,
12 Sue Gaynor, said last week the staff has not
13 determined whether it would be appropriate to issue
14 the license amendment while the matter is still
15 pending before ASLB, but she said there have been
16 previous cases in which this had been done." Do you
17 know what your position would be on that part of the
18 license amendment request?

19 MS. UTTAL: I think that Ms. Gaynor spoke
20 for the agency when she gave that answer. I have
21 nothing else to add to that.

22 MR. REPKA: This is Dave Repka for Duke.
23 Judge Elleman, I would interpret that as a reference
24 to the question of no significant hazards
25 consideration determination, and whether the staff

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1 would make that finding. And, of course, we have no
2 knowledge as to what the staff will determine on that
3 issue. We did propose a no significant hazards
4 consideration determination when filing the license
5 amendment request, and that remains before the agency.

6 JUDGE YOUNG: But this proceeding would
7 continue on, as would be the normal course in any
8 situation like that; although it's a little unusual,
9 but that should not affect our schedule.

10 Is there anything else that any party
11 knows of that could affect our schedule? And, Judge
12 Elleman, did I cut you off before you --

13 JUDGE ELLEMAN: No, no. I've heard what
14 the participants have to say on it. That's
15 sufficient.

16 JUDGE YOUNG: Does anyone know of any
17 other issues that might affect our schedule?

18 MR. REPKA: This is for Duke. We are not
19 aware of any issues.

20 MS. UTTAL: Staff is not aware of any
21 issues.

22 JUDGE YOUNG: Ms. Curran.

23 MS. CURRAN: No.

24 JUDGE YOUNG: Okay. There is another
25 ruling, and this is something that, frankly, we just

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1 haven't moved -- we haven't put on our front burner
2 because the schedule for the security contentions has
3 not started yet, but I think it was indicated that the
4 parties would like a formal ruling on BREDL's
5 amendment to basically the basis of Contention 5, and
6 so that will be issued in the near future.

7 Today we expect to issue the amended
8 notice of hearing and the redacted order on the
9 security contentions. The only difference between
10 what we had earlier provided to you and what will go
11 out is that we did add to the new paragraph on page 2
12 an additional reference to the definition of
13 safeguards information and consultation with Mr.
14 Manilli and so forth. And taking out the safeguards
15 header and footer, changes the pagination.

16 Also, I have talked to one of our computer
17 people here, and if I can get the Acrobat software so
18 that I can convert this to a PDF file, I'll email it
19 to everyone, but because of the, I guess, potential
20 that even a document itself could retain some memory
21 of the original content of it, event though these
22 black squares are actually symbols that have been
23 inserted, we won't be emailing this to you today
24 unless I'm able to convert it to a PDF file. It will
25 be mailed to you.

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1 MS. UTTAL: Judge, can I make a
2 suggestion?

3 JUDGE YOUNG: Yes.

4 MS. UTTAL: Perhaps you could scan a hard
5 copy into the computer, and that would take care of
6 any latent codes.

7 JUDGE YOUNG: Well, it will be scanned by
8 SECY when they scan it in for ADAMS. I don't know
9 what our availability of a scanner is. I've never
10 used one here to tell you the truth.

11 MS. UTTAL: You may have one in your
12 office for -- they issued them to a lot of the offices
13 when ADAMS first came in.

14 JUDGE YOUNG: I think there is one, but
15 I'm not sure how it works, to tell you the truth.
16 It's the same thing as our printer. I know how to
17 work it as a printer, but I'm not -- we'll check on
18 that. But in any event, if for some reason we're not
19 able to email it, just in the interest of caution, it
20 will be mailed to you, and everyone should get it
21 within the next couple of days. Well, next week. I
22 think the earlier one, BREDL got that next day, I
23 believe. Right?

24 MS. CURRAN: Yes, I think so.

25 JUDGE YOUNG: Yes.

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1 MR. WETTERHAHN: Your Honor, this is Mark
2 Wetterhahn. One word of caution; if you
3 electronically convert the document to PDF, someone
4 can electronically go back to the original document
5 and look at all the revisions.

6 JUDGE YOUNG: Oh, really?

7 MR. WETTERHAHN: Yes.

8 JUDGE YOUNG: Oh, even with that. Okay.
9 Well, then I guess scanning is it.

10 MR. WETTERHAHN: Yes. The way to do it is
11 to scan the document.

12 JUDGE YOUNG: Okay. Well, thank you for
13 that information. I was not aware of that, and that's
14 valuable information. All right. We'll try to find
15 a way to scan it. And if we can't, it will be mailed
16 to you, if there are any insurmountable problems in
17 that regard. But I think, again, other than the
18 changes to the paragraph 2 quoting the definition for
19 safeguards information, making reference to Mr.
20 Manilli and that we have redacted material that could
21 in some way identify Duke's detailed security measures
22 as specified in 73.2, whether now or in the future
23 after final action on Duke's current LAR. And again,
24 we emphasized that BREDL may revisit the
25 appropriateness of redacting references to various

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1 information if any dispute then remains or arises at
2 the time we issue an initial decision. And we
3 understand that BREDL has indicated an intent to
4 appeal that, and that's fine. But I did want to let
5 you know the contents of that paragraph in case we are
6 not able to send it to you electronically today.

7 MS. CURRAN: Okay.

8 JUDGE YOUNG: All right. Let's see. I
9 think that completes everything on my list, other than
10 the main subject of today's -- the original subject of
11 today's conference, which was a discussion of any
12 discovery disputes, and any other issues relating to
13 the upcoming hearing on Contention 1. I ask
14 hopefully, am I to assume by the silence that you have
15 resolved any disputes, and you don't have any to bring
16 to us?

17 MR. REPKA: Dave Repka for Duke, we have
18 none right now.

19 JUDGE YOUNG: And let's see. You're going
20 to get your responses on June 8th, and then June 11th
21 is the deposition date. We have the closed hearing
22 scheduled for the 25th of June. I suppose if any
23 disputes come up - I'm going to be gone the beginning
24 of that week - well, if any disputes come up, I guess
25 we could talk about them. Well, if not earlier,

1 certainly on the 25th. And it doesn't sound like
2 anyone anticipates any at this point.

3 MS. CURRAN: This is Diane Curran. We are
4 on schedule at this point to answer the discovery
5 that's outstanding by the 8th. Dr. Lyman will be
6 available for deposition on the 11th, so it seems the
7 way the process is set up that we're going to be able
8 to finish this discovery. It seems unlikely to me
9 that there's going to be disputes.

10 JUDGE YOUNG: Good. Okay. Is there
11 anything that I've overlooked that any party, or Judge
12 Baratta, or Judge Elleman would like to discuss before
13 we close for today?

14 JUDGE ELLEMAN: This is Judge Elleman. I
15 don't have any issues.

16 JUDGE BARATTA: This is Judge Baratta. I
17 don't have any issues either.

18 JUDGE YOUNG: Any of the parties?

19 MS. CURRAN: This is Diane Curran. I
20 don't.

21 MS. UTTAL: This is the Staff, Susan
22 Uttal. I don't have any issues.

23 MR. REPKA: Dave Repka, none for Duke.

24 JUDGE YOUNG: Wonderful. Okay. I don't
25 think that there's any need then to issue anything

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1 other than just the revised or amended notice of
2 hearing, and the redacted order. And then probably
3 next week the ruling on the amendment to the basis of
4 Contention 5, and that should keep us on course. And
5 we look forward to seeing -- well, I don't know who
6 we'll see on June 15th, but whoever is there, we look
7 forward to seeing you then, and then thereafter, in
8 July. So I guess that would conclude this session.
9 Does the Court Reporter have any questions for us?

10 COURT REPORTER: No, I don't think so.

11 JUDGE YOUNG: Okay. Great. Thank you.
12 Judge Elleman and Judge Baratta, I'll call you after
13 we hang up.

14 JUDGE ELLEMAN: Okay.

15 (Whereupon, the proceedings in the above-
16 entitled matter went off the record at 10:01 a.m.)
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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: 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

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

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