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## NUCLEAR REGULATORY COMMISSION

Title: Duke Energy Corporation

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

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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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PRE-HEARING CONFERENCE

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In the Matter of:

||

|| Docket Nos. 50-413-OLA

DUKE ENERGY CORPORATION

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50-414-OLA

Catawba Nuclear Station,

||

ASLBP No. 03-815-03-OLA

Units 1 and 2

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Friday, December 17, 2004

Via Teleconference

BEFORE:

ANN MARSHALL YOUNG, Chairperson

ANTHONY J. BARATTA, Administrative Law Judge

THOMAS S. ELLEMAN, Administrative Law Judge

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ALSO PRESENT:

SHERRI CROSS, NSIR

JOSEPH SHEA

ALBERT GARRETT

FRANCIS YOUNG, NRC

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

(10:10 a.m.)

1  
2  
3 CHAIRPERSON YOUNG: Let's go on the  
4 record.

5 This is Judge Ann Marshall Young. I'm the  
6 Chair of the Board. I have here with me Judge Baratta  
7 and Francis Young, our security expert advisor.

8 Judge Elleman, you are also present,  
9 right?

10 JUDGE ELLEMAN: This is Judge Thomas  
11 Elleman. Yes, I'm here.

12 CHAIRPERSON YOUNG: And if we could start  
13 with Staff. Could Sue introduce who is present?

14 MS. UTTAL: Yes. This is Susan Uttal,  
15 Staff counsel. Also with me is Antonio Fernandez,  
16 Staff counsel, some members of NSIR staff, Joseph Shea  
17 and Sherri Cross.

18 CHAIRPERSON YOUNG: And BREDL?

19 MS. CURRAN: This is Diane Curran,  
20 representing Blue Ridge Environmental Defense League,  
21 and I'm alone.

22 MR. WETTERHAHN: This is Mark Wetterhahn  
23 with Winston & Strawn, Counsel for Duke Energy  
24 Corporation.

25 CHAIRPERSON YOUNG: Okay. Thank you.

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1 All right. We were just -- just to put on  
2 the record what we were just discussing, we will,  
3 during the hearing -- we're going to try to have  
4 available for all parties locking file cabinets in  
5 your respective conference rooms, around the hearing  
6 room.

7 MS. UTTAL: Excuse me. Judge Young?

8 CHAIRPERSON YOUNG: Yes.

9 MS. UTTAL: This is Susan Uttal. We're  
10 losing part of what you're saying when the papers are  
11 rustling.

12 CHAIRPERSON YOUNG: Could everybody try to  
13 avoid rustling papers, because we really need to use  
14 speakerphone, and that's -- so we're -- that requires  
15 that everyone keep especially quiet when -- well, all  
16 the way through, except for talking.

17 Okay. Just to confirm what we said  
18 beforehand on the record, for the hearing we are going  
19 to -- we are making an effort -- and I think that  
20 we're going to be able to provide locking file  
21 cabinets in each of the parties' conference rooms  
22 around our hearing room to be used during that week.

23 In addition, if there's any incidental  
24 needs for copying of exhibits that come up, obviously,  
25 please try to disclose anything as soon as you have it

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1 in advance of the hearing, if something comes up at  
2 the last minute.

3 We also discussed whether the -- Ms.  
4 Curran asked whether the hearing might start on  
5 Tuesday, January 11th, and we're not going to do that.  
6 We're going to go ahead and start on the 10th unless  
7 we -- we did talk about maybe the middle of the week  
8 of January -- of the first week of January we could  
9 get together on the phone to address any last-minute  
10 things before the hearing.

11 And if at that point it looked as though  
12 we really didn't need the whole week, and that was  
13 certain, we could reconsider that. But at this point,  
14 we need to maintain the whole week as -- including the  
15 possibility of a need for a site visit on the 14th.

16 Was there anything else that we talked  
17 about before we went on the record that we need to  
18 just confirm on the record? All right.

19 And I don't think that the parties had  
20 anything else to talk about, so we were just going to  
21 address two things. First, on the -- on BREDL -- the  
22 Staff -- I hear some papers rustling now. I don't  
23 know if we're --

24 On BREDL's appeal of the Staff's Need to  
25 Know Determination, we are ready to make our ruling,

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1 and we've talked with Mr. Young to make sure that we  
2 state it in such a way that we're not disclosing any  
3 safeguards information.

4 Our ruling is this. With regard to the  
5 documents that BREDL seeks access to, the Commission  
6 did consider that document, and they approved it in  
7 part and disproved it in part. There were two areas  
8 that the Commission approved, and we would direct the  
9 Staff to provide the sections of the document at issue  
10 that address those two areas to BREDL. We do not --  
11 and since those are Commission policy relating to the  
12 insider threat.

13 We do not find the other portions, since  
14 they were not adopted by the Commission, to be  
15 Commission policy, and we don't find them to be  
16 relevant such that there is a need for them by BREDL,  
17 balancing out all of the relevant factors. We're not  
18 getting into the privilege issue raised by the Staff.  
19 We're simply placing our ruling on the factors that  
20 I've stated.

21 Now, I guess -- and one of the reasons we  
22 wanted to tell you that today was so that that could  
23 -- that could be done today, assuming the Staff had no  
24 problem with doing that, which we wanted to find out,  
25 to just sort of see where we were.

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1 I guess we're anticipating that given that  
2 the Staff had gotten access to the same SRM as  
3 indicated in my e-mail of yesterday, we anticipated  
4 that the Staff probably would not have a problem with  
5 that. Could you address that, Staff counsel?

6 MR. FERNANDEZ: Your Honor, we're not  
7 ready to address that right now. We would endeavor to  
8 resolve that issue today and inform the parties of  
9 whether the Staff is going to move to appeal the  
10 Board's decision and move for a stay of the Board's  
11 order.

12 CHAIRPERSON YOUNG: Okay. Yes, that would  
13 help us, to let everybody know that, so that things  
14 could move along if -- with full knowledge of what's  
15 going to be happening. And we will try to get an  
16 order confirming that out today.

17 But in any event, the parties know what  
18 our ruling is, and it is on the record now. And so if  
19 you let us know what you're going to do, that should  
20 give everyone the information they need to move  
21 forward. We'll try to get an order out on that today.  
22 If not today, then it will be next week, probably not  
23 until Tuesday.

24 MS. CURRAN: Judge Young?

25 CHAIRPERSON YOUNG: Yes.

1 MS. CURRAN: This is Diane Curran. I was  
2 just wondering, if it turns out that this new document  
3 is something that Dr. Lyman needs to address in his  
4 testimony, should we put in a piece of supplemental  
5 direct written testimony, or should he just address it  
6 when he gets to the hearing, or --

7 MR. WETTERHAHN: Well, he's going to have  
8 rebuttal testimony.

9 MS. CURRAN: Well, I guess he could put it  
10 -- he could address it in his rebuttal testimony.

11 CHAIRPERSON YOUNG: Yes.

12 MR. WETTERHAHN: Your Honor, just for  
13 clarification, I would expect your ruling also applies  
14 to Duke, so Duke would have access to this document  
15 also.

16 CHAIRPERSON YOUNG: Yes. Thank you for  
17 pointing that out.

18 MR. WETTERHAHN: Thank you.

19 CHAIRPERSON YOUNG: Okay. Then, on the  
20 Motion to Amend the Protective Order, I guess we would  
21 just like to hear briefly from the Staff on what the  
22 situation is with that, because we were a little  
23 puzzled by the circumstances that were described.

24 MR. FERNANDEZ: Your Honor, let me first  
25 begin by clarifying some representations made by BREDL

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1 counsel with regard to what the Staff stated prior to  
2 reviewing what facility protections and what handling  
3 Ms. Curran was conducting at her facility for the  
4 documents that she already had.

5 Prior to making a decision on whether  
6 additional documents should be kept at BREDL's  
7 offices, the Staff wanted to have an understanding of  
8 what measures Ms. Curran was applying and how she was  
9 complying with the order before we made a decision.  
10 Once the Staff communicated that to me, I talked to  
11 Ms. Curran, and I expressed that the Staff wanted to  
12 inspect her facilities prior to making a decision on  
13 whether further access should be granted.

14 At no point did the Staff make a  
15 representation of what the outcome of that assessment  
16 was going to be and what further actions were going to  
17 be taken subsequent to that inspection.

18 So for BREDL counsel to state that it was  
19 assured that upon successful completion of the  
20 inspection that further actions would be granted is a  
21 misstatement of my recollection of that conversation.  
22 In fact, I remember quite specifically saying that  
23 before making a decision the Staff wanted to conduct  
24 this inspection.

25 JUDGE BARATTA: All right. Now, Mr.

1 Fernandez, the question is: what was the outcome of  
2 the inspection?

3 MR. FERNANDEZ: The Staff found that Ms.  
4 Curran is in compliance with the order and -- hold on  
5 one second. And as Mr. Stapleton communicated to Ms.  
6 Curran, that Ms. Curran was adequately protecting, in  
7 compliance with the order, the documents that she  
8 already had in her possession.

9 JUDGE BARATTA: In other words, she does  
10 have adequate storage and procedures for ensuring that  
11 disclosure of protected information inadvertently --  
12 there would be no inadvertent disclosure of protected  
13 information. Is that correct?

14 MR. FERNANDEZ: For the documents that she  
15 has right now, that's correct, yes.

16 JUDGE BARATTA: And was there any  
17 indication that that capacity of -- was limited such  
18 that additional documents would not be adequately  
19 stored?

20 MR. FERNANDEZ: We did not reach that  
21 issue. We did not consider that. What we considered  
22 was the sensitivity of the further documents that  
23 could be housed at her facility.

24 JUDGE BARATTA: And these are all  
25 safeguards, so they're -- they are comparable in their

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1 sensitivity?

2 MR. FERNANDEZ: Well, to the extent that  
3 some of the documents are merely documents generated  
4 by BREDL, and the documents that -- and, of course,  
5 we're doing this in a vacuum, because we really don't  
6 know what the exhibits are yet. But some examples of  
7 documents that could be exhibits are maps that have  
8 identified all the locations of the CCTV cameras at  
9 the Catawba Nuclear Station, all of the locations of  
10 the microwaves at the Catawba Nuclear Station, the  
11 responder procedures where if there were an attack on  
12 the facility.

13 So although all of the documents are  
14 marked "safeguards," because under the Act that is the  
15 required marking, there is additional sensitivities  
16 with regard to other documents that are -- that could  
17 be exhibits in this proceeding.

18 JUDGE BARATTA: And the adequacy of  
19 storage is the same, though, regardless of whether  
20 there are those documents or the documents that she  
21 currently has. Is that not correct?

22 MR. FERNANDEZ: Could you please ask your  
23 question again, Judge?

24 JUDGE BARATTA: Documents that -- those  
25 documents and the documents that she currently has all

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1 require identical storage, is that correct?

2 MR. FERNANDEZ: That's correct.

3 JUDGE BARATTA: And they all require the  
4 same handling procedures, is that correct?

5 MR. FERNANDEZ: That's true.

6 JUDGE BARATTA: Thank you.

7 MR. FERNANDEZ: I would like to add  
8 something, because I -- I can see where the Board is  
9 going with its questioning. And even though one could  
10 argue, as Ms. Curran has, that she is already  
11 protecting safeguards documents adequately, as the  
12 Staff found, that there's no reason, then, why she  
13 shouldn't be allowed to have this other type of  
14 information at her facility.

15 I would refer the Board to an Atomic  
16 Safety and Licensing Board -- Atomic Safety and  
17 Licensing Appeals Board decision found that ASLAB 410,  
18 5 NRC 1398, dated 1977, in the Diablo Canyon  
19 proceeding --

20 CHAIRPERSON YOUNG: What's the cite again?

21 MR. FERNANDEZ: 5 NRC 1398. The citation  
22 is 1406. In that case, which has been cited by the  
23 Commission as a source of guidance for boards in  
24 considering how to issue protective orders,  
25 particularly in the Statement of Considerations found

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1 at 46 Fed Reg 51718, and a final rulemaking under  
2 Protection of Unclassified Safeguards Information.

3 The Commission cites this decision as  
4 providing guidance to the Board, and in that decision  
5 the Licensing Board stated that -- I'm sorry, the  
6 Appeals Board stated, "Licensing Board may wish,  
7 however, to include additional or different terms and  
8 conditions in such an order," and referenced the  
9 protective order.

10 For example, "It may appear to be  
11 desirable to limit the locations at which the  
12 Intervenor may examine relevant portions," and here is  
13 in reference to the security plan, "of the plan to the  
14 offices of the applicant at the sites of any hearing  
15 or prehearing conference convened to consider the  
16 plan. It would also appear desirable to preclude the  
17 Intervenor from copying or taking notes about any  
18 portions of the plan."

19 And then the part which I think bears  
20 relevance upon the arguments made by BREDL. "Such  
21 restriction could result in a lengthened hearing.  
22 Since the Intervenor's representatives might not --  
23 might have" -- I'm sorry -- "might have to refresh  
24 their recollections about what they had examined  
25 earlier. But that may be an acceptable price to pay

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1 for the added security obtained."

2 JUDGE BARATTA: In any case, it's quite  
3 clear that the security that is in effect at BREDL is  
4 adequate.

5 MR. FERNANDEZ: Well, actually, it is  
6 quite clear to the Staff that the security in place at  
7 BREDL is not adequate, and we do not feel comfortable  
8 having plans that have all of the CCTV cameras for a  
9 nuclear powerplant, all of the microwave locations for  
10 a nuclear powerplant, the response measures that a  
11 security force would have to take to be located at her  
12 offices. That has been the determination of the staff  
13 in this proceeding.

14 JUDGE BARATTA: It's stated that the --  
15 that your own expert said that the -- it was adequate  
16 for the storage of safeguards material. Now, it's  
17 either adequate, or it's inadequate.

18 MR. FERNANDEZ: No. He found that the  
19 measures that are in place are adequate to protect the  
20 information that she currently has. There was no  
21 finding made by the inspector with regard to any  
22 additional types of safeguards information.

23 MS. CURRAN: That's not what he said to  
24 me.

25 JUDGE BARATTA: That doesn't make any

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1 sense.

2 JUDGE ELLEMAN: Mr. Fernandez, this is  
3 Judge Elleman. You said just a minute ago that it was  
4 not adequate. Can you identify what about the storage  
5 capability is inadequate?

6 MR. FERNANDEZ: Well, what I would respond  
7 to that, Your Honor, is that I don't have that type of  
8 information.

9 CHAIRPERSON YOUNG: But you have your --  
10 you have that type of information from your expert who  
11 did the inspection, didn't you?

12 MR. FERNANDEZ: No. The inspector only  
13 looked to see what were the current measures at the  
14 facility with regard to the -- I'm sorry, with regard  
15 to the currently held information at the facility.

16 CHAIRPERSON YOUNG: And what's the basis  
17 of your saying that they should not be allowed to keep  
18 those documents there? And then, I want to ask  
19 another question in the context of that. This case  
20 that you have pointed us to talks about the -- this  
21 kind of restriction resulting in a lengthened hearing.

22 What we're talking about now is BREDL's  
23 ability not only to participate in the hearing but to  
24 prepare for the hearing. And we are moving this case  
25 forward as quickly as possible in order to meet, if

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1 possible, Duke's needs with regard to their schedule.

2 And this case seems to say that with this  
3 kind of restriction this may result, in effect, in a  
4 hearing not only taking longer, but it would seem to  
5 me by an analogy our preparation taking longer.

6 Now, obviously, not having these documents  
7 in their own office would be a significant impairment  
8 to BREDL in preparing for the hearing in this case.  
9 So if you could address that. And also, what about  
10 BREDL's ability to protect the documents do you find  
11 insufficient with regard to the documents that they're  
12 asking to keep there?

13 Actually, I'm told by Mr. Young that we  
14 should not talk about inadequacies in terms of --  
15 address vulnerabilities.

16 MR. YOUNG: It's either adequate or  
17 inadequate. That's all -- either -- that's as far as  
18 I think we should discuss it in an open forum.

19 CHAIRPERSON YOUNG: And --

20 MR. FERNANDEZ: Your Honor, let me address  
21 the timeliness issue first, and --

22 CHAIRPERSON YOUNG: Excuse me. Excuse me.  
23 Court Reporter, that was Mr. Francis Young who just  
24 spoke.

25 MR. FERNANDEZ: With regard to the

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1 timeliness issue, all of the parties in this  
2 proceeding have been very well aware of what the  
3 schedule is going to be in this proceeding since the  
4 Board set it. And Ms. Curran waited until this week  
5 to file a request to modify where she should have  
6 access to safeguards information.

7 She was aware that the protective order,  
8 since it's been in place, limited the sites where she  
9 should have access. So if -- if any party that's  
10 before you today has abused the process and now is  
11 hiding behind the fact that it's not timely and it's  
12 handicapping them in any way, it's clearly BREDL,  
13 because Ms. Curran, from the very first time that we  
14 sent out the order, and all parties agreed to it, has  
15 known that her access is limited to the NRC and  
16 Winston & Strawn.

17 CHAIRPERSON YOUNG: Mr. Fernandez, I'm  
18 going to interrupt you right there. Over the course  
19 of preparing for this hearing, we have had, as you  
20 know, as is clear from the record, numerous need --  
21 numerous situations where various of us, including the  
22 Board and even the Commission, have been called upon  
23 to make need-to-know determinations.

24 This has been a developing situation with  
25 regard to how much information we're talking about and

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1 how many documents. Apparently, Ms. Curran last week  
2 requested this from you, and an inspection was done,  
3 and the result of the inspection was that Ms. Curran's  
4 law firm had adequate measures in place to protect  
5 safeguards material. And --

6 MR. FERNANDEZ: Can I clarify that for the  
7 record, Your Honor?

8 CHAIRPERSON YOUNG: Mr. Fernandez, let me  
9 finish what I'm saying to you. You just cited to us  
10 a case in which you quoted language saying that  
11 requiring this results in a lengthened hearing. I  
12 don't want to get into any argument about who -- he  
13 said/she said and what happened when.

14 It's clear that all parties, including the  
15 Board and the Commission, in this case have put in a  
16 lot of time and energy to addressing these types of  
17 security issues, and we are -- make every effort as we  
18 go to address the needs as they arise.

19 For example, that is why we gave you our  
20 ruling on the need-to-know this morning, so you would  
21 not be delayed, so that the parties would not be  
22 delayed in addressing the outcome of that, whichever  
23 way that may go.

24 So let's not get into that kind of back  
25 and forth about what has happened in the past. We are

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1 at a point in the process of this hearing where we are  
2 getting close to the hearing, in the process of  
3 proceeding where we are very close to the hearing, and  
4 the parties are engaged in preparation for the  
5 hearing.

6 You and I both were here at the NRC last  
7 night after hours. You told me that you were working  
8 on the testimony. And, obviously, this is the kind of  
9 separation that is -- becomes quite intensive at this  
10 point on the part of the parties. And it needs to be  
11 recognized that -- that BREDL, like other parties, are  
12 in that intensive preparation period.

13 And that's what we need for this. That --  
14 along with the fact that the Staff has made a  
15 determination that BREDL's facilities are -- or that  
16 Ms. Curran's law firm facilities are adequate for  
17 protecting safeguards materials.

18 Now, we can't -- Mr. Young has told us we  
19 cannot get into the details about any inadequacies or  
20 vulnerabilities that the Staff might see with regard  
21 to these additional documents. It seems to me that  
22 what this -- what the Board is saying here, and what  
23 the Commission has cited it for, is it talks about  
24 something being desirable. In other words, over and  
25 above the requirements -- desirable. And it talks

1 about the results of the -- of any restrictions like  
2 that.

3 In addition, in that case, the Appeals  
4 Board and, presumably, the Commission by -- by  
5 referring to this, left it to the Board -- it stated  
6 that the Board was -- that the Licensing Board was in  
7 the best position to determine the most appropriate  
8 circumstance in which the plan may be viewed, and,  
9 therefore, left it to the Board to formulate the exact  
10 terms and conditions of the order.

11 And by the way, I need to get that -- the  
12 cite from you. You gave another cite in which the  
13 Commission cited this case. What was that?

14 MR. FERNANDEZ: It was in the publication  
15 of the final rule amending the section of unclassified  
16 safeguards information. The Federal Register cite is  
17 46 Fed Reg 51718. The date is October 22, 1981.

18 MS. CURRAN: 1981?

19 MR. FERNANDEZ: That's correct.

20 CHAIRPERSON YOUNG: Okay. Thank you.

21 Now, in light of what I've said, I think  
22 we need to wrap up the argument on this very quickly,  
23 and then it may be that Judge Baratta and Judge  
24 Elleman and I need to talk and come back to you on  
25 that.

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1 MR. FERNANDEZ: Your Honor, can I briefly  
2 summarize the Staff's position for the Board?

3 CHAIRPERSON YOUNG: Keep in mind Mr.  
4 Young's caution.

5 MR. FERNANDEZ: Yes. What we're trying to  
6 tell the Board today is that the Staff, as the  
7 Commission's security expert, has found that the  
8 exhibits in this case, which could include maps of  
9 CCTVs for this facility, response procedures for this  
10 facility, maps of the microwave locations, should not  
11 be stored at Harmon Curran. And that that finding is  
12 based on our expertise, and that we feel that those  
13 documents should not be stored there, those types of  
14 documents. And --

15 JUDGE BARATTA: Can I ask you one question  
16 before you go on, Mr. Fernandez?

17 MR. FERNANDEZ: Sure, Your Honor.

18 JUDGE BARATTA: Are those types of  
19 documents stored in the offices where Mr. Wetterhahn  
20 is?

21 MR. WETTERHAHN: The answer is yes,  
22 because we make them available to BREDL at our  
23 location here.

24 JUDGE BARATTA: Thank you.

25 MR. FERNANDEZ: And that summarizes our

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1 position before the Board.

2 MR. WETTERHAHN: Your Honor, may I be  
3 heard for a second? This is Mark Wetterhahn.

4 CHAIRPERSON YOUNG: Go ahead.

5 MR. WETTERHAHN: We would agree that the  
6 documents in question, although we have enumerated  
7 them, are the most detailed kinds relating to the  
8 security of the plant. Any loss or disclosure would  
9 be devastating and really diminish the security of the  
10 facility.

11 I can't speak to the preparation at Ms.  
12 Curran's law firm. All I can say is that any time you  
13 put such documents in another location it tends to  
14 diminish the overall security. It's a fact of life.

15 We here have always cooperated in making  
16 documents available to the point of saying already we  
17 would make them -- we would come down here and make  
18 them available on weekends before the hearing to  
19 facilitate their preparation.

20 So while there's a slight additional  
21 difficulty in coming here -- we're only a few blocks  
22 away -- the fact that we've made them available for  
23 all this period of time during business hours, and we  
24 would make them available at -- during weekends,  
25 diminishes their need for it.

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1           Again, I can't say anything about the  
2 track record at Ms. Curran's offices. All I can do is  
3 quote you from an e-mail I received from Duke in  
4 Charlotte. They documented the fact that this week  
5 they received a package from Harmon, Curran,  
6 Spielberg & Eisenberg, whose contents, although they  
7 were double-wrapped, the interior didn't indicate that  
8 they were safeguards information. That could have led  
9 to a disclosure of safeguards information. It did  
10 not, but it's an example of things that happen if you  
11 increase the distribution of these sensitive  
12 documents.

13           I would ask that the Board consider these  
14 and deny the -- giving copies of these documents to  
15 BREDL for the next few weeks.

16           CHAIRPERSON YOUNG: Mr. Wetterhahn, did I  
17 understand you correctly? You said that apart from  
18 the weekends you only are providing access during  
19 business hours?

20           MR. WETTERHAHN: During business hours.  
21 Our business hours extend -- I get here very early,  
22 6:00 in the morning, and there's always someone here  
23 until at least 6:00 at night. So 12 hours a day is a  
24 considerable period of time of the day to give them  
25 access.

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1 CHAIRPERSON YOUNG: But not in the  
2 evening.

3 MR. WETTERHAHN: Not in the evening. But  
4 if there's one evening they need access, we'll give  
5 them access. But we believe that the time period that  
6 we've given them access is reasonable, and we've gone  
7 out of our way to compensate for any problem in their  
8 not having those documents.

9 MS. CURRAN: Judge Young, I'd like to be  
10 heard if I could.

11 CHAIRPERSON YOUNG: Go ahead.

12 MS. CURRAN: I just have a couple of  
13 points. I just want to make clear why it is, first,  
14 that we want to see these documents in my office, and  
15 it's only in my office. And I do have a steel file  
16 cabinet that has sufficient capacity for any  
17 additional documents.

18 It is very cumbersome to go to Winston &  
19 Strawn. Certainly, we've done it, but it means  
20 dragging a lot of other documents along with us,  
21 because you're doing an integrated review. And  
22 there's only so much paper that you can carry, and  
23 it's -- it's just -- it's very -- it's difficult. It  
24 is cumbersome, it's time-consuming, and we really  
25 don't have that much time to prepare for the hearing.

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1 Between the filing of the rebuttal testimony and the  
2 hearing, there's just a weekend.

3 And the other point I want to make is  
4 we're not talking about an endless amount of time. We  
5 have only asked for the period of time between when  
6 the initial testimony is filed and when proposed  
7 findings are filed, so that we can really spend the  
8 time that we need to spend doing a good job on this.

9 I want to address the issue of timeliness,  
10 too. The issue of -- of serving exhibits on us came  
11 up not at a -- a conference. I think it was before  
12 the one on the -- well, I know I raised it a while  
13 ago. At the most recent conference, it was said -- we  
14 said the parties would try to work it out. And the  
15 way we tried to work it out was I got a call from Mr.  
16 Fernandez on the 9th, which -- I mean, maybe he said  
17 we're not going to decide until Bern Stapleton looks  
18 at your offices.

19 But we all knew that the issue before us  
20 was whether to amend the protective order, which  
21 clearly required that we could only look at the  
22 documents at Winston & Strawn and the NRC Staff  
23 offices.

24 So, and when I got the response, after Mr.  
25 Stapleton examined my office, when I spoke to Ms.

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1 Uttal and asked her, "Why are you denying me access to  
2 the documents?" she said, "Because the protective  
3 order says you have to look at them at Winston &  
4 Strawn and our office."

5 But that was the whole thing we were  
6 talking about changing. So it was kind of like, why  
7 did I go through this if -- if the reasoning of the  
8 staff was going to be the same, and they weren't going  
9 to consider anything different?

10 Well, and I also want to clarify that Bern  
11 Stapleton said to me, "I don't see any reason why you  
12 can't get these exhibits at your office." So --

13 CHAIRPERSON YOUNG: We would like to  
14 ask --

15 JUDGE BARATTA: I have one last question,  
16 if I could. Mr. Fernandez?

17 MR. FERNANDEZ: Yes, Your Honor.

18 JUDGE BARATTA: Do you know when material  
19 commonly gets -- is at the highest risk of disclosure?  
20 Is it during storage? Is it during use? Is it during  
21 transmission? Do you have any idea? I don't know the  
22 answer. I'm just --

23 MR. FERNANDEZ: I do not know, and the  
24 Staff is shaking their heads. So I'm assuming they  
25 don't know either.

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1 JUDGE BARATTA: Thank you.

2 CHAIRPERSON YOUNG: Okay. We're sorry.  
3 We'd like to ask everyone to hold on.

4 Judge Elleman, if you could hang up, and  
5 we're going to call you back on another line. And  
6 we're just going to put you on hold for a few minutes  
7 while we confer.

8 JUDGE ELLEMAN: All right. Are you going  
9 to call me on my cell phone, or on my other hard line  
10 into my office?

11 CHAIRPERSON YOUNG: We could call you on  
12 your cell phone, and then that way you wouldn't break  
13 this connection.

14 JUDGE ELLEMAN: Okay. And you've got that  
15 number, don't you?

16 CHAIRPERSON YOUNG: Yes, I do.

17 JUDGE ELLEMAN: Okay. Give me just a  
18 minute, then.

19 (Whereupon, the proceedings in the  
20 foregoing matter went off the record at  
21 10:46 a.m. and went back on the record at  
22 11:31 a.m.)

23 CHAIRPERSON YOUNG: All right. Again, we  
24 apologize.

25 Would everyone be available to get back

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1 together at 3:00 this afternoon?

2 MS. CURRAN: What time did you say?

3 CHAIRPERSON YOUNG: 3:00.

4 MS. UTTAL: Your Honor, I leave at 2:30  
5 today. And I can't stay because I have no child care  
6 for my children.

7 MR. FERNANDEZ: And I'm getting a root  
8 canal done at 2:00.

9 (Laughter.)

10 CHAIRPERSON YOUNG: Judge Elleman?

11 JUDGE ELLEMAN: Yes.

12 CHAIRPERSON YOUNG: What other time --  
13 you're going -- you're going to be leaving shortly,  
14 and you won't be back until about 3:00, right?

15 JUDGE ELLEMAN: Well, it looks like my  
16 luncheon engagement is going to have to be cancelled,  
17 so I can move forward the 3:00 time if we need to.

18 CHAIRPERSON YOUNG: 1:00? Would 1:00 --

19 JUDGE ELLEMAN: Okay. Yes, I can do 1:00.

20 MS. CURRAN: Judge, 1:00 is all right for  
21 me.

22 MR. WETTERHAHN: 1:00 is fine for me, too.  
23 It's Mark Wetterhahn.

24 MS. UTTAL: Susan Uttal. 1:00 is fine for  
25 me.

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1 CHAIRPERSON YOUNG: Well --

2 MS. UTTAL: Mr. Fernandez will not be  
3 here, though.

4 MR. WETTERHAHN: He'd rather have a root  
5 canal.

6 MS. UTTAL: Yes, he would.

7 CHAIRPERSON YOUNG: Before we do that, we  
8 need to make sure that we can get the Court Reporter.  
9 The Court Reporter isn't done now. I'm thinking we  
10 originally scheduled for you to be available until  
11 1:00. I don't know if we have to go through formal --  
12 now, there's a message on my phone right now. I  
13 wonder who --

14 MS. CURRAN: Judge Young?

15 CHAIRPERSON YOUNG: Yes.

16 MS. CURRAN: This is Diane Curran. It's  
17 my understanding that the Staff is going to -- if you  
18 do give us access to the documents, the Staff is going  
19 to appeal it. So I'm just wondering if we could have  
20 this conversation on Monday, because they're not going  
21 to send the documents to Winston & Strawn anyway. And  
22 I'm just concerned about the time for producing the  
23 testimony

24 CHAIRPERSON YOUNG: Right. What we're  
25 trying -- what we're working on we're hoping might

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1 address some of the issues. And I'm sorry, I just  
2 don't want to go further than that --

3 MS. CURRAN: Yes.

4 CHAIRPERSON YOUNG: -- at this point. But  
5 just give us a few minutes more. In a moment or two,  
6 we should know whether 1:00 will work, and then -- and  
7 once we get on the phone at 1:00. We should not take  
8 more than just long enough to basically tell you what  
9 our ruling is.

10 MS. CURRAN: Okay.

11 MR. FERNANDEZ: Sorry for having a root  
12 canal. I apologize.

13 CHAIRPERSON YOUNG: They're not really as  
14 bad as everyone --

15 (Laughter.)

16 I mean, the drilling part is the part that  
17 hurts. The actual root --

18 MR. WETTERHAHN: I don't think you're  
19 helping him.

20 (Laughter.)

21 MS. UTTAL: The thing with the drilling  
22 is, if you get enough novocaine and other things, then  
23 you don't feel it.

24 MR. FERNANDEZ: I'm happy to inform you  
25 that my dentist is one of these new-fangled dentists

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1 that believes in putting you completely out. So I'm  
2 looking forward to it.

3 (Laughter.)

4 CHAIRPERSON YOUNG: Take a little nap.

5 MR. FERNANDEZ: Yes.

6 MR. WETTERHAHN: I can only think of the  
7 Marathon Man.

8 CHAIRPERSON YOUNG: Oh, gosh. Thanks for  
9 that thought.

10 (Laughter.)

11 I'm going to give you the pass code right  
12 now. It's 4534.

13 MS. CURRAN: Say it again, please.

14 CHAIRPERSON YOUNG: 4534.

15 MS. CURRAN: Okay.

16 CHAIRPERSON YOUNG: Did everyone get that?

17 MR. WETTERHAHN: And same dial-in number.

18 CHAIRPERSON YOUNG: Same dial-in number.

19 MS. CURRAN: Okay.

20 CHAIRPERSON YOUNG: So we're off the  
21 record for now. We apologize for the delays.

22 (Whereupon, the proceedings in the  
23 foregoing matter went off the record at  
24 11:35 a.m. and went back on the record at  
25 1:10 p.m.)

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1 CHAIRPERSON YOUNG: Okay. Let's go on the  
2 record.

3 I'm Ann Marshall Young, the Chair of the  
4 Board. I have here with me Judge Anthony Baratta and  
5 our security expert adviser, Mr. Francis Young.

6 Judge Elleman, you're also present?

7 JUDGE ELLEMAN: I'm present.

8 CHAIRPERSON YOUNG: And if we could just  
9 go through the Staff and BREDL representatives again.

10 MS. UTTAL: This is Susan Uttal  
11 representing the Staff. I have with me Joseph Shea,  
12 Sherri Cross, and Albert Garrett.

13 MS. CURRAN: This is Diane Curran  
14 representing the Blue Ridge Environmental Defense  
15 League.

16 MR. WETTERHAHN: This is Mark Wetterhahn  
17 with Winston & Strawn representing Duke.

18 CHAIRPERSON YOUNG: All right. We said  
19 that we'd give you our ruling, and we're ready to do  
20 that. And I've written out part of it, and I'm going  
21 to try to read that to you and then address any  
22 specifics that we need to.

23 All right. Without going through a  
24 summary of what BREDL is requesting, we note that  
25 BREDL had stated that its -- that its request is

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1 necessary in order to allow it a sufficient  
2 opportunity to review exhibits in preparation for  
3 hearing, and we note the time period requested, again,  
4 through the filing of the reply for proposed findings  
5 of fact and conclusions of law.

6 After hearing all the arguments of counsel  
7 this morning, we find that BREDL's request is a  
8 reasonable one if this proceeding is to be conducted  
9 without further delay. We've consistently endeavored  
10 in this proceeding to move forward without undue  
11 delay, both to further the general desirability of  
12 conducting adjudication of proceedings in a timely and  
13 efficient manner, and to accommodate as much as  
14 possible Duke's planning and schedule with regard to  
15 the proposed MOX lead test assemblies.

16 The case cited by the Staff counsel in  
17 support of its argument against the request of BREDL  
18 provides that it may be desirable to limit locations  
19 where sensitive materials may be examined. But the  
20 case also recognizes -- and I should say it's the case  
21 of Diablo Canyon, 5 NRC 1398, and I'm going to be  
22 quoting from page 1406 cited to us by the Staff.

23 "It may be desirable to limit locations  
24 where sensitive materials may be examined, but the  
25 case also recognizes in so providing that this may

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1 result in a lengthened hearing."

2 The Appeals Board in that case also noted  
3 that the Licensing Board is in the best position to  
4 determine the most appropriate circumstance in which  
5 a document may be viewed and left it to the Board to  
6 formulate the exact terms and conditions of the order.

7 We make our ruling, then, in this matter  
8 in this light, i.e. in view of the goals of protecting  
9 the security of very sensitive material as well as  
10 minimizing the possibility of any lengthening of the  
11 hearing in this matter or any related delays, and  
12 recognizing also the very reasonable and legitimate  
13 need of counsel to prepare its case adequately in  
14 order to participate in the proceeding and evidentiary  
15 hearing in a meaningful way.

16 To be in a position of not being able to  
17 examine exhibits in preparation for the hearing or  
18 proposed findings during the evening hours as needed,  
19 and without having to carry voluminous amounts of  
20 documents, many of a sensitive nature themselves, back  
21 and forth to opposing counsel's office, which seems to  
22 be essential if this proceeding is to be conducted in  
23 a timely manner without further delay.

24 Part of the concern for protecting the  
25 security of sensitive materials that particularly

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1 concerns us with regard to BREDL's request is the  
2 desirability of avoiding risks associated with  
3 repeated transport of sensitive safeguards materials  
4 now in BREDL's possession back and forth to opposing  
5 counsel's office, which we find increases the  
6 likelihood of losing control of sensitive material.

7 Thus, to fulfill these three goals --  
8 protecting the security of very sensitive materials,  
9 avoiding delay, and permitting the meaningful  
10 participation of Intervenor BREDL in this proceeding,  
11 we herein order with regard to BREDL's request  
12 amendment to the protective order to allow the holding  
13 of the exhibits at the law office of BREDL's counsel  
14 during the time period requested, with the following  
15 proviso. And this is what we've been working on, and  
16 we have just had it confirmed that this is a possible  
17 -- that it will be possible to do this, and,  
18 specifically, to do it on next Tuesday morning.

19 A member of the NRC Staff who is  
20 knowledgeable in physical security and handling and  
21 storage of safeguards material, and who has been  
22 assigned to conduct an independent inspection, finds  
23 after such inspection and consultation with BREDL  
24 counsel that BREDL counsel can effectively, with  
25 measures now in place, along with any additional

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1 reasonable measures arrived at in consultation with  
2 BREDL counsel, ensure the effective safeguarding of  
3 the exhibits in question in her law office.

4 The Board requests the Staff to coordinate  
5 this activity and expect that in doing so the Staff  
6 will operate in good faith to ensure that -- I'm sorry  
7 -- expect that in doing so the Staff will operate in  
8 good faith to ensure that appropriate measures are  
9 taken to separate the functions of the independent  
10 inspector from those of the Staff working on the  
11 Catawba proceeding, and that this, along with the  
12 provision to the inspectors of the parties' agreed  
13 description of the documents in question -- and we  
14 would ask you to work together on that -- will be  
15 sufficient to assure the appropriateness of the  
16 inspection.

17 We expect that BREDL counsel will operate  
18 in good faith to accommodate the inspection and work  
19 with the inspector regarding any reasonable additional  
20 measures recommended to ensure appropriate protection  
21 of the exhibits.

22 Finally, we expect that all parties will  
23 cooperate in this matter as we have described in order  
24 to avoid delay and ensure the furtherance of this  
25 proceeding, including the evidentiary hearing and

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1 related preparation for it, and the proposed findings  
2 of fact and conclusions of law, all in a meaningful  
3 manner.

4 We don't know who may -- who in OGC the  
5 people in physical security may have spoken with, but  
6 Judge Baratta can give you more details on the  
7 arrangements that he has been communicating with the  
8 person at that division on. And we do understand that  
9 OGC has been involved in it in some manner, and we  
10 don't know whether that is with you, Ms. Uttal, or  
11 not.

12 MS. UTTAL: I'm sorry. Who consulted with  
13 who?

14 CHAIRPERSON YOUNG: Judge Baratta is going  
15 to explain the discussion.

16 JUDGE BARATTA: Yes. As you know, the  
17 Office of Facilities and Security actually has  
18 personnel within the Security Division who conduct  
19 assist visits for contractor personnel -- or  
20 contractors to look at their -- whether or not their  
21 -- they have adequate physical security procedures to  
22 safeguard safeguards information, as well as  
23 classified information.

24 So we made a request to Mark Lombard, who  
25 is Acting Director of the office while Tom Martin is

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1 out, and he then consulted with OGC, as well as his  
2 staff, and agreed that it was appropriate for them and  
3 that they could, in fact, do an assist visit to Ms.  
4 Curran's office with the intent of ensuring that the  
5 physical security and procedures that she has are  
6 adequate to safeguard material of this sort.

7 And he has agreed to have that done on  
8 Tuesday morning, and we're asking that the Staff work  
9 with them. We're going to be making a request of all  
10 of you with respect to the type of material and such  
11 that we -- that you anticipate would be stored there,  
12 so that that's clear.

13 We'll also -- we may want to, in fact,  
14 have our -- Mr. Young meet with whoever the individual  
15 is that will be doing that assist visit to instruct  
16 them on what -- you know, what the purpose of that  
17 visit is, etcetera, and it has to be as specific as  
18 possible by Mr. Lombard.

19 MS. UTTAL: So I understand what happened,  
20 the Board went outside -- outside the record and  
21 outside the parties to consult with and have  
22 consultation with another part of OGC regarding what's  
23 going on in this case?

24 CHAIRPERSON YOUNG: No. No, let me  
25 explain. The first thing the Board did was speak to

1 the Chief Judge and ask -- the first thing that the  
2 Board -- Judge Baratta thought of this idea, and the  
3 Board consulted with the Chief Judge, which I actually  
4 meant to mention earlier, to discuss whether it might  
5 be appropriate to see whether we could get an  
6 independent inspection.

7 After speaking with the people in physical  
8 security, after Judge Baratta spoke with the people in  
9 physical security, they on their own apparently  
10 contacted someone at OGC about the appropriate process  
11 to do this. We were concerned that -- wanted to make  
12 sure that any process that we put in place was  
13 appropriate in view of consideration such as whether  
14 we -- whether we should go through the Commission and  
15 thought that if the Staff would cooperate in  
16 coordinating this activity that that would not be  
17 necessary.

18 And so, obviously, we're asking all of you  
19 to cooperate in this. We don't know what your  
20 responses are going to be, but with regard to  
21 consultation with OGC, do you know who that was with?  
22 That was done by -- we don't know who that was with.  
23 That was done by --

24 MS. UTTAL: Mr. Lombard?

25 CHAIRPERSON YOUNG: Mr. Lombard?

1 JUDGE BARATTA: Yes.

2 CHAIRPERSON YOUNG: Mr. Lombard. And  
3 so --

4 JUDGE BARATTA: After he consulted with  
5 his boss.

6 CHAIRPERSON YOUNG: Mr. Martin?

7 JUDGE BARATTA: No, Martin is not here.  
8 Okay. I'm sorry. He consulted with his superior. I  
9 don't remember the name.

10 CHAIRPERSON YOUNG: So basically what  
11 we're proposing here is a process that would allow for  
12 an inspection. Frankly, we suspect that Mr. Stapleton  
13 knew what type of materials were involved when he did  
14 his inspection. But to -- to make sure that the  
15 concerns of the Staff are met, the idea of having an  
16 independent inspection, and that the arrangements to  
17 see how that could be done in a timely manner, because  
18 what -- what we are concerned with here are the three  
19 goals.

20 We're concerned with the protection of  
21 sensitive information, and, quite frankly, we're very  
22 concerned about the transporting back and forth, which  
23 obviously would be necessary without this. We agree  
24 with BREDL counsel on that.

25 We're also concerned with delays, as we

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1 have repeatedly discussed here. And that's why, for  
2 example, we made our earlier need-to-know ruling from  
3 the bench this morning, and we're making this ruling  
4 now, in order to avoid delay.

5 And the third consideration is the  
6 protection of meaningful participation in this  
7 proceeding by all parties, including the Intervenor.  
8 So balancing all those interests, we feel that this is  
9 the most appropriate manner in which to proceed, and  
10 we would request Staff to assist in coordinating this,  
11 and all parties to assist by coming up with an agreed  
12 description of the types of documents that we're  
13 talking about -- that up to this point we have found  
14 it desirable to provide additional protections of --  
15 by requiring inspection in the Winston & Strawn  
16 offices.

17 We see that at this point in the  
18 proceeding the need to prepare for the hearing, and  
19 this sort of intensive period of preparation, and to  
20 prepare for proposed findings of fact and conclusions  
21 of law afterwards, warrants a different approach  
22 consistent with furtherance of all three goals that we  
23 have mentioned before.

24 So that's our ruling. Are there -- Judge  
25 Baratta or Judge Elleman, do you have anything to add?

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1 JUDGE ELLEMAN: No, I have nothing.

2 JUDGE BARATTA: No, I have nothing.

3 CHAIRPERSON YOUNG: Do the parties have  
4 any questions for us?

5 MS. UTTAL: I just have two things that  
6 I'd like to say. And I don't want to belabor the  
7 point that we discussed this morning, but it was not  
8 the results of the inspection that necessarily drove  
9 the decision. It was the nature of the documents that  
10 the Staff believes requires more protection than the  
11 documents that are now in Ms. Curran's possession.

12 The second thing that I wanted to ask the  
13 Board -- the Staff will be requesting -- petitioning  
14 for review by the Commission of the decision  
15 permitting the documents to be sent -- to be stored at  
16 Ms. Curran's office. We had asked for a stay pending  
17 the filing of the appeal, which I will do Monday.

18 CHAIRPERSON YOUNG: We, frankly, I guess  
19 had hoped that providing for this additional measure  
20 of an additional NRC inspection would --

21 JUDGE BARATTA: In which we were going to  
22 identify the nature of the documents, so there would  
23 be no question as to the adequacy of the safeguards in  
24 place. That's why we chose to do it that way as  
25 opposed to relying on the previous one, which

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1           apparently you felt was not adequate because it only  
2           covered the documents that they currently have.

3                       CHAIRPERSON YOUNG: And also, we had hoped  
4           that this would -- this would address the concerns, so  
5           as to avoid further delay, because obviously as -- as  
6           the Appeals Board recognized in Diablo Canyon, when  
7           the requirements for heightened inspection in a  
8           different location are in place, that might lengthen  
9           a hearing. So we're operating out of concern.

10                      So in terms of the stay, Tuesday morning  
11           is -- is the time that this should be done. Now, if  
12           you're asking for a stay of our ruling pending your  
13           appeal submission, we don't really have any control  
14           over what that will do in terms of the timing of this.  
15           And we don't know whether the person that we're  
16           talking about would even be available to do the  
17           inspection on another day, especially as we get closer  
18           to the holidays.

19                      So the Staff may want to reconsider your  
20           request for stay, and assuming all -- assuming BREDL  
21           is in agreement, go ahead and have the inspection, and  
22           you can -- you can still pursue your appeal.

23                      MS. UTTAL: Well, Judge, the portion of  
24           the Board's order that concerns me most is the  
25           possibility of turning over documents. As to any

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1 arrangements made short of that, such as an  
2 inspection, I want to -- I'm not asking for a stay of  
3 that, if it can be arranged. What I'm asking for is  
4 a stay of having to turn documents over.

5 CHAIRPERSON YOUNG: Well, actually, just  
6 conferring as you were talking, certainly if the  
7 Commission feels that a stay is appropriate, then I  
8 think that that would be most appropriate. But if  
9 you're taking the appeal to the Commission on Monday,  
10 then you should be able to get a response from them  
11 prior to --

12 MS. UTTAL: Okay. Then, I'll file a  
13 motion for a stay with the Commission.

14 CHAIRPERSON YOUNG: And I am going to try  
15 to get this order out, as well as the other one, today  
16 so that you'll have them. I am not planning to be in  
17 the office on Monday or on Tuesday morning. Judge  
18 Baratta will be here, and I can be probably reached by  
19 telephone, or at least I can get back to people within  
20 a reasonable time during that time period. Judge  
21 Baratta knows how to reach me.

22 JUDGE BARATTA: Is it our understanding,  
23 then, that your request to the Commission, you have no  
24 objection to the inspection proceeding, that you will  
25 be specific in your request that it will only be to

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1 turn over the material that you request a stay on?

2 MS. UTTAL: Can you hold on one second?

3 CHAIRPERSON YOUNG: And we realize we  
4 haven't heard from BREDL yet. After Ms. Uttal speaks,  
5 we'll hear from the other parties as well.

6 MS. UTTAL: Judge, I'm going to -- Judge  
7 Baratta, in answer to your question, I'm going to have  
8 to consult further with the Staff about that  
9 particular point. So I can't really answer the  
10 question now.

11 MS. CURRAN: Judge Young?

12 CHAIRPERSON YOUNG: Oh. I thought you had  
13 said earlier that you did not oppose going ahead with  
14 the inspection.

15 MS. UTTAL: Well, I've been -- the Staff  
16 is sitting next to me, and we're having some  
17 discussion about that. So I'm going to withdraw that,  
18 and I have to talk further with them.

19 CHAIRPERSON YOUNG: Okay. And, Ms.  
20 Curran, go ahead.

21 MS. CURRAN: Well, I was just going to  
22 comment that it sounded from the Board's order as  
23 though the inspection was something that -- the Board  
24 thought that our security measures were adequate, but  
25 that to hold out an olive branch to the Staff

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1 essentially the Board was willing to go through this  
2 additional inspection, or have me go through it.

3 And I think I heard Ms. Uttal say that it  
4 doesn't really matter how that inspection comes out.  
5 Maybe that's wrong, but that makes me wonder, is this  
6 inspection a good use of anybody's time, if that was  
7 the point of time.

8 CHAIRPERSON YOUNG: You know, if the Staff  
9 -- if Staff gets a stay, and certainly you all can  
10 agree to hold off on the inspection -- I guess just to  
11 clarify, I think that our -- our suggestion of the  
12 inspection was to address the issue of the  
13 desirability of heightened additional measures as  
14 discussed in the Diablo Canyon case, since apparently  
15 the Staff is saying that -- that apparently Mr.  
16 Stapleton's inspection was not made with that in mind.

17 Now, again, knowing how knowledgeable Mr.  
18 Stapleton is, we expect that he actually would have  
19 known that. But to address the needs of those  
20 heightened protections, as discussed in Diablo Canyon,  
21 that's the reason for the inspection by an independent  
22 inspector from the Staff who has been given specific  
23 information on the types of documents that we're  
24 talking about, so that he can take that into  
25 consideration.

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1           And as I said before, we were asking the  
2 Staff to coordinate this, so that this could be an  
3 appropriate Staff activity that would not necessitate  
4 going before the Commission and requiring their time  
5 and attention, which would obviously involve not only  
6 their time and attention but some degree of delay in  
7 going through that request process to seek to  
8 accomplish this through that route.

9           JUDGE BARATTA: And I think, Ms. Curran,  
10 the other thing I'd like to add is that this group  
11 that we're talking about is part of the administrative  
12 organization of the agency and is not a part of the  
13 Staff. Even though we refer to them as Staff, they  
14 are not part of the Staff that participates in the  
15 adjudicatory process.

16           MS. CURRAN: Oh, okay.

17           JUDGE BARATTA: It's actually more like  
18 the landlord, okay, for lack of a better definition.  
19 Okay? So that's why we went that route. And they're  
20 the ones, for example, that design the security  
21 systems for the buildings and that sort of stuff.

22           CHAIRPERSON YOUNG: And also do the --

23           JUDGE BARATTA: And also do the assist  
24 visits for the contractors. That's a routine function  
25 of theirs, but they have no -- they do not participate

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1 in the adjudicatory process in any way, shape, or  
2 form.

3 MS. CURRAN: Okay. And what is the name  
4 of the office again?

5 JUDGE BARATTA: It's the Office of -- the  
6 whole organization is Administration, and then under  
7 that is the Office of Facilities and Security.

8 MS. CURRAN: Okay.

9 JUDGE BARATTA: And it's within that  
10 Office of Facilities and Security that we spoke with  
11 the Chief of the Security Division.

12 MS. UTTAL: Judge Baratta, I just wanted  
13 to correct one thing. The admin staff is part of the  
14 staff. They do all answer to the EDO. They're just  
15 not part of this litigation, and they're not part of  
16 NSIR, which is the staff we have been consulting with  
17 regarding security. So they're not involved in this  
18 case.

19 JUDGE BARATTA: It's the staff, but it's  
20 not the staff. Let's just leave it at that.

21 CHAIRPERSON YOUNG: It's a different part  
22 of the staff.

23 MS. UTTAL: That's true. It's a different  
24 part of the staff.

25 CHAIRPERSON YOUNG: That's why we were

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1 requesting that the staff, in coordinating it, ensure  
2 the appropriate separation between the different parts  
3 of the staff.

4 Well, I guess the only thing -- Duke, Mr.  
5 Wetterhahn, did you have anything you wanted to say  
6 about this?

7 MR. WETTERHAHN: I don't think I can give  
8 Duke's position until we determine from BREDL exactly  
9 what documents it would request. And we would request  
10 that it identify those documents expeditiously and  
11 refer to them by title and also their discovery  
12 document number or Bates number.

13 MS. CURRAN: Sure.

14 MR. WETTERHAHN: So we can have a  
15 definitive and specific basis of discussing this.

16 CHAIRPERSON YOUNG: And that would  
17 include --

18 JUDGE BARATTA: I'm sorry.

19 CHAIRPERSON YOUNG: Go ahead.

20 JUDGE BARATTA: Yes. The Board will also  
21 need that information, so that we can convey that to  
22 whoever does the visit.

23 MR. WETTERHAHN: I will circulate an  
24 updated index of all documents which have been made  
25 available to BREDL for -- to the Board and all

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1 parties, probably by Monday morning.

2 CHAIRPERSON YOUNG: Okay. So send that to  
3 Judge Baratta's attention.

4 MR. WETTERHAHN: Yes. That's not  
5 safeguards. It's going to come by e-mail.

6 JUDGE BARATTA: Thank you.

7 CHAIRPERSON YOUNG: Okay. Okay. And  
8 then, what I was going to say -- what I was going to  
9 say is that obviously this -- the motion applies to  
10 the exhibits for the hearing. And so BREDL can tell  
11 what their exhibits are, but if there are any  
12 additional ones on the part of Duke or the Staff the  
13 -- it would apply to those as well. So if you could  
14 all indicate what documents you intend to submit as  
15 exhibits.

16 MS. CURRAN: Okay.

17 JUDGE ELLEMAN: Judge Young?

18 CHAIRPERSON YOUNG: Yes.

19 JUDGE ELLEMAN: This is Judge Elleman.  
20 I'm a little confused on the status of the Tuesday  
21 morning security review.

22 Ms. Curran, did you say you would prefer  
23 not to go through with this if the decision on the  
24 stay order is not known by Tuesday?

25 MS. CURRAN: Well, I do want to have

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1 access to these documents, and I'm willing to go  
2 through it just to get it out of the way, so that if  
3 we get a favorable ruling I could get the documents.

4 So I will say yes to that. I was just  
5 raising a question to the Board as to whether you  
6 wanted to include that -- continue to include that as  
7 a requirement of your order, since it didn't yield any  
8 compromise by the parties.

9 CHAIRPERSON YOUNG: Well, our order  
10 basically -- I mean, what we're doing is we're --  
11 we're ordering that.

12 MS. CURRAN: Yes.

13 CHAIRPERSON YOUNG: And I don't know if I  
14 indicated in the order, but I'll try to, that Tuesday  
15 morning is the time when this person would be able to  
16 do it. And then, depending upon what actions the  
17 Staff takes and what response they get, then that  
18 would occur or not occur, and you can communicate with  
19 the Staff in terms of just scheduling issues.

20 MS. CURRAN: Okay. Well, I will plan to  
21 go ahead with it, and I hope the Staff will give me a  
22 call and let me know when this person is coming.

23 CHAIRPERSON YOUNG: And do we know --

24 JUDGE BARATTA: No, we don't know the  
25 exact time, but as soon as we coordinate -- or get it

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1 coordinated, we'll let you know.

2 MS. CURRAN: Okay. Thank you.

3 CHAIRPERSON YOUNG: And then, I'm just  
4 going to -- I'm going to try to get this order and the  
5 other order done, which we're all just about run out  
6 of our deadline time, but -- I need to call SECY about  
7 that. But then, on Monday, just direct -- if you need  
8 to talk with anyone, talk with Judge Baratta, and I'll  
9 give him how to reach me.

10 I'll take my cell phone with me  
11 everywhere, so I'll just -- you can call me on my cell  
12 phone if you need to reach me. And if I'm unavailable  
13 or out of range or something, I should be able to get  
14 back to anyone, you know, within a reasonable time.  
15 And if I need to come in, I'll come in.

16 In any event, any other things that we  
17 need to take care of? Can anyone --

18 MS. CURRAN: Not from BREDL.

19 MS. UTTAL: Not from the Staff.

20 JUDGE BARATTA: And we will be asking Mr.  
21 Young -- I want to emphasize this -- to meet with  
22 whoever is going to do the inspection on Tuesday, so  
23 that it's clear, you know, what the purpose of such  
24 is.

25 That's all I have.

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CHAIRPERSON YOUNG: Okay. Thank you, all.  
(Whereupon, at 1:40 p.m., the proceedings  
in the foregoing matter were adjourned.)

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: 50-413/414-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.

*Eric Mollen*

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Eric Mollen  
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