

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Duke Energy Carolinas, Inc.

Docket Number: 50-269-SLR-2, 50-270-SLR-2, 50-287-SLR-2

ASLBP Number: 24-985-03-SLR-BD01

Location: teleconference

Date: Tuesday, July 30, 2024

Work Order No.: NRC-2949

Pages 150-246

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1716 14th Street, N.W.
Washington, D.C. 20009
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

PRE-HEARING CONFERENCE

-----x

In the Matter of: : Docket No.

DUKE ENERGY CAROLINAS, LLC : 50-269-SLR-2

(Oconee Nuclear Station, : 50-270-SLR-2

Units 1, 2, and 3) : 50-287-SLR-2

: ASLBP No.

: 24-985-03-SLR-BD01

-----x

Tuesday, July 30, 2024

Teleconference

BEFORE:

G. PAUL BOLLWERK, Chair

SUE H. ABREU, Administrative Judge

ARIELLE J. MILLER, Administrative Judge

1 APPEARANCES:

2

3

On Behalf of Duke Energy Carolinas, LLC

4

RYAN K. LIGHTY, ESQ.

5

of: Morgan, Lewis & Bockius LLC

6

1111 Pennsylvania Avenue, N.W.

7

Washington, D.C. 20004

8

202-739-5274

9

ryan.lighty@morganlewis.com

10

11

On Behalf of Beyond Nuclear and Sierra Club

12

DIANE CURRAN, ESQ.

13

of: Harmon, Curran, Spielberg & Eisenberg,

14

LLP

15

1725 DeSales Street, N.W., Suite 500

16

Washington, D.C. 20036

17

240-393-9285

18

dcurran@harmoncurran.com

19

and

20

PAUL GUNTER

21

of: Beyond Nuclear Reactor Oversight Project

22

7304 Carroll Avenue #182

23

Takoma Park, Maryland 20912

24

paul@beyondnuclear.org

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 On Behalf of the Nuclear Regulatory Commission

2 MARY FRANCES WOODS, ESQ.

3 KEVIN BERNSTEIN, ESQ.

4 of: Office of the General Counsel

5 Mail Stop - O-14 A44

6 U.S. Nuclear Regulatory Commission

7 Washington, D.C. 20555-0001

8 516-765-6523 (Wood)

9 301-415-1001 (Bernstein)

10 mary.woods@nrc.gov

11 kevin.bernstein@nrc.gov

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2:30 p.m.

JUDGE BOLLWERK: Good afternoon, I'm Administrative Judge Paul Bollwerk, the chair of this Atomic Safety and Licensing Board. And today we're here to conduct a pre-hearing conference in this 10 Code of Federal Regulations or CFR Part 52 subsequent license renewal, or SLR proceeding, in which applicant, Duke Energy Carolinas, LLC, or Duke, requests that the 10 CFR Part 50 operating licenses for its Oconee Nuclear Station Units 1, 2, and 3 be extended for a second 20 year period.

On June 24th, 2024, the board heard presentations from the participants of this proceeding, the NRC staff, Duke, and petitioners Beyond Nuclear, Incorporated, and the Sierra Club, Incorporated, regarding the admissibility of petitioner's three National Environmental Policy Act or NEPA related contentions, an issue that remains pending before the board.

However, shortly after the argument transcript was submitted to the docket of this proceeding, the board was contacted by email by NRC staff counsel who indicated that there were concerns that the transcript might contain non-public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 information, and requested that the transcript remain
2 non-public pending NRC staff review.

3 The board responded in a June 28th, 2024
4 order, in which it indicated that the NRC Office of
5 the Secretary, which has responsibility for the
6 agency's electronic hearing docket, or EHD, had placed
7 a transcript in EHD's non-public protective order
8 file, and that the agency's court reporting service
9 had been alerted not to make the transcript available
10 to anyone requesting a copy.

11 Also in that issuance the board requested
12 a status report from the NRC staff by July 3rd, 2024,
13 providing its best estimate of when it would complete
14 its review of the transcript, and inform the board and
15 the other participants about the need for transcript
16 redaction. Further, because the transcript already
17 had been served to all the participants of this
18 proceeding.

19 The board requested that Duke and the
20 petitioners not disseminate the transcript or the
21 information it contained to anyone who would not
22 eventually be the subject of an affidavit of non-
23 disclosure if it was determined that the transcript
24 contains non-public information such that a protective
25 order needs to be implemented for this proceeding.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 In its July 3rd, 2024 status report, the
2 staff indicated that its review process was
3 continuing, and indicated it would provide another
4 status report on July 23rd, 2024. In response, the
5 board entered an order dated July 8th, 2024, in which
6 the board directed that while awaiting the staff's
7 next status report, to ensure the participants and the
8 public have appropriate and timely access to the
9 documents in this proceeding, the participants were to
10 confer among themselves, and come to an agreement
11 about the contents of a proposed protective order, and
12 an associated affidavit of non-disclosure.

13 Further, if in its next status report the
14 staff indicated that document withholding or redaction
15 was necessary because of the presence of non-public
16 information, the next business day the staff was to
17 submit a joint proposed protective order, and an
18 associated affidavit of non-disclosure for board
19 consideration and adoption.

20 Additionally, in identifying the need to
21 withhold or redact non-public information, the staff
22 was to indicate the basis supporting such an action
23 relative to the various categories for which non-
24 disclosure information is authorized as specified in
25 10 CFR Section 2.390(a). And finally, the board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 provided a list of possible dates for a potentially
2 closed virtual pre-hearing conference shortly after
3 the submission of the joint proposed protective order
4 to discuss any issues regarding the potential non-
5 public information.

6 In its July 23rd, 2024 status update, the
7 NRC staff stated that it was consulting with the
8 Federal Energy Regulatory Commission, or FERC on
9 information in this proceeding, and that in the
10 interim it would propose information be redacted in
11 the proceeding, so that the licensing board, if it
12 chose to do so, could make a decision on contention
13 admissibility.

14 It also indicated that it had consulted
15 with the other participants, and it would file a joint
16 motion for the entry of a protective order on the next
17 day, July 24th. Additionally, the staff reported that
18 it initiated consultation with the participants
19 regarding a draft proposed joint motion for redaction
20 of the June 24th, 2024 initial pre-hearing conference
21 transcript consistent with 10 CFR Section
22 2.390(a)(iii).

23 The next day the NRC staff filed a motion
24 for entry of a proposed protective order with an
25 accompanying proposed protective order, and an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 associated non-disclosure agreement, and possession
2 termination declaration. The staff also indicated
3 that while Duke joined in the motion, petitioners
4 opposed the motion, and reserved the right to respond
5 to it.

6 In a July 25th, 2024 directive, the
7 licensing board indicated that because of the ongoing
8 FERC review of what the proposed protective order
9 identified as potential non-public sensitive
10 unclassified non-safeguards information, or SUNSI,
11 specifically critical energy/electric infrastructure
12 information, or CEII.

13 The matter of whether to adopt a
14 protective order in this proceeding to govern access
15 to and dissemination of non-public information
16 warranted a prompt resolution. Accordingly, the board
17 set a July 29th, 2024 deadline for petitioners to file
18 any written opposition to the staff's motion for entry
19 of a protective order.

20 And based on the scheduling information
21 previously provided by the participants, established
22 the time and date for this public pre-hearing
23 conference in which it would hear presentations from
24 the participants on whether to grant the pending staff
25 motion, as well as on additional related items as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 specified in the order.

2 Petitioners filed their response to the
3 staff's motion for protective order on July 29th, in
4 which they opposed the entry of a protective order,
5 and suggested the board take alternative steps in
6 dealing with any CEII. Before beginning the
7 participant's presentations, I would like to introduce
8 the board members, and then have the representatives
9 of the participants identify themselves for the
10 record, along with any individuals they have
11 designated as available to provide them assistance in
12 responding to the board's questions.

13 With respect to the board, appearing
14 virtually is Administrative Judge Sue Abreu, an
15 engineer, a nuclear medicine physician, and an
16 attorney who also serves as the licensing board
17 panel's associate chief administrative judge
18 technical. And seated on my left here in the
19 licensing board panel's judges' chambers is Judge
20 Arielle Miller, who is a nuclear, and a mechanical
21 engineer.

22 As I indicated at the outset, my name is
23 Paul Bollwerk, and I'm an attorney, and the chair of
24 this licensing board. With that, let's turn to the
25 participants to identify themselves for the record,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 starting with the NRC staff, then moving to applicant
2 Duke, and finally to the petitioners. NRC staff
3 please.

4 MS. WOODS: Good afternoon, may it please
5 the board, my name is Mary Frances Woods, and I'll be
6 representing the NRC staff in this matter. I am
7 joined in the room by one of my co-counsels, Kevin
8 Bernstein, and other members of the NRC staff. And
9 remotely, one of my other co-counsels, Megan Wright,
10 as well as other NRC staff. Thank you.

11 JUDGE BOLLWERK: Mr. Lighty? I think
12 you're muted, sir.

13 JUDGE MILLER: I don't think he has any
14 sound at all.

15 MR. LIGHTY: Can you hear me now, Your
16 Honor?

17 JUDGE BOLLWERK: Yes, I can, thank you.

18 MR. LIGHTY: Very good, thank you. May it
19 please the board, Your Honors, Ryan Lighty, appearing
20 on behalf of Duke Energy Carolinas, LLC. I am joined
21 remotely by my co-counsel Paul Bessette, and Tracy
22 Leroy, as well as personnel from Duke, Rounette Nader,
23 Greg Robinson, and Adam Johnson.

24 JUDGE BOLLWERK: All right, thank you.
25 And Ms. Curran?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. CURRAN: Good afternoon, this is Diane
2 Curran, representing Beyond Nuclear and the Sierra
3 Club. And also on the video, but in a non-speaking
4 role are Paul Gunter of Beyond Nuclear, and our
5 expert, Jeffrey Mitman. And I just wanted to mention
6 to the board that we are going to be, if we need to,
7 in contact by text messages, and I am going to stay on
8 mute as much as I can.

9 But there may be beeping noises if I'm
10 speaking, because they're trying to tell me something,
11 and we're going to try to make it as unintrusive as
12 possible. We're just making the best possible use of
13 Zoom for me to be able to consult them. Thank you.

14 JUDGE BOLLWERK: All right, thank you for
15 the warning, appreciate it. All right, well, thank
16 you all counsel then. And I would note that we made
17 available to the participants and interested members
18 of the public, including via the board's scheduling
19 issuance in this case, and an NRC website notice,
20 information on how to access this conference by
21 telephone on a listen only basis.

22 We hope that those members of the public
23 or others who wish to listen to this conference have
24 been able to access the bridge line this afternoon.
25 And as a courtesy to those members of the public, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 others who are joining us via a listen only telephone
2 connection, as they start to speak in delivering their
3 argument or responding to a board question, counsel
4 should please identify themselves so it will be clear
5 who is talking, something the board's judges will
6 attempt to do as well.

7 I would observe as well that this
8 proceeding is being transcribed, and a transcript
9 should be available to the participants later this
10 week via agency e-filing system notice, with
11 incorporation into the NRC's publicly available
12 electronic hearing docket shortly thereafter. And in
13 that regard, I would point out that in our July 25
14 issuance, the board indicated that it anticipated that
15 the matters involved in this pre-hearing conference
16 could be discussed without referencing any non-public
17 information.

18 Nonetheless, since the NRC staff seemingly
19 has the best understanding about exactly what
20 information potentially could be non-public, it is
21 also our expectation that they will advise the board
22 promptly if they believe any discussion is moving
23 toward information that potentially could be non-
24 public, so as to avoid the board having to make this
25 transcript a non-public document as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 As to the process that will follow for
2 today's presentations, as we outline in our July 25th,
3 2024 issuance, each participant's designated
4 representative has been allotted a period of time
5 within which to present that participant's position
6 regarding the entry of a protective order in this
7 case.

8 We will hear first from the NRC staff as
9 the proponent of the pending motion for entry of a
10 protective order, which has been given a total of 15
11 minutes, of which they may reserve up to five minutes
12 for rebuttal presentation. Then Duke, which the staff
13 has indicated supports the motion, will be heard from,
14 and also has been allotted 15 minutes to present its
15 position, of which five minutes can be reserved for
16 rebuttal.

17 Then the petitioners will have 15 minutes
18 to present their opposition to the motion, after which
19 Duke, and then the NRC staff will have an opportunity
20 for rebuttal. And while board members normally might
21 interpose questions during a participant's argument
22 presentation, as we did in the June 24th initial pre-
23 hearing conference regarding contention admissibility,
24 we'll endeavor to wait until all the participant's
25 presentations are concluded.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Then to the degree they haven't already
2 been explored in the context of participant's motion
3 presentation, we'll explore several questions we
4 outlined in our July 25th, 2024 order that have been
5 risen about this non-public information matter. All
6 that being said, and turning to Ms. Woods, how much
7 time do you wish to reserve for rebuttal?

8 MS. WOODS: Thank you, Your Honor, I would
9 like to reserve five minutes for the period of
10 rebuttal. Thank you.

11 JUDGE BOLLWERK: All right, and you're on.

12 MS. WOODS: Thank you, Your Honor. Good
13 afternoon, and may it please the board. My name is
14 Mary Frances Woods, and I am representing the NRC
15 staff in this matter. The discussion here today is
16 centered around a key point, ensuring the protection
17 of information in this proceeding, specifically
18 information the NRC staff has initially identified as
19 potentially containing critical electric energy
20 infrastructure information, or CEII.

21 Specifically the item for the licensing
22 board today for consideration is the joint motion for
23 a proposed protective order and non-disclosure
24 declaration submitted by the NRC staff, which was
25 supported and joined by Duke Energy. First, I would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 like to take a minute to briefly provide a high level
2 discussion of CEII.

3 There is a statutory requirement to
4 protect critical electric and energy infrastructure
5 information as provided in Title 16 of the U.S. Code
6 at Section 824(o)-1(d)(1) through (2). Both describe
7 CEII as specific engineering vulnerability or detailed
8 design information about proposed or existing critical
9 infrastructure, physical or virtual, that one, relates
10 details about the production, generation,
11 transmission, or distribution of energy.

12 Two, could be useful to a person planning
13 an attack on critical infrastructure. Three, is
14 exempt from mandatory disclosure under the Freedom of
15 Information Act. And four, gives strategic
16 information beyond the location of the critical
17 infrastructure. FERC goes on to say that critical
18 energy electric infrastructure means a system or asset
19 of the bulk power system, physical or virtual, the
20 incapacity or destruction of which negatively could
21 affect national security, economic security, public
22 health or safety, or any combination of such matters.

23 Under 16 USC 824(o)-1(d)(3), FERC has the
24 statutory authority to designate as CEII both its own
25 information, and information of other agencies.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Importantly, FERC is the only entity that can formally
2 designate information as CEII for the NRC. However,
3 FERC has encouraged other federal agencies to take all
4 necessary steps to protect information that may be
5 CEII.

6 The NRC does not have discretion to
7 publicly release information that FERC has designated
8 as CEII. In 2018 the NRC and FERC entered into a
9 memorandum of understanding or MOU available at
10 ML18164A182, which was most recently renewed in April
11 2024. The MOU sets forth the basic parameters, under
12 which the NRC and FERC will cooperate under 18 CFR
13 388.13(a) to protect the material in the NRC's
14 possession that may be CEII.

15 Further, the MOU provides that NRC staff
16 will be responsible for initially identifying
17 information in its custody that contains CEII as
18 defined by 18 CFR 388.113©, and FERC staff will be
19 available to consult with NRC staff about any CEII.
20 The NRC handles CEII under its sensitive unclassified
21 non-safeguards information, or SUNSI processes, of
22 which CEII is a SUNSI group.

23 The NRC staff will be proposing redactions
24 to the 2024 initial pre-hearing conference transcript
25 in this matter. Other documents associated with this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 current 2024 adjudicatory proceeding are also
2 impacted. The NRC staff is consulting with the
3 parties regarding the non-public treatment of
4 information associated with this proceeding, and
5 intends to update the licensing board and parties
6 promptly at the conclusion of this consultation.

7 To be clear, those impacted documents will
8 be made temporarily non-public. Should the outcome of
9 the NRC staff's consultation with FERC result in
10 necessary redactions to the documents, those will be
11 made accordingly, and the redacted documents re-
12 released for public availability. In other words, the
13 NRC staff would only redact information FERC
14 designates as CEII, and otherwise make the information
15 publicly available.

16 As the NRC staff made the initial
17 identification of information as potentially being
18 CEII, at this point the focus is on ensuring the
19 information is protected as part of this proceeding.
20 The NRC staff acknowledges that this is a unique
21 situation, and recognizes the protection associated
22 with this type of information impacts how information
23 is handled on the subject docket, as well as
24 discussions associated with the information within the
25 scope of this proceeding.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 It is important to note that
2 implementation of this protective order, and non-
3 disclosure declarations before the licensing board
4 today would not restrict by its terms the petitioner's
5 current access to the limited information identified
6 on this current docket. However, it would ensure the
7 information remains protected during this proceeding,
8 and after its conclusion.

9 Furthermore, it would ensure that the
10 information at issue is not disseminated outside the
11 bounds of this proceeding, or to parties not covered
12 under the protective order and non-disclosure
13 declarations. Thus, in the NRC staff's view, the
14 participants will still be able to fully participate
15 in this proceeding, and are not harmed by the issuance
16 of a protective order in this proceeding.

17 In the NRC staff's view, the protective
18 order is necessary to ensure that information in this
19 proceeding can be properly protected during its
20 pendency. Accordingly, it is the NRC staff's position
21 that the licensing board should issue the protective
22 order submitted by the NRC staff, and supported, and
23 joined by Duke Energy. Thank you.

24 JUDGE BOLLWERK: All right, Mr. Lighty?

25 MR. LIGHTY: Thank you, Your Honors, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 may it please the board, Ryan Lighty on behalf of Duke
2 Energy. We generally agree with the staff's
3 presentation, and will not repeat those same
4 arguments. But perhaps we can add some additional
5 gloss. For the record, I would note that we just
6 received petitioner's 23 page opposition to the motion
7 less than 24 hours before this conference.

8 But nevertheless, we will endeavor to
9 address three key arguments that they raised in their
10 opposition. First, the suggestion that a protective
11 order is premature, or unnecessary at this stage.
12 Second, their claims of undue burden and unknown
13 scope. And finally, their assertion that
14 inadvertently disclosed information is forever public.

15 So starting with the first topic, their
16 suggestion that a protective order is premature, or
17 unnecessary at this stage. If the petitioners had
18 their way, they would postpone efforts to protect
19 potentially non-public information until a definitive
20 conclusion has been reached on the status of that
21 information.

22 But that view flies in the face of
23 extensive NRC case law holding exactly the opposite.
24 For more than four decades presiding officers have
25 been instructed that protective orders are an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 appropriate, and I quote, interim measure to avoid
2 delay in the proceedings pending definitive resolution
3 of whether or to what degree information should be
4 withheld from the general public, end quote.

5 That comes from the Metropolitan Edison
6 case, ALAB-807 issued in 1985. And that's precisely
7 the purpose the motion seeks to serve here, is it's
8 important to recognize that the purpose of the
9 protective order is not to deprive petitioners of
10 their ability to access any non-public information for
11 purposes of participating in this proceeding.

12 Duke and the staff have categorically
13 agreed that the petitioners may have access to that
14 information, that's not in dispute. But the objective
15 of the protective order is to prevent disclosure to
16 others who do not have a legitimate purpose. The
17 definition of CEII includes information that could be
18 useful to a person in planning an attack on critical
19 infrastructure that could negatively affect security,
20 economic security, public health or safety, or any
21 combination of those matters.

22 And we would also note that in addition to
23 CEII, the NRC has previously withheld similar
24 information under FOIA Exemption Bravo Seven Foxtrot,
25 and that pertains to information that could reasonably

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 be expected to endanger the life or physical safety of
2 any individual. And I would note that courts have
3 routinely upheld the use of that exception to withhold
4 precisely this type of information.

5 So petitioners claim that a protective
6 order is premature, or is unnecessary, those arguments
7 are simply without merit here. Turning next to
8 petitioner's claims of undue burden and unknown scope.
9 The petitioners claim both that a protective order
10 would impose an undue burden on them, and also that
11 the scope of that burden is unknown, but those two
12 assertions are in conflict.

13 If petitioners don't know the scope of the
14 information they may be required to protect, then
15 their claim of undue burden has no factual basis. But
16 as a matter of process, the precise scope of the
17 covered information can't be discussed in a public
18 forum. The scope definition per se is non-public. So
19 simply put, a protective order is needed to facilitate
20 the communication of that scope.

21 And to the extent the petitioners demand
22 otherwise, they're simply trying to put the cart
23 before the horse here. And in any event, the burden
24 of protecting non-public information must be viewed in
25 the context of the interest that is being protected

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 here. Life safety. One can hardly imagine a scenario
2 in which the burdens associated with reviewing a
3 relatively small stack of papers would somehow
4 outweigh the significant public interest in protecting
5 life and physical safety.

6 And finally, to petitioner's assertion
7 that inadvertently disclosed information is forever
8 public. As a general matter we do not view this as an
9 issue that must be resolved by the board. As noted in
10 petitioner's opposition at page eight, quote, if
11 petitioners decide to seek disclosure of the redacted
12 information, they will use the NRC's procedures in 10
13 CFR Part 9, and may appeal to federal district court
14 as permitted by the FOIA, end quote.

15 We agree that the agency's normal FOIA
16 process is the appropriate agency process for
17 challenging any determination that information is non-
18 public. So unlike challenges to proprietary
19 information designations, where presiding officers are
20 called on to make determinations regarding the
21 designation itself, we are unaware of any regulation
22 or delegation of authority to the board to adjudicate
23 other types of SUNSI determinations or the agency's
24 FOIA obligations.

25 And so petitioner's arguments here about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 what may or may not be non-public, I think simply are
2 not at issue here. But for the record, and as a
3 matter of law, it is quite clear that inadvertent
4 disclosures do not operate as an automatic waiver of
5 non-public information designations. And in fact our
6 brief research has revealed multiple cases in which
7 courts have ordered a receiving party to destroy or
8 return copies of documents that were inadvertently
9 produced in response to a FOIA request.

10 So ultimately in our view the board should
11 grant the protective order herein order to allow the
12 process to move forward, and for the discussion of the
13 scope of covered information to be discussed among the
14 parties. Thank you, Your Honors.

15 JUDGE BOLLWERK: I take it -- I neglected
16 to ask you, you're saving five minutes for rebuttal,
17 I take it?

18 MR. LIGHTY: Yes, Your Honor, thank you.

19 JUDGE BOLLWERK: Thank you. All right,
20 Ms. Curran?

21 MS. CURRAN: Thank you. May it please the
22 board, we have briefed this issue extensively, and I'm
23 not going to go over everything we say in our brief,
24 very happy to answer questions, but I would like to
25 address a couple things that have been said here

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 today. I really want to emphasize that ever piece of
2 information that the staff is proposing to redact
3 here, or to withhold, is in the public record.

4 We're not relying on anything that's not
5 a public document, and Mr. Lighty referred a couple
6 times to inadvertent disclosures, these disclosures
7 weren't inadvertent. This is a years' long process of
8 trying to bring to light information about the
9 situation at Oconee, what many members of the public
10 perceive as a failure to adequately protect the Oconee
11 reactors from the risk of flooding.

12 And Mr. Lighty also referred to the
13 importance to safety of withholding this information.
14 From our perspective, shedding light on this
15 information is more important to safety because we
16 need -- we want the public to be aware of this
17 situation. Now, we understand that sometimes there is
18 information that needs to be protected.

19 But a long time ago, at least 10 years
20 ago, 15 years ago, the NRC determined that the
21 information we're using could be released. And the
22 cases that we are relying on, there is a body of cases
23 that relates to inadvertent disclosures, and whether
24 the agency can take back something that was
25 inadvertently released, and whether it can tell

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 whoever is holding that information that they have to
2 give it back, or they can't use it.

3 There is another body of cases that says
4 that once the bell has rung, it can't be unring. Once
5 there is a formal disclosure under FOIA of
6 information, once the agency has determined that it's
7 non-exempt, that the agency cannot claw that back. We
8 are concerned that this protective order, with its
9 very broad terms, is being used -- that we're being
10 actually asked to participate in the clawing back of
11 this information by agreeing not to disclose or
12 discuss it.

13 And just to illustrate a little bit, this
14 information, much of it has been in the public domain
15 for years now. It's in all kinds of places, it's on
16 ADAMS for sure, we checked. The information that
17 we're relying on, the documents, certain documents may
18 not be there anymore. But you can find it elsewhere
19 on ADAMS.

20 And then there are other places where it
21 is, people have it, individuals have it, organizations
22 have it, it's on something called the Way Back
23 Machine. This is information that has gone out into
24 the public, it's there, it's been there a long time,
25 and to say, to create the fiction that we are being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 given access to this information and we have to
2 protect it, it obliges us now.

3 If we sign this protective order, we've
4 all got to go through all our files, and find any
5 place where we have saved, or copied, or done
6 something with a document that has this information,
7 and find a locked cabinet, and put it in there. And
8 this is information that's been public for a long
9 time. So I hope you can understand how reluctant we
10 are to enter into something like an agreement like
11 this.

12 And I'll say again that for this
13 particular stage of the proceeding, we are not opposed
14 if the licensing board decides that it wants to redact
15 information for purposes of public disclosure, we're
16 not opposed to -- for the purposes of making that
17 decision, to observe those redactions -- if we get an
18 adverse decision from you, if we do a motion for
19 reconsideration, if we do an appeal brief, we're
20 certainly willing to agree to redactions of what we
21 think is public information.

22 But of working through the FOIA process,
23 as Mr. Lighty said, we could go through the
24 administrative process, and try to get it released
25 that way. It's very possible that this proceeding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 will be over soon, because you will decide against it.
2 Certainly happens fairly often to petitioners in cases
3 like this.

4 I think if contentions are admitted, it
5 gets more complicated, and in that event we would ask
6 either the board to engage in a discovery process that
7 would help us sort out what is legitimately public
8 information from what information should be protected,
9 or use the FOIA process to do that. But we think that
10 it's very important as we go forward to sort that out
11 so that we can maximize public disclosure of relevant
12 information.

13 And certainly, we can go on the NRC
14 website, and transparency is a very important value of
15 this agency. So I don't think it's 100 percent clear,
16 supposing you admit at least one contention that could
17 involve what the staff is saying to be SUNSI, we would
18 -- what we would strive to do once the staff had
19 identified information that was claimed to be SUNSI,
20 we would see if we could find it in the public record.

21 And then if it truly was new information,
22 say Duke has made changes to the facility in recent
23 times that have never been disclosed publicly, we
24 would consider entering a protective order for
25 something like that. But we definitely want to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 careful to the extent that we can rely on information
2 that is already in the public record, that can be
3 publicly discussed, that is a very important goal for
4 the petitioners. I'll stop there.

5 JUDGE BOLLWERK: All right. This is Judge
6 Bollwerk, Mr. Lighty, do you have any rebuttal to
7 anything you've heard?

8 MR. LIGHTY: Thank you, Your Honor.
9 Again, I would just note that this assertion that
10 inadvertently disclosed information is forever public
11 is simply contrary to law. I know that Ms. Curran
12 takes the position that information that was disclosed
13 as part of a FOIA response somehow demonstrates that
14 it was not an inadvertent disclosure is simply
15 unsupported by the case law.

16 There are plenty of cases in which
17 documents have been disclosed as part of a FOIA
18 request, but the inadvertency was clear because the
19 agency had attempted to withhold certain information,
20 and it was simply an administrative error that the
21 information got released to the public. And although
22 we really can't go into it here in this public
23 session, I think that there is more than adequate
24 evidence to demonstrate that that may be the case
25 here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 But again, I'm not even sure that that's
2 an area that the board needs to resolve here, as it is
3 the agency's determination as to what information is
4 SUNSI, and that appears to have been delegated to the
5 staff. So other than that, I think we would stand on
6 our earlier arguments.

7 JUDGE BOLLWERK: All right. Ms. Woods?

8 MS. WOODS: Thank you, Your Honor. Just
9 a few points I would like to make, is that I think we
10 can all agree here that the purpose of today's
11 proceeding is to ensure the protection of members of
12 the public. And to do that, this type of information
13 has been considered as sensitive information in order
14 to protect critical infrastructure.

15 And so in order to protect the people that
16 live near the plant, or any plant, we need to protect
17 CEII in this proceeding. And to be clear as well, the
18 CEII -- the information disclosures which the
19 petitioners are referring to predated the creation of
20 CEII, which was done in 2015, as well as the NRC's MOU
21 with FERC, which was executed in 2018.

22 And so, again, I just want to iterate that
23 the purpose here is really to protect the information
24 in order to ensure the efficacy of the processes that
25 are in this proceeding. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE BOLLWERK: All right, this is Judge
2 Bollwerk, let me then start with some questions. Ms.
3 Woods, do you agree that this was an inadvertent
4 disclosure in terms of the FOIA material?

5 MS. WOODS: In terms of that, I think I'd
6 like to take a step back and maybe walk through the
7 chronology of that. There was a previous FOIA request
8 that was done as I understand it, that was done in pre
9 2015. The NRC's executed MOU with FERC was not done
10 until 2018. And so the NRC staff is following its
11 current procedure in order to protect CEII under its
12 statutory obligation as agreed upon within the MOU
13 with FERC.

14 JUDGE BOLLWERK: Well, I guess that raises
15 a question, one of the ones we framed in the order,
16 which is can you give us some sense of why all of a
17 sudden this is taking place now?

18 MS. WOODS: Of course, Your Honor. So as
19 a result, again, I know I just walked through it, but
20 again, the information that is at issue is a FOIA that
21 predated the execution of an MOU with FERC, which was
22 in 2018. The NRC received subsequently around the
23 2022 time frame a freedom of information request. As
24 part of the NRC staff's review of information
25 pertaining to that FOIA request, one of the documents

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 at issue was made non-public in January of 2023.

2 JUDGE BOLLWERK: So that was 2023, now all
3 of a sudden in 2024 we have other concerns, which are
4 -- I mean one of the problems from the board's
5 perspective is that we have no idea what the scope of
6 this is. Obviously there's a transcript involved, but
7 we don't really know what else is involved. Can you
8 give us any sense about what the scope of this is in
9 any way, or even when you think FERC is going to be
10 finished looking at whatever it's looking at?

11 MS. WOODS: Thank you for the question,
12 Your Honor. So as was noted, within the 2024 initial
13 pre-hearing conference, the board did ask the staff to
14 look over the transcript to check if there was any
15 concerns regarding information. The NRC staff did so,
16 and did identify information that could potentially be
17 considered CEII.

18 As a result, it did expand its scope to
19 look at the current adjudicatory record, as well as
20 the previous adjudicatory record, and identified the
21 same or similar information that was also discussed
22 there. And as a result, the NRC staff is going
23 through its process regarding consultation with FERC.
24 And I do have an update as well, this kind of late
25 breaking news as it were.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 FERC will provide an update to the NRC
2 tomorrow morning, so we may have more information
3 regarding the status of our consultation with FERC as
4 early as tomorrow morning.

5 JUDGE BOLLWERK: And did that consultation
6 include the transcript?

7 MS. WOODS: Yes, it did, Your Honor.

8 JUDGE BOLLWERK: Let me go to Ms. Curran
9 -- well, let me ask you a question. Mr. Lighty made
10 reference to the fact that, at least he seemed to
11 suggest that the board would have no authority to, if
12 Ms. Curran raised an objection to something that was
13 made non-public, which is generally the process under
14 a protective order, if that sort of concern is lodged,
15 we have no authority to do that in this instance?

16 MS. WOODS: Thank you, Your Honor. The
17 NRC or the board would not have the authority to de-
18 designate information that is identified or designated
19 as CEII by FERC, as it is mandatory to withhold under
20 statutory requirements for that category of
21 information.

22 JUDGE BOLLWERK: And you're saying that
23 that then distinguishes this from other kinds of
24 SUNSI?

25 MS. WOODS: I would argue that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 different than other kinds of SUNSI, as here there is
2 a mandatory withholding requirement under a statutory
3 obligation to do so, and FERC is the designating
4 authority for CEII.

5 JUDGE BOLLWERK: Well, in looking at the
6 MOU, it talks about consultation with the FERC
7 coordinator, and in reading this, I guess I'm a little
8 confused, it sounded to me like in the end, is it
9 FERC's determination, or is it the NRC staff's
10 determination based on what FERC suggests to them?

11 MS. WOODS: That's a great question, Your
12 Honor, I can elaborate or clarify that. So the NRC
13 staff is under an obligation that when it identifies
14 information that could potentially be CEII, it
15 initially identifies that information, at which point
16 it will protect it accordingly during the pendency of
17 consultation with FERC.

18 And at which point FERC will render its
19 determination, or designate that information as CEII
20 if it agrees.

21 JUDGE BOLLWERK: And so you're saying that
22 once FERC makes that determination, the staff has no
23 discretion?

24 MS. WOODS: That's correct, Your Honor.

25 JUDGE BOLLWERK: Ms. Curran, do you want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to address that point?

2 MS. CURRAN: If that's correct, then it
3 looks like that puts the petitioners in the position
4 of making a FOIA request and or FERC, and dealing with
5 both agencies through that part nine administrative
6 process, or through FERC's administrative process.
7 And separating what the board has to do here from the
8 issue of public disclosure, I think it's just a little
9 complicated.

10 And as I say, a lot depends on whether the
11 board grants us a hearing. I honestly don't think
12 it's complicated, if the board denies a hearing, I
13 don't think there's a whole lot that -- it's not that
14 complicated. What's complicated is if we get a
15 contention or more that's been admitted that involves
16 consideration of this information.

17 And I think it really is going to -- we're
18 going to need to find out what is FERC proposing to
19 withhold, why, on what basis, we're going to have to
20 get a sense of is there information that is not
21 currently in the public record that is going to be
22 relied on. For purposes of this hearing request,
23 we've put all the information in, it's been discussed,
24 the board isn't allowed to rely on extraneous
25 information in this decision, so everybody knows what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 it is.

2 And it's only a matter of if the board
3 issues a redacted decision of us seeking disclosure
4 through FOIA at some point, that's straight forward.
5 If there's a hearing here, I think it's more
6 complicated, and it's probably going to take some time
7 to sort it out, these questions of intentional
8 disclosure versus inadvertent disclosure.

9 Whether this statute trumps the previous
10 disclosures, it's my understanding from Mr. Mitman
11 that CEII has existed since 2001. It relates to the
12 September 11th attacks, that these were -- we all
13 remember that there was a tremendous federal response
14 to the September 11th attacks. And these FOIA
15 disclosures happened after the September 11th attacks,
16 so there was some thought put into that before.

17 We don't know all the details yet because
18 we're still trying to sort through it, we're waiting
19 for FERC's determination, we've had a reversal of
20 course here. We didn't know that the staff was
21 starting to take information off of ADAMS until we got
22 to this point of doing a hearing request, and all of
23 a sudden the 2011 safety evaluation isn't on ADAMS
24 anymore.

25 It's been in the public for a long time,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 nobody said anything to us about how well now this is
2 non-public, it just suddenly disappeared from ADAMS.
3 So we're trying to understand what's going on at the
4 NRC here. There's been a real sea change in the
5 treatment of this information, and we do not want to
6 get involved in any kind of procedural situation where
7 we would tie ourselves in knots trying to keep this
8 information from being suppressed.

9 We think it is super important that --
10 this is not the first time in our experience where
11 there was a significant safety problem that the NRC's
12 solution to it was not to address the substance of the
13 problem, but to suppress the information. I have many
14 years of experience with spent fuel pool safety, that
15 was the initial response.

16 And there was a tremendous effort to -- I
17 remember when the National Academy of Sciences did
18 their study, there was an effort to suppress that
19 study, ultimately it was released in redacted form.
20 But getting that information out in the public eye was
21 so important, because that's how you get change. If
22 no one knows there's a problem, then it's very
23 unlikely to be addressed.

24 JUDGE BOLLWERK: Let me go back to Ms.
25 Woods for a couple questions. In terms of FERC's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 response tomorrow, are you expecting them simply to
2 tell you some information may have CEII in it, or
3 you're expecting them to tell you this information
4 definitely has CEII in it, and here is what it is?

5 MS. WOODS: I'd have to wait to find out
6 from FERC until tomorrow morning to know exactly what
7 the nature of the update will be.

8 JUDGE BOLLWERK: Okay, let's assume, right
9 now the only thing that we know is non-public is the
10 transcript, and if FERC comes back to you and says you
11 need to take the following items out of the
12 transcript, does that then relieve the need for us to
13 put any protective order in place because you're
14 simply going to redact that and put it out?

15 MS. WOODS: It does not, Your Honor. At
16 this point, as we indicated before, there is
17 information that needs to be protected at this point.
18 We've identified information, again, that we are
19 consulting with on FERC, regarding its designation of
20 CEII. And so even collaterally to this proceeding,
21 and for transparency, the NRC staff has initiated an
22 information review regarding this type of information.
23 And so that is being done outside of the scope of this
24 proceeding as well.

25 JUDGE BOLLWERK: So if we ask you for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 status report on whatever FERC tells you tomorrow, are
2 you going to be able to provide that for us, or is
3 that going to run back into non-public information?

4 MS. WOODS: We would certainly be able to
5 provide an update to the board on a public setting.
6 But should it require information that would need to
7 be retained non-publicly, the EIE does offer the
8 ability to provide a non-public submission, and the
9 NRC staff could certainly provide a non-public
10 submission should that be necessary in order to (audio
11 interference).

12 JUDGE BOLLWERK: Again, we don't have a
13 protective order in place, at least not right this
14 second. Ms. Curran, you want to say something?

15 MS. CURRAN: Yes, please. I just don't
16 see, if the issue is what information in this
17 proceeding should be non-public, all of the
18 information that we rely on is public information,
19 it's in our pleadings, it's in the oral argument
20 transcript. I don't see why a closed proceeding is
21 needed for the staff to identify information that
22 ought to be redacted.

23 And if there is other documents that we
24 didn't rely on that are out there in the public
25 record, in ADAMS, then I don't think that's something

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that the staff needs to bring up to the board. That's
2 something that the staff needs to engage the public
3 within another setting. But we still don't see the
4 need for any kind of protective order right now based
5 on the information that is in this adjudicatory
6 record.

7 JUDGE BOLLWERK: Ms. Woods, besides the
8 pre-hearing conference transcript, can you tell us of
9 any of the other information that's currently in the
10 docket in terms of the filings that are being
11 considered by FERC?

12 MS. WOODS: At this point given that we
13 are in a public setting, I am hesitant to identify any
14 specific documents that are on the docket, as we are
15 in a public conference. However, I would just like to
16 take a step back, and note that this is a FERC call,
17 in terms of the information that needs to be
18 designated as CEII.

19 The NRC staff again has just initially
20 identified information as being CEII, and is
21 consulting accordingly for designation of that
22 information.

23 JUDGE BOLLWERK: How long would it take
24 you to be able to provide the board with a status
25 report on what FERC tells you tomorrow?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. WOODS: I'm hesitant to speculate, but
2 I would say within a day or so, depending on the
3 nature of the update tomorrow.

4 JUDGE BOLLWERK: So tomorrow is Wednesday,
5 certainly by Friday then?

6 MS. WOODS: Yes, Your Honor, I think
7 Friday would be reasonable for an update regarding
8 FERC's determination, or the information or update.

9 JUDGE BOLLWERK: All right, Ms. Curran,
10 I'm sorry?

11 MS. WOODS: And looking at sooner,
12 obviously, if possible.

13 JUDGE BOLLWERK: I'm sorry, I spoke over
14 you, can you repeat that?

15 MS. WOODS: My apologies, Your Honor, we
16 would certainly strive to update the board sooner, but
17 we think Friday would be reasonable as well.

18 JUDGE BOLLWERK: Sorry, Ms. Curran, you
19 had your hand up?

20 MS. CURRAN: Yeah, I just would like to
21 respond to the question of whether it's sensitive
22 information, what documents FERC is reviewing to see
23 whether information should be redacted. With relation
24 to this particular proceeding, there's a very limited
25 number of documents, we all know what information is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 in these documents.

2 I just -- we do not think that that is the
3 kind of information that is super sensitive. If we
4 make a FOIA request, the NRC, and we ask for a
5 document that has redacted information, the document's
6 redacted. It's just a pretty standard approach. I
7 don't see -- none of us sees why this is confidential
8 information, and I would ask the staff to report on
9 what documents is FERC reviewing.

10 And that way we know if they don't ask for
11 redactions from some document or other, that we have
12 no concerns.

13 JUDGE BOLLWERK: Ms. Woods, do you want to
14 respond to that?

15 MS. WOODS: Again, this determination is
16 FERC's in terms of the designation of CEII, and again,
17 in respect to the board's order that was issued on
18 July 25th as well, that this public conference remain
19 public, again, the NRC staff is not at liberty to be
20 able to provide those specific document references in
21 a public setting.

22 JUDGE BOLLWERK: So if I'm hearing you
23 correctly, notwithstanding whatever status information
24 you give us on Friday, we probably need to have
25 another conference, which would be non-public, within

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the next week or so, potentially.

2 MS. WOODS: There is a potential, should
3 Your Honors agree, as the NRC staff was supported and
4 joined by Duke Energy to issue a protective order in
5 this matter, there is the ability of the board to
6 issue a protective order to ensure that the
7 information that is potentially at issue as being CEII
8 is protected accordingly.

9 JUDGE BOLLWERK: Let me go to a couple --
10 let me just stop here. Judge Abreu, did you have any
11 questions about what we've been speaking about? No?
12 Judge Miller?

13 JUDGE MILLER: I do.

14 JUDGE BOLLWERK: Go ahead.

15 JUDGE MILLER: Thank you. My questions
16 are for NRC staff counsel. I guess I'll start with
17 what you just mentioned, and work our way back. So if
18 we can't discuss the specific titles, and numbers of
19 the documents that are being reviewed by FERC, and
20 potentially contain CEII, then how can we, as a board,
21 appropriately give guidance and boundary conditions to
22 all the parties with respect to all the SUNSI
23 documents associated with this proceeding? How do we
24 know what that envelops?

25 MS. WOODS: Thank you, Your Honor, for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that question. So we do have the ability, we can
2 update the board through a non-public filing, and
3 provide a better boundary, if you will, on that
4 information. And again, I would like to also just
5 maybe take a broader step back in terms of what the
6 purposes of this proceeding are. And they are to
7 discuss contention admissibility regarding the draft
8 environmental impact statement associated with the
9 Oconee subsequent license renewal.

10 JUDGE MILLER: Yes, well I understand
11 that, but to Ms. Curran's point, if we're here to
12 discuss the contention admissibility of Oconee, and
13 we're talking now about these documents which may or
14 may not become applicable, then doesn't it then state
15 that we would need to know what that list is in order
16 for us to appropriately give guidance to everyone for
17 the remainder of this hearing for as long as it
18 exists?

19 MS. WOODS: Again, here, this isn't an
20 evidentiary hearing as it were, in terms of any sort
21 of broader scope of documentary evidentiary searches.
22 And again, it is possible for the board to make this
23 a non-public proceeding. And again, I would just say
24 we can update the board through a non-public filing.

25 JUDGE MILLER: Mr. Lighty, I think I saw

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 your hand up.

2 MR. LIGHTY: Yes, thank you, Your Honor.
3 I was just going to offer a thought here. I know two
4 of the board's questions were about process, and how
5 we move forward from here, and we would suggest that
6 the logical first step is to issue a protective order
7 to allow the sharing of exactly the type of
8 information you're asking about.

9 So the parties could share that
10 information among themselves, and with the board. And
11 then once that information is shared, then the board
12 could potentially append that information to the
13 protective order that specifically defines what is
14 being protected here. In other words, the specific
15 documents, and the specific information within those
16 documents that is potentially non-public.

17 And that would be non-public attachment,
18 for example, to the protective order itself. But that
19 information can't be shared among the parties until
20 there is a protective order. But I would, to go back
21 to what staff was mentioning, I think counsel was
22 suggesting an in camera submission, so only between
23 the staff and the board, and that's one option.

24 But to allow that information to be shared
25 among the parties, I don't see how you do that without

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 a protective order, because the existence and
2 definition of the non-public information itself is
3 non-public information.

4 JUDGE MILLER: Okay.

5 JUDGE BOLLWERK: So, Mr. Lighty, I heard
6 you use the word in camera, I heard Ms. Woods use the
7 word non-public, which isn't exactly the same thing.
8 In camera means only the board gets it, non-public
9 means that in theory other participants in the
10 proceeding would see it, it just can't be made
11 available on the public record. Let me turn back to
12 Ms. Woods, and see what you were contemplating.

13 MS. WOODS: At this point I would agree
14 with Duke Energy's counsel, in that if there's not a
15 protective order in place, the information would be,
16 by default, a non-public filing that would be in
17 camera with the board, and only those that have the
18 appropriate access would have access to that non-
19 public filing without the protective order being put
20 in place.

21 JUDGE BOLLWERK: Ms. Curran, do you want
22 to comment on that?

23 MS. CURRAN: Yes, please. Well, we would
24 object strenuously to either the concept of a
25 protective order, or in camera review for a report on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 what documents FERC is reviewing to see if there is
2 protected information in them. Documents in this
3 proceeding, we're not talking about documents outside
4 of this proceeding.

5 There is a very limited number, it's
6 pretty obvious what they are, and we really want to
7 avoid this penumbra of secrecy that the staff is
8 seeking to throw over this proceeding. So we ask if
9 the staff is going to propose this, we would ask for
10 a formal opportunity to object before you accept that.
11 And if you do accept it, I guess we will be forced to
12 FOIA everything in this proceeding to get it out into
13 the light of day.

14 But I hope that the board can make a
15 preliminary determination that it isn't necessary to
16 -- that it's secret, what document you're reviewing to
17 see if it contains proprietary information when
18 there's only a handful of documents that's been even
19 filed in this proceeding, it's to us, absurd.

20 JUDGE MILLER: I think that's all the
21 questions that I have.

22 JUDGE BOLLWERK: Okay. So, Ms. Woods,
23 just so I make sure that I understand clearly what
24 you're talking about, if there were a protective order
25 in place, and you were to -- relative to any list of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 documents, with that protective order in place, that
2 could be shared with Ms. Curran as well, that list?

3 MS. WOODS: That is correct, Your Honor,
4 as the NRC staff indicated in its opening statement.
5 The intent of the protective order is just that, to
6 protect the information in this proceeding. And in
7 order to allow an open discussion of it amongst the
8 participants, the protective order is necessary, in
9 this case, in order to ensure the protection of the
10 information.

11 And again, the determination of
12 information here is FERC's. The NRC staff is
13 consulting with information initially identified as
14 potentially being CEII, and I think we can all agree,
15 again, that we want to be able to protect the
16 information in order to be able to protect public
17 health and safety, and that is the purpose of this
18 proceeding here.

19 And so in order to do that, and share
20 amongst the participants, the protective order is
21 necessary, as well as the non-disclosure agreements,
22 and the other supporting declarations there. Thank
23 you.

24 JUDGE BOLLWERK: Ms. Curran?

25 MS. CURRAN: Ms. Woods just used the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 phrase open discussion of information, and we'd just
2 like to point out that we've had the open discussion
3 in the oral argument. As far as we know, this is it
4 for us. We have submitted -- in terms of we're waiting
5 for a ruling from the board on the admissibility of
6 our contentions.

7 We filed our petition for a hearing, we
8 had oppositions, we replied, we had an oral argument,
9 under the rules that's what we get. What possible use
10 would an open discussion of this redacted information
11 have, or this withheld information have if it's
12 completely in FERC's discretion to withhold it as the
13 staff is saying?

14 What purpose is served from us talking
15 about it? It's just some words that are going to be
16 removed from some documents, and the words are already
17 on the paper. It's not going to add anything to have
18 a discussion of those words, except to gag the
19 petitioners who aren't allowed to, once we sign a
20 protective order, then everything that comes up there
21 is because we signed a protective order, for that
22 reason alone, we can't discuss it.

23 So we've got that problem now, in addition
24 to the fact that we have to FOIA everything now. It's
25 too much of a burden on the petitioners for no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 apparent purpose.

2 JUDGE BOLLWERK: Well, one thing from the
3 board's perspective I would point out, until we know
4 what information is non-public, we don't know what our
5 decision, in issuing a decision, what has to be
6 public, and what has to be non-public. Yes.

7 MS. CURRAN: Judge Bollwerk, I think
8 you're going to get that determination from FERC, in
9 the sense that they're going to hand you back the
10 pleadings, and the transcript from this proceeding
11 with redactions, and say these are the words you can't
12 discuss publicly. And it would be good -- we want to
13 know what is the basis for saying that.

14 But there's a limited universe of words
15 that are already on paper that FERC, I would assume,
16 has the capability of saying these words have to be
17 removed from the public record, and they do that by
18 crossing them out, and blotting them out so they can't
19 be seen.

20 JUDGE BOLLWERK: So am I hearing you say
21 that we simply shouldn't do anything, and let the
22 staff redact all the documents for whatever FERC puts
23 into them, and move from there, that you don't want to
24 be part of that process?

25 MS. CURRAN: From what the staff is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 saying, no group other than FERC has the authority to
2 do this. You don't have any authority, the staff
3 doesn't have any authority, we're all waiting on FERC
4 to tell us what are the rules with respect to these
5 pleadings, and the oral argument transcript, this
6 small universe of documents.

7 And if that's correct, then none of us has
8 the ability to do much, except that the petitioners
9 can file a FOIA request with either NRC, or FERC,
10 we'll have to figure out where it goes.

11 JUDGE BOLLWERK: Ms. Woods, do you want to
12 respond to that, in terms of that possible process?

13 MS. WOODS: The staff has made this
14 initial identification, and FERC has the
15 responsibility for protecting energy and the grid, and
16 we respect that. This is a statutory obligation that
17 the agency is under in order to protect this
18 information. And again, as I think we've discussed
19 here several times, the purposes of the protective
20 order would allow the continued access of the
21 participants to be able to litigate within the scope
22 of this proceeding.

23 JUDGE BOLLWERK: Ms. Curran, anything you
24 want to say?

25 MS. CURRAN: I would just like to point

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 out Ms. Woods referred to the staff's initial
2 determination, and I think that's what we have gotten
3 a proposed -- I think it was in the July 17th -- well,
4 I guess it was circulated to the other parties, there
5 was a proposed redacted transcript with the staff's
6 proposed redactions.

7 We think it's premature for the board to
8 rule on redactions proposed by the staff, just because
9 as Ms. Woods has said today, FERC is the ultimate
10 arbiter of what should be redacted, and therefore the
11 staff doesn't really know what the scope of the
12 redactions ought to be. They could shoot for what
13 they think is appropriate, and find out that it wasn't
14 broad enough, or it was too broad.

15 I don't think that you have a lot of
16 choice under the circumstances except to wait for
17 FERC.

18 JUDGE BOLLWERK: Ms. Woods, based on your
19 experience, do you expect FERC to come back eventually
20 and redact these documents actually?

21 MS. WOODS: I wouldn't speculate on FERC's
22 outcome, however the staff does have experience with
23 this information, and has made an initial
24 identification of information that it believes is
25 CEII. And so that is a potential. And while this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 proposal has obviously not been consulted with among
2 the parties, we could potentially file proposed
3 redactions on a non-public docket if there are
4 concerns, if it's expanded, or reduced.

5 That is a potential option. But one thing
6 I would also like to point out is that if FERC does
7 come back, and disagrees, and says no, this is not
8 CEII, the NRC staff will certainly release the
9 information. It's going through its process, and is
10 consulting accordingly, and is trying to protect the
11 information according to our statutory obligation.

12 And again, protective orders are not an
13 unusual thing. In terms of proceedings, this type of
14 process has been used in previous proceedings, there's
15 been several, for example, like in TVA Clinch River
16 for an early site permit, protective orders have been
17 put in place. Thank you.

18 JUDGE BOLLWERK: Yes, Ms. Curran?

19 MS. CURRAN: I think Ms. Woods said the
20 staff could file proposed redactions. If we don't
21 know why FERC is proposing to redact the information,
22 we can't really comment on proposed redactions. And
23 in fact it seems reasonable to assume, given that the
24 statute in question was passed shortly after the
25 September 11th attacks, it's reasonable to presume

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that when the NRC initially disclosed these documents,
2 or this information to the public, they must have
3 consulted FERC.

4 It would be strange to me if they hadn't
5 consulted FERC about it first. But even if they
6 hadn't, they had some reasoned basis for disclosing
7 it, and now FERC is going to come along and say no,
8 there's a different -- even though this statute has
9 been around for a while, we're now going to take it
10 off the record for some other reason.

11 It's reasonable for us to ask what's
12 FERC's reasoning here. Without knowing that, how can
13 we take a position on proposed redactions? So it's
14 not really a legitimate negotiation.

15 JUDGE BOLLWERK: All right, thank you.
16 Judge Abreu, anything you want to ask in this regard?
17 No? Judge Miller?

18 JUDGE MILLER: Not in regard to what we
19 were just discussing.

20 JUDGE BOLLWERK: All right. Let me move
21 for a second to the provisions of the proposed
22 protective order. I would note actually that the
23 order, that the proposed protective order provided by
24 the staff and Duke appears to be based on an October
25 10th, 2021 protective order entered by the Commission

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 in a licensed transfer case involving a number of
2 Exelon Generation Company, LLC, facilities.

3 The ADAMS accession number for that
4 document is ML21280A362. The protective order in that
5 case was intended to govern non-public SUNSI
6 information potentially associated with the submission
7 of hearing petitions challenging the proposed license
8 transfer. Which the Commission has subsequently
9 denied in CLI-22-01, which is 95 NRC 1.

10 And so in asking these questions I'm sort
11 of doing it in that context. This order being based
12 obviously on a template, I have a couple questions
13 about how it would apply in this particular instance.
14 So paragraph 7A of the proposed protective order
15 regarding document marking indicates that documents
16 containing SUNSI shall be marked contains protected
17 information subject to protective order.

18 Some documents in this proceeding that
19 were previously marked with designations, and again,
20 I don't know what's involved here, so I can't say
21 whether these are or aren't involved, have
22 designations such as official use only, security
23 related information that were later released pursuant
24 to the Freedom of Information Act, and the markings
25 were lined out.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 How would marking of those types of
2 documents be handled? In other words when there was
3 an initial designation, it was OUO, then that was
4 marked out, what are we going to do now, assuming
5 that's information we need to deal with?

6 MS. WOODS: As I understand it, the
7 protective order outlines the standard handling
8 procedures for SUNSI. And so if there's information,
9 I think it's just to ensure that there's an
10 identification of the information that is in
11 possession of the individuals, that it is protected
12 information. As the purposes of the protective order
13 are just that, to protect the information.

14 JUDGE BOLLWERK: So you would remark the
15 document then with a new designation?

16 MS. WOODS: My apologies, Your Honor, I
17 misunderstood your question. In terms of any
18 information, should we receive a determination from
19 FERC that it is CEII, the NRC staff would comply with
20 whatever those marking procedures are in that case,
21 and designate it accordingly.

22 JUDGE BOLLWERK: Okay, and that gets to my
23 next question, which is who does the marking? Are you
24 saying anything the staff identifies, or anything the
25 staff identified to FERC, that FERC then says needs to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 be CEII, the staff would then do the marking?

2 MS. WOODS: I understand that the staff
3 would. In terms of the actual technical process of
4 how that goes about, I don't have that information on
5 me. In terms of the actual implementing on who does
6 the what markings, and how that goes about from an
7 internal procedure.

8 JUDGE BOLLWERK: Right, so for instance,
9 I'm just speculating, if the document originated from
10 Duke, the staff would be the one to mark it, because
11 they're the one that identified it as CEII?

12 MS. WOODS: That would be my
13 understanding, is that the agency would need to go
14 through whatever its internal processes are for the
15 proper marking of documents that have been identified
16 as containing such information, consistent with
17 whatever those procedures are. Again, I apologize, I
18 just don't have that information on me.

19 JUDGE BOLLWERK: All right. Mr. Lighty,
20 would that be consistent with what you think would
21 happen?

22 MR. LIGHTY: Yes, I would suspect that
23 FERC may provide some specific redactions, or
24 acknowledge or affirm that the information has been
25 flagged by the staff. But I certainly would assume

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that the information would have to contain the
2 appropriate designations. In other words, just
3 because a document was previously public, then once
4 the new designation has been confirmed, there would be
5 requirements to mark it as such.

6 The way I would see it playing out in this
7 proceeding is that once the protective order is
8 issued, then the list of documents, and potentially
9 even specific pieces of information within those
10 documents is shared among the parties, that would
11 include both a redacted version, and potentially a
12 secondary version of the document where the
13 information is simply outlined, but still visible.

14 And that's what could be shared among the
15 parties, and the board, so that you could see exactly
16 what information is non-public, to then facilitate,
17 for example, the issuance of a board order either that
18 doesn't contain any non-public information, or any
19 potentially non-public information, or allow the board
20 to redact its decision according to that format if
21 that was necessary.

22 JUDGE BOLLWERK: And on a related line,
23 Ms. Woods, do you anticipate that there are going to
24 be redacted versions of all these documents that FERC
25 designates as CEII put onto the public record at some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 point?

2 MS. WOODS: That would be correct. At
3 this point any information would be made non-public
4 while the pendency of that determination is being
5 reached, at which time the redacted versions would be
6 release accordingly, and made publicly available. And
7 again, I would just like to not that the purposes of
8 the protective order is really to balance the
9 petitioner's ability to challenge the applicable
10 information at issue here with the federal
11 government's requirements, and need to protect
12 sensitive information, and protect the public.

13 JUDGE BOLLWERK: Yes, Ms. Curran?

14 MS. CURRAN: Again, we're going back to
15 the fact that there's a handful of documents that we
16 know of that potentially contain SUNSI. Our hearing
17 request, our reply, oral argument transcript. We
18 would be willing to consider a protective order that
19 said that those documents, to the extent that we use
20 them for any purpose beyond what we're doing now, and
21 I guess that would -- the only thing I can think of is
22 for right now, it would be we're waiting for the
23 board's decision.

24 So we'd say that the board's decision
25 would be subject to a protective order with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 anticipation that it would be redacted, and put on the
2 public record with redactions. And we would agree to
3 a protective order to look at the board's decision so
4 that we could appeal it, or do a motion for
5 reconsideration.

6 And we would agree that we would file --
7 we'd file our appeal, or motion for reconsideration on
8 the confidential docket. But to have an open ended
9 protective order, and have wide ranging discussion of
10 whatever the staff is saying is SUNSI, that suddenly
11 puts -- that sounds to us more like a gag order. That
12 if information comes up in one of these discussions,
13 or anything where it's far ranging, we're really not
14 willing to do that.

15 We're not willing to basically tie
16 ourselves up in terms of what we are able to access
17 from the public record and discuss it.

18 JUDGE BOLLWERK: All right. I should say,
19 I think that the board is interested in a protective
20 order that covers the information it needs to, and
21 nothing more. We're not trying to regulate what's
22 CEII within this agency. We're simply interested in
23 what relates to this proceeding.

24 MS. CURRAN: Thank you, Judge Bollwerk.
25 And I just -- we really appreciate that, we don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 think the way the protective order is written, that
2 it's as narrow as it needs to be.

3 JUDGE BOLLWERK: All right. Do any of the
4 other two parties have an objection to a protective
5 order that's specific to this proceeding? That raises
6 some definitional questions I understand, but go
7 ahead, Mr. Lighty.

8 MR. LIGHTY: Thank you, Your Honor, that's
9 exactly what I was about to say. I think even trying
10 to limit the scope, it certainly wouldn't just be
11 pleadings, it would be source documents, cross
12 reference materials, and so defining the scope of
13 that, I think is something that would require some
14 further discussion. But again, that's the type of
15 discussion that we could have if we had a protective
16 order that just allowed the sharing of the list of
17 potentially non-public information.

18 And then allowed the board to then
19 supplement the protective order with a specific list
20 of documents and information that are subject to the
21 proceeding.

22 JUDGE BOLLWERK: All right, Ms. Woods,
23 anything you want to say about that?

24 MS. WOODS: Your Honor, again, the intent
25 is to be able to protect the information at issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And I would also just like to note that the
2 petitioner's reply did also contain an entire list of
3 ML numbers that was also provided on this public
4 docket, and so that will need to be considered as
5 well.

6 JUDGE BOLLWERK: I'm sorry, let's see, is
7 that -- you're talking about -- I understand now, the
8 list that was attached to the back, group I is how
9 it's labeled?

10 MS. WOODS: Yes, Your Honor. The one that
11 was just submitted yesterday in the petitioner's
12 response to the July 25th board order.

13 JUDGE BOLLWERK: Right, and again, I'm
14 sorry, explain to me your concern about that list?

15 MS. WOODS: There's a list of ML numbers,
16 and that information will need to be looked at by the
17 NRC staff as well.

18 JUDGE BOLLWERK: All right. Let me ask
19 you, what would the staff do with the list?

20 MS. WOODS: The NRC staff would need to
21 review it, and also potentially consult with FERC on
22 it as well.

23 JUDGE BOLLWERK: So all of a sudden every
24 document on that list is subject to review?

25 MS. WOODS: That is correct, Your Honor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 The NRC staff would need to, in light of the issues
2 that have arose within the scope of this proceeding,
3 the NRC staff would need to review those ML numbers to
4 reach a potential initial identification, and if
5 needed, would need to consult with FERC on it as well.

6 JUDGE BOLLWERK: Ms. Curran, anything you
7 want to say about that?

8 MS. CURRAN: I'd like to see it in
9 writing, what the staff is proposing here. We're
10 concerned that this information is still on the public
11 record, if this is of such concern to the staff, what
12 is -- it sometimes seems as though the petitioners in
13 this case are being used as kind of a fulcrum here,
14 that there is two groups that are really interested in
15 this safety issue.

16 So instead of the staff taking some kind
17 of systematic approach to what are we going to do
18 about we have some new perspective on the safety of
19 Ocone that requires us to remove information from the
20 record, what we're going to do is just muzzle the two
21 groups that have an interest in this. And we don't --
22 we're really reluctant to be a party to that.

23 We want to participate in this proceeding,
24 if the board believes that in order to make a decision
25 it has to use some of this information, we're willing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to work with the board. What we're not willing to do
2 is to agree not to discuss a whole universe of
3 information that is still out there on ADAMS publicly
4 available to anyone, and the only people who would be
5 restricted from using it is the petitioners.

6 MS. WOODS: Your Honor, if I may?

7 JUDGE BOLLWERK: Yes.

8 MS. WOODS: Thank you so much, I
9 appreciate that. I'm not sure I entirely follow the
10 petitioner's argument in this case. In that the
11 issuance of the protective order and agreement to the
12 protective order would allow the petitioners continued
13 access to the limited scope of information that is at
14 issue in order to continue to litigate contention
15 admissibility within the scope of this proceeding.

16 What it would restrict is any further
17 public dissemination of the information that has been
18 initially identified by the staff as being CEII, and
19 is being consulted with on FERC. It would still be
20 able to be discussed within the scope of this
21 proceeding. And again, I would just like to note that
22 for transparency, as the staff mentioned again, along
23 with the information review that is part of this
24 proceeding, the NRC staff has initiated a reasonable
25 search and review of the NRC's ADAMS files as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And is taking that under consideration as
2 part of its processes, and is looking into that
3 further outside the scope of this proceeding.

4 JUDGE BOLLWERK: And if I understand Ms.
5 Curran's concern, she's identified a lot of documents
6 that are publicly available that relate to Oconee
7 potentially, and all of a sudden that gets thrown into
8 the hopper, is that correct, Ms. Curran?

9 MS. CURRAN: Yes, it's almost like this
10 proceeding is going to be a funnel for all the
11 relevant information that's out there on ADAMS now
12 will, for our purposes, the two groups, Beyond Nuclear
13 and the Sierra Club, will all get funneled through
14 this proceeding, and we'll be muzzled from discussing
15 it as Ms. Woods just said, we won't be able to talk
16 about it anymore.

17 If it goes through this proceeding, if it
18 can be identified as somehow we gave an ML number, and
19 a document, and it just seems to us that for purposes
20 of this proceeding, FERC can look at the pleadings
21 that have been filed and say the petitioners have
22 used, stated something that we think should not be
23 public.

24 It's some non-public information is in the
25 transcript, here's our reasons for saying it should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 not be public. And then the board's decision may have
2 to be reviewed for should not be public. But it
3 should not be that this proceeding is used as a tool
4 to silence us on a whole array of documents that are
5 currently posted on ADAMS, and are generally available
6 to the public.

7 MS. WOODS: Your Honor, may I?

8 JUDGE BOLLWERK: Yes, please.

9 MS. WOODS: So just to clarify a little
10 bit, and again, just to reiterate, issuance and
11 agreement to the protective order and non-disclosure
12 agreements is not a muzzle. It still allows the
13 petitioner to fully litigate the information at issue
14 within the scope of this proceeding. Again, it just
15 restricts the further dissemination of potential CEII
16 to other individuals who are not associated with this
17 proceeding.

18 And for clarity, and to get to the
19 petitioner's point, the NRC staff is now aware, and on
20 notice of a potential spill. And so the actions the
21 NRC staff are taking are consistent with its process
22 to try to address such a potential spill.

23 JUDGE BOLLWERK: Yes, Ms. Curran?

24 MS. CURRAN: Could I ask what is meant by
25 potential spill?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE BOLLWERK: Yes, I mean my
2 understanding is someone in the staff believes that
3 what could be non-public information has become
4 publicly available, is that your understanding, Ms.
5 Woods?

6 MS. WOODS: That's correct, Your Honor.

7 MS. CURRAN: This is information that's
8 never been on the public record that has now been
9 disclosed, is that what you're saying, Ms. Woods?

10 JUDGE BOLLWERK: I believe a spill -- this
11 is Judge Bollwerk, I believe a spill would only deal
12 with something that should be non-public that has
13 become public.

14 MS. WOODS: That's correct, Your Honor.

15 JUDGE BOLLWERK: Does that answer your
16 question, Ms. Curran, or am I confusing you more?

17 MS. CURRAN: It doesn't, because we see
18 the staff taking information that was public, and
19 saying that now it's non-public. And I'm trying to
20 get a distinction between is this information that was
21 never public, or is this part of the body of
22 information that the staff is now withdrawing from the
23 public record, and saying for new reasons is non-
24 public?

25 JUDGE BOLLWERK: Ms. Woods, do you want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 respond?

2 MS. WOODS: Thank you, Your Honor. So to
3 be clear, the MOU with FERC was entered into in 2018.
4 So the threat landscape can change as time progresses,
5 and so at this point the NRC staff has made an initial
6 identification that information is potentially CEII,
7 and is following its process to consult with FERC.

8 And again, to ensure the protection of
9 public health and safety, and members of the public,
10 this is also to protect the information that is
11 potentially sensitive in this case. And so the staff
12 is following its process regarding coordination with
13 FERC on that information.

14 JUDGE BOLLWERK: Yes, Ms. Curran? I think
15 we need to move on then.

16 MS. CURRAN: I just didn't hear an answer
17 to the question, that's all.

18 JUDGE BOLLWERK: Okay, what didn't you
19 hear?

20 MS. CURRAN: Well, I didn't hear was this
21 information that allegedly has been spilled on the
22 public record prior to recent actions by the staff.

23 JUDGE BOLLWERK: I mean, I'll let Ms.
24 Woods comment, but it strikes me, my understanding of
25 a spill is it's only spilled when it gets onto the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 public record, so it had to have been made public
2 somehow, and that's considered a spill.

3 MS. CURRAN: But Judge Bollwerk, you
4 understand that what's happening here is that
5 information that's been on the public record for 10 or
6 15 years is now being taken off the public record.

7 JUDGE BOLLWERK: That's correct, it's been
8 reclassified.

9 MS. CURRAN: It's been reclassified. So
10 if something -- and all of this information, every
11 single thing that is in our pleadings is still on
12 ADAMS. So I just want to make that clear. You can
13 find every single piece of information that we cited
14 in our pleadings on ADAMS. It may not be in the
15 particular document that we cited, but it's still
16 there.

17 JUDGE BOLLWERK: Okay, thank you, I
18 appreciate the clarification. Let me go back and just
19 explore a couple other things about the provisions, or
20 the protective order potentially. Paragraphs eight
21 and nine of the proposed protective order set out a
22 number of specific requirements associated with
23 storing and using CEI by, potentially petitioners.

24 In the recent past, board approved
25 protective orders have had less prescriptive language

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 in this regard. For instance, in the 2022 Palisades
2 license transfer proceeding, in an unpublished
3 December 2nd, 2022 order at page three, found at ADAMS
4 accession number ML22356A153, the board declared
5 counsel shall take all reasonable precautions
6 necessary to assure the proprietary documents and the
7 information contained therein were not distributed to
8 unauthorized persons.

9 Counsel are responsible for ensuring that
10 persons under their supervision or control comply with
11 this protective order. And there is similar language
12 in a Seabrook license amendment proceeding order,
13 unpublished decision January 19th, 2018, at four found
14 at ADAMS accession number ML18019A148 that basically
15 says the parties shall securely maintain all protected
16 information.

17 And shall not provide the protected
18 information to anyone not authorized to receive it
19 pursuant to this order. Why isn't language like that
20 appropriate here, as opposed to the somewhat
21 prescriptive, anyway, language that's included in
22 paragraphs eight and nine?

23 MS. WOODS: Thank you, Your Honor. My
24 understanding is that this is the standard SUNSI
25 handling procedures that are available to ensure the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 protection of SUNSI.

2 JUDGE BOLLWERK: And in this case, we do
3 have counsel that is responsible for protecting the
4 information, is that correct?

5 MS. WOODS: I'm sorry, I didn't follow
6 your question, Your Honor.

7 JUDGE BOLLWERK: I'm sorry. In this case
8 we would have counsel for the petitioners who would be
9 responsible for protecting the information, and making
10 sure it's not disclosed, is that inappropriate here?

11 MS. WOODS: Your question broke up at the
12 end, I apologize, Your Honor.

13 JUDGE BOLLWERK: I'm sorry, is it
14 inappropriate for us simply to indicate that counsel
15 is responsible for making sure that the information is
16 not disclosed?

17 MS. WOODS: As I understand this is --
18 (Simultaneous speaking.)

19 MS. WOODS: As I understand this is the
20 standard SUNSI handling procedures, so.

21 JUDGE BOLLWERK: Okay, Ms. Curran?

22 MS. CURRAN: In a really broad protective
23 order, if we're talking about information that can be
24 found in public documents that are currently publicly
25 available, we all have these documents in our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 possession. It's like unringing the bell. This
2 information has gone out in the public domain, I have
3 it in various places in my files, I've never tried --
4 it's public information.

5 I've never tried to gather it up and put
6 it in a box, and the representatives of Beyond
7 Nuclear, and the Sierra Club, and Mr. Mitman, same
8 thing, it's been public information. So what this
9 would require us to do is comb through everything that
10 we have for years accumulated, this Oconee process has
11 gone on since 2021 for us.

12 And some of us have been interested in it
13 before then. What are we going to do, we're supposed
14 to go through all our paper files, all our computer
15 files, try to find where this stuff is, and then
16 gather it up and put it in a box? We don't want to
17 agree to something that would be so onerous, and
18 potentially impossible.

19 JUDGE BOLLWERK: Mr. Lighty, go ahead.

20 MR. LIGHTY: Thank you, Your Honor. I did
21 want to provide a little bit more information about
22 some of the more prescriptive terms that are in
23 paragraphs eight and nine as you mentioned. Those
24 actually are born out of the template for a model
25 SUNSI protective order that was developed for ITAC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 hearings.

2 So it's the more -- actually I think it's
3 the most modern template protective order that the NRC
4 has put out. And that's available at accession number
5 ML19036A727. And so I think that's what you're
6 seeing, is the evolution of more modern protective
7 orders. I did also want to comment on a couple of the
8 exchanges that happened here over the last several
9 minutes.

10 It's certainly not unusual for a court to
11 order a clawback of previously available information.
12 It sounds like petitioner's counsel is suggesting
13 that's simply not something that a tribunal should be
14 doing, but it happens all the time. There are cases
15 in which preciously public information gets clawed
16 back from the people who are party to a litigation,
17 and to have that information that's later determined
18 to have been inadvertently produced.

19 And that's potentially what we have here,
20 and the further details of that could come out if we
21 were able to have a non-public conference. And also
22 I want to return to something that the staff mentioned
23 earlier, and really emphasize that, that the objective
24 of the protective order is to prevent disclosure of
25 information to others who do not have a legitimate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 purpose.

2 It's not to restrict the petitioner from
3 accessing, or using the information for a legitimate
4 purpose. The impetus of the statute for protecting
5 this type of information is to protect life safety,
6 right? This is born out of a concern of terrorism,
7 and so why the petitioners think they need to retain
8 this information, and share it freely with others
9 after this proceeding, or to use it after their
10 legitimate purpose for using it, it's just unclear.

11 There's certainly no legitimate basis for
12 them to claim a need to hang onto information that is
13 protected by statute.

14 JUDGE BOLLWERK: Ms. Curran?

15 MS. CURRAN: Just to say that we've gone
16 over this, but I just want to say it one more time.
17 We don't necessarily agree that this information that
18 is sought to be withheld here is protected by statute.
19 These were not inadvertent disclosures. These cases
20 that we cited, two sets of cases in our brief, there
21 is a set about inadvertent disclosures, maybe the
22 information in this FOIA release is mistaken for a
23 matter of weeks and the agency takes it back.

24 But there is a whole other body of cases
25 that talks about this doctrine of acknowledged

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 disclosure, that the disclosure was intentional, it
2 was formal. We think this information meets those
3 criteria, those judicially established criteria, and
4 we think the greatest obstacle to safety is secrecy
5 with the NRC.

6 That as long as this information stays in
7 these how many boxes are on this viewing screen here,
8 we don't have a prayer, we really don't. Because this
9 is a big problem, the NRC as an agency has been
10 grappling this for years, and not taking action. We
11 are finally trying to use the hearing process to get
12 some accountability from the agency as a whole.

13 Once this thing goes up to the Commission,
14 or even if we get a contention admitted, once it goes
15 up to the commissioners, it's a politically appointed
16 body, we don't have a lot of confidence that we're
17 going to get relief unless people in the public know
18 and understand what's at stake here. So this isn't a
19 question of, from our perspective, that safety is
20 served by continued secrecy.

21 The secrecy has been going on for years,
22 and the reforms, the safety measures that we're
23 advocating have not been met, they've not been
24 implemented. That's what we're looking for, some
25 accountability for that, and it's got to be public.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. WOODS: Your Honor, may I?

2 JUDGE BOLLWERK: Yes, Ms. Woods.

3 MS. WOODS: Thank you, I appreciate that.
4 One item I think I'd like to iterate, and again, I
5 think Mr. Lighty touched on it as well, is that the
6 purpose as an American citizen, and officers of the
7 court, we're responsible for protecting information
8 for the public health and safety, I think we can all
9 agree on that.

10 And to the extent the petitioners are
11 asserting that the only way to challenge or raise
12 safety concerns is by the continued public
13 dissemination of information that has been now
14 identified by the staff as potentially containing
15 CEII, I would just like to note for the board's
16 consideration that there is a provision within the
17 NRC's regulation under 2.206 where an individual can
18 raise ongoing safety concerns before the NRC for
19 consideration.

20 And in this case, again, just taking a
21 step back, the purpose of the proceeding is for
22 contention admissibility on the draft environmental
23 impact statement for the Oconee subsequent license
24 renewal.

25 JUDGE BOLLWERK: All right, thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Mr. Lighty, I want to raise a related question with
2 you about the provisions. The way that the protective
3 order is written, those restrictions in eight and nine
4 are really applicable to petitioners, at least
5 explicitly anyway, wouldn't they also be applicable to
6 Duke to the degree that any of the documents
7 originated by the NRC staff, as opposed to being
8 originated by Duke?

9 MR. LIGHTY: Your Honor, I would disagree
10 with that assertion because what we're talking about
11 here in terms of the framework of the protective order
12 are terms for use in this adjudicatory proceeding, and
13 an assumption that at the end of that proceeding, then
14 the participants are going to destroy or return that
15 information to the NRC staff.

16 The licensee here has an ongoing business
17 need to access this information in perpetuity to
18 comply with its regulatory obligations. And so it's
19 not necessary to prescribe the same type of
20 requirements for the petitioners versus the applicant
21 slash licensee.

22 JUDGE BOLLWERK: But aren't we talking
23 about in the context of this adjudicatory proceeding?
24 I'm not talking about Duke in general, I'm talking
25 about your office, frankly.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. LIGHTY: Yes, Your Honor, we certainly
2 think that for the provisions that pertain to
3 authorized holders would apply to all of the parties,
4 and it's only the provisions that pertain to
5 authorized recipients that would be specific to the
6 petitioners.

7 JUDGE BOLLWERK: Correct, and those are
8 all the restrictive provisions.

9 MR. LIGHTY: I guess I look at paragraph
10 nine, and it applies to authorized holders, so that's
11 everyone.

12 JUDGE BOLLWERK: So you're saying only
13 eight applies to the petitioners, but nine applies to
14 both you and to the petitioners?

15 MR. LIGHTY: Correct, and to the staff as
16 well.

17 JUDGE BOLLWERK: And to the staff as well,
18 all right. Let me just bring up again, one point
19 about the protective order. Paragraph 10C of the
20 protective order actually no longer reflects the way
21 in which the e-filing system works for filing non-
22 public information. As explained on the welcome page
23 of the e-filing system, the service list for non-
24 public filings will have checks for those who have
25 been given protective order file access by SECY.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Consistent with the provisions of any
2 protective order with the option to uncheck the
3 service list box if the filers believe service on a
4 listed person would be improper. This also triggers
5 an email to the individual who is unchecked, that they
6 have not been served with a non-public filing, and
7 provides a reason they have been de-selected, which
8 then allows them to raise an objection to not being
9 served with a non-public submission.

10 In light of the revised processes, which
11 again, is on the welcome page for the e-filing system,
12 should this paragraph be deleted?

13 MR. LIGHTY: Your Honor, I wouldn't
14 necessarily say it needs to be deleted. I don't see
15 it as necessarily in conflict with the changed
16 process. I certainly think that the language could be
17 tweaked to reflect, I guess now it's sort of a
18 negative process where only the individuals that the
19 boxes are checked, and then individuals could be
20 unchecked, but I certainly think that this reflects
21 the notion that authorized holders should be checked,
22 if that makes sense.

23 JUDGE BOLLWERK: Well, they are checked
24 automatically, you have to uncheck them. So it's not
25 -- I mean the process is actually 180 degrees the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 other way now, in one sense.

2 MR. LIGHTY: Yes, I think this says, as I
3 read 10C now, it says you shouldn't uncheck anyone
4 that --

5 JUDGE BOLLWERK: All right, we'll look at
6 the provision again in light of the welcome page.
7 Just a question for the staff, what is the penalty for
8 publicly disclosing NRC held information designated as
9 CEII?

10 MS. WOODS: Actually I don't have that
11 information available in terms of penalties.

12 JUDGE BOLLWERK: Is it administrative, is
13 it criminal, is it civil, you have no idea?

14 MS. WOODS: I'm not sure of the scope of
15 the potential penalties, Your Honor.

16 JUDGE BOLLWERK: Do you know if the
17 penalty would include the disclosure of information
18 that's been identified as potential CEII that's
19 undergoing FERC review?

20 MS. WOODS: I apologize, Your Honor, I
21 didn't quite catch your question.

22 JUDGE BOLLWERK: So the question is the
23 information that has been going under -- whatever
24 information has been undergoing FERC review, but has
25 not yet been designated by FERC as CEII. If someone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 discloses that, are they subject to some kind of a
2 penalty?

3 MS. WOODS: At this point it is an initial
4 identification. I think out of respect for the
5 information, the NRC staff is protecting it
6 accordingly according to its statutory obligations.
7 But again, should FERC determine that it is not CEII,
8 that information would be made publicly available.

9 JUDGE BOLLWERK: So it sounds like you're
10 not sure, as you weren't about what the penalty is if
11 it is CEII.

12 MS. WOODS: I would say again, as American
13 citizens and officers of the court, we would strive to
14 potentially, but I do have -- if I may consult just
15 very quickly, Your Honor. Apologies, Your Honor,
16 that's all I have, thank you.

17 JUDGE BOLLWERK: All right. Judge Abreu,
18 do you have any questions? Yes, go ahead.

19 JUDGE ABREU: I just have one topic I
20 wanted to clarify with Ms. Curran. I just want to see
21 if I'm understanding what you're trying to tell us,
22 which is basically you'd kind of rather ride the wave
23 of whatever is public is public, and what's non-
24 public, where things are redacted, for example, you'd
25 just live with that for now, not necessarily wanting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 access to the non-public items, so that you don't
2 obligate yourself to all of the requirements of the
3 protective order, if you can avoid it, is that sort of
4 what you're telling us?

5 Because since you don't really know where
6 the proceeding is going at this point, it's simpler
7 for you to just wait it out until there's a real need
8 for you to access things under the protective order.

9 MS. CURRAN: I think that's right, and I
10 just want to emphasize the word access. We already
11 have access to --

12 JUDGE ABREU: I understand, yes.

13 MS. CURRAN: This information, so we do
14 not want to enter the fiction that we need access, we
15 have it. And we don't want to agree to all the things
16 that we have to do, as if -- these other cases, I was
17 involved in Seabrook, it was a safety case, it
18 involved proprietary information. I would assume
19 license transfer cases involve proprietary information
20 that's been off the public record since it was
21 created.

22 That is not the case here in a really big
23 way. I think Ms. Woods said at the beginning, this is
24 unique, and we just -- we think that the uniqueness of
25 this case needs to be recognized, and the long history

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 of the public trying to shed light on what is
2 happening at Oconee, what has happened since this
3 plant was built, and the government, and to consider
4 that flooding, a dam breach of the Jocassee Dam was
5 not credible. It all starts back there, and then --

6 MS. WOODS: Your Honor, if I may interject
7 here? If information that may be potentially
8 considered non-public, and the petitioner would like
9 to continue down that line of information, consistent
10 with the board's July 2025 order that the proceeding
11 either be made non-public, or disclosure of such
12 information not be discussed within the scope of this
13 public proceeding.

14 MS. CURRAN: Well, I will stop there. And
15 say that what I just said, if that is now non-public
16 information, it's somewhat frightening. But at any
17 rate, yes, it's that word access. We don't want to
18 pretend that we don't have access to this information,
19 and then agree to pretty draconian measures to keep us
20 from doing anything with it indefinitely. And it
21 wouldn't be just for this proceeding, it would be
22 indefinite.

23 JUDGE ABREU: So my thinking was right now
24 we have a transcript that has some restrictions on it,
25 and then the next major step is an order from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 board, which may or may not have things in it that
2 might require redaction, depending on what it talks
3 about. And at this point, you'd rather live with
4 getting an order that might have some redactions than
5 to have to sign a protective order that might limit
6 what you do with things you already have that you
7 legitimately have at this point.

8 MS. CURRAN: That's correct.

9 JUDGE ABREU: Okay, I just wanted to
10 clarify that that's what I'm hearing you tell us so
11 that we're on the same page. Thank you, Ms. Curran.

12 JUDGE BOLLWERK: Do you have any other
13 questions, Judge Abreu? Yes, Mr. Lighty?

14 MR. LIGHTY: I just wanted to note one
15 distinction. Although the petitioners may have
16 originally obtained some of this information through
17 legitimate means, circumstances have changed. And
18 they are now in possession of what is potentially the
19 fruit of the poisonous tree, and I don't think that we
20 can overlook that simply because it might impose some
21 paperwork burden on the petitioners.

22 If the petitioners wanted to, for example,
23 appeal the decision once it comes in, they would still
24 need to be able to potentially access that
25 information, to rely on it, in order to proceed with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 their case. And no one here is trying to prevent them
2 from doing that. No one is trying to prevent
3 petitioners from using the information for a
4 legitimate purpose, which is this adjudicatory
5 proceeding, and any potential further steps in the
6 process.

7 The purpose of the protective order
8 though, is to acknowledge those changed circumstances,
9 that there has now been an identification of
10 potentially non-public information that the
11 petitioners may be in possession of. And the
12 objective of the protective order is to allow them to
13 continue to use that throughout this process for a
14 legitimate purpose.

15 But to restrict illegitimate use of that
16 information after the conclusion of this proceeding.
17 Because if they're not subject to a protective order,
18 they would be free to share that information after
19 this proceeding with anyone they wanted to, and that
20 is contrary to the objective of the statute to protect
21 that information.

22 Again, it's a matter of life safety
23 information. So I don't think that we can necessarily
24 say simply issuing a redacted version of an order, and
25 call it a day here. Circumstances have changed, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 I think that we need to acknowledge that, and deal
2 with it accordingly through the issuance of a
3 protective order.

4 JUDGE BOLLWERK: But again, Mr. Lighty,
5 one that applies to the information that's relevant to
6 this proceeding, correct?

7 MR. LIGHTY: Correct, Your Honor. And
8 again, I think it would be perfectly reasonable for
9 the parties to have a non-public conference to define
10 the exact scope of that information.

11 JUDGE BOLLWERK: All right, thank you,
12 sir. Ms. Curran?

13 MS. CURRAN: Just one more comment about
14 the importance of public hearings. That is the
15 assumption, I think, of all NRC adjudicatory hearings,
16 is if it is possible to hold them in public, to allow
17 the public to observe what's going on, that is an
18 important part of the process. To educate people, to
19 keep the neighbors, and public officials informed of
20 what is being discussed, what is being decided in
21 these important adjudicatory proceedings, transparency
22 is a very important goal of the NRC.

23 So I would say the presumption is that a
24 proceeding should be in public, our goals are not
25 illegitimate in seeking transparency as a part of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 hearing process.

2 JUDGE BOLLWERK: All right, thank you.
3 Ms. Woods?

4 MS. WOODS: Your Honor, if I could just
5 take a quick step back, you had asked a question of
6 the NRC staff regarding potential sanctions.

7 JUDGE BOLLWERK: Yes.

8 MS. WOODS: While I don't have that
9 specific information available, there is the Fixing
10 America's Surface Transportation or FAST Act that may
11 be able to provide some additional information, or
12 clarification for Your Honors.

13 JUDGE BOLLWERK: All right, thank you.
14 Judge Abreu, do you have anything further? Judge
15 Miller?

16 JUDGE MILLER: Yes.

17 JUDGE BOLLWERK: Go ahead.

18 JUDGE MILLER: One question. So in the
19 proposed protective order, in the first paragraph it
20 states that the protective order shall govern the
21 access, disclosure, and use of SUNSI in this
22 proceeding, and that the definition of SUNSI as its
23 used in this protective order is the information
24 designated as containing potentially critical energy
25 and electric infrastructure information pending the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 final determination by the Federal Energy Regulatory
2 Commission.

3 So my question is, without discussing any
4 specific documents, or any specific ML numbers, or any
5 specific information whatsoever, do the all parties
6 know that list of information?

7 MS. WOODS: Again, we're in the public
8 setting, I'm not really at liberty to go into the
9 detailed description. But the purposes of the
10 protective order is to be able to have those types of
11 discussions, and be able to discuss that information,
12 and the scope of that information amongst all of the
13 participants.

14 Execution of the protective order and non-
15 disclosure declarations would allow such a discussion
16 to be able to take place among all of the
17 participants.

18 JUDGE MILLER: Yes, I understand that, Ms.
19 Woods, I appreciate that, and I in no way want to have
20 a discussion about any specifics, or descriptions of
21 anything specific. But just at a very high level,
22 what I'm asking is do we need to have that non-public
23 meeting, hearing, so that everybody does actually know
24 what's inside the boundary lines, and what's outside
25 the boundary lines?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. WOODS: At this point the protective
2 order is the vehicle to be able to allow those types
3 of discussions. And as was previously indicated, we
4 have circulated a proposed redacted transcript. And
5 so there is, I would assume, a reasonable
6 understanding of the information potentially at issue
7 here, as again, a redacted version has been circulated
8 for consultation amongst the participants.

9 JUDGE MILLER: Mr. Lighty, I think I had
10 seen your hand up first.

11 MR. LIGHTY: Yes, and I would agree with
12 what staff mentioned, that I don't think that the
13 precise scope is defined. I don't think we can all
14 say we're all on exactly the same page about which
15 documents, which pages of which documents, which
16 pieces of information within those documents. But
17 that's something that I would envision the board would
18 append as an attachment to the protective order after
19 the initial consultation under the umbrella protective
20 order has been issued, so that we could all be on
21 exactly the same page.

22 JUDGE MILLER: Yes, Ms. Curran?

23 MS. CURRAN: And again, we would say we do
24 not think any kind of confidential or closed
25 discussion is needed to know what documents FERC wants

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to redact, and what kind of redactions. And as a
2 matter of fact, FOIA would basically govern this, or
3 as a guide here. If we wanted to know what FERC was
4 redacting, we would do a FOIA request to FERC, and
5 they'd have to tell us.

6 And if they wouldn't tell us, we'd go to
7 district court, and we'd get a Vaughn Index, and
8 they'd have to list all the documents that they had
9 reviewed, and redacted. It isn't -- that's not secret
10 information, that's information you can get in a FOIA
11 request. So why we have to have some closed
12 discussion of this, we just can't see it.

13 JUDGE BOLLWERK: Ms. Woods, let me go back
14 to you for one second. You mention that you've
15 circulated a proposed redacted transcript. My
16 understanding, unless I misunderstood, you don't yet
17 have FERC's specific designation of what's non-public
18 in the transcript, is that correct?

19 MS. WOODS: That is correct, Your Honor.
20 It was circulated for consideration and transparency
21 in terms of the proposed redactions. But if I could
22 go back and just address something that the
23 petitioners were talking about regarding FOIA. In
24 this case, this is a statutory requirement to protect
25 this information, CEII is a statutory -- it is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 obligated that we protect it under statute.

2 And so, again, the designation does rest
3 with FERC in terms of designating the information as
4 CEII, and it is not discretionary on the NRC staff.

5 JUDGE BOLLWERK: Yes, Ms. Curran?

6 MS. CURRAN: If the board would like a
7 briefing on whether CEII, whatever the CEII statute is
8 trumps the requirement of the FOIA to identify what
9 documents are exempt and why, we'd be willing to do
10 that research, and present you with that. It would
11 shock me if that statute would be so broad that FERC
12 never had to say what document was being protected,
13 and why, or what words were being redacted from that.

14 There has got to be some balance between
15 the FOIA and the statute. It can't be just a blanket
16 we don't have to tell you anything, we're just going
17 to take the whole thing off the record, that's what it
18 sounds like.

19 JUDGE BOLLWERK: I'm not sure that's what
20 Ms. Woods was saying. I think what she was saying is
21 simply when FERC designates it, that ends the
22 discussion with the NRC. Now, what other remedies you
23 have to contest that, I would expect the Freedom of
24 Information Act applies to that like it does to other
25 SUNSI information. Or am I wrong, Ms. Woods? Let's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 hear from Ms. Woods first.

2 MS. WOODS: Your Honor, I think what Ms.
3 Curran may be referring to is what occurs after the
4 document is redacted. At this point in time the NRC
5 staff finds itself in a spill situation, at this
6 moment, and the NRC staff is following its processes,
7 and taking the action it has deemed necessary to
8 protect information potentially identified as
9 containing CEII.

10 And is following its consultation purposes
11 with FERC in order to ensure the protection of the
12 information.

13 JUDGE BOLLWERK: I take it you weren't
14 saying that once that's designated, the it can't be
15 contested with an FOIA request for instance?

16 MS. WOODS: My intent was not to indicate
17 any limitation upon once the document is redacted.
18 Again, at this point we are in a spill situation, and
19 trying to protect the information as best as possible.
20 And I would like to, if I may, just consult one
21 second, Your Honor.

22 JUDGE BOLLWERK: All right.

23 MS. WOODS: Thank you. So at this point
24 it sounds like the NRC staff would have an objection
25 to the petitioners wanting to continue to spill

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 potential information, to the extent that is what is
2 occurring. And again, I would also note that as the
3 staff noted in its opening, that once the information
4 is reviewed, and we receive that determination from
5 FERC, a redacted version of the documents would be
6 made publicly available with those redactions in
7 place.

8 The intent is that, as I mentioned, these
9 documents would be placed temporarily non-publicly
10 while that redaction and consultation process is
11 ongoing, and once that is complete the staff would
12 redact accordingly, and provide a publicly available
13 version that is redacted.

14 JUDGE BOLLWERK: All right, thank you.
15 Yes, Ms. Curran, and then we're going to wrap this up.

16 MS. CURRAN: It now appears that the
17 petitioners are being accused of spilling information
18 that's protected under the CEII. That's what I think
19 I heard Ms. Woods say, something about our continuing
20 to spill information, and we would like to know what
21 exactly we are being accused of. Because we are being
22 -- we think we are being extremely careful to use
23 publicly available information.

24 To our knowledge we have never disclosed
25 anything that is not on the public record, so we would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 like to know what exactly we are being accused of by
2 the NRC staff, and if this is an effort to get us to
3 agree to a protective order to find out why, we object
4 to that. And when I was talking about the FOIA being
5 relevant here, I meant the board can take guidance
6 from the FOIA in terms of whether to hold a closed
7 meeting about this.

8 That is not necessary, because ultimately
9 FERC is going to have to publicly identify the
10 documents that it wants to redact, and the redactions,
11 and why they're being redacted. No confidential
12 discussion is necessary for that.

13 JUDGE BOLLWERK: All right, thank you.
14 Judge Abreu, anything further?

15 JUDGE ABREU: No, nothing here.

16 JUDGE BOLLWERK: Judge Miller?

17 JUDGE MILLER: No.

18 JUDGE BOLLWERK: Nothing? All right. I
19 want to mention one other matter, and I do this with
20 a great deal of trepidation, but I'm going to do it
21 anyway. And I should say that I'm doing this as sort
22 of a generic matter, although what's triggered my
23 discussion is something we saw in Ms. Woods'
24 pleadings.

25 And I'll preface this by saying that I had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the opportunity for a number of years to work with
2 Judge Rosenthal, who some of you may know, a really
3 distinguished jurist, a distinguished lawyer, a really
4 fine person. And his approach was one, when it came
5 to dealing with this NRC staff, that he wanted the
6 staff to cut square corners, that was very important
7 to him.

8 And he minced no words when he thought
9 that that had not happened. I think from the panel's
10 perspective, and I'm speaking for a number of the
11 judges here, not just myself, we are seeing some
12 instances where it appears that some of the
13 representations in the staff pleadings are not what
14 they should be in terms of being precise.

15 To call the motion that was filed, I think
16 a joint motion, I understand there were two parties,
17 but obviously that was not what the board was looking
18 for. And to find out in the last sentence basically
19 of the consultation certification that in fact Ms.
20 Curran did not agree to the motion was kind of burying
21 the lead.

22 So I'm really hoping that Ms. Woods, you
23 can take that to your colleagues, the panel finds it
24 extremely important that we can count on you all to
25 give us the straight scoop on what's going on, to cut

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 those square corners. And again, I apologize if
2 you're offended by this, I'm very reluctant to do
3 this, and I'm not Judge Rosenthal.

4 I think from the panel's perspective, it's
5 gotten to the point where something needs to be said.
6 So, please, think about that, take that back to your
7 colleagues. Look at what you're filling with the
8 board, we want to be able to depend on you that when
9 you tell us something, that's the out and out straight
10 facts, and I think we're seeing some pleadings
11 recently that don't necessarily reflect that.

12 So, please, I'm not trying to offend you
13 personally, this is more of a thing that we're trying
14 to express to the General Counsel's Office generally.
15 Please cut those square corners, it's not easy, I
16 understand you're a litigator, but you're also a
17 litigator for the government, and it's important that
18 you take that perspective.

19 And I will say I will now climb down off
20 my soapbox, which I very reluctantly got on, I do not
21 like doing this sort of thing. But I think that it
22 was something that needed to be said at this point,
23 because there's a lot of important things comes in up
24 in the near future, and the panel needs to be able to
25 depend on the NRC staff, and on the General Counsel's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Office to make sure those square corners are being
2 cut.

3 So with that, we will conclude this pre-
4 hearing conference regarding the entry of a protective
5 order in this proceeding. Given that this is a
6 somewhat short notice affair, we very much appreciate
7 the obvious efforts of all the participant's counsel
8 to provide the board with their positions on the
9 pending motion for entry of a protective order, and
10 the information they provided in response to the
11 board's questions.

12 Before adjourning, I also want to take a
13 moment to thank those on the licensing board panel,
14 who have made it possible for us to conduct this
15 argument. We are, as always, indebted to Andy Welkie,
16 and Joe Deucher, the panel's information technology
17 staff for ensuring the flawless operation of the IT
18 infrastructure associated with this conference.

19 The same is true regarding our
20 administrative assistant Sara Culler, who has rendered
21 invaluable assistance on short notice in issuing
22 various announcements and orders that provide the
23 participants and members of the public with
24 information about this conference. Our thanks as well
25 to our court reporter, whom we hope counsel will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 assist us after we adjourn with any questions that she
2 might have about names, terms, or other clarifying
3 details regarding anything that was discussed during
4 today's conference.

5 And let me just say then, we will look
6 forward to something from the staff on Friday,
7 hopefully by Friday about what FERC says, and we will
8 move forward from there. We'll let you know what the
9 next step in the process is. And with that, we stand
10 adjourned. Thank you.

11 (Whereupon, the above-entitled matter went
12 off the record at 4:39 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25