

RAS 3584

# Official Transcript of Proceedings

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## NUCLEAR REGULATORY COMMISSION

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Title: Duke Energy Corporation: McGuire Nuclear  
Station Units 1 & 2; Catawba Nuclear Station  
Units 1 & 2

Docket Number: 50-413-LR, 50-414-LR, 50-369-LR, 50-370-LR

Location: (telephone conference)

Date: Wednesday, November 14, 2001

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

LICENSING RENEWAL

TELEPHONE CONFERENCE ON MOTION FOR EXTENSION

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In the matter of : Docket Nos  
DUKE ENERGY CORPORATION : 50-413-LR  
(McGuire Nuclear Station, : 50-414-LR  
Units 1 & 2, Catawba Nuclear : 50-369-LR  
Station, Units 1 & 2 : 50-370-LR

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Wednesday,

November 14, 2001

The above-entitled matter came on for hearing,  
pursuant to notice, at 4:08 p.m.

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE CHARLES N. KELBER

THE HONORABLE LESTER S. RUBENSTEIN

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1       APPEARANCES:

2               On Behalf of the Intervenor:

3                       MARY OLSON

4                       PAUL GUNTER

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10               On Behalf of Duke Energy Corp.:

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17                      LISA F. VAUGHN, ESQ.

18               of:    Duke Energy Corporation

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1                   On Behalf of the Blue Ridge Environmental  
2                   Defense League

3                   PAUL MONIAK

4                   Blue Ridge Environmental Defense League

5                   P.O. Box 3487

6                   Aiken, South Carolina 29802

7  
8                   On Behalf of the Agency:

9                   SUSAN L. UTTAL, ESQ.

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12                  Mail Stop-0-14D21

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14                  Washington, D.C. 20555-0001

15  
16                  ALSO PRESENT:

17                  BOB GILL, Duke Energy Corp.

18                  BILL MILLER, Duke Energy Corp.

19  
20  
21  
22  
23  
24  
25  
  
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P-R-O-C-E-E-D-I-N-G-S

4:08 P.M.

JUDGE YOUNG: I think that's everyone. Of those present, are you expecting anyone else to be calling in?

MS. OLSON: Is Paul Gunter on the line?

MR. GUNTER: Yes, I am. Paul Gunter, here. Nuclear Information and Resource Service.

JUDGE YOUNG: Is Ms. Uttal going to be calling in?

MS. UTTAL: She's here with us, Judge.

JUDGE YOUNG: Okay, great. And then I think we had Mr. Repka, Ms. Cottingham, Ms. Vaughn and Mr. Gill.

MR. REPKA: Yes, we do. And we're at all different locations, so I apologize for that in advance.

JUDGE YOUNG: That's fine. And I think we have Mr. Moniak.

MR. MONIAK: Yes.

JUDGE YOUNG: All right, first, the Court Reporter, did you go over what I just said on the record?

Did you include that on the record?

MR. REPKA: Yes ma'am, I have.

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1 JUDGE YOUNG: Great. We're starting with  
2 page 150 today, I believe.

3 MS. OLSON: The same service list as  
4 October 30 and November 7th?

5 JUDGE YOUNG: Okay?

6 MR. REPKA: Okay.

7 JUDGE YOUNG: Let me just start out by  
8 saying a few things. Judge Kelber, Judge Rubenstein  
9 and I have some time to talk both yesterday and today  
10 and when I first go over some items that --  
11 circumstances --

12 MR. GUNTER: Judge, you're breaking up.

13 JUDGE YOUNG: Okay, if anyone is rustling  
14 papers, try to restrain from doing that because I know  
15 in the past sometimes if anyone rustles papers that  
16 causes everyone to break up.

17 Can you hear me now?

18 MS. OLSON: Yes ma'am.

19 JUDGE YOUNG: The first thing I want to do  
20 is go over some items that we're not going to be  
21 addressing absent compelling circumstances that we  
22 should, based on our discussion yesterday and today.

23 First of all, looking first at the NIRS  
24 reply, the reference to the Petitioner recognizing  
25 that the licensing board and the staff acknowledged

1 that these documents rightfully belong in the public  
2 domain, as I think both of the responses from the  
3 staff and Duke argued we did not make any finding with  
4 regard to what does not belong in the public domain so  
5 that may not be assumed.

6 With regard to the clarification that NIRS  
7 wishes to have the daily event reports generated by  
8 all operating pressurized water reactors, including  
9 those of the same design model as Catawba and McGuire  
10 units, we will not be granting that request absent  
11 compelling circumstances to the contrary. And prior  
12 to our conference, I did go through the entire  
13 transcript and looked to see where these event reports  
14 were mentioned and on October 30th I believe that Ms.  
15 Olson had said, that you did mention that the key  
16 thing was daily event reports, you did not specify  
17 anything outside the context of the Duke, the four  
18 units that are at issue in this case.

19 And on November 7th, on page 89 of the  
20 transcript there was a discussion by Mr. Repka with  
21 Judge Kelber about the daily event reports not being  
22 Duke documents. And it was obvious that the context  
23 that was being discussed was daily event reports  
24 relating to Duke and there never was any effort to  
25 indicate that anything more than that was warranted.

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1           Again on page 92 there's a reference to  
2           the extent to which the daily events reports could be  
3           gotten from Duke. Ms. Olson said that she understood  
4           that the daily event reports were NRC documents, but  
5           did not make any indication that those, that you  
6           wanted anything more than the Duke daily event reports  
7           relating to the four Dukes units.

8           There are other references on page 99 when  
9           asked by myself what the reason for wanting the daily  
10          event reports was. Mr. Gunter said that the daily  
11          event reports reflect not only plant conditions but  
12          the licensee's ability to keep the plant in an  
13          analyzed condition to perform within compliance and to  
14          do so without personnel error, with no indication of  
15          wanting anything further than the licensee daily event  
16          reports.

17          There's another reference on page 102 to  
18          environmental conditions created around the plant and  
19          that DER is to provide us with insights into those  
20          conditions.

21          On pages 110 and 111, Mr. Gunter is saying  
22          yes, we're interested in the daily event reports as  
23          they are in unanalyzed conditions that then reflected  
24          on the licensee surveillance program of a host plant  
25          conditions including aging.

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1           Again, on pages 118 and 119 -- then on  
2           page 119, you gave the Oconee example and then you  
3           said certainly we would be looking for similar events  
4           to that with regard to McGuire and Catawba. We would  
5           be looking for daily reports that would cause capture  
6           age related degradation that would basically provide  
7           us with a thread to pull on.

8           At the top of that same page, we'd be  
9           looking for various plant conditions. And so unless  
10          you can provide us with something that we missed, that  
11          is not something that we are inclined to consider  
12          granting any relief on.

13                 MR. GUNTER: Judge Young?

14                 JUDGE YOUNG: Yes.

15                 MR. GUNTER: This is Paul Gunter, Nuclear  
16          Information Resource Service?

17                 JUDGE YOUNG: Yes.

18                 MR. GUNTER: I appreciate your analysis  
19          here. Although I could read in any of those  
20          statements that we were not excluding other plants.  
21          I think that there -- that consistent through the  
22          transcript, what I hear is a broad general addressing  
23          of the daily event reports as they would impact plant  
24          conditions to include the McGuire and Catawba units.  
25          But clearly as we have seen the pressurized water

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1 reactor fleet has an experience record that relates to  
2 various plant specific conditions and this is what we  
3 were intending to speak to and I think that as the  
4 general references to the daily event reports  
5 throughout the transcript infer that, in fact, we're  
6 looking for a broader set of daily event reports than  
7 just those constraints to the Catawba and McGuire  
8 units.

9 JUDGE YOUNG: I think you're probably the  
10 only ones that read it that way from my understanding  
11 at this point. I don't think that we see how plant  
12 conditions at other plants would be relevant and so  
13 when you're talking about plant conditions, I think  
14 that it was assumed by everyone again and no  
15 clarification was made when there were statements that  
16 did make specific reference to the Duke Plant. So  
17 we'll take your argument into consideration, but I  
18 think you've got a steep uphill battle on that one.

19 MR. GUNTER: Judge Young?

20 JUDGE YOUNG: Yes.

21 MR. GUNTER: I would just add that that we  
22 were not specific to the Duke Plant, McGuire and  
23 Catawba translates into a broader set of daily reports  
24 that we were seeking.

25 JUDGE YOUNG: In some other context, you

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1 might have an argument, but in the context of the  
2 hearing on four specific plant units, again, if I'm  
3 not speaking correctly for Judge Rubenstein and Judge  
4 Kelber, I'm sure they'll say so, but I don't think  
5 that we read it that way and I think that if that's  
6 what you wanted that should have been clearly  
7 specified from the start and we don't see that that  
8 was specified. Normally, the only thing that's  
9 relevant with regard to a particular plant are events  
10 related to that plant and if you want to bring in  
11 something relating to another plant that would be  
12 unusual that you would have to show the basis for  
13 doing that.

14 All right, if there's nothing else on  
15 that, I think what we want to get down to what  
16 actually happened with regard to the daily event  
17 reports that were sent, those relating to the four  
18 Duke units.

19 Was that somebody else coming in?

20 (Pause.)

21 We've read the responses and with regard  
22 to the timing of when materials were sent where, we  
23 would like to hear more from both the staff and Ms.  
24 Olson and Mr. Gunter on what actually occurred with  
25 regard to this. So Ms. Olson, you were the one who

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1 asked for the additional time. Why don't you start?

2 MS. OLSON: Yes. Thank you. On Thursday,  
3 we received the e-mail announcing that overnight  
4 delivery of the daily event reports for Catawba and  
5 McGuire would be forthcoming. On Friday, we received  
6 your order affirming that that should happen. We  
7 weren't quite clear from the e-mail on Thursday  
8 whether the material would be sent to both offices,  
9 the one in D.C. and the one in Ashville, North  
10 Carolina. Or one of them. We weren't entirely clear  
11 whether they were originating on Thursday or  
12 subsequent to the order, so on Friday, nothing had  
13 arrived in either office. We were a little bit  
14 unhappy because we work on weekends, often. But we  
15 understand that we're talking about business days and  
16 so we waited until Monday. Monday was a holiday for  
17 some aspects --

18 JUDGE YOUNG: Excuse me, did you make any  
19 attempt to contact staff counsel to find out what had  
20 happened on Friday?

21 MS. OLSON: I was not available to do  
22 that, myself, but basically about 4 o'clock realized  
23 that that was an opportunity and couldn't get through  
24 on the switchboard.

25 On Monday, it was a holiday and --

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1 JUDGE YOUNG: Excuse me, you're saying  
2 that you did try on 4 o'clock on Friday?

3 JUDGE KELBER: Did you contact Mr. Gunter?

4 MS. OLSON: Yes, I had been in contact  
5 with Mr. Gunter on Friday. And he had not received  
6 anything, nor had -- I mean, he's on parent leave, so  
7 we actually have three physical locations we're  
8 dealing with and the main office in D.C. had not  
9 received anything.

10 JUDGE KELBER: The office being -- where  
11 located?

12 MS. OLSON: 1424 16th Street, N.W., No.  
13 404.

14 JUDGE KELBER: And it had not received the  
15 package at 11:35 a.m. on the 9th?

16 MS. OLSON: It had not received the  
17 package at any time on the 9th?

18 COURT REPORTER: Excuse me, this is the  
19 Court Reporter. Can I just break in and ask people  
20 to identify themselves when they're speaking?

21 JUDGE KELBER: I'm Judge Kelber.

22 MR. GUNTER: This is Paul Gunter, Nuclear  
23 Information Resource Service. I can affirm that we  
24 did not receive the package on the 9th. Subsequently,  
25 our office was closed on Monday, the 12th.

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1 JUDGE YOUNG: Mr. Gunter?

2 MR. GUNTER: Yes.

3 JUDGE YOUNG: Were you in the office on  
4 the 9th?

5 MR. GUNTER: Yes ma'am.

6 JUDGE YOUNG: At 11:35?

7 MR. GUNTER: Yes ma'am.

8 JUDGE YOUNG: For the whole day?

9 MR. GUNTER: Through the whole day? Well,  
10 actually, I was at an ACRS meeting in the morning,  
11 regarding -- so I was actually at One White -- Two  
12 White Flint on Friday morning.

13 JUDGE KELBER: Was somebody in the office  
14 at 11:35?

15 MR. GUNTER: I believe so, yes sir.

16 JUDGE YOUNG: Was there notice left?

17 MR. GUNTER: To my knowledge, no ma'am.  
18 We did -- I have subsequently found a voice message  
19 that was left on my machine on Monday 12th, by Federal  
20 Express saying that they had a package and they were  
21 looking for a delivery address.

22 JUDGE KELBER: Because according to the  
23 staff reply, it says they say according to Federal  
24 Express the first attempt was made to deliver the  
25 package on November 9th at 11:35 a.m., but the

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1 customer was not available or the business was closed.

2 This is Judge Kelber.

3 May I ask Mr. Fernandez or Ms. Uttal,  
4 whoever is there, you got this work from Federal  
5 Express?

6 MR. FERNANDEZ: Judge Kelber, this is  
7 Antonio Fernandez for the staff. Yes, Federal Express  
8 keeps a website where you can track all shipments  
9 through a tracking number given to each individual  
10 shipment and some of the packages were sent to the  
11 Federal Express and does state on that website and  
12 through a subsequent phone call that I personally made  
13 to Federal Express with regards to the status of the  
14 packages that they did attempt to deliver it on Friday  
15 at 11:35 and according to FedEx, it wasn't deliverable  
16 because nobody was at the location or the business was  
17 closed.

18 JUDGE KELBER: That was the 16th Street  
19 address?

20 MR. FERNANDEZ: Yes, Your Honor.

21 MS. OLSON: Your Honor, this is Mary  
22 Olson.

23 JUDGE YOUNG: Go ahead.

24 MS. OLSON: I absolutely confirm that  
25 there was nothing delivered to me on Friday and I

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1 understand that we're dealing with lots of constraints  
2 in the world, but indeed, it wasn't until after 3  
3 o'clock on Monday, although mail was being put into  
4 boxes here in Ashville, I checked it up until 3  
5 o'clock and gave up at that point. It's a Post Office  
6 box. And so it was delivered into Ashville on Monday,  
7 but after 3 p.m.

8 JUDGE KELBER: Did you get the DERs on  
9 Tuesday?

10 MS. OLSON: I did get them on Tuesday.

11 JUDGE KELBER: Thank you very much.

12 MS. OLSON: I would like to add one more  
13 comment.

14 JUDGE YOUNG: Go ahead.

15 MS. OLSON: We were rather amazed to  
16 receive the DERs electronically and quite frankly my  
17 mind is a blank. Was it this morning or yesterday  
18 afternoon, which would have resolved all of this so  
19 much more quickly.

20 JUDGE KELBER: But you do have the DERs  
21 now.

22 MS. OLSON: Both hard copy and  
23 electronically.

24 JUDGE KELBER: Very fine. Is there  
25 anything more to discuss today?

1 MS. OLSON: I have two other items I  
2 wanted to ask about.

3 JUDGE YOUNG: Go ahead.

4 MR. FERNANDEZ: Your Honor, this is  
5 Antonio Fernandez for the staff again. Before we  
6 proceed, the staff just wanted to clarify whether  
7 either of the people that have made appearances on  
8 this case for BREDL are on the line and if they're  
9 not, why hasn't Mr. Moniak filed a notice of  
10 appearance?

11 JUDGE KELBER: Mr. Moniak is on the line,  
12 I believe.

13 JUDGE KELBER: Are you there, Mr. Moniak?

14 MR. MONIAK: Yes, I am. I am filing a  
15 notice of appearance.

16 JUDGE YOUNG: Is Ms. Vella still  
17 unavailable?

18 MR. MONIAK: Yes, and the situation is  
19 that -- the situation is that we're not being given  
20 enough time. They're often out in the field. I'm out  
21 in the field and getting an e-mail saying you're going  
22 to have a conference call the next day at this time  
23 doesn't provide for people's schedules at all. I  
24 think there has to be a little bit more leeway in the  
25 scheduling of these.

1 JUDGE YOUNG: Well, I think once the  
2 Commission issued its October 4th order, everybody was  
3 on notice that we were under a very tight time line  
4 here and we're trying to comply with those, obviously,  
5 everybody has to -- we rearranged our schedules and  
6 previously arranged travel plans around the holidays  
7 in order to accommodate the case and obviously, all  
8 parties are expected to do what is necessary to see  
9 that they can meet deadlines. And if they don't and  
10 they do have unavoidable and extreme circumstances, I  
11 believe the original order that I issued provided that  
12 you needed to file a request for extension 3 days in  
13 advance of the relevant deadline and I don't think  
14 anyone from BREDL did that.

15 MR. MONIAK: We have not filed an  
16 extension for request -- a request for an extension  
17 yet.

18 JUDGE YOUNG: Right.

19 MR. MONIAK: And we failed to write in  
20 support of NIRS, even though we do support their  
21 request and we thank you for giving us the 3-week  
22 request. We were going to and then NIRS did and then  
23 when we got the 3 weeks decide not to.

24 JUDGE YOUNG: Okay.

25 MR. MONIAK: However, is it still an

1 option to request an additional extension on our  
2 behalf, right?

3 JUDGE YOUNG: Well, you sort of missed the  
4 first extension request deadline.

5 MR. MONIAK: Oh.

6 JUDGE YOUNG: You got the benefit of NIRS.

7 MR. MONIAK: Okay. Well, we're going to  
8 live with the deadline as is.

9 JUDGE YOUNG: I think the message is and  
10 as I've repeated in most of the orders, if not all  
11 that I've issued, all parties are directed to assume  
12 that we would keep that November 27th deadline and  
13 operate on that assumption and so obviously when  
14 you're getting ready for a case in any context, people  
15 are expected to do what's necessary to get ready.

16 And if there are unavoidable and extreme  
17 circumstances warranting an extension to timely make  
18 a request for that. Now, the reason we're here today  
19 and I think what we've really sort of narrowed it down  
20 to at this point is the cause for the delay of several  
21 days in getting the daily event reports after November  
22 8th when I think the staff indicated they were going  
23 to provide them.

24 I have a couple of questions for the staff  
25 and that is, Ms. Olson before and I think Mr. Moniak

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1 said what he said. I think Ms. Olson was asking about  
2 why weren't they send by e-mail and also to be fair,  
3 I also as I was reading through the transcript, looked  
4 back to see what statements had been made about the  
5 relative capacities of Ms. Olson and Mr. Gunter with  
6 regard to their representation and I do believe that  
7 Mr. Gunter on page 84 indicated that he was assisting  
8 Ms. Olson and that he was under some restrictions  
9 because of his -- it says caring leave, but I think I  
10 recall he said parental leave.

11 So I guess my question for you is did you  
12 try to send them to Ms. Olson or try to do them by  
13 e-mail on the 8th?

14 MR. FERNANDEZ: Your Honor, this is  
15 Antonio Fernandez again for the staff. We sent them  
16 to all the recipients on the 8th by mail, physical  
17 copies. We did not have permission from the staff at  
18 the time to forward electronic versions of the  
19 documents. The versions that were sent were sent to  
20 everybody, like I said, at the same time.

21 JUDGE YOUNG: And everyone on what list?

22 MR. FERNANDEZ: On any list, to the  
23 recipients, Your Honor, to the two representatives  
24 from NIRS.

25 JUDGE YOUNG: You said you did send them

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1 overnight to Ms. Olson on the 8th?

2 MR. FERNANDEZ: Yes, Your Honor. It was  
3 delivered today at 1:23 p.m. as reported by United  
4 States Postal Service.com. I'm sorry, yesterday, at  
5 1:23 p.m. in Ashville, North Carolina.

6 JUDGE YOUNG: You're saying that was a  
7 postal problem?

8 MR. FERNANDEZ: Yes, Your Honor.

9 JUDGE YOUNG: Okay.

10 MS. OLSON: Your Honor?

11 JUDGE YOUNG: Yes.

12 MS. OLSON: I understand -- this is Mary  
13 Olson. I understand that we are somehow bound by a  
14 previous decision at a different level about schedule  
15 in this case and I really don't understand all the ins  
16 and outs about it, but I would like to go back to my  
17 point that I made in my appeal just briefly that if  
18 the website had never gone away which obviously it  
19 did, but if it had not, and you take your original  
20 order delineating time and you count up the number of  
21 business days that NIRS would have had access to this  
22 library of documents, and then you compare that to  
23 where we are on the current time line and our access  
24 to these documents, it's cut in half in terms of the  
25 remaining time. And to me that's a substantial issue

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1 and I want to go on record with that fact.

2 JUDGE YOUNG: How many days would you have  
3 had -- well --

4 MS. OLSON: At this point I would have 20  
5 days.

6 JUDGE KELBER: Counting from June 12th,  
7 Ms. Olson, how many days would you have had?

8 MS. OLSON: I'm going on the order from  
9 the Court.

10 JUDGE KELBER: Counting from June 12th,  
11 Ms. Olson, how many days would you have had?

12 MS. OLSON: Perhaps you know the answer to  
13 that question, since I don't have a calendar in front  
14 of me.

15 JUDGE YOUNG: My question for you, Ms.  
16 Olson, was had you gotten them on the 9th, that would  
17 have given you what 15 days? Am I counting correctly?

18 MS. OLSON: If I had gotten them on the  
19 9th, I was only counting business days, I would have  
20 had two additional business days if you allow that I  
21 would have had it Friday and Tuesday and counting  
22 those days.

23 JUDGE YOUNG: Well, I think as you said  
24 earlier, you work on weekends. I work on weekends.  
25 A lot of us work on weekends, especially when gearing

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1 up for a case.

2 MS. OLSON: Then I would have had even  
3 more days because there were holidays in your original  
4 schedule, so I was being big to only count the  
5 business days. I could go back and count again, but  
6 I know that it would be even more days. I was being  
7 modest in my request.

8 JUDGE YOUNG: Okay, here's the situation.  
9 If we give you -- if we were to -- I think we are  
10 going to need to confer, but if we were to decide to  
11 give you some additional time because you did not have  
12 it last week as of the date of our order, which --  
13 recognizing that you had not had these quite as long  
14 as you had had the other materials that we discussed  
15 on October 30th, but also, I think, recognizing or at  
16 least in looking back at the October 30th transcript,  
17 there was not much emphasis placed on the daily event  
18 reports and I think that you even said something to  
19 the effect that even though you were raising those  
20 that you really couldn't talk that much about them  
21 yourself.

22 So if we were to give you an extra week or  
23 a little more than a week, what that would do is put  
24 the hearing between Christmas and New Years. I don't  
25 know what -- we're willing to do that. We can do

1 that.

2 JUDGE KELBER: Some of us are. I am not.

3 JUDGE YOUNG: If that's what it comes down  
4 to, we may -- that's something that we could look at  
5 in terms of that being subject to travel availability  
6 and room availability and so forth. I don't know what  
7 the other parties feel about that.

8 MR. FERNANDEZ: Your Honor --

9 MS. OLSON: I'd like to say too. I'll  
10 wait.

11 JUDGE YOUNG: But I think that what we  
12 need to really look at here is reasonableness. And  
13 we've gotten indications that you have not begun, I  
14 think in the last November 7th, there was a reference  
15 to not having started working on the writing the  
16 contentions. I think Mr. Gunter was asked a question  
17 and answered it to that effect.

18 And so --

19 MS. OLSON: Your Honor?

20 JUDGE YOUNG: I don't know that we're  
21 going to get into an automatic counting of day for  
22 day. What we need to deal with is the reality of the  
23 situation and what you can and cannot accomplish, not  
24 sort of a mechanical counting of days. So what I'd  
25 like to hear from NIRS is what your circumstances are

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1 now. What you have done to this point. What are your  
2 practical/pragmatic problems that would prevent you  
3 from being able to get your amended and supplemented  
4 petition done by the 27th and then I would like to  
5 hear from all parties in terms of the practical  
6 situation of rescheduling a hearing, should that be  
7 called for.

8 MS. OLSON: Your Honor, this is Mary  
9 Olson.

10 JUDGE YOUNG: Yes, go ahead.

11 MS. OLSON: Okay, at this time, I'd like  
12 to clarify that we most certainly have started on  
13 contentions. I think that answer was in relation to  
14 that particular -- I think it was in relation to that  
15 particular line of questioning and the daily event  
16 reports in particular. Not all our contentions are  
17 based on needing access to daily event reports. So  
18 I'd like to clarify that NIRS is certainly in progress  
19 on contentions.

20 JUDGE YOUNG: Okay.

21 MS. OLSON: And I would also like to say  
22 that in view of the scheduling difficulty, I would ask  
23 the consideration of the Panel for a 48-hour extension  
24 in part due to Mr. Gunter's previously scheduled  
25 travel that we did not anticipate as running into this

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1 schedule, so I'm not saying the travel is the issue,  
2 but I'm saying that at this point it would relieve the  
3 NIRS filing tremendously if we had the opportunity to  
4 finalize the filing after his return which is on the  
5 27th and I'd like to commend to this the fact that we  
6 have to file by paper and I had wanted to add to  
7 today's discussion, a note at the end on housekeeping  
8 about clarifying that process because of all these  
9 delays and --

10 JUDGE YOUNG: Okay, actually, Ms. Birdsong  
11 from the Secretary's Office let me know that you had  
12 asked about filing and that was one of the things I  
13 wanted to talk about, but what I hear you saying is  
14 that you could live with a 48-hour extension from a  
15 practical standpoint which would bring it to November  
16 29th.

17 MS. OLSON: Yes.

18 JUDGE RUBENSTEIN: I guess the next  
19 question, this is Judge Rubenstein, is could the staff  
20 respond in a reduced time period so that the staff's  
21 responses would be on time?

22 MR. FERNANDEZ: Your Honor, this is  
23 Antonio Fernandez for the staff. I wish that the  
24 Board would keep in mind that the staff would be  
25 working and responding to two sets of documents

1 instead of only generating one set of documents. The  
2 obligation on the staff, I believe, is maximized  
3 because of the number of parties that we'd have to  
4 respond to and in responding to that, shortening the  
5 staff's time, I think would be very detrimental to the  
6 response from the staff.

7 JUDGE RUBENSTEIN: If you consider the  
8 alternative of directing them to Christmas week, do  
9 you think you could make that kind of an effort?

10 MR. FERNANDEZ: I think we wouldn't be  
11 willing to do that, given that our position is that no  
12 extensions should be given because NIRS has not proven  
13 the standard that the Commission ordered and the  
14 referral order to the Board. I believe the staff  
15 position is that there has been no showing of an  
16 unavoidable and extreme circumstances in this case.

17 JUDGE YOUNG: Mr. Fernandez, this is Judge  
18 Young. I think we've all been proceeding on the --  
19 and there was some discussion of this on November 7th  
20 and at least the Board has been proceeding on the  
21 assumption that the unavoidable and extreme  
22 circumstances were the continuing unavailability of  
23 the daily event reports due to the events of September  
24 11th and the subsequent taking down of the NRC public  
25 website, so at least that's -- that has been the

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1 assumption. So from a practical standpoint, we've  
2 heard NIRS say that they could live with November  
3 29th. If we -- and Judge Rubenstein asked you, could  
4 you -- that would shorten your time by two days. It  
5 would shorten your time from 14 days to 12 days, as  
6 I'm counting, unless I'm not counting correctly.

7 Now I think what the Board needs is to  
8 have these, your responses in advance early enough  
9 that we can make good use of them. I think what Judge  
10 Rubenstein was asking you was what kind of  
11 accommodation are you willing to make to try to avoid  
12 having everyone have to move into -- possibly have to  
13 move into the week of Christmas.

14 MR. FERNANDEZ: Your Honor, again, if we  
15 take it as a foregone conclusion that NIRS will be  
16 getting an extension, we would be willing to file a  
17 response by the 13th.

18 JUDGE RUBENSTEIN: This is Judge  
19 Rubenstein. Thank you, that's very considerate.

20 JUDGE YOUNG: Okay, does anyone want to  
21 say anything else? Because I think at this point what  
22 we need to do is confer and then back with you in a  
23 few minutes.

24 Judge Rubenstein, I can call you at your  
25 regular number or you can give me your cell phone

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1 number, whichever way you prefer it?

2 JUDGE RUBENSTEIN: Why don't I give you my  
3 cell phone and then I won't disconnect from the call.

4 JUDGE YOUNG: Okay, and then everyone  
5 else, if you'd --

6 JUDGE RUBENSTEIN: It's 1-520-390-1521.

7 JUDGE YOUNG: Okay. I will leave the  
8 room. Everyone else will remain on the phone and  
9 we'll be back with you in a few minutes.

10 (Off the record.)

11 JUDGE YOUNG: Okay, we're back. First of  
12 all, I think we want to commend the parties on being  
13 open to trying to work together to resolve this issue  
14 and based on the fact that NIRS did not get the  
15 materials on the 8th or the 9th and there was a  
16 several days' delay and their willingness to accept  
17 the 48-hour extension under the circumstances, we  
18 think that that is appropriate and would grant the  
19 same additional two days to the staff.

20 Now there are a couple of other just  
21 little minor --

22 MR. REPKA: Judge Young?

23 JUDGE YOUNG: Yes.

24 MR. REPKA: May I ask if that two days  
25 would apply to the Duke Energy response as well? I

1 see no reason it should not.

2 JUDGE YOUNG: Right, that was actually one  
3 of the next things that I was going to get into, the  
4 extent to which we want to have every body on the same  
5 schedule. To some degree, that makes things simpler  
6 and any of you can speak to that. That's one of the  
7 things that I wanted to address.

8 Let's just go in order. Mr. Gunter, was  
9 that you?

10 MR. REPKA: That was David Repka for Duke  
11 Energy.

12 JUDGE YOUNG: Yes.

13 MR. REPKA: Our position would be, for all  
14 the reasons we've already said, no extension is  
15 necessary, but recognizing that we're beyond that we  
16 would just ask that it be like extension for all the  
17 dates, going from the 11th to the 13th for our  
18 response wouldn't push us into the next week and it  
19 wouldn't jeopardize the pre-hearing schedule.

20 JUDGE YOUNG: And I'm assuming when you  
21 said for all dates that you would include BREDL, B-R-  
22 E-D-L, an acronym for the Court Reporter, in the  
23 extension as well or they didn't actually ask for it,  
24 but for simplicity's sake, were you also suggesting  
25 that?

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1 MR. REPKA: As the proposed extension  
2 schedule, the 29th? We have no objection to that. I  
3 was just keeping the dates together.

4 JUDGE YOUNG: Unless I hear another  
5 objection, I think that probably would simplify  
6 things.

7 What we would like to address next is the  
8 issue raised on Ms. Olson earlier and also the timing  
9 of these. I believe in our original order and I'm  
10 trying to reach down into the stack here to get it in  
11 front of me, we did set out some guidelines for  
12 service which I think -- I've got it.

13 Okay, No. 5 of the October 16th order, all  
14 filing should be served so as to ensure receipt on or  
15 before the filing deadline. And then a deadline of  
16 midnight on the date due is set.

17 We were going to make the deadline for  
18 both of those be close of business so that -- and  
19 again, here we're really thinking selfishly to some  
20 degree because we want to have full opportunity to  
21 read the responses prior to flying down to North  
22 Carolina on the 17th.

23 So was there any concern that anything  
24 could not be filed by e-mail?

25 MS. OLSON: Yes, Your Honor, this is Mary

1 Olson.

2 JUDGE YOUNG: And which things were you  
3 talking about?

4 MS. OLSON: Well, it's my understanding  
5 that we need to include supporting documents. Maybe  
6 I'm confused on that point, but we have documents that  
7 are not electronic and I don't have a scanner or a way  
8 to make that happen between now and then and meet the  
9 deadline.

10 JUDGE YOUNG: What about a fax machine?

11 MS. OLSON: Mr. Gunter, what do you think  
12 about that? I don't know how big these are.

13 MR. GUNTER: Faxing might present a  
14 problem. I mean it's my understanding we were going  
15 to try to do some of this by paper. But I think that  
16 we would -- and frankly, right at this point I don't  
17 know the size of the filing considering the exhibits  
18 that we're planning to attach. It may be too large to  
19 fax.

20 MR. REPKA: Certainly coming from  
21 Washington, it's going to be hand carried over to our  
22 offices for Duke Energy and to the NRC.

23 MS. OLSON: And Your Honor, this is Mary  
24 Olson. The 48-hour extension allows us to consider  
25 that option. Previously, when I filed that query to

1 the Secretary's Office I believe Mr. Gunter was going  
2 to be out of the country at that time, but his  
3 presence in Washington will assist that greatly.

4 MS. COTTINGHAM: Your Honor, this is Anne  
5 Cottingham. Might I ask if it would be possible for  
6 the Petitioners to file the text of their proposed  
7 contentions electronically so as to ensure receipt on  
8 the 13th and perhaps provide the supplements or other  
9 documents in the best way possible, but that would at  
10 least ensure that we have the text of the proposed  
11 contentions in hand.

12 JUDGE YOUNG: Well, you're thinking right  
13 along the same lines I was thinking. Obviously,  
14 anything that can be filed electronically, file it  
15 electronically. We're going to make the deadline for  
16 that the close of business 5 o'clock Eastern on each  
17 of the dates, November 9th and December 13th.

18 What I would suggest with regard to the  
19 other documents is that you have a pretty good idea of  
20 what they are going to be. So I would expect that it  
21 would have been able to -- that you would be able  
22 either to have Mr. Gunter hand deliver them to  
23 everyone in the Washington area by the close of  
24 business on the 29th or you would know well enough  
25 what they were going to be that you could mail those

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1 overnight a day ahead of time. At least, they'd have  
2 those when they got the electronic text of your  
3 supplemented and amended. Does that make sense?

4 MS. OLSON: Let me just clarify this.  
5 This is Mary Olson. A clarifying question. Am I  
6 understanding that we should file what can be filed  
7 electronically as a courtesy to all in that manner and  
8 that supporting documents could be delivered to those  
9 in the Washington area. Is a postmark sufficient for  
10 the others on the service list of the supporting  
11 documents or do we have to FedEx them for arrival to  
12 all on the date of the 29th?

13 JUDGE YOUNG: I think the ones that really  
14 need to get it are the three of us, three Judges and  
15 obviously, you're going to need to mail them to  
16 Arizona. And the parties. I don't actually -- I  
17 think I would do a courtesy e-mail filing with the  
18 Secretary's Office, probably that a postmark with  
19 everything else, with the written, the paper copy, a  
20 postmark of the November 29th before 5 o'clock would  
21 work to get it to the Secretary's Office.

22 So give them the courtesy e-mail filing,  
23 but I don't think that they would need as much as we  
24 would to have the paper documents in hand.

25 MS. UTTAL: Your Honor, this is Susan

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1 Uttal representing the staff. There's been a  
2 reference to the e-mail filings as courtesy copies.  
3 I believe that under the Commission's order and also  
4 the Board's order that they're actually required and  
5 they're not courtesy copies. They are the filings.

6 JUDGE YOUNG: You know, that's an  
7 interesting issue because I know that there is a rule,  
8 I think, in progress at this point. I don't know that  
9 we can -- I don't know that we need to actually  
10 quibble over what we call them.

11 What we're requiring is that you file the  
12 e-mail, that you do the e-mail, get the e-mail copies  
13 to us. Get e-mail or paper copies to us by close of  
14 business, 5 o'clock on the days in question.

15 In terms of filing it with the Secretary's  
16 Office, I suggest you also do the e-mail filing,  
17 delivery, whatever you want to call it, accompanied by  
18 paper filing posted the same date.

19 And obviously, we would like to get paper  
20 filings mailed to us, but as long as we have the  
21 e-mail ones on the deadline date, that's fine.

22 JUDGE KELBER: I would like to point out  
23 that anything sent by overnight mail to us here at the  
24 NRC does not go to the Post Office box address. The  
25 instructions, I believe, are in the order.

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1 JUDGE YOUNG: They are and actually I want  
2 to encourage everyone to look at that order. Re-read  
3 the October 16th order because it does go into a fair  
4 amount of detail, not only on service, but on crafting  
5 of contentions and what's required with regard to that  
6 and read that carefully and try to follow that in  
7 drafting all your filings.

8 All right. I think that leaves us hearing  
9 the case on December 18th and 19th. Is there anything  
10 else that we need to address today?

11 JUDGE KELBER: This is Judge Kelber. I'd  
12 like to suggest to the Petitioners that they read Part  
13 51 subpart A very carefully and where it is at all  
14 possible, direct our attention to that part of subpart  
15 A, you are discussing in your contentions. It helps  
16 us a great deal.

17 JUDGE YOUNG: And obviously, also, don't  
18 overlook the Commission's direction in its referral  
19 order in which it defines the scope of the proceeding.

20 Okay, anything else?

21 MR. MONIAK: I have one question.

22 JUDGE YOUNG: Yes.

23 MR. MONIAK: This is Don Moniak with Blue  
24 Ridge.

25 JUDGE YOUNG: Yes.

1 MR. MONIAK: I just downloaded today on  
2 ADAMS a document about telecommunication with Duke  
3 Energy Corporation, the NRC staff to discuss  
4 information in the license renewal application and  
5 fire protection systems and in which they discussed at  
6 length what was within the scope of the -- what was  
7 within the scope and what should be within the scope  
8 of the application. I thought what was supposed to be  
9 within the scope of the application by the licensee is  
10 supposed to be established long before we have to file  
11 contentions.

12 JUDGE KELBER: I believe it has been  
13 established by the rules.

14 MR. MONIAK: Okay.

15 JUDGE KELBER: That's why I mentioned Part  
16 51 subpart A.

17 MR. MONIAK: Okay. I'll take a look at  
18 it. Thank you.

19 JUDGE YOUNG: And you'll also want to look  
20 back at the Commission's referral order on this.

21 MR. MONIAK: Yes.

22 JUDGE YOUNG: And whatever communications  
23 there have been between the staff and Duke, I don't  
24 think the Board has any participation in that, so I'm  
25 not sure --

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1 MR. MONIAK: I'm just curious. If these  
2 teleconferences are functioning as requests for  
3 additional information --

4 JUDGE KELBER: You can't base a contention  
5 on a request for additional information, Mr. Moniak.

6 MR. MONIAK: I know you cannot base a  
7 request on that, a contention on that. However, the  
8 question I was going to ask, Judge Kelber, is whether  
9 or not we're supposed to be provided that information  
10 or do we have to hunt it down?

11 If it functions as a request for  
12 additional information, wouldn't Petitioners be  
13 provided a copy of that request?

14 JUDGE KELBER: I don't know of any such  
15 case.

16 MR. MONIAK: Okay, because we've been --

17 JUDGE KELBER: Excuse me, Mr. Moniak.

18 MR. MONIAK: Yes.

19 JUDGE KELBER: I know of the instance  
20 you're referring to because of your participation in  
21 another case on which I am sitting as well.

22 MR. MONIAK: Yes.

23 JUDGE KELBER: In the absence of an active  
24 website, I suggest that periodically, going to ADAMS  
25 and check what's in the dockets, in the date range

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1 from the last time you checked to the current dates,  
2 whatever it is.

3 MR. MONIAK: Yes.

4 JUDGE KELBER: That's your best way of  
5 keeping in touch.

6 MR. MONIAK: Okay, well I have been doing  
7 that.

8 JUDGE KELBER: It's the way I do it.

9 MR. MONIAK: Okay.

10 JUDGE YOUNG: Okay, anything else?

11 MS. OLSON: This will certainly come out  
12 in our amended petition, but just to mention, this is  
13 Mary Olson mentioning that we have an additional  
14 member of Nuclear Information and Resource Service who  
15 was not available at the time we filed our original  
16 petition to intervene who is going to be joining the  
17 case, Mr. Jeff Riley, so that will be reflected in our  
18 filing, but I thought I'd mention it today.

19 JUDGE YOUNG: Do you want to give us his  
20 contact information and have us add him to the service  
21 list?

22 MS. OLSON: No, he's a Nuclear Information  
23 and Resource Service member who we will be  
24 representing.

25 JUDGE YOUNG: So you and Mr. Gunter are

1 the two representatives who are on the service list?

2 MS. OLSON: Yes.

3 JUDGE YOUNG: And I think everybody else  
4 has been getting things from us anyway that needs to  
5 get them. Am I correct or do we need to add anyone,  
6 change anyone?

7 (No response.)

8 I'll assume we're right then. Thank you  
9 all.

10 (Whereupon, at 5:09 p.m., the telephone  
11 conference was concluded.)

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CERTIFICATE

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

Name of Proceeding: Duke Energy Corporation

Docket Number: 50-413-LR, 50-414-LR,  
50-369-LR, 50-370-LR

Location: (Telephone Conference)

were held as herein appears, and that this is the  
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