

# Official Transcript of Proceedings

2002 MAR 18 AM 9: 52

## NUCLEAR REGULATORY COMMISSION

ASSISTANT SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

Docket Number: 50-369-LR et al.

Location: (telephone conference)

Date: Wednesday, March 13, 2002

Work Order No.: NRC-261

Pages 705-751

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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

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Wednesday,

March 13, 2002

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

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE CHARLES N. KELBER

THE HONORABLE LESTER S. RUBENSTEIN

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9  
10        ALSO PRESENT:

11  
12                KEN DANADY, Duke Energy Corp.

13                ROBERT GILL, Duke Energy Corp.

14                GREG ROBISON, Duke Energy Corp.

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

10:01 A.M.

JUDGE YOUNG: This is Judge Ann Marshall Young, no E in Ann.

JUDGE KELBER: Charles Kelber.

JUDGE YOUNG: And we have Will Keyser, a law clerk with us. And Susan Uttal, U-T-T-A-L, correct?

MS. UTTAL: That's correct.

JUDGE RUBENSTEIN: And Judge Lester S. Rubenstein.

JUDGE YOUNG: Okay, anyone else from the Staff?

MS. UTTAL: No, Your Honor.

JUDGE YOUNG: Is Mary Olson, O-L-S-O-N from NIRS. Lou Zeller from BREDL. Anyone else from BREDL?

MR. ZELLER: That's all, Your Honor.

JUDGE YOUNG: And then David Repka and also Lisa Vaughn for Duke. Do you want to tell us who else is with you?

MR. REPKA: With me, this is David Repka, is Ann Cottingham and as you mentioned, Lisa Vaughn, is also counsel for the company. She's at a separate location. And at a third location in Charlotte is

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1 Robert Gill and Greg Roberson and that's G-I-L-L and  
2 R-O-B-E-R-S-O-N.

3 And Bob, is there anybody else with you in  
4 Charlotte?

5 MR. GILL: Also is Ken Danady, our Vice  
6 President of Engineering. And a few of the folks that  
7 do the SAMMA work.

8 JUDGE YOUNG: K-E-N-N-E-D-Y?

9 MR. GILL: D-A-N-A-D-Y. Ken, first name.  
10 We'll file a listing after the phone call.

11 JUDGE YOUNG: Okay, and I believe Mr. Gill  
12 and Mr. Robeson had given their titles before, but  
13 just for the record go ahead.

14 MR. GILL: I am the Licensing Engineer and  
15 Greg Robeson is the Project Management for the License  
16 Renewal Project.

17 And the correct spelling of his name is R-  
18 O-B-I-S-O-N.

19 MR. REPKA: Sorry about that.

20 JUDGE YOUNG: Okay. Great.

21 JUDGE KELBER: For the Court Reporter,  
22 BREDL is the acronym for Blue Ridge Environmental  
23 Defense League. B-R-E-D-L.

24 MR. ZELLER: Correct.

25 JUDGE KELBER: NIRS is the acronym for the

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1 Nuclear Information Research Services?

2 MS. OLSON: Resource.

3 JUDGE KELBER: Resource Service. NIRS.

4 JUDGE YOUNG: Okay. We have several  
5 things that we're going to discuss today. The first  
6 among them was discovery, then also any potential  
7 possible progress on settlement and if not discussing  
8 any discovery and scheduling issues, leave of parties  
9 with regard to Contention 2 and then any -- the need  
10 for any status conferences in scheduling matters and  
11 so forth.

12 We obviously got the -- I assume everyone  
13 got the Staff's Motion for Stay yesterday and I'm  
14 assuming that nothing has -- since that was filed, am  
15 I correct in assuming that?

16 MS. UTTAL: I haven't heard anything,  
17 Judge. This is Susan Uttal.

18 MR. REPKA: This is Dave Repka, certainly  
19 nothing -- Duke has not filed anything.

20 JUDGE YOUNG: Are there any preliminary  
21 matters before we just go through our agenda in the  
22 order in which I just listed it?

23 MR. ZELLER: This is Lou Zeller. I think  
24 it's suitable.

25 JUDGE YOUNG: Okay, great. We scheduled

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1 discovery to start on March 15th and obviously that  
2 appears to be why the Staff filed its motion yesterday  
3 to try to get some resolution of that before we get  
4 too far into discovery.

5 We have discussed this issue among  
6 ourselves here in the D.C. area and Judge Rubenstein,  
7 we were sort of in a rush this morning, so we  
8 apologize for not getting to you on that, but what we  
9 would like to do is to try to get down to brass tacks  
10 as much as possible to see what we're talking about,  
11 to see where any disputes lie so that we can move this  
12 along as efficiently as possible, assuming that it  
13 does go forward. And as we stated last time, the  
14 general practice is to move forward, absent the stay  
15 by the Commission which would be somewhat unusual. If  
16 there's a stay, obviously, we comply with that.

17 It does strike me, and Judge Kelber and I  
18 have discussed this to some degree, that if we can  
19 sort of get out on the table what we're talking about  
20 in terms of what discovery any party wishes to seek,  
21 then we might be able to short circuit some of the  
22 issues that seem to be of concern to the Staff in  
23 particular. And obviously, the Staff's motion is not  
24 to us, but we have read it and we are aware of some of  
25 the concerns and I think that we may be able to

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1 address those in a somewhat efficient way that may  
2 obviate the need for a lot of dispute over that.

3 And I guess, it seems that a good place to  
4 start might be to have Duke and more particularly,  
5 NIRS, Ms. Olson, tell us what you anticipate asking  
6 for.

7 MS. OLSON: Judge Young, this is Mary  
8 Olson.

9 JUDGE YOUNG: And also, I'm assuming  
10 everyone knows that the current state of the website  
11 and ability to get documents and public document  
12 rooms, keeping that in mind you might mention both  
13 what you expect you should be able to get through the  
14 public document room on the website and then what else  
15 you want and who you anticipate asking for it.

16 MS. OLSON: Judge Young, I need to make  
17 clear that I have not had the benefit of reading the  
18 Staff's motion yet. So if I'm being asked to address  
19 concerns in that document, I'm not able to do that.

20 JUDGE YOUNG: All you're being asked to do  
21 is tell us what it is that you want, what is it that  
22 you expect to ask for in discovery.

23 MS. OLSON: Okay, I also didn't have any  
24 notice on that question. So I hope that my entering  
25 a response into the record is in no way going to limit

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1 our ability to revise my response, because honestly,  
2 I did not understand that that was what I would be  
3 asked this morning.

4 JUDGE YOUNG: Okay, hold on for just a  
5 second. First of all, to sort of enlighten you a  
6 little bit on what the concerns are with what the  
7 Staff has raised, just so you'll know where we all  
8 are. The Staff requests the stay, among other things,  
9 talks about the difficulty that the Staff would have  
10 analyzing issues if requested to participate in  
11 discovery on environmental issues.

12 As far as -- etcetera, and I'm not going  
13 to go into that in any more detail because you should  
14 have it on your e-mail --

15 MS. OLSON: I do. I simply did not have  
16 the opportunity.

17 JUDGE YOUNG: Okay. In the future, just  
18 for future reference, if you get something and you  
19 know we're going to be having a conference, it would  
20 probably be a good idea to check and make sure what's  
21 been filed before the conference so you'll be prepared  
22 to proceed.

23 MS. OLSON: Judge Young, there was a  
24 nationwide outage in my e-mail server yesterday and I  
25 made many attempts to try and get e-mail in a

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1 different way. I had a sick child and we also had a  
2 filing deadline in another piece of this, so I'm sorry  
3 that I couldn't do it.

4 JUDGE YOUNG: But what I'm saying is the  
5 purpose for me and I think for the whole Board of  
6 these pre-hearing conferences, these status  
7 conferences is to move the case along efficiently and  
8 if people are not prepared when we convene, then that  
9 makes that more difficult.

10 As far as notice, the order that I entered  
11 on March 1st, clearly says in the final paragraph that  
12 we will address any matters that may aid in the most  
13 efficient conduct of this proceeding, including  
14 preparation for and discovery related to the July  
15 hearing. So that's what I'm asking you to address and  
16 given that it's your contention I would assume that  
17 you have enough knowledge about that to tell us as  
18 much as you know at this point of what you want.

19 MS. OLSON: Okay, as long as we understand  
20 that it's what I know at this point and we're not  
21 limiting my ability to amend this. I will respond by  
22 saying that since the order mentioned the fact that if  
23 this hearing results in a decision that plutonium fuel  
24 is a current part of this action, therefore, limited  
25 discovery under the aging effects would certainly

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1 bring into play not only documents that are currently  
2 available to us, but also the European experience.

3 We don't have access to documents from  
4 countries that are using MOX at this point. And I  
5 believe that that is relevant to questions about  
6 whether there is aging implications.

7 JUDGE YOUNG: Where would you want to get  
8 those from?

9 MS. OLSON: Uh --

10 JUDGE YOUNG: Who would you be seeking  
11 discovery of those --

12 MS. OLSON: I don't know what NRC is in  
13 possession of, so I don't know what NRC could provide  
14 us with. I don't know what Duke is in possession of,  
15 so I don't know what Duke could provide us with. I  
16 suspect both of them have more than we have.

17 I don't know what the Department of Energy  
18 has or whether I can do discovery on them and forgive  
19 me for my ignorance. I need to find more about the  
20 procedures involved.

21 JUDGE YOUNG: Well, you're really going to  
22 have to sort of stay a little bit more on top of this.  
23 And I want to encourage you to be as specific as  
24 possible today because frankly, it occurs to us that  
25 this whole issue of discovery and the potential

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1 problems for example may be to some degree, to some  
2 degree, a tempest in a teapot given that all that any  
3 party is required to provide under discovery is what  
4 they have in their possession that would be within the  
5 scope of discovery, in other words, relevant to the  
6 proceeding of reasonably calculated -- to lead to the  
7 discovery of relevant evidence.

8 MS. OLSON: I have no interest in either  
9 a tempest or a teapot, but I do have a question  
10 pertaining to your order that I have had since I read  
11 it which is you mentioned aging effects, but there was  
12 no reference at the same time to the environmental  
13 data that again, we don't have access to from Europe  
14 and there isn't a concomitant record here in the  
15 United States. That's what we're up against.

16 JUDGE YOUNG: Okay, let's try to focus on  
17 what it is exactly that you want and where you would  
18 try to get it from.

19 MS. OLSON: Well, in the aging category it  
20 has to do with experience in how the fuel has been  
21 loaded and the type of fuel that has been loaded and  
22 its positioning and any studies that have been done on  
23 the impact of those scenarios on the pressure vessel  
24 primarily. I'm not going to say only. And I'm going  
25 to stop there because I truly apologize that I am not

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1 as prepared as I need to be. I'll stop there. That's  
2 a pretty broad statement, but that's the category of  
3 interest.

4 In the environmental side --

5 JUDGE YOUNG: Before you move to the  
6 environmental, let me see if I can understand. And I  
7 want to also ask you to tell us who you want to seek  
8 discovery from and I'm assuming since we specifically  
9 asked everyone to read the rules last time that you do  
10 have a general understanding of what the discovery  
11 process consists of and the different forms of  
12 discovery.

13 You want information on certain effects of  
14 aging and any papers that have been done with regard  
15 to that. What did I leave out in my restatement and  
16 Judge Kelber, or Judge Rubenstein, did you -- could  
17 you do a better job than I did of summarizing that?

18 JUDGE KELBER: Well, Ms. Olson, this is  
19 Judge Kelber.

20 MS. OLSON: Yes.

21 JUDGE KELBER: I have difficulty  
22 understanding what it is you want that's not in the  
23 current report on the effects of fuel loading on  
24 vessel embrittlement. Could you be more specific what  
25 additional information you want?

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1 MS. OLSON: Well, part of our contention  
2 had to do with the fact that there are some trade offs  
3 in the scenarios that might be used for how MOX fuel  
4 would be loaded at the 40 percent. Now we're not to  
5 that point yet. We're talking about would there be an  
6 impact here. So I'm going all the way to that point.

7 JUDGE KELBER: Specifically, you're  
8 talking about the scenarios for loading MOX fuel into  
9 the reactor if the amendment is, in fact, applied for  
10 and approved?

11 MS. OLSON: Right, which is why we're  
12 asking you if this is a current component. There are  
13 many "what ifs" in this moment, so the what if is if  
14 being done, will it have an implication for the  
15 renewal period and the period of extended operation  
16 and aging analyses.

17 JUDGE YOUNG: I'm sorry, could you just  
18 repeat that?

19 MS. OLSON: Who are you asking?

20 JUDGE YOUNG: You.

21 MS. OLSON: Yes. For purposes of asking  
22 what kind of information do we want under discovery,  
23 we are withholding our disbelief for a moment and  
24 saying okay, let's imagine Duke is all the way to the  
25 point, posts all the approval steps and is actually

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1 using up to 40 percent plutonium fuel and the question  
2 then is what are the concerns for the period of  
3 license renewal which is 40 years and the period of  
4 extended operation which is an additional 20 years and  
5 impact on aging of components in that picture.

6 And so we're not assuming it happens.  
7 We're saying what if it happens, then what? And then  
8 what is cutting to what I was talking about previously  
9 is that there are some trade offs in how the 40  
10 percent MOX fuel would be loaded in terms of the aging  
11 impacts.

12 JUDGE KELBER: Ms. Olson, Judge Kelber.

13 MS. OLSON: Yes.

14 JUDGE KELBER: Ms. Olson, did we not  
15 discuss this at the hearing in Charlotte and did we  
16 not secure the agreements of all parties in the  
17 context of the license amendment application? Correct  
18 me if I'm wrong.

19 MS. OLSON: Judge Kelber, I'm only going  
20 on what's in the order.

21 JUDGE KELBER: But I'm going on what we  
22 discussed earlier.

23 MS. OLSON: I agree that Duke Energy  
24 agreed that at such a time as they are applying for an  
25 amendment to use MOX fuel, they did not think that any

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1 issue examined under license renewal would be  
2 foreclosed from that proceeding.

3 I will note, however, that NRC Staff did  
4 not make a similar commitment.

5 JUDGE YOUNG: Let's back up for a second,  
6 okay? Does everyone have the March 1st order in front  
7 of you?

8 MR. REPKA: Yes.

9 MR. ZELLER: Yes.

10 MS. OLSON: I'll get it open. I don't  
11 have it right now.

12 (Pause.)

13 JUDGE YOUNG: Everyone look at page 2 of  
14 that and does anyone not yet have it?

15 MS. OLSON: I'm getting there. Sorry.  
16 Okay.

17 JUDGE YOUNG: In the middle top half of  
18 page 2, there are two subparagraphs that are set off  
19 that define the issues for the July hearing and all  
20 the case law that's discussed and our ruling on  
21 contentions, January 24th ruling. We went through a  
22 long recounting and analysis of the various tests that  
23 have been applied by the Courts following after the  
24 Kleppe -- for the Court Reporter, that's K-L-E-P-P-E,  
25 case. This is a summary of those principles and

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1 basically the cases look at two things. First, they  
2 look at how concrete, how certain, how probable, how  
3 foreseeable, how definite a particular action is such  
4 that it should be considered in the context of another  
5 action. In other words, how definite, certain  
6 probable, foreseeable, etcetera, etcetera, the use of  
7 MOX fuel in the Duke Plant is such that the use of MOX  
8 fuel should be considered in this license renewal  
9 proceeding.

10 Another time that's use as a sort of catch  
11 all or a summary itself of these various concepts is  
12 whether it's a proposal. The Courts have said  
13 proposal is not limited to only things that have the  
14 word "proposal" written across the top. But that's  
15 one of the issues.

16 The second issue that the Courts look at  
17 and that will be the second issue in the July hearing,  
18 assuming it goes forward and these are also the issues  
19 for discovery at this point is the relationship  
20 between the license renewal and the anticipated  
21 possible, so forth and so on, use of MOX fuel in the  
22 four Duke plants; whether the impact will be  
23 cumulative or synergistic, interdependent, no  
24 interdependent, that it would be unwise or irrational  
25 to proceed with the license renewal proceeding without

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1 considering it, or otherwise appropriately connected  
2 and related under appropriate case law standards  
3 summarized in our previous order and those certainly  
4 may not be exhaustive, but obviously, we've looked at  
5 those which the parties have provided to us.

6 I got the sense from what you were saying  
7 that you were starting to go a little bit afield from  
8 that. As we said in the next paragraph in that order,  
9 although any aging issues will not be addressed in the  
10 depth in which they may be later addressed in any  
11 further hearing should the resolution of the issues in  
12 paragraph 1 be in favor of NIRS, discovery on aging  
13 issues may be permitted to a reasonable extent insofar  
14 as the matters on which discovery is sought are  
15 relevant to the two issues summarized in paragraph 1  
16 that I just want over.

17 What I'm trying to get the parties to do  
18 is to try to get out on the table what it is you want  
19 and where you want it from, who you want it from.

20 The Board which has Judge Kelber as one of  
21 its members, is also on the MOX case involving Duke is  
22 obviously aware of what's going on in that case and of  
23 various documents that are available on the website or  
24 through ADAMS, publicly-available documents relating  
25 to the use of MOX fuel in the Duke plant.

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1           There is also a rule that allows the Board  
2           to take official notice of various facts and the most  
3           recent digest of the NRC spells out a long list of the  
4           types of things that Boards have taken official notice  
5           of. What I would like to get you, Ms. Olson, and then  
6           also hear from Duke and from the Staff on, what  
7           specifically are we talking about? I don't want us to  
8           leave this conference, if at all possible, with  
9           everything just sort of open-ended, up in the air and  
10          vague about what we're talking about here.

11           MS. OLSON: May I ask you a question?

12           JUDGE YOUNG: Pardon?

13           MS. OLSON: May I ask a question, Your  
14          Honor?

15           JUDGE YOUNG: Go ahead.

16           MS. OLSON: Okay, I have looked at the  
17          regs, but I'm still a little bit confused and I don't  
18          want to be confused about the proposed process with  
19          regards to this initial hearing. I mean I know that  
20          it may not happen, okay. If it happens, it will  
21          probably be appealed, okay. But let's say that there  
22          was a ruling that MOX is a current proposal and it  
23          survives appeal. Are we then to proceed on the merest  
24          contentions without further discovery or would there  
25          be a sort of starting over point somehow?

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1 JUDGE YOUNG: I think you're sort of  
2 putting the cart before the horse here. What we need  
3 to be looking at here is the hearing that as to this  
4 day will occur in July and to the discovery that any  
5 party may wish to seek in preparation for that  
6 hearing, the issues as we set forth in our March 1st  
7 order that the Board will be looking at, at that  
8 hearing and the issues that the Board will be looking  
9 at and ruling on any discovery disputes are those two  
10 that I just went over and I'm assuming that at this  
11 point everyone has that order in front of you, the  
12 March 1st order that spells out those two issues.

13 JUDGE RUBENSTEIN: This is Judge  
14 Rubenstein. Let me try to paraphrase.

15 JUDGE YOUNG: Go ahead.

16 JUDGE RUBENSTEIN: I think the substance  
17 of the discovery has to deal with the admissability of  
18 the MOX contention as described in the two paragraphs  
19 on page 2. Subsequent to admission, then you would  
20 have discovery on the effects, both the safety and the  
21 environmental effects of the MOX. So the substance of  
22 what you said originally spoke mostly to the latter.

23 MS. OLSON: I agree. And if you're  
24 affirming that if it all -- I'm not saying it will go  
25 forward, but if it all did go forward, in this

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1 paragraph right after -- it's the paragraph that  
2 starts number 2 on page 2, says any further hearing,  
3 so you're telling me that if we all got to that point  
4 which we don't know we will, that's when the type of  
5 discovery I was describing would be -- there would be  
6 another opportunity at that point.

7 JUDGE RUBENSTEIN: As I understand it,  
8 yes, from what you said.

9 MS. OLSON: Okay.

10 JUDGE YOUNG: Thank you, Judge Rubenstein,  
11 that was very helpful.

12 Yes, I mean if we go forward in July and  
13 if you were to prevail, then depending upon what Duke  
14 did or the Staff did after that, the issue might go  
15 away because they might put in their license renewal  
16 application and in the SEIS everything that you could  
17 possibly want. They might not. There might be late  
18 filed contentions. But if we get to that point,  
19 obviously, as Judge Rubenstein said, maybe not  
20 obviously, pardon me, to you because you're not a  
21 lawyer, but at that point there would be discovery on  
22 everything that remained in the case to be decided at  
23 that point.

24 At this point, we're only talking about  
25 the two issues defined in (a) and (b) on page 2 of the

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1 March 1st order. And the purpose of having this  
2 discussion is to try to get everybody on the same page  
3 in terms of what we're talking about, find out what  
4 you and Duke, if Duke wants to do any discovery,  
5 what's on these issues. There's been some somewhat  
6 confusing discussion in various of the documents  
7 talking about all the facts that are available. Just  
8 to give you a for instance, in terms of what the Board  
9 is thinking of, we -- Judge Kelber in the MOX case has  
10 seen the contract relating to that. He did not look  
11 at that contract or any of the other documents that we  
12 might take official notice of at this point because  
13 frankly, we wanted to give the parties an opportunity  
14 to present their evidence.

15 MS. OLSON: That brings me now to, this is  
16 Mary Olson, one thing that we would definitely be  
17 pursuing under discovery at this point which is a  
18 recent report to Congress by the DOE suggests that  
19 there will be additional reactors added to the  
20 plutonium fuel program under the DOE contract and  
21 there's been rumor that Ocone owned by Duke would be  
22 included. And so at this point in terms of what is it  
23 that we're actually doing in the scope of the MOX  
24 program also relates to Duke and relates to the --

25 JUDGE RUBENSTEIN: Well, I have a little

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1 trouble with that. The scope of this hearing relates  
2 to the license renewal, not to the MOX program of the  
3 national establishment. So I think you have to have  
4 some sort of a nexus to this hearing.

5 MS. OLSON: Okay.

6 JUDGE RUBENSTEIN: In particular with the  
7 aging effects, so it may be of interest that Duke may  
8 or may not be in some sort of a preliminary  
9 contractual arrangement with the Department of Energy,  
10 but it doesn't particularly affect their licensing  
11 renewal aspects of potentially using MOX.

12 So I think you're a little far afield on  
13 that.

14 JUDGE YOUNG: And just let me interject at  
15 this point. I think we want to stay away at this  
16 point from getting into a discussion of the substance  
17 of your argument. Obviously, some things might come  
18 in if they're relevant to the foreseeability,  
19 etcetera.

20 What I'm trying to get you to address, is  
21 not to give us your argument about why something is  
22 relevant, it's really much, much, much more simple  
23 than that. It's simply what is it that you want? Do  
24 you know of documents that you want? Do you know what  
25 you want from Duke? Do you know what you want from

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1 the Staff at this point? If anything from the Staff?  
2 Is there anything that you can imagine that you would  
3 have to get from the Staff that you could not get from  
4 anywhere else?

5 MS. OLSON: I will say that there is  
6 information that is available from sources in Europe  
7 that I feel fairly confident that NRC Staff either has  
8 or is getting for themselves that are necessary for an  
9 evaluation of the contention. I understand that those  
10 --

11 JUDGE YOUNG: Ms. Olson, let me repeat  
12 what I said. What I'm trying to get us to focus on  
13 here because the Staff has a concern about discovery  
14 against it. What I'm trying to get you to focus on is  
15 is there anything that you see that you could only get  
16 from the Staff that you could not get from anywhere  
17 else that bears on the two issues for this 10th of  
18 July hearing?

19 MS. OLSON: I believe that what we need in  
20 relation to NRC's participation in this program is  
21 available to ADAMS and website and other documents  
22 that we have in our possession, so I don't foresee a  
23 major additional request. And as I say, this is a  
24 preliminary comment on my part and I apologize.

25 JUDGE YOUNG: Okay, that's what we were

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1 trying to get to because if that's the case, then we  
2 don't really have much, if anything to worry about  
3 with regard to discovery. Obviously, this position  
4 has exempted the Staff from discovery, in particular  
5 with regard to environmental issues. Quite frankly,  
6 we had hoped as we said, that you could have maybe  
7 tried to communicate on as much as possible and we  
8 always encourage you to communicate to try to work  
9 things out by agreement with each other, but at this  
10 point, it doesn't look like discovery against the  
11 Staff is even going to be an issue at this point in  
12 the proceeding. That's very helpful.

13 In terms of discovery against Duke, it  
14 might be helpful to go into a similar kind of  
15 discussion to flesh out any potential issues that  
16 might arise and need resolution or need input from the  
17 Board, especially since we need to be looking at our  
18 schedules and may not be available at certain points  
19 to resolve disputes.

20 So can you tell us is there anything that  
21 you can see asking from Duke?

22 MS. OLSON: The only thing I'm not 100  
23 percent sure on is whether we have all of the  
24 amendments to the Department of Energy's contract and  
25 whether we can at this point get those. We have been

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1     able to get them in the past. I don't know if we  
2     still can. And I would suspect that they are in  
3     possession of those, so that's one thing that comes to  
4     mind.

5             JUDGE KELBER: You are talking about the  
6     contracts between Duke Energy and the Department of  
7     Energy with respect to the irradiation of MOX fuel?

8             MS. OLSON: Yes.

9             JUDGE KELBER: Can't hear you.

10            JUDGE YOUNG: I'm sorry, we're having --  
11     you're breaking up, Judge Rubenstein.

12            JUDGE RUBENSTEIN: Particularized --

13            JUDGE YOUNG: We can't hear you very well.

14            JUDGE RUBENSTEIN: Particularized to these  
15     four plants.

16            MS. OLSON: Yes.

17            JUDGE YOUNG: Mr. Repka or Ms. Vaughn,  
18     whichever one -- are we all still here?

19            Okay, Mr. Repka or Ms. Vaughn, can you  
20     just let us know with regard to any amendments to the  
21     contract, do you have any problem providing those?

22            MR. REPKA: Ms. Vaughn, I'll defer to you  
23     on that.

24            MS. VAUGHN: I think first of all, a  
25     matter of clarification. The contract that Duke

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1 Energy has is not with the DOE directly. It is with  
2 DOE's contractor, DCS.

3 In terms of an amendment to that contract,  
4 I am not aware of one.

5 JUDGE YOUNG: Okay. Now just to clarify  
6 for my understanding, Judge Kelber may already know  
7 it. I don't know about Judge Rubenstein, but Judge  
8 Kelber, are there more than one contract that we're  
9 talking about and do we need to make sure that we're  
10 all on the same page with regard to what contract we  
11 are talking about?

12 JUDGE KELBER: Ms. Olson?

13 MS. OLSON: I believe she's correct that  
14 I was referring to the contract with DCS which spells  
15 out requirements for the subcontract, but I honestly  
16 understand that she's talking about the subcontract.  
17 I don't know if they're sufficiently different, so  
18 that might be something we would ask for.

19 JUDGE YOUNG: Okay, Ms. Vaughn, can you  
20 just provide whatever contracts have been entered  
21 into, do you have any problem with doing that along  
22 with any amendments that may have been added to them?

23 MS. VAUGHN: I mean whatever contracts  
24 that may have been entered into is a pretty broad  
25 category. I think it's fair to say that if you're

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1 interested in the contract between Duke Energy and  
2 DCS, we can provide that. There are certain  
3 proprietary provisions contained in that and we would  
4 need to figure out how to address those. But  
5 otherwise, I think we can provide that.

6 Then the question, I guess the other  
7 contracts that might be contemplated is the contract  
8 between DCS and DOE and I would need to look into us  
9 providing that, but I don't foresee a significant  
10 problem with doing that.

11 JUDGE YOUNG: Okay, I mean obviously the  
12 contracts that we're talking about are any that are  
13 relevant to the MOX proceeding -- hello?

14 MS. VAUGHN: I'm sorry, Judge, you're  
15 breaking up.

16 JUDGE YOUNG: Oh. Not having seen any of  
17 the contracts myself, what I'm talking about and I'm  
18 really trying to get what the parties are talking  
19 about, I have noticed references to a contract or  
20 contracts that have been discussed and are attached to  
21 various documents in the MOX fuel case and that I  
22 understand Ms. Olson to be asking for insofar as they  
23 would be relevant to issue A, the concreteness,  
24 definiteness, etcetera, foreseeability of using the  
25 MOX fuel in the Duke plant.

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1 And so maybe it would be a good idea to  
2 get that out on the table. I was not aware that there  
3 was.

4 JUDGE KELBER: This is Judge Kelber. Let  
5 me be a little bit more specific. The Department of  
6 Energy refers to a contract calling for the  
7 irradiation of fuel in the four plants that are under  
8 discussion here and I believe that's what's relevant.

9 MS. VAUGHN: And indeed, I agree and that  
10 would be the contract then between Duke Energy  
11 Corporation and DCS. That would be the contract that  
12 would contain the provisions addressing Duke's  
13 obligation to irradiate the fuel.

14 JUDGE KELBER: Fine.

15 JUDGE YOUNG: Ms. Olson, does that satisfy  
16 you? Were you wanting something besides that?

17 MS. OLSON: The other thing that comes to  
18 mind is documents that might be in Duke's possession.  
19 I don't know of their definite existence, but the  
20 question is the contract was signed and then the  
21 decision to pursue license renewal at this time and  
22 the exemptions for being able to file eagerly on three  
23 out of the four reactors. There's a temporal  
24 connection and I'm wondering if there are any analysis  
25 papers that Duke did about the relationship between

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1 license renewal and plutonium fuel use.

2 JUDGE YOUNG: Ms. Vaughn or Mr. Repka, and  
3 again, without getting into what argument might be  
4 made with regard to any of these because I want to  
5 stay away from having substantive argument on the  
6 merit to these things and mainly just use today's time  
7 to define what people are in agreement about and where  
8 potential areas of dispute may lie.

9 With regard to what Ms. Olson just said,  
10 do you have any problem providing those or do you  
11 anticipate that that's something that might need to be  
12 resolved?

13 MR. REPKA: This is Dave Repka for Duke.  
14 I guess the threshold issue is do any such documents  
15 exist and I don't know that any such documents do  
16 indeed exist.

17 If they did, I think the one issue that  
18 might be there, the privilege issue, but beyond that,  
19 I don't see any other complications that would be any  
20 different from normal discovery type discussions. So  
21 I don't think we can definitively respond to that  
22 today, but beyond possibly privilege and beyond  
23 possibly that there may not be any such documents, we  
24 could address that.

25 JUDGE YOUNG: Okay, and just to clarify

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1 for Ms. Olson's sake, a minute ago, thank you, Mr.  
2 Repka, for jogging our memories on this. A minute  
3 ago, Ms. Vaughn made a reference to proprietary  
4 information and Ms. Olson, you understand that you may  
5 need to enter into some agreements or there may need  
6 to be some way to address any proprietary information  
7 that -- to keep protected and with regard to  
8 privilege, there are privileges that exist in the law  
9 to protect, for example, attorney-client  
10 communications and so on and so forth.

11 With regard to all these kinds of things,  
12 I encourage you all to work together as we proceed and  
13 always, as I said, be able to attest that you have  
14 made a good faith effort to resolve disputes between  
15 the parties prior to seeking Board action.

16 Are there any other discovery issues that  
17 it would be helpful to sort of lay on the table at  
18 this point to flesh out any possible disputes that we  
19 might ultimately work out?

20 MR. REPKA: This is Dave Repka from Duke.  
21 I don't think so from my perspective. I would just  
22 point out that we agreed with Judge Rubenstein  
23 earlier. I think he characterized very nicely the  
24 distinction between what's the subject of discovery  
25 now versus what might be subject to discovery later.

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1 And then with respect to whether we, Duke Energy,  
2 might seek something from the NRC Staff that would  
3 cause problems in this period of time, which caused  
4 the stay request, right now I do not contemplate  
5 filing any discovery requests from the Staff on this  
6 phase of the issue.

7 JUDGE YOUNG: It sounds really like  
8 neither you or NIRS -- kind of like filing any  
9 discovery against the Staff and I guess I would also  
10 say that if on the off, off, off, off, off chance that  
11 any such request did surface, the Board, I hope I --  
12 I think I'm speaking fairly for the Board, would  
13 expect that first of all every -- an exhaustive effort  
14 would be made to assure oneself that the document or  
15 information is not publicly available elsewhere and  
16 two, to work out things by agreement so as not to put  
17 a burden on any party. And that goes between all  
18 parties. It's not directed at any one in particular,  
19 but other than the issues we have been discussing with  
20 regard to the Staff.

21 MS. UTTAL: This is Susan Uttal from the  
22 Staff. I lost part of what you said. Can you repeat  
23 the last portion of what you said?

24 JUDGE YOUNG: I can try. If I can  
25 backtrack. It sounds as though the issue of discovery

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1 against the Staff has pretty much disappeared in terms  
2 of the July hearing and the issues for the July  
3 hearing, (a) and (b) issues on page 2 of our March 1st  
4 order.

5 And so the Staff concern about that, I  
6 hope, is assuaged.

7 What I said was if, against all  
8 expectations at this point, something does arise that  
9 the Board wants to emphasize and I think I can speak  
10 fairly for the Board in saying this, that we would  
11 expect that first before any such requests were made  
12 that an exhaustive effort would have been made to make  
13 sure something is not available publicly or elsewhere  
14 publicly or not, (2) that parties would have gotten  
15 together to try to work together to try to resolve any  
16 disputes among themselves before coming to us for  
17 resolution, obviously, all that in a timely manner.

18 MS.UTTAL: From the Staff's viewpoint, we  
19 appreciate the fact that we won't have to go through  
20 this fight right now, but it's our view and you've  
21 seen our stay motion that based on the law and based  
22 on the Commission's order referring this case that no  
23 discovery shall be had on the Staff. We will try to  
24 cooperate to the extent that we can, but waiving any  
25 rights to protest against any discovery order

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1 requested of us.

2 JUDGE YOUNG: Right. I think that we can  
3 say with a fair amount of confidence that it's not  
4 going to be an issue and so we don't even need to look  
5 at it at this point in terms of sifting out what might  
6 be safety as opposed to environmental, etcetera,  
7 etcetera, etcetera.

8 The Staff is not going to be requested to  
9 provide any discovery and if it is, then obviously we  
10 can address that when the time comes and you can make  
11 your argument and we may have some further guidance  
12 from the Commission by that time and we will all hope  
13 that nothing comes back that we haven't expected to  
14 slow us down in moving along efficiently.

15 Are there any other discovery issues that  
16 it would be helpful to discuss today?

17 MS. OLSON: Your Honor, this is Mary  
18 Olson.

19 JUDGE YOUNG: Yes.

20 MS. OLSON: I would simply like to note  
21 that I appreciate the initiative that Duke has taken  
22 in communicating and that I concur with your  
23 encouragement that we do this as a joint effort in  
24 communicating with each other. So I just want to  
25 acknowledge that they've taken some initiative in

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1       contacting us and that's good.

2               JUDGE YOUNG: Right.

3               MR. REPKA: We appreciate that.

4               JUDGE YOUNG: That's real helpful. I  
5 always find that if parties try to work together,  
6 generally they find that they can get a lot more than  
7 they expected when they dig their heels in on either  
8 side and I'm real pleased to hear that you're working  
9 well together.

10              I didn't hear an answer to the question  
11 before. Are there any other discovery issues? I'm  
12 assuming that means there's nothing else at this point  
13 that we need to discuss. It sounds as though we may  
14 not even need the full period of discovery that we  
15 allowed and certainly don't wait until the last minute  
16 to do discovery. Start immediately and that way  
17 you'll be more assured of not having any disputes that  
18 slow things down.

19              The next issue that we were going to talk  
20 about was Contention 2 and Duke had responses to the  
21 Staff's RAI, Request for Additional information. And  
22 the parties were going to look at that and BREDL,  
23 you're more involved now too, Mr. Zeller, because you  
24 are part of Contention 2.

25              You were going to look to see whether you

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1 might settle any or all of Contention 2.

2 MR. ZELLER: Judge Young, this is Lou  
3 Zeller. A word or two dropped out from your last  
4 statement. I'm sorry.

5 JUDGE YOUNG: We do have problems when  
6 we've got more than one speaker phone going, I know.  
7 Sometimes rustling paper causes that, so maybe we and  
8 everyone can try to avoid that.

9 The next issue, I was saying for us to  
10 discuss today is whether the parties have been able to  
11 reach either partial or complete agreement on issues  
12 related to Contention 2, such that any or all of  
13 Contention 2 could be settled. Based on the  
14 information that Duke provided in response to Staff's  
15 RAIs on the issues involved in Contention 2.

16 MR. ZELLER: Yes, okay. This is Lou  
17 Zeller. There is no resolution, so far as I know,  
18 about Contention 2.

19 JUDGE YOUNG: Has there been any  
20 discussion between Duke and BREDL or NIRS?

21 MR. REPKA: This is Dave Repka for Duke.  
22 I have made a call to Mr. Moniak on this issue and  
23 left a detailed message and have received no return.  
24 So the answer is to your question is no, there have  
25 not been.

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1 As Ms. Olson alluded to, we've had good  
2 discussions with NIRS on Contention 1, but have so far  
3 not proven to be fruitful, but we've had no  
4 discussions on Contention 2.

5 JUDGE KELBER: This is Judge Kelber. I'm  
6 going to encourage the parties, all parties, to get  
7 together on Contention 2 and try to see how much of  
8 this can be resolved at this stage and to narrow the  
9 issues as much as possible.

10 MR. REPKA: Dave Repka --

11 JUDGE KELBER: Excuse me, Mr. Repka. If  
12 we have to discuss the whole range of topics in  
13 Contention 2, then reviewing the reply responses to  
14 the request for additional information, I foresee the  
15 need for the parties to have at their service experts  
16 in a range of areas. I've noted six areas which I  
17 think are distinct in terms of expertise. One is the  
18 rates and amount of hydrogen generation, following  
19 core melt expulsion into the cavity; (2) the force of  
20 any steam explosions if there's water in the cavity;  
21 (3) mixing of hydrogen in the containment as a  
22 function of time after expulsion; (4) the deflagration  
23 and detonation of hydrogen in a ternary mixture of  
24 hydrogen, air and steam; (5) the actual as opposed to  
25 code, ultimate strengths of the containment.

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1 JUDGE YOUNG: Hold on just one second.  
2 Court Reporter, if you need to have any of those words  
3 spelled feel free to ask Judge Kelber, because I know  
4 you may.

5 JUDGE KELBER: And (6) finally, is the  
6 cost of placing transmission lines underground or  
7 underwater.

8 Now I think you're going to need to supply  
9 experts in those areas if you want to discuss the  
10 whole topic. If you want to -- if you can narrow the  
11 issues as much as possible, the fewer experts you will  
12 need. So I think it pays everybody to put their heads  
13 together and do their best to narrow the issues here.

14 MR. REPKA: This is Dave Repka again for  
15 Duke. I just want to say we encourage that  
16 discussion. We've made an effort to initiate that  
17 discussion. It hasn't happened. But we would like to  
18 continue to try to do that.

19 The other thing I do want to point out for  
20 the record is that we have previously circulated the  
21 responses to the RAIs. There will be an additional  
22 response to the RAIs in response to some Staff  
23 questions to our prior response that will be coming in  
24 the next few days and I will circulate that to the  
25 Board and parties as well. So there is more

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1 information still to come on this issue as well.

2 JUDGE KELBER: Thank you, sir.

3 JUDGE YOUNG: Let me ask Mr. Zeller, Mr.  
4 Repka said that he had contacted or tried to contact  
5 Mr. Moniak. He's not with us today and normally he's  
6 been the representative of BREDL. What is his  
7 situation with regard to availability and ability to  
8 talk about this? I'm trying to remember. It seems  
9 like he was -- am I correct in remembering that he was  
10 the main person on this contention from BREDL?

11 MR. ZELLER: Judge Young, your assumption  
12 is correct. There's a change in the way we're going  
13 to be staffing this. Mr. Moniak is still working with  
14 us. However, he will no longer be the lead. I will  
15 be that person from here on out. So I think the call  
16 that Mr. Repka made to Mr. Moniak was certainly the  
17 correct thing and I understand why there would be some  
18 confusion on that matter at this point.

19 So what I'm saying is that I would be  
20 certainly willing to discuss any of the matters that  
21 Judge Kelber has brought up in order to save all  
22 parties resources.

23 JUDGE YOUNG: And then with regard to  
24 NIRS, you're part of Contention 2, as I recall, and  
25 have you, Ms. Olson, and you, Mr. Zeller, talked with

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1 each other (1) about which one of you would be the  
2 lead party on that contention; and then (2) if you're  
3 not, well, this is not just limited to Contention 2.  
4 This really relates to both contentions, to the degree  
5 things are not settled or even to assist you in  
6 settlement discussions. Is there any more chance that  
7 you might be getting counsel involved and if so, I  
8 think we would encourage you to get them involved as  
9 soon as possible because quite often that will  
10 facilitate these kinds of discussions.

11 What about that in terms of lead parties  
12 and in terms of counsel, generally?

13 MR. ZELLER: This is Lou Zeller. Judge  
14 Young, you anticipate us. I think we are certainly  
15 investigating at this point the use of -- employment  
16 of counsel in these matters for future proceedings.  
17 We're figuring out payment and things like that right  
18 now.

19 JUDGE YOUNG: You're working with NIRS or  
20 separately?

21 MR. ZELLER: Yes, we are working with  
22 NIRS.

23 JUDGE YOUNG: Great. Now have you and  
24 NIRS talked about which party would be the lead party  
25 on Contention 2?

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1 MR. ZELLER: Yes, we have and it would be  
2 Blue Ridge Environmental Defense League.

3 JUDGE YOUNG: Good. Then Mr. Repka, I'm  
4 taking from that that you would need, that Mr. Zeller  
5 would be the point person, so to speak on Contention  
6 2 and that Mr. Zeller, you will have taken or will  
7 continue to have combinations with Ms. Olson as  
8 necessary so that you can speak for both of you in  
9 your discussions with Mr. Repka in trying to narrow  
10 the issues and/or settle as much or all of Contention  
11 2, if possible.

12 MS. OLSON: Your Honor?

13 JUDGE YOUNG: Yes.

14 MS. OLSON: I would like to clarify that  
15 I'm not sure that we're linked in settlement, so I  
16 think NIRS will be a participant in those  
17 conversations, but in terms of proceeding, the Blue  
18 Ridge Environmental Defense League is the lead group  
19 dealing with the contention, yes. But we had  
20 clarified in the last call that settlement is not  
21 something that necessarily both parties have to agree  
22 to.

23 Is that correct?

24 JUDGE YOUNG: Who are you asking?

25 MS. OLSON: You.

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1 JUDGE YOUNG: Oh. Nobody has to settle  
2 anything ever.

3 MS. OLSON: Okay.

4 JUDGE YOUNG: What we're trying to do in  
5 these status conferences is figure out the most  
6 efficient, reasonable ways for the parties to proceed  
7 to effectuate the most efficient resolution of the  
8 issues that the parties have.

9 MS. OLSON: Yes.

10 JUDGE YOUNG: And if you feel the need to  
11 have conference calls, then maybe you need to schedule  
12 conference calls between Mr. Repka and whoever else at  
13 Duke would be involved, along with Mr. Zeller and you.  
14 We don't care how you do it.

15 MS. OLSON: Okay.

16 JUDGE YOUNG: We encourage you to do it  
17 and we encourage you to do it as quickly as possible  
18 so that we can move along on the case and save  
19 everybody on all sides, attorney fees, time, effort,  
20 etcetera, etcetera that might be wasted if it's not  
21 undertaken in the most efficient way possible.

22 Now, with that said, we really haven't  
23 gotten any answers with regard to Contention 2. We're  
24 not planning to go to hearing at this point on  
25 Contention 2. It occurs to me that looking at our

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1 next issue on the agenda and that is additional status  
2 conferences and any other scheduling matters, it would  
3 be appropriate to set a time for another status  
4 conference. I've got a 3-week hearing starting the  
5 week of April 22nd. And I'm not going to be in the  
6 office from the 19th. I would suggest early in April  
7 to make sure everything is moving along, if we can set  
8 up a conference call.

9 JUDGE RUBENSTEIN: This is Judge  
10 Rubenstein.

11 JUDGE YOUNG: Yes, are you --

12 JUDGE RUBENSTEIN: Yes, April 10th works  
13 for me.

14 JUDGE YOUNG: Pardon?

15 JUDGE RUBENSTEIN: April 10th works for  
16 me.

17 JUDGE YOUNG: Does April 10th work for  
18 everyone else?

19 MR. ZELLER: It works for me. This is Lou  
20 Zeller.

21 MR. REPKA: Dave Repka. That works fine.  
22 I would ask the group in Charlotte whether that works.

23 MR. GILL: This is Bob Gill. April 10th  
24 is fine for us down here.

25 MS. OLSON: I can do it. This is Mary

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1 Olson.

2 MS. UTTAL: This is Susan Uttal. It works  
3 for us.

4 JUDGE YOUNG: Because of the scheduling,  
5 10 o'clock was a good time, I think, for everyone,  
6 balancing East and West Coast and Ms. Uttal's schedule  
7 and so forth. 10 o'clock Eastern Time on April 10th.

8 The primary focus of this will be  
9 Contention 2, but also I want to again emphasize, it  
10 can't be emphasized too much, get going with your  
11 discovery, start this Friday, move along with it so  
12 that if you've gotten any disputes, you'll know about  
13 them by September 10th -- I'm sorry, April 10th -- so  
14 that we can be sure that discovery will end as  
15 scheduled and that means be completed with all  
16 responses in.

17 MR. REPKA: And Judge, you're referring to  
18 Contention 1 now, correct?

19 JUDGE YOUNG: Exactly, exactly. And then  
20 with regard to Contention 2, if you've settled any or  
21 all of that, that will define what we need to do  
22 further on that contention.

23 MR. REPKA: May I ask one question and  
24 that's if Mr. Zeller has no objection, I would like to  
25 get his phone number. I don't have a phone number for

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1 him.

2 MR. ZELLER: My phone number here is Area  
3 Code 336/982-2691.

4 MR. REPKA: Thank you.

5 JUDGE YOUNG: Okay. So you're going to  
6 report to us on your progress on settlement  
7 negotiations, discussions related to Contention 2.  
8 You're going to report to us any disputes on discovery  
9 related to Contention 1. It means you're going to  
10 have to get on it right away. Talk to each other and  
11 that's Ms. Olson and Duke and Ms. Olson, go back and  
12 read those rules again if you need to. I'm going to  
13 make this as explicit as possible this time. Be ready  
14 with any disputes. We're not going to be as kindly  
15 disposed to anything brought to us after that time and  
16 I may be unavailable once we get moving, and during  
17 the 3-week hearing that I'm going to be involved in  
18 starting mid to late April.

19 MS. OLSON: I appreciate your forbearance  
20 today.

21 JUDGE YOUNG: Thank you. Again, if you're  
22 going to get counsel, the sooner the better. I've  
23 said it before and I'm going to say it again. If  
24 counsel comes in and says we don't know what's going  
25 on, we need time to prepare, you've been forewarned.

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1 This is twice no. That's not going to be considered  
2 a real good excuse for delaying anything at all. So  
3 get them involved at the front end. Maybe sure they  
4 know what's going on so they can jump in, hit the  
5 floor running.

6 MR. ZELLER: I understand, Your Honor.

7 JUDGE YOUNG: Great. Are there any other  
8 matters that any of you think would be helpful to us  
9 today?

10 MR. REPKA: Dave Repka for Duke Energy.  
11 I would just point out again since we're talking about  
12 settlement that with respect to Contention 1, we have  
13 had some discussions with NIRS and at this point NIRS  
14 has closed us down, but we remain willing and able to  
15 talk about that contention as well.

16 JUDGE YOUNG: And also, since you're going  
17 to go out and start the discovery process right away,  
18 you're going to go out and look in all the places you  
19 need to get those documents that should assist you in  
20 determining whether you can settle that and we always  
21 encourage that, if possible.

22 So the one thing we don't want to hear  
23 again on April 10th is we haven't thought about that  
24 issue. We want you to think about all the issues  
25 between now and then so that if there are any disputes

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1 at all and we realize the Staff's not that involved at  
2 this point, but if there are any disputes at all,  
3 you'll know what they are and indeed, if possible,  
4 even let us know about those in advance so that we'll  
5 be prepared to discuss them on April 10th.

6 Anything else? Well, very good. Thank  
7 you all and congratulations on the progress you've  
8 made and we encourage you to continue.

9 MS. OLSON: Thank you.

10 MR. REPKA: Thank you, Your Honor.

11 MS. UTTAL: Thank you, Your Honor.

12 MR. ZELLER: Thank you.

13 (Whereupon, at 11:10 a.m., the telephone  
14 conference was concluded.)  
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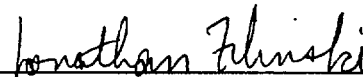
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