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NUCLEAR REGULATORY COMMISSION

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Catawba Nuclear Station, Units 1 & 2
Teleconference

Docket Number: 50-413-OLA and 50-414-OLA

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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 CALL

IN THE MATTER OF ||
DUKE ENERGY CORPORATION || Docket Nos.
(Catawba Nuclear Station, || 50-413-OLA
Units 1 & 2) || 50-414-OLA

Thursday,

December 11, 2003

The above-entitled matter came on for hearing,
pursuant to notice, at 3:30 p.m.

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE ANTHONY BARATTA

THE HONORABLE THOMAS ELLEMAN

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

3:36 p.m.

JUDGE YOUNG: Okay, this is Judge Ann Marshall Young. And I'm going to pass it on to Judge Baratta and Judge Elleman.

JUDGE BARATTA: This is Judge Anthony J. Baratta.

JUDGE ELLEMAN: This is Judge Thomas Elleman.

JUDGE YOUNG: Okay, staff.

MR. FERNANDEZ: This is Antonio Fernandez from the staff. With me I have Kathleen Kannler, Susan Uttal and Bob Martin, which is the Project Manager for the MOX Project.

MR. WETTERHAHN: Good afternoon, this is Mark Wetterhahn for the Licensee, Duke Energy Corporation. I have with me Ann Cottingham and in Charlotte, will you identify yourselves, please?

MR. NESBIT: Steve Nesbit and Mike Cash.

MR. WETTERHAHN: Thank you. Just for the record, I will submit a formal notice of appearance with our next pleading in this case.

JUDGE YOUNG: Thanks. BREDL.

MS. CURRAN: This is Diane Curran, C-u-r-r-a-n, representing Blue Ridge Environmental Defense

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1 League.

2 JUDGE YOUNG: That's, when I said BREDL,
3 that's an acronym for the Blue Ridge Environmental
4 Defense League, for the Court Reporter. And Ms.
5 Olson.

6 MS. OLSON: This is Mary Olson,
7 representing Nuclear Information and Resource Service.
8 Our acronym is NIRS.

9 JUDGE YOUNG: Is there anyone else present
10 that we haven't heard from? Okay, well, thank you
11 very much, all of you, for putting together this
12 schedule.

13 We've looked at it and absent any untoward
14 circumstances, we think it looks good. We were
15 talking earlier about trying to set the oral argument
16 for, did we say the 7th or the 8th?

17 MS. UTTAL: Judge Young.

18 JUDGE YOUNG: Umm hmm.

19 MS. UTTAL: Judge Young, this is Susan
20 Uttal, I have a problem with the oral argument that
21 arose today.

22 JUDGE YOUNG: Okay, go ahead.

23 MS. UTTAL: One of my staff was involved in
24 reviewing the Fuel Act that will not be the 12th.
25 She's available from January 12th, to January 23rd.

1 JUDGE YOUNG: I think I missed part of what
2 you were saying. But you said they're not going to be
3 available from the 7th to the 12th?

4 MS. UTTAL: That's correct. She will be
5 available on the 12th, through the 23rd of January.

6 JUDGE YOUNG: So we could do it on the
7 13th, for example?

8 MS. UTTAL: Yes.

9 JUDGE YOUNG: We had wanted to do it as
10 earlier as possible. So, if we, if we could, the 12th
11 to travel and did it on the 13th, that would be within
12 your 7th to 15th window.

13 Would that be all right with you, Judge
14 Baratta and Judge Elleman, assuming everything?

15 JUDGE BARATTA: As far as I'm concerned,
16 this is Judge Baratta, that's okay.

17 JUDGE ELLEMAN: Judge Elleman, I hear, that
18 will work for me.

19 JUDGE YOUNG: Okay, then I'm going to put
20 it on my calendar for the 13th. And, unless we
21 discuss anything different, I'm just going to do an
22 order incorporating all the dates that you all have
23 come up with.

24 The protective order, we've gotten Ms.
25 Curran's objection and the staff -

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1 MS. CURRAN: Excuse me, Judge Young.

2 JUDGE YOUNG: Umm hmm.

3 MS. CURRAN: Just for a moment, can we
4 back up to the oral argument?

5 JUDGE YOUNG: Oh, sure.

6 MS. CURRAN: I would, I'd like to just be
7 sure that Dr. Lyman can be there. Can I let you know
8 whether the 13th works for him?

9 JUDGE YOUNG: Yeah.

10 MS. CURRAN: Okay.

11 JUDGE YOUNG: Try to, I guess I assumed
12 that, that between the 7th and 15th meant that he
13 would be available on any of those dates. But, so try
14 to -

15 MS. CURRAN: Okay.

16 JUDGE YOUNG: - try to encourage him to be
17 there since -

18 MS. CURRAN: I will. I don't think it
19 should be a problem.

20 JUDGE YOUNG: Okay. Is there anyway -

21 COURT REPORTER: Judge Young, this is the
22 Court Reporter, I'm sorry to interrupt, but who just
23 spoke to you, Judge Young?

24 JUDGE YOUNG: Diane -

25 MS. CURRAN: Diane Curran.

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1 COURT REPORTER: Okay, thank you.

2 JUDGE YOUNG: Is there any way you could
3 call him, I don't guess you have another phone there?

4 MS. CURRAN: I'll call him when we hang up
5 and then I'll call you back.

6 JUDGE YOUNG: Okay. Or, maybe we might
7 even take a break so that in case we need to
8 reschedule, we'll all still be here.

9 MS. CURRAN: Okay.

10 MS. COTTINGHAM: Judge Young, this is Anne
11 Cottingham. What location are you contemplating for
12 the oral argument?

13 JUDGE YOUNG: I think we were contemplating
14 coming back down to North Carolina. Judge Elleman is
15 there and I know there's a lot of interest, and so
16 Judge Baratta and Judge Elleman and I have discussed
17 it.

18 And we're willing to do that unless there
19 is a problem with it. I think, we generally try to go
20 to the location.

21 MS. COTTINGHAM: Thank you.

22 JUDGE YOUNG: Ms. Curran, is there anyway
23 you could just break off and we'll hold on while you
24 call him?

25 MS. CURRAN: I can try it.

1 JUDGE YOUNG: Okay.

2 MS. CURRAN: I'll get back to you.

3 JUDGE YOUNG: Just because in case we need
4 to reschedule, we'll have everybody here.

5 MR. WETTERHAHN: Perhaps we can go through
6 the schedule or items, so that if there are any
7 additional questions regarding availability that we
8 can check at the end of our schedule review.

9 JUDGE YOUNG: Okay, who was that?

10 MR. WETTERHAHN: This is Mark Wetterhahn.

11 JUDGE YOUNG: Okay. Are there any, are
12 there any questions about the dates? I guess we had
13 assumed, the only ones that appear to be open at this
14 point, are those related to the security contention.
15 Is that correct? Am I missing something?

16 MS. COTTINGHAM: It seems that way.

17 JUDGE YOUNG: And I guess on those I was
18 going to ask the staff if you had any, I guess the
19 staff and Duke, if you have an idea when the Security
20 Plan Submittal will be available for review?

21 MS. COTTINGHAM: Well, it depends on when
22 the protective order gets signed.

23 JUDGE YOUNG: Well, okay, that's good, a
24 good point. Let's discuss that, then. Was someone
25 just about to say something?

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1 MR. WETTERHAHN: This is Mark Wetterhahn.
2 That submittal has already been filed, so the staff
3 has it.

4 JUDGE YOUNG: Right.

5 MR. WETTERHAHN: And can release it at the
6 moment the protective order is signed.

7 JUDGE YOUNG: Oh, okay. Well, okay. That
8 explains it very succinctly, thank you.

9 JUDGE BARATTA: One thing, though, this is
10 Judge Baratta. I think that there has to be a review
11 of the, all the parties security. I think that was
12 something that was brought up at the hearing.

13 MS. UTTAL: I think that's already been
14 done, Judge Baratta. This is Susan Uttal.

15 JUDGE BARATTA: Okay.

16 MS. UTTAL: I think they've already been
17 cleared.

18 JUDGE BARATTA: Well, the clearance, yes,
19 the clearances, but the physical security is, I'm
20 sorry, is what I was referring to.

21 Like there was some discussion about
22 checking the containers and that sort of thing.

23 MR. FERNANDEZ: I think once the, this is
24 Antonio Fernandez. Once the Petitioners have the
25 information and begin working on it, that inspection

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1 can be done later, at a later time, if the staff
2 chooses to conduct an inspection.

3 It's not a requirement. We assume that
4 Ms. Curran and Mr. Lyman will adhere to the contents
5 of the order. And that if they do end up processing
6 safeguarded information that they would obey the terms
7 of the order.

8 So it's not, it's not a condition
9 precedent that we go and inspect their facility prior
10 to them going ahead and processing the information.

11 JUDGE BARATTA: Okay, I was confused, I
12 apologize. I thought at the meeting it was said that
13 that was necessary.

14 MR. FERNANDEZ: If we gave you that
15 impression, I apologize, Your Honor.

16 JUDGE YOUNG: So are all the parties clear
17 on all the procedures and requirements? I haven't
18 lately read the protective order and the non-
19 disclosure affidavit in detail.

20 But I think that that did seem to cover
21 pretty much everything about computers and everyone
22 knows not to use e-mail and telephone.

23 And one thing that was pointed out to us
24 by Bern Stapleton in another case, was when you're
25 traveling it's often better to send it in a double

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1 envelope sealed method, than carry it with you, in
2 case you might, something might happen to it.

3 Am I correct in assuming that you all have
4 all clarified any questions relating to the security
5 methods and procedures?

6 JUDGE BARATTA: I don't think there are any
7 questions with regard to the content of the protective
8 order. I think the parties are knowledgeable and I'm
9 sure if there are any questions, there will be
10 consultation among the parties as to the meaning.

11 MS. CURRAN: This is Diane Curran. The
12 way I think understand it, sometimes when you go to
13 carry something out a question comes up, but I think
14 I have all the contact people that I would need to get
15 in touch with.

16 JUDGE YOUNG: Okay, great. On the
17 protective order, we have discussed your objection,
18 Ms. Curran, and we've tentatively discussed approving
19 the protective order subject to a possible further
20 conversation or argument on your objection.

21 But, in the meantime, I want to ask Judge
22 Baratta about a suggestion that you came, you and
23 Judge Elleman came up with, with regard to a possible
24 alternative way of addressing the concerns in Ms.
25 Curran's objection.

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1 JUDGE BARATTA: Yes, it's my understanding,
2 and correct me if I'm wrong, Mr. Fernandez, is that
3 the staff doesn't feel that they would have the
4 resources to review all of the pleading.

5 And I was thinking that if it were
6 possible, maybe Ms. Curran could generate a summary
7 which might be a little bit shorter in duration and
8 maybe that could then be reviewed. So it wouldn't as
9 quite a heavy a burden.

10 I think maybe we could, in that way,
11 achieve the same goal which is keeping her membership
12 as though it was a public form. Is there any -

13 MR. FERNANDEZ: Since last we met, I've had
14 the opportunity of speaking further about this issue
15 with my client. And not only does the staff feel that
16 it would a burden on their resources, but also that,
17 given that they are not required to do so, they are
18 not going to exercise that discretion and go ahead and
19 review these documents.

20 JUDGE BARATTA: All right.

21 JUDGE YOUNG: The only other thing, well,
22 this may not be the only other, but one other thing
23 that we had discussed was the possibility of, at
24 whatever point at which we conduct the closed hearing,
25 closed oral argument on the security contention, if

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1 there are any questions at that point, while everyone
2 is there. We would ask to have a staff person there.
3 And if Ms. Curran could be prepared with the summaries
4 or abstracts and we could just address those right at
5 that point with the security person there.

6 MR. FERNANDEZ: Your Honor, I think, the
7 staff and I want to be very, very clear. The staff is
8 not going to review documents for the Petitioners in
9 this proceeding to determine whether the documents,
10 before issuance, have safeguards information in them.

11 JUDGE YOUNG: Are you saying that you're
12 not going to have a staff person at the oral argument?

13 MR. FERNANDEZ: I'm assuming that we will,
14 Your Honor, since you have requested to have a person
15 there. But that person's function there is not going
16 to be to review documents for the Petitioner.

17 Rather, it would be of an informational
18 service to the Board, if the Board were to have any
19 questions with regards to the conduct of the
20 proceeding.

21 JUDGE YOUNG: And if the Board were to ask
22 if the security person had any problem with a
23 particular summary, you would not have any objection
24 to the staff person, the security staff person
25 responding, would you?

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1 MR. FERNANDEZ: I think we would. Because
2 then it would, it would just try, it would be trying
3 to get in through the back door what we've already
4 said that the staff would, is not going to do. Which
5 is review documents for the Petitioner.

6 These are documents the Petitioner wishes to disclose
7 to their membership, and they are advised by Counsel,
8 as is the staff, and they can read 7321, as well as
9 the staff can.

10 MS. CURRAN: Well, I beg to differ about
11 that. The guidelines are pretty broad and there's
12 tremendously liability associated with disclosing
13 safeguards information.

14 Certainly with proprietary information
15 it's much less, considered less valuable, the NRC has,
16 a whole process for dealing with that.

17 JUDGE ELLEMAN: Judge Young, this is Judge
18 Elleman. May I ask a question or so on this issue?

19 JUDGE YOUNG: Umm hmm.

20 JUDGE ELLEMAN: Ms. Curran, from our oral
21 discussions in Charlotte, it was my impression that
22 what you wanted to be able to do was to apprise your
23 membership of what in general was going on, what
24 progress was being made.

25 And address those kinds of issues in your

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1 report. Is this substantially the case?

2 MS. CURRAN: We want to be able to, to
3 some degree, address substantive issues, such as to be
4 able to say we think the security plan is inadequate.

5 JUDGE ELLEMAN: Okay.

6 MS. CURRAN: Or, and then the question is,
7 to what degree can we describe it. And there's really
8 very little guidance that you can get from the
9 definitions as to what that, where you draw the line.

10 And I know recently there's a group that
11 put some information on its web site and was told,
12 this is safeguards information and was threatened with
13 criminal liability.

14 I don't want to get my client into that
15 situation.

16 JUDGE ELLEMAN: No, and I think we would
17 all understand that and appreciate that. I was hoping
18 you could describe, in general, the areas of concern
19 without getting into a specific discussion of
20 procedures, which is where the classification exists
21 in issues.

22 So you think you couldn't steer clear of
23 that boundary in your reporting?

24 MS. CURRAN: Well, my problem is I don't
25 know what it is we're going to be seeing. I've never

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1 seen a security plan before. So I don't, I'm a little
2 bit in the dark, as to what the issues are and what
3 I'd want to be able to tell people.

4 We definitely, we don't want to disclose
5 safeguards information. We also want to be able to
6 tell people as much as we can about what's happening.

7
8 Because the public hearing process is a
9 very important practice for informing the public about
10 what's going on.

11 JUDGE ELLEMAN: Yeah.

12 MS. CURRAN: And I'd like to, I don't want
13 to be restricted to real general platitudes, and I
14 think there's probably some middle ground there.

15 JUDGE ELLEMAN: Yeah, I was hoping you
16 could convey to the membership a sense of what is
17 happening in the deliberations and in the reviews,
18 without having to get into the specifics of what the
19 plans say.

20 And that's where you would have the
21 security trouble, I think.

22 MS. CURRAN: Right.

23 JUDGE YOUNG: I understand what you're
24 saying, and this is Judge Young, in terms of, without
25 seeing it, it's hard to know exactly what you're

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1 talking about.

2 I think one of the functions that is
3 helpful for the Board, for the staff to serve, is to
4 sort of help us be alert to the kinds of things that
5 all of us shouldn't discuss or include in public
6 orders, public pleadings, whatever the case may be.

7 And Mr. Stapleton performed that function
8 when I asked Duke Counsel a question in Charlotte and
9 on one or two occasions, I believe.

10 It strikes me that we should be able to
11 discuss, at oral argument, in one context or another,
12 the kinds of things that are, constitute the
13 safeguards information and the degree to which it can
14 be discussed generally without stepping over the line
15 and disclosing safeguards information.

16 And I think we encourage, we want to
17 encourage the parties to work together on this. But
18 if we, if it cannot be revolved prior to the oral
19 argument, I don't think we need to hold up the
20 briefing that's scheduled for contingents and
21 responses.

22 And if there are any issues that the
23 parties can't work out by agreement, just in, you
24 know, good faith talking with each other, then those
25 could be brought up at that point.

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1 And if we need any advice, I mean, we may
2 be issuing orders which will have some parts of public
3 and some parts under seal.

4 Because we, I think we view it as our
5 responsibility to try to be as public as possible. IN
6 the recent Maine Yankee case, we were able to issue
7 decisions in, publicly, without having to have any
8 parts of it being private.

9 So, it strikes me that that's something
10 that should any disputes remain at the time of oral
11 argument, we could address those at that point.

12 Am I, does anyone see any problem with
13 proceeding in that fashion?

14 MS. CURRAN: Yes, Judge Young. My
15 understanding of the position that staff is taking is
16 that, in effect, there won't be any dispute because
17 the staff isn't going to engage us.

18 In other words, the staff isn't going to
19 give us any assistance in figuring out what we can put
20 in a public pleading. We're just going to be told do
21 it at your own risk.

22 JUDGE YOUNG: Well, I think we're going to
23 need to have some discussion, not necessarily limited
24 to what your pleadings would contain.

25 But some discussion about what aspects of

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1 various parts of the plan make it safeguards
2 information and what overall descriptions don't. Just
3 for the assistance of the Board if for nothing else.

4 And I would hope that even before that
5 time, the parties will have discussed that with each
6 other for all your benefit. Just so that we can try
7 to keep everyone on the same page and moving along as
8 efficiently as possible, without any roadblocks that
9 are unnecessary.

10 And I think the more the parties can
11 cooperate with each other, the less, the less, well
12 the more efficiently we can conduct the proceedings.

13 MS. CURRAN: That sounds good to me, Judge
14 Young, I'm just not sure I hear the staff saying
15 they're willing to do that. Maybe we should just hear
16 from the staff.

17 JUDGE YOUNG: Mr. Fernandez

18 MR. FERNANDEZ: Yes, Your Honor.

19 JUDGE YOUNG: I'm not sure what answer I'm
20 going to get, but, I would be surprised -

21 MR. FERNANDEZ: Well, let me say something
22 real quick. The staff is advised by Counsel the same
23 way the Petitioner is. And if the staff were to come
24 with a question about whether a document was
25 safeguards information, I would do exactly the same

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1 thing that Ms. Curran would do.

2 I would pull out the regulations, I would
3 read them, I would look at the document and I would
4 give my legal opinion as to whether the document is
5 safeguards or not.

6 JUDGE YOUNG: We understand and that's what
7 you said before. And what I wanted to get at, really,
8 was this. The Board may have some concerns of its
9 own, about what types of things.

10 I think it's good to get all the parties
11 on the same page as much as possible, on the issue of
12 what types of things should be protected. And any
13 writings that any of us do and what sorts of things,
14 what sorts of general descriptive or summary
15 description which would fall within that limitation.

16 And I'm sure that you're not going to tell
17 me that if the Board seeks assistance from the
18 security expert, for the Board's benefit in writing
19 orders, that that would be refused.

20 MR. FERNANDEZ: I don't think that's what
21 I was saying, Your Honor.

22 JUDGE YOUNG: Right.

23 MR. FERNANDEZ: What I was saying is that
24 initially when this issue came up and it seems to have
25 been changing a little bit now that we're having this

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1 conversation, was Ms. Curran said that they would be
2 filing certain pleadings that contained safeguards
3 information. And that she wanted to inform her
4 membership or her client's membership, to a different
5 document or some other type of vehicle of what it was
6 that they had done in those, in those pleadings, that
7 contained safeguard information.

8 The staff has never engaged a Petitioner
9 in a proceeding in such a fashion as to be reviewing
10 documents that would be those organization's documents
11 to determine if the organization has properly marked
12 the documents and safeguards are known safeguards.

13 JUDGE YOUNG: And that's not what I was
14 talking about.

15 MR. FERNANDEZ: Okay.

16 JUDGE YOUNG: Judge Baratta, are you back
17 at your phone?

18 JUDGE BARATTA: Yes. Yes, I am. This is
19 Judge Baratta. I think what Judge Young and I are
20 thinking that since we're rather ignorant in what
21 constitutes safeguards and that my experience over the
22 years with security questions have often times
23 involved interpretations and such, that I think maybe
24 it might be appropriate if we were to, at the next
25 hearing, see if we could arrange to have a training

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1 session for all of us on this.

2 And to have the, everybody starting out at
3 the same level, so we're thinking maybe -

4 MR. FERNANDEZ: That is a different request
5 than the one that I had initially heard. And if that
6 is the case, I need to present that to my client,
7 because I have not presented that option to my client.

8 MR. WETTERHAHN: This is Mark Wetterhahn.
9 The Licensee has an interest in protecting its
10 safeguards information because it's Duke's safeguards
11 information in this case for the most part.

12 We would be glad to assist the Board in
13 determining what is safeguards information and what
14 should not be revealed at oral argument.

15 And we believe that interveners can take
16 their cue from that and determine on their own what is
17 safeguards and what is not safeguards.

18 JUDGE BARATTA: I appreciate that offer of
19 assistance. I think Judge Young, Judge Elleman, do
20 you think we should pursue, as I said, having this
21 training session and also taking up the suggestion we
22 just heard of assistance?

23 JUDGE ELLEMAN: This is Judge Elleman. We
24 have the same the problem Ms. Curran has. We need to
25 know what the boundaries are. And I think we

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1 definitely need a session like that.

2 JUDGE YOUNG: And I think that actually, it
3 gets to an aspect of the case, which is that lawyers
4 aren't necessarily always the best experts on security
5 matters.

6 And I know that I've gotten invaluable
7 assistance in another case from a security expert and
8 I think we rely on them. So, I agree. I think that
9 pursuing both those avenues of clarification for all
10 our benefit would be very helpful.

11 JUDGE BARATTA: We'll discuss this on our
12 own as to how to make that come about, whether to use
13 an order or whatever I guess we have to.

14 JUDGE YOUNG: Right.

15 MR. WETTERHAHN: May I suggest with regard
16 to schedule, because of the convenience and the
17 security of facilities in the Rockville Office, I
18 suggest that the oral argument on security contentions
19 be in Rockville. And any session -

20 JUDGE YOUNG: It would be.

21 MR. WETTERHAHN: Okay, thank you.

22 JUDGE YOUNG: There's no question about
23 that. The only question that we might have is that
24 our hearing room is going to be going through some
25 renovation and I'm not sure of the schedule for that.

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1 So if it is not available, we're going to
2 have to find another room in the NRC offices here, to
3 conduct it. But we would conduct any sessions on
4 security issues in the Rockville office, either in our
5 hearing room or in another conference room or -

6 JUDGE BARATTA: In secure, some sort of
7 secured facility.

8 MR. WETTERHAHN: Thank you.

9 JUDGE YOUNG: All right, then, is there
10 anything else relating to the protective order that we
11 need to discuss? Because the only other questions I
12 would have, then, before issuing it is, just from a
13 practical standpoint, I'm assuming I can go back to
14 the staff submittal and save it on to my computer.
15 Take out the draft -

16 MR. FERNANDEZ: Your Honor. Your Honor.

17 JUDGE YOUNG: Yes, Mr. Fernandez.

18 MR. FERNANDEZ: I think you may not be able
19 to do that because we submitted as a PDF file, so it
20 won't be, you probably won't be able to manage the
21 document in such fashion.

22 JUDGE YOUNG: Maybe you would submit it in
23 WordPerfect format.

24 MR. FERNANDEZ: I will ask the Applicant to
25 send it to the Board. They actually have the

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1 document, the document actually resides on their hard
2 drive and I would ask Ms. Cottingham, as I have
3 before, that in the event that you were to need it,
4 she has already offered to send it to you.

5 MR. WETTERHAHN: We will do that, Your
6 Honor.

7 JUDGE YOUNG: Thank you very much.

8 MS. COTTINGHAM: Let me just ask Antonio
9 for clarification. We had agreed on some additional
10 language -

11 MR. FERNANDEZ: Yes.

12 MS. COTTINGHAM: - to go into -

13 JUDGE YOUNG: That was my next question is
14 whether, since you're bringing that up, Mr., tell me
15 your name again? I apologize for not -

16 MR. WETTERHAHN: Wetterhahn.

17 JUDGE YOUNG: Wetterhahn. W-e -

18 MR. WETTERHAHN: T-t-e-r-h-a-h-n.

19 JUDGE YOUNG: Could you incorporate, do
20 your have the language that you all have agreed to?

21 MS. CURRAN: Yes, Your Honor.

22 MR. WETTERHAHN: Yes. And we will
23 incorporate that and send it to you as well as the
24 other, as to the parties.

25 JUDGE YOUNG: Okay. And then probably I

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1 will just add something like subject to the provisions
2 of another, well, I'm not even sure I would need to
3 that.

4 But, basically, the reference to our
5 discussion at oral argument, I could include,
6 incorporate in another order, so that unless any party
7 sees a need to include any language like that in the
8 protective order itself.

9 Ms. Curran, you're the one who raised the
10 objection. Do you see any problem with addressing
11 your concerns in another order which would include all
12 these dates and scheduling issues?

13 MS. CURRAN: That would be all right.

14 JUDGE YOUNG: Okay. That would probably
15 make it quicker. And if you send it to me as
16 WordPerfect, I think I can transform Word to
17 WordPerfect, but sometimes there are problems going in
18 that direction.

19 It's easier to go from WordPerfect into
20 Word, I think. Is it possible for you to save it in
21 WordPerfect, Mr. Wetterhahn?

22 MS. COTTINGHAM: Yes, ma'am, it is and we
23 will do that.

24 JUDGE YOUNG: Great. Thank you very much.
25 And then if I need to fix any dates or so forth, I'll

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1 do that. And I should be able to get it out tomorrow
2 or Monday. And then assuming, let's assume, if it
3 were Monday it would be December 15th, which would
4 make the deadline January 15th.

5 I believe that would be 30 days. Well,
6 that would actually be 31 days, would be the 14th.
7 Ms. Curran, can you manage that? I know we're going
8 to be having, we're talking about having oral argument
9 on the 13th.

10 MS. CURRAN: I'm sorry, can I manage what?

11 JUDGE YOUNG: The 14th?

12 MS. CURRAN: For?

13 JUDGE YOUNG: For your security
14 contentions, assuming we get out the order on the
15 15th?

16 MS. CURRAN: I don't think, I would rather
17 not, it's just going to make it really hard.

18 MR. WETTERHAHN: Your Honor, this is the
19 basis of our agreement.

20 MS. CURRAN: Yeah. Well, I wasn't figuring
21 on going to North Carolina in the middle of it. So,
22 I mean I was already aware that it was cut back
23 because of the holidays, but it seems like 30 days is
24 a good rule of thumb, so I stuck with it.

25 But for an oral argument, that means I

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1 have to travel, I have to prepare. It means, umm,
2 okay, if you approved it, I guess what I, let me just
3 suggest this.

4 If we have the oral argument later in the
5 week, let's see the, you would approve it on December
6 the -

7 JUDGE YOUNG: I was saying tomorrow or
8 Monday. It depends on how quickly I get it. But
9 assuming I did it Monday, we wanted to have some time
10 with Judge Elleman. If we moved it forward to the
11 15th, Judge Elleman and Judge Baratta, would that, if
12 we do the same thing we do this time, would that be
13 pushing up against your schedule too much, Judge
14 Elleman?

15 JUDGE ELLEMAN: Any time that week is fine
16 with me.

17 JUDGE BARATTA: That's fine with me. So
18 we'd have the hearing on the new contentions on the
19 13th, is that correct?

20 JUDGE YOUNG: Well, we're talking about
21 moving it over to the 15th. She was, Ms. Curran was
22 asking if we could move that more towards the end of
23 the -

24 JUDGE BARATTA: Week.

25 JUDGE YOUNG: - of the week, so that she

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1 could have the beginning of the week to finish up her

2 -

3 JUDGE BARATTA: Right, right, I'm sorry, I
4 missed the, for some reason I was thinking that we
5 were talking about security plan. Okay, so the 15th,
6 that's fine.

7 JUDGE YOUNG: Then, let's see, 21 days.
8 Let's just, let's just set a date. If you're going to
9 be traveling on the 14th, if I issued it the 15th, it
10 will be the 14th.

11 So let's say the deadline is the 14th.

12 MS. CURRAN: Okay. And then I wanted to
13 make a request about the oral argument. If we could
14 agree, I will tell Dr. Lyman and my client that the
15 15th is the preferred date, but maybe if everyone
16 could look at their calendar, between the 15th and the
17 23rd, which is the date that Ms. Uttal had given and
18 see if we could all do it on some day in there that
19 would give us a little flexibility.

20 JUDGE YOUNG: Is that, was that the date
21 you gave Ms. Uttal?

22 MS. CURRAN: It was the 12th to the 23rd.

23 MS. UTTAL: It was the 12th to the 23rd,
24 that's correct.

25 JUDGE YOUNG: Twelfth to the 23rd.

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1 MS. UTTAL: I would note that the 19th is
2 open.

3 JUDGE YOUNG: We can't do it the week,
4 actually, I'm sorry. Judge Elleman will not be
5 available the week of the 18th, so we need to do it
6 the week of the 12th.

7 MS. CURRAN: Okay, and the 15th is a
8 Thursday, is it?

9 JUDGE YOUNG: Umm hmm.

10 JUDGE BARATTA: That's correct.

11 JUDGE ELLEMAN: Yes, that's correct.

12 MS. CURRAN: Okay, so, say Thursday or
13 Friday, the 15th or the 16th?

14 JUDGE YOUNG: We could, if we need to go
15 over to Friday would that, I'd prefer not to, because
16 we want to have some time with Judge Elleman before he
17 leaves the country or I think that's it.

18 JUDGE ELLEMAN: Judge Young, this is Judge
19 Elleman. I'm available, really, through the end of
20 the day on the 19th, if you had any reason to want to
21 go early in that next week.

22 JUDGE YOUNG: Okay.

23 MS. UTTAL: Judge, the 19th, is Martin
24 Luther King Day.

25 JUDGE YOUNG: Oh, okay.

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1 JUDGE ELLEMAN: Oh, okay, yeah, that's not
2 good.

3 JUDGE YOUNG: Well, let's try for the 15th.
4 The deadline would be the 14th, then, for the security
5 contentions. And they would need to obviously be
6 filed in the, in the manner specified in the non-
7 disclosure agreement.

8 Twenty-one days after that is February
9 4th.

10 JUDGE BARATTA: I counted the 5th, but
11 would someone else count for me?

12 JUDGE YOUNG: Well, 21 days is three weeks,
13 and three weeks from the 14th, if I'm reading my
14 calendar right, it's the 4th.

15 JUDGE BARATTA: Okay.

16 MS. CURRAN: I believe it's the 4th is -

17 JUDGE BARATTA: I've been corrected, that's
18 fine.

19 JUDGE YOUNG: Okay. Then you had put,
20 let's see, seven to ten days after the responses. We
21 are probably going to need to, what about the 12th or
22 the 13th for the oral argument on the - I'm sorry,
23 Judge Elleman, you're back on the 8th?

24 JUDGE ELLEMAN: I'm back on the 8th.

25 JUDGE YOUNG: So, we're going to have a lot

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1 to do that week. Would you be able to come up here
2 that week?

3 JUDGE ELLEMAN: I could. I'm starting the
4 week of the 9th, Monday, I'm flexible for that entire
5 week. And so I could come to Washington, stay in
6 Washington, whatever.

7 JUDGE YOUNG: Okay, okay. I'm thinking
8 we're going to have a lot to do that week with you,
9 and I'm thinking that it might be better to set this
10 for the 13th.

11 Now, I don't know, I don't know that any
12 of us have any idea how many contentions, but we, I
13 think, could go late, if need be, on the 13th. That's
14 a Friday the 13th, that's not good luck.

15 MS. UTTAL: Judge, Fridays are very
16 problematic for me because I have no aftercare for my
17 kids. So I'd prefer if we did it on Thursday.

18 JUDGE YOUNG: The 12th? Okay, well, let's,
19 is everyone available on the 12th of February?

20 MS. CURRAN: I will check on that.

21 JUDGE YOUNG: Okay, well, we'll take a
22 short break in a minute and you can check on both of
23 those.

24 MS. CURRAN: Okay. So we're talking
25 January 15th and February 12th.

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1 JUDGE YOUNG: Right.

2 MR. FERNANDEZ: Your Honor, should we look
3 at February 12th and 13th, just in case we have enough
4 contentions that it may -

5 JUDGE YOUNG: That might be a good idea.
6 That might be a very good idea. Assuming, Ms. Uttal,
7 if you had to leave, Mr. Fernandez could stay for the
8 end of it on the 13th if we needed it?

9 MS. UTTAL: That's right, Your Honor.

10 JUDGE YOUNG: Okay. All right. Are there
11 any other dates? I think we've got them all or am I
12 missing any. Now, obviously the security contentions,
13 oral argument is dependent on us finding a room to do
14 it in.

15 I don't think that will be a problem in
16 this whole, these two buildings here.

17 MR. FERNANDEZ: Your Honor.

18 JUDGE YOUNG: Yes.

19 MR. FERNANDEZ: In case the Board's hearing
20 room is not available, the person to contact is
21 Cynthia Harbaugh.

22 JUDGE YOUNG: Right, okay.

23 MR. FERNANDEZ: And the requirements to
24 have, for a room to, where you can discuss safeguards,
25 are not that onerous. So, I know there are several

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1 rooms that you can use.

2 JUDGE YOUNG: And, I don't guess we need to
3 have room for an audience, because it's only going to
4 be for cleared people, so, yeah. And we work with
5 Cindy on, Ms. Harbaugh, on security issues.

6 So, I'll check and hopefully in the order
7 that's issued tomorrow or Monday, I'll indicate where
8 that will be. Why don't we take a break now, unless
9 anyone can think of any other dates?

10 Why don't we just take two or three
11 minutes and let Ms. Curran call Mr. Lyman and make
12 sure we're all together. And if anyone else has
13 anyone you need to call, to confirm the January 15th
14 and February 12th dates.

15 MS. CURRAN: Okay, will do.

16 JUDGE YOUNG: Okay.

17 MS. CURRAN: I'll be back.

18 JUDGE YOUNG: I'm going to put my phone
19 down and come into Judge Baratta's office.

20 (Whereupon, the foregoing matter
21 went off the record at 4:18 p.m., and
22 went back on the record at 4:26 p.m.)

23 MS. CURRAN: The 15th works for us.

24 JUDGE YOUNG: What about the 12th?

25 MS. CURRAN: I think that will all right,

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1 too?

2 JUDGE YOUNG: Great, okay, so I'll put
3 those two dates in.

4 MR. FERNANDEZ: Your Honor.

5 JUDGE YOUNG: Yes.

6 MR. FERNANDEZ: We will add Ms. Olson to
7 the service list for Catawba, but she -- the staff,
8 when they put somebody on the service list, she is
9 going to get all the correspondence between the
10 Licensee and the Agency on the facility. So, it's not
11 going to distinguish between MOX or anything else,
12 everything will start going to her.

13 JUDGE YOUNG: Okay.

14 MR. FERNANDEZ: But she will be added.

15 JUDGE YOUNG: Thank you. All right. All
16 right, I think that pretty much covers everything. Am
17 I overlooking anything? Can anyone think of anything
18 that we need to look at?

19 Court Reporter, did you tell me that this
20 is a one-day turnaround?

21 COURT REPORTER: I'm sorry, ma'am, can you
22 repeat that?

23 JUDGE YOUNG: Could you confirm for me that
24 the transcript we're supposed to get tomorrow, one day
25 turnaround?

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1 COURT REPORTER: I was told that it is a
2 daily, which means yes.

3 JUDGE YOUNG: Okay, great. Yeah, I asked
4 for that this time so we could keep things moving
5 along. Can anyone think of anything else? Judge
6 Elleman? Judge Baratta?

7 MS. CURRAN: Oh, Judge Young, I just wanted
8 to let you know, this is Diane Curran. I checked
9 Adams today for that transcript and it's not there
10 yet.

11 JUDGE YOUNG: We were just talking about
12 that and I apologize for not making sure of that
13 before we started today. I will right after we hang
14 up.

15 MS. CURRAN: Thank you.

16 JUDGE YOUNG: Judge Elleman, Judge Baratta,
17 can you think of anything else?

18 JUDGE BARATTA: I have no additional items.

19 JUDGE ELLEMAN: And I have no additional
20 items.

21 JUDGE YOUNG: Any of the participants?

22 (A chorus of nos.)

23 JUDGE YOUNG: Thank you all and, as I said,
24 I'll get an order out on this Monday, and I think
25 everyone's been keeping notes, so you'll know the

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1 dates.

2 And we appreciate your working together to
3 make this a lot easier for us by picking most of the
4 dates in advance. So, we will look forward to hearing
5 from you and next seeing you on January the 15th.
6 Okay.

7 (End of call.)

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This is to certify that the attached proceedings
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in the matter of:

Name of Proceeding: Duke Energy Corporation
Catawba Nuclear Station
Units 1 & 2
Teleconference

Docket Number: 50-413-OLA and 50-414-OLA

Location: telephone conference

were held as herein appears, and that this is the
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