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OFFICE OF THE 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: Monday, April 29, 2002

Work Order No.: NRC-354

Pages 864-918

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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

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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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Monday,
April 29, 2002

The above-entitled matter came on for hearing,
pursuant to notice, at 12:00 p.m.

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE CHARLES N. KELBER

THE HONORABLE LESTER S. RUBENSTEIN

1 APPEARANCES:2 On Behalf of the Licensee, Duke Energy Corp.:

3 DAVID A. REPKA, ESQ.

4 of: Winston & Strawn

5 1400 L Street, N.W.

6 Washington, D.C. 20005

7 AND

8 LISA F. VAUGHN, ESQ.

9 BOB GILL, ESQ.

10 of: Duke Energy Corporation

11 422 South Church Street

12 Charlotte, North Carolina 28202

13

14 On Behalf of the Nuclear Regulatory Commission:

15 SUSAN L. UTTAL, ESQ.

16 U.S. Nuclear Regulatory Commission

17 Office of the General Counsel

18 Mail Stop-0-14D21

19 Washington, D.C. 20555-0001

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1 APPEARANCES: (CONT.)

2 On Behalf of the Intervenors:

3 MARY OLSON, Director, Southeast Office
4 of: Nuclear Information and Resource Service
5 729 Haywood Road, 1-A
6 P.O. Box 7586
7 Asheville, North Carolina 28802

8
9 LOU ZELLER, Executive Director
10 Blue Ridge Environmental Defense League
11 P.O. Box 88
12 Glendale Springs, North Carolina 28629

13

14

15 ALSO PRESENT:

16 DIANE CURRAN

17

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19

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

12:00 p.m.

CHAIRPERSON YOUNG: Let's see. Duke?

MR. REPKA: This is Dave Repka for Duke. I'm in Washington today. And there is a group in Charlotte that should be on as well. I'll let -- Bob Gill, you're there with --

MR. GILL: I'm here. Lisa Vaughn is here. She just stepped out a moment. And we have Duncan Brewer and Michael Barrett from our PRA staff.

CHAIRPERSON YOUNG: Okay. And BREDL?

MS. CURRAN: This is Diane Curran, and I have been retained to represent BREDL in the proceeding. I hope you got my Notice of Appearance.

CHAIRPERSON YOUNG: I got your message. I haven't -- I'm down in Washington today, so I have not seen your Notice of Appearance. But I did get your message, and I spoke with Judge Kelber this morning and --

MS. CURRAN: Okay. And Lou Zeller is on the phone also.

CHAIRPERSON YOUNG: Okay. And then for NIRS?

MS. CURRAN: Mary Olson is here.

CHAIRPERSON YOUNG: Mary Olson. Okay.

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1 Well, I guess first in light of the
2 issuance of CLI-0214, contention 1 is off the table in
3 this proceeding. And as directed in my e-mail of
4 April 18th, we would like to hear the parties address
5 any issues remaining in the case after CLI-0214,
6 specifically issues relating to contention 2.

7 We had encouraged the parties to see
8 whether any parts of that might be resolved based on
9 Duke's responses to some requests for additional
10 information. And at the last conference I believe
11 there had not been any progress on that, and I don't
12 know how much time you had had at that point to
13 consider all the responses.

14 But why don't you give us an update on
15 what, if any, progress you've made in this regard, and
16 then just so we'll be aware of how it plays in,
17 although we may get a more detailed response on that
18 in a moment.

19 Let's see. It's Generic Safety Issue 189,
20 the possibility of some staff action on that that --
21 possibly even promulgation of a rule, the degree to
22 which that may play into any settlement negotiations.
23 Did someone want to add something?

24 MR. REPKA: Judge Young, this is Dave
25 Repka. I was just -- I'm not sure how you wanted to

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1 proceed. I'm happy to try to explain where things are
2 from our perspective.

3 CHAIRPERSON YOUNG: Okay. Has there been
4 any communication between the parties on contention 2?

5 MR. REPKA: There have been two things.
6 Number 1, after our last call, I had sent
7 correspondence to both Ms. Olson and Mr. Zeller
8 reiterating Duke's perspective that based upon the
9 information provided in response to the RAIs we feel
10 we have done the analysis and considered the data that
11 was exactly what was requested in the contention.

12 So we were interested in hearing whether
13 there were any particular issues that merited further
14 discussions, and we're certainly willing to have those
15 discussions.

16 I since then had a good conversation with
17 Ms. Curran on Friday last week, and I -- with
18 deference to Ms. Curran, she is obviously getting up
19 to speed, and she has committed to me to look at that
20 with her expert, Mr. Leimann, and, really, I think the
21 ball is in BREDL's court to let us know if there are
22 specific things that they want to discuss to try to
23 narrow the issues. But we really do believe the
24 issues are amenable to, if not elimination, certainly
25 narrowing.

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1 CHAIRPERSON YOUNG: Let me ask another
2 question, and I don't know how this fits in here. But
3 we were -- the Board is aware of the reference in
4 footnote 2 to CLI-0214, to the Commission stating that
5 although they had not addressed the SAMA issue in that
6 order -- memorandum and order that they will do so in
7 future Commission issuances.

8 Now, as I recall, there was -- the appeal
9 on contention 2 included an appeal -- I'm sorry. The
10 appeal of our memorandum and order included an appeal
11 of contention 2. And I don't know whether any of the
12 parties has any expectation that there will be any
13 further Commission issuance on this that we should
14 take into account at this point.

15 I guess absent that, we'll proceed as we
16 normally would and as we have been doing on
17 contention 1, which is that we'll proceed. And if
18 anything comes from the Commission that would change
19 what we should do, we'll address that at that point.

20 But is there any -- does any party have
21 any indication that anything would be forthcoming on
22 this?

23 MR. REPKA: Dave Repka here. No, we have
24 no information on what the Commission's schedule might
25 be. We certainly expect them to rule on the appeal

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1 one way or the other. And in the meantime, just as
2 with contention 1, we're prepared to proceed unless
3 and until the appeal is upheld or -- essentially, I
4 guess unless it's upheld.

5 CHAIRPERSON YOUNG: Okay. But sometimes
6 we get filings of parties with the Commission, we get
7 copies of those. Other times we don't. So we may or
8 may not know everything that's going on with the
9 Commission, so don't automatically assume that we do
10 know the latest progress with that.

11 Okay. Mr. Repka, did you have anything
12 else you wanted to say before I ask Ms. Curran and Ms.
13 Olson what they have to say on contention 2?

14 MR. REPKA: No. I just -- you know,
15 again, I would underscore that in the RAI information
16 we really do believe that we've effectively mooted the
17 contention. So at this point, I think it's really --
18 it is incumbent upon the other parties to tell us what
19 issues might remain, if any.

20 CHAIRPERSON YOUNG: Let me ask -- I just
21 want to get to the page. There were two parts to the
22 contention -- one, that it failed to include
23 information from NUREG CR 64-27; and, two, that it
24 failed to include a severe accident mitigation
25 alternative relating to station blackout caused

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1 accidents, namely a dedicated electrical line from the
2 hydroelectric generating dams adjacent to each reactor
3 site.

4 By the way, Court Reporter, are you
5 getting this?

6 THE COURT REPORTER: Yes.

7 CHAIRPERSON YOUNG: Okay. Because I heard
8 some crumpling, and I know sometimes that blocks it
9 out.

10 Mr. Repka, when you say that you believe
11 your responses to the RAIs moots out the contention,
12 are you referring to both parts there?

13 MR. REPKA: Yes, I am, Judge Young. The
14 RAI includes calculations including the NUREG data as
15 well as an evaluation of the additional SAMA of a
16 dedicated hydroelectric line.

17 CHAIRPERSON YOUNG: Okay. All right. Who
18 wants to go first between -- I think BREDL was going
19 to be the lead party. So why don't we go to Ms.
20 Curran next.

21 MS. CURRAN: Yes. And as Mr. Repka was
22 saying, I am catching up here and trying to get
23 abreast of all that's gone on. It's my understanding
24 that the sticking point here is in terms of having a
25 meaningful settlement discussion or narrowing

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1 discussion is that BREDL needs to have sufficient
2 information to evaluate the information that's been
3 presented in the RAI responses.

4 And for instance, we've asked for the PRA,
5 and at this point Duke isn't willing to share that
6 with us. And I did tell Mr. Repka that I'd go back
7 and take another look and see what could be done
8 without it. But I am a little bit doubtful that we
9 can go very far.

10 But, again, our expert is out of the
11 country right now, and he's going to be back later
12 this week. So I will talk to him. I know he's been
13 receiving these RAI responses and reviewing them. So
14 I don't think it's a question of him not being
15 familiar with what has come in.

16 CHAIRPERSON YOUNG: And you're referring
17 to Dr. Leimann?

18 MS. CURRAN: Yes.

19 CHAIRPERSON YOUNG: Okay.

20 MS. CURRAN: And in terms of what the
21 contention -- how to interpret the contention, it's
22 our interpretation that as the Board admitted the
23 contention, that it's not just a question of whether
24 Duke discussed the NUREG or the alternative but to
25 what extent. And so we think that it's not just a

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1 matter of Duke looking at the data that's in the
2 NUREG, but actually whether we agree upon the way it
3 was used.

4 CHAIRPERSON YOUNG: I guess maybe it would
5 be helpful if I shared with you my understanding about
6 how similar issues have been handled in other cases,
7 and which might have some precedential value here.
8 And that is how to handle -- I guess that gets into
9 the whole question of how to handle amendments to
10 contentions or late-filed amendments to contentions or
11 late-filed contentions.

12 The contention, as stated, the first part
13 of it says that the SAMA analysis is incomplete in
14 that it fails to include information from NUREG
15 CR 64-27.

16 There is certainly definite precedent to
17 the effect that if, then, information is provided that
18 does include information from, in this case, NUREG
19 CR 64-27, that that could be interpreted to moot out
20 that -- a contention of that nature, such that any
21 questions about how an application, for example,
22 analyzes a particular issue when the original
23 contention was saying that it did not do it at all,
24 that that could be viewed as requiring an amendment or
25 a late-filed contention.

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1 And I'm not sure of the degree to which we
2 need to get into that at this point, since it sounds
3 as though there are a lot of things pending that may
4 or may not resolve this on their own. But I think
5 it's probably important that you're aware of that
6 precedent and how these types of issues have been
7 addressed in the past.

8 MS. CURRAN: Right. And I am aware of
9 some issues, like I think it's a little unclear to me
10 -- and I think it's a case-by-case kind of thing --
11 for instance, I looked at your ruling, and on page 99,
12 it's -- the decision says that BREDL has shown that a
13 genuine dispute exists with regard to the material
14 facts of whether and to what extent Duke's SAMA
15 analysis should take into account the calculations and
16 values referenced in NUREG CR 64-27.

17 CHAIRPERSON YOUNG: Excuse me for a
18 second.

19 MS. CURRAN: Yes.

20 CHAIRPERSON YOUNG: You said page 99?

21 MS. CURRAN: Well, maybe I've got a
22 printout that is --

23 CHAIRPERSON YOUNG: I think you may --
24 because I'm looking at the order itself. So maybe you
25 need to tell me the paragraph and what section it's

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1 in, etcetera.

2 MS. CURRAN: Okay. It's in a section
3 entitled Ruling on BREDL Contention 4 and NIRS
4 Contention 1.1.5 and 1.1.4. And it's one, two, three
5 -- I think it's the fourth paragraph in.

6 CHAIRPERSON YOUNG: Okay. That's page 96
7 of the --

8 MS. CURRAN: Okay.

9 CHAIRPERSON YOUNG: -- printed out -- go
10 ahead.

11 MS. CURRAN: Sorry about that. I've been
12 getting a lot of things by e-mail.

13 CHAIRPERSON YOUNG: Right. And they do
14 change the pagination.

15 MS. CURRAN: Yes. In any event, the
16 language uses the phrase "to what extent," and --

17 CHAIRPERSON YOUNG: Point me to which
18 sentence you were reading from.

19 MS. CURRAN: Okay. In that fourth
20 paragraph -- and I'm in -- I think it's the second
21 sentence that begins, "We also find that," --

22 CHAIRPERSON YOUNG: Okay. Let me see.
23 The second sentence starts with, "We find."

24 MS. CURRAN: Oh, no. It's the third
25 sentence. Sorry.

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1 CHAIRPERSON YOUNG: "We also find that,
2 with regard to these issues" --

3 MS. CURRAN: Yes.

4 CHAIRPERSON YOUNG: Okay. You're right.
5 That does say "and to what extent." And then it goes
6 -- it refers both to NUREG CR 64-27 and includes the
7 alternative of a dedicated line as described above.

8 MR. REPKA: Judge Young, this is Dave
9 Repka. May I respond to that?

10 CHAIRPERSON YOUNG: Please.

11 MR. REPKA: My take on that contention is
12 that it still raises the basic threshold issue of
13 whether or not the NUREG data needed to be considered
14 in the SAMA analysis or whether or not the dedicated
15 hydroelectric line needed to be considered in the SAMA
16 analysis. And, therefore, to what extent is perhaps
17 some in-between state between not being needed and
18 being needed.

19 Be that as it may, I mean, the threshold
20 question is essentially mooted by the fact that both
21 have now been considered through the RAI response.
22 The NUREG data has been generated, or the SAMA
23 analysis has been -- new numbers, risk numbers, have
24 been generated using the NUREG data. So it's not a
25 matter of to the extent. It's more like it either has

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1 been done or it has not been done, and here it's been
2 done.

3 I take issue with Ms. Curran's
4 characterization that she needs the PRA to look at
5 that. In my correspondence that I mentioned earlier
6 I pointed out the fact that there's a large volume of
7 material on the docket on the McGuire and Catawba PRA.
8 And in addition to that, there is information in the
9 RAI responses that discusses the -- that provides the
10 core damage sequences that are affected by the NUREG
11 data, that kind of information.

12 So I think we're -- I think number one is
13 that to the extent doesn't -- that language doesn't
14 inflate this contention into something more than what
15 it was, which is, does it need to be considered or
16 not? And number two is, in any event, we don't have
17 to jump into the PRA unless and until BREDL or anybody
18 else has looked at the data that is on the docket and
19 is available in the RAI responses.

20 And I think that is where -- you know, we
21 have asked BREDL to focus and say, "Well, please read
22 what's out there first, and then let's talk about, you
23 know, whether or not something is -- additionally is
24 needed."

25 MS. CURRAN: Judge Young? This is Diane

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1 Curran.

2 CHAIRPERSON YOUNG: Go ahead.

3 MS. CURRAN: I just have two responses.
4 First of all, on the PRA issue, it's my understanding
5 that the problem here is that the RAI responses
6 provide results or summary information. And in a PRA,
7 of course, the devil is in the details. It's in all
8 of the assumptions that underlie the analysis. This
9 is my understanding of the problem.

10 And, again, I've said I'm willing to make
11 sure that -- go back to Dr. Leimann and make sure that
12 I've got that right. But that is where I understand
13 the problem to be.

14 Second, in terms of what this contention
15 means, we're in the funny situation where the Board
16 rewrote the contention. But if you go back and look
17 at those two contentions, they go into some detail
18 about concerns about the kind of information that
19 should be taken into account and why. And I think
20 we've presented a good faith showing, a strong
21 showing, as to what kind of information needs to be
22 taken into account.

23 Now, if it's a procedural matter you think
24 that we need to go back and reword this to add issues,
25 then I guess I'd like to -- I don't want to go a long

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1 way down the road and find that because of a -- I
2 think possibly ambiguous wording of the contention
3 that our efforts are for naught. I don't want to do
4 that.

5 And I guess I'd like to have an
6 opportunity, if we need to amend this, to do it and to
7 hear from you whether -- what your interpretation of
8 this contention is.

9 CHAIRPERSON YOUNG: That might be
10 appropriate, to set a deadline for any amendment to
11 that. Meanwhile, we -- Judge Kelber and I in
12 particular, and to the degree that we've been able to
13 with Judge Rubenstein, and now we're all in three
14 different places, but have discussed the possibility
15 that this Generic Issue 189, Generic Safety Issue 189,
16 and the Commission's direction to the staff to take
17 some action on that, we -- we're going to get an
18 update on that from the staff.

19 Ms. Uttal, do you -- what can you tell us
20 about progress on that?

21 MS. UTTAL: Well, I know they're working
22 on it, Your Honor. But I was unable to find a date or
23 a schedule before this. I will continue to try to
24 find out and inform the Board as soon as I can.

25 CHAIRPERSON YOUNG: You didn't get any

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1 indication of the general timeline or what -- is a
2 rule expected to come out of it?

3 MS. UTTAL: No, I'm sure they don't even
4 have that information available, but I will find out
5 as soon as I can. I must apologize to the Board for
6 my inability to provide the information at this time.

7 JUDGE KELBER: This is Judge Kelber. In
8 the March 19th meeting with the Commission, Mr.
9 Thadani indicated a timeframe of, as I recall,
10 approximately two months. And I don't know -- this
11 starting from when is a good question.

12 But it seems to me that it's in his
13 ballpark. And if he's got that firm a grip on it,
14 they should have a schedule in hand.

15 MS. UTTAL: Okay. Then I will obtain that
16 and let the Board know, hopefully before the end of
17 the day.

18 JUDGE KELBER: Appreciate that. I have a
19 further question, which I do not expect to be answered
20 now. But I'm somewhat puzzled over the need for the
21 details of Duke's PRA at this stage. NUREG -- the
22 NUREG in question deals with events subsequent to a
23 station blackout. And it involves two -- generally
24 speaking two types of sequences, one in which direct
25 core heating, which results from molten fuel spilling

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1 out onto a concrete floor, deliberates hydrogen; on
2 the other, where the hydrogen from the metal water
3 reaction in the fuel is produced, but there is water
4 on the floor and it has no direct core heating.

5 And much to my surprise, and I think a
6 number of other people, it was found that the -- in
7 the -- it was the latter case that dominated.

8 Now, I'm somewhat puzzled as to what the
9 role of the PRA in getting to the station blackout
10 stage matters. I think there is some question about
11 the differences between the models used in contain and
12 the -- I forget which code was used by Duke. Was
13 it -- pardon?

14 MR. ZELLER: Was it EPIC?

15 JUDGE KELBER: I'm not sure.

16 MR. REPKA: I don't know the answer to
17 that question. I suspect somebody in Charlotte does,
18 if it matters.

19 JUDGE KELBER: No, it does not. But there
20 are two different codes used, and I would suspect that
21 there is -- that there may be differences between the
22 two codes, and so on, and there may be differences in
23 the models of their various reactions. But I'm
24 somewhat puzzled by the insistence on details of the
25 PRA, and I -- and anything which could illuminate that

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1 would be useful.

2 MR. ZELLER: Judge Kelber, this is Lou
3 Zeller. I'm looking at the -- under the cover of
4 February 1, 2002, response to the RAIs. And in it, in
5 Attachment 1, there is a discussion of core damage
6 frequency estimates. Much of the language is subject,
7 and there are some tables in here for McGuire, for
8 example, on core damage frequency estimates. But --

9 JUDGE KELBER: Mr. Zeller, let me
10 interrupt. Mr. Zeller?

11 MR. ZELLER: Yes?

12 JUDGE KELBER: All well and good. But the
13 discrepancies addressed by the NUREG arise after the
14 core has been damaged. In other words, core damage is
15 assumed. And so the likelihood, although it enters
16 into some absolute calculations, is not addressed in
17 the NUREG CR 64-27. It's assumed that that has
18 happened.

19 What we're discussing is the conditional
20 probability of --

21 MR. ZELLER: Containment failure.

22 JUDGE KELBER: -- subsequent to that.

23 MS. CURRAN: That's Level 2 and 3, right?

24 JUDGE KELBER: Yes.

25 MS. CURRAN: Well, that's what -- I know

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1 that's what Dr. Leimann is interested in.

2 JUDGE KELBER: But as I say, it's a very
3 restrictive set, and I don't remember that there is a
4 great deal of PRA analysis involved in the actual meat
5 of NUREG 64-27. I'm a little bit puzzled, that's all.

6 MR. ZELLER: Well, that's just -- I
7 understand that. But there is -- that's just the
8 beginning of it, Your Honor. There is even within
9 this response under that same cover a summary of
10 averted power replacement benefit calculations to the
11 20-year license renewal period.

12 And, again, the basis for this figures
13 is --

14 JUDGE KELBER: Excuse me, Mr. Zeller.
15 Again, that's done by the book. And if -- and the
16 contention does not challenge the core damage
17 frequency calculations that Duke has made. In other
18 words, the contention is solely based on the question
19 of consideration of NUREG CR 64-27. It doesn't
20 address the question of, have they estimated the core
21 damage frequency correctly?

22 MS. CURRAN: Can I also say something?

23 MR. REPKA: This is Dave Repka, and I
24 would say the contention also does not challenge the
25 PRA itself. The entire PRA is not in dispute. I

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1 would think that there are some -- to the extent that
2 the RAI response is considered to be insufficient on
3 whatever basis, I think it would really be incumbent
4 upon the intervenor's experts to come up with their
5 own model and demonstrate different numbers, not -- I
6 mean, just to argue it and try to inflate the entire
7 contention into the PRA is just wrong.

8 JUDGE KELBER: I think a short brief is in
9 order on what PRA details are needed to forward this
10 discussion.

11 CHAIRPERSON YOUNG: Ms. Curran, I think
12 you had something to say, and then maybe it might be
13 good to get sort of back into the procedural process
14 and the point at which we find ourselves in that
15 process at this time.

16 As I understood it, the PRA issue arose as
17 part of the settlement process, and you were saying
18 that in order to do the analyses that you would need
19 to discuss settlement further you would need that PRA.
20 And, of course, whatever you all can do with each
21 other in settlement discussions is between you, and we
22 don't want to insert ourselves into that. Mainly,
23 what we want to know is the outcome of that.

24 However, it sounds as though the upshot of
25 this is if you are not able to settle the issues --

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1 and it may be that once you go back to Dr. Leimann and
2 you share with him either by telling him or showing
3 him the transcript of this conference, what Judge
4 Kelber has pointed out -- namely that it doesn't look
5 like the PRA would be that relevant to what happens
6 after the core damage, if I'm saying that correctly --
7 that may help you in your settlement process.

8 As a separate issue, we probably need to
9 discuss procedural issues such as deadlines for any
10 amendments to the contention, responses to those, and
11 discuss the separate issue of discovery, should we
12 need to get into that process absent settlement or to
13 the degree settlement is not possible. Just sort of
14 setting that context.

15 Ms. Curran, you had something you wanted
16 to add?

17 MS. CURRAN: Oh, I just -- I was
18 remembering our conversation with Dr. Leimann in which
19 he said to me what -- it's important to him to see the
20 results of the Level 2 and Level 3 analysis, which in
21 my poor understanding of PRA is getting beyond the
22 core damage frequencies.

23 So I really feel handicapped that he's not
24 on the phone. And I -- I will share the transcript
25 with him, which brings up another problem that I'm

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1 having. And I do have chronic problems using the
2 Adams system.

3 But I tried very hard before getting on
4 this conference call to get a copy of the April 10th
5 conference transcript, partly because I wanted to see
6 what the concerns were of the Licensing Board about
7 settlement issues.

8 CHAIRPERSON YOUNG: And that was not -- it
9 had not gone onto Adams yet or --

10 MS. CURRAN: I am unable to open it. It's
11 in a TIF file. And, you know, I'm still working on
12 it, but I've spent quite a bit of time just trying to
13 get this -- call up this -- open this file. And I'm
14 just wondering if the Licensing Board has these things
15 in any other format that you could share with us.

16 JUDGE KELBER: Ms. Curran?

17 MS. CURRAN: Yes?

18 JUDGE KELBER: This is Judge Kelber. Yes,
19 I have an electronic copy of the transcript in
20 WordPerfect format. And if you can read -- can you
21 read WordPerfect?

22 MS. CURRAN: Oh, yes.

23 JUDGE KELBER: All right. Does anybody
24 else want a copy in the WordPerfect format?
25 Otherwise, I will send one directly to Ms. Curran.

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1 MS. CURRAN: And if you wouldn't mind
2 doing the same thing with today's transcript. The
3 other thing is it takes quite a while for the public
4 document room to get it. So --

5 JUDGE KELBER: Give me your e-mail address
6 again, please.

7 MS. CURRAN: Yes. It's dcurran@harmon,
8 that's H-A-R-M-O-N, curran.com.

9 JUDGE KELBER: Will do.

10 MS. CURRAN: Thank you.

11 CHAIRPERSON YOUNG: Let me check that.
12 Even though I'm not in my office, and probably won't
13 be able to -- we've tried once to use e-mail. Judge
14 Beckhoefer here tried to get into our e-mail through
15 CITRIX and was not able to stay on as long as he
16 wanted.

17 On the off chance that I can get through
18 to e-mail, your address is dcurran, no dots, C-U-R-R-
19 A-N?

20 MS. CURRAN: Yes.

21 CHAIRPERSON YOUNG: At H-A-R-M-O-N, C-U-R-
22 R-A-N, dot com?

23 MS. CURRAN: Right.

24 CHAIRPERSON YOUNG: Okay.

25 JUDGE KELBER: Reading the files -- there

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1 is an image viewer which has been supplied to us by
2 the agency. And what it does is it reads -- the TIF
3 file that you get -- T-I-F -- is --

4 MS. CURRAN: Yes. And I have the ability
5 to read TIF files. But for some reason --

6 JUDGE KELBER: You can't read them page by
7 page.

8 MS. CURRAN: Yes.

9 JUDGE KELBER: This one does. And that's
10 the problem. Ordinary viewers do not, and it seems to
11 me that the people who set up entrance to the
12 electronic reading room should be able to supply the
13 viewer electronic form for reading the TIF files.

14 MS. CURRAN: Well, I will keep working on
15 it.

16 JUDGE KELBER: Well, just make a request
17 to the -- to them to send it -- to send you a copy of
18 the viewer.

19 MS. CURRAN: Okay.

20 JUDGE KELBER: I don't have the
21 installation file myself, unfortunately. It's
22 something that comes -- they put it on. If you know
23 the way Windows operates, you've been following the
24 antitrust action, you know that it's quite complex to
25 install a --

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1 MS. CURRAN: Yes.

2 JUDGE KELBER: -- program under Windows.

3 MS. CURRAN: Yes. Well, thank you.

4 CHAIRPERSON YOUNG: Okay. I guess
5 probably what we need to discuss at this point, unless
6 there is anything -- well, let me ask, is there
7 anything further on the settlement process, and what,
8 if anything, is needed that might facilitate that
9 going forward?

10 MR. REPKA: Yes. This is Dave Repka
11 again.

12 CHAIRPERSON YOUNG: Yes.

13 MR. REPKA: Let me just reiterate that
14 where I think we are is we have a contention that
15 discusses the NUREG data in the station blackout
16 sequences and the hydroelectric dam.

17 Yet we have made the offer several times
18 that to the extent the analysis that's been done is
19 viewed as deficient in some way, we'd like to discuss
20 that. And we'd like to hear it specifically, and we'd
21 like the opportunity to discuss that through these
22 settlement discussions or by whatever avenue.

23 And I think Ms. Curran has made that
24 commitment to get back to me in that process doing
25 that. And I -- I really think that that -- I'm very

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1 uncomfortable with the notion of jumping through that
2 to amending contentions and doing other things. I
3 think we need to stay focused on the contention that's
4 been admitted, and any amendment needs to be within
5 the scope or the sphere of what was admitted in the
6 first place.

7 And I really think, in all fairness, the
8 settlement process ought to play out. But we really
9 need feedback from the intervenor, and we need
10 technical specificity, because we can't respond to
11 something that has no specificity.

12 CHAIRPERSON YOUNG: Well, that's helpful
13 in looking at the larger context also. So thank you,
14 Mr. Repka.

15 Let me just say this, and then to the
16 degree I've overlooked something let me hear from
17 anyone -- Judge Kelber, Judge Rubenstein, or the
18 parties. And to the degree necessary, if we need to,
19 Judge Kelber and Judge Rubenstein and I can probably
20 get together separately. But given the sort of
21 unwieldy nature of that, let me just say this.

22 Obviously, the SER and SEIS final process
23 -- the deadline or the expected issuance date for
24 those are January and February 2003, even though there
25 -- it's expected that there may be a draft SEIS during

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1 May or June of this year.

2 Given that, and given the fact that the
3 appeal on the SAMA issue is still before the
4 Commission, and -- but primarily the final -- the
5 issuance dates for the final SEIS and SER, Mr. Repka's
6 point about giving the settlement process every chance
7 that it has for success before we get into things like
8 setting deadlines for amended contentions, and also
9 really discovery on that and discovery against the
10 staff in any case would be delayed until after the
11 issuance of the SER and SEIS, the final one.

12 It might be good, since Ms. Curran has
13 just gotten involved with the case, to let the parties
14 go forward with these discussions. When is Dr.
15 Leimann expected back?

16 MS. CURRAN: I think he's back tomorrow
17 afternoon.

18 CHAIRPERSON YOUNG: Back tomorrow
19 afternoon?

20 MS. CURRAN: Yes.

21 CHAIRPERSON YOUNG: So, well, that bodes
22 well. I know Mr. Repka is going to be -- or may be
23 back down here in Tennessee on another case.

24 So, but I don't know the degree to which
25 you will be needed, Mr. Repka, in the settlement

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1 discussions.

2 MR. REPKA: Well, I think, obviously, Ms.
3 Curran needs to talk to her client, and she can get
4 back to me in due course. I mean, I will be in
5 Tennessee this week, but I'm available to set
6 something up at any appropriate time here over the
7 next couple of weeks. So I think we just need to go
8 from here.

9 CHAIRPERSON YOUNG: Well, then, does
10 anyone have any objection, with the understanding,
11 obviously, that if necessary later we can set
12 deadlines for discovery, deadlines for amendments to
13 contentions and responses, but in the meantime does
14 any party have any objection to going forward with
15 more -- maybe the best word to use would be more in-
16 depth discussions of contention 2 with an eye towards
17 possible settlement or at least narrowing the issues
18 with the involvement of Dr. Leimann, and taking into
19 account Mr. Repka's statement that Duke is ready and
20 willing to discuss any particular problems that the
21 petitioners might have with Duke's analysis?

22 That's sort of a long sentence at this
23 point. But does any party have any objection to going
24 forward with the settlement negotiations, and then
25 setting another status conference at which we can get

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1 another report back, we can find out from the staff
2 more information about the staff's progress on Generic
3 Safety Issue 189 and see where we are at that point?

4 MS. CURRAN: I think it sounds reasonable.
5 I really -- I guess the one thing that I want to be
6 sure of is that if we are unable to settle this that
7 there will be an opportunity to, if necessary, amend
8 the contention to account for changes in information
9 that have come in. That's my major concern.

10 CHAIRPERSON YOUNG: And Mr. -- let me --
11 Mr. Repka, I understood from what you said that you
12 won't be making any arguments that there could not be
13 any amendment to the contention, but that you want to
14 get the -- make every effort to try to resolve it
15 through settlement prior to getting into both parties
16 filing various documents relating to contention
17 amendment.

18 MR. REPKA: I would certainly object to
19 any amendment beyond the umbrella of what's been
20 admitted. But with respect to those -- to the
21 contention that's been admitted and the RAI responses,
22 no, we want to pursue that through the settlement
23 process first. And if we can -- if it -- if there is
24 some specific subissue that -- of inadequacy we want
25 to hear it.

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1 MS. CURRAN: Judge Young, could I
2 interject for a minute?

3 CHAIRPERSON YOUNG: Please. This is Ms.
4 Curran?

5 MS. CURRAN: Yes.

6 CHAIRPERSON YOUNG: Okay.

7 MS. CURRAN: I guess I wouldn't expect Mr.
8 Repka to waive any objection to an amended contention,
9 but it would be on the grounds of timeliness if the
10 Board sets a schedule for that, that we would agree
11 that that's an orderly process for dealing with this,
12 and that timeliness would not be raised as an issue.

13 MR. REPKA: Again, that's true with
14 respect to anything that's within the umbrella of the
15 admitted contention.

16 MS. CURRAN: Well, what do you mean by
17 within the umbrella? Because we would be amending the
18 contention to address new facts, so the facts wouldn't
19 be the same. I mean, it would be the same basic idea
20 that was advanced in the original contention, which is
21 -- well, I think it goes back to the language in the
22 Board's order. To what extent does the SAMA analysis
23 take into account this information? And is it
24 adequate?

25 Where I think we're going is that you want

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1 more specifics on what we think is wrong with it.
2 So --

3 MR. REPKA: We want more specifics on what
4 you think is wrong with the analysis that's been done
5 on the two issues that were admitted.

6 MS. CURRAN: Right.

7 MR. REPKA: The NUREG data and the
8 hydroelectric line.

9 CHAIRPERSON YOUNG: In the context of
10 settlement discussions.

11 MR. REPKA: Correct.

12 MS. CURRAN: But in the context of
13 objecting to an amended contention --

14 MR. REPKA: I'm certainly going to object
15 to a contention that comes in and says that there's
16 something else completely in the SAMA analysis that's
17 inadequate, or the PRA is in some way inadequate.
18 Those are things that have nothing to do with the
19 particular admitted contention, and I'm going to
20 object to it because it's untimely. I'm going to
21 object to it for all kinds of reasons.

22 MS. CURRAN: Okay.

23 CHAIRPERSON YOUNG: Let me --

24 MR. VAUGHN: Your Honor?

25 CHAIRPERSON YOUNG: Yes?

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1 MR. VAUGHN: From the staff's viewpoint,
2 we would take the same position. We're not waiving
3 any of our rights to object to any late-filed
4 contentions or amended contentions that don't comply
5 with Commission precedent and the regulations.

6 CHAIRPERSON YOUNG: Okay. And I guess
7 probably we need to clear that up, then, at this
8 point. And when I referred to precedent earlier on --
9 when there's a contention admitted that says the
10 application does not address XYZ, and then the
11 applicant provides information that does address XYZ,
12 it's possible to file late-filed amendments to
13 contentions or late-filed contentions based on the
14 applicant's new information.

15 And sometimes the deadlines for such late-
16 filed contentions are set for, say, 30 days after the
17 provision of the new material. In this case, we have
18 not done that, and so that's why I raise the issue of
19 the deadline for any such late-filed contention or
20 amended contention or amendment to a contention,
21 whatever you want to call it.

22 I think probably we need to admit the
23 content -- doing that. We could set a deadline at
24 this point for filing any late-filed contentions based
25 on the new information provided by Duke, or -- and

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1 this is what I had -- I thought I understood Mr. Repka
2 to be saying, that at this point let's concentrate on
3 the settlement process and worry about all of that
4 later on down the line, given the timing of the
5 issuance of the final SEIS and SER.

6 I think that Commission precedent would be
7 if -- if a party does not -- and this is as I
8 understand it, and obviously any party can make any
9 argument or file anything on this at an appropriate
10 time that you want to.

11 But my understanding of the -- some of the
12 precedent has been if a party does not timely file
13 amended contentions or new contentions based -- you
14 know, based on new information provided by an
15 applicant, then those late-filed contentions or
16 amended contentions or amendments to contentions would
17 be denied.

18 So the whole issue of timeliness comes in
19 here, and maybe I need to clarify with Mr. Repka and
20 with the staff, first with Mr. Repka since he
21 suggested that we concentrate on the settlement
22 process at this point, what's your position with
23 regard to any deadlines for the filing of late-filed
24 contentions, amended contentions, or amendments to
25 contentions, however you want to characterize them,

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1 based on the new information that you have provided in
2 your responses to the RAIs.

3 MR. REPKA: Well, is the question whether
4 we should have a deadline or not?

5 CHAIRPERSON YOUNG: Well, it's partly
6 whether we should have a deadline.

7 MR. REPKA: I mean, if we were looking at
8 this in straight timeliness and BREDL not being
9 entitled to extra time for the fact that they've just
10 retained counsel, I mean, I could certainly argue that
11 we submitted information on February 1 and March 20,
12 2002, and that the timeliness clock to evaluate that
13 information started to run on those dates. And if
14 we're not untimely already for new contentions, we're
15 pretty darn close to being untimely.

16 However, I've been saying for months now
17 on this contention that we're willing to listen to any
18 specifics with respect to the information that's been
19 submitted. I'm still willing to listen to any
20 specifics, and I'm willing to listen to it through
21 settlement discussions or otherwise. So far, I've
22 gotten nothing but vague generalities and indirection,
23 really, or if not misdirection.

24 So I think the bottom line is is if we're
25 going to have late-filed contentions, amendments to

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1 these contentions, let's set a date and let's get
2 after it. And it should be sooner rather than later.

3 On the other hand, as I said, I'm willing
4 to play out the settlement process, but it needs to be
5 a good faith effort.

6 CHAIRPERSON YOUNG: But there's no reason
7 that those cannot go on together at the same time.
8 But, obviously, depending upon what that -- what
9 deadline is set, I don't know the degree to which, but
10 if it appears as though that might affect how much
11 attention could be paid to the settlement process --
12 but that's why I raised it earlier.

13 If we need to set a deadline, we can go
14 ahead and set a deadline for that, so everybody is all
15 on the same page with regard to it. And then, at the
16 same time, have all parties move forward, particularly
17 with Mr. Repka and Ms. Curran being sort of the
18 representatives of each side, move forward on the
19 possibility of narrowing the issues of dispute, seeing
20 where the dispute or the disputes lie, and seeing how
21 much you can pare down this contention.

22 MR. REPKA: Well, I suspect, then, that
23 upon consideration, then we ought to set a date in
24 order to get -- because it seems like that specificity
25 is going to be a prerequisite to getting anything --

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1 any discussions going. We may as well set a date.

2 CHAIRPERSON YOUNG: Does any party have a
3 suggestion on a specific date?

4 JUDGE KELBER: This is Charles Kelber.
5 How about when you get back to Washington?

6 CHAIRPERSON YOUNG: Who do you mean by
7 "you"?

8 JUDGE KELBER: Judge Young, when you are
9 back in Washington here. Is that somewhere after
10 May 9th?

11 CHAIRPERSON YOUNG: We will be flying back
12 on May 9th. I probably -- I may or may not be in the
13 office on the 10th. But I'm not sure that it
14 necessarily has to be tied to when I get back. I
15 mean --

16 JUDGE KELBER: Well, logistically, it's
17 easier for -- if people are more or less at the same
18 location as their work.

19 CHAIRPERSON YOUNG: I'm sorry. What?

20 JUDGE KELBER: The same location as their
21 files.

22 MS. CURRAN: Yes. I -- this is Diane
23 Curran. I guess I'd like to ask for some more time
24 than that, just because there's quite a volume of
25 material that's been sent in now by Duke. And I just

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1 want to have a chance to go over it carefully.

2 MR. REPKA: See, I thought you didn't have
3 enough information, Ms. Curran. I think May 9th or
4 May 10th is a good date, and we ought to just get on
5 with it.

6 MS. CURRAN: You know, Dave, I don't think
7 it helps to be sarcastic. You've sent in a lot of
8 paper. It's got a lot of numbers in it. And what
9 we're talking about here is a deadline for getting
10 down to exactly what's wrong with what you filed.
11 It's a large volume of paper.

12 CHAIRPERSON YOUNG: Okay. Let's move on
13 and try to all be straightforward here. Today is the
14 29th. Two weeks from today would be the 13th and --

15 JUDGE RUBENSTEIN: This is Judge
16 Rubenstein. That doesn't work for me. I'm sorry.

17 CHAIRPERSON YOUNG: This is not a time
18 when we would have to do anything. This is a deadline
19 for them --

20 JUDGE RUBENSTEIN: Okay.

21 CHAIRPERSON YOUNG: -- to file any late-
22 filed contentions. Two weeks from today would be the
23 13th, and then we would need to give a deadline for
24 responses to contentions.

25 MS. CURRAN: Judge Young, could I ask for

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1 three weeks, until the 20th?

2 CHAIRPERSON YOUNG: And then how much time
3 do you think -- and this is directed to Mr. Repka and
4 Mr. Uttal, how much time do you think, without saying
5 what the deadlines are, but how much time would you
6 need to respond to any late-filed contentions?

7 MR. REPKA: I think if it's two weeks for
8 the contentions, then two weeks for the response.

9 MS. UTTAL: I would agree. And I -- one
10 thing from the staff's point of view, if Mr. Repka and
11 BREDL have been exchanging information regarding the
12 merits of the contention, I would ask to be copied
13 with any of that information.

14 CHAIRPERSON YOUNG: Certainly, I mean,
15 it's appropriate to be copied with that.

16 Ms. Curran, you asked for three weeks.
17 Now, then, I'm assuming if you wanted three weeks, the
18 staff and Duke would want three weeks in response,
19 which would take us to June 10th.

20 MS. CURRAN: Judge Young?

21 CHAIRPERSON YOUNG: Yes.

22 MS. CURRAN: I have a question as to -- is
23 there any matter to wait until the staff comes out
24 with its report on the generic issue or --

25 CHAIRPERSON YOUNG: Well, we don't know

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1 when that will be.

2 MS. CURRAN: Yes.

3 CHAIRPERSON YOUNG: And so I think we
4 probably -- it probably is a good idea to go ahead and
5 set the deadlines at this point, and at least that --
6 as -- actually, I think Mr. Repka said -- perhaps that
7 -- if you didn't intend to say this, maybe getting
8 these out on the table might facilitate the settlement
9 process as well.

10 Does any party have any objection to
11 setting the deadlines for, say, the 20th for amended
12 or new late-filed contentions and then one, two,
13 three, the 10th for responses? Actually, that's when
14 I'm supposed to start jury duty. I don't know whether
15 I'll be called or not, but any -- any objection to
16 those dates?

17 MR. REPKA: No objection here. I would
18 reiterate, though, that I think that the admitted
19 contentions should be the defining umbrella here.

20 CHAIRPERSON YOUNG: Well, let's try to be
21 clear, then. I'll try to be clear. The basis -- the
22 late-filed contentions that we're talking about now
23 are -- would be based on any new information not
24 previously available that is currently to be found in
25 Duke's responses to the RAIs relating to contention 2.

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1 So to the degree the information provided
2 by Duke would expand the coverage of that umbrella so
3 to speak, anything that your responses place in issue
4 and any new information there would be the basis for
5 these late-filed contentions. And that's what the
6 deadline would be for.

7 Does that -- did everyone understand what
8 I meant by that, what I'm trying to say here?

9 MR. REPKA: Yes, Judge. I did.

10 CHAIRPERSON YOUNG: Okay. Then, May 20th
11 would be the deadline for the amended contention based
12 on any new information provided in Duke's responses to
13 the staff's RAIs on contention 2, and then June 10th
14 would be the deadline for responses.

15 I don't know whether it would be helpful
16 to set another status conference for any time between
17 now and then. As I just said, I have jury duty on
18 June 10th, and I don't know how long that will last.
19 I expect that there's a fairly high likelihood that I
20 will not be accepted for jury duty, but I can't be
21 sure of that.

22 It might be appropriate to set a
23 conference for the week following June 10th to hear
24 argument on those. And then, if that needs to be
25 changed, we can change it. Is everyone available the

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1 week of June 17th?

2 MS. UTTAL: I'm not so sure about the end
3 of the week, Judge, because my -- school lets out that
4 week, and I may not have day care for my children. I
5 have to check that out.

6 CHAIRPERSON YOUNG: Let's see. What about
7 Tuesday, the 18th? Does that day look okay for
8 everyone?

9 MS. CURRAN: Yes.

10 CHAIRPERSON YOUNG: And I think --

11 MR. REPKA: The 18th is good.

12 CHAIRPERSON YOUNG: I think 10:00 has been
13 the time that -- Ms. Uttal, you were the one who has
14 the scheduling issues.

15 MS. UTTAL: But what day of the week is --

16 CHAIRPERSON YOUNG: It's a Tuesday.

17 MS. UTTAL: Okay. I don't have my
18 children's schedule before me, so I don't know for
19 sure. But if there is a problem, I'll let the Board
20 know immediately.

21 CHAIRPERSON YOUNG: Okay.

22 MS. CURRAN: Judge Young?

23 CHAIRPERSON YOUNG: Yes?

24 MS. CURRAN: This is Diane Curran. In
25 terms of problems, since Dr. Leimann is out of town,

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1 I can't check with him until tomorrow or the next day
2 about this schedule. I can't imagine that -- I don't
3 think it'll pose a problem, because it's a long time,
4 but if there is any problem I will get in touch with
5 you immediately.

6 CHAIRPERSON YOUNG: Okay. For that
7 purpose, let me give everyone the fax number here.
8 And just address any fax to my attention and ask that
9 it be given to me. The fax number here is
10 (423) 265-4635.

11 MR. REPKA: And, Judge Young, this is Dave
12 Repka. Can I make one other point, just so the record
13 is clear from my perspective?

14 CHAIRPERSON YOUNG: Yes.

15 MR. REPKA: Since we are pursuing this
16 route as opposed to settlement first, we had some
17 discussion earlier about, you know, waiving objections
18 and timeliness and all that. You know, we're
19 perfectly fine with this approach, but like I think
20 Ms. Uttal said, we don't intend here to waive any
21 objections to these amended contentions when they come
22 in -- timeliness, scope, or otherwise.

23 CHAIRPERSON YOUNG: Well, now, am I
24 understanding you to be saying that you would object
25 to the deadlines later or --

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1 MR. REPKA: No, no, no, no. Just that to
2 -- with respect to any proposed amendments when they
3 come in, I mean, we may or may not object to --
4 depending upon what the contention says, to the
5 timeliness of raising it and whether it's really based
6 on new information, whether it's within scope, or
7 whatever. I think that at this point I don't want to
8 waive any objection that might be available.

9 CHAIRPERSON YOUNG: Well, I don't think
10 anyone is construing anything to be a waiver of any
11 objection. I think probably the major -- certainly,
12 if you had any objections to something not being
13 within the scope or something not being based on the
14 new information, but by setting these deadlines I
15 think that should handle any issue of timeliness
16 insofar as there's no objection on the scope or on
17 whether the late-filed contention is actually based on
18 the staff's responses.

19 MR. REPKA: That's fine. I understand
20 that.

21 CHAIRPERSON YOUNG: Okay. Because we
22 don't need to -- we don't -- we can lay those on the
23 table at this point, if there are any issues around
24 that.

25 MR. VAUGHN: Judge Young? This is Lisa

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1 Vaughn with Duke.

2 CHAIRPERSON YOUNG: Yes.

3 MR. VAUGHN: I guess I'm just wanting to
4 make a point here, and I think Dave Repka made it
5 earlier. We have provided the RAI responses. And to
6 the extent that the -- any amended contentions would
7 be based on those responses, then they would need to
8 meet the timeliness requirement in addition to meet
9 the deadline requirement that was just set.

10 CHAIRPERSON YOUNG: Okay. When you say to
11 the extent they would be based on those responses,
12 that's what we're talking about. The late-filed
13 contentions that we're talking about are late-filed
14 contentions based on those responses. The timeliness
15 issue we are resolving by setting these deadlines at
16 this point.

17 And if there's any discussion that we need
18 to have on that, we probably need to have that at this
19 point, so that everyone is on the same page about
20 that. We had not previously set any deadlines of the
21 nature of any late-filed contentions have to be filed
22 30 days after X date, or 60 days after X date. And in
23 lieu of that, we're setting a specific deadline and
24 then a specific deadline for responses.

25 So, and given the fact that various other

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1 things have been going on up to this point, if you
2 have any other timeliness issues, I think probably now
3 would be a good time to at least get them out on the
4 table.

5 MR. VAUGHN: So your point is this is in
6 substitution of any other I guess timeliness
7 requirements that might be applicable based on the RAI
8 responses.

9 CHAIRPERSON YOUNG: That's I think, yes,
10 how we're looking at it. And this is to set a
11 deadline and say if they come in by this deadline,
12 then we'll look at the merits of them. Duke can argue
13 that they -- that they should not be admitted for any
14 number of reasons, but the timeliness issue will be
15 taken care of by setting a specific deadline.

16 And this is to get everyone on the same
17 page. Earlier I had thought that Mr. Repka was
18 saying, well, let's leave off late-filed contentions
19 until later, and let's try to work out the -- you
20 know, concentrate on the settlement process at this
21 point. But it sounds as though we needed to set
22 deadlines so that everyone would know where we were.

23 MS. UTTAL: Well, Your Honor -- this is
24 Susan Uttal.

25 CHAIRPERSON YOUNG: Yes.

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1 MS. UTTAL: I understand the need to set
2 deadlines for motions to come in. But in the case law
3 -- and I don't have the case law before me -- but I
4 think as Ms. Curran pointed out before, it's usually
5 done on a case-by-case basis regarding timeliness.
6 And one must show I believe good cause for late-filed
7 contentions.

8 CHAIRPERSON YOUNG: Right.

9 MS. UTTAL: And since Mr. -- since the
10 licensee produced their information, I think it was in
11 February or March, I would think that the intervenor
12 would have to show good cause why they did not file
13 within a reasonable amount of time. That's why I said
14 earlier that I'm not waiving our right to raise any
15 objections.

16 MS. CURRAN: This is Diane Curran. I
17 thought that that was the discussion that we had
18 earlier that the Licensing Board's order admitting the
19 contention was -- well, we interpreted it to be
20 broader than the applicant did, and that we are --
21 this is a way of saying, okay, there's a real
22 disagreement here about what the contention means as
23 it was worded and admitted by the Licensing Board.
24 And this is a way of dealing with that.

25 MS. UTTAL: But that's the kind of thing

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1 that you would argue in a brief in demonstrating good
2 cause, and I don't think that this is entirely the
3 appropriate place to be making those kind of merits
4 arguments.

5 CHAIRPERSON YOUNG: Okay. Hold on. Let
6 me get my copy of the rules. Hold on one second.

7 JUDGE KELBER: While Judge Young is doing
8 that, let me give you a couple of numbers to call to
9 request a copy of the Image Vue, V-U-E, Image Vue, V-
10 U-E, software to view the TIF images. You can call 1-
11 800-397-4209 or 301-415-4737.

12 CHAIRPERSON YOUNG: Okay.

13 MS. CURRAN: Thank you.

14 CHAIRPERSON YOUNG: Okay. In cases that
15 I -- I'm back on the phone. Did you need to finish up
16 anything like -- that you were in the middle of?

17 JUDGE KELBER: No.

18 CHAIRPERSON YOUNG: Okay. In cases that
19 I've been aware of where, for example, there were
20 motions for summary disposition alleging that an issue
21 is moot because the deadline for filing late-filed
22 contentions with regard to a particular issue had
23 passed, there had been a deadline set that was tied to
24 each event.

25 And the event -- and that would be, say,

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1 30 or 60 days after the event occurred, the late-filed
2 contentions would need to be filed. In this case, we
3 did not do this. Obviously, any party can argue
4 anything you want to argue, but I -- by setting these
5 deadlines, at this point I don't know -- I can't say
6 in any way how we would rule on any objections to
7 contentions based on timeliness.

8 But if there were objections based on
9 timeliness, given that we are today setting the
10 deadlines for the filing of late-filed contentions
11 based on the -- based on Duke's responses to the RAIs,
12 then probably we need to set another deadline, or
13 would at that point set another deadline for responses
14 to the timeliness objections.

15 I don't think that we need to get -- waste
16 everybody's time by getting into a wrangle about this,
17 if it's not going to be necessary. So depending upon
18 what the responses are, assuming we do get late filed
19 contentions and assuming that there are responses and
20 that this whole thing has not been mooted out through
21 some other procedure, at that time we may set -- or
22 perhaps we should set at this point any -- a deadline
23 for any responses of the petitioners to timeliness
24 objections.

25 Yes, maybe we should, because if I do get

1 -- if I do get called to sit on a jury, I may be
2 absent that whole week of June 10th. And maybe we'd
3 better move all this up a little bit.

4 If there are any objections to timeliness,
5 let's say the petitioners would need to respond to
6 those by June 14th. And that would make it still
7 possible for us to have the conference call on
8 June 18th.

9 MS. CURRAN: Okay.

10 CHAIRPERSON YOUNG: Now, I don't know how
11 soon I will be able to get an order out on this, in
12 part because I don't know how easy it will be to get
13 anything -- get access to e-mail, and so forth. So I
14 want everyone to write all this down and get clear
15 what we're saying here, so that there won't be any
16 reason for delay based on not getting an actual
17 written order defining these deadlines

18 The deadline for late-filed contentions
19 and/or amendments to contention 2, based on Duke's
20 responses to RAIs relating to contention 2, is May 20.
21 The deadline for Duke's and the staff's responses to
22 any late-filed contentions or late-filed amendments to
23 contention 2, based on Duke's responses to the RAIs
24 relating to contention 2, is June 10.

25 The deadline for the petitioners -- and I

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1 guess I should say since BREDL is taking the lead on
2 contention 2, I would expect, absent good reason, that
3 you would work together and that we would get one
4 amended contention or set of amended contentions or
5 late-filed contentions filed through Ms. Curran,
6 rather than two sets. And, again, the same would
7 apply to any responses to any objections to the
8 contentions based on timeliness grounds on June 14th.

9 MS. CURRAN: That sounds reasonable.

10 CHAIRPERSON YOUNG: That was Ms. Curran?

11 MS. CURRAN: Yes.

12 CHAIRPERSON YOUNG: Okay. And, Ms. Olson,
13 you agreed earlier that BREDL would be the lead party.
14 So you don't have any --

15 MS. OLSON: No, I --

16 CHAIRPERSON YOUNG: -- objection to
17 working through Ms. Curran on this?

18 MS. OLSON: No objection at all.

19 CHAIRPERSON YOUNG: Great. Okay. Then,
20 on June 18th, which is a Tuesday, we are tentatively
21 setting that day at 10:00. And if anybody has any
22 problem with that, let Judge Kelber and Judge
23 Rubenstein know by e-mail, and let me know by fax to
24 the number I gave you earlier. And let us know what
25 other days early in that week -- because I think Ms.

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1 Uttal said late in the week was not good.

2 So let us know preferably if Monday or
3 Wednesday would work, and preferably earlier. Well,
4 I think the mornings are the time that work for Ms.
5 Uttal. So we'll try to do that.

6 Now, discovery was the other thing, and I
7 think in light of what's going on I would imagine that
8 no party would object to -- especially in view of the
9 -- not just the late-filed contention issue but the --
10 what I expect would be continuing settlement
11 negotiations throughout all of this, that no party
12 would object to putting off discovery until after we
13 see where we are on the settlement process, on the
14 late-filed contention process, on the staff process
15 relating to Generic Safety Issue 189, and also on the
16 pending appeal of the Board's admission of
17 contention 2.

18 So unless there is any objection, we will
19 not set discovery deadlines on contention 2 at this
20 time, or deadlines for motions for summary
21 disposition. And we'll hold off on those until after
22 we see how some of these other processes have worked
23 themselves out.

24 MR. REPKA: No objection from Duke.

25 MS. CURRAN: None from BREDL.

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1 CHAIRPERSON YOUNG: Okay. Is there
2 anything else that any of you think we need to talk
3 about this morning or anything that I have overlooked?
4 And Judge Kelber, Judge Rubenstein, is there anything
5 you want to add or anything that you think we need to
6 talk about that --

7 JUDGE KELBER: Not from this end.

8 JUDGE RUBENSTEIN: Judge Rubenstein.
9 Nothing now.

10 CHAIRPERSON YOUNG: Okay. Anybody else,
11 anything we need to address today before signing off?
12 Okay. And you've all written down the deadlines that
13 I just went through. And if you don't get an order
14 right away, you will get one as soon as I get back in
15 the office and have the ability to get that issued.
16 And we will expect you to comply with the deadlines,
17 notwithstanding the lack of a written order prior to
18 any of those deadlines.

19 Okay? And next time for sure we'll have
20 Dr. Leimann with us, and if we have to reschedule the
21 June 18th one to do that we'll do that.

22 And it might be helpful, Ms. Curran and
23 Ms. Uttal, prior -- I mean, you can certainly let us
24 know what your scheduling issues are, but it might be
25 helpful for the two of you to discuss with each other

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1 what your situations are, so that you could make a --
2 sort of a joint response, and then, to whatever degree
3 necessary, bring in Mr. Repka and Ms. Vaughn, so that
4 as little back and forth procedural scheduling issues
5 will be necessitated and we can just come up with a
6 date; hopefully, the date that we have already set.

7 Okay? Very good. Thank you all. Nice
8 talking with you all.

9 And, Mr. Repka, I'll see you tomorrow in
10 Chattanooga.

11 Bye-bye.

12 (Whereupon, at 1:15 p.m., the proceedings
13 in the foregoing matter were concluded.)
14
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CERTIFICATE


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

Name of Proceeding: Duke Energy Corporation

Docket Number: 50-369-LR et al.

Location: Telephone Conference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Emily Massie
Official Reporter
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