

RAS 4635

Official Transcript of Proceedings

~~NUCLEAR REGULATORY COMMISSION~~

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

Docket Number: 50-369-LR et al.

Location: (telephone conference)

Date: Wednesday, July 10, 2002

Work Order No.: NRC-464

Pages 919-1063

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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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Wednesday,

July 10, 2002

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

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE CHARLES N. KELBER

THE HONORABLE LESTER S. RUBENSTEIN

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1 APPEARANCES:

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

3 DAVID A. REPKA, ESQ.

4 Of: Winston & Strawn

5 1400 L Street, NW

6 Washington, DC 20005

7 AND

8 LISA F. VAUGHN, ESQ.

9 BOB GILL, ESQ.

10 Of: Duke Energy Corporation

11 422 South Church Street

12 Charlotte, NC 28202

13

14 On Behalf of the Nuclear Regulatory Commission:

15 SUSAN L. UTTAL, ESQ.

16 U.S. Nuclear Regulatory Commission

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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, NC 28802

8
9 LOU ZELLER, Executive Director

10 Blue Ridge Environmental Defense League

11 P.O. Box 88

12 Glendale Springs, NC 28629

13
14
15 ALSO PRESENT:

16 Duncan Barrett

17 Brew Barron

18 Duncan Brewer

19 Diane Curran

20 Lee Dewey

21 Raju Goyal

22 Jared Heck

23 Ed Lyman

24 Michelle Mendelson

25 Robert Palla

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1 ALSO PRESENT: (cont.)

2 Greg Robison

3 Mike Snodderly

4 James Wilson

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

10:08 a.m.

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3 CHAIRPERSON YOUNG: On the record. This
4 is Judge Kelber and I are here in Rockville. Judge
5 Rubenstein -- and we have our Counsel, Lee Dewey with
6 us along with Lockhard Mendelson and Raju Goyal here
7 in Rockville. I want to ask the Staff, the
8 intervenors and Duke if you would all introduce
9 yourselves and all those present. Why don't we start
10 with Duke as we did before?

11 MR. REPKA: Yes. This is David Repka for
12 Duke Energy. With me at McGuire Station near
13 Charlotte are Lisa Vaughn, Associate General Counsel,
14 on a separate line from Washington is Anne Cottingham,
15 also with me at McGuire are Brew Barron who is the
16 site Vice President of McGuire Station, Duncan Brewer
17 who is the Manager of the Severe Accident Analysis
18 Group for Duke Energy, Michael Barret who is the
19 Senior Engineer of Severe Accident Analysis, Greg
20 Robinson who is the Project Manager for the McGuire
21 Catawba Renewal Project, Bob Gill who is the Senior
22 Licensing Consultant for License Renewal.

23 CHAIRPERSON YOUNG: Okay. Thank you. Ms.
24 Curran for the intervenors.

25 MS. CURRAN: This is Diane Curran. I am

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1 representing Friedel (PH) and NIRS this morning. With
2 me in my Washington, D.C. office is Dr. Edwin Lyman.
3 On a separate line is Louis Zeller of BREDL and Mary
4 Olson who's on yet another line of NIRS.

5 CHAIRPERSON YOUNG: Thank you. Then Ms.
6 Uttal for the Staff.

7 MS. UTTAL: Susan Uttal, Counsel for the
8 NRC Staff. With me is Jared Heck, Counsel for the NRC
9 Staff, James Wilson member of the Staff, and Robert
10 Palla also a member of the Staff.

11 CHAIRPERSON YOUNG: Thank you. Also we
12 have on the line Mr. Mike Snodderly who is serving as
13 the adjudicate. Mr. Snodderly, why don't you give
14 your title?

15 MR. SNODDERLY: Sure. Reactor Systems
16 Engineer Probablistic Safety Assessment Branch, Office
17 of the Nuclear Reactor Regulation.

18 CHAIRPERSON YOUNG: What was the title
19 that you're serving as?

20 MR. SNODDERLY: Adjudicatory employee
21 advising the Commission on behalf of this hearing.

22 CHAIRPERSON YOUNG: All right. We have an
23 agenda for today. There are six items listed. The
24 first item on the agenda is to let us know whether
25 you've made any further progress in your settlement

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1 negotiations on contention two. Do you have anything
2 to report on that?

3 MR. REPKA: This is Dave Repka for Duke
4 Energy. I would say the short answer to that is no.
5 We have nothing to report. We have a standing offer
6 to discuss settlement. We have heard nothing on that
7 issue. In fact, we felt on the last conference call
8 that the focus of the opportunity for amended
9 contentions would be to narrow the issues, to in fact
10 potentially foster settlement discussions. What we
11 got clearly was not that. It expanded the contention.

12 CHAIRPERSON YOUNG: Well, let's not get
13 into that at this point. All we need to talk about at
14 this point is whether -- And I realize in saying that
15 obviously when the determination was made that there
16 might be an issue of possibly moving out contentions
17 by the RAI responses, a need for the filing of amended
18 contentions and all that goes with that without making
19 any value judgements, the whole issue of settlement
20 did get pushed somewhat into the background. We want
21 to hear what everyone has to say in appropriate time
22 on the amended contention. On settlement, I hear you
23 saying that there has been no progress. Does any
24 party have anything to add?

25 MS. CURRAN: I would agree with Mr. Repka.

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1 It seems like --

2 CHAIRPERSON YOUNG: Is that Ms. Curran?

3 MS. CURRAN: I'm sorry. It is.

4 CHAIRPERSON YOUNG: We need to identify
5 ourselves.

6 MS. CURRAN: Sure. The sticking points in
7 our first discussion still remain, so it didn't seem
8 like we were able to make any progress on that.

9 CHAIRPERSON YOUNG: And Ms. Uttal, do you
10 have anything to add?

11 MS. UTTAL: No, Your Honor.

12 CHAIRPERSON YOUNG: Okay. The next issue
13 on the agenda is whether there are any continuing
14 Commission proceedings that would affect this
15 proceeding before this Board. I think what we were
16 contemplating when that was placed on the agenda was
17 the possibility that the Commission might be close to
18 a decision on who's going to staff the appeal of the
19 Board's decision on contention two.

20 Mr. Snodderly, you indicated earlier that
21 you were here to listen and report back to the
22 Commission in the Appellate Counsel's office. If you
23 have anything to add at this point please feel free.
24 Or does anyone else have anything to add on that item?
25 I'm not sure.

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1 MR. SNODDERLY: Yes, Your Honor. I've
2 been advising Cecilia Carson of the Commission Staff.
3 No, I don't have anything to report at this time.

4 COURT REPORTER: I'm sorry. This is the
5 Court Reporter. Could you please identify yourself
6 when you speak?

7 MR. SNODDERLY: I'm sorry. This is Mike
8 Snodderly. I've been working with Cecilia Carson of
9 the Staff. I'm not aware of any additional
10 information at this time, Your Honor.

11 CHAIRPERSON YOUNG: Thank you. I'm
12 probably going to be talking more than anybody else,
13 so if I forget to say who I am feel free to interrupt
14 me too. This is Judge Young.

15 The third item is any relevant information
16 related to Generic Safety Issue 189 that would affect
17 this proceeding. I should note that Ms. Uttal has
18 told us all on May 22nd I believe noted of the ACRS
19 meeting with regard to Generic Safety Issue 189. The
20 Board is aware of that. As a matter of fact one of
21 our law clerks attended that. We have looked at the
22 transcript of that, some of us anyway, the ACRS's
23 discussion on that.

24 Do the parties have anything to report?
25 I guess we should start with the Staff on this. If I

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1 am assuming incorrectly please feel free to correct
2 me. I am assuming that everyone is aware of that
3 meeting since I believe NIRS was present. I'm not
4 sure whether Duke was. But everyone was aware that it
5 was occurring.

6 JUDGE KELBER: This is Judge Kelber. If
7 you aren't aware, let me give you the -- numbers of
8 the transcripts of the meeting and also of the ACRS
9 letter that was subsequently sent to the Executive
10 Director for Operations.

11 CHAIRPERSON YOUNG: And I believe just
12 anticipating these are all public documents.

13 JUDGE KELBER: Yes. They're all publicly
14 available. The transcript comes in two parts. The
15 first part is ML02170012. The second part is
16 ML021700307. The discussion of the ACRS's
17 presentation by the Staff to the Committee is found in
18 part one starting at page 110.

19 Letters on the topic have been received by
20 the ACRS from Anne Harris and Ken Burgeron. Dr.
21 Burgeron was a co-author of NUREG CR 6427. He was
22 represented at the meeting by David Lockbaum of the
23 Union of Concerned Scientists. Ms. Harris and Dr.
24 Burgeron's letters are found near the end of part two
25 of the transcript at pages 146 and 151 respectively.

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1 The letter which was written by the ACRS to the
2 Executive Director of Operations was dated June
3 17,2002. It's available on Adams as exception number
4 ML021760381.

5 MS. CURRAN: Judge Kelber, this is Diane
6 Curran. Would you please repeat the session number of
7 the first part of the transcript?

8 JUDGE KELBER: Certainly.

9 MS. CURRAN: I missed the last couple of
10 digits.

11 JUDGE KELBER: ML021700212. Is that all
12 right?

13 MS. CURRAN: Yes. Thank you.

14 JUDGE KELBER: Anything else?

15 (No response.)

16 CHAIRPERSON YOUNG: Okay. So I guess, Ms.
17 Uttal, this is Judge Young again, do you have anything
18 to report on the progress of the Staff on Generic
19 Safety Issue 189 since the ACRS meetings? Does anyone
20 wish that Ms. Uttal would address any progress up to
21 that point? I'm assuming that everyone knows up to
22 that point. If not, be heard at this point.

23 MS. UTTAL: Your Honor, this is Susan
24 Uttal. One thing I have a different Adams session
25 number for the letter from the ACRS to Dr. Travers.

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1 I'd like to give that to everybody. ML021760381.

2 JUDGE KELBER: I thought that's what I
3 said. This is Judge Kelber.

4 MS. UTTAL: Oh. Maybe I'm reading it
5 wrong, Judge Kelber. I'm sorry. I have several
6 numbers in front of me. I have no additional
7 information regarding Staff action after the June 17
8 letter. The Staff has not yet responded to this
9 letter.

10 CHAIRPERSON YOUNG: Okay. Thank you.

11 MR. REPKA: This is Dave Repka. May I add
12 one thing?

13 CHAIRPERSON YOUNG: Sure.

14 MR. REPKA: We are aware of a June 27
15 Staff requirements memo from the Commission on SECY-
16 02-0080 in which --

17 CHAIRPERSON YOUNG: What's that number
18 again please?

19 MR. REPKA: It's a Staff requirements memo
20 related to SECY-02-0080. I don't have the Adams
21 session number. But the Commission directs the staff
22 to go forward to resolve GSI 189 in a timely fashion.

23 MS. UTTAL: Your Honor, I have the session
24 number for that.

25 CHAIRPERSON YOUNG: Go ahead. Is this Ms.

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1 Uttal?

2 MS. UTTAL: Yes. ML021780172.

3 CHAIRPERSON YOUNG: Okay. Mr. Repka, did
4 you have anything that you wanted to say about that or
5 just to share the information that it had been issued?

6 MR. REPKA: No. Just to share that it had
7 been issued and the fact that it represents the
8 Commission's direction to go forward with that
9 resolution.

10 CHAIRPERSON YOUNG: I don't have that in
11 front of me. I don't know whether Judge Kelber does.
12 But may I just ask whoever knows, Mr. Uttal or Mr.
13 Repka or whoever else, does the Commission direct the
14 Staff to go forward with the rulemaking or is there
15 any particular direction that the Staff is to take?

16 MS. UTTAL: This is Ms. Uttal again. This
17 says to move toward a resolution of the issue.

18 MR. REPKA: This is Dave Repka There is no
19 particular resolution identified nor is there a means
20 for resolution. It could be rulemaking. It could be
21 some other means potentially but that's not
22 identified.

23 CHAIRPERSON YOUNG: Are there any time-
24 lines set?

25 MR. REPKA: "In a timely fashion" are the

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1 words of the SRN.

2 CHAIRPERSON YOUNG: Thank you. Anything
3 else on Generic Safety Issue 189 at this point? I
4 realize it may come up in some of the amended
5 contentions. Hearing none, moving on to the next item
6 on the agenda. Staff's objections as expressed in the
7 May 16, 2002 letter to the Board members regarding a
8 document referenced in the May 13 order.

9 I just want to report first of all I
10 believe Judge Kelber, you were not aware that the
11 document in question was not public. The Board has
12 taken measures to assure that we know when documents
13 are public and are not public. That had to do with
14 how the Adams window was set up. We should be more
15 aware of that in the future. I'm not sure that
16 there's any need to talk any further on that. Does
17 anyone see any need to address that any further?

18 (No response.)

19 CHAIRPERSON YOUNG: All right. The next
20 two items on the agenda are any questions arising out
21 of the parties filings related to late filed
22 amendments to contention two including the need for
23 any further argument on these and then finally any
24 other pertinent subjects relating to this proceeding.
25 Before going on to the late filed amendments, let me

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1 just ask a question. Are there any other items that
2 any party thinks that we should address today?

3 MR. REPKA: Dave Repka for Duke. We don't
4 have any other items.

5 CHAIRPERSON YOUNG: Any other? The Staff
6 or intervenors?

7 (No response.)

8 CHAIRPERSON YOUNG: All right. We have
9 discussed ways of -- to the amendments to contention
10 two. We on the Board have some questions that we
11 would like to pose to the parties on each of these.
12 I guess now might be a good time to address whether
13 these are separate contentions or part of a
14 contention. Let me get back to that.

15 We did not anticipate hearing any oral
16 argument today from the parties on the contentions.
17 What we would like to do is pose our questions to you
18 so that you can see what our concerns are. We may or
19 may not have time to get into discussion on any of
20 those questions today. Depending upon how we proceed
21 today and the progress that we make, we may or may not
22 need to discuss further oral arguments which I think
23 in our discussions we had been anticipating that it
24 would be in person if we do need further oral
25 arguments.

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1 Just on the issue of what to call what's
2 been filed, the intervenors titled the first part of
3 what I have been calling parts of the amended
4 contention "Amended Consolidated Contention Two" which
5 says "The Duke SAMA, S-A-M-A, Analysis is incomplete
6 and insufficient to mitigate severe accidents in that
7 it fails to provide an adequate discussion of
8 information from NUREG/CR-6427." I've been calling it
9 NUREG 6427 for short.

10 Continuing now "The discussion of
11 information from NUREG 6427 and a dedicated electrical
12 line from the hydroelectric generating dams adjacent
13 to each reactor site. In particular the SAMA Analysis
14 contains the following deficiencies." Then there are
15 eight listed. What I have been looking at is sub-
16 parts. I noticed that Duke and possibly the Staff
17 refer to those as separate contentions. If we need to
18 clarify anything on that, now might be a good time to
19 do that. If they are anything other than simply a
20 difference in terminology that people have used,
21 anything more substantive with regards described that
22 anyone would like to speak to.

23 MS. CURRAN: Judge Young, this is Diane
24 Curran. I wonder if it would help if I explain how it
25 got to be structured this way.

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1 CHAIRPERSON YOUNG: If you can do so
2 briefly, I think that would be appropriate.

3 MS. CURRAN: I have to tell you that I've
4 been trained by lawyers for various applicants to
5 start doing contentions this way because I used to
6 have a lot of information in the basis. I wound up
7 with responses to contentions that basically go down
8 the basis that constituted propositions and said these
9 are actually sub-parts of the contention, aren't they.
10 And I had to agree.

11 I think of a basis as an explanation in
12 support for a proposition. There's various sub-
13 propositions to this contention. So that was how it
14 was meant to be, that there's an overall proposition
15 but then it breaks down into more specific parts.
16 That's why the contention is broken down the way it
17 is. I know that Duke and I think the Staff refers to
18 the separate parts as separate contentions. I think
19 of them as sub-parts of the main contention.

20 CHAIRPERSON YOUNG: This is Judge Young.
21 Probably the confusion arose by the use of the word
22 contention at the beginning. You're saying you meant
23 those to be sub-parts of the amended consolidated
24 contention two.

25 MS. CURRAN: Yes. I should have probably

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1 called them sub-contentions.

2 CHAIRPERSON YOUNG: Any other issues on
3 that which Duke or the Staff wishes to raise at this
4 point?

5 MR. REPKA: This is Dave Repka for Duke.
6 I'm not sure it matters what you call them. I know
7 that Ms. Curran maintains that they are sub-parts of
8 the admitted contention, but I think substantively
9 they are not so limited. We tried to address them
10 that way.

11 Again, I'm not sure the name is really
12 important. What's important is what they say. I
13 don't think there can be any doubt that there are
14 really eight new issues. Therefore, we tried to deal
15 with them as the new issues that they are. They
16 clearly exceed the scope of the original consolidated
17 contention two. That's explained in our papers.

18 CHAIRPERSON YOUNG: All right. This is
19 Judge Young again. In terms of how we spend the
20 remainder of our time together today and just to
21 follow up on what Mr. Repka said I'll just make the
22 following observations. It might be helpful and this
23 is not to indicate any suggestion on how I or the
24 Board might rule on any of these, but it might be
25 helpful to think of them in a context of the second

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1 sentence of the amended consolidated contention two,
2 in particular the SAMA analysis contains the following
3 deficiencies to read into that, in particular the SAMA
4 analysis with regard to information from NUREG 6427
5 and a dedicated electrical line from the hydroelectric
6 generating dam adjacent to each reactor site contains
7 the following deficiencies. With that limitation, Ms.
8 Curran, would you disagree because Mr. Repka has
9 raised the issue of the scope that it implicitly
10 contained in that sentence that you've written?

11 MS. CURRAN: Yes. I would agree with the
12 way that you amended it if that is what is meant.

13 CHAIRPERSON YOUNG: I don't mean to amend
14 it. I'm just saying there seems to be in light of how
15 all this arose obviously these are not just amended
16 contentions on anything based on the RAI responses.
17 But they are proposed amendments to contention two
18 which had two parts. So it sounds as though you agree
19 with that. That fits with what Mr. Repka says.
20 Obviously the parties have disagreements on whether or
21 not the particular sub-parts do relate to the two
22 subject areas contained in the original consolidated
23 contention two.

24 MR. REPKA: This is Dave Repka. I just
25 wanted to react to that and say I certainly have no

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1 objection to putting that limitation in there. But by
2 no means do I think that cures the admissibility of
3 the contention.

4 CHAIRPERSON YOUNG: Sure. You raised
5 numerous issues relating not only to the basis but
6 also to the timeliness. We're aware of that. Is that
7 what you meant to say?

8 MR. REPKA: Yes. Absolutely.

9 CHAIRPERSON YOUNG: Right. I guess the
10 way that the Board is somewhat looking at this and
11 Judge Rubenstein and Judge Kelber correct me if I'm
12 wrong, but just to put a little structure on this is
13 that we're looking at it as a three part analysis.
14 The first is the amended consolidation contention two
15 with all its sub-parts, timely under the timeliness
16 criteria for late contentions. The second is do the
17 sub-parts fall within the scope of the original
18 consolidated contention two and its two sub-parts.
19 Then third is assuming we get past each of these in
20 order, do any, all, or none of the sub-parts meet the
21 regular contention admissibility criteria of 10 CFR
22 2714.

23 So I guess it might be appropriate to
24 start with our questions on the contentions in order.
25 It's a little past ten. If we can get very brief

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1 responses to our questions as we go and move along
2 fairly quickly, that might be appropriate. Judge
3 Kelber, I was just saying if we can get very brief
4 responses to our questions as we go and we seem like
5 we're making some progress that might be appropriate.
6 Otherwise if it looks like it's taking some time, we
7 may want to move along, share our questions with you,
8 and then consider, if we don't give you an opportunity
9 to respond today, what would be the appropriate
10 setting for responding to those questions. Does that
11 sound all right with you, Judge Kelber and Judge
12 Rubenstein?

13 JUDGE KELBER: Yes it does.

14 JUDGE RUBENSTEIN: Yes.

15 CHAIRPERSON YOUNG: All right. At the end
16 of each one if any of the parties have any questions
17 that you'd like to raise or brief statements that you
18 would like to make in response to anything or any
19 issues that you would like to point out to us as long
20 as we keep these concise and move along with them, we
21 will permit that as well. On the amended consolidated
22 contention two itself as opposed to the various sub-
23 parts, are there any questions Judge Kelber or Judge
24 Rubenstein?

25 JUDGE RUBENSTEIN: This is Judge

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1 Rubenstein. Do you want to address timeliness first?
2 Why don't we do it in the order that you laid out the
3 criteria for acceptability?

4 CHAIRPERSON YOUNG: That sounds like a
5 good idea. Judge Kelber, do you agree?

6 JUDGE KELBER: No problem.

7 CHAIRPERSON YOUNG: All right. Judge
8 Rubenstein, why don't you go first if you have any
9 questions on the timeliness issues?

10 JUDGE RUBENSTEIN: I really don't have
11 much on timeliness. I'm going to yield to you, Judge
12 Young or Judge Kelber. When we get to scope, I have
13 some questions.

14 CHAIRPERSON YOUNG: Judge Kelber?

15 JUDGE KELBER: Well, I don't understand
16 why it is thought that material which is obviously
17 outside the scope of 6427 is to be considered timely
18 in any way. I understand the references to the use of
19 the word "extent." I think that's quite a stretch.
20 It comes from the same root as extend. I think that's
21 quite a stretch.

22 I believe that the language of the
23 contention and the repeated warnings that we gave
24 during the telephone conferences that considerations
25 related to the PRA response were outside the scope

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1 should have put you on alert that this really is a
2 late filed contention and that it has to meet the
3 timeliness criteria. You cannot site the use of the
4 word "extent" as extenuating.

5 CHAIRPERSON YOUNG: Ms. Curran, do you
6 have a brief response to that?

7 MS. CURRAN: Well, I think Judge Kelber's
8 question is going back to the discussion that we had
9 in the last telephone conference where I explained our
10 interpretation of the Board's order of meeting the
11 contention. I did interpret the language of the order
12 as allowing us to litigate questions regarding of the
13 extent of consideration of NUREG 6427. So I don't
14 think I have anything more that I can add to that
15 except that we relied on the language in that order.

16 JUDGE RUBENSTEIN: This is Judge
17 Rubenstein. It appears that we have gotten into
18 scope. If I can pick up on that at this time and
19 Judge Kelber will yield to me on it.

20 JUDGE KELBER: Certainly.

21 CHAIRPERSON YOUNG: Judge Rubenstein,
22 that's fine with me as well although I did have a
23 couple questions on timeliness.

24 JUDGE RUBENSTEIN: We seem to have drifted
25 into scope.

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1 CHAIRPERSON YOUNG: I can come back.

2 JUDGE RUBENSTEIN: Through a discussion of
3 the transcript from the April 29 meeting, I'd like to
4 give a little background on what one could reasonably
5 view this extent question and the scope, both the
6 written contention and of the scope of the hearings
7 which would allow a certain degree of latitude. I'm
8 sorry we didn't have a Statement of Considerations
9 when we wrote our consolidation contention two.
10 However, we did take great care to narrow the issues
11 and to try to be specific.

12 The original contention as proffered by
13 the intervenors was that the SAMA analysis was
14 incomplete in that it did not take into account (1) a
15 dedicated electric line from a hydroelectric source
16 and (2) the calculations and values used in the --
17 Contractors Report, shorthand notation 6427. There
18 are consolidate contentions. It was the intent of the
19 Board to provide the relief sought by the intervenors
20 in their original drafting of the contention which was
21 consideration of these two items in the SAMA analysis.

22 In the April 24 teleconference, the
23 question of ambiguity in our wording was raised by Ms.
24 Curran. In effect, -- Counsel suggested a broader
25 interpretation of the applicant. I guess a reasonable

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1 person could conclude that this interpretation was
2 consistent or not consistent with the discussion in
3 the background section of the Board's January 24
4 memorandum and order LBP 02-04.

5 In that place, we discussed the various
6 arguments of the parties regarding the original
7 contention. From this, we had hoped an understanding
8 of our redrafted contention could arise. For example,
9 on page 94 of our memorandum and order we wrote "Duke
10 has not considered or applied the values for
11 conditional containment failure probabilities in the
12 NUREG, particularly on containment, vulnerability, and
13 failure probabilities and any consideration of a
14 dedicated line."

15 Our accent or at least certainly mine was
16 "has not considered." Then in the last sentence on
17 page 96 we state, "The intervenors would be entitled
18 to their relief. They seek consideration in Duke's
19 analysis of the NUREG information as a dedicated
20 electric line." Subsequently on page 97 we note "Our
21 ruling admitted only those issues in the refraining of
22 the contention that do not reasonably fall within it."

23 I have to admit we didn't say it, but this
24 was mentioned to be exclusionary as opposed to
25 inclusionary particularly as to the extent of the

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1 responses. Finally at the teleconference Judge Kelber
2 reiterated "The contention was carefully rewritten and
3 was quite limited in scope." This is from the
4 transcript on page 866.

5 Later on Ms. Curran clarified her
6 interpretation when she stated that "As the Board
7 admitted the contention it was not just a question of
8 whether Duke discussed the NUREG or the alternatives
9 but to what extent." That's the first time we really
10 got into a little different interpretation. I'm sorry
11 to say this was then clarified by Judge Kelber and I
12 might add that if he hadn't done so I would have when
13 he stated on page 889 lines 8 through 12 "The
14 contention is solely based on the question of
15 consideration of NUREG 6427. It doesn't address the
16 question of have they estimated the core damage
17 frequency correctly."

18 So based on my selected portions of the
19 record, is there anything you could briefly add that
20 is beyond what was in your submittals that would help
21 clarify this or focus it more clearly? If you're not
22 prepared today, I guess we could entertain some sort
23 of a written response. I'm done, Judge Young.

24 CHAIRPERSON YOUNG: Ms. Curran, did you
25 have a response?

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1 MS. CURRAN: Well, I guess for the most
2 part I go back to what was said in that last
3 teleconference which I think I represented what our
4 good faith interpretation of the order was and the
5 language on which we relied. I also think going back
6 to the original contention, it did go into quite a bit
7 of explanation as to the importance of considering
8 NUREG 6427 and how and why it should be considered.

9 The intention of the original contention
10 was to get into the rationale for incorporating that
11 and the importance of having a good analysis that
12 would address it. So I guess the other thing I would
13 refer back to is the original contention which was
14 quite lengthy as I recall. I guess I really don't
15 have too much more to add other than our reliance on
16 what it says in the Board's decision.

17 CHAIRPERSON YOUNG: I have a question on
18 the timeliness issue.

19 JUDGE RUBENSTEIN: Excuse me. This is
20 Judge Rubenstein. Does Duke or the Staff wish to add
21 anything to this?

22 MR. REPKA: This is Dave Repka for Duke.
23 The only thing I would add is I think we're in
24 complete alignment with the position inherent
25 observations of Judge Kelber and Judge Rubenstein.

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1 The language to the extent of the analysis in the
2 contention that intervenors are relying upon so much
3 is really a red herring. The fact is the information
4 that was relied on in the contention was the NUREG
5 6427 data on the conditional containment failure
6 probability and whether that was used versus Duke's
7 site specific analysis.

8 Really what we have is a binary situation.
9 It's either been considered or it's not been
10 considered. What the company did and the response to
11 the RAI was is the NUREG 6427 conditional containment
12 failure probability. So there really is no issue of
13 the extent. There is no in between state between not
14 using it and using it. I think that whole issue is
15 really a red herring and the language doesn't expand
16 the scope of the contention in any way.

17 CHAIRPERSON YOUNG: Anything further on
18 that? I would like to ask a question on timeliness to
19 Duke.

20 MS. CURRAN: Could I just add one more
21 thing please? This is Diane Curran.

22 CHAIRPERSON YOUNG: Just briefly, yes.

23 MS. CURRAN: Just looking back to the
24 language of the reframed contention. The second part
25 refers to an evaluation of a Severe Accident

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1 Mitigation Alternative. I think the word "evaluation"
2 carries with it the concept of an analysis and what
3 that would consist of not just that it was addressed
4 but that it was evaluated. Implicit in that was there
5 was a PRA evaluation of their analysis.

6 JUDGE RUBENSTEIN: This is Judge
7 Rubenstein. Do you not feel or believe that the
8 clarification in 429 by Judge Kelber and the one I
9 would have offered at that time carries equal or
10 greater weight than that interpretation of what we
11 meant to be a fairly narrow and specific and
12 exclusionary contention?

13 MS. CURRAN: Well, Judge Rubenstein, we
14 are judged in terms of our timeliness based on that
15 decision admitting the contention. So I would say had
16 we not understood your order the way we did we might
17 have leapt on the RAI responses right away and amended
18 the contention. In which case, we wouldn't be arguing
19 about timeliness now. So I think it is important that
20 we relied on that language.

21 I mean, now it is clear that it was not
22 what you intended. You've explained that. But I
23 guess the question is did we reasonably rely on that
24 because it certainly has been argued by the NRC Staff
25 that we sat on our hands while these RAI responses

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1 came out and we didn't amend the contention. We did
2 that because we thought we were entitled in the
3 hearing to question the extent to which the analysis
4 incorporated the NUREG.

5 JUDGE RUBENSTEIN: This is Judge
6 Rubenstein again. I would agree that it is not
7 unreasonable for each of the parties and the Board to
8 slightly differ in interpretation. I guess I hinge a
9 lot of it on the clear statement by Judge Kelber on
10 what we meant subsequently. I guess it explored the
11 subject adequately at least in my mind. I would
12 suggest to Judge Young that we can move on.

13 CHAIRPERSON YOUNG: I do have a question
14 about timeliness before we move on. I'd also like to
15 just say obviously whenever any tribunal issues and
16 order, memorandum and order, the interpretation of it
17 is something that can differ depending upon the
18 reader. I am very hesitant as the Administrative
19 Judge to go back and state what I meant or did not
20 mean by certain words because I think that the words
21 of our memorandum and order have to stand as they are.

22 I do not undertake here at all to indicate
23 in any way what I intended by any of the language in
24 the order. I think what we need to look at is what
25 the order said and what could be drawn from that since

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1 we are in this position of evaluating the timeliness
2 of the late filed contention which leads me to my
3 question of Duke and the Staff. I went back and read
4 through some of the transcripts of our conferences
5 after issuance of our memorandum and order.

6 I found several places in the transcripts
7 in which the discussion in so far as it addressed
8 contention two seemed to assume that litigation would
9 proceed forward on contention two if the settlement
10 discussions that were based on the RAI responses were
11 not successful. I would direct the parties to pages
12 846 to the end of the April 10 conference and pages
13 741 to the end of the March 13 conference.

14 Mr. Repka, just to help you out a little
15 bit realizing that you can't quickly read through all
16 those pages, on page 845 after talking about
17 contention one and recalling that what we were doing
18 at that point was proceeding to our planned hearing on
19 contention one and in effect putting off the
20 consideration of contention two until after we had
21 concentrated on contention one with however the
22 continuing settlement discussions based on the RAI
23 responses going on to the extent possible. In the
24 context of that at the after we've been discussing
25 contention one on April 10 I think it was on page 846

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1 I said what kind of progress are you making on
2 contention two.

3 Mr. Repka, you said Mr. Zeller and I have
4 spoken. I think it's fair to say we've not made any
5 progress. At this point I think the assumption is
6 we're proceeding on that contention. There are
7 several other similar references by all of us that
8 might arguably lead one who was in the middle of that
9 to conclude that hearings would proceed on the
10 contention notwithstanding the RAI responses had been
11 filed.

12 I think it was not until April 29 when you
13 indicated that it was your belief that the RAI
14 responses had in effect mooded out contention two. So
15 in view of all that long preface, Mr. Repka, do you
16 find it unreasonable that a party in that context and
17 given the language in our order, using the language to
18 what extent, might conclude that we were in fact
19 planning to go forward to litigate contention two if
20 settlement negotiations were not successful.

21 MR. REPKA: Yes, Judge Young. This is
22 Dave Repka. The first thing I would say is our
23 position with respect to the mooding of the
24 contentions has been public since we filed our appeal
25 with the Commission. We did take that position in the

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1 appeal to the Commission. I don't remember the exact
2 date, but that's long prior to April 29 or whatever.

3 CHAIRPERSON YOUNG: Well, let me interrupt
4 you. You'll forgive me if I'm concentrating more on
5 the proceedings before us. One of the things that we
6 always ask and obviously we know you had filed that
7 contention but I'm a little confused about why you
8 continued to go forward with negotiations and didn't
9 state that to all of us in the context of this
10 proceeding.

11 MR. REPKA: Our feeling was that if we
12 went forward on that contention there would be an
13 opportunity for dispositive motion set in the
14 schedule. That clearly would have been our intent to
15 file a dispositive motion at the appropriate time.
16 The feeling was that the Board wouldn't set a schedule
17 for that until after (A) settlement discussions had
18 failed and (B) that there might be some period for
19 discovering. We clearly intended and it would have
20 been our plan all along to file a dispositive motion.

21 I don't think any of that would make any
22 of the intervenor's amended contentions timely. I
23 don't see the relationship whatsoever. The fact of
24 the matter is these contentions far exceed the narrow
25 issue of the data in the NUREG. It's really based on

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1 information that was available in the PRAs. It was
2 available in the original SAMA evaluations. The time-
3 line for judging when a lot of this information was
4 available really goes back to the original application
5 and the original SAMA evaluation. So I'm not sure
6 where we even get into this idea that there's some
7 ambiguity in early, the first quarter of 2002
8 justifies untimely raising of concerns related to core
9 damage frequency. That simply doesn't follow.

10 CHAIRPERSON YOUNG: Mr. Repka, let's
11 separate out those issues because I think you have a
12 very good point with regard to any information that
13 was previously available. I think we'll get into that
14 definitely in discussing individual parts of the
15 contention. But assuming for the sake of argument
16 that there may be some parts of the late filed
17 amendment to contention two that are based on the RAI
18 responses, let's address those solely at this point on
19 the issue of timeliness.

20 Assuming that the only reference to your
21 belief that the RAI responses muddled out the
22 contention was in the proceeding before the Commission
23 and not before the Board that the only reference of
24 that nature prior to April 29 was to the Commission.
25 I guess I --

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1 MR. REPKA: I'm not sure that's factually
2 correct either Judge Young. I certainly had
3 discussions in the time after the appeal was filed in
4 the context of settlement discussions with Ms. Olson
5 subsequent to that with Ms. Curran. I'm certain that
6 in our position that we had done precisely what the
7 contention asked for has been articulated. Whether
8 it's on the record or in the settlement discussions I
9 can't tell you. By no conceivable stretch can you
10 conclude that the position was a secret.

11 CHAIRPERSON YOUNG: The position --

12 JUDGE KELBER: Might I interject an
13 observation? This is Judge Kelber. I do believe that
14 from one of the early telephone conferences where we
15 focused mainly on contention one that you did indeed
16 bring up the mooding of that. Let me ask you. Is it
17 necessary for us to ask you to make a motion to
18 dismiss?

19 CHAIRPERSON YOUNG: We did as he said put
20 that issue off. I think he's right on that. We
21 decided that we'd put everything off on motions and
22 discovery on contention two until after we had
23 finished with this preliminary hearing on contention
24 one that we were planning to do. So I think Mr. Repka
25 is right on that.

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1 But Mr. Repka, if you are right and you
2 did make any statements earlier than April 29 on your
3 position that contention two was mooded out by the RAI
4 responses then certainly I think that's something that
5 we would like to know because my question was really
6 based on my understanding that you had not said that
7 prior to April 29. That's when Ms. Curran responded
8 with the to what extent language. I think that's when
9 I went into the discussion about the precedent on
10 mooding out contentions and deadlines for late filed
11 contentions and so forth.

12 If you don't have anything to add on that,
13 then I agree with Judge Rubenstein. We can move on.
14 I would suggest that on the scope issues that those
15 are probably dealt with more efficiently by taking
16 them part by part. Judge Rubenstein, would you
17 disagree with that? Is that all right with you?
18 Judge Rubenstein, are you still on?

19 (No response.)

20 MR. REPKA: Apparently we've lost him.

21 CHAIRPERSON YOUNG: Maybe we need to take
22 a break and find out what the situation is with the
23 phone connection with Judge Rubenstein.

24 MS. CURRAN: Judge Young?

25 CHAIRPERSON YOUNG: Yes.

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1 MS. CURRAN: To give some input on that,
2 the Board's voices periodically break up for me.
3 That's why I had to ask Judge Kelber to repeat that
4 number. It doesn't last very long, but I'll lose a
5 word or two every couple of minutes.

6 CHAIRPERSON YOUNG: Right. And actually
7 that's -- Judge Rubenstein?

8 JUDGE RUBENSTEIN: Yes.

9 CHAIRPERSON YOUNG: Oh good. How long did
10 we lose you for?

11 JUDGE RUBENSTEIN: A few minutes.

12 CHAIRPERSON YOUNG: Okay. Let me back up
13 to address Ms. Curran's point. Ms. Curran, and this
14 is for the Court Reporter, that's why I told the Court
15 Reporter at the beginning please interrupt us if we do
16 start breaking up. Anyone please interject if anyone
17 is breaking up and we're not hearing someone because
18 we want to make sure everyone hears everyone else and
19 that the Court Reporter gets everything down.

20 Judge Rubenstein, what I had just said was
21 to move on from the timeliness issue now. It seems
22 that it might be more efficient to discuss the scope
23 issue in conjunction with each of the contention parts
24 and discuss that along with the admissibility
25 requirements rather than discussing the scope issue

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1 with regard to each and then going back and discussing
2 the admissibility issues with regard to each. Do you
3 have any --

4 JUDGE RUBENSTEIN: No objections
5 whatsoever.

6 CHAIRPERSON YOUNG: Okay. Great. Judge
7 Kelber, is that all right with you?

8 JUDGE KELBER: Yes.

9 CHAIRPERSON YOUNG: Okay.

10 MS. CURRAN: Judge Young?

11 CHAIRPERSON YOUNG: Yes.

12 MS. CURRAN: This is Diane Curran. I
13 don't know when a good time would be but at some point
14 I would like to ask for a short break.

15 CHAIRPERSON YOUNG: Anyone object to
16 taking a short break right now?

17 (No response.)

18 CHAIRPERSON YOUNG: Then we'll put you on
19 mute.

20 COURT REPORTER: Judge Young?

21 CHAIRPERSON YOUNG: Yes.

22 COURT REPORTER: We're still on the
23 record.

24 CHAIRPERSON YOUNG: We can go off the
25 record right now for about as close to five as

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1 possible. We're going to put you on mute. Off the
2 record.

3 (Whereupon, the foregoing matter went off
4 the record at 11:05 a.m. and went back on
5 the record at 11:16 a.m.)

6 CHAIRPERSON YOUNG: On the record.

7 MR. REPKA: Judge Young? What about Judge
8 Rubenstein?

9 CHAIRPERSON YOUNG: He's here. I heard
10 you Judge Rubenstein. Didn't I?

11 JUDGE RUBENSTEIN: Yes you did.

12 MR. HECK: This is Jared Heck from the
13 Staff. We're here.

14 CHAIRPERSON YOUNG: Great. All right.

15 MR. REPKA: Judge Young, this is Dave
16 Repka.

17 CHAIRPERSON YOUNG: Yes.

18 MR. REPKA: May I bring up one thing
19 before we move on to your next question?

20 CHAIRPERSON YOUNG: Please go ahead.

21 MR. REPKA: I would like to respond to I
22 think a question that Judge Kelber started to ask. I
23 think his question was do we need a motion to dismiss.
24 I think my answer to that question would be at this
25 point no if the Board came to that conclusion that the

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1 issue was moved that they wouldn't. In any event, we
2 have made the suggestion in our June 10 filing in the
3 conclusion that previously admitted consolidated
4 contention two should be dismissed as moot. It
5 doesn't have the title motion on there but if that
6 needs to be a motion we're happy to make that a
7 motion. So just to respond to that question, I think
8 the answer is no other paper is necessary but if the
9 Board thinks such a paper would be necessary we're
10 happy to make such a motion.

11 CHAIRPERSON YOUNG: Given what you said,
12 I'm not sure that any paper is necessary. Does the
13 Staff or intervenors have anything different to argue?

14 MR. HECK: Jared Heck from the Staff, Your
15 Honor. We don't have anything else to add.

16 MS. CURRAN: Neither does Friedel (PH) and
17 NIRS.

18 JUDGE KELBER: I would like -- We're on
19 the record. Aren't we?

20 CHAIRPERSON YOUNG: Court Reporter, we've
21 been on the record since I started talking. Correct?

22 COURT REPORTER: Yes, ma'am.

23 CHAIRPERSON YOUNG: Great. Thank you.

24 JUDGE KELBER: Okay. Just to say that
25 during the break I took a look and the first issue

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1 instance that I can find where there's a discussion of
2 mooding of contention two is mentioned on page 696 of
3 the transcript.

4 COURT REPORTER: I'm sorry. Could you
5 identify yourself please?

6 JUDGE KELBER: Judge Kelber. It's page
7 696. It's in the February 12, 2002 teleconference.

8 MR. REPKA: Yes, Judge Kelber. We have
9 not completed our search of the record, but that would
10 seem to make sense. The RAI responses were on
11 February 1 and January 31 I believe.

12 CHAIRPERSON YOUNG: Thank you. Then with
13 regard to any need for a motion to dismiss I think the
14 posture of the case at this point is if the Board
15 finds that any or all parts of amended consolidated
16 contention two would be admitted, then there would be
17 no need to address a motion to dismiss -- If on the
18 other hand the Board were to determine that no parts
19 of amended consolidated contention two be admitted,
20 then we would consider the motion to dismiss -- at
21 that point. Does anyone disagree with that statement
22 of the posture of the case?

23 MR. REPKA: No, Your Honor, from David.

24 CHAIRPERSON YOUNG: And from the Staff and
25 intervenors.

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1 MS. CURRAN: This is Diane Curran. We
2 wouldn't disagree with that.

3 MS. UTTAL: Staff does not disagree.

4 CHAIRPERSON YOUNG: Okay. Then we'll
5 consider that that's how we will proceed. With that
6 said, Judge Kelber or Judge Rubenstein, I think I
7 asked you before we went off into the more organized
8 questions about timeliness first but do you have any
9 questions about the first paragraph of amended
10 consolidated contention two before we get into the
11 sub-parts?

12 JUDGE RUBENSTEIN: This is Judge
13 Rubenstein. I don't.

14 JUDGE KELBER: No. I do not. This is
15 Judge Kelber.

16 CHAIRPERSON YOUNG: Okay. There are
17 several general questions that I have. They don't
18 necessarily relate to any particular part but may
19 relate to more than one. So it might be efficient if
20 I just -- Well, I was going to say read those but
21 maybe that's not true. Maybe I'll just save them for
22 as we go through the contentions.

23 So as to sub-part one "The SAMA analysis
24 contains the following deficiencies: (1) failure to
25 evaluate alternative of -- licenses. Judge Kelber or

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1 Judge Rubenstein, do you have any questions on that
2 sub-part?

3 JUDGE KELBER: This is Judge Kelber. Sub-
4 part one?

5 CHAIRPERSON YOUNG: Right.

6 JUDGE KELBER: No. I do not.

7 JUDGE RUBENSTEIN: This is Judge
8 Rubenstein, no.

9 CHAIRPERSON YOUNG: I guess my question on
10 that one is to the intervenors. How does this
11 contention arise out of the RAI responses as opposed
12 to being something that could have been raised
13 earlier?

14 MS. CURRAN: This is Diane Curran. First
15 off, I would like to say that there is a clerical
16 error in this contention that I did not mention the
17 regulation that applies here but which did identify
18 the proper regulation. It's 10 CFR 51.95 sub-section
19 C, sub-section 4.

20 This sub-part of the contention relates to
21 the significant conclusion of NUREG/CR 6427 that the
22 containment would not be strong enough or robust
23 enough to withstand a hydrogen explosion. This
24 information from the NUREG was not specifically
25 addressed in connection with compliance with that

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1 standard.

2 JUDGE RUBENSTEIN: This is Judge
3 Rubenstein. Would this not be covered by the current
4 activity on Generic Safety Issue 189 and be part of
5 the current licensing basis?

6 MS. CURRAN: Well, that's a good question
7 that has come up a number of times in this case. Let
8 me tell you how we view that. It seems to us that
9 there's two regulatory rule books here. One is the
10 safety and design basis rule book that has to do with
11 resolving Generic Safety Issues. The other is NEPA.

12 The context in which this contention is
13 being brought is a NEPA context. The fact that an
14 issue is being dealt with in the safety realm does not
15 necessarily resolve the NEPA issue. It's really
16 possible that the staff will come to a resolution of
17 Generic Safety Issue 189 that will satisfy the
18 intervenors and we will decide not to pursue this
19 contention. That's very possible. But that will
20 happen at some point in the future.

21 In the meantime, the fact that an issue is
22 being dealt with in the safety realm does not mean
23 that it's precluded from being addressed under NEPA.
24 I also had a difficult time understanding how that
25 argument could be advanced because NEPA of course

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1 requires the Agency to address significant adverse
2 environmental impacts. As long as those impacts are
3 out there and have not been resolved then this is a
4 live NEPA issue.

5 JUDGE RUBENSTEIN: This is Judge
6 Rubenstein again. Our carefully drawn reconstituted
7 contention two is highly focused. Is there an exit
8 between this and the REI responses?

9 MS. CURRAN: Well the REI responses
10 purport to specifically address new reg 6427. This is
11 one aspect in which they don't.

12 CHAIRPERSON YOUNG: I guess I would also
13 add. I understand that you're saying that your
14 position is the matter in which Duke addresses 6427 is
15 inadequate and that one of the ways in which it's
16 inadequate is that it does not consider the options of
17 not renewing the license. But I guess it does occur
18 to me that that argument could have eased prior to the
19 responses to the REI.

20 One of the things that should be
21 considered based on 6427 or based on the statute or
22 based on NEPA that all of those arguments could have
23 been made earlier just as easily as they could be
24 raised now. I'm not really following what was
25 different then such that you could not have raised the

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1 issue at that point.

2 MS. CURRAN: This is Diane Curran. I
3 think we did really the general issue that USCR-6427
4 was not addressed at all.

5 CHAIRPERSON YOUNG: Right. But I'm
6 limiting my question to failure to evaluate the
7 alternative of not renewing the licenses. I could be
8 wrong but I don't recall that that was raised before.
9 I don't see how it was impossible to raise that
10 earlier. That it barely arises out of the REI
11 responses to the exclusion of raising it earlier.

12 JUDGE RUBENSTEIN: This is Judge
13 Rubenstein. I'll give you a chance to think. I have
14 the same problem as Judge Young does. I fail to see
15 the relationship.

16 JUDGE KELBER: Now this is Judge Kelber.
17 NUREG/CR 6427 addresses among other things the
18 activation of igniters and air return fans. It does
19 not address at any point simply abandoning the site or
20 abandoning the plant I should say. I don't really
21 understand what this has to do with NUREG/CR 6427.

22 DR. LYMAN: Hi, this is Dr. Lyman. Can I
23 just interject? On this point, the hydrating (PH)
24 ignition is not the only containment failure mode that
25 it is analyzed in NUREG/CR 6427. So from that point

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1 of view even providing a power to the ignators and the
2 SBO will not completely eliminate the risk of early
3 containment failure due to other modes including DCH
4 or containment liner meltthrough.

5 JUDGE KELBER: I think everybody
6 understands that, Dr. Lyman.

7 DR. LYMAN: From that point of view then
8 even the power of the ignitors and the air return fans
9 will not necessarily completely eliminate the risk to
10 the public and the sites. So from that point of view
11 it does provide evidence that the option of not
12 renewing the license has an environmental impact and
13 should be considered.

14 JUDGE KELBER: This is Judge Kelber. Dr.
15 Lyman, the point is that the Commission has in fact
16 issued guidance to nuclear plant operators on the
17 value of their early containment failure frequency.
18 That guidance is based on the environmental effect of
19 such failures. So that's true for all plants.

20 But NUREG/CR 6427 does not discuss that
21 alternative of shutting down the plant. Moreover
22 that's part of the current licensing basis because the
23 period of license renewal comes sometimes in the
24 future.

25 CHAIRPERSON YOUNG: Before you answer, I

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1 think really without getting into the merits even my
2 question was could this issue not have been raised
3 earlier. Was there anything that prevented this issue
4 from being raised earlier prior to the following of
5 the REI responses?

6 MS. CURRAN: This is Diane Curran. I'm
7 sorry if I seem to keep repeating myself but we feel
8 that the issue was raised in a general sense. That
9 first contention said this application does not take
10 NUREG/CR 6427 into consideration.

11 CHAIRPERSON YOUNG: Let me interrupt here.
12 I'm really trying to zero in on a very small point but
13 it's critical with regard to this particular part of
14 your amended consolidated contention two and that is
15 I do understand that the previous contention raised
16 the due lack of reference two or reliance on NUREG
17 6427. My question is could you not have raised the
18 issue, the alternative of not renewing license earlier
19 and I'm not hearing a response. Moreover, I don't
20 think that saying that you raised the lack of
21 consideration earlier to be equivalent to having
22 earlier raised the alternative of not renewing the
23 licenses.

24 MR. ZELLER: This is Lou Zeller. But we
25 do go further in that in our original contention we

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1 said that licensing not only failed to address it but
2 that our searches of the 626 page application and
3 Appendix B of the application for NUREG 6427 yielded
4 no information.

5 CHAIRPERSON YOUNG: Mr. Zeller, I'm going
6 to ask you to do the same thing that Dr. Lyman did.
7 That is normally in a legal proceeding Counsel speaks
8 for the client. So if you want to speak ask if you
9 may be heard and then the Board will determine whether
10 you may.

11 I would prefer to start with Ms. Curran
12 and then to the extent that Dr. Lyman's expertise
13 might play in that might be appropriate. But with
14 regard to the general legal arguments, Ms. Curran is
15 your lawyer and I would like to hear from her.

16 MS. CURRAN: Judge Young?

17 CHAIRPERSON YOUNG: Yes.

18 MS. CURRAN: Diane Curran. In response to
19 your question I think I understand what you're asking.
20 I guess that part of the answer is yes we could have
21 raised Duke's failure to address that requirement of
22 looking at the option of not seeking license renewal.
23 But I think the important part is that NUREG/CR 6427
24 makes that option more significant.

25 CHAIRPERSON YOUNG: Right. But you could

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1 have raised that earlier also. Could you not have?
2 I understand what you're saying that it does raise the
3 significance from your position but you could have
4 raised that argument earlier because you were aware of
5 6427 or aware in your mind Duke had not addressed or
6 included those calculations. So you could have in the
7 initial contention said and also based on the findings
8 of NUREG 6427 Duke failed to sufficiently evaluate the
9 alternative of not renewing the license.

10 MS. CURRAN: I think what we thought was
11 that the failure in any respect to consider mentioning
12 6427 that was the first thing that we focused on.
13 This hasn't been dealt with at all. Then of course
14 once they do deal with it, you look at each aspect in
15 order to say deal with it and then say okay they
16 missed this or that or the other thing in dealing with
17 it. That was the practice that we went through.

18 Our first concern was this isn't anywhere
19 in here. Nowhere is this significant document
20 mentioned. The second step that we took in this
21 amended contention was to once they had addressed it
22 to go into specific aspects of whether that was
23 sufficient.

24 CHAIRPERSON YOUNG: The only other
25 question I have on this one and then I think we

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1 probably need to move along unless Judge Kelber and
2 Judge Rubenstein have more questions on this is I
3 would like to hear from you or if you would prefer it
4 might be appropriate to be done in writing responses
5 to the citations that the staff provided on page 12 of
6 this response regarding the scope of alternatives that
7 are intended to be addressed in the SAMA analysis.

8 I'm reading into that as opposed to an
9 environmental report or EIS in which I understand the
10 staff and possibly Duke's position to be that this
11 alternative has been considered in the ER and EIS or
12 DEIS. Even though I understand your arguments not
13 that you don't find that it does that sufficiently but
14 the staff has cited some authority for its focus of
15 the SAMA analysis. Do you have any response at this
16 point on that?

17 MS. CURRAN: I'm sorry I don't and I would
18 like an opportunity to address it in writing.

19 CHAIRPERSON YOUNG: All right. Any other
20 questions on subpart one?

21 (No response.)

22 CHAIRPERSON YOUNG: Then moving on to
23 subpart two.

24 JUDGE RUBENSTEIN: Judge Young. I merely
25 say that your concern would be better served if you

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1 follow Dr. Lyman's logic by filing a 2.206.

2 CHAIRPERSON YOUNG: That's on number one.

3 JUDGE RUBENSTEIN: That's right.

4 JUDGE KELBER: Going on to subsection two.

5 CHAIRPERSON YOUNG: Yes, go ahead, Judge
6 Kelber.

7 JUDGE KELBER: I have just two questions
8 which really go to the scope. Does NUREG 6427 or the
9 response to REI 3C or 4 contain any discussion of the
10 analysis of cost benefit ratios? The second question
11 does the SAMA analysis present in the environmental
12 report contain any discussion of the PRA? Now I'm
13 restricting that to the SAMA analysis. Those are the
14 two questions I have.

15 MS. CURRAN: Can you repeat the first
16 question?

17 JUDGE KELBER: Does NUREG 6427 or the
18 response to REI 3C or 4 contain any discussion of the
19 analysis of cost benefit ratios?

20 MS. CURRAN: The response to REI 4 does.
21 I'm not sure it's in 3.

22 DR. LYMAN: But it should be. Number
23 three has implications for the cost benefits.

24 MS. CURRAN: The issue is that the answer
25 to three has implications for the cost benefit

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1 analysis.

2 JUDGE KELBER: I understand that. I
3 didn't ask that question about implications. I asked
4 the question about is it referenced in there at all
5 explicitly and not by implication.

6 MS. CURRAN: Not explicitly referenced but
7 we would direct you to the answer to four. What was
8 the second question if I finished answering the first
9 question?

10 JUDGE KELBER: Where in four do you see
11 anything about the SAMA analysis?

12 CHAIRPERSON YOUNG: Back to REI four.

13 JUDGE KELBER: Okay. I take that back.

14 MS. CURRAN: But have we answered your
15 first question completely?

16 CHAIRPERSON YOUNG: I have a question.
17 You questioned the adequacy of these responses in
18 their failure to provide the PRA to show the basis for
19 its conclusions. My question is do you demonstrate
20 the inadequacy in any other way or show that the lack
21 of PRA affirmatively indicates specific problems as
22 opposed to what Duke and the staff would and I'm
23 paraphrasing merely raising what could arguably be
24 termed speculative questions.

25 In other words, you say with active PRAs

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1 we cannot evaluate it but do you say there is any
2 affirmatively wrong based on the lack of the PRAs or
3 in the responses themselves that you refer to here.

4 MS. CURRAN: This is Diane Curran.

5 CHAIRPERSON YOUNG: It just to add to your
6 thinking process. The staff did indicate that there
7 has been publication of portions of the PRA. I was
8 wondering whether you had looked at those.

9 MS. CURRAN: We looked at the information
10 that is provided in the REI responses. But I'd like
11 to get back to the question of what you would call a
12 circular problem here. We haven't been given any of
13 the details of the PRA analysis that would allow us to
14 make a meaningful critique of it or of how NUREG 6427
15 was taken into account.

16 Therefore the staff and the Applicant
17 argue that we haven't been specific in making
18 criticisms of the analysis. I would like to back-up
19 a step and look at the whole approach to the use of
20 PRA and this particular licensing proceeding and also
21 in others.

22 There is an NRC regulation, NCFR 51.45 (c)
23 which pertains to environmental reports and states
24 that environmental factors should be quantified to the
25 fullest extent practicable. Certainly it's the case

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1 that more and more and to a great extent in this case
2 Probabilistic Risk Assessment is being used to address
3 compliance with NEPA. It's very much relied on in
4 this case.

5 So that it seems to us that if this is to
6 be relied on, if the use of PRA is going to be heavily
7 relied on by applicants for licenses they have to take
8 the bitter with the sweet. They have to expose to the
9 public what it is they are using, the details of what
10 they are doing because in a PRA the devil is in the
11 details. We are somewhat hamstrung by the fact that
12 we can't get at the details. It isn't exactly
13 surprising that we can't make a detailed critique of
14 the analysis that was done because we have no access
15 to it.

16 Our only recourse to deal with that was to
17 frame this as a contention. This particular
18 application relies to a significant extent on the use
19 of PRA. But the PRA itself is not being disclosed so
20 that one can see if it was done adequately or whether
21 the new information from NUREG/CR 6427 had been
22 incorporated adequately into that quantitative
23 analysis.

24 CHAIRPERSON YOUNG: I understand that and
25 I do appreciate your point about the circularity. As

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1 a matter of fact, I intend to ask and I want to ask
2 Duke to address this issue of it's almost a line
3 drawing analysis. If an applicant came in and just
4 made a bare statement, we've analyzed this and we've
5 concluded X, Y, Z.

6 I think probably, Mr. Repka, you would
7 agree that there is some point at which an application
8 can provide such minimal information and basis and
9 analysis for the conclusions or the propositions that
10 it's making in the application. Well, do you agree?
11 There would some point at which it could be so minimal
12 that it would not acceptable. That's why for example
13 staff follows REI. Mr. Repka?

14 MR. REPKA: This is Dave Repka. The
15 burden is always on the intervenor to provide basic
16 specific contention.

17 CHAIRPERSON YOUNG: I understand that.
18 What I'm trying to get you to address though and what
19 I would really like both parties to address that is
20 there is issue and I've seen it come up in other cases
21 where the contention is that an application has not
22 sufficiently explained how it's going to handle X, Y,
23 Z to protect the public health for example. The
24 applicant says something to the effect of we don't
25 have to tell you how. The intervenor has the burden

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1 of providing a contention that explains where we've
2 gone. It becomes a head-knocking kind of exercise at
3 that point.

4 What I have more or less concluded is that
5 it's a line drawing exercise that a contention can
6 challenge the adequacy of a portion of an application
7 but obviously there's a line drawn between what's
8 sufficient to be able to demonstrate that whatever is
9 being undertaken will be safe for the environment and
10 the public and so forth. It's something that's either
11 too minimal to provide any or sufficient information
12 or that would require too much and be overly
13 burdensome. I would like to ask Duke to address this
14 line drawing question. It's that question alone.

15 Then again back to the intervenors my
16 question was very narrow and focused on parts of a
17 line drawing issue which I think is a valid question.
18 Apart from that are there any specific problems that
19 you have posed in this particular subpart of amended
20 contention two apart from alleging that the failure to
21 provide the PRAs is a problem?

22 So you can take that in whichever order
23 you want. Whoever needs time to think can go second.
24 Who would like to go first? Did you understand the
25 two fairly focused questions I have? One for each of

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1 you?

2 MR. REPKA: This is Dave Repka. I think
3 I understand the question. I think the question is
4 can the intervenor allege if there's insufficient
5 information and therefore have a contention based upon
6 that alone.

7 CHAIRPERSON YOUNG: Well, insufficient
8 information to meet whatever standards at issue.

9 MR. REPKA: And the answer is no. I don't
10 think you can just say there's insufficient
11 information. You still need an affirmative showing of
12 something on some basis that you think is missing.
13 That's number one. Number two in addition you have an
14 iron clad obligation to search the record, the public
15 record, to review what is available publicly in order
16 to make that finding that there's an affirmative
17 deficiency in your view. In this particular case, I
18 think you, Judge Young, have raised the possibility of
19 a scenario in which an issue is simply not direct or
20 there is no information available.

21 CHAIRPERSON YOUNG: But I pose that to
22 illustrate the line drawing quality because if we had
23 that scenario and I realize it's extreme but say
24 there's nothing in the public record on a particular
25 issue and an applicant provides just bare bones,

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1 minimal conclusory information I think you would
2 probably agree that a contestant could challenge that
3 as being insufficient.

4 JUDGE RUBENSTEIN: A contestant could
5 challenge that as being insufficient but still would
6 need an affirmative showing as to what it is that must
7 be addressed and what the basis for that conclusion
8 is. That's number one.

9 And number two in this particular case
10 we're talking about a demo evaluation that was
11 submitted last year that's just a fairly detailed
12 description of what's been done that in fact included
13 references in section 8.0 of both demo evaluations to
14 substantial docketed material on the PRA including in
15 the case of McGuire the fact that the PRA had been
16 submitted on the docket and it's available on the
17 docket.

18 With respect to Catawba, the submittal had
19 included the prior version of the PRA. So there was
20 substantial information out there. So the scenario
21 that you raised simply doesn't exist here.

22 In the third argument among others here is
23 simply that none of this in any way is dependant upon
24 NUREG 6427 and the REI response. All of this are
25 issues and substantive material that was available

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1 since day one in this proceeding. Apart from just the
2 lack of an affirmative showing, there is also the time
3 in this argument.

4 CHAIRPERSON YOUNG: Actually that was my
5 next question for the Petitioners. How does this
6 particular subpart relate to the REIs and arrived out
7 of them as opposed to being something -- Obviously
8 you're saying that they failed to provide adequate
9 support for the concluding results and the REI
10 responses but was not a lot of the information
11 available in the public record?

12 MS. CURRAN: Okay. This is Diane Curran.
13 I want to get back to your first question too.

14 CHAIRPERSON YOUNG: Right.

15 MS. CURRAN: But maybe I can do both as I
16 go through. What we tried to do in this subpart of
17 the contention was to provide examples of the
18 difficulty of verifying the reasonableness of the Duke
19 SAMA analysis. We specifically referred to REI
20 responses and general statements that were made in
21 those responses. So we did tie this back to the REI
22 responses.

23 One of the problems we raised is that the
24 things are factors that are described in qualitative
25 terms and we don't have a way of determining what the

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1 quantitative factors that were used. We also point
2 out things that seem to be anomalous that raise red
3 flags for us. We're doing as much as we can do based
4 on incomplete information. We're trying to identify
5 places where qualitative statements are made that we
6 have no way of evaluating whether we would agree with
7 those qualitative judgements.

8 CHAIRPERSON YOUNG: Have you in this part
9 of the contention asserted apart from your failure to
10 analyze any impact of the failure to provide the PRA?
11 In other words, public safety, environmental
12 considerations. I think that's what Mr. Repka was
13 getting at and it's also related to the first question
14 I asked you. What's the impact of not providing the
15 PRA responses other than you're not being able to do
16 an analysis? And without putting any value on that
17 one way or the other, do you have any response on the
18 impact?

19 MS. CURRAN: There's an overall question
20 of public confidence in the results here. If you
21 can't evaluate what went into this analysis how can
22 you have confidence in the ultimate result? There are
23 qualitative judgements least significantly reduced.
24 What does that mean? Unless you can look at the whole
25 picture you can't come out with your general

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1 bottomline statement unless you had a chance to look
2 at how the pieces fit together.

3 It seems like the more handicapped we are
4 by the failure to disclose information the more
5 difficult it is to get to that bottomline and show
6 that this affects the bottomline. We don't know
7 because there's a whole array of things we haven't
8 seen. We would also differ with Mr. Repka on how much
9 of this PRA is on the record. It's only parts of the
10 PRA. The IPE is but there's parts of the PRA that
11 have not made it on to the records. It's very clear.

12 JUDGE KELBER: Ms. Curran, this is Judge
13 Kelber. When you say you referenced REI you are
14 referencing actually REI 1 a, b, and c. Is that not
15 correct?

16 MS. CURRAN: It's part of the contention.

17 JUDGE KELBER: Correct.

18 MS. CURRAN: It looks like it, yes.

19 JUDGE KELBER: Okay. Those have nothing
20 to do with 6427 of course. Did you in fact look at
21 the parts of that PRA that are published and are
22 available?

23 MS. CURRAN: Hold on just a minute. Could
24 Dr. Lyman answer this question because he's the person
25 that would be responsible for looking at it?

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1 DR. LYMAN: I certainly was not aware that
2 the entire McGuire PRA was being available to the
3 public. But certainly the most recent conversion is
4 not. That is what we would need to assess the
5 information that is in the --

6 JUDGE KELBER: You did not look at what
7 exists in the public record.

8 DR. LYMAN: I would like to ask Duke if it
9 is true that the higher McGuire PRA is available to
10 the public right now.

11 MR. REPKA: This is Dave Repka. First I
12 would say that the reference as to what's been on the
13 public docket were included in the original SAMA
14 evaluation so this is not new information. Second
15 thing I would say actually I will let Mr. Brewer with
16 the leave of the Board describe exactly what's in the
17 March 19, 1998 submittal from McGuire and in a similar
18 submittal from Catawba.

19 JUDGE KELBER: Thank you. Mr. Brewer, you
20 may proceed.

21 MR. BREWER: This is Duncan Brewer. I'm
22 the manager of the PRA group at Duke Power Company.
23 As part of our IPE submittal rather than submitting
24 only the information required by the NRC we submitted
25 our entire PRA for both McGuire and Catawba. So the

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1 full PRA is on record including all fault -- and all
2 data that were used and all initiating event
3 frequencies. The human reliability actions and the
4 basis for this so the original IPE and the full PRA
5 was submitted to the NRC on the docket.

6 DR. LYMAN: But how does the current PRA -
7 -

8 MR. BREWER: I'm not finished yet. If I
9 could finish.

10 DR. LYMAN: This is Dr. Lyman.

11 MR. BREWER: Dr. Lyman, I would like to
12 continue. Following that whenever we did a revision
13 to that PRA we submitted a very detailed summary
14 report that included the system models, the data that
15 was used in the PRA, the initiating event frequencies
16 and how they were calculated, the human reliability
17 data, and the top 100 cuts for both internal events
18 and external events as well as an explanation for the
19 difference in the results between that and the
20 original IPE submittal. That is on the docket also
21 for both McGuire and Catawba.

22 Following that we revised Catawba one more
23 time. That was the verdict that was used for the SAMA
24 analysis for Catawba. Then we put on the docket a
25 summary of the changes and the results for that

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1 particular PRA. This combined with the responses to
2 the REI I think provide an adequate amount of
3 information that someone could very easily take our
4 PRA along with the NUREG containment failure
5 probabilities and the level three analysis that we
6 provided and do a SAMA evaluation for virtually
7 anything. In fact that's what the university did do
8 and reported it in their environmental impact study.

9 JUDGE KELBER: Mr. Brewer, this is Judge
10 Kelber. As I understand your answer, you could take
11 the original IPE report which as you say contains
12 levels 2 and 3 as well as level 1.

13 MR. BREWER: That's correct.

14 JUDGE KELBER: You would take the
15 subsequent summaries of the changes to revise it.

16 MR. BREWER: That's correct.

17 JUDGE KELBER: Then you would have the up-
18 to-date PRA.

19 MR. BREWER: Yes.

20 JUDGE KELBER: That material has all been
21 published.

22 MR. BREWER: Yes, and the NRC has
23 essentially clarified that with REIs. That was the
24 reason for our qualitative discussion which was to
25 provide additional discussion for how they could use

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1 that information. The REIs themselves do not provide
2 adequate information but in combination with all the
3 other information that's available it is possible and
4 the NRC did do it and presented it as part of their
5 environmental impact study.

6 JUDGE KELBER: I understand that. Thank
7 you, sir. I have one final question for you, Mr.
8 Brewer. If I wanted to replicate the type of results
9 in NUREG/CR 6427 with perhaps some other plant in
10 mind, would I have to have the plant's PRA to do that
11 or could I simply use a containment of entries from
12 NUREG 1150?

13 MR. BREWER: The information provided in
14 that NUREG is specific to the ice condenser plants so
15 it has to be an ice condenser plant.

16 JUDGE KELBER: Of course, that's Kowhia
17 (PH) for example.

18 MR. BREWER: Yes and then it does provide
19 information in there on how it quantifies the
20 containment failure probabilities for each of those
21 individual plants. What you would need is the station
22 blackout frequency as calculated by the current PRA
23 and then you would need the level 3 PRA associated
24 with that for an early containment failure you would
25 need to know dose impact and the potential doses

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1 associated with the early containment failure.

2 JUDGE KELBER: Mr. Brewer, I simply wanted
3 to note about how you calculate and what you would
4 need to know to calculate the conditional containment
5 failure probability.

6 MR. BREWER: You would imply that an early
7 containment failure due to hydrogen burn as a failure
8 is an early containment failure. So all you would
9 need is the conditional probability of containment
10 failure which was provided in that NUREG along with
11 the station blackout core damage frequency.

12 JUDGE KELBER: I understand that. Thank
13 you, Mr. Brewer.

14 MR. REPKA: This is Dave Repka. I would
15 just like to add that again none of these questions or
16 alleged questions that are being raised with regard to
17 the PRA are unique to the issue of consolidated
18 contention two. The fact of the matter is you could
19 raise those questions without any particular SAMA and
20 they all could have been timely raised back at the
21 beginning of the proceeding.

22 All we did with respect to addressing the
23 REI response with respect to the NUREG 6427 data was
24 take the conditional containment failure probability
25 and incorporate them into the PRA SAMA evaluation that

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1 had already been done. Again we're not changing
2 anything or doing anything differently based upon the
3 NUREG and the particular contention.

4 MS. CURRAN: Judge Young, this is Diane
5 Curran. I wonder if Dr. Lyman could have an
6 opportunity to comment on Mr. Brewer's answer to Judge
7 Kelber's question.

8 CHAIRPERSON YOUNG: Sure. Let me just
9 mention to everyone. It is 12:00 noon. I would in
10 particular like to get at least to part four of the
11 contention today which I think brings together a lot
12 of the issues. So if you wish to go forward now with
13 Dr. Lyman, that's fine. Then we can move on.

14 DR. LYMAN: Just to point out the footnote
15 number two in our amended contention two which shows
16 why not only conditional containment failure
17 frequencies would be required but also some level one
18 information is necessary.

19 In particular other issues such as the
20 probability that the primary system will depressurize
21 is an important and coming up with the weighted
22 containment failure frequency and station blackouts.
23 So some of the lower level PRA information will also
24 be necessary with the NUREG 6427 results.

25 CHAIRPERSON YOUNG: Did Mr. Brewer say

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1 that that was also available? Did I misunderstand?

2 MR. BREWER: That's actually included in
3 there.

4 MR. REPKA: Mr. Brewer is saying that's
5 actually included in the NUREG itself. That
6 information is in NUREG 6427. Correct?

7 MR. BREWER: Yes.

8 CHAIRPERSON YOUNG: But you used the same
9 PRA that was used.

10 MR. BREWER: Yes, this is Duncan Brewer
11 again. What that NUREG did is it developed a
12 simplified containment of entry where if you input the
13 station blackout core damage frequency it would
14 calculate conditional core damage probability or
15 conditional early containment failure probability.
16 That's what we reported it for that REI. The only two
17 things that were potential inputs that we had to
18 clarify where whether or not they were slow station
19 blackout sequences or fast station blackout sequences
20 which we did provide in response to the REI.

21 CHAIRPERSON YOUNG: If Dr. Lyman has any
22 further remarks that's fine. Then I think we need to
23 move on. If anyone needs one, we can take a short
24 break before we move on. I think Judge Kelber and I
25 would like to especially get to subpart four. Do you

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1 have anything further?

2 MS. CURRAN: Mr. Lyman does.

3 DR. LYMAN: Just one point. In the
4 NUREG/CR 6427 the only information from Duke's
5 submittal was from the original IPE not any of the
6 revisions that were referred to. So one question is
7 I'm curious why -- didn't have available these updated
8 PRA results if they were indeed available to the
9 public. Another is I'm certainly surprised that Duke
10 has made all this information available since to my
11 knowledge PRAs are generally proprietary information.
12 I would just like to ask Mr. Brewer if there is no
13 part of the current PRA that is considered
14 proprietary.

15 JUDGE KELBER: I think the question is
16 beyond the scope of what we are here to talk about
17 today.

18 MR. REPKA: I would like to respond.

19 CHAIRPERSON YOUNG: Hold on just one
20 second. Mr. Repka, I think it's you that has spoken.

21 MR. REPKA: That's correct.

22 CHAIRPERSON YOUNG: Since you are arguing
23 that they were available I think it is appropriate for
24 Mr. Brewer to answer and I think he wants to. So let
25 him go ahead and answer.

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1 MR. BREWER: First of all the question of
2 why that NUREG didn't use the up-to-date information
3 has been one of the main issues that we've had with
4 that report since it was published. We've stated that
5 in many public meetings that we felt that should have
6 been done and was an error in using that report to
7 make any decisions on 10 CRF 5044 using risk
8 information. In the fact the GSI 189 is attempting in
9 use the most current information on station blackout
10 core damage frequency.

11 Secondly, Duke has begun doing PRA long
12 before the IPES were requiring it and had seen the
13 value in doing risk analysis and looking for ways to
14 improve the safety of the plant and felt that that was
15 a necessary thing to continue especially as we move
16 into risk informed regulations.

17 CHAIRPERSON YOUNG: And on the question
18 of them being proprietary, I think you were going to
19 respond to that.

20 MR. BREWER: That's why we considered
21 submitting the entire PRA as a revision whenever we
22 did the current revisions. We developed a summary
23 report that provides enough information that someone
24 could determine controlling factors that are driving
25 the PRA without giving the entire PRA. There is a lot

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1 of proprietary information, not only proprietary but
2 also from our vendors that is necessary to do a
3 complete PRA.

4 CHAIRPERSON YOUNG: I didn't catch the
5 last part that you said.

6 MR. BREWER: There is a lot of due
7 proprietary information that is contained in a PRA.
8 There is also a lot of vendor specific proprietary
9 information that is contained in a PRA. So as a
10 result we have decided not to put the entire PRA on
11 the docket but to put together summary reports that
12 give the information necessary to understand the risk
13 insights for the plant.

14 CHAIRPERSON YOUNG: Is that applied to the
15 original PRA plus the revisions or only to the
16 revisions? I thought that it has been said that the
17 complete original PRAs were out there and with regard
18 to the revisions the relevant information on how the
19 original PRAs were changed were publicly available.
20 Is my understanding incorrect?

21 MR. BREWER: Your understanding is
22 correct. The original PRAs contain the entire
23 documentation of the PRA.

24 DR. LYMAN: Dr. Lyman. I would just like
25 to point out that what information is or is not

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1 necessary for a full understanding of this is a
2 subjective judgement and therefore a large part of the
3 PRA or proprietary that are being withheld is a
4 subjective judgement whether the proprietary
5 information is just allowing to filter into the public
6 domain is sufficient for the public to understand
7 this.

8 JUDGE KELBER: Dr. Lyman, we want to take
9 a little break now. But let me say. Did you try?

10 DR. LYMAN: Some of the summary
11 information that has been provided by Duke is
12 generally simply numerical results and it is very
13 difficult to establish the entire reasoning behind
14 some of the numerical results that are produced.

15 JUDGE KELBER: Like if the original PRA
16 could incorporate the new results?

17 DR. LYMAN: There is no original PRA.
18 There is an IPE. As the staff review indicates, the
19 original IPE had numerous inconsistencies with their
20 own understanding and licensing to perform so I don't
21 consider the original IPE as a document which is
22 reliable.

23 CHAIRPERSON YOUNG: Let's take a five
24 minute break and then come back and move on to subpart
25 three and then try to move through that as quickly as

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1 possible and then on to four which I think Judge
2 Kelber and I are fairly interested in asking several
3 questions on. I have 10 after. Come back at quarter
4 after and we'll get everyone set on mute until then.
5 Off the record.

6 (Whereupon, the foregoing matter went off
7 the record at 12:10 p.m. and went back on
8 the record at 12:17 p.m.)

9 CHAIRPERSON YOUNG: Is everyone still with
10 us? If there is nothing else on contention two,
11 hearing nothing, can we move on to contention three?
12 Judge Kelber, I think you had a question.

13 JUDGE KELBER: Yes, my question maybe is
14 addressed to the staff. In as much as the station
15 blackout is the subject of 10 CFR 50.63 and is there
16 for part of the current licensing basis, to what
17 respect is that properly a subject of a contention on
18 a license renewal case?

19 CHAIRPERSON YOUNG: Then let me add to it
20 so you can address it and get the whole context of
21 this. If station blackout comes into play in a
22 particular SAMA, namely the one we are talking about,
23 the fact that it would otherwise be part of current
24 licensing basis, how relevant is that if it comes into
25 play in a particular SAMA? So Mr. Uttal or Mr. Heck.

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1 JUDGE RUBENSTEIN: Judge Rubenstein. My
2 staff member, Bob Palla (PH), just reentered the room.
3 Could you please repeat your question in his presence?

4 CHAIRPERSON YOUNG: This is Judge Kelber
5 and Judge Young.

6 JUDGE RUBENSTEIN: I'm sorry, Judge
7 Kelber.

8 CHAIRPERSON YOUNG: Judge Kelber, you
9 start and then I'll give my part.

10 JUDGE KELBER: In as much as station
11 blackout is the subject to 10 CFR 50.63 and it's there
12 for part of the current licensing phase. In what
13 respect is it properly a subject of contention in a
14 licensing renewal case? By the way I do have a second
15 question on this but we will get to that later.

16 CHAIRPERSON YOUNG: And then my question
17 so that you can address these similar issue altogether
18 is even though a particular subject would normally be
19 part of the current licensing basis and I'm raising
20 this question because there are several places where
21 either Duke or the staff or both say that a particular
22 issue is part of the current licensing basis. Even
23 though something would ordinarily be part of the
24 current licensing basis if the subject comes into play
25 with regard to a particular SAMA which is a legitimate

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1 issue for litigation in the license renewal
2 proceeding, how does the fact that it would otherwise
3 be part of current licensing basis take it out of the
4 consideration of the SAMA?

5 MR. HECK: Judge Young and Judge Kelber,
6 one moment while I confer with Bob Palla (PH) please.

7 CHAIRPERSON YOUNG: And if you need to
8 wait for Ms. Uttal. Is Ms. Uttal back yet?

9 MR. HECK: Yes, she is.

10 CHAIRPERSON YOUNG: Okay, good.

11 MR. REPKA: This is Dave Repka. When the
12 staff is done I think we would like to address that
13 issue as well.

14 CHAIRPERSON YOUNG: Yes. Actually if the
15 staff would prefer that you go first, we don't have
16 any problem with that.

17 MR. HECK: Judges Kelber and Young, this
18 Jared Heck for the staff. We agree that station
19 blackout does have to do with the current licensing
20 basis but when it comes to SAMA analysis and license
21 renewal it may be appropriate in some circumstances to
22 address that event occurring. As far as contention
23 three goes, our position is that the reason why Duke
24 have not stated a contention with a real factual
25 basis, Duke has described and supported its conclusion

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1 that the frequency of SBO events is lower than
2 previously predicted in its responses to REIs from
3 McGuire. It's also described risk reduction measures
4 and on-going initiatives associated with operation of
5 both play-offs in its environmental reports.

6 JUDGE KELBER: Now let me follow that with
7 this question and then Mr. Repka would like to
8 respond. This is Judge Kelber. Is the fact that the
9 station blackout frequency has been lowered by various
10 plant modifications described in the original
11 application?

12 CHAIRPERSON YOUNG: Were you directly that
13 to the staff or Mr. Repka or either one?

14 JUDGE KELBER: Either one.

15 MR. REPKA: This is Dave Repka for Duke.
16 That question and it's our belief and we're discussing
17 this right now but it's our belief that there's a
18 reference to that in the original environmental report
19 SAMA evaluation the fact that there has been --
20 generator reliability improvement programs that have
21 resulted in a decrease in the station blackout
22 frequency. We believe that was in the environmental
23 report.

24 JUDGE KELBER: Okay.

25 JUDGE RUBENSTEIN: This is Judge

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1 Rubenstein. I believe I remember that in the oral
2 arguments in Charlotte.

3 MR. REPKA: I do as well, Judge
4 Rubenstein. Beyond that would you like me to address
5 the first question?

6 (No response.)

7 MR. REPKA: I'll take that as a yes.

8 CHAIRPERSON YOUNG: Yes.

9 MR. REPKA: I'm sorry I didn't hear.

10 JUDGE KELBER: Yes please.

11 MR. REPKA: With respect to the issue of
12 whether station blackout is a current licensing basis
13 issue or not I think the answer is yes. It clearly is
14 to the extent that the argument would be that measures
15 would have to be taken to address station blackout
16 frequency. That's clearly a CLB issue and not a
17 license renewal issue.

18 Now with respect to the argument that it's
19 somehow germane to the SAMA evaluation and that brings
20 it within scope, I think it's theoretically possible.
21 But it's not the case with respect to this contention
22 three in the first place because the narrow question
23 raised related to NUREG 6427 really doesn't offer any
24 basis to put the station blackout frequency that is
25 used in the Duke PRA in dispute. So there is no basis

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1 to challenge that station blackout frequency.

2 In addition if there were in 6427 which is
3 the very basis for the contention that we are talking
4 about it could have been more timely raised. It
5 hasn't been timely raised. Then I think the final
6 point is the fact that what we're talking about is the
7 SAMA evaluation here. The SAMA evaluation has been
8 done.

9 It's concluded by at least some lights
10 within the NRC staff and elsewhere that there is at
11 least depending upon what assumption is used that
12 there may be cost beneficial SAMA related to the early
13 containment failure rate in 6427. So that then is the
14 reason for all the discussion of GSI 189 and what
15 specific changes might actually be warranted, what
16 specific changes might cost beneficial to address
17 that.

18 That issue which may be affected to some
19 degree one way or the other by station blackout
20 frequency is precisely the GSI 189 that is clearly a
21 part 50 current day licensing basis issue. We're
22 beyond.

23 To argue station blackout frequency now in
24 license renewal proceeding under SAMA, frankly we are
25 beyond that. The SAMA evaluation has been done.

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1 Everything else at this point goes to the question of
2 whether or not a specific fix can be identified as
3 cost beneficial. That's where the staff is right now
4 with 189. Although the station blackout frequency
5 might in some sense be relevant to a SAMA evaluation
6 we in the NRC staff are beyond that in reviewing
7 within part 50 space as a current licensing basis
8 issue.

9 CHAIRPERSON YOUNG: But you're not arguing
10 by the fact that you and the staff as you say are
11 beyond that. That a challenge cannot be made to it
12 separate and apart from timeliness issues assuming
13 that we find this intervenor get over the timeliness
14 hurdle. Raising questions about how you deal with
15 6427 is something that you're not arguing that that's
16 not open to question.

17 MR. REPKA: I'm not arguing that 6427 is
18 not open to question. It is and that's the
19 contention. That in fact has been addressed. I am
20 arguing that station blackout frequency is not open to
21 question for at least two reasons beyond timeliness.
22 Timeliness is clearly a reason it's not opened. But
23 beyond that there has been no basis presented as to
24 why the station blackout frequency used in the PRA is
25 not accurate. So there's no affirmative basis for a

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1 challenge to it.

2 Number two is in any event it's in effect
3 irrelevant and immaterial because it really goes to
4 the question at this point of you could vary that
5 frequency and yes you might have a small effect one
6 way or the other on the cost benefit numbers but
7 frankly given that GSI 189 exists to resolve the
8 technical issue there is no point in that.

9 You are now arguing points that go to the
10 technical resolution of the issue. Whether any
11 technical resolution can meet the NRC's back fit
12 criteria in current day part 50 licensing space. So
13 yes I am arguing that that's not open to challenge in
14 a part 50 for license renewal proceeding even if it
15 were timely rated.

16 And the last thing I say is NUREG 6427
17 itself does not provide a basis for challenging that
18 station blackout frequency number. It does not
19 address that issue.

20 CHAIRPERSON YOUNG: I want to hear
21 arguments from all sides on that. But if you are
22 correct that it does not I'm not sure you are but
23 let's say if you were not correct in your assertion
24 that 6427 has nothing to do with station blackout and
25 does not address station blackout --

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1 MR. REPKA: That's not really what I said.
2 What I said is that the NUREG does not provide a basis
3 for challenging the station blackout frequency number
4 which is different than saying it has nothing to do
5 with it.

6 CHAIRPERSON YOUNG: I'm simply not clear
7 on how you argue that even though station blackout
8 would normally be a current licensing basis issue that
9 in the context of SAMA and in the context of NUREG
10 6427 are you saying it does not come into play at all?
11 That's what I heard you to be saying.

12 And I'm curious about that because it
13 seems to me that from my understanding of 6427 and
14 generic safety issue 189 and the relevance of that is
15 another issue we need to talk about but that all of
16 these issues at station blackout in ice condenser
17 plants in McGuire and Catawba all that is very much
18 tied into the issues addressed in the contention and
19 in NUREG 6427.

20 MR. REPKA: Let me try again. My first
21 point is if you were arguing that some further measure
22 had to be taken to reduce station blackout frequency
23 that's a CLB current day part 50 issue. The
24 intervenors to the best of my knowledge are not making
25 that argument. They are raising a question that they

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1 don't know or don't understand or can't follow or
2 whatever. But they are not making that argument. If
3 they made that argument it would be out of scope.
4 What they might be arguing --

5 CHAIRPERSON YOUNG: It would be out of
6 scope. Why?

7 MR. REPKA: It would be out of scope as a
8 current day part 50 licensing basis issue.

9 CHAIRPERSON YOUNG: And I'm not
10 understanding your argument on why that would be so.

11 MR. REPKA: Because it relates to the
12 current day operation of the plant. It's not an
13 equipment aging issue, not an aging management issue
14 unique to the period of extended operation.

15 CHAIRPERSON YOUNG: But it's related to
16 the SAMA which is a licensing issue.

17 MR. REPKA: That's the second question.
18 If you then said it's related to the SAMA issue, then
19 you have to (a) show its timely rated and it's not
20 because of the --

21 CHAIRPERSON YOUNG: Apart from timeliness
22 I'm trying to get you to focus on --

23 MR. REPKA: And I'm trying to go through
24 the chain of logic in the order that makes sense.

25 CHAIRPERSON YOUNG: Let's leave timeliness

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1 aside. Let's try to focus in on how it is not related
2 to SAMA pure and simple assuming no timeliness.

3 MR. REPKA: It's related to SAMA in that
4 it's an input to the evaluation. But you would have
5 to have a basis to challenge the station blackout
6 frequency number that in fact is used in the SAMA
7 evaluation. That has not been provided. There is no
8 basis whatsoever for that. The NUREG 6427 doesn't do
9 that. It doesn't address that.

10 It isn't in the NUREG what they did when
11 the Duke IPE station blackout frequency number and
12 simply plug that into their analysis that helped lead
13 to their conclusion about early containment failure
14 event. They didn't comment one way or the other about
15 on the correctness of that number. So the NUREG
16 provides no basis for a challenge to that number.

17 CHAIRPERSON YOUNG: But I'm trying to get
18 you to address all the things that the petitioners
19 have raised. The petitioners do say that NUREG talks
20 about the robustness of ice condenser plants to
21 station blackout. So even though it may have taken
22 the numbers from the IPE it does address the issue of
23 the vulnerability or the robustness with regard to
24 station blackout.

25 MR. REPKA: With your leave, I'm going to

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1 let Mr. Brewer address that further.

2 CHAIRPERSON YOUNG: Okay.

3 MR. BREWER: This is Duncan Brewer. The
4 particular item number three, the contention three,
5 talks about the failure to provide a basis for our
6 station blackout frequency that we currently used in
7 the SAMA analysis. That is essentially the level one
8 part that the PRA calculates the frequency of a core
9 damage event one scenario which can be station
10 blackout.

11 CHAIRPERSON YOUNG: Okay.

12 MR. BREWER: So that part was input to the
13 NUREG analysis. They took their numbers from our IPE
14 submittal.

15 CHAIRPERSON YOUNG: And then you changed
16 your numbers and you're saying that your new numbers
17 are more accurate.

18 MR. BREWER: That's correct. The NUREG
19 really didn't do anything with that number other than
20 use it as an input. It then went on to calculate what
21 is the likelihood of early containment failure given
22 that you have a station blackout scenario. So when
23 they refer to the robustness of the containment they
24 are talking about the consequences of the core damage
25 accident and how it affects the containment.

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1 That was what we took to be the issue that
2 was allowed this particular contention which was the
3 NUREG took a different view on the robustness of the
4 containment and how it performed during the station
5 blackout core damage frequency. So that is the part
6 where when we respond to the NRC questions and I think
7 that was their understanding too is how does the
8 analysis provided on this NUREG change the result of
9 the early containment failure probability given the
10 other parts of your PRA.

11 JUDGE KELBER: Mr. Brewer, this is Judge
12 Kelber. Can I do a calculation similar of the
13 conditional containment failure probability similar to
14 that done in NUREG/CR 6427 without even knowing the
15 value of station blackout frequency?

16 MR. BREWER: Yes, you can do it. The
17 conditional probability of early containment failure
18 given that you have a station blackout. You could
19 assume that the scenario is a station blackout and it
20 would tell you the conditional containment failure
21 probability.

22 JUDGE KELBER: Not knowing the frequency
23 of station blackout?

24 MR. BREWER: That's correct.

25 JUDGE KELBER: Thank you, sir.

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1 CHAIRPERSON YOUNG: And you're saying just
2 so I can understand this that 6427 doesn't really say
3 anything about level one and start from level one and
4 does its analysis from that point forward?

5 MR. BREWER: That's correct. It's really
6 a level two PRA that utilized information from our
7 level one PRA that was submitted in our IPE submittal.

8 CHAIRPERSON YOUNG: I think we could
9 probably move on unless Judge Rubenstein has a
10 question or Ms. Curran has a short response.

11 MS. CURRAN: I think Dr. Lyman has a
12 comment that he would like to make.

13 DR. LYMAN: Yes, this is Dr. Lyman. Our
14 point on this contention was that the significance in
15 NUREG/CR 6427 demonstrates the severity of the station
16 blackout accident at ice condenser plants. That is
17 its main significance.

18 To that extent the definition and the
19 accurate calculation of what the station blackout
20 frequency is is of great importance. Therefore that
21 has to be documented extremely carefully and explained
22 to the public in enough detail so that the public can
23 understand it. A reduction of the station blackout
24 frequency using a qualitative argument about improving
25 diesel generator liability is fine but we just want to

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1 see the documentations for that because we understand
2 how severe this accident can be. That is an important
3 part of understanding why severe accidents
4 mitigational alternatives need to be considered as
5 thoroughly as we believe they do.

6 JUDGE KELBER: Dr. Lyman, this is Judge
7 Kelber. If there were no license renewal application
8 appending, would the station blackout frequency still
9 be an important parameter?

10 DR. LYMAN: Yes, absolutely but in the
11 context of -- as is well understood.

12 JUDGE KELBER: I just wanted to get the
13 yes or no.

14 DR. LYMAN: Yes.

15 JUDGE KELBER: Thank you.

16 CHAIRPERSON YOUNG: And just so I
17 understand what you are saying, Dr. Lyman, I
18 understand you to be saying that the significance of
19 station blackout in the NUREG 6427 and in the
20 arguments that you are making is that it is a
21 significant factor in determining the level of risk.

22 DR. LYMAN: Yes, that's right. That's
23 the implication as of the NUREG analysis demonstrates
24 how severe a station blackout accident is. To that
25 mind the value provided by Duke has to be extremely

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1 well documented because of its significance.

2 CHAIRPERSON YOUNG: Thank you. Okay,
3 anything else on three?

4 (No response.)

5 CHAIRPERSON YOUNG: Hearing none, let's
6 move on to subpart four.

7 MR. REPKA: Judge Young, this is Dave
8 Repka. Before we leave three, Mr. Brewer did not want
9 leave anything in the fact that the number that Dr.
10 Lyman is referring is documented.

11 CHAIRPERSON YOUNG: Go ahead.

12 MR. BREWER: Yes, it's documented in the
13 submittal that we provided on our docket. It is
14 included in those submittals, the station blackout
15 core damage frequency and the cutsets associated with
16 it. So to say that it's not no basis is provided that
17 isn't really true. There really wasn't a basis
18 provided in the REIs other than a qualitative basis.
19 But in the information we have on the docket it gives
20 the diesel generator reliability, initiating event
21 frequency and the top cutsets associated with that
22 scenario.

23 CHAIRPERSON YOUNG: Is the word you are
24 using cutset?

25 MR. BREWER: Yes.

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1 CHAIRPERSON YOUNG: Thank you. That's
2 what I thought. Then moving on to four --

3 MS. CURRAN: Excuse me, Judge Young. Just
4 one quick response.

5 DR. LYMAN: But we would need I think more
6 information about the actual diesel generator
7 properties to be able to verify that the systems will
8 do what Duke claims they will do.

9 And simply by looking at a probability
10 value, and changing that value, without understanding
11 what the systems entail, won't do it. That is our
12 view, thank you.

13 CHAIRPERSON YOUNG: That was Dr. Lyman,
14 for the Court Reporter.

15 Maybe I went too quickly before. I will
16 wait a longer moment now. Does anyone have anything
17 else to say with regard to Part III?

18 MR. LYMAN: This is Dr. Lyman, again.
19 Just on the point -- Part III doesn't only deal with
20 station blackouts, but also other accident
21 contributors that lead to core damage.

22 In particular we brought up the issue of
23 sump clogging. I would like to point out that --

24 JUDGE KELBER: Dr. Lyman, this is Judge
25 Kelber, let me interrupt you.

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1 Does that occur during the course of
2 operation in the current license, or is it essentially
3 a license renewal question?

4 DR. LYMAN: It is a license renewal
5 question in that it will mean that the actual --

6 JUDGE KELBER: Does it occur now, could it
7 occur now, as part of a current licensing basis??

8 CHAIRPERSON YOUNG: I think what he is
9 saying is yes, it could, but it --

10 JUDGE KELBER: Well, I think it is part of
11 the current licensing --

12 CHAIRPERSON YOUNG: -- to the degree that
13 it --

14 DR. LYMAN: For the same reason that
15 station blackout is part of the current licensing
16 basis, but is relevant to SAMAs. So any frequency
17 that we go into a SAMA analysis in determining the
18 risk of the plant, and so that is why it is relevant.

19 JUDGE KELBER: I understand. Thank you,
20 sir.

21 CHAIRPERSON YOUNG: There was one thing
22 about this, the sump clogging, I believe that Duke
23 says that since there is no, in a station blackout,
24 for damage sequence there is no power to the
25 recirculation pump, the clogging is irrelevant.

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1 And so since you raised that, what is your
2 response to Duke's argument in that regard?

3 DR. LYMAN: Yes, I want to raise that
4 point. If there is no recovery of power, then that is
5 clearly true. But I believe that in some station
6 blackouts Duke must assume that power is restored, and
7 that the core damage can be arrested in at least some
8 of the sequences.

9 I don't think that in their PRA they
10 assume that every station blackout is unrecoverable.
11 So it will certainly affect the station blackout
12 frequencies, because it will affect the probability
13 that recovery will occur.

14 MR. REPKA: This is Dave Repka, and I
15 would respond by saying that that is another current
16 day operation issue that is being addressed as another
17 GSI, I believe it is 191.

18 And, Mr. Brewer, do you have something to
19 add to that?

20 MR. BREWER: Yes, I was going to say that
21 the station blackout core damage frequency, for both
22 McGuire and Catawba, are dominated by scenarios for
23 which we do not take any credit for recovery.

24 There are seismic events, or tornado
25 events, or some type of flooding event, where we don't

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1 take any credit for recovering power, therefore there
2 is no potential to swamp the recirc.

3 However, if you wanted to look at the ones
4 which are recoverable, the likelihood that you would
5 actually succeed, sometime between getting a seal
6 LOCA, and then having the opportunity to prevent core
7 damage, is a pretty small contributor to overall risk.

8 So although there is a very, very minor
9 tie between the two issues, it so insignificant, that
10 it wouldn't make any difference in the SAMA
11 evaluation.

12 CHAIRPERSON YOUNG: Okay. Now maybe we
13 can move on. And before we start on 4, I just want to
14 say a couple of things. And what I'm going to suggest
15 is that we hold off further argument on these two
16 general subjects until after we finish going through
17 the contention subparts.

18 And those two things are references to
19 current licensing basis and generic safety issues.
20 The fact that the Staff is at work on GSI189 is
21 something that I think the parties need to address.

22 And there is a case that relates to this.
23 It is -- it is another Duke Energy case, the Bell
24 County case, CLR9911, and on page 345 the Commission
25 discusses the relevance of current rulemaking that was

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1 going on.

2 And the Commission notes that even though
3 the Petitioners there argue that there was no
4 guarantee that the proposal would proceed unimpeded,
5 the Commission noted that there had been no delays.

6 We are looking at that case which our
7 excellent law clerks, Ms. Mendelson in this case, and
8 we want the parties to address that. But I think it
9 would probably be more efficient to hold off argument
10 on that general issue, rather than raising it with
11 regard to each separate one.

12 And, again, with the current licensing
13 basis I think that sort of becomes a definitional
14 issue of, even though I'm not convinced at this point,
15 and I would like to hear argument not in the context
16 of the individual subparts of the Contention, but at
17 the end, or in some other way, about the degree to
18 which something can be part of current licensing
19 basis, and also be a license renewal issue, in this
20 case in the context of being tied up in, or related to
21 a SAMA issue, which is definitely a license renewal
22 issue.

23 49NRC328 is the CLR99 cite. Yes, thank
24 you, I did need to do that.

25 So are there any questions about those two

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1 issues as I've just defined them? And the efficiency
2 of just holding off on those as we go through the
3 remaining four subparts of the Contention?

4 And with regard to timeliness I suggest
5 that to the degree you are raising the general
6 timeliness issue, we've already sort of dealt with
7 that, to the degree that Duke or the Staff wants to
8 argue that something is not timely because it was
9 available prior to the RAI responses, then I would say
10 you are free to include those in your answers.

11 Just sort of move this along a little more
12 efficiently. So on number 4, the SAMA analysis
13 contains the following deficiencies, for failure to
14 justify departure from NUREG CR-6427.

15 Questions, Judge Kelber, or Judge
16 Rubenstein? And then I might have some, also.

17 JUDGE KELBER: Judge Rubenstein, do you
18 have anything? Otherwise I will go.

19 JUDGE RUBENSTEIN: No. I carefully read
20 REI B, C, and 4, and I have to admit I am a little
21 confused as to the basis proffered by the Intervenor.

22 JUDGE KELBER: Do you have a question
23 there?

24 JUDGE RUBENSTEIN: No, there isn't.

25 JUDGE KELBER: I would like to ask, first

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1 of all, why are there values in NUREG CR-6427
2 superior, either morally or technically to those views
3 by Duke?

4 And since Duke has provided a SAMA
5 analysis using the 6427 values, what relief would be
6 possible if they were to, say, adopt NUREG CR-6427
7 wholesale?

8 CHAIRPERSON YOUNG: Ms. Curran, I think
9 that is directed to you and Dr. Lyman.

10 DR. LYMAN: Yes, this is Dr. Lyman. The
11 first point is we don't know that NUREG CR-6427 is
12 superior to Duke's analysis, but that is the core of
13 the issue. We need to see all the technical basis
14 supporting Duke's position, so that it can be
15 compared, so that a credible value can be obtained.

16 In particular this is an issue that was
17 raised by the Staff. And as far as we know has not
18 been resolved, in particular Duke's assumption of what
19 the potential for ignition, spontaneous ignition of
20 the hydrogen is, and also the amount of hydrogen
21 generated.

22 These are open technical issues that have
23 not been resolved and, therefore, we need to see that
24 resolution before we can have any confidence in Duke's
25 SAMA analysis..

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1 JUDGE KELBER: NUREG 6427 there are basis
2 for the choice of 58.5 percent full total, whatever it
3 is. Is there a basis to apply for that number, other
4 than it is somewhere at the high end of the range?

5 DR. LYMAN: No, they, in both --

6 JUDGE KELBER: There is no basis for
7 applying NUREG 6427?

8 DR. LYMAN: Computer analysis were done to
9 estimate the core degradation, the hydrogen
10 generation. So it comes down to competing codes.
11 Although one, I believe --

12 JUDGE KELBER: I think if I wanted to
13 compute the hydrogen generation, I would use a
14 combination of RELAP and SCDAP to get the metal water
15 reaction.

16 DR. LYMAN: That is why I believe that
17 Duke uses MAAP.

18 JUDGE KELBER: Well, MAAP is used for a
19 different purpose. MAAP is not a code used for
20 generating the amount of hydrogen generated, or
21 computing the hydrogen generated.

22 DR. LYMAN: Well, if you read Duke's
23 response to RAI 3C they say they used MAAP to generate
24 the fraction of core oxidize, which is the amount of
25 hydrogen generated.

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1 Judge Kelber, if you would like Mr. Brewer
2 to clarify, he will.

3 JUDGE KELBER: Yes, please.

4 MR. BREWER: We do use the MAAP code. You
5 may be confusing it with possibly MAX or some other
6 code. But MAAP is the MALCOR accident assessment
7 program. It was a computer code that was developed as
8 part of the resolution of the degraded core issues.

9 CHAIRPERSON YOUNG: Mr. Brewer?

10 MR. BREWER: Yes?

11 CHAIRPERSON YOUNG: Let me interrupt you
12 for just a second. I have a feeling that the Court
13 Reporter is having a hard time with all these
14 acronyms. Would it be helpful, Court Reporter, if you
15 can come back and get them later, that is fine.

16 But would it be helpful to stop and just
17 spell out all the codes that we just made reference
18 to?

19 COURT REPORTER: Yes, it would.

20 CHAIRPERSON YOUNG: Okay. MAAP, I know is
21 M-A-A-P, all caps. MALCOR is --

22 MR. BREWER: I'm sorry, it is actually the
23 modular accident assessment program.

24 CHAIRPERSON YOUNG: I was trying to spell
25 out the acronyms. Why don't you do it, you spell out

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1 all the acronyms for the Court Reporter so that he
2 will --

3 MR. BREWER: I'm not sure that I know all
4 of them, but MAAP is the modular accident assessment
5 program. It was developed by the industry degraded
6 core rulemaking working group.

7 CHAIRPERSON YOUNG: Mr. Brewer --

8 MR. BREWER: Yes?

9 CHAIRPERSON YOUNG: I really wasn't asking
10 you to explain what it was, just tell what the letters
11 are, M-A-A-P, for example.

12 MR. BREWER: Okay.

13 CHAIRPERSON YOUNG: And then MALCOR is M-
14 A-L-C-O-R, in all caps, again. And there were a
15 couple of other codes that were mentioned.

16 MR. BREWER: SCDAP I think was mentioned.
17 I'm not sure how that goes.

18 CHAIRPERSON YOUNG: And then there was one
19 other, I think.

20 MR. BREWER: R-E-L-A-P.

21 CHAIRPERSON YOUNG: Thank you. And if
22 anyone else mentions another acronym it might be
23 helpful for the Court Reporter, and also for me at
24 times, to have the acronym spelled out, because
25 sometimes it is hard to keep up.

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1 JUDGE KELBER: Mr. Brewer, tell us what
2 you do with MAAP?

3 MR. BREWER: MAAP is an integrated program
4 that does the core degradation, it includes hydrogen
5 generation, it includes (inaudible) from the primary
6 system to the containment.

7 CHAIRPERSON YOUNG: We lost you for a
8 moment. Say that last sentence over again.

9 MR. BREWER: MAAP is an integrated program
10 that does severe accident analysis modeling. It does
11 the fuel melting, it does the primary thermal
12 hydraulics, it does the fission product releases, it
13 calculates hydrogen release, it calculates the
14 containment performance in terms of fission product,
15 transport.

16 It does the containment thermal hydraulics
17 analysis, and if the containment fails it will
18 calculate the releases to the environment. So MAAP is
19 an integrated program that does what those other
20 programs do as separate parts.

21 JUDGE KELBER: The code I referred to
22 before RELAP/SCDAP also does -- formulated on behalf
23 of the Nuclear Regulatory Commission to do much the
24 same thing in more determinative fashion.

25 And then MALCOR does the input in a more

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1 approximate form for PRA work?

2 MR. BREWER: That is correct. I think
3 MALCOR actually is primarily containment response.
4 And the other codes were primary type response. So in
5 combination they can do essentially the same thing as
6 MAAP.

7 DR. LYMAN: Now, this is Dr. Lyman, just
8 to clarify, the NUREG CR6427 used SCDAP/RELAP and Duke
9 used MAAP.

10 JUDGE KELBER: Now, tell us again, why are
11 the 6427 values better than the MAAP values?

12 DR. LYMAN: Well, when at least the NRC
13 code is one that NRC staff is comfortable with, and is
14 validated, while the industry has not allowed NRC, to
15 my knowledge, to validate MAAP to the full extent
16 possible, and there are inconsistencies as a result of
17 those codes in important ways.

18 JUDGE KELBER: Mr. Brewer, does not MAAP
19 contain benchmark problems?

20 MR. BREWER: Yes, it does, it is
21 benchmarked against the different experiments that
22 have been performed (inaudible) by both the industry
23 and the NRC.

24 CHAIRPERSON YOUNG: Mr. Brewer, let me ask
25 the Court Reporter, did you get all that? You did

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1 sort of fade out, and I want to make sure that you get
2 all that you said.

3 COURT REPORTER: If you could just repeat
4 the last sentence, Mr. Brewer?

5 MR. BREWER: Has been benchmarked against
6 both experiments performed by the industry, and by the
7 NRC, and foreign organizations, in trying to
8 understand severe accident behavior. So, yes, it has
9 been benchmarked.

10 JUDGE KELBER: Mr. Brewer, has the NRC
11 ever objected to you using MAAP in your analysis?

12 MR. BREWER: Not in performing the
13 accident analysis assessment for the level 2 part of
14 the PRA inconsistent with the IPE.

15 JUDGE KELBER: Have they ever seemed
16 uncomfortable with you using it?

17 MR. BREWER: The only area where I'm
18 familiar with them being uncomfortable is in the
19 performance of the thermohydraulics, in using MAAP to
20 do thermohydraulics success criteria. I'm aware that
21 they are uncomfortable with using MAAP to strictly do
22 thermohydraulic analysis.

23 But in terms of performing fission product
24 releases, and hydrogen generation, I'm pretty sure
25 that it is reasonable. And if I could say that the

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1 use of the SCDAP/RELAP in the NUREG, there were a very
2 few scenarios that were modeled.

3 And the NUREG points out that they
4 developed conservative hydrogen source terms and used
5 those, because they were doing a simplified analysis.

6 JUDGE RUBENSTEIN: This is Judge
7 Rubenstein. They assumed the hydrogen ignition vessel
8 leak, which is quite conservative. But I'm a little
9 concerned with what kind of release the Intervenors
10 want.

11 When one looks at the averted risk values
12 between Duke, and using the more conservative NUREG
13 numbers code, what one talks about 121K versus maybe
14 462K, and 161 versus 264K for Catawba.

15 So what is the release one wants? The
16 original reworked Contention was, from my viewpoint,
17 take the NUREG into account, do the calculation, and
18 now we are into a fine structure of the calculation
19 and the asserted deficiencies in the code.

20 So where do we go with this? And I would
21 like to hear this from Ms. Curran and/or Dr. Lyman.

22 DR. LYMAN: Yes, this is Dr. Lyman. I
23 think the relief we seek is that there seems to be a
24 technical dispute between values that we've discussed,
25 that were provided by Duke in the RAI response, and

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1 those that were assumed in the NUREG, and also in
2 Staff meetings that I attended, it seems that the
3 Staff has concerns with Duke's assumptions with regard
4 to hydrogen combustion.

5 And, to my knowledge, those haven't been
6 resolved.

7 JUDGE RUBENSTEIN: So what do you want,
8 you want resolution of the codes?

9 DR. LYMAN: No, we want --

10 JUDGE RUBENSTEIN: You want hydrogen
11 igniters --

12 DR. LYMAN: Well, one is the quantity of
13 hydrogen to be generated, and what is a credible,
14 appropriately conservative value. Another is what is
15 the probability of random ignition. And those are two
16 of the examples.

17 JUDGE RUBENSTEIN: Those are steps towards
18 release. What release do you want in the context of
19 a license renewal application hearing?

20 DR. LYMAN: Well, ultimately we want a
21 SAMA analysis that has appropriate values that are
22 technically defensible, so that we can have confidence
23 that the cost benefit analysis are done appropriately.

24 JUDGE RUBENSTEIN: But if you have a
25 clearly stated conservative calculation, as the NUREG

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1 purports to be, one can now only go, as one fine tunes
2 the calculation, down in averted risk value.

3 DR. LYMAN: Well, I don't see the
4 conditional containment failure probability may not be
5 the most conservative one from NUREG CR6427. That
6 also has assumptions associated with the
7 depressurization of the primary.

8 JUDGE KELBER: Dr. Lyman, it appropriate,
9 in a PRA to use a most conservative value, or
10 shouldn't they use assessment values?

11 DR. LYMAN: Well, I think as we argued, in
12 another contention, there needs to be uncertainties
13 estimate in addition to the central or --

14 JUDGE KELBER: We will come to that. But
15 is it appropriate to use best estimate, or
16 conservative values?

17 DR. LYMAN: Well, in my view conservatism
18 should be the rule, in any kind of nuclear regulation,
19 or environmental assessment.

20 JUDGE KELBER: -- utility of PRA, does it
21 not?

22 DR. LYMAN: I'm sorry?

23 JUDGE KELBER: Doesn't that vitiate the
24 utility of PRA?

25 DR. LYMAN: Not necessarily.

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1 JUDGE KELBER: I think you are wrong, but
2 Judge Rubenstein's question of what relief is
3 possible, since they've already provided an analysis,
4 SAMA analysis, using the NUREG 6427 numbers.

5 You seem to be suggesting that 6427 is too
6 liberal, and perhaps something more conservative
7 should be used.

8 JUDGE RUBENSTEIN: Yes. In that regard do
9 you have a basis for saying 58.8 is too small?

10 DR. LYMAN: Well, even in the actual
11 assumption in the Rule it is 75 percent, I would have
12 to check that. I don't have 10CFR here, but in the
13 LOCA, the --

14 JUDGE RUBENSTEIN: I think you are in part
15 50 now, aren't you?

16 DR. LYMAN: Yes. But I'm just saying, as
17 a conservative figure for the amount of clad react in
18 the LOCA, that would provide a more conservative
19 value.

20 It is not really our expertise to
21 determine, all we see is a dispute between Duke's
22 values, between the NRC Staff, and I've witnessed
23 discussion when NRC Staff have raised concerns about
24 the assumptions Duke has made and the technical staff
25 of the consultant's report.

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1 We see a technical dispute, and we can't
2 determine, at least at this point, what the most
3 appropriate numbers are to be used. And therefore we
4 can't have confidence in the SAMA analysis.

5 CHAIRPERSON YOUNG: Judge Rubenstein, were
6 you finished with your questions?

7 JUDGE RUBENSTEIN: I'm ready to move on.

8 CHAIRPERSON YOUNG: I have a question, and
9 I actually have two questions. First of all I think,
10 Dr. Lyman, you've expressed that the dispute, and I
11 just looked back at 714, and 10CFR2.714, and also in
12 our Memorandum in Order of January 24th, on pages 14
13 and 15, we included a summary list of all that a
14 Contention is required to contain.

15 So assuming we get past the timeliness
16 issue, of the late file timeliness issue, a Contention
17 must contain a specific statement of the issue of law
18 or fact that Petitioner wishes to raise or controvert,
19 and a brief explanation, statement of the alleged
20 facts, or expert opinion that supports the Contention,
21 references to any specific documents.

22 I understood you, Dr. Lyman, and Ms.
23 Curran, I want you to step in here too, as much as
24 appropriate, that there is a genuine dispute on the
25 material issue of law or fact is, as I understand it,

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1 whether the numbers that -- the assumptions that Duke
2 has used, or the assumptions in calculations in NUREG
3 6427 are more appropriate to be used in the SAMA
4 analysis.

5 And what I understood Dr. Lyman to say is
6 that the relief requested is to have, ultimately, a
7 SAMA analysis that provides the, and I can't recall
8 your exact words, but best assurance that -- why don't
9 you repeat that for me?

10 DR. LYMAN: Yes, the SAMA analysis in
11 which the parameters are used to determine the cost
12 benefit analysis are credible to the public, and that
13 we in particular can have confidence in those
14 analysis.

15 And, therefore, if there are ranges of
16 values or if there is any technical difference in
17 opinion that we witnessed, we want to know that the
18 final values that are used are the appropriate ones.

19 And if there is an uncertainty associated
20 with them, that the uncertainties are also applied.
21 So our interest is simply in seeing a SAMA analysis
22 that does the cost benefit calculation appropriately.

23 And, therefore, you need to know what the
24 risks are, and you often need to know how they vary
25 with these assumptions and the parameters. So that is

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1 the bottom line. To the extent that there is a
2 technical difference we want to see technical support
3 and backups for the parameters that are used. And
4 that is what is missing from Duke's RAI response.

5 JUDGE KELBER: Is there technical support
6 in appendix, in NUREG CR 6427?

7 DR. LYMAN: Well, it is a large document
8 with lots of footnotes, I could go through and pick
9 out --

10 JUDGE KELBER: Does it have, for example,
11 the explicit calculations of the hydrogen generated?

12 DR. LYMAN: No, it references studies that
13 do. While you will have to agree that the number of
14 references in Duke's RAI response is considerably
15 fewer. And I don't see any reference --

16 JUDGE KELBER: If I were to do a
17 calculation for a plant one reference would be
18 sufficient. You raised the question on Part 50
19 appendix K, part 1.5 is the metal water reaction rate,
20 not the total amount.

21 CHAIRPERSON YOUNG: If I may go back to --
22 going through the Contention admissibility criteria,
23 looking at the Contention, I'm assuming that there is
24 a difference of opinion between Duke and the
25 Intervenors and whether Duke has justified the failure

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1 to incorporate NUREG 6427 in toto in its SAMA
2 analysis?

3 MR. REPKA: This is Dave Repka, for Duke.
4 I don't think we believe that there is a basis for a
5 conclusion that there is a difference of opinion.

6 JUDGE KELBER: I was going to ask the same
7 question, Mr. Repka. I was going to ask Ms. Curran,
8 what is the basis for making that statement?

9 CHAIRPERSON YOUNG: Go ahead, Ms. Curran,
10 and then I will ask.

11 MS. CURRAN: We are starting from the
12 premise that NUREG CR6427 is a comprehensive analysis
13 of this issue, that represents a significant amount of
14 study and choice of values that went into the
15 analysis.

16 And here Duke purports to take NUREG
17 CR6427 into account. But it seems to us that when you
18 take something into account like that, if you don't,
19 if you reject some of the values in the study, that
20 one would expect to see some explanation of why those
21 values were rejected.

22 And that is what we believe constitutes an
23 inadequacy.

24 JUDGE KELBER: Is the statement in the
25 response to RAI's receipt, that was made, an

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1 inadequate explanation? It seems to me that they state
2 -- by the way nobody, I think, claims that NUREG CR
3 6427 was comprehensive, it is a simplified study of
4 something which, by the way, is known to be a problem
5 for 20 years.

6 Now, let me read you a statement from
7 Duke's response, and ask you in what way it provides
8 an affirmative basis for your statement. The Duke
9 analysis estimated that the hydrogen release of the
10 containment, or the sequence specific analysis using
11 version 3P of the MAAP code, fraction of clad oxidized
12 typically 13 percent to 53 percent, is less than the
13 approximately 59 percent value that is applied in
14 NUREG CR6427.

15 Now, in what respect, is that either --
16 well, in what respect is that not a justification? In
17 what respect have they failed, in making that
18 statement, to justify their use?

19 DR. LYMAN: This is Dr. Lyman. Well, they
20 have not tried to explain why their code results yield
21 a different value in any sense. As a scientist I
22 would say, if you get a result which differs from the
23 result of the different codes, we would want to try to
24 understand the differences, and identify them. They
25 don't do that.

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1 JUDGE KELBER: They say they have a
2 fraction of clad oxidize, and is that not a measure of
3 factor?

4 DR. LYMAN: What I'm saying is that they
5 produced the results from the code which is clearly
6 inconsistent with the results that was provided in
7 NUREG CR6427.

8 JUDGE KELBER: Well, let me ask Mr. Brewer
9 a question. If you had used a 58.5 percent value for
10 hydrogen release, would you have calculated something
11 similar to NUREG 6427?

12 MR. BREWER: Yes, sir, we would have.
13 And, in fact, I can explain the difference in the
14 fraction of clad reacted on the hydrogen generation.
15 It is very sequence dependent. And if you take -- if
16 you look at what was done in the NUREG, they only ran
17 very few cases. And they did it in a conservative
18 manner, because they were trying to do a simplified
19 analysis.

20 I think that is a pretty clear explanation
21 of why ours is different. Ours is sequence dependent,
22 and theirs is not. And if we had used that in our
23 original analysis we would have seen similar results
24 in terms of the amount of hydrogen produced, and the
25 pressure that would be generated from a hydrogen burn

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1 at vessel failure.

2 JUDGE KELBER: I believe you just said
3 that it is a sequence specific analysis?

4 MR. BREWER: Yes, it is.

5 JUDGE KELBER: I'm quoting from your
6 response.

7 MR. BREWER: Yes, it is. And, in fact, in
8 response to the RAI we did exactly as the NUREG did to
9 calculate the change in the risk and the potential
10 benefit of the SAMA if we had used the NUREG.

11 So we've incorporated the NUREG assumption
12 about hydrogen generation, we incorporated the NUREG
13 assumption on the probability of burn at vessel
14 failure, by adopting their early containment failure
15 probability.

16 JUDGE RUBENSTEIN: This is Judge
17 Rubenstein. When you submitted your RAI's did you get
18 some sort of response from the Staff? Did they
19 disagree with your submittal?

20 MR. BREWER: No, in fact they agreed with
21 it, and they incorporated it into their AIS. In fact
22 they've explained that it is dependent on this, and
23 that is (inaudible) why they approached it as a
24 generic issue, issue 189.

25 CHAIRPERSON YOUNG: We lost the end of

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1 that, Mr. Brewer.

2 MR. BREWER: The Staff recognized that
3 there is sensitivity to these assumptions, and they
4 don't know, particularly, which is the right
5 assumption, so they reverted over to the generic issue
6 for resolution.

7 MR. REPKA: Not to put too fine a point on
8 it, again, but there is no further release. RAI
9 response and the SAMA evaluation incorporates the
10 NUREG values, both for hydrogen produced, and
11 probability of vessel failure.

12 There is now two SAMA evaluations, one
13 that we think is more realistic than the other. But
14 the fact remains that there are two that have been
15 done, there is no further relief in SAMA that is
16 justified. And now you have an issue that is thrown
17 over to GSI 189 for resolution in the Part 50 context.

18 There is really no other relief related to
19 license renewal, or SAMA evaluation that can be given
20 here.

21 CHAIRPERSON YOUNG: But what is it that
22 you are saying that 189 would resolve, this is Judge
23 Young here, what is it you are saying that the Staff
24 will resolve in generic safety issue 189, that you
25 have not resolved in your SAMA analysis?

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1 MR. REPKA: What 189 will look at is we
2 will take a closer look at the issue of the risk here
3 and the averted risk benefit, by looking at issues
4 like the backup power to the hydrogen igniters, what
5 size the power supply would need to be, how much
6 seismic qualification, whether it needs to be tornado
7 protected, all of those kinds of issues go into it,
8 along with, I suppose, if there is any further
9 analysis of what is the most realistic risk benefit.

10 But those are all issues that pertain
11 today. They are not limited to the license renewal
12 period, so that is an issue that is being evaluated
13 today in the context of the GSI to determine what
14 action, if any, is appropriate.

15 In license renewal we are required to do
16 a SAMA evaluation, a reasonable assessment of severe
17 accident mitigation alternatives. Duke has done that,
18 they've done it twice. They've done it using its own
19 view of what is reasonable, and they've done it using
20 the NUREG 6427 data.

21 And all of the issues that go into
22 resolving the issue beyond that are current day Part
23 50 issues, subject to the GSI.

24 DR. LYMAN: This is Dr. Lyman, I would
25 like to look at that a slightly different way. The

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1 fact is that the issue is being considered now in the
2 generic safety issue resolution, implying that it is
3 not now -- yet today we are talking about a SAMA
4 analysis which Duke claims is already done.

5 The fact is, the fact that there is a Part
6 50 Proceeding going on, and that hasn't been resolved,
7 indicates that there is a technical issue there, and
8 that is what, in my mind, that means that the issue
9 still hasn't been resolved, and is not ripe for
10 incorporation into a revised SAMA.

11 MR. REPKA: And that is precisely what the
12 Commission has made their expectations very clear
13 about the scope of the license renewal proceeding. It
14 relates to equipment aging, and aging management, and
15 aging effects that are unique to the period of
16 extended operation.

17 Yes, a SAMA evaluation is required, but we
18 can't take a SAMA evaluation and inflate it to now it
19 is ripe to litigate in license renewal context
20 everything that is a current operating issue because
21 it might have a SAMA implication.

22 I think that is just wrong, and I think
23 that would clearly exceed the Commission's
24 expectations for license renewal.

25 CHAIRPERSON YOUNG: Mr. Repka, I want to

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1 ask you something, this is Judge Young.

2 What I said at the beginning of our
3 discussion, was that I would like, is possible, to ask
4 the Parties to address all the issues separate and
5 apart from the GSI issue, and the CLV issue. Those
6 are all caps, for the Court Reporter.

7 And so I would like for you to address
8 that now. And in addressing that I would like for you
9 to consider the Commission's rule at 10CFR51.53
10 subsection C, small roman number II L that states:

11 If the Staff has not previously considered
12 severe accident mitigation alternatives for the
13 Appellant's plant and an environmental impact
14 statement, or an environmental assessment, or --
15 alternative to mitigate the accident must be provided.

16 Now, setting aside for a moment the issue
17 of generic safety issue 189, I would like for you to
18 address how all of the issues raised by NUREG 6427,
19 which aren't being dealt with by the Staff, GSI 189,
20 and which the ACRS has considered, apart from all
21 that, how they don't fall within that definition of
22 what a SAMA is.

23 And, also, address how those issues should
24 be resolved, and how there is no dispute if you don't
25 rely on saying, well, GSI 189 will take care of that,

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1 or that is in current licensing basis.

2 Do you follow me here? I'm asking you to
3 answer the question without reference to GSI 189, or
4 current licensing basis, in the context of the rule I
5 just read to you.

6 MR. REPKA: I think the short answer is
7 that what is required by 51.53(c)3 little 2 L, is a
8 SAMA evaluation. Duke has done that. They have done
9 precisely what the rule requires. And they've not
10 only done it once, they've done it twice.

11 CHAIRPERSON YOUNG: But you are not saying
12 by that, that Petitioner and Intervenor cannot dispute
13 how appropriately, or how adequately the SAMA
14 evaluation is, no matter how many times it has been
15 done, are you, you are not saying that, are you?

16 MR. REPKA: No, I'm not saying that. But
17 the relevant question is what is the standard for a
18 SAMA evaluation. And the standard is that it is a
19 reasonable assessment of the severe accident
20 mitigation alternatives, and the risks and benefits
21 related to them.

22 And to allow, and I believe the words of
23 the cases we cited was informed decision making. We
24 think that standard has been met.

25 CHAIRPERSON YOUNG: Right, and the

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1 Intervenor think that it has not been met.

2 MR. REPKA: Right. And let me address
3 that, because they think it has not been addressed,
4 because in the context of this case they are saying,
5 because of 6427.

6 And the answer to that is that the only
7 issues raised by NUREG 6427 relate to the hydrogen
8 event, and early containment failure. And that has
9 been addressed. There is nothing in NUREG 6427 that
10 has not been addressed in Duke's SAMA evaluation.

11 We believe that those issues, the
12 substantive issues were actually addressed in the
13 first SAMA evaluation. Given the RAI response we
14 actually went a step further, of taking the simplified
15 NUREG numbers and using them in those numbers.

16 So the issues of the NUREG, again, have
17 been addressed. They have been addressed two
18 different ways. Most importantly, given the context
19 of where we are right now, they've been addressed
20 using the very NUREG data that is the basis for the
21 Contention.

22 Beyond that, the dispute, and I use that
23 word dispute in quotations, today are not issues that
24 A, have any real basis; B, are not issues that could
25 lead to any further relief in this Proceeding.

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1 So putting (inaudible) that is all the
2 reason why --

3 CHAIRPERSON YOUNG: Excuse me, Mr. Repka,
4 I don't know what is happening. Are you at the same
5 phone as Mr. Brewer?

6 MR. REPKA: I am.

7 CHAIRPERSON YOUNG: Because you are doing
8 the same thing as him, you are fading in and out.

9 MR. REPKA: Okay. My mouth is about six
10 inches from the microphone, so I'm not sure what the
11 explanation for that is. Can you hear me?

12 CHAIRPERSON YOUNG: Yes, now I can hear
13 you, I can hear you better. Go ahead and finish what
14 you are saying. And then what I would like you to do
15 is address, in a moment I want to ask Ms. Curran and
16 Mr. Lyman, to address what you've said about nothing
17 in NUREG 6427 has not been dealt with.

18 And so Dr. Lyman and Ms. Curran, if you
19 could keep that in mind? And, meanwhile, Mr. Repka,
20 what I would like you to address is, we are not, at
21 this point, determining the merits of this.

22 And I think we need to keep that in mind.
23 We are not looking to see whether what you have done
24 is the best, or accurate, or whatever. At this point,
25 what we are looking at, at this point, is whether

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1 there is a genuine dispute of material fact or law,
2 and the other primary issue seems to be whether there
3 is any relief that can be granted.

4 So in that context I would like for you to
5 explain, again for me, why there is no dispute. Since
6 what I hear being said by the parties is that, the
7 Intervenors are saying that you do not incorporate all
8 the assumptions used in NUREG 6427, or justify your
9 failure to do so.

10 And you are saying that you do, in fact,
11 incorporate all the assumptions used in NUREG 6427 and
12 there is no dispute, and no room for relief?

13 MR. REPKA: The latter is what we are
14 saying. That we have incorporated all the information
15 from NUREG 6427, and so there is no basis for a
16 Contention, and there is no further relief that can be
17 granted.

18 I think your first statement of what they
19 are saying is that there is a technical difference as
20 to whether or not we have, in fact, done that. That
21 is not really what Contention 4 says.

22 What Contention 4 says is we haven't
23 justified the differences between NUREG 6427 and the
24 original SAMA evaluation. And on that question there
25 really is no basis for that particular question,

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1 because it is irrelevant, it is immaterial, to justify
2 the differences between the two SAMA evaluations.

3 The fact of the matter is that the SAMA
4 evaluation based upon 6427, the very reason we are
5 here today, on consolidated contention 2, has been
6 performed.

7 CHAIRPERSON YOUNG: And you are saying
8 that that more recent SAMA evaluation incorporates all
9 the assumptions in 6427 without changing any of the
10 calculations, values or assumptions?

11 MR. REPKA: That is true. Except Mr.
12 Brewer tells me except for the station blackout
13 frequency, which we talked about earlier, which
14 really goes to the level 1 issue, not the level 2
15 issue.

16 CHAIRPERSON YOUNG: Okay. Then I would
17 like to hear from Ms. Curran and Dr. Lyman on that,
18 and concentrating on the issue of what is the dispute,
19 and what is the relief available. Go right ahead.

20 MS. CURRAN: Basing the Contention on the
21 response to the RAI, which states that there is
22 differences between Duke's analysis and the NUREG. So
23 I guess I'm a little confused as to where -- well, let
24 me cede to Dr. Lyman, because he has something to say.

25 DR. LYMAN: This is Dr. Lyman. All that

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1 Duke did is change the, as far as I can tell, change
2 the condition of containment failure frequency, and
3 use the NUREG CR6427 value. And that was,
4 essentially, the only change they made to their
5 calculation, as far as I can tell.

6 But NUREG CR6427 is quite a large
7 document. And --

8 JUDGE KELBER: But, sir, this is Judge
9 Kelber, does it not calculate simply the conditional
10 containment failure probabilities, it doesn't
11 calculate anything else?

12 DR. LYMAN: No. I mean, it is a large
13 document, and it actually --

14 JUDGE KELBER: It is a large document, but
15 doesn't it --

16 DR. LYMAN: But it goes to the extent of
17 analysis. You can't just adopt the level 2 results
18 without justifying them from a --

19 JUDGE KELBER: But doesn't it just
20 calculate the CFP?

21 CHAIRPERSON YOUNG: If I could follow up?
22 Dr. Lyman, what I want you to address, and Ms. Curran,
23 is in what way does Duke not incorporate assumptions
24 used in NUREG 6427?

25 Mr. Repka says that Duke has done that.

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1 And that there is no failure to do that. And so what
2 I would like for you to address is in what way, in
3 what way are you asserting that the assumptions in
4 NUREG 6427 are not incorporated in the most recent
5 SAMA analysis?

6 DR. LYMAN: I can give you several
7 references in NUREG CR6427 where the Catawba and
8 McGuire IPE's are singled out as having questions
9 raised about them, and I don't see that Duke has
10 actually addressed where NUREG CR6427 has singled out
11 the Catawba and McGuire IPE's for assumptions that the
12 authors of NUREG CR6427 do not believe are reasonable.

13 My view of taking into account this
14 document is not simply swapping one conditional
15 containment failure frequency for another, and getting
16 out a single number. It is taking into account, and
17 examining, and comparing, Duke's PRA analysis from the
18 beginning with all the assumptions and discussion in
19 NUREG CR6427, and indicating all the places where they
20 are different, and making the appropriate adjustments.

21 JUDGE KELBER: Where is that brought out
22 in the Contention?

23 DR. LYMAN: This is our Contention --

24 CHAIRPERSON YOUNG: Let me interject here,
25 if I could, with a question for Mr. Repka and Mr.

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1 Brewer.

2 In the basis for the subpart 4 of the
3 amended Contention 2, the Intervenors say that Duke
4 states that it has calculated lower containment
5 failure probabilities than NRC did in NUREG 6427, and
6 also that the assumption about the fraction of clad
7 reaction is different.

8 Now, those are two differences that are
9 stated in the basis for this subpart. And I guess I'm
10 a little confused, now, in terms of, Mr. Repka, your
11 earlier statement that there were no differences.

12 MR. REPKA: Those differences are
13 referring to differences between Duke's original SAMA
14 evaluation and the evaluation based upon the NUREG
15 6427 data.

16 Those are not statements that are
17 evaluation using NUREG 6427 data, are somehow
18 inadequate. What they are focusing on is the delta
19 between the two SAMA evaluations. There is absolutely
20 nothing in this amended Contention 4 that suggests the
21 evaluation based upon NUREG 6427 data is inadequate.

22 Do you understand the distinction I'm
23 trying to make here?

24 CHAIRPERSON YOUNG: I'm afraid I don't.
25 Because now looking back at your response to RAI 3C,

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1 you respond to, as the Contention basically reads, you
2 say the primary -- well, first of all, you talk about
3 the differences in conditional containment failure
4 probabilities.

5 You say the primary difference is the
6 amount of hydrogen assumed to be in containment. You
7 refer to appendix B of NUREG 6427, and you talk about
8 the differences that you, in your calculations, based
9 on the MAAP code.

10 So I'm not understanding where, in your
11 response to RAI3C you say there are differences, now
12 you are telling me there are no differences. And
13 maybe you need to simplify it, because I'm not
14 understanding how there can be differences here, and
15 now you are saying they are not different.

16 MR. REPKA: I'm going to try, and then I'm
17 going to let Mr. Brewer try. The RAI 3 response is
18 attempting to explain differences between the two SAMA
19 evaluation results.

20 The first result that Duke did, based upon
21 its own IPE/PRA data, and the second evaluation based
22 upon the NUREG 6427 data.

23 CHAIRPERSON YOUNG: Where do you say that
24 in your response to RAI 3C?

25 MR. REPKA: That is correct. And so that

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1 is --

2 CHAIRPERSON YOUNG: No, it was a question.
3 Where does it say that you are comparing your two SAMA
4 evaluations? I read, on RAI 3C, let's see.

5 A comparison of the conditional early
6 containment failure probability for McGuire to the
7 conditional early containment failure probabilities
8 reported in a recent NRC sponsored study by Sandia
9 National Laboratory, in other words NUREG 6427.

10 In other words, compare your own
11 calculation to those in NUREG 6427. Then in your
12 response to that you say the primary difference, and
13 presumably the difference that you are referring to,
14 is the difference that the question asked you about,
15 namely between your calculations and NUREG 6427.

16 So I'm not understanding how in the answer
17 to the question about what is the difference in NUREG
18 6427 and your calculation, you talk about differences,
19 and now you are telling me they are not different.
20 I'm not following it.

21 MR. REPKA: The RAI 3C asks for a
22 comparison of the conditional early containment
23 failure probability for Catawba. I'm looking at the
24 Catawba one, which is what was used in the first SAMA
25 evaluation, to the conditional early containment

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1 failure probability reported in the NUREG 6427.

2 They are asking, the NRC is asking us what
3 is different between what you submitted the first
4 time, and what is used in the NUREG 6427, in that
5 evaluation.

6 So we are explaining, in response to 3C,
7 what are the differences, why did we come to a
8 different result in our submittal back in the original
9 environmental report in June or July of '01.

10 Then in RAI 4 the Staff asked us, go ahead
11 in light of the NUREG 6427 data, recalculate the SAMA
12 results, which then in response to RAI 4 we do that.
13 So these differences in RAI 3 are not differences
14 between the second SAMA and what we did.

15 These are differences between the first
16 SAMA and what was done in NUREG 6427. The comparison
17 is to the first SAMA and NUREG 6427 itself. Then in
18 RAI 4, when we submit our revised SAMA based upon
19 NUREG 6427, there are no differences.

20 And that is what I'm saying. What we did
21 for RAI response 4, incorporated the hydrogen produced
22 from 6427, incorporated the probabilities of vessel
23 failure and containment, of early containment failure
24 based upon NUREG 6427. There are no differences.

25 CHAIRPERSON YOUNG: Mr. Repka, then let me

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1 ask you this, because -- and I appreciate your
2 explaining all this, and I want to hear from the
3 intervenors as well.

4 But in the final sentence to your response
5 to RAI 4, well in the next to the last sentence you
6 say: The risk and benefit value is reevaluated using
7 NUREG 6427, made a containment failure probability for
8 McGuire yield an estimated 21.0 person REM, with an
9 averted risk value of 462,000 dollars.

10 Then you say: This result overestimates
11 the benefit of all of the early containment failure
12 risk can be eliminated by providing hydrogen control.
13 The other early containment failure mode is still --
14 so is your response to RAI 4 intended to mean that you
15 are going to do exactly what NUREG 6427 suggests, in
16 its assumptions and calculations?

17 MR. REPKA: What that response says is
18 that the estimated containment failure probability the
19 person REM, with an averted risk value, are exactly
20 based upon the NUREG 6427 data.

21 So that is what it is providing, it is
22 providing a recalculation of averted risk value based
23 upon NUREG 6427 data. The following sentence then
24 explains a reason why we think that is an over-
25 statement of risk.

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1 And, again, it is going back to the
2 difference between the NUREG calculated value versus
3 our original calculated value, based upon, really, the
4 potential of early containment failure.

5 Mr. Brewer will add to that.

6 CHAIRPERSON YOUNG: So then what we get
7 down to is that -- what we get down to is that you are
8 saying that you are not going to apply the 6427 values
9 because you believe that that over-estimates the
10 benefit?

11 MR. REPKA: It is not a matter of applying
12 or not. They have both been done. And what we are
13 just saying is the one we think is slightly better
14 than the other, but it doesn't matter.

15 And the Staff has taken both values for
16 their FDIS draft, and said that based upon the range
17 of values calculated, some changes may be cost
18 beneficial, hence we need to look at that in Part 50
19 space, hence GSI 189.

20 CHAIRPERSON YOUNG: But apart from GSI
21 189, you keep coming back to that --

22 MR. REPKA: That is because all roads lead
23 there.

24 CHAIRPERSON YOUNG: But what I'm saying
25 is, let's assume for a moment, and it may not be the

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1 case, but let's assume for a moment that GSI 189 is
2 not out there.

3 Because if GSI 189 resolves everything,
4 and I think every single conference that we've had,
5 for the last several months, we've asked -- as a
6 matter of fact, Judge Kelber is the one who even told
7 the Staff that GSI 189 was out there, and we've
8 continued to ask, what is the relevance of 189, does
9 that resolve anything in this case?

10 And it has remained an issue. So let's --
11 if it resolves everything, then we don't need to be
12 here. But let's put it aside for a moment. And what
13 I want to get an answer for you on, is if 189 is not
14 there, what I understand you to be saying is that you
15 do not plan to proceed in a fashion that would follow
16 from following every recommendation, calculation,
17 value, assumption, in NUREG 6427?

18 Am I correct in assuming that? If I've
19 misstated, restate it for me.

20 MR. REPKA: Well, first Mr. Brewer wants
21 to respond to the difference of -- go ahead.

22 MR. BREWER: In that particular paragraph
23 that you were referring to, where it talks about, it
24 says: The risk vested value is reevaluated using the
25 NUREG, estimated containment failure probability for

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1 McGuire yields an estimated 21 person REM, with an
2 averted risk of 462,000 dollars.

3 That is a statement of what happens to our
4 analysis if we use the NUREG numbers. So, therefore,
5 we have evaluated our SAMA analysis for hydrogen
6 control, giving the calculated risk change.

7 But then we clarify it with the next
8 sentence by saying, really this is an overestimation
9 of the benefit, because simply providing hydrogen
10 control doesn't eliminate all of this risk. By
11 providing hydrogen control there is still risk of
12 early containment failure from other means.

13 So you can't eliminate all of this. We
14 are not even disagreeing with the assumptions in the
15 NUREG here. We are just stating that this is an upper
16 bound to the change in risk if you provide hydrogen
17 control.

18 MR. REPKA: Now, Judge Young, your
19 question is what are we going to do with it? I mean,
20 in a sense, where do we go?

21 Well, the answer to that is we have, in
22 effect, provided the SAMA evaluation done both ways.
23 It is now in the docket. We aren't required to go
24 anywhere beyond that. The Staff will publish their
25 supplemental environmental impact statement, and they

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1 will write it the way they want to write it, and the
2 way they determine it to be correct, or most correct.

3 And we don't have to do anything further,
4 we don't have to decide whether we think 21 person REM
5 and averted risk value of 462 is right or wrong. The
6 fact is we provided the value.

7 The SAMA evaluation doesn't force any
8 further action, it is just an evaluation. The person
9 that would make us go any further would be the NRC
10 staff, and the NRC through the Part 50 rulemaking
11 process, or some other means.

12 But in terms of where do we go on a SAMA,
13 we aren't picking one over the other. We are not
14 required to pick one version of the SAMA evaluation
15 over the other. We were asked to do it, and we did
16 it.

17 JUDGE KELBER: Let me ask a question. Mr.
18 Repka and Mr. Brewer, did the SAMA evaluation, remind
19 me, did the SAMA evaluation you did in the
20 environmental report move the risk from other, of
21 early failure from containment failure, from other
22 contributors?

23 MR. REPKA: Yes, it did.

24 JUDGE KELBER: Thank you.

25 CHAIRPERSON YOUNG: My next question is

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1 for the Intervenors. Having heard what Duke has to
2 say on this, I haven't asked the Staff because I'm
3 assuming, maybe incorrectly, but -- well, let me just
4 ask, before we move on to the Intervenors.

5 Does the Staff disagree with anything that
6 Duke has said?

7 MR. HECK: Your Honor, this is Jared Heck.
8 No, we are in agreement with what Duke has said
9 regarding SAMA evaluations, and their responsibilities
10 in that regard.

11 CHAIRPERSON YOUNG: Okay. Then what I
12 would like to ask, and we are going to need to either
13 reconvene at a later time, if we can't finish up in
14 the next 15 minutes, or extend the telephone
15 conference.

16 But I would like to ask the Intervenor to
17 respond to what Duke has said, which may have
18 clarified the situation somewhat, or may at least help
19 you to focus on, again, what is the dispute, and what
20 is the relief that could be provided.

21 DR. LYMAN: This is Dr. Lyman. Before we
22 get to that I would just like to provide the citation
23 I was referring to before, with regard to the hydrogen
24 generation fraction. It is 5044C5B.

25 That is the assumption of the amount of

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1 hydrogen generated in a LOCA when designing the
2 igniter system, that is 75 percent of the fuel
3 cladding.

4 JUDGE KELBER: That is the design
5 criteria, is that correct?

6 DR. LYMAN: That is right. So one could
7 argue that --

8 JUDGE KELBER: The design criteria is not
9 necessarily what you expect to happen, is it?

10 DR. LYMAN: No, I'm not saying that, I'm
11 just --

12 JUDGE KELBER: You design a bridge to
13 carry 40 tons, do you expect it to carry 40 tons?

14 DR. LYMAN: That is not the point I was
15 making. I was simply pointing out the reference I was
16 referring to, as an upper bound that was regarded as
17 the conservative upper bounds for setting the design
18 criteria.

19 CHAIRPERSON YOUNG: Okay. So then could
20 you go on and respond to what Mr. Repka and Mr. Brewer
21 have said about whether there is actually any dispute
22 here, and any relief available to you?

23 DR. LYMAN: I only reiterate the point we
24 made before. And that is that simply substituting the
25 conditional containment failure probability, swapping

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1 what they've used for the one from NUREG 6427 does not
2 meet the --

3 (Telephone operator interruption.)

4 DR. LYMAN: -- does not meet the concern
5 that we've expressed, that NUREG 6427's assumptions
6 have been fully incorporated, and particularly refer
7 those who have read the document to the numerous
8 places where Catawba and McGuire IPE's --

9 CHAIRPERSON YOUNG: Excuse me, Mr. Lyman.
10 I'm sorry, I didn't hear that, because we are going to
11 need to end this conference shortly. And so I do want
12 to hear your response, but rather than be cut off in
13 the middle of a sentence, I think probably we need to
14 take a break here and decide how we are going to
15 handle the remainder of the questions on the
16 Contention.

17 I'm hearing one indication that going on
18 longer is not something that we want to do. We have
19 the choice of scheduling another telephone conference.
20 We could, Judge Kelber had suggested earlier the
21 possibility of going back to Charlotte.

22 I think that that is something that we
23 need to consider before we get cutoff in the middle of
24 a sentence. And I think we do want to make sure that
25 all our questions get answered, and that we do hear

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1 you.

2 So do I hear any suggestions on how we
3 handle the remainder of the questions?

4 MR. REPKA: This is Dave Repka for Duke.
5 I think it is very important that we answer your
6 questions, and I think that the best way to proceed
7 would be to set up another telephone conference to
8 continue this discussion.

9 CHAIRPERSON YOUNG: Anybody else have
10 anything to say on that? I don't have any problem
11 with that myself, and if everyone has their calendars
12 we can talk about another date.

13 As a matter of fact, I have tomorrow open,
14 if we want to continue tomorrow.

15 JUDGE RUBENSTEIN: I'm in a travel status.

16 CHAIRPERSON YOUNG: Judge Kelber is saying
17 that we really need to stop shortly. I do want to
18 hear Dr. Lyman's, at least preliminary, response to
19 the last question before we go.

20 But I don't think that we have any more
21 time, as a practical matter, today. Next week I'm
22 going to be traveling on another case, and doing a
23 site visit Monday through Wednesday. I will be in
24 next Thursday, and possibly Friday.

25 JUDGE RUBENSTEIN: Thursday works for me.

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1 CHAIRPERSON YOUNG: Thursday the 18th?

2 MS. CURRAN: Judge Young, I'm going to be
3 out of town starting the -- what is this Friday, the
4 12th? I will be out of town starting the 19th, so the
5 following week.

6 CHAIRPERSON YOUNG: Would you be available
7 on the 18th, then, same time, anyplace you can make a
8 phone call?

9 MR. ZELLER: The 18th is not good for me.

10 CHAIRPERSON YOUNG: What about Friday of
11 this week? I don't think we discussed that. I do
12 have a doctor's appointment -- Judge Kelber can't do
13 that on Friday.

14 JUDGE RUBENSTEIN: I'm not available this
15 Friday.

16 CHAIRPERSON YOUNG: Tomorrow somebody --
17 who was not available?

18 JUDGE RUBENSTEIN: I'm not available in
19 the morning.

20 JUDGE KELBER: I'm not available on the
21 morning.

22 CHAIRPERSON YOUNG: The afternoon of
23 tomorrow? We don't need to have this on the record,
24 I don't think.

25 (Whereupon, the above-entitled matter

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1 went off the record at 1:49 p.m. and
2 went back on the record at 1:55 p.m.)

3 CHAIRPERSON YOUNG: Just to go back on the
4 record, recount what we've just decided. We are going
5 to reconvene, by telephone conference, on July 29th,
6 Monday, at 10 o'clock, be prepared to go through until
7 2 o'clock, if necessary.

8 We will continue with questions from Judge
9 Kelber, Judge Rubenstein, and myself.

10 JUDGE RUBENSTEIN: On Items 5 through 8.

11 CHAIRPERSON YOUNG: And finishing up on 4
12 as necessary. And then at the conclusion of that, if
13 the parties have any points that they feel have not
14 been addressed, then time for them to do that in a
15 concise -- so hopefully between now and then we will
16 use the transcript from today to focus our questions
17 and comments, and arguments on the 29th.

18 The Board will issue an Order, in the near
19 future, indicating whether we wish to have any further
20 written filings summarizing any additional arguments
21 on the issues we've already limited this to, would be
22 appropriate, and if so, setting a deadline for that.

23 We do have a few more minutes, and I'd
24 like to give Dr. Lyman, who was literally interrupted
25 in the middle of a sentence, a chance to finish what

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1 you were saying.

2 And I believe my question was to respond
3 to what Mr. Repka and Mr. Brewer have said about there
4 being no dispute here, because Duke has already done
5 the, incorporated the assumptions used in NUREG 6427
6 as one of the quantitative SAMA analysis, as I
7 understood it.

8 So to address that, and also to address
9 what relief would be available to you under this
10 Contention subpart 4. And, Ms. Curran, if you have
11 anything to add, as well? If both of you could just,
12 concisely, do that and then I think we would adjourn
13 for today.

14 DR. LYMAN: This is Dr. Lyman. As I was
15 saying, we do not believe that simply taking Duke's
16 existing SAMA analysis, and replacing the NUREG 6427
17 initial containment failure frequency value, meets the
18 remedies or objections.

19 It doesn't make technical sense, I would
20 think everyone agrees, to take a PRA and artificially
21 insert a different condition of containment failure
22 frequency without having evaluated that from
23 considering each accident sequence, propagating that
24 to the level 1, to level 2, and then tabulating the
25 results.

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1 So NUREG CR6427 to the extent it goes
2 through an analysis of the initial sequences that can
3 lead to hydrogen generation containment failure, as
4 well as the non-hydrogen generation events, including
5 direct containment heating and liner failure, those
6 individual end points need to be evaluated, partly so
7 that we can asses when Duke asserts that their results
8 are overly conservative, we need to know how overly
9 conservative those are.

10 Because unless we understand the
11 contribution of the non-hydrogen combustion events,
12 the containment failure, we can't understand how
13 conservative those results are.

14 So we don't think that that simple
15 substitution is technically sound, or provides enough
16 information. Thank you.

17 JUDGE RUBENSTEIN: Excuse me, does that
18 address the relief you wanted?

19 MS. CURRAN: Let me address the relief.
20 And that is that underneath -- one of the prime
21 purposes of NEPA is disclosure of relevant --
22 information that is relevant to environmental impacts.

23 So to have a factual discussion of, that
24 is based on credible information, and an adequate
25 analysis is important. And the NEPA analysis is not

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1 just a matter of throwing something out and saying we
2 did it.

3 The Statute demands what they call a hard
4 look. In other words, is it reasonable. So that is
5 -- we feel that it is relief, the kind of relief we
6 are looking for at the analysis is based on a
7 reasonable facts and reasonable methodology.

8 JUDGE RUBENSTEIN: But you are asking the
9 Board to determine if the current calculation status
10 is reasonable?

11 MS. CURRAN: Well, I guess that is the
12 underlying premise of the Contention, is that there
13 hasn't been a demonstration that the analysis that was
14 done is reasonable. They just said, you wanted us to
15 put this input in, so we did it without going the next
16 step and doing it in a way that adds up to credible
17 and thorough analysis.

18 JUDGE RUBENSTEIN: Thank you, I understand
19 where you are at.

20 CHAIRPERSON YOUNG: All right. One of the
21 things that I would just like to say before we close,
22 and Ms. Curran reminded me, there are several issues
23 that I would like the parties to be prepared to
24 addresses in a fairly focused way.

25 And those are, we've given you the

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1 citation to the case relating to the relevance of
2 generic staff action that is in progress. And if you
3 need that again it is 49NRC328, and then the citation
4 in particular was 345.

5 So whether we indicate that we want that
6 in writing, or verbally, we would like the parties to
7 address that. And Judge Kelber earlier gave you the
8 citation, the Adams citation for the ACRS meeting
9 where this was discussed.

10 It is, obviously, a significant issue, and
11 how it is handled is a significant issue as well,
12 particularly in the context of this case. I would
13 like to ask the Intervenors to be ready to respond to
14 the Staff and Duke's arguments on the hard look
15 doctrine that you raised in your amended Contention.

16 And then insofar as this current licensing
17 basis issue plays into when that might take some issue
18 out of a SAMA or not, or how these interrelate, if
19 there is any further, or anything that anyone wants to
20 offer on that.

21 My understanding at this point is that
22 even though something is current licensing basis, if
23 it relates to a SAMA, it would be within the scope of
24 the license renewal proceeding, but if any parties
25 have anything to argue on that, that would be an issue

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1 to be prepared to address shortly.

2 JUDGE RUBENSTEIN: Judge Young?

3 CHAIRPERSON YOUNG: Yes.

4 JUDGE RUBENSTEIN: Do you think you want
5 to reiterate this in the Order, so the instructions
6 are clearer to the participants?

7 CHAIRPERSON YOUNG: Right. And we are
8 going to issue an order indicating how to do it, and
9 so forth. But mainly I just wanted to let everyone
10 know today, and it will be on the record that these
11 are issues I would like to have addressed.

12 I would like to ask you, Judge Rubenstein,
13 and you Judge Kelber, if there are any other specific
14 points that you would like the parties to be prepared
15 to address when we reconvene on the 29th?

16 JUDGE KELBER: Just specific questions
17 about the particular Contentions, not the intent.

18 CHAIRPERSON YOUNG: Judge Rubenstein?

19 JUDGE RUBENSTEIN: I'm satisfied at this
20 moment.

21 CHAIRPERSON YOUNG: All right. Then if
22 there is nothing else that anyone -- go ahead.

23 JUDGE RUBENSTEIN: Are you going to thank
24 the parties, I'm sure, for their participation today?

25 CHAIRPERSON YOUNG: Yes.

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1 JUDGE RUBENSTEIN: If so, I'm going to add
2 my thank you.

3 CHAIRPERSON YOUNG: Thank you all, and
4 also thank everyone for their fortitude in sitting by
5 a phone for four hours. And at least it saves travel
6 expenses, even though we don't get to smile at each
7 other face to face. I think we have made some
8 progress today, and I appreciate everyone's
9 participation, and I'm sure all of us do.

10 So if there is nothing further for today?

11 (No response.)

12 CHAIRPERSON YOUNG: Hearing none, we will
13 adjourn for today and reconvene on the 29th at 10
14 o'clock.

15 (Whereupon, at 2:06 p.m. the above-
16 entitled matter was concluded.)

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CERTIFICATE

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

Name of Proceeding: Duke Energy Corporation

Docket Number: 50-369-LR et al.

Location: Teleconference

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.

JS/George Besa

George Besa
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