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Millstone Nuclear Power Plant, Unit 3

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20 ALSO PRESENT:

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23 PETE REYNOLDS, CCAM

24 PAUL CHOINIERE, The Day Newspaper

25 DICK WINN, Dominion Nuclear, Connecticut

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

10:02 a.m.

CHAIRMAN BECHOEFER: This is Judge Bechoefer.

JUDGE COLE: This is Judge Cole. Good morning.

JUDGE KELBER: Judge Kelber. Good morning.

CHAIRMAN BECHOEFER: And our legal counsel, Michelle McKown, is also with us.

MS. MCKOWN: Good morning, everyone.

CHAIRMAN BECHOEFER: This conference call is designed to deal with the motion for further extension of time and some of the responses that we've gotten.

To start out with since this is October, I'm assuming the so-called FRAP report has been issued already, although not circulated. Am I correct?

MR. REPKA: This is Dave Repka for Dominion Nuclear Connecticut. We expect to circulate the FRAP report this week.

CHAIRMAN BECHOEFER: I assume the report is out, but you have asked for several extra days to circulate it and it did come out as you had projected. Am I correct?

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1 MR. REPKA: That report has been delivered  
2 as of the end of the day yesterday. Nuclear Energy  
3 FRAP Team. So it's under acceptance review right now.

4 CHAIRMAN BECHOEFER: So the question  
5 before us is whether we should continue to defer all  
6 discovery, etcetera, in the proceeding as late as  
7 October 31, I guess.

8 MR. REPKA: This is Dave Repka from  
9 Dominion Energy. Just to clarify, Judge Bechoefer,  
10 what will be circulated this week would be the FRAP  
11 report. As we have said before, there's a separate  
12 root cause report that has to follow by a couple of  
13 weeks and so, as always anticipated, that's still to  
14 come.

15 CHAIRMAN BECHOEFER: By the way, you  
16 should identify yourself by name. That was Dave Repka  
17 and this is Judge Bechoefer. This is for the benefit  
18 of the reporter.

19 JUDGE COLE: Maybe we should go through  
20 and have everybody identify themselves with their  
21 affiliation for the record. This is Judge Cole.

22 MR. REPKA: I'm happy to start again.  
23 This is David Repka, Winston and Strawn for Dominion  
24 Nuclear Connecticut and with me here in Washington is  
25 Donald Ferraro.

1 MS. BURTON: I'm Nancy Burton, and I'm  
2 representing the Intervenor/Petitioner.

3 MS. CUOCO: This is Lillian Cuoco. I am  
4 counsel for Dominion Nuclear Connecticut. I'm located  
5 at Millstone Station. I have with me Dick Winn from  
6 our communications group.

7 MR. REYNOLDS: I'm Pete Reynolds, public  
8 citizen.

9 MS. HODGDON: Anne Hodgdon for the NRC  
10 staff, and I have with me Victor Nerses who is the  
11 project manager for Millstone 3 and I have also David  
12 Cummings who's just joined our division as an honor  
13 law graduate from the University of Virginia. He's  
14 the new crop of honor law graduates. So just the  
15 three of us.

16 CHAIRMAN BECHOEFER: Now to continue, I  
17 think we should go to the request to -- report and  
18 that, the way I recollect, would stand until, I'm  
19 told, October 31. Is that correct?

20 MS. HODGDON: The staff, that is Mr.  
21 Nerses and I, spoke with Barry Letts yesterday to  
22 confirm that his affidavit filed on September 4  
23 remains factually correct and we are told that does.  
24 He furnished us one other fact. He said that he  
25 closed the report on Friday, September 28 and sent it

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1 to headquarters on that date. I couldn't find anybody  
2 here yesterday who actually has it. I think it's in  
3 the mail. There's no reason that any date in his  
4 affidavit should be changed. So October 31 is still  
5 the expectation for the date on which copies of that  
6 report can be made available to the board and parties.

7 CHAIRMAN BECHOEFER: It appeared, to me at  
8 least, that the timing from the end of August when the  
9 investigation was through, finished, to October 31 is  
10 fairly leisurely for preparing and circulating a  
11 report. Could we get perhaps some information along  
12 that line?

13 MS. HODGDON: Well, I'm not going to talk  
14 about this report specifically, but I will talk about  
15 OI reports generically, why they take a month after OI  
16 has issued them or closed them or whatever word Barry  
17 Letts uses. The regional office of OI gives that  
18 report to the regional administrator and he sends it  
19 down here. I presume it comes to OI's headquarters  
20 office. It goes from there to OGC and to the Office  
21 of Enforcement. Those offices have approximately  
22 three weeks if it's an ordinary report to review it  
23 for possible enforcement action and for legal  
24 correctness and legal adequacy. That would be OGC  
25 that does that.

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1                   There are some very, very long reports,  
2 long investigations that take a very great deal longer  
3 than that and it depends, and so the assumption that  
4 a report is ready to be made public at the time that  
5 its author, OI, releases it is just not correct.  
6 That's not the way it's done. So that's all I can  
7 tell you about that.

8                   CHAIRMAN BECHOEFER: Does it have to take  
9 that long?

10                  MS. HODGDON: I think I said --

11                  CHAIRMAN BECHOEFER: Can OGC, for  
12 instance, maybe you speed it up a little bit?

13                  MS. HODGDON: Excuse me?

14                  CHAIRMAN BECHOEFER: Can OGC speed up its  
15 review like yourself?

16                  MS. HODGDON: I do not review that report.  
17 Okay, look, I'm happy to explain this because it might  
18 not be clear to everybody. In March of 1999 OGC was  
19 reorganized and so now the division that I work in is  
20 Reactor Programs. We do hearings and all other work  
21 having to do with reactors and so our client for the  
22 most is NRR because they are the licensing arm of the  
23 agency with regards to reactors. They do more than  
24 that, but I'm trying to cut this short.

25                  We used to have also in our division a

1 group that's now become a separate division and that  
2 division represents NMMS. It does hearings on  
3 materials. That is, not reactors. And it also does  
4 all enforcement action. And that group reviews all  
5 enforcement related matters and that includes OI  
6 reports. So I'm not the person that reviews that  
7 report. I'd be happy to speed it up if I were, but  
8 I'm not and I have no control over it any more than  
9 Mr. Letts does because it's gone from him now. I mean  
10 he gave his report. It's for somebody else to review  
11 and there's nothing I can do about it.

12 CHAIRMAN BECHOEFER: Well, my next  
13 question is we've deferred for the OI report basically  
14 because of the policy statement that was issued on --

15 MS. HODGDON: I think it's in the board's  
16 order.

17 CHAIRMAN BECHOEFER: -- September 7, 1984  
18 published in *The Federal Register* on September 13,  
19 1984. Basically, that policy statement -- well,  
20 first, it's not clear whether it includes only the OI  
21 investigation or whether it also includes issuance of  
22 the report. It just doesn't say. But the purposes of  
23 the policy statement indicate that they're basically  
24 purposes for not having discovery, for instance, while  
25 OI either investigates or issues its report and it's

1 1) to protect OI, the OI report itself and the other  
2 to preclude there being the revelation of sources, for  
3 instance.

4 Either of those purposes, would they still  
5 exist at the present time prior to issuance of the  
6 report on October 31?

7 MS. HODGDON: Things have changed somewhat  
8 since the staff filed its motion on May 22, its  
9 original motion to defer, because of the OI  
10 investigation. The primary purpose, Judge Bechoefer,  
11 you're correct, it is to protect the integrity of the  
12 investigation and also to preclude discovery where the  
13 persons being deposed might be the same persons that  
14 OI is investigating. And so that phase is over, at  
15 least for now. So that is over and that has been  
16 done.

17 Meanwhile, the board did ask that copies  
18 of the report be given to the board and parties, and  
19 they will not be available until October 31. There  
20 are other dates that are more important and certainly  
21 more closely related to the issues here that are not  
22 yet out and have other reasons behind them for  
23 compelling a later date for discovery against the  
24 staff. If we finished with the OI report, I'm happy  
25 to answer any other questions that I can answer. I

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1 have no idea, other than what I've just told you. I  
2 believe I've told you everything I know about the OI  
3 report.

4 CHAIRMAN BECHOEFER: So then if we're  
5 trying to figure out the best timing for starting  
6 discovery in this proceeding. Restarting it.

7 MS. HODGDON: That is true, and I believe  
8 the board generally agreed with Mr. Repka in the last  
9 pre-hearing conference call on May 24 where he said  
10 that the FRAP report, the licensee's FRAP report,  
11 would be a basis for starting discovery because  
12 discovery could proceed from that. The staff agrees  
13 with that and also agrees that the staff document in  
14 this regard would be not the OI report but the staff's  
15 inspection of the FRAP which is scheduled for starting  
16 on October 9. I think we've already made that date  
17 clear.

18 CHAIRMAN BECHOEFER: That I'm not sure we  
19 ever agreed with. The staff inspection of the FRAP  
20 obviously will have to take place but that, at least  
21 to me, seems like a phase of trial preparation.

22 MS. HODGDON: It's not actually. The fact  
23 is from the staff's point of view, the staff can not  
24 take a position about the FRAP other than the position  
25 that will be taken by Doctor Bellamy's people in their

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1 investigation response. So that will be the staff's  
2 case, and the staff does not believe that this effort  
3 against the staff should be ongoing at the time these  
4 very people that would be involved in answering the  
5 discovery would be writing this report.

6 CHAIRMAN BECHOEFER: Again, that's trial  
7 preparation as far as I can see. What I can't really  
8 understand is why discovery of this proceeding need  
9 await the staff's completion of its own trial  
10 preparation. I'm not sure that's fair.

11 MS. HODGDON: Oh, it's final preparation.  
12 If you can believe that it's comparable to a safety  
13 evaluation where COI 98-12, which is a policy  
14 statement, says that proceedings ordinarily shouldn't  
15 go forward with discovery against the staff until the  
16 staff has published its document. They're talking  
17 about the FE there, but the staff would find it very  
18 awkward to have discovery against its proceedings when  
19 it doesn't know what the position is.

20 We're not opposed to end discovery  
21 proceeding, as Mr. Repka has indicated in his response  
22 to our motion which is a response supporting our  
23 motion except that he believes --

24 CHAIRMAN BECHOEFER: Not completely  
25 supporting.

1 MS. HODGDON: I do believe it supports the  
2 notion. It states its support for our motion and it  
3 says that perhaps -- because it takes no position  
4 about discovery against the staff. It says that it  
5 believes that the FRAP itself is the primary document,  
6 the FRAP plus the root cause report which will follow  
7 on and that as soon as people have had an opportunity  
8 to examine those documents, that perhaps discovery  
9 would be proper based on the documentation that  
10 supports those and, to the extent that intervenors  
11 might think that that documentation needs to be  
12 supplemented, they could file discovery. That's the  
13 way I read the licensee's response.

14 MR. REPKA: I would just say that's, I  
15 think, a fair characterization. Our position is that  
16 the question of discovery is premature until the FRAP  
17 documents, including the root cause, are out because  
18 there's no basis until those documents are out to even  
19 talk about what, if any, other discovery might be  
20 required. So the logic hasn't changed since May and  
21 June and in our position supporting the staff. By the  
22 end of October, those documents should be out. That's  
23 generally consistent with the OI schedule. So late  
24 October would be a good time to take up the issue  
25 after everybody has had a chance at least to review

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1 the FRAP and the root cause of next steps in this  
2 proceeding including where the NRC staff inspection  
3 report fits in. But the basic logic here hasn't  
4 changed since June.

5 CHAIRMAN BECHOEFER: Ms. Burton, do you  
6 have any reaction to what you've heard thus far?

7 MS. BURTON: Yes. What I would like to  
8 say is that, of course, we have a continuing objection  
9 to any delay in these proceedings and we don't believe  
10 that any good cause has yet been presented factually  
11 for any further continuance. But having said that, I  
12 think that I haven't heard specifically from Mr.  
13 Repka as to the dates when the parties will receive  
14 both the FRAP report and the root cause report. Is he  
15 saying October 31?

16 MR. REPKA: I did not say that.

17 MS. BURTON: No, I didn't think so, but I  
18 wonder if you could give us dates. Then we could  
19 maybe plot out the next step more efficiently here.

20 MR. REPKA: I can not give you precise  
21 dates or times on those dates, but I can say that what  
22 I anticipate right now, barring the unforeseen, is  
23 that this week the FRAP report will be distributed and  
24 in a couple of weeks time the root cause report should  
25 be ready. That's what we said all along. We expect

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1 the root cause report to be ready a couple of weeks  
2 following the FRAP report.

3 MS. BURTON: I just had a question about  
4 that again because when you say distribution, the  
5 first step of distribution is to Dominion. Correct?  
6 Not the parties. There was a period of time when you  
7 wanted to have the licensee have an exclusive  
8 opportunity to review the FRAP report.

9 MR. REPKA: The FRAP was presented from  
10 the Northeast Nuclear Energy team to Dominion and yes,  
11 that's true. We wanted some time to look at that  
12 first.

13 MS. BURTON: So if that has already  
14 happened, then could you give us a time by which we  
15 could expect to see it?

16 MR. REPKA: All I can say at this point is  
17 I hope to send it later this week.

18 MS. BURTON: And as far as a date for the  
19 root cause report?

20 MR. REPKA: I expect that to be a couple  
21 of weeks.

22 CHAIRMAN BECHOEFER: So October 15, more  
23 or less?

24 MR. REPKA: More or less. I really can't  
25 control that report and don't know what the exact

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1 process will be but yes, a couple of weeks would be  
2 about right.

3 MS. BURTON: And that would be to the  
4 parties

5 MR. REPKA: And we would distribute it.

6 CHAIRMAN BECHOEFER: To the board and  
7 parties. Correct.

8 MR. REPKA: Right. We would send that by  
9 hard copy or, when we distribute it, we could  
10 certainly send it by Federal Express or whatever.

11 MS. BURTON: I was a little bit confused  
12 about what the staff was saying, if I may. I  
13 understand that a report has been sent to headquarters  
14 from Region 1 OI. Does that mean that the  
15 investigation has been completed, that it's closed?  
16 What else are we waiting for? Why can't that report  
17 be issued other than that it's being reviewed? Is it  
18 subject to being modified? I just want to have a  
19 better understanding of the process that we're in.  
20 That you are in. That the staff is in.

21 MS. HODGDON: Judge Bechoefer, I have  
22 nothing to add to the explanation that I've already  
23 given regarding the fact that OI's reports are not  
24 final and that they are never made public until the  
25 review that I talked about has taken place.

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1 MS. BURTON: Then I understand it's now  
2 anticipated that they will be made available October  
3 31. That is the report prepared by Region 1 OI. Is  
4 that correct? Is that what we're looking to see on  
5 October 31?

6 MS. HODGDON: The staff has already  
7 explained that the affidavit of Barry Letts remains  
8 factually correct. It says October 31 or maybe it  
9 says the end of October. It's more or less the same  
10 thing. In any event, we expect that the report will  
11 be available by that date.

12 MS. BURTON: That's the Region 1 report.

13 MS. HODGDON: That would be the OI report.  
14 That is the report. I mean it's it. The regions do  
15 the OI inspections and they forward the report to OI  
16 and its headquarters, but it is an agency report.

17 MS. BURTON: As far as the issue of  
18 whether there may be some referral to the Department  
19 of Justice, I don't think the staff touched on that  
20 and to the extent, if any, to which that might  
21 implicate our scheduling.

22 MS. HODGDON: Ms. Burton is correct. The  
23 staff did not touch on that.

24 JUDGE KELBER: This is Judge Kelber. i'd  
25 like to clarify something. The FRAP report. That

1 contains a collection of facts, I hope. Is that  
2 correct?

3 MR. REPKA: A collection, a description of  
4 what has been done in the findings and conclusions of  
5 the staff. That's correct.

6 JUDGE KELBER: Now, the root cause  
7 analysis is an analysis, it's not a recital of facts.  
8 Is that correct, Mr. Repka?

9 MR. REPKA: That would be correct. It  
10 certainly would have a recital of facts relevant to  
11 the root cause, but it would be an assessment of root  
12 causes and contributing factors, etcetera, etcetera.

13 MS. HODGDON: Could I ask a question or  
14 make a comment. I was of the belief that this was  
15 like a normal follow-on to an LER which has a root  
16 cause and has a recital of what happened and etcetera.  
17 The Rev 1, Rev 2 and so forth to an LER. Is that not  
18 so?

19 MR. REPKA: That's not really so. There  
20 will be a rev of the LER based upon the FRAP findings  
21 and the root cause assessment being done as part of  
22 the FRAP.

23 MS. HODGDON: But this root cause analysis  
24 is not the same kind of analysis that we normally get  
25 in an LER analysis except maybe on a grander scale.

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1 MR. REPKA: It is the same kind of  
2 analysis that you would see the summary of it in an  
3 LER. That's correct. I think the grander scale would  
4 be an accurate way of characterizing it.

5 MS. HODGDON: Thank you.

6 JUDGE KELBER: The OI report presumably  
7 will contain some fact.

8 MS. HODGDON: I'm not sure. I haven't  
9 seen it. Normally they have facts and conclusions.  
10 Yes, presumably. It's based on interviews, of course,  
11 and normally an OI report compares interviews with  
12 other interviews and tries to come out with an  
13 investigation and tries to come out with a  
14 determination of who's telling the truth and what  
15 really happened.

16 JUDGE KELBER: So at the end of October,  
17 we should have all the facts before us that are known.  
18 Is that correct?

19 MS. HODGDON: Actually, by the end of  
20 October, the staff plans to distribute the OI report  
21 itself. The interviews on which the report is based  
22 will not be available at that time because there's  
23 some 15" of them and they're normally not given out  
24 with the report. It takes longer to sanitize them,  
25 copy them and so forth. And so normally, they don't

1 go out with the report.

2 JUDGE KELBER: This process may in fact  
3 take a very long time.

4 MS. HODGDON: Are you talking about  
5 sanitizing and releasing those 15" of documents?

6 JUDGE KELBER: Yes.

7 MS. HODGDON: I think it might take a very  
8 long time. It might not have to be done. I think  
9 they're not normally done unless there's an FOIA  
10 request for them.

11 JUDGE KELBER: We'll face that when we  
12 come to it.

13 MS. HODGDON: Yes. I'd hope the 31st.

14 JUDGE KELBER: Everything is analysis and  
15 nothing is fact finding.

16 MS. HODGDON: Judge Kelber, I'm sure that  
17 you've seen OI reports. I know that Judge Bechoefer  
18 has. Normally, there's a relatively thin report and  
19 attached to it is sometimes, depending on the nature  
20 of the report, when they go to hearing on the report--  
21 which, of course, this hearing is not -- they will  
22 have the interviews go along with the report.

23 JUDGE KELBER: I'm not so much concerned  
24 about that. What I'm concerned about is when will we  
25 have the facts before us that are known regarding this

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1 unfortunately unique event in the United States  
2 reactor history?

3 MS. HODGDON: The OI report was looking  
4 into an allegation that the licensee had committed a  
5 reporting violation regarding these two missing fuel  
6 logs. That's all it's about. It's not about the  
7 reporting.

8 JUDGE KELBER: So it may not even be  
9 relevant.

10 MS. HODGDON: It's probably not relevant  
11 in its larger framework. That's correct. The staff  
12 investigation of the FRAP report is both the substance  
13 like the FRAP report itself.

14 JUDGE KELBER: But that dose not develop  
15 facts.

16 MS. HODGDON: Of course it develops facts.

17 JUDGE KELBER: The staff's view of them.

18 MS. HODGDON: It develops the staff's view  
19 of the licensee's view of the facts.

20 JUDGE KELBER: Thank you.

21 MR. REPKA: Judge Kelber, this is Dave  
22 Repka, just to respond for Dominion. I think that  
23 with respect to the facts regarding the retrospective  
24 look, yes, you're correct that by October 31 those  
25 facts will be there. To the extent there's some

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1 further action that might be indicated in the future  
2 going forward, obviously that won't be done. It may  
3 or may not be. But certainly with respect to the past  
4 event, the facts will be developed by October 31.

5 JUDGE KELBER: Now that's an ancillary  
6 matter. Chairman Meserve's letter to Congressman  
7 Markey mentioned some ongoing reports of reviews of  
8 staff action. We've heard nothing about that. When  
9 will they be available?

10 MS. HODGDON: The staff has sent an  
11 information paper to the Commission. There is an  
12 information paper now before the Commission which the  
13 Commission has not yet made public. But the staff  
14 expects that it will be made public shortly, and the  
15 staff will provide copies of the report to the board  
16 and parties as soon as it is made public. We expect  
17 probably within a few days, although we can't say with  
18 any certainty. That is in many ways a follow-on to  
19 the Markey letter. It takes care of some of the  
20 things that Judge Kelber was concerned about, but not  
21 all of them, and it does give status with regard to  
22 some of those things.

23 JUDGE KELBER: By the way, answer my  
24 question as to why the staff didn't discover this back  
25 in the '80s.

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1 MS. HODGDON: In a way, it does.

2 JUDGE KELBER: -- the checkbook.

3 MS. HODGDON: In a way, it does. It  
4 addresses that subject. Yes.

5 JUDGE KELBER: In a way.

6 MS. HODGDON: You might not like the  
7 answer but it does answer it. I'm going to ask Mr.  
8 Nerses --

9 MR. NERSES: It tries to answer the  
10 weakness in the inspection procedures that were  
11 available at the time and tries to address it from  
12 that aspect of it.

13 JUDGE KELBER: Mr. Nerses, you may not  
14 have been aware of the earlier conversations we had.  
15 The staff of NMFS gets the nuclear fuel inventory when  
16 the inventories are made at the plant. They send a  
17 copy to headquarters. That's in the regulation. Did  
18 anybody at NMFS or elsewhere in the staff ever look at  
19 these and try to balance one inventory against the  
20 other?

21 MS. HODGDON: That is addressed in the  
22 paper to a certain extent.

23 JUDGE KELBER: It is.

24 MS. HODGDON: Yes. I mean there are  
25 several different parts of the paper that address

1 certain aspects of this problem. The problem here, of  
2 course, is that Mr. Nerses is in NRR and is the  
3 project manager for -- and this matter is in MSF who  
4 as, I just told, is not our client. So we did the  
5 best we can with regard to this.

6 JUDGE KELBER: They may need a defense  
7 attorney.

8 MS. HODGDON: Excuse me? You think I need  
9 a lawyer? Thank you.

10 MS. BURTON: Judge Bechoefer, to get back  
11 to a couple of other points. The Department of  
12 Justice potential investigation. I'm just looking for  
13 some information on that and how the various parties  
14 believe now that that might implicate our schedule.  
15 I'm referring in particular, I have the board's  
16 memorandum and order dated June 21, 2001 at page five.  
17 In the bottom paragraph where it says, quote, "The  
18 board further noted that if the staff thought a  
19 further deferral beyond Labor Day, e.g., to a select  
20 lack of completion of the OI investigation or to  
21 accommodate a referral to the DOJ, the board would  
22 consider with the parties whether and to what extent  
23 continued deferral was warranted." That's why I'm  
24 focusing here for a moment on that issue potential  
25 referral to the DOJ. Does the staff have a comment on

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1 that?

2 MR. REPKA: I would comment on that by  
3 saying that that question is not before us today. The  
4 staff has not requested a deferral based on a DOJ  
5 referral and if they were to do that, that would be a  
6 separate question and they would certainly have to  
7 look at the relevance of the issue at that point. We  
8 would have the OI report presumably which to gauge.  
9 The bottom line is there has been no DOJ referral to  
10 date. There has been no staff request to defer  
11 pending that and the relevance of it is just simply  
12 not yet before us.

13 CHAIRMAN BECHOEFER: Well, I think that  
14 what I've heard at least, there is nothing before us  
15 that would indicate that deferral of further  
16 activities in this proceeding, discovery, etcetera,  
17 should not extend perhaps beyond the latest I've heard  
18 is October 31 or the end of October and further beyond  
19 that, I realize that the staff will need additional  
20 time to analyze, etcetera, but from what it appears to  
21 me, there's no reason to defer activities in this  
22 proceeding beyond October 31. Granted, the staff's  
23 position will not be complete, but that to me does not  
24 indicate why we should defer discovery in this  
25 proceeding beyond October 31. Perhaps the staff will

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1 not be able to respond for some time beyond that, but  
2 the other parties need to prepare their cases. Is  
3 there any reason that we should not at least authorize  
4 further discovery beyond beginning October 31 as of  
5 this time now?

6 MS. HODGDON: Judge Bechoefer, Mr. Repka  
7 can go ahead. He's going to say the same thing that  
8 I'm going to say, I believe.

9 MR. REPKA: They don't necessarily have to  
10 be the same.

11 MS. HODGDON: He's going to say that he's  
12 already said that he doesn't see any reason to set a  
13 discovery schedule at this time, and neither does the  
14 staff.

15 MR. REPKA: I think Ms. Hodgdon is exactly  
16 right. I think what we said in our papers in response  
17 to staff motion was that the time to discuss discovery  
18 would be when at least the FRAP report and root cause  
19 are in front of people so that we can intelligently  
20 discuss what, if any, further discovery is needed.  
21 Right now we would be discussing something completely  
22 in the blind. So as we suggested in our papers, the  
23 time to do that would be mid to late October, once the  
24 documents are before us.

25 CHAIRMAN BECHOEFER: So should we set a

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1 further pre-hearing conference for that time  
2 particularly? Mid to late October.

3 MR. REPKA: I would agree with that.

4 MS. HODGDON: Judge Bechoefer, yes, the  
5 staff thought that that's when the pre-hearing  
6 conference on discovery would have taken place anyway,  
7 when the FRAP document became available after it and  
8 the root cause document had become available in order  
9 to see whether discovery was necessary and, if so,  
10 what discovery was appropriate. And so this pre-  
11 hearing conference, we didn't entirely understand the  
12 purpose of it because it seemed premature in that  
13 regard.

14 MS. BURTON: Judge Bechoefer, on the issue  
15 of discovery, I think it's been our position all along  
16 that we have disagreed with a delay here and that  
17 whatever is being generated by the licensee and the  
18 staff is being done independently of really our  
19 proceeding, and so I don't think we should have a  
20 discovery schedule that's necessarily dictated by  
21 their own workings.

22 That having been said, I would think that,  
23 given the present status of things, that it might be  
24 appropriate for another teleconference call to be  
25 scheduled a week or so after all of these various

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1 documents have been provided to the parties.

2 But also I wanted to say and I had pointed  
3 out in the motion that I filed, that we haven't been  
4 receiving those periodic reports as to the status of  
5 the OI investigation nor the interim inspection  
6 reports, and again I'm reading from page five of the  
7 board's order of June 21, 2001. Given this delay, I  
8 would think that it would be appropriate for the staff  
9 to provide us with those as the board had been led to  
10 believe it would.

11 MS. HODGDON: I'd like to address that.  
12 The board's order does say on page five, as offered by  
13 the staff, the staff is to provide the board and  
14 parties with periodic reports as to the status of the  
15 OI investigation together with interim inspection  
16 reports on this matter and cites the transcript at  
17 573. I have read that transcript in its entirety, and  
18 I paid particular attention to page 573 which reads as  
19 follows. This is Ms. Hodgdon speaking.

20 "The staff will also furnish the board and  
21 parties the interim inspection report that will become  
22 public anyway." I've already indicated one will come  
23 out next week, and so those will be furnished. The  
24 staff was talking about the staff inspection of the  
25 FRAP and not about the OI report, and the staff never

1 committed to give any status reports on the OI report.  
2 In fact, the staff has furnished every report that has  
3 been prepared.

4 I have no idea what Ms. Burton has in mind  
5 with regard to staff reports. We gave the inspection  
6 report of refueling outage three and we gave the  
7 quarterly inspection report of the FRAP and I just  
8 indicated that there's a position paper that the staff  
9 wrote which will be made available. That is simply  
10 all there is. There isn't anything else.

11 MS. BURTON: Judge Bechoefer, I have  
12 reference to a different page of the transcript, the  
13 conference on May 24, and that is page 570 at the top.  
14 You may have that available. Judge Bechoefer states,  
15 the board has decided that we should defer for some  
16 period of time and that we think it should be no  
17 longer than Labor Day but we did require periodic  
18 reports from the type of reports the staff indicated  
19 it would make available about the progress of the  
20 investigation.

21 MS. HODGDON: I suppose that reasonable  
22 people might differ about what that means. No such  
23 reports were ever required, and we never produced any.  
24 To allow deferring proceedings from the beginning  
25 because of the pendency of an OI investigation and to

1 require OI to provide periodic reports to what it was  
2 doing in that investigation would seem to be counter-  
3 indicated.

4 CHAIRMAN BECHOEFER: Are there any?

5 MS. HODGDON: No, there aren't any. OI  
6 never puts out reports of its progress.

7 CHAIRMAN BECHOEFER: Are there any  
8 inspection reports?

9 MS. HODGDON: Inspection reports I just  
10 indicated --

11 CHAIRMAN BECHOEFER: There are the two  
12 that we got on June 28.

13 MS. HODGDON: That's all. Those are the  
14 inspection reports that exist. We did not write any  
15 particularly for the board. All we promised to  
16 deliver were existing reports but not to prepare  
17 reports.

18 CHAIRMAN BECHOEFER: Right. That's all  
19 that exist.

20 MS. HODGDON: That's it.

21 CHAIRMAN BECHOEFER: Okay. So I just  
22 wanted to have that clarified for the record.

23 MS. BURTON: Well, judge Bechoefer, I have  
24 another page here in this transcript that I'm looking  
25 at and this seems to be Attorney Hodgdon speaking at

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1 page 568 where she says, quote, "This effort is not  
2 voluntary and that's yet another report that we will  
3 want to look at, the inspection reports that the staff  
4 will write."

5 CHAIRMAN BECHOEFER: Right. I am told  
6 there aren't any except for the two that have been  
7 transmitted on June 28.

8 MS. HODGDON: Well, I go on to say on that  
9 page, "I talked with Mr. Bellamy this morning. I'm  
10 happy to get that information" and so forth. I speak  
11 with Mr. Bellamy frequently. I'm aware of those  
12 inspections. I've said several times. The staff has  
13 done everything it said it would do and it's produced  
14 all the reports. There are no other reports nor did  
15 the staff commit to write reports other than the ones  
16 that were being produced.

17 CHAIRMAN BECHOEFER: As of now, there are  
18 no inspections available other than the two that were  
19 sent on June 28. Just to reiterate, is that accurate?

20 MS. HODGDON: That is correct.

21 CHAIRMAN BECHOEFER: Okay. That is at  
22 least what the staff's current position is. I won't  
23 ask if you're satisfied with that, but it seems to me  
24 that there is nothing more that they'll volunteer and  
25 apparently that's all that's available.

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1 MS. BURTON: Judge Bechoefer, yes. I  
2 think that we feared the board's perception that there  
3 would be more.

4 CHAIRMAN BECHOEFER: But given that, maybe  
5 what we need to do -- it's clear to me that there  
6 probably needs to be a further conference of this sort  
7 and that should take place mid to late October,  
8 October 15 to 20. I'm not setting any precise date.  
9 Am I correct? We can set a date, not now but for that  
10 time frame. Okay?

11 MS. HODGDON: We should be sure this time  
12 that we don't set a date arbitrarily where the staff  
13 report and the root cause both should have come in a  
14 week or so at least prior to that telephone conference  
15 in order for it to be of any use and so if you want to  
16 set a date now, it should be like two weeks after the  
17 receipt of the root cause report.

18 JUDGE KELBER: One week? Two weeks? How  
19 long does it take people to analyze a set of facts  
20 followed by an analysis of those facts?

21 MS. HODGDON: I understand it will be  
22 quite long, the root cause report.

23 MR. REPKA: I think -- would be probably  
24 appropriate.

25 CHAIRMAN BECHOEFER: I didn't hear that.

1 What?

2 MR. REPKA: Two weeks would probably be  
3 appropriate.

4 CHAIRMAN BECHOEFER: One or two?

5 MR. REPKA: Two.

6 MS. BURTON: Judge Bechoefer, I had  
7 suggested a week but, of course, I'm operating here in  
8 the blind because I don't know what we're about to  
9 see. But certainly it would --

10 CHAIRMAN BECHOEFER: That goes for us, as  
11 well, by the way.

12 MS. BURTON: It would seem that additional  
13 time would be needed to make distribution to the  
14 experts that we have on call here and to allow them to  
15 have the chance to get back to us and prepare whatever  
16 we have to say. Two weeks would seem to be  
17 reasonable.

18 CHAIRMAN BECHOEFER: Okay. So we will not  
19 set it now. It sounds like about October 20 more or  
20 less. Not the specific date.

21 JUDGE COLE: You're anticipating the root  
22 cause analysis to be out on or about the 15th of  
23 October. Is that right, Mr. Repka?

24 MR. REPKA: Yes. I think that would be  
25 about right.

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1 JUDGE COLE: So two weeks after that would  
2 be the end of October. Right?

3 MR. REPKA: If my math is correct, that's  
4 true. Halloween.

5 JUDGE COLE: That would be a fitting time  
6 for this conference to continue.

7 MS. HODGDON: We might try for Guy Fawkes  
8 Day. That would be November 5. If anybody knows Guy  
9 Fawkes Day.

10 MR. REPKA: I'm sorry. I missed that  
11 reference.

12 MS. HODGDON: Guy Fawkes Day.

13 MR. REPKA: We'll look it up.

14 MS. HODGDON: Do.

15 CHAIRMAN BECHOEFER: We'll have another  
16 conference. Toward the end of October we'll have  
17 another conference and we can set it then but expect  
18 it now. Right, everybody?

19 MS. BURTON: Okay.

20 MR. REPKA: Correct.

21 MS. HODGDON: Okay.

22 CHAIRMAN BECHOEFER: Okay. We will issue  
23 an order probably before we get the transcript. We  
24 will issue an order summarizing everything. Well, the  
25 rulings have been made but we'll summarize that. The

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1 rulings have been made in this conference, and an  
2 order will come out at that time or as soon as  
3 possible. Okay?

4 And with that, is there anything further  
5 that anyone wishes us to address?

6 MS. BURTON: Yes, Judge Bechoefer. One  
7 final point. I received recently from Mr. Repka a  
8 notification that one L. Michael Rafky, I guess very  
9 recently formerly associated with the NRC legal staff,  
10 has as of yesterday joined Mr. Repka's law firm and  
11 the letter that I have, which is to Mr. John Szabo at  
12 the NRC, is dated September 28, 2001. It states that  
13 Mr. Rafky has advised Mr. Repka's firm that while  
14 working at the NRC he performed work on behalf of the  
15 NRC staff in a proceeding, quote, "involving our  
16 clients, Northeast Nuclear Energy Company and Dominion  
17 Nuclear Connecticut Inc. The proceeding involved the  
18 license amendment to increase spent fuel pool storage  
19 capacity at the Millstone Nuclear Power Station. This  
20 is our docket number" and so forth.

21 I would just for the record like to make  
22 note of that as well as the departure during our  
23 proceedings of Brooke Poole from the NRC's staff to  
24 join Mr. Repka's law firm. She had also been closely  
25 involved in this proceeding. We have some concern

1 about this and certainly there must have been  
2 negotiations going on with these individuals involving  
3 Mr. Repka's firm prior to their departure, of which we  
4 knew nothing. I must say that we're somewhat  
5 unsettled by hearing of these departures of staff who  
6 have been closely involved in this proceeding and  
7 their joining up with Mr. Repka's firm. I just wanted  
8 to put that on the record.

9 CHAIRMAN BECHOEFER: We were not aware of  
10 that either, by the way.

11 MS. HODGDON: If Mr. Repka wants to go  
12 first, that's fine. I was just going to say that Mr.  
13 Rafky never worked in reactor programs and the letter,  
14 if it says what Ms. Burton says it says, is mistaken.  
15 He never worked on Millstone 3 spent fuel pool.

16 CHAIRMAN BECHOEFER: We have not got this,  
17 by the way. I don't have it, at least.

18 MS. HODGDON: I'm reading from a letter  
19 that appears on Winston and Strawn stationary over the  
20 signature of Anne E. Thar. I wouldn't have any reason  
21 to believe it didn't come from her.

22 JUDGE COLE: I personally received a copy  
23 of that and I believe it might be in the mail for  
24 Judge Bechoefer. Doctor Kelber might have received  
25 his copy also. It seems as if the procedures they're

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1 setting up, setting up Chinese walls so there's no  
2 communication to those who have been working on those  
3 cases. That seems to be a standard procedure that we  
4 haven't had a problem with.

5 MR. REPKA: That's correct, and the  
6 procedure we followed is in compliance with Part 0 and  
7 was based on Mr. Rafky's representation as to what he  
8 was involved in. We had no knowledge of him being  
9 involved in this matter. So out of an abundance of  
10 caution, we included it as one of the matters that he  
11 would be screened out of participating in here.

12 MR. REYNOLDS: Pete Reynolds. I have a  
13 question. When you say he's screened out, does that  
14 mean up front or behind the scenes? Does that include  
15 both?

16 MR. REPKA: I'm not sure what you mean by  
17 that, but it includes in every way that can be  
18 imagined.

19 MR. REYNOLDS: I hope so.

20 JUDGE COLE: Who is this? Mr. Besade?

21 MR. REYNOLDS: No. This is Pete Reynolds.

22 JUDGE COLE: Mr. Reynolds. All right.

23 MR. CHOINIERE: Paul Choiniere of *The*  
24 *Daily Newspaper*. I've been listening in. I just had  
25 a couple of questions to clarify a couple of things

1 that were said, if that's okay, before everyone signs  
2 off.

3 You kept referring to a reference to a  
4 FRAP report. What's that acronym stand for?

5 CHAIRMAN BECHOEFER: Fuel Rod  
6 Accountability Project. Am I right? I hope I'm  
7 right.

8 MS. HODGDON: That's correct.

9 MR. CHOINIERE: And who prepares that?

10 MR. REPKA: That's correct. I would say  
11 Mr. Choiniere, Mr. Winn is on this call who's the  
12 public affairs person at Millstone and could respond  
13 to these questions off-line.

14 JUDGE COLE: It sounds to me like most of  
15 your questions can be handled outside of the official  
16 conference. This is Doctor Cole.

17 MR. CHOINIERE: I guess I won't know that  
18 until everyone hangs up and I find out he can't  
19 address them. I don't need to take very long. Just  
20 a few. I don't want to tie you down. It'll just take  
21 a minute.

22 JUDGE COLE: All right.

23 MR. CHOINIERE: I just wanted to know who  
24 prepared the various reports you referred to. The  
25 FRAP report, for instance. Is that prepared by the

1 NRC staff?

2 CHAIRMAN BECHOEFER: No.

3 MR. REPKA: That is a Northeast Nuclear  
4 report.

5 MR. CHOINIERE: And the root cause would  
6 be as well?

7 CHAIRMAN BECHOEFER: No.

8 COURT REPORTER: This is the court  
9 reporter. Do you want this on the record?

10 CHAIRMAN BECHOEFER: No. I don't think we  
11 need this to be on the record.

12 COURT REPORTER: Okay. I'll take us off.

13 (Off the record briefly at 10:59 a.m.)

14 MS. BURTON: Just a follow-up. In the  
15 transcript of the previous proceeding, I spelled Mr.  
16 Choiniere beginning with an S and I think his name  
17 starts with a C, if I'm not mistaken.

18 MR. CHOINIERE: Yes, that's right. Not  
19 that that's a terribly big issue, but thank you.

20 CHAIRMAN BECHOEFER: Okay.

21 MS. HODGDON: The reporter is off now and  
22 so when we see it we will --

23 COURT REPORTER: Do you want me to be off  
24 now?

25 MS. HODGDON: We will have C-H-O-I-N-I-E-

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1 R-E.

2 MR. CHOINIERE: Correct. Thank you.

3 COURT REPORTER: Now are we off the  
4 record?

5 CHAIRMAN BECHOEFER: We're not yet but  
6 we're about to go. We've appreciated all your  
7 participation and we will adjourn at the moment and we  
8 thank you.

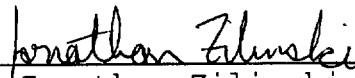
9 (Whereupon, the afore-mentioned matter was  
10 concluded at 11:00 a.m.)  
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CERTIFICATE

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

Name of Proceeding: Dominion Nuclear  
Connecticut Corporation  
Docket Number: 50-423-LA-3  
ASLBP Number: 00-771-01-LA-R  
Location: Telephone Conference Call

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  
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