

21199



SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 2, 2000

DOCKETED  
USNRC

'00 FEB -3 A8:28

OFFICE OF THE SECRETARY  
NUCLEAR REGULATORY COMMISSION  
ADJUDICATION OFFICE

The Honorable Michael P. Forbes  
United States House of  
Representatives  
Washington, DC 20515-3201

**SERVED FEB - 3 2000**

Dear Congressman Forbes:

I am responding to your letter dated December 9, 1999, addressed to Chairman Richard A. Meserve. Your letter urged a grant of standing to the Long Island Coalition Against Millstone and the Connecticut Coalition Against Millstone with respect to their joint petition to intervene in a license amendment proceeding for the Millstone Unit 3 facility. The petition is currently under consideration by an Atomic Safety and Licensing Board established on October 19, 1999. Under Nuclear Regulatory Commission procedural rules for adjudications, the Commission has an appellate role in proceedings commenced before its Atomic Safety and Licensing Boards. Because of that role, I trust that you will understand that the Commissioners must remain impartial during the pendency of a case, whether it is before a Licensing Board or on appeal to the Commission.

A pre-hearing conference to examine the issue of petitioners' standing and the admissibility of their contentions occurred on December 13, 1999. The Atomic Safety and Licensing Board (ASLB) for Millstone (Docket No. 50-423-LA-3) intends to issue an order with respect to the pre-hearing conference. However, the transcript of that hearing indicates that the ASLB granted standing during the course of the hearing to the Connecticut Coalition Against Millstone. It also indicates that your letter of December 9, 1999, was read into the record. I am enclosing copies of the pages of the transcript that cover those items.

Although your letter of December 9, 1999 has been read into the proceeding record, a copy of your letter and this response will be placed on the Millstone hearing docket and served on the parties to the proceeding.

Sincerely,

*Annette Viatti-Cook*  
Annette L. Viatti-Cook

Enclosure: As stated

DS02

ORIGINAL

**OFFICIAL TRANSCRIPT OF PROCEEDINGS**

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

**Title: PRE-HEARING CONFERENCE  
NORTHEAST NUCLEAR POWER  
STATION, UNIT NO. 3**

**Case No.: 50-423-LA-3**

**Work Order No.: ASB-300-1063**

**LOCATION: New London, CT**

**DATE: Monday, December 13, 1999**

**PAGES: 1 - 224**

**ANN RILEY & ASSOCIATES, LTD.  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034**

21087

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

----- X  
In the Matter of: :  
NORTHEAST NUCLEAR ENERGY COMPANY : Docket No. 50-423-LA3  
(Millstone Nuclear Power Station, :  
Unit No. 3 :  
----- X

Radisson Motel  
35 Govenor Winthrop Blvd.  
Ballroom 3  
New Lcndon, Connecticut  
Monday, December 13, 1999

The above-entitled matter came on for pre-hearing  
conference, pursuant to notice, at 9:00 a.m.

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

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

[9:00 a.m.]

1  
2  
3 CHAIRMAN BECHHOEFER: Good morning, ladies and  
4 gentlemen. This is a pre-hearing conference in the matter  
5 of the proposed amendment to the license of -- license for  
6 the Millstone Unit 3 reactor, to expand the capacity of the  
7 spent fuel, short and long view of that.

8 This proceeding is being heard by the Atomic  
9 Safety and Licensing Board. I'll introduce the members. On  
10 my left is Dr. Charles Kelber. He's a nuclear physicist.  
11 And on my right is Dr. Richard Cole. He's an environmental  
12 engineer. And my name is Charles Bechhoefer and I'm  
13 Chairman of the Board and I'm an attorney. Before we start,  
14 I would like to have the parties and other petitioners,  
15 etc., introduce themselves for the benefit of the court  
16 reporter. I'll go from my left to right.

17 MR. REPKA: Yes. I'm David Repka with the law  
18 firm of Winston & Strawn and I'm counsel to Northeast  
19 Nuclear Energy Company. And on my right is David Dodson,  
20 who is a supervisor for Millstone Unit 3 licensing for  
21 Northeast Nuclear.

22 MS. BURTON: Good morning. I'm Attorney Nancy  
23 Burton and I'm here today representing the Connecticut  
24 Coalition Against Millstone and the Long Island Coalition  
25 Against Millstone. On my right is David Lochbaum, a nuclear

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1 safety engineer with the Union of Concerned Scientists; and  
2 on my left is Dr. Gordon Thompson, who is Executive Director  
3 of the Institute for Resource and Security Studies.

4 MR. KELBER: Ms. Burton, check the microphones,  
5 because that's the court reporter's microphone. I can't --  
6 I couldn't hear you too well.

7 MS. BURTON: Okay.

8 MR. KELBER: It's not that microphone. That's for  
9 the court reporter.

10 MS. BURTON: Oh, it's this; I see. Okay, this is  
11 for the reporter; this is for me to be heard.

12 MR. KELBER: That's much better.

13 MS. BURTON: Shall I start again?

14 MR. KELBER: No, that's fine. Thank you.

15 MS. BURTON: Thank you.

16 MS. HODGDON: I'm Ann Hodgdon from the NRC staff  
17 and with me on my right is Robert Weisman, also from the NRC  
18 staff. And I have with me today John Nakoski, sitting  
19 directly behind me. He is the project manager. And to his  
20 right is Victor Nerses, who will take Mr. Nakoski's place as  
21 project manager, after the first of the year.

22 CHAIRMAN BECHHOEFER: Before we get on the way, on  
23 Friday, a fax came in and it was initially -- it was  
24 directed to the Commission -- the Chairman of the  
25 Commission, Mr. Meserve, and it is from one of the local

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1 Congressmen. And I was asked by the Chairman's office to  
2 read the letter into the record. I had informed -- well, we  
3 had informed him that we weren't taking limited appearance  
4 statements at this session and we would receive them in  
5 writing and this is what this sent in for. But, the  
6 Chairman's office asked me to read this into the record.  
7 Does anybody have any problem with that? It's just a one-  
8 page letter from a Congressman, Michael Forbes.

9 MR. REPKA: We have no objection.

10 CHAIRMAN BECHHOEFER: It's not going to take very  
11 long. It says, "Dear Chairman Meserve: A Nuclear  
12 Regulatory Commission (NRC) Atomic Safety and Licensing  
13 Board," that's us, "pre-hearing conference in New London,  
14 Connecticut on Monday, December 13, will determine the  
15 standing of two important citizen groups opposed to an  
16 application by the Northeast Utilities to double its spent  
17 fuel capacity at Millstone 3 station. I oppose such  
18 expansion plans and, as you know, several years ago asked  
19 the NRC to close down the reactors after a checkered history  
20 and the absence of an evacuation plan for the people of Long  
21 Island."

22 "I write to urge approval of the Long Island  
23 Coalition Against Millstone and the Connecticut Coalition  
24 Against Millstone petitions for legal standing in all  
25 matters related to the Millstone Plants."

1            "As you know, I have long been in opposition to  
2 continued operation of the reactors at Millstone. The  
3 continued operation -- much less the expansion -- of the  
4 Millstone facility should be opposed for a variety of  
5 reasons. First, Millstone has incurred the largest single  
6 fine in the history of the United States nuclear power  
7 industry signifying a pattern of serious operational  
8 problems and a weak safety record. Second, in the event of  
9 a catastrophe, there is not an emergency management and  
10 evacuation plan for Suffolk County (NY) residents. Third,  
11 Millstone is clearly in close proximity to Long Island and  
12 any event involving the reactors there could likely affect  
13 this region."

14            "Due to its proximity, weak safety record and lack  
15 of an evacuation plan, the people of Long Island have a  
16 concrete and cognizable interest in the outcome of any  
17 proceedings involving the operation and/or expansion of  
18 Millstone and must be formally recognized for inclusion in  
19 all NRC proceedings regarding this facility."

20            "Almost two years ago, I was the first public  
21 official to initiate greater involvement by Long Islanders  
22 in the Millstone issue. You were most kind to grant my  
23 request that the NRC hold forums on Long Island on two  
24 occasions to listen to our concerns."

25            "I respectfully urge approval of the Long Island

1 and Connecticut Coalitions' petitions for legal standing to  
2 give voice to the concerns of our community."

3 "Sincerely, Michael Forbes, Member of Congress."

4 I might say, this is no more than a limited  
5 appearance statement. It doesn't have any evidentiary  
6 value. We know it exists. I don't have copies; but if  
7 somebody wants to make copies, they're welcome to have  
8 them." So, I might say this same letter came in earlier,  
9 but it was addressed to the wrong chairman -- it was to the  
10 former chairman, Chairman Janson -- so then it was sent  
11 again.

12 Well, with that -- with that, I'll get to the  
13 substantive matter. I believe that we should consider first  
14 the standing of the two petitioners and then move on to each  
15 of the proposed contentions -- so in that order. On  
16 standing, one of the briefs, there's no opposition to. We  
17 agree to the facts, we've had standing. But the other  
18 brief, the Long Island group, I read my papers as saying a  
19 little bit different from what they've been characterized as  
20 by the people opposing the Long Island group. I see in the  
21 affidavit that the representative says she lives part time  
22 on the site in question and that doesn't seem to have been  
23 recognized. And I inquire first, is that accurate? Am I  
24 reading it accurately? It may not be her major residence,  
25 but I read her affidavit as saying she lives there part

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1 time.

2 MS. BURTON: May I respond?

3 CHAIRMAN BECHHOEFER: Yes, please.

4 MS. BURTON: With us today are Jacqueline  
5 Williamson. She's here to avail the Board and the parties  
6 with the opportunity to inquire further, if you wish.  
7 Perhaps if I could ask her to come forward?

8 CHAIRMAN BECHHOEFER: Well, it's this paragraph  
9 two of her declaration. It says, "I don't reside during  
10 much of the year," and that seemed to be a little at odds  
11 with what the other parties have said. This is not  
12 evidence, as such, but we sort of take it into account, as  
13 clarifying what's already in the affidavit -- or the  
14 declaration, I should say.

15 MS. WILLIAMSON: I have been going to Fischer's  
16 Island since 1960. I bought property on the island in about  
17 1965 and I built a house there in the 1980s. My husband is  
18 buried on the island and I expect to be buried there, too;  
19 not too soon, I hope. I live in an area, which is on the  
20 shore and I am there generally between early April and about  
21 Thanksgiving. It depends upon various obligations whether I  
22 am there all the time or whether I am there part time. I am  
23 not a legal resident of Fischer's Island, but I am a New  
24 York State resident. I pay taxes to Suffolk County, to the  
25 receiver of taxes in Southhold. And I am -- I am on the

1 island, which has -- since it has an evacuation official and  
2 an emergency escape plan, I feel very definitely that I am  
3 affected by this and if anything happened and there were a  
4 safety glitch at Millstone, that I would have to be  
5 evacuated and that I would be evacuated through New London,  
6 through Windham, Connecticut, which is not something that  
7 I'd want like to consider.

8 CHAIRMAN BECHHOEFER: Is your property -- I  
9 understand it is within 10 miles of the facility?

10 MS. WILLIAMSON: To the best of my knowledge, it  
11 is. I'm not an engineer, so I can't, you know, pinpoint and  
12 everything. But, I am within an arc and from the -- my best  
13 look at the various maps, it looks as though I am within the  
14 10 miles; I think so.

15 CHAIRMAN BECHHOEFER: Okay.

16 MS. BURTON: May I respond further?

17 CHAIRMAN BECHHOEFER: Yes.

18 MS. BURTON: As Ms. Williamson was saying, as a  
19 resident of Fischer's Island, she is -- even if she were  
20 beyond 10 miles, if she were located anywhere on Fischer's  
21 Island, she would be subject to the emergency evacuation  
22 plan, which dictates that in the event of evacuation, the  
23 residents go to the west, toward Millstone, board the ferry,  
24 and head to New London, where we are presently, and come  
25 within a very short distance of the Millstone Station. So,

1 certainly, in an emergency, she would be more likely to be  
2 adversely affected than most of us, by having to follow  
3 that route and having to suffer the perils of trying to  
4 evacuate under that particular plan.

5 I may offer into evidence the public emergency  
6 notification for residents and visitors in these  
7 communities, which has been prepared and distributed by  
8 Northeast Utilities, in conjunction with the Connecticut  
9 Office of Emergency Management, the Connecticut Department  
10 of Environmental Protection.

11 CHAIRMAN BECHHOEFER: I would think, by the way,  
12 that that is pretty general. It wouldn't apply to like an  
13 accident emanating from the spent fuel pool. So, I'm not  
14 sure that it would be relevant to this particular issue.  
15 This is whether you can be injured by something that might  
16 occur in this proceeding, which is the spent fuel pool. So,  
17 I'm not sure that that's relevant. If you are residential,  
18 if you -- the time that you occupy substantial periods of  
19 time is within 10 miles, that means that you can possibly be  
20 affected by an accident emanating from the spent fuel pool,  
21 and that's how I interpret it.

22 But, I'm going to ask the other parties for  
23 comments on that, because they have made a point that  
24 residents, who are at Staten Island or something like that,  
25 is too far. And I think, under precedent, it probably is

1 for spent fuel pool expansion. And -- but 10 miles is --  
2 I've held 10 miles is okay in a case of my own earlier, in  
3 this kind of proceeding, and there's a recent one down in  
4 the Carolinas, which went out as far as 17 miles. And so,  
5 I'm just relying on precedent. But, I'd like other parties  
6 comments. Mr. Repka?

7 MR. REPKA: Yes, Judge Bechhoefer. A couple of  
8 points: first, I'd like to start by saying that the issues  
9 raised in the Congressman's letter related to emergency  
10 preparedness on Long Island really are not at all within the  
11 scope of this particular proceeding --

12 CHAIRMAN BECHHOEFER: That's correct.

13 MR. REPKA: -- nor is there any regulatory or  
14 safety basis for those kinds of issues. Beyond that, with  
15 respect to the Long Island Coalition in this proceeding, we  
16 don't have any disagreement as to the factual premises, the  
17 residence of Ms. Williamson. We would assume that she has  
18 residence on Fischer's Island and that's at approximately 10  
19 miles.

20 Our position is based upon the law of standing, as  
21 it's been applied in NRC proceedings in the past, and,  
22 essentially, the Commission has applied a three-part test  
23 for standing: first, there has to be an alleged injury;  
24 second, that injury has to be traceable to the action, the  
25 amendment that's at issue; and third, that that injury has

1 to be one that could be redressed in the proceeding. Our  
2 view is that with respect to residents, even at 10 miles,  
3 the only allegations of offsite consequences, offsite  
4 injuries, really relate to beyond design basis scenarios,  
5 scenarios that have not been determined to be credible; that  
6 Northeast Nuclear is not required to address; that those  
7 scenarios exist independent of the proposed action here. So  
8 those harms are not -- those alleged harms are not harms  
9 that are really traceable to this particular proposed  
10 licensing action, nor would they be redressed by even a  
11 favorable decision in this proceeding. So that's the basis  
12 for our objection to the Long Island Group standing.

13 Beyond that, a couple of other factual points I  
14 want to make that are just -- just to be very clear. One,  
15 the proposal at issue here does not involve, in any way,  
16 expanding Millstone. It doesn't involve expanding the  
17 Millstone spent fuel pool. The existing pool is a very  
18 large spent fuel pool and the proposal involves putting new  
19 racks in open spaces in the pool. And third, does not --

20 CHAIRMAN BECHHOEFER: By the way, if I used  
21 expansion in the introduction, I -- it really --

22 MR. REPKA: I think the way you said it was  
23 probably fine. I think it's just -- it's an increase in the  
24 capacity --

25 CHAIRMAN BECHHOEFER: Yes, that's correct.

1 MR. REPKA: -- but not an increase in the size of  
2 the pool.

3 CHAIRMAN BECHHOEFER: That's correct.

4 MR. REPKA: And lastly, the pool cooling design  
5 basis has been for a significant number of assemblies.  
6 Really since Millstone was licensed in the mid-1980s,  
7 actually, the design basis, from a cooling perspective, was  
8 for more assemblies than the company is actually proposing  
9 in this amendment package.

10 So with that, I think the point on standing is  
11 that we don't think -- beyond design basis, harms are not -  
12 - they're remote and speculative, number one; they're not  
13 traceable to this proposal. This proposal doesn't change  
14 those -- doesn't create those harms, doesn't change them in  
15 any way, nor are they likely to be redressed in this  
16 proceeding.

17 CHAIRMAN BECHHOEFER: Do you see any difference  
18 between this proposal and say the other cases, where there  
19 have been 10 miles, 17 miles?

20 MR. REPKA: Well, I think we've cited to some of  
21 the cases in our paper.

22 CHAIRMAN BECHHOEFER: No, you didn't cite those -  
23 - well, you may have cited Vermont Yankee, which is 10.

24 MR. REPKA: Right. And the standard was close  
25 proximity. I recognized the Sharon Harris case, which you

1 alluded to --

2 CHAIRMAN BECHHOEFER: Yes.

3 MR. REPKA: -- which I believe the intervenor  
4 group is at 17 miles. That's non-binding precedent on this  
5 Board and, you know, I don't necessarily want to concede  
6 that that was correctly decided.

7 CHAIRMAN BECHHOEFER: Ms. Hodgdon, do you have --

8  
9 MS. HODGDON: Yes. In order to avoid repeating a  
10 number of things that Mr. Repka has said, I would say that  
11 generally the staff agrees with him. The case that he  
12 relied on, on which the staff relied on as well, was North  
13 Anna, a Virginia Electric and Power Company, North Anna  
14 Nuclear Power Station Units 1 and 2, of A lab. That is an  
15 Appeal Board Decision, which may be offered as precedent,  
16 No. 522 NRC 54.

17 The distinction there is one, some of the member  
18 groups lived at close proximity. It doesn't say -- it's  
19 like on the shores of Lake Anna; whereas the group that was  
20 further away did canoe, etc., in the North Anna River --  
21 dangerously canoe on the North Anna River. I think the  
22 distinction here is that nothing is shown in Ms.  
23 Williamson's declaration regarding her being closer than 10  
24 miles and there's nothing in the Appeal Board cases or in  
25 the Commission cases that would establish that distance as

1 being sufficient in a spent fuel pool expansion case. And -

2 -  
3 CHAIRMAN BECHHOEFER: So, you are, in effect,  
4 saying that we shouldn't be following -- well, what about  
5 Vermont Yankee, which was formed by the Appeal Board? It  
6 was my case. I remember it was --

7 MS. HODGDON: The -- these cases -- as I say, it's  
8 foolish to rely on this old case only, because it's -- and  
9 the Vermont Yankee case -- at such time, actually there were  
10 two. I'm not quite sure that you want me to debate that.  
11 It was out to 10 miles.

12 Here, I think there have been -- well, we do set  
13 spent fuel pools apart, because this -- it's nothing that  
14 has anything to do with the reactor. And so the obvious  
15 potential for offsite consequences, which the Commission has  
16 held in a case involving Northeast Nuclear Energy Company,  
17 and that's 48 NRC 183, COI 9820, the Commission held where  
18 there was no obvious -- they upheld a licensee or finding -  
19 - not finding standing for a person, who was with the same  
20 declarant, but different group. It was Mr. Besade, if  
21 that's the proper pronunciation of his name. But, Mr.  
22 Besade -- the group was -- Citizens Regulatory Commission  
23 was the petitioner there and they held that there was no  
24 obvious potential for offsite consequences where it involved  
25 a new sump pump subsystem, even though it was within two

1 miles.

2           So, I'm saying that these cases are sort of --  
3 they go on facts and nobody contests that there might  
4 possibly -- well, I suppose someone would like to contest,  
5 actually, that there can be any offsite consequences of this  
6 spent fuel pool expansion -- obvious potential for offsite  
7 consequences, I should say. And so, these findings beyond  
8 10 miles -- the problem is that we're right at 10 miles here  
9 and you're citing Vermont Yankee as a precedent for 10  
10 miles.

11           CHAIRMAN BECHHOEFER: Yeah.

12           MS. HODGDON: So, in any event, I'm saying that  
13 there are other factors. I have -- I can't remember what  
14 the distinction is there, but the -- normally, in those  
15 cases, the declarant has some claim as to being closer or  
16 for some purposes, and that's my understanding and because  
17 there is distinction there between the one, who was within a  
18 stone's throw, and the other group, who came in -- or the  
19 other petitioner, I suppose, who came in by virtue of close  
20 association by use of something closer than that. So,  
21 anyway, I was saying whether cases are not really in  
22 agreement, it's hard to say when you're putting somebody  
23 right at 10 miles, which seems to be the distance that's in  
24 dispute here.

25           CHAIRMAN BECHHOEFER: How about 17?

1 MS. HODGDON: Well, 17 was a case that was not  
2 appealed and the -- so, there's no -- there's no Appeal  
3 Board, of course, that the Commission does not take the  
4 position -- the Commission does not speak to that. Also --

5  
6 CHAIRMAN BECHHOEFER: Excuse me. The Commission  
7 could not speak to that, because --

8 MS. HODGDON: No, I said, did not, did not.

9 CHAIRMAN BECHHOEFER: Oh, did not, okay.

10 MS. HODGDON: It did not.

11 CHAIRMAN BECHHOEFER: I thought you said "could  
12 not."

13 MS. HODGDON: No, I did not say "could not;" I  
14 said "did not," the Commission did not speak to that. It  
15 was not appealed. There seems to be something in that case  
16 that suggests that because it was a county that was -- that  
17 there were a great number of people, I wouldn't know that  
18 that makes any difference, because they certainly would have  
19 had 2.715 intervention. Had anyone else petitioned under  
20 2.714 -- but, nobody did, so I don't know how -- what the  
21 Commission -- that they haven't had an opportunity to  
22 address it and actually I don't know if they ever will.

23 CHAIRMAN BECHHOEFER: The Board might just give a  
24 little more deference to a county.

25 MS. HODGDON: It appears that they did. It's -- I

1 have it with me. I read it several times.

2 CHAIRMAN BECHHOEFER: I have it with me, too.

3 MS. HODGDON: It appears that -- it appears that  
4 they were impressed with the fact that there were a lot  
5 people and even though they were at 17 miles -- well, it's a  
6 different case, as well. I mean, this is not Sharon Harris  
7 -- that was not Sharon Harris. But, it's not your ordinary  
8 spent fuel pool case, because, here, they wanted to  
9 commission two pools. They didn't want merely to expand the  
10 -- add racks to the existing pool. So, that may, also, make  
11 a difference. It's -- as I say, it's not your ordinary  
12 case. It may not have been found on any case.

13 I suppose, then, that's all we have to say. I  
14 mean, the reason I'm having so much trouble with this is  
15 that it seems the precedent, the Commission cases and the  
16 Appeal Board cases, most of it is very old and the  
17 technology has vastly improved. So, there's no way to weigh  
18 that. I have nothing else to say.

19 JUDGE COLE: Both the applicant and the staff  
20 indicated that Mr. Joseph Besade, they concede -- they  
21 indicate that they would accept his standing, but not the  
22 case with Ms. Williamson. I would like them to explain to  
23 me what they consider to be the rule of difference between  
24 these two.

25 MR. REPKA: Okay; I can attempt to do that, Judge

1 Cole. I think that some of the difficulty that Ms. Hodgdon  
2 is having and I think that probably the Board is having and  
3 we're having on this is if you look at this in terms of  
4 mileage, that doesn't necessarily square with the case law.  
5 The case law on standing, in a judicial sense, focuses on  
6 can there be an injury in fact that's within the scope of  
7 the proceeding and is redressable. And I think in our  
8 argument, with respect to 10 miles, is that that hasn't been  
9 shown; in fact, that doesn't exist. You can make a similar  
10 argument at two miles.

11 We have not chosen to do that. We believe the  
12 Commission's case law is fairly clear, that close proximity  
13 or within a stone's throw I believe are some of the words  
14 that are used in the Commission's cases. We would defer to  
15 that precedent, in the case of two miles. And I think that  
16 it's well within the Commission's discretion to grant  
17 standing within a couple of miles, even though -- for the  
18 same reasons that there would be no injury, as a result of  
19 the amendment at 10 miles, there would be no injury at two  
20 miles either. But, we would defer to the Commission's  
21 discretion for those short distances to allow standing to an  
22 intervenor. At 10 miles or 17 miles or 25 miles, I don't  
23 think that the basis for that discretion exists and,  
24 certainly, the judicial precedence on standing don't suggest  
25 that there would be standing in this case.

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1           But, I don't think that -- I think that some of  
2 the discussion has focused on 10 miles, as if 10 miles is a  
3 dividing line, and there's nothing in the case law that  
4 suggests that there is any magic in this context to 10  
5 miles.

6           JUDGE COLE: Would you like to address that?

7           MS. HODGDON: I thought I already did.

8           JUDGE COLE: Okay; that's fine.

9           MS. HODGDON: I would repeat what I said.

10          JUDGE COLE: No, you don't have to repeat  
11 anything. If you think you've said everything you wanted to  
12 say about that, you --

13          MS. HODGDON: No To the extent that -- I'm  
14 sorry, I interrupted.

15          JUDGE COLE: That's all right.

16          MS. HODGDON: To the extent that I was  
17 misunderstood, I would like to clarify what I said. The  
18 case that I was construing, North Anna, did -- people who  
19 lived at a greater distance than a stone's throw, that case  
20 found standing where they had an association -- where they  
21 had activities closer to the plant than 10 miles; in fact,  
22 within a stone's throw. And so, it's not a matter of  
23 residence; it's a matter of whether somebody might possibly  
24 be affected. And although I might agree with Mr. Repka,  
25 there is no obvious potential for offsite consequences. The

1 Commission has decided that if you're very close, then  
2 that's fine; but, I don't think there's been any decision  
3 that they, after 10 miles, without more, is sufficient to  
4 show standing in a spent fuel pool expansion, like this  
5 sort.

6 JUDGE COLE: Thank you. Ms. Burton, you'd like to  
7 comment, I'm sure.

8 MS. BURTON: Yes, if I may. I have a few  
9 comments. One is a pretty good point was well taken, Dr.  
10 Cole, as to where to draw the line: if two miles is okay,  
11 how many miles is not okay; at what point does it become too  
12 far? And, of course, we do rely on the Vermont Yankee case,  
13 decided by the Chairman, as well as the recent Sharon Harris  
14 case.

15 But, there are several other things I wanted to  
16 bring to your attention. One was the -- there was some  
17 error in the Northeast Utilities reply in the statement, I  
18 think, that Ms. Williamson resides at Riverhead, some 36  
19 miles. I want to be sure that's corrected, because she does  
20 not. She maintains another address, but not there.

21 I will make reference to the Brookhaven National  
22 Laboratory study that was undertaken in 1997 on an accident  
23 in the spent fuel pool. And in that analysis, which we  
24 cited on page seven of our supplemental petition, for the  
25 least serious case analyzed, Brookhaven reported 1,500

1 additional cancer deaths to the population living within 50  
2 miles of the plant. That was the least serious case. We  
3 have, also, pointed out that according to our expert's  
4 search of the public document room, there has, to date, been  
5 no evaluation of criticality accidents in spent fuel pools.

6 In several of our contentions, we are addressing  
7 the issue of criticality. This is something that has not  
8 been litigated, hasn't been determined, but we are making  
9 the case that both with respect to criticality and severe  
10 accidents, that certainly an individual residing in property  
11 within about 10 miles of this plant is, in fact, in a  
12 position to assert, as we do here, injury in fact. We are  
13 asserting in our petition here that a severe pool accident  
14 is an almost certain outcome of a severe reactor accident  
15 and that the emergency plans, which have been devised for  
16 severe reactor accident, including evacuation within a 10-  
17 mile zone, necessarily apply here; and, if anything, more  
18 so. Because if there is this severe reactor accident with  
19 the almost certain outcome of consequences to the spent fuel  
20 pool, we recognize the spent fuel pool has no containment,  
21 is manually operated, and is designed with materials, which  
22 are not required to meet standards that are required in the  
23 reactor. So, if anything, we would suggest more significant  
24 from spent fuel severe accident than we do with reactor, for  
25 which Ms. Williamson is required to evacuate her home within

1 10 miles, in the event of that kind of an emergency.

2 Our asserted nexus has never been litigated. We  
3 are presenting contentions and we may be raising issues here  
4 for the first time. But, I believe the Board should take  
5 note of that.

6 And I wanted to, also, on the point of remote and  
7 speculative, it has been suggested that our contentions  
8 concerning severe accidents are remote and speculative.

9 CHAIRMAN BECHHOEFER: We'll get to them when we  
10 get to your contentions.

11 MS. BURTON: I just wanted to respond.

12 CHAIRMAN BECHHOEFER: Oh, okay.

13 MS. BURTON: But -- well, then let me conclude by  
14 saying that I believe we have met the test of standing. The  
15 standing that we have presented does come within the case  
16 law. Ms. Williamson has demonstrated injury in fact. And I  
17 will refer to her affidavit, paragraph 18, where she is  
18 saying that the present licensing amendment, if granted,  
19 would significantly increase the risk of serious accidental  
20 release of radioactivity into the environment. At paragraph  
21 22, she asserts that that the potential of the application  
22 is to expose the public to a significant increase in the  
23 probability and offsite consequences of serious accident.  
24 Again, she is in the unique and unenviable position of  
25 owning property, which is subject to an evacuation, which

1 will take her closer to, shall we say, the mouth of the  
2 dragon, than the other direction, to a zone of safety.

3 She has adequately and sufficiently demonstrated  
4 injury in fact, which is traceable to this application that  
5 has been set forth in this affidavit. She asserts that the  
6 safety risk is compounded. There is a greater risk of  
7 significant injury because of this application, if granted,  
8 and her injury can be redressed in this proceeding, mainly  
9 by a consideration of all the issues presented. And we  
10 request a denial of the application to expand the density of  
11 the spent fuel pool, in the configuration and in accordance  
12 with the proposal, which has been presented.

13 So, I believe we have very adequately met the  
14 standing criteria, which have been set out in the  
15 regulations and have been implemented by case law.

16 MR. REPKA: Judge Bechhoefer, I'd like to respond  
17 to that briefly.

18 CHAIRMAN BECHHOEFER: Okay.

19 MR. REPKA: I think we will get into the issue of  
20 the Brookhaven report and some of the alleged scenarios, but  
21 these are precisely the kinds of scenarios that are being  
22 postulated that I referred to earlier as really being beyond  
23 the scope of this proceeding. There are issues that would  
24 apply to the current pool, that would apply to wet storage  
25 throughout the nuclear industry. They would represent a

1 challenge to the existing design basis of Millstone Unit 3.  
2 They would exist -- they would represent a challenge to the  
3 NRC's regulatory structure, which are issues not unique to  
4 this proceeding. This proposal doesn't change those alleged  
5 risks. Those are risks that have been determined by the  
6 Commission previously, not to warrant being addressed. And  
7 they are, quite frankly, matters outside the scope of this  
8 proceeding and a challenge to the NRC's regulations.

9 CHAIRMAN BECHHOEFER: I have only one question. I  
10 -- in a sense, we seem to be asked to be applying the  
11 standards for contentions to the standards for determining  
12 whether we have standing, and I'm not sure that that's  
13 comparable. The standing rule requires much less of a  
14 showing than does, for instance, proposed contention.

15 MR. REPKA: I don't think that observation is  
16 really true. I think the standard for contention requires a  
17 much greater evidentiary --

18 CHAIRMAN BECHHOEFER: Well, there is precedent to  
19 that, by the way.

20 MR. REPKA: But, I don't think that's what we're  
21 asking.

22 CHAIRMAN BECHHOEFER: Pardon?

23 MR. REPKA: I don't think that's what we're  
24 asking. The evidentiary standard for the basis for  
25 contention is very clear. The Commission has spoken to

1 that. You need an evidentiary basis for the allegation that  
2 a -- that there is a real issue, that there could be an  
3 accident of this type, and we'll get to that.

4 In the context of standing, I think what we're  
5 asking is you apply the existing judicial case law that says  
6 that there has to be a plausible injury in fact, traceable  
7 to this amendment and redressable in this proceeding. And I  
8 think that the kinds of issues that have been raised, it's  
9 not so much a lack of an evidentiary basis, although that  
10 certainly exists, that the plausibility is not there, the  
11 traceability to this proceeding is not there, and the  
12 redressibility in this proceeding is not there. So, those  
13 are legal requirements related to standing that we maintain  
14 have not been addressed, have not been met.

15 CHAIRMAN BECHHOEFER: We're not going to rule --  
16 well, we're ruling that the Connecticut group has standing  
17 and there's no opposition to that. But, we'll hold for a  
18 while on ruling on the Long Island group.

19 MS. HODGDON: Judge Bechhoefer?

20 CHAIRMAN BECHHOEFER: Pardon?

21 MS. HODGDON: May I speak to this issue --

22 CHAIRMAN BECHHOEFER: Oh, yes.

23 MS. HODGDON: -- before you --

24 CHAIRMAN BECHHOEFER: I don't think we have to  
25 rule before you --

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTHEAST NUCLEAR ENERGY COMPANY

(Millstone Nuclear Power Station,  
Unit No. 3)

Docket No.(s) 50-423-LA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LTR SECY TO REP. M. P. FORBES have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles Bechhoefer, Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Richard F. Cole  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Ann P. Hodgdon, Esq.  
Robert M. Weisman, Esq.  
Office of the General Counsel  
Mail Stop - 0-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Lillian M. Cuoco, Esq.  
Senior Nuclear Counsel  
Northeast Utilities Service Company  
107 Selden Street  
Berlin, CT 06037

David A. Repka, Esq.  
Donald P. Ferraro, Esq.  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005

Nancy Burton, Esq.  
147 Cross Highway  
Redding Ridge, CT 06876

Docket No. (s) 50-423-LA-3  
LTR SECY TO REP. M. P. FORBES

Dated at Rockville, Md. this  
3 day of February 2000

*Adria T. Byrdson*  
Office of the Secretary of the Commission