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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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THE MILLSTONE UNITS 2 AND 3

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6

7 On Behalf of the Northeast Utility Counsel

8 Present:

9

10 DAVID REPKA

11 Winston & Strawn Law Firm

12

13 RAVI JOSHI, Northeast Utilities

14

15 PETITIONER PRESENT:

16 NANCY BURTON, ATTY.

17 JOE BESEDE

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P R O C E E D I N G S

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2 JUDGE YOUNG: Good morning. This is Judge Young.
3 Judge Kelber and Judge Moore are also present.

4 Could I have everyone else identify themselves for
5 the record? I guess, first, Ms. Riley, are you there?

6 THE REPORTER: Yes, ma'am.

7 JUDGE YOUNG: Okay, great. Ms. Hodgdon?

8 MS. HODGDON: Yes, Ann Hodgdon for the NRC Staff,
9 and I have with me James Zimmerman who is the project
10 manager, and I am expecting Stephen Klementowicz, who is
11 detained, but should arrive shortly, who is the reviewer,
12 the technical reviewer for this amendment and who wrote the
13 safety evaluation.

14 JUDGE MOORE: Ms. Hodgdon, could you give us his
15 name again, please?

16 MS. HODGDON: Stephen Klementowicz, S-t-e-p-h-e-n
17 K-l-e-m-e-n-t-o-w-i-c-z.

18 JUDGE YOUNG: Ms. Burton, are you present?

19 MS. BURTON: Good morning, Judge Young. Yes, I am
20 present, and I also wanted to note that also present is Mr.
21 Joseph H. Besede. He is a member of the petitioner
22 organization who filed an affidavit in support of standing.

23 JUDGE YOUNG: And Mr. Repka?

24 MR. REPKA: Yes, I am here, David Repka.
25 R-e-p-k-a. And with me is my associate, Donald Ferraro,

1 F-e-r-r-a-r-o. And I also expect -- we are in Washington,
2 D.C. I also expect that some representatives from Northeast
3 Nuclear will be on the phone from Connecticut. They may
4 already be there, I don't know.

5 MR. JOSHI: Yes, this is Ravi Joshi from Northeast
6 Nuclear Company at Millstone.

7 JUDGE YOUNG: J-o-s-h-i?

8 MR. JOSHI: That's correct.

9 JUDGE YOUNG: Thank you. Have we left anyone out?

10 Okay, I think that includes everyone, then. We
11 will start the discussion in a moment on the issues of
12 standing and contention, but, Ms. Burton, I do think it
13 would be appropriate if you could explain to us what
14 happened last week.

15 MS. BURTON: Yes. I was going to do that without
16 even being invited to do so. I am extending sincere
17 apologies to everyone. I goofed, and I am very sorry. I
18 actually was en route to a proceeding in the Superior Court
19 here in Connecticut at Waterbury and had not taken adequate
20 notice of your conference call schedule before. Again, I
21 extend very sincere apologies. I certainly did not mean any
22 disrespect for this body or the proceedings, and I hope that
23 you all will accept my apologies.

24 JUDGE YOUNG: Okay. I just want to emphasize that
25 any further failure to appear by any party would obviously

1 not be favorably considered.

2 But with that said, let's move on and start from
3 where we are, which is to consider issues of standing and
4 whether the contention that petitioners have submitted is an
5 admissible, acceptable contention for this case to go
6 forward.

7 I would like to start by giving each party,
8 starting with the petitioners, 20 minutes, and I expect that
9 all of us will be interrupting with questions, and I expect
10 that I will have more than anyone else since, as I said last
11 time, I am fairly new, and I have been reading up on the
12 rules, the amendments to the rules, the Commission
13 commentary on the rules and the standards for which
14 technical specifications should remain in licenses and which
15 may be relocated. So I may give some leeway on time, based
16 on the amount of questions that we have to ask. But let's
17 start with that and sort of see where we go.

18 Before we start, are there any questions or
19 preliminary matters that anyone would like to address?

20 Okay, then, Ms. Burton, let's start with you and I
21 would like you to just address point by point, as concisely
22 and straightforwardly as possible, how you believe the
23 parties that you are representing have some standing and how
24 your proposed contention should be ruled upon favorably,
25 based upon the standards that have been set forth with

1 regard to relocation of technical specifications. I would
2 like for you to address also in your discussion the
3 arguments made by the Staff and NECo. When I say NECo, is
4 that the right --

5 MR. REPKA: Well, we would say NNC0, but --

6 JUDGE YOUNG: NNC0?

7 MR. REPKA: Right. But Northeast Nuclear is fine,
8 too.

9 JUDGE YOUNG: Okay. Northeast Nuclear has made
10 with regard to whether your contention is essentially a
11 challenge to an NRC rule relating to the allowable levels of
12 effluent.

13 MS. BURTON: Yes.

14 JUDGE YOUNG: Go ahead.

15 MS. BURTON: Thank you very much. Yes.

16 In this proceeding I am representing two
17 petitioners, the Connecticut Coalition Against Millstone and
18 the Long Island Coalition Against Millstone. Both of those
19 organizations were granted intervention status a year ago in
20 Millstone proceedings concerning application by the Licensee
21 to expand their storage capacity of Unit 3's spent fuel
22 pool, and those proceedings are now pending before the full
23 Commission after --

24 JUDGE YOUNG: Excuse me.

25 MS. BURTON: Pardon me.

1 JUDGE YOUNG: Judge Kelber has a question.

2 JUDGE KELBER: I don't believe Starr was
3 represented.

4 MS. BURTON: Pardon me, Dr. Kelber. Thank you
5 very much for that correction. I was incorrect with respect
6 to my identification.

7 The Connecticut -- excuse me, the Long Island
8 Coalition Against Millstone includes numerous organizations
9 and individuals, including Starr Foundation, Inc. Starr
10 Foundation is one of the members of the Long Island
11 Coalition Against Millstone.

12 In this particular proceeding, you are quite
13 correct, the Petitioners, or the Connecticut Coalition
14 Against Millstone and Starr Foundation. Thank you very much
15 for that correction.

16 As in the other proceeding, and Judge Kelber is
17 very familiar with that because he was on the board hearing
18 that matter, we presented in an amended petition an
19 affidavit of Mr. Besede who is present in this call this
20 morning as a representative member of the coalition. Mr.
21 Besede has sworn as to his ownership and residency of
22 property within two miles of the Millstone station in
23 Waterford, and his concerns as to his family's health, his
24 health, and so forth, with respect to the propinquity of his
25 property to Millstone and the Connecticut Coalition's

1 interventions was substantially similar in the prior
2 proceeding with respect to Mr. Besede's assertions.

3 With respect to the Starr Foundation application,
4 Starr is an organization based in Easthampton, New York
5 which is on Long Island across the Sound from Millstone, at
6 times directly downwind from Millstone when the winds are
7 blowing from the north, and the representative affidavit
8 there was submitted by Christina Guilliomo, who swore to her
9 residency with her family within the emergency planning zone
10 of Millstone -- how did she put it? Yes, the emergency
11 planning zone of Millstone, and that she was submitting an
12 affidavit in support of standing for Starr in these
13 proceedings. Both Mr. Besede and Ms. Guilliomo represented
14 that they wished to have their interests represented in this
15 proceedings by the organizations which are the named
16 petitioners.

17 I will briefly address --

18 JUDGE YOUNG: Ms. Burton.

19 MS. BURTON: Yes.

20 JUDGE YOUNG: This is Judge Young.

21 On Ms. Guilliomo, could you address two issues?
22 One, the lateness of the filing of her affidavit; and then
23 two, the fact in her affidavit that she is located
24 approximately 20 miles from the nuclear power station, and
25 under what authority that distance would constitute

1 sufficient proximity to serve as requisite injury?

2 MS. BURTON: Yes. Thank you. I will be happy to.

3 On the second point, she does represent that the
4 Starr membership -- this is paragraph 6 of her affidavit --
5 includes members who reside within the immediate proximity
6 of Millstone and within the 10-mile emergency planning zone.
7 Being 20 miles from Millstone herself, I believe that she
8 would fall within the zone that has been considered in
9 Atomic Safety & Licensing Board proceedings as being within
10 the requisite geographical closeness to a plant to provide
11 it standing.

12 JUDGE YOUNG: Can you give me cites for those?

13 MS. BURTON: I'm sorry?

14 JUDGE YOUNG: Can you give me cites for those?

15 MS. BURTON: Yes. I was just looking for that
16 site as I was speaking. It's in the document that I'm about
17 to refer to, so perhaps not to take too much time, I will
18 refer that in just a minute.

19 With regard to the lateness issue, there was a bit
20 of a communications error that was responsible for the
21 lateness of the submission of her affidavit. However, I
22 don't believe that any of the parties here are prejudiced,
23 were prejudiced by that, and particularly given their
24 familiarity with Starr's active participation in many
25 matters, including presence in the proceedings before the

1 Atomic Safety & Licensing Board in the recent spent fuel
2 pool amendment concerning Millstone.

3 I wanted to reference the Perry 1 decision, and
4 that may be where I have the reference to Atomic Safety &
5 Licensing Board's standards on geographical proximity. I
6 may not be able to put my finger on that. Could I reserve a
7 moment later? I don't want to take everybody's time while I
8 look.

9 JUDGE YOUNG: Yes, that's fine.

10 MS. BURTON: Okay. Thank you.

11 MR. BESEDE: Excuse me, this is Joe Besede.

12 Nancy, that Fishers Island lady that was -- had
13 standing like myself, was -- what organization did she
14 belong with?

15 MS. BURTON: You are referring to --

16 JUDGE YOUNG: Why don't you just save that till
17 later?

18 MS. BURTON: Okay.

19 MR. BESEDE: Okay.

20 MS. BURTON: Very good.

21 MR. BESEDE: Okay.

22 MS. BURTON: I have reference here to the decision
23 that has been referred to as the Perry 1 case.

24 JUDGE YOUNG: Right.

25 MS. BURTON: That addresses standing. I cannot

1 really distinguish that case from our standing because it
2 seems to be --

3 JUDGE MOORE: Ms. Burton, this is Judge Moore.

4 MS. BURTON: Good morning.

5 JUDGE MOORE: In Florida Power & Light years ago,
6 the Commission held that for standing purposes in a
7 situation of a license amendment, in contrast to an original
8 license, that one needed to show that the license amendment
9 created an obvious potential for harm, in contrast to that
10 generally accepted for a licensing proceeding, original
11 licensing proceeding case where a presumption that if you
12 were within a 50-mile radius of the plant, there was a
13 presumption that you would be harmed in the event of an
14 accident.

15 Now your reference to Perry, which involved the
16 issue of embrittlement of a reactor vessel, is something the
17 Commission found created or demonstrated an obvious
18 potential for off-site consequences.

19 What is the obvious potential for off-site
20 consequences to the members you proffer as having standing?
21 Moving these technical specifications, in contrast from
22 removing these technical specifications out of the license
23 into other licensee-control documents?

24 MS. BURTON: Yes. Be happy to respond to that,
25 and thank you so much for calling our attention to the case

1 of Florida Power & Light Company. Actually that was one of
2 the cases I was looking for to cite to you. The cite is 30
3 NRC 325.

4 Specifically, this application involved the
5 radiological liquid and gaseous effluent monitoring
6 instrumentation used to monitor routine radiological
7 releases. The application itself states, in attachment 2,
8 at page 1:

9 "These instrumentation provide a surveillance of
10 potential release points and initiate automatic alarm and
11 trip functions which will terminate" -- I emphasize
12 terminate -- "the release prior to exceeding the limits of
13 10 CFR P at 20, 1993 version."

14 It is our contention here that although we are
15 poised at a procedural juncture, namely the procedural step
16 of moving or removing technical specifications from where
17 they are presently reposed, I refer to the Perry cases in
18 support of our claim here that our procedural issues are
19 related to serious health and safety issues which are
20 prospective and which are substantive and necessarily
21 intertwined with the procedural issue, namely our concern
22 that --

23 JUDGE YOUNG: Ms. Burton.

24 MS. BURTON: Yes.

25 JUDGE YOUNG: Could you -- and I think you are

1 really getting to the heart of the issue, both as to
2 standing and contentions at this point. I think what I
3 would like to hear, anyway, is could you be very specific
4 about the nature of the harm, the potential harm, and with
5 respect to the specific technical specifications that are to
6 be moved in comparison to those that take their place, and
7 how any such harm would meet the standards set forth in
8 Volume 60 of The Federal Register, and with regard to the
9 standard of whether, for example, in this the radiological
10 effluent or their monitoring is a matter as to which the
11 imposition of rigid conditions or limitations upon reactor
12 operations is deemed necessary to obviate the possibility of
13 an abnormal situation, that giving rise to an immediate
14 threat to public health and safety?

15 I understand the Staff and Northeast arguing that
16 there would not be such a significant possibility of an
17 abnormal situation or safety consequence because there are
18 substitute provisions or other provisions remaining the
19 license that would protect against that.

20 MS. BURTON: Yes, of course. My short answer to
21 that is then why were these technical specifications adopted
22 and placed as part of the license initially? We the public
23 or we the petitioners look to that license for protection on
24 health and safety issues, and this is certainly central to
25 any definition of safety as it concerns the operations of

1 the Millstone reactors.

2 I just want to briefly note references that appear
3 in a book entitled "Millstone and Me," that was published by
4 Michael Steinberg recently. In his chapter titled
5 "Leakers," beginning at 24, he cites many of the reports of
6 effluent releases to the atmosphere from the Millstone
7 station, including the -- what he cites as the record of
8 releases from Unit 1 setting a record in the industry with
9 the exception of Three Mile Island back in 1975.

10 At pages 30 to 31, there is a discussion of batch
11 releases that go on for hours into the air from Units 2 and
12 3, and that --

13 JUDGE YOUNG: Ms. Burton.

14 MS. BURTON: Yes?

15 JUDGE YOUNG: Did you say batch, b-a-t-c-h,
16 releases?

17 MS. BURTON: That's right, batch releases. That
18 appears in quotes in his book, for instance, in 1994, and
19 the Licensee reported 22 batch releases of airborne
20 radioactive gases from Millstone 2, and two from Millstone
21 3.

22 JUDGE YOUNG: Ms. Burton.

23 MS. BURTON: Yes.

24 JUDGE YOUNG: Did they violate -- did any of those
25 releases violate the rule?

1 MS. BURTON: I am not prepared to answer that. I
2 don't know. But the fact is that it is our position that
3 any radioactive airborne releases are cause for concern, and
4 Mr. Mangano, who provided a supplemental affidavit in this
5 matter, is of the opinion that there is no safe level of
6 radioactive airborne release from a nuclear reactor, and
7 these reactors are --

8 JUDGE YOUNG: Ms. Burton --

9 MS. BURTON: -- located in a residential zone.
10 People live very, very --

11 JUDGE YOUNG: Ms. Burton.

12 MS. BURTON: -- near.

13 Yes?

14 JUDGE YOUNG: Again, I tried to warn you, I'm
15 going to be asking a lot of questions because I really need
16 to understand here. If your position is that any
17 radiological release is cause for harm, and you are not
18 prepared to say that the releases that you are talking about
19 that have occurred in the past, or any in the future, would
20 violate the rule, how is your argument here not a challenge
21 to the rules?

22 And also I would like to ask you to look at it
23 from our point of view. If you are not alleging any
24 violation of the rule or if you are not alleging with
25 specificity any facts that would fall within the standards

1 that the Commission set when it revised the rule and
2 permitted the relocation of technical specifications for the
3 specific purpose of allowing the industry to center in on
4 those most risk-significant activities, and thereby become
5 overall more safe, as I understand the general approach, how
6 do we have jurisdiction over this if you are not alleging
7 either a violation of those standards or of those specific
8 rules with regard to radiological effluents, specifically
9 Appendix I?

10 MS. BURTON: We haven't raised those issues
11 because they are not really properly before your panel in
12 this application. I am simply reciting --

13 JUDGE YOUNG: Ms. Burton.

14 MS. BURTON: Yes.

15 JUDGE YOUNG: My question is, if you have not,
16 what have you raised that would be in effect litigable in
17 this case?

18 MS. BURTON: Yes. It is our contention that the
19 provisions that presently appear in the technical
20 specifications belong there, and I guess here we are getting
21 into one of the questions that you addressed to the Staff
22 and Northeast Utilities.

23 Let me just turn to Perry 2.

24 [Pause.]

25 MS. BURTON: I'm just looking for one sheet of

1 paper here. Please bear with me just a moment.

2 [Pause.]

3 JUDGE YOUNG: Ms. Burton, you have a couple more
4 minutes. Why don't we reserve some time till later to do
5 that?

6 MS. BURTON: Yes, I do. Actually I'm trying to
7 find my copy of the -- here they are -- the technical
8 specifications, and let's see -- just a moment.

9 [Pause.]

10 MS. BURTON: The reference in Perry 2, that quote,
11 "If the intervenors believed that the nature and
12 significance of the material specimen withdrawal schedules
13 such that it needed to remain in the Perry technical
14 specifications as a specific challenge of the Perry license,
15 the intervenors could have raised this argument in this
16 proceeding. They instead concurred with the NRC Staff that
17 there is no statutory or regulatory requirement that the
18 withdrawal schedule remain in the Perry license."

19 I just want to comment here that our position is
20 different from that of the intervenors in that case. We do
21 argue that these technical specifications belong and should
22 remain in the license of specifically 10 CFR 50.36, does
23 seem to speak directly to this, at subsection -- is it c.1.,
24 specifically subparagraph under that, 2.a, there is no
25 question that these are technical specifications that

1 concern automatic protective devices that relate to
2 significant safety features, and it is my understanding from
3 the license amendment application materials that these
4 devices are barriers to prevent accidental release of
5 radiological effluent to the air, and that --

6 JUDGE MOORE: Ms. Burton, this is Judge Moore.

7 MS. BURTON: Yes.

8 JUDGE MOORE: Is it your position that criterion 1
9 of 50.36.c.2.a., which is criterion 1 -- I guess it's
10 c.2.i.a., installed instrumentation that is used to detect
11 and indicate in the control room a significant abnormal
12 degradation of the reactor coolant pressure boundary is
13 involved in this case?

14 MS. BURTON: I'm sorry. I don't see where you're
15 reading from.

16 JUDGE MOORE: I believe I was reading criterion 1,
17 which is what you have cited as 50.36.C.2 --

18 JUDGE YOUNG: She was looking at 50.36.C.1.a, I
19 think.

20 JUDGE MOORE: I'm sorry if I misunderstood you.
21 What specifically were you citing, Ms. Burton?

22 MS. BURTON: Let me -- I believe it was 50.36,
23 subsection C.1.B.ii.A -- that's a small lower case I,
24 capital A, and it starts, "Limiting Safety System Settings
25 for Nuclear Reactors or Settings for Automatic Protective

1 Devices Unrelated to Those Variables Having Significant
2 Safety Functions."

3 JUDGE YOUNG: Excuse me. That's C. small Roman
4 numeral --

5 JUDGE MOORE: No, I believe it is --

6 MS. BURTON: Oh, wait. I may have missed that. I
7 may have put something accidental.

8 It's 50.36.C.1, then two little ones, or I's, and
9 then capital A.

10 JUDGE YOUNG: Okay. Okay. Thank you. Go ahead.

11 MS. BURTON: And also going back, 50.36.C.1 and
12 then in parentheses a single lower case I and then a capital
13 A.

14 JUDGE YOUNG: Let me just ask you specifically --
15 and I think we really do need to get to this level of
16 specificity. In what way does taking the specifications
17 that are proposed or actually have been located out of the
18 license do away with the types of safety limits and limiting
19 safety settings and limiting control settings that are
20 required when you take into account the replacement? What
21 are the significant changes that would allow for an increase
22 in releases that might constitute an immediate threat to
23 public health and safety?

24 MS. BURTON: Yes. I have reference to the
25 Applicant's cover letter dated February 22, 2000, in which

1 the Applicant states:

2 "Relocating requirements to NNCo control documents
3 will reduce costs by allowing NNCo to change the
4 requirements without necessarily amending the license."

5 Our concern here, at this stage, is procedural;
6 namely that the Licensee may in the future set about
7 amending the present requirements, and there will be no
8 requirement for notice to the public or opportunity for
9 public hearing, and that necessarily we would anticipate,
10 and it would not be unreasonable to contemplate, that the
11 Licensee would seek to in some way minimize or diminish its
12 responsibilities with respect to these matters.

13 JUDGE YOUNG: Ms. Burton.

14 MS. BURTON: Yes.

15 JUDGE YOUNG: Your time is about up, but what I
16 think I need to understand here is you are making a general
17 statement. We are talking about the document that Mr.
18 Zimmerman recently -- it is fairly thick, and I need to get
19 an understanding with some substance to it, some more
20 specificity to it, how what you are saying could occur.

21 In other words, if that -- and I understand the
22 procedural part of what you are saying. I think that Perry
23 gives you that. But the question again is in what way, in
24 what specific way, could moving these particular technical
25 specifications allow for changes of what sort? What sort of

1 changes could be made? Would they be merely arithemtical
2 as in the other Perry case actually?

3 MS. BURTON: Well, I think we may be beyond what
4 we may legally be required to demonstrate at this point, but
5 I would be happy to try to respond.

6 JUDGE YOUNG: Ms. Burton, you just raised another
7 point. Can you give me some citation to authority on the
8 level of specificity that you are required to show? And
9 then I would like you to sort of wrap it up and save the
10 rest for rebuttal, and let's move on to Northeast or the
11 Staff at this point.

12 MS. BURTON: Okay. Let me respond to the earlier
13 question.

14 With reference to page 4 of the Licensee's
15 application, shown on my materials as dated February 22,
16 2000, the Licensee is requesting this amendment and wanted
17 it to be issued by August 31st of this year, "to support the
18 ongoing effort to eliminate Millstone Units Nos. 2 and 3's
19 dependence on the Millstone Unit No. 1 stack gas high range
20 radiation monitor."

21 I mention this and I call attention to it because
22 it seems, therefore, that this application may not be simply
23 just procedural, in the case of paper shuffling, but may
24 actually be relied upon to provide authority for actual and
25 real changes to monitors at Millstone.

1 I understand that, if this is the stack that I am
2 somewhat familiar with, it may presently involve releases
3 from all three units. I may stand to be corrected on that,
4 but I believe that we are not dealing here just in the realm
5 of concept, but actual changes to the station, and its
6 actual monitoring devices.

7 JUDGE YOUNG: Judge Kelber?

8 JUDGE KELBER: Can I ask a question, please?

9 There is a new technical specification included in
10 the amendment that contains language under
11 Licensee-initiated Changes to the REM ODCM. I'd like
12 someone to pronounce that. But it's the manual that's in
13 question.

14 And in view of that technical specification which
15 will be a license condition, how do you see possible changes
16 affecting the accuracy or reliability of the monitoring?

17 MS. BURTON: Yes. Our contention didn't get into
18 that issue of the prospective new technical specifications
19 which would be under consideration. Our contention is
20 limited to our objection to the removal of the present
21 effluent monitoring instrumentation.

22 JUDGE KELBER: This is really just considering
23 whether it meets the criteria of 50.36 or not.

24 MS. BURTON: The application for new technical
25 specifications?

1 JUDGE KELBER: No.

2 MS. BURTON: I'm sorry?

3 JUDGE KELBER: Your contention then is concerned
4 solely with 50.36, that specific applicability to these --

5 MS. BURTON: I'm not sure I'm following you.

6 JUDGE KELBER: Well, as you are not considering
7 the new technical specifications, which obviously bears on
8 the safety question, then you are really concerned simply
9 with the question of 50.36 classification applies to these
10 -- how they apply to these contentions.

11 MS. BURTON: I'm sorry, I'm not sure that I follow
12 you completely, Dr. Kelber.

13 JUDGE KELBER: Well, you said that you are not
14 concerned with the implications of the new technical
15 specification 6.1.

16 MS. BURTON: No, I haven't said, or if that's what
17 you heard, I'm sorry I misstated. The contention that we
18 submitted here relates to the -- solely to the issue of
19 removal of the present technical specifications. It does
20 not address prospective new technical specifications as a
21 contention.

22 JUDGE KELBER: I don't understand that, quite,
23 because I could, for example, come in with an amendment, any
24 applicant, any licensee could, with an amendment proposing
25 to substitute a new technical specification for a group of

1 older ones which might, for example, not be useful any more
2 because of changes in instrument design.

3 MS. BURTON: I don't think that's the case here.

4 JUDGE KELBER: Well, I could conceive ways in
5 which it could be, but that's not the point. I still am not
6 sure which section of the rules that we are looking at, the
7 way we are going.

8 JUDGE YOUNG: Well, why don't hold your answer to
9 that question unless you want to stop at this point. Save
10 your answer there, and then let's move on, because we really
11 have gone about 10 minutes over time.

12 Is that all right with you, Judge Moore? Do you
13 want to ask one last --

14 JUDGE MOORE: Well, I have a number of questions,
15 but I'll hold them until rebuttal.

16 JUDGE YOUNG: Okay. I have some more, too, but
17 why don't we make sure we give Northeast and the Staff a
18 chance. Do either of you prefer to go next? I would think
19 Northeast would be --

20 MR. REPKA: I would be happy to go next.

21 JUDGE YOUNG: Go ahead.

22 MR. REPKA: I am really not sure where to begin.
23 I think that was a fairly confused presentation, which I
24 think reflects the state of the pleadings.

25 But let me just say -- let me try to address four

1 things under the context of standing.

2 First, I think I would like to discuss a little
3 bit about the nature of the amendment itself, because I
4 think that's important for understanding the standing
5 question.

6 Second, I would like to talk a little bit about
7 the procedural issue related to Starr, and address some of
8 the things that Ms. Burton said.

9 Third, I would like to deal with the off-site
10 consequences as a basis for representation of standing for
11 either the Coalition or Starr.

12 And last, I want to come back to the alleged
13 procedural harm in the so-called Perry 1 line of cases.

14 First, on the issue of the amendment itself, I
15 think there's a lot of discussion about what it does and
16 does not do. Number one, the amendment itself is
17 administrative. The amendment is not necessary to support
18 any hardware changes at the nuclear plant. Notwithstanding
19 the --

20 JUDGE YOUNG: Would it allow changes?

21 MR. REPKA: Excuse me?

22 JUDGE YOUNG: Would it allow changes, though?

23 MR. REPKA: The amendment allows the
24 administrative change of moving the descriptions and
25 surveillance requirements and effluent limits from the tech

1 specs to the REM ODCM. It is not necessary for any -- there
2 are no proposed plant changes for which this tech spec is
3 necessary. And I don't know if that's making any sense, but
4 --

5 JUDGE YOUNG: But my question was -- you say it's
6 not necessary. Would it allow any type of changes to the
7 instrumentation or monitoring methods with regard to the
8 effluent releases in such a way that it would be possible
9 for there to be an abnormally high release, for example, on
10 a given day that would give rise to an immediate threat to
11 public health and safety? And could those changes be made
12 as a matter of discretion on the part of Northeast or
13 Millstone personnel?

14 MR. REPKA: Well, the tech spec amendment itself
15 doesn't allow anything that couldn't already be done under
16 50.59. The requirements are being moved over verbatim to
17 the REM ODCM.

18 JUDGE YOUNG: I understand that, but what I'm
19 saying is, by taking those requirements out of the license,
20 could changes be made that would -- to the instrumentation
21 or monitoring methodology by Millstone or Northeast in a
22 discretionary manner that could, in the future, conceivably
23 lead to different or higher levels of releases that could
24 conceivably lead to an immediate threat to public health or
25 safety?

1 In other words, are there limitations in those
2 technical specifications that are being relocated that would
3 allow that type of change that I just described to take
4 place without having to go through a license amendment
5 process?

6 MR. REPKA: The amendment would allow future
7 changes to the terms of the REM ODCM without going through a
8 license amendment process.

9 JUDGE YOUNG: Right.

10 MR. REPKA: That's the nature of the amendment.
11 That's exactly what the Commission with the whole tech spec
12 improvement program.

13 JUDGE YOUNG: And what I am trying to get at is
14 the types of changes that would be allowed by moving it to
15 the manual, moving these specifications to the manual, what
16 type of changes would be allowed under this? You say that
17 none of them involve any discretion whatsoever, and none of
18 them could involve any changes to instrumentation or
19 monitoring such that there could be, for example, on any
20 given day, an abnormally high release that could lead to an
21 immediate danger to public health and safety? Can you state
22 unequivocally that there could be no change of that sort?

23 MR. REPKA: There could be no change of that sort
24 because the requirements related to the effluent limits are
25 the same as they ever were, and they can't change, they

1 can't go beyond the regulatory requirements on effluents.
2 Those exist independent of -- the regulatory requirements on
3 effluents exist independent of whether it's in tech specs --

4 JUDGE YOUNG: Let me see if I can be more specific
5 with my question.

6 I understand that the limits stay the same, and
7 that we are talking about yearly limits, I think it's five
8 millirem to an individual. What I am asking is, could there
9 be changes to the instrumentation or monitoring method that
10 could allow a more likely event of an abnormal release that
11 could conceivably lead to an immediate threat to public
12 safety or health? That's what I'm talking about; not the
13 limits, but the methodology for detecting any releases
14 proportionately greater than are allowed, such that they
15 would bring in the corrections and so forth that are in
16 place?

17 MR. REPKA: Well, let me try to address it this
18 way:

19 The ultimate limit can't be changed. By virtue of
20 not being a tech spec, a surveillance requirement, a
21 monitoring point could be changed, equipment could be
22 changed without going through the amendment process, but
23 subject to the control process that would be described in
24 the new tech spec.

25 Now having said that, the Board should recognize

1 that equipment can be changed now, even with the tech specs,
2 without necessarily getting a tech spec change. The current
3 tech specs and the requirements of the REM ODCM are not
4 equipment-specific. They don't set out ID numbers on
5 equipment or equipment type. They specify effluent limit,
6 they specific operability requirements, they specify
7 surveillance requirements, they specify release points and
8 thresholds, but they are not specific as to whether it's a
9 widget stand or a gadget stand doing it.

10 So right now --

11 JUDGE YOUNG: Mr. Repka, you said that monitoring
12 points could be changed. And by monitoring points -- well,
13 why don't you tell me what you mean by monitoring points?

14 MR. REPKA: Well, right now, for example, I think
15 that the ultimate monitoring point for all of the releases
16 is the Unit 1 stack, which is, as you know, Millstone Unit 1
17 is being decommissioned. But the stack remains the site
18 stack and will continue to be the site stack, and the REM
19 ODCM specifies that there are monitoring points in the
20 stack.

21 Now that's being proposed to be changed, but --

22 JUDGE YOUNG: Right. But what we're talking about
23 is what types of changes could be done under the manual?
24 And what I am trying to get an understanding of is what are
25 those types of changes that could be made? And you said

1 monitoring points could be changed. Would that involve
2 discretion? And could that -- can you say unequivocally
3 that no changes could possibly be made that could
4 conceivably lead to an anomaly on any given day that could
5 lead to a threat to public health and safety?

6 MR. REPKA: The situation that would create the
7 release isn't depending upon the monitoring equipment, but
8 beyond that, any change that would be made would still be
9 subject to the criteria of the new tech spec for what is an
10 allowable change, as well as the criteria of 10 CFR 50.59.

11 So no change -- while the change could be
12 discretionary, no change could be made without Commission
13 approval, if it does not meet 50.59, for example, and 50.59
14 requires approval for changes that would involve a new or
15 different kind of accident, a reduction in a margin of
16 safety. It is, broadly speaking, an unreviewed safety
17 question.

18 So I think the kind of change that you are talking
19 about, abnormal releases -- A, they're not necessarily a
20 product of the monitoring equipment itself, but B, they --
21 you couldn't make a change that would lead to that effect,
22 because I don't think it would survive the screening of
23 either 50.59 or the new control -- of this program control
24 that would be included in the tech spec to address future
25 changes.

1 JUDGE YOUNG: Mr. Repka, aren't you talking about
2 that you would have to get approval from the NRC, but that
3 would be under -- in a context in which it would not involve
4 a license amendment, so that what Ms. Burton is arguing is
5 that the public would then not have the right to --

6 MR. REPKA: Actually, that's not correct. If a
7 change were made that does not involve an unreviewed safety
8 question, there is no Commission approval required.

9 If a change is such that it does involve an
10 unreviewed safety question, it does require NRC Staff
11 approval, it does require -- 50.59 goes through the license
12 amendment process, 50, 90, 91, and 92, which does involve a
13 hearing opportunity. So the kind of extreme change that I
14 think you are proposing would be subject to a hearing
15 opportunity under 10 CFR 50.59.

16 JUDGE YOUNG: But I guess what I'm asking is I'm
17 not really talking about extreme changes and, again, pardon
18 my place on the learning curve at this point, but what I am
19 trying to understand in Perry, in the other Perry case, the
20 issue, the factual issue was specimen monitoring to
21 determine the potential embrittlement of the safety reactor
22 vessel, and the Commission thought that had obvious safety
23 consequences. It was also talking about monitoring here, so
24 there's some comparison there.

25 Now I understand that in that case, the material

1 specimen samples, there were a number of those, and you took
2 them, and when you ran out, you could no longer test. I am
3 talking about monitoring radiological effluents here, so
4 that if, for example, there were changes to the monitoring
5 methods -- you didn't do it as frequently -- and I'm asking
6 here, now -- or you didn't do it as stringently, hopefully
7 -- you didn't take a stringent corrective action when there
8 was maybe an abnormally high release on a given day.

9 What I am trying to understand is if any of those
10 types of things could occur and can you say that the
11 ultimate result would have no safety significance, no threat
12 to public safety?

13 MR. REPKA: Well, I think there is a difference
14 between the Perry situation and this situation. In Perry
15 you are talking about surveillance requirements related to
16 the reactor vessel, and the hypothetical harm would be that
17 the surveillance requirements would be reduced on the vessel
18 itself, therefore leading to some kind of failure of the
19 vessel that would have obvious off-site consequences.

20 Here we are talking about a second tier component
21 when we are talking about radiological monitoring. And yes,
22 a surveillance requirement might conceivably be changed down
23 the road -- nothing is being proposed right now, but down
24 the road on surveillance of a monitoring instrument.

25 Well, you still then need to presuppose that

1 something else fails, and then because of the surveillance
2 being unduly lax somehow -- and I think that's a huge
3 assumption when you realize the process, the control process
4 that change has to go through. But you then have to say
5 that the surveillance -- the monitoring instrument, because
6 of the reduced surveillance, fails to pick up the release.
7 That's the chain of causation, but that is not a direct
8 cause and effect. It's unlike Perry, whereas the reactor
9 vessel itself was failing, leading to the release.

10 JUDGE YOUNG: Right. But -- you're right. I
11 think you have described the chain of causation, and what I
12 am trying to get an understanding of is are you saying that
13 assuming that chain that you described took place, are you
14 saying that there could never be any increase in the release
15 of radiological effluents, such that they could cause
16 immediate harm to public safety, especially in view of the
17 epidemiological studies that the expert -- excuse me, Judge
18 Kelber, I want to finish asking my question. Especially
19 with regard to the epidemiological evidence that the
20 Petitioners' expert proposes to present. And I am trying to
21 really get an understanding here of whether you are saying
22 that there could never be a harm to public health or safety
23 from any radiological effluent or increase in such effluent
24 as a result of any changes in the surveillance?

25 And if you are saying that, what is your basis for

1 saying that?

2 MR. REPKA: Well, Judge Kelber once taught me in
3 another proceeding never to say never, but -- which I think
4 was wise advice. But beyond that, the change -- let's just
5 assume there was a change to the surveillance requirement
6 related to the radiological monitoring instrument. If there
7 was some off-site release, the change to the radiological
8 monitoring system would not be the cause of that occurrence.

9 JUDGE YOUNG: But it might not catch it; correct?
10 Isn't that what you said before?

11 MR. REPKA: Well, I think that would be the
12 hypothetical you would propose, is that it might not -- it
13 might not, yes, pick it up. That's --

14 JUDGE YOUNG: Right. And what I'm asking is if it
15 did not pick it up, could the result be an increased release
16 that could lead to an immediate danger to public health or
17 safety? Or really the question I'm asking is can you say
18 that that could not occur as a result of that failure to
19 catch the release?

20 MR. REPKA: I don't believe I could say
21 categorically that something like that cannot occur, but I
22 can say that that really stretches credibility, given the
23 nature of the instrumentation involved, given the existence
24 of the effluent limit that will not change, given the
25 control process that will exist on future changes --

1 JUDGE MOORE: Mr. Repka, Judge Moore.

2 MR. REPKA: Yes.

3 JUDGE MOORE: The question posited by Judge Young
4 is essentially an accident situation?

5 MR. REPKA: Is that a question, that it is an
6 accident situation?

7 JUDGE MOORE: Yes.

8 MR. REPKA: That's my understanding, is that you
9 are positing an accident, something to create a release.

10 JUDGE YOUNG: Actually I was using your term, but
11 I guess, yes, what we are trying to get at is if there was
12 something that would cause a release and I understand you to
13 be saying that it could be possible by moving these
14 technical specifications, that somebody at Millstone in the
15 future could change the surveillance methodology in such a
16 way that that release could not -- might not be caught;
17 right?

18 MR. REPKA: Well, somebody could -- I don't
19 believe anybody would change the surveillance requirement in
20 any way that would have that effect, but -- because of the
21 control processes. But somebody might argue that that could
22 occur.

23 JUDGE MOORE: Well, Mr. Repka, help me out here on
24 what -- under the current system of monitoring and
25 surveillance effect, what happens in the eventuality of an

1 accident? This system has nothing to do with an accident,
2 does it?

3 MR. REPKA: That's correct.

4 JUDGE MOORE: So anything that would trigger
5 events now is no different than the same events triggering
6 it if you move these tech specs out of the license; is that
7 correct?

8 MR. REPKA: That's correct. That's the point I
9 was trying to make, that --

10 JUDGE MOORE: So the situation that Judge Young
11 posited, as I understand her, can happen now as well as
12 happening later if the tech specs were removed out of the
13 license?

14 MR. REPKA: That's correct.

15 JUDGE YOUNG: Let me see if I understand you,
16 though. What I understood you to say, the difference
17 between now and later is that it is -- it could be possible
18 for there to be discretionary changes made to the
19 surveillance methodology, without going through the license
20 amendment process, and that such changes in the surveillance
21 methodology could lead to a situation in which, as compared
22 to now at least would be caught by the monitoring equipment,
23 and the hypothetical later situation, the same release might
24 not be caught as quickly or effectively as it presently
25 would be.

1 I think I understood you to say that that would be
2 possible.

3 MR. REPKA: Well, that chain of causation could be
4 argued. I personally do not believe that that situation
5 could exist, because I believe the controls in the tech
6 specs would prevent discretionary changes where any such
7 reduction in effectiveness like that would become critical?

8 JUDGE YOUNG: Where are those controls? Where are
9 those controls, and what specifically are you talking about
10 when you say you believe the controls would prevent that?

11 MR. REPKA: Well, what I'm talking about is -- I
12 need to find a copy of our file -- was referred to in --
13 bear with me for one second. It's discussed in our
14 September 25th filing on page 4.

15 JUDGE YOUNG: Let me find your September 25th
16 filing. Okay, page what?

17 MR. REPKA: Page 4. It references new
18 administrative control tech specs 6.15, radiological
19 effluent monitoring and off-site dose calculation manual,
20 and it states that changes to the REM ODCM shall be
21 documented, and records of reviews retained, effective after
22 review and acceptance, by the station off-site review
23 committee, et cetera, et cetera.

24 It's the new tech spec 6.1 that establishes the
25 programmatic control on future changes, the evaluation of

1 changes that need to be done, and that really supplements
2 the existing change requirements of 10 CFR 50.59.

3 JUDGE YOUNG: Let me see if I can understand sort
4 of what the issue here is, and I would like to get your
5 edification on this.

6 My understanding of the whole process of moving --
7 allowing the relocation of some technical specifications to
8 things like this manual, is that by moving out a lot of
9 detailed technical specifications that are not as
10 safety-significant as others are, it allows the license
11 holder and the NRC to zero in on those that are the most
12 significant, and thereby does a better job of protecting the
13 safety and health issues, by allowing that focus.

14 My understanding is that for any technical
15 specification that is moved, there would be similar
16 replacement techniques in place to serve as a check on
17 future changes, but the difference would be that the check
18 on future changes would be not something that would be
19 subject to a license amendment, so that it would allow for
20 greater efficiency.

21 My understanding is further that the difference
22 between the types of technical specifications that are
23 permitted to be relocated, and those that are required to be
24 retained, has to do with the level of safety significance,
25 and the standard that the Commission has defined has to do

1 with whether we are talking about matters as to which the
2 imposition of rigid conditions or limitations upon reactor
3 operations is deemed necessary to obviate the possibility of
4 an abnormal situation or event giving rise to an immediate
5 threat to public safety or health.

6 In addition, I think that there is a standard that
7 the Commission has defined -- let me see if I can find that
8 one, it's criterion No. 4 which has to do with whether we
9 are talking about a structure, system or component which
10 operating experience or probabilistic safety assessment has
11 shown to be significant to public health and safety.

12 So I guess that in my mind the answer to whether
13 this is the type of technical specification that is
14 permitted to be moved under these standards depends upon
15 whether radiological effluents and/or their monitoring is a
16 matter as to which the imposition of rigid conditions or
17 limitations upon reactor operations is deemed necessary to
18 obviate the possibility of an abnormal situation or event
19 giving rise to an immediate threat to public health or
20 safety, and whether radiological effluent monitoring is
21 something which operating experience or probabilistic safety
22 assessment has been -- has shown to be significant to public
23 health and safety.

24 As a relative newcomer here, on the one hand it
25 seems to me that when you are talking about the release of

1 radiological effluent, it is almost implicitly safety
2 significant, and that the monitoring of that would also
3 thereby be implicitly safety significant.

4 But I am a relative newcomer, so what I am asking
5 you is how do you argue that radiological effluents and
6 their monitoring do or do not fall within these two criteria
7 that the Commission has defined?

8 MR. REPKA: Well, if they do not meet the two
9 criteria under 50.36 -- and I think really we are getting
10 here into the question of the contention, and as far as a
11 showing on the criteria of 50.36, the license amendment
12 application of February goes painstakingly each proposed
13 change and applies the criteria of 50.36 and states the
14 conclusion --

15 JUDGE YOUNG: What I am asking you, though, is to
16 tell me that in a plain English way, point me to how I
17 should understand that radiological effluents and their
18 monitoring does not fall under this criterion 4, for
19 example?

20 MR. REPKA: It does not fall under criterion 4
21 first and foremost because the effluent limits are not in
22 any way being changed, nor can they be changed. They are
23 ultimately subject to the regulatory requirement. So the
24 tech specs are not -- do not --

25 JUDGE YOUNG: I'm talking about the limits,

1 though. We are talking about the monitoring that might
2 catch any release that might conceivably violate the limits,
3 right? We're talking about the monitoring, and so that's
4 what I'm trying to get you to zero in on.

5 MR. REPKA: The criterion 4 states a structure,
6 system or component which operating experience or
7 probabilistic risk assessment has shown to be significant to
8 public health and safety, the very -- the point that recurs
9 throughout the application is that neither PRA nor operating
10 experience shows that to be the case.

11 JUDGE YOUNG: With regard to surveillance and
12 monitoring of radiological effluents.

13 MR. REPKA: That's correct.

14 Now with respect to the contention, is what this
15 hearing, if we assume there would be a hearing, what it
16 should be about, it would be limited by the nature of the
17 amendment application to the question of whether or not
18 these requirements fall within the criteria of 50.36, and
19 the fact of the matter is there has been absolutely no basis
20 presented or offered by the Petitioner to support any such
21 assertion. And the fact remains the application and now the
22 amendment very thoroughly addresses that on a technical,
23 factual level, and this is consistent with what the NRC has
24 issued for numerous other power plants. So I think that it
25 would be extreme to say that somehow the Petitioner has

1 satisfied their burden of going forward to say that this
2 meets the requirements of 50.36.

3 JUDGE MOORE: Can you tell me -- this morning we
4 heard for the first time from the Petitioners that 50.36.C,
5 and I guess it must be C.B.ii.A, is the requirement of the
6 regulations that demands that these technical specifications
7 remain in the license. Can you tell me why the technical
8 specifications at issue are not limiting safety systems for
9 nuclear reactors, et cetera, et cetera, as set forth in the
10 section I just cited?

11 MR. REPKA: I believe again that is not an issue I
12 have focused on because it was never raised before today.
13 But I don't believe that monitoring equipment, by its
14 nature, falls within that category.

15 JUDGE YOUNG: Can you explain that a little
16 further?

17 JUDGE KELBER: Let me interject with an example
18 and ask you to comment on it.

19 Suppose in the ops system, there is a charcoal
20 absorber. I am not sure what they use at Millstone. But
21 there's a charcoal absorber which either catches fire or
22 gets saturated and stops working, how does the monitoring
23 equipment affect the release from that?

24 MR. REPKA: How does the monitoring -- I don't
25 believe it does. I mean I think that the monitoring

1 equipment is entirely separate from that type of equipment.
2 But I think what you are asking me is fundamentally a
3 technical question which I am not prepared to answer.

4 JUDGE MOORE: But it is your answer, Mr. Repka,
5 that contrary to the assertion we heard this morning from
6 the Petitioners that 50.36.C.B.ii.A is inapplicable to the
7 changes you are proposing?

8 MR. REPKA: That's correct.

9 JUDGE MOORE: But you believe it is a -- did I
10 understand you correctly that it's a technical question as
11 to why that you can't tell us?

12 MR. REPKA: Perhaps Mr. Joshi could better address
13 that than I could.

14 JUDGE YOUNG: And before you do address it, I
15 would like to add --

16 JUDGE MOORE: Well, let's get one thing answered
17 at a time.

18 JUDGE YOUNG: It's the same question. I mean it
19 might save a little time.

20 I hear you saying that the answers to these
21 questions of the significance and the risk assessment all
22 depend on technical answers, and so in giving your answer,
23 can you explain how those technical matters answer the
24 questions that we have been talking about here?

25 Maybe I just repeated what Judge Moore said a

1 different way. Go ahead.

2 MR. REPKA: Mr. Joshi?

3 MR. JOSHI: Okay. The limiting safety system is
4 really a section under the tech spec 2.0, safety limits and
5 limiting safety system settings. That's the section that
6 satisfies the regulation of 50.36.

7 Also, the reactor operation systems setpoint,
8 which is under the instrumentation section, those are also
9 under the limiting safety system. Those are the ones that
10 are covered under this regulation, and those are not
11 impacted by the proposed change.

12 JUDGE MOORE: So the technical specifications at
13 issue are not limiting safety systems?

14 MR. JOSHI: That's correct.

15 JUDGE YOUNG: Okay. I guess what -- I need a
16 little bit more plain English explanation of what you just
17 said. You are saying that there are no technical
18 specifications that are being relocated that could allow for
19 possible, just possible, changes in the monitoring that
20 could result in a failure to catch a release that was caused
21 by another cause?

22 MS. BURTON: Pardon me, Judge Young.

23 JUDGE YOUNG: Yes.

24 MS. BURTON: I don't mean to interrupt. I just
25 have a clarification on a procedural point. For purposes of

1 this discussion, I am just wondering about the correctness
2 of having a technical person participate. We don't have a
3 technical person at hand. I hadn't understood that this
4 discussion would occur except as among the panel and the
5 attorneys.

6 MR. REPKA: Well, may I respond to that?

7 If this were a prehearing conference held live, or
8 if I was in Connecticut, Mr. Joshi would be with me, and we
9 would be able to coordinate. But by virtue of the nature of
10 this call, we don't have that luxury, so I think the easiest
11 thing to do is just let the technical person speak for
12 himself, rather than through me.

13 MS. BURTON: Well, except I understand why you
14 would advocate for that, Mr. Repka. But again, if I had
15 expected this, we might have invited some participation so
16 that we could be prepared to respond.

17 JUDGE YOUNG: Ms. Burton, I am going to overrule
18 your objection, and taking it as that.

19 I think that what this gets down to, really, that
20 probably Perry allows the procedural issue, as you have
21 argued it, Ms. Burton, in terms of standing. But in terms
22 of harm under both standing and under whether the contention
23 has submitted a disputed fact as to what it comes down to,
24 safety significance, the answer to that question is a
25 factual technical one, and what I am trying to get is some

1 understanding of that, such that I can make an independent
2 determination of whether what we are talking about falls
3 under specifically criterion 4 with regard to whether we are
4 talking about conditions or limitations upon reactor
5 operations that are necessary to obviate the possibility of
6 an abnormal situation or event giving rise to an immediate
7 threat to the public health and safety.

8 And in order to understand enough to answer that
9 question, I need to understand what the technical
10 specifications actually do. I understand from what Mr.
11 Repka said that there could conceivably be changes to the
12 surveillance methodology that could result in not catching a
13 release, and so what I am trying to understand is the
14 significance of that kind of release and what type of
15 changes to the surveillance methodology or monitoring could
16 be made that could not be made now, currently, or could not
17 be made if the technical specifications were in the license,
18 without a license amendment.

19 So if I can get any technical elucidation on that
20 in plain English, it helps me understand what I need to
21 know, I welcome it at this point from any party.

22 So go ahead, Mr. Joshi, if you could explain that.
23 Excuse me if I missed it.

24 MR. JOSHI: Oh, that's okay.

25 MS. BURTON: I'm sorry. Just as a further point

1 on the procedure, I think that we are here for oral
2 argument, and so I would continue with my objection, with
3 the request that perhaps we simply continue this to a date
4 certain and soon, and we would be happy to bring some
5 technical expertise to bear so that the panel could hear
6 from both sides.

7 JUDGE YOUNG: Ms. Burton, Judge Moore has a
8 question.

9 JUDGE MOORE: Where in your contention, as set
10 forth in either your original petition or your amended
11 petition, have you stated that 10 CFR 50.36.C.1.B.ii.A
12 requires these tech specs to remain in the license?

13 MS. BURTON: We haven't explicitly set that forth.
14 I believe it is implicit in our petition.

15 JUDGE MOORE: What sentence or sentences?

16 [Pause.]

17 MS. BURTON: Well, I have reference to the
18 contention in its entirety.

19 JUDGE MOORE: Is that your answer to my question?

20 MS. BURTON: Well, that is where we address the
21 issue, and where implicitly.

22 JUDGE MOORE: You don't mention regulation or as
23 much as use the word regulation in your contention. Do you?

24 MS. BURTON: The word regulation?

25 JUDGE MOORE: Or rules, or 50.36, or anything of

1 that ilk?

2 MS. BURTON: We do mention that radiation,
3 radioactive effluent discharges to the air and water, we do
4 reference effects to the public safety and health risks, and
5 our concern about degradation of standards to protect the
6 public health and safety, and certainly implicit in this
7 petition are the applicable provisions of the law.

8 JUDGE MOORE: I can read your contention, Ms.
9 Burton.

10 Now, secondly, you mentioned to us this morning
11 for the first time this 50.36.B.ii.A. Now accepting for the
12 sake of argument that that is now your position, can you
13 tell me how these technical specifications are limiting
14 safety systems, as set forth in that provision in the
15 regulation? And actually my question is, can you tell me
16 where in your contention it is set forth how removing these
17 technical specifications -- I'm sorry. How it is set forth
18 that these technical specifications are in fact limiting
19 safety systems?

20 MS. BURTON: Yes. Just a moment.

21 JUDGE MOORE: Limiting safety system settings.
22 Yes. I left off the word setting.

23 [Pause.]

24 MS. BURTON: Well, in the introduction in our
25 petition, we reference the fact that radiological liquid and

1 gaseous effluent monitoring instruments monitors routine
2 radioactive releases from Millstone Units 2 and 3. The
3 instrumentation provides the surveillance of potential
4 release points and initiates automatic and trip functions
5 which are intended to terminate the release prior to
6 exceeding the limits of 10 CFR Part 20, 1993 version, that
7 has reference to section 50.36. It may be that our
8 contention implicitly references more of the provisions of
9 section 50.36.

10 JUDGE MOORE: Okay, Ms. Burton, let's turn for a
11 minute to 10 CFR 2.714, which sets forth the Commission's
12 requirements for what a contention must meet. Can you point
13 to me in your contention that is set forth in either the
14 original petition or your amended petition where they have
15 set forth references to those specific portions of the
16 application that you dispute, and where is the, in each
17 case, for those specific portions of the application are
18 your supporting reasons for disputing those sections?

19 MS. BURTON: Yes, I'd be happy to, Judge.

20 Our petition is, as I have tried to point out
21 before, concerned with the procedural aspect of removing
22 these technical specifications so that there may be changes
23 later on which the public will have no opportunity to
24 involve itself in, and will have to rely entirely upon the
25 process from which the public is excluded. And these

1 Petitioners aren't prepared to accept that without bringing
2 the issues forward.

3 JUDGE MOORE: Are you telling me that your
4 contention is in the nature of a legal issue, the same as
5 the legal issue set forth in Perry?

6 MS. BURTON: Well, I think it's a mixed legal and
7 factual issue, given what we have seen from the application,
8 and I wanted to come back to Mr. Repka's point which he made
9 in response to a question from Judge Young in terms of how,
10 if at all, this application, if it is granted, will make
11 possible actual changes. Because I am very concerned about
12 the kind that Mr. Raymond T. Necchi in the cover letter that
13 I earlier referenced at page 4, in which it is stated:

14 "The approval of this amendment is needed by this
15 date to support the ongoing effort to eliminate Millstone
16 Unit Nos. 2 and 3's dependence on the Millstone Unit No. 1
17 stack gas high range radiation monitor."

18 That sounds to me as though a change is in the
19 works, or is about to be in the works, that will affect
20 radiation monitoring as an issue of fact at the Millstone
21 station.

22 JUDGE MOORE: Where do you cite that in your
23 contention?

24 MS. BURTON: Well, the contention references the
25 application by Northeast Nuclear Energy Company on February

1 22, 2000.

2 JUDGE MOORE: Okay, fine. But doesn't 2.714 use
3 the word "the showing must include" -- and I'm quoting --
4 "the showing must include references to the specific
5 portions of the application that the petitioner disputes"?

6 MS. BURTON: Well, here again, since we are
7 challenging the propriety of removing these technical
8 specifications from the license, on grounds that this will
9 deprive -- and I believe the Applicant is not disputing this
10 -- the public of the opportunity to request a hearing and to
11 participate in proceedings, should the Licensee determine
12 the need to amend these standards.

13 In light of that, I believe that the panel needs
14 to consider our petition in that regard.

15 JUDGE MOORE: Okay, let me ask just a couple other
16 questions then, if I may.

17 If I looked at your contention, which says, "It
18 will deprive them of the opportunity for hearing and to
19 comment and object to changes which can only be projected to
20 lower standards of radiological effluent monitoring in the
21 area of deregulation in electric restructuring."

22 Have you presented any factual support for that in
23 your contention, or the affidavits supporting the
24 contention?

25 MS. BURTON: Well, I note we have referenced the

1 application, and I have noted that there is an issue here of
2 cost reduction which apparently is a motivating factor, or
3 was in the Applicant's application here.

4 JUDGE YOUNG: Ms. Burton, excuse me. An issue of
5 what reduction?

6 MS. BURTON: Cost reduction.

7 JUDGE YOUNG: Cost reduction.

8 MS. BURTON: I will quote from that February 22
9 letter, just one sentence, quote --

10 JUDGE MOORE: Let's move on to the next sentence
11 or next paragraph in your contention where you say:

12 "Even according to the Applicant, the amendment
13 opens the door to increases in the type and amounts of
14 effluents that may be released off-site, as well as
15 individual and cumulative occupational radiation exposures."

16 And you say that:

17 "NNCo's amendment request states that such
18 increases will not be significant."

19 From that, was it your intent to express the view
20 that there will be increases in radiological releases
21 because of these amendments, the changing of these technical
22 specifications from the license to other licensee control
23 documents?

24 MS. BURTON: I don't think that we can venture
25 quite so far at this point. We would be venturing in the

1 realm of speculation. However, we are studious and vigilant
2 observers of the deregulation process, we are aware of that.
3 On this very issue of batch releases, the projected new
4 owner of Millstone, just within the past week or so,
5 indicated to the community that if his company, Dominion
6 Resources, Inc., were to take over Millstone, it had no
7 intention of notifying the public in advance of batch
8 releases.

9 In other ways, the community has been told that
10 there will be serious cost cutting, staff lay-offs and so
11 forth. That will implicate surveillance testing because
12 that involves manpower, and as much as one quarter, if I'm
13 not mistaken, of the work force is scheduled to be released
14 from employment. That will necessarily burden the remaining
15 work force with more requirements, more work for them to do,
16 and on that point I just wanted to mention that on this
17 issue of controls, that Mr. Repka has relied upon so
18 studiously to assuage concerns that there may be accidents
19 that would implicate the health and safety --

20 JUDGE MOORE: Let me explain to you my problem.

21 MS. BURTON: I'm sorry, I haven't quite finished
22 what I had to say.

23 JUDGE MOORE: I understand your position, and so
24 if I am correct, you are not saying that there will be
25 radiological effluent releases?

1 MS. BURTON: I'm sorry, that -- pardon me. If you
2 could just repeat that?

3 JUDGE MOORE: I am saying that as I understood
4 your answer, you are not saying that there will be increases
5 in radiological effluent releases?

6 MS. BURTON: The application, I don't believe at
7 this time, proposes such changes, although I am not
8 completely confident about that, given the statement about
9 the need for this amendment to make changes at the stack.

10 However, it is because it is the very concern of
11 the two Petitioners here that the Licensee now or in the
12 future certainly wouldn't have troubled to make this
13 application if it didn't have some thought that in the
14 future, it wanted to amend these standards. And we would
15 be, I think, very foolish to think that the present or
16 future owner will wish to enact standards that will require
17 more surveillance, more manpower, and more effort, to
18 protect the public health and safety. I think that would be
19 preposterous for us to venture such a thought.

20 JUDGE YOUNG: What was your answer to his
21 question? Are you saying yes or no, that you expect that
22 there could be increases in the radiological effluent?

23 MS. BURTON: Well, I guess my best answer is that
24 we have no reason to not believe that that is exactly what
25 is contemplated here, and that if the Applicant didn't have

1 that mind, there really wouldn't be any need to put the
2 effort into what has gone into this present application.

3 JUDGE YOUNG: Are you hesitating to say yes, you
4 believe that there could be increased releases for some
5 reason that I'm not --

6 MS. BURTON: Well, it's just the point that if,
7 for instance, surveillances were to be reduced from so many
8 during a certain period of time to fewer, that that would
9 necessarily increase the risk that during those fewer --
10 during those periods of time in between surveillances, that
11 there would be a greater chance that the surveillances would
12 not catch the releases. And if there are uncaught releases,
13 the automatic mechanisms presumably won't work to stop them
14 because that's what this is all about. Necessarily there
15 will be releases to the environment causing potentially
16 off-site consequences.

17 JUDGE MOORE: That's important, because a limiting
18 safety system setting for nuclear reactors are set to
19 automatic protective devices. What automatic protective
20 devices are you talking about here?

21 MS. BURTON: Again, I have reference to the
22 application which describes the instrumentation as providing
23 a surveillance of potential release points and initiating
24 automatic and trip functions which are intended to terminate
25 the release prior to exceeding the limits set forth in 10

1 CFR Part 20.

2 So, in other words, if they don't work and there
3 are changes to the equipment such that they may not
4 terminate releases prior to reaching the point of
5 exceedence, then necessarily public health and safety is
6 implicated.

7 JUDGE MOORE: I don't think that's really what is
8 meant by an automatic protective device, but that's for
9 further argument.

10 The question that I have is does the new technical
11 specification, 6.16, affect that in any way?

12 [Pause.]

13 JUDGE YOUNG: While you are looking for that, let
14 me just point out that it is after 11:30, and we have this
15 phone line reserved until noon, and unless we do something
16 to have someone call in to extend it, we will be cut off at
17 noon.

18 So I think we are going to need to make a decision
19 in the next little while as to whether we extend this today
20 or whether we need to possibly extend it to another date,
21 because frankly I think that the answers to the issue of
22 whether or not these technical specifications are of the
23 sort that could be moved is very factual and very technical.

24 Judge Kelber specifically wanted to hear from Mr.
25 Joshi, and I am not sure how much time, how much more time

1 today would get us to that point.

2 What do you think, Judge Moore? Do you want to
3 confer?

4 JUDGE MOORE: I think we can wrap this up in a
5 half an hour. I just have one more question of Ms. Burton,
6 and I have a couple of very quick ones for the Staff, when
7 the Staff gets its say-so.

8 JUDGE YOUNG: I'm not sure that we can wrap it up
9 in a half hour. But go ahead.

10 JUDGE MOORE: Let me go ahead and ask my last
11 question of Ms. Burton.

12 Ms. Burton, let me give you quickly what my
13 problem is:

14 If I understood you correctly, you are not saying
15 that there will be an increase in radiological effluent
16 releases. Now the Commission's contention -- regulations
17 dealing with the standards for which contentions must be
18 met, must meet, states that:

19 "The contention, if proven, will be of no
20 consequence in the proceeding because it would not entitle
21 petitioner to any relief."

22 Now if there is not going to be any increases in
23 radiological effluent releases, and even if there are such
24 increases, those increases are within the regulation's
25 limits of Part 20 and Part --

1 JUDGE YOUNG: Appendix I.

2 JUDGE MOORE: -- then what possible relief would
3 you be entitled to in this proceeding?

4 MS. BURTON: Yes, I think that's a good question,
5 and it calls for a very simple answer. In this proceeding,
6 it is our position that the Commission and the panel should
7 not proceed to permit these technical specifications to be
8 removed from the license.

9 JUDGE MOORE: Okay, but --

10 MS. BURTON: And should that be the case, then we
11 shouldn't have to worry about the next step, about increased
12 risk of actual radioactive effluent emissions.

13 JUDGE MOORE: Well, here's the problem with that
14 reasoning, Ms. Burton, as I see it, that the Applicant is
15 bound by the Commission's regulation on releases. They
16 can't exceed those limits, and yet they -- the current
17 system allows them, the one in place under these technical
18 specifications, allows them to go up to those limits, and
19 that doesn't change in any way, shape, or form with moving
20 these technical specifications.

21 So if you say the relief you are seeking is don't
22 remove the technical specifications, they can do now up to
23 those limits as they would be able to do by moving them.

24 MS. BURTON: Yes, but here's the issue. The issue
25 is the prospect of amendments, changes to these technical

1 specifications as they now stand, and the request from the
2 Licensee to be able to do that without involving the public,
3 and the Licensee is counting on us all to rely on the
4 Licensee's ability to adequately carry out these protections
5 that are for protecting the public health and safety.

6 I don't know if you all are aware of what was
7 reported just a couple of weeks ago, November 24th, the NRC
8 Weekly Information Report, but at Millstone it seems that
9 two spent fuel pins at Millstone Unit 1 are now recognized
10 to be unaccounted for.

11 JUDGE MOORE: Well, Ms. Burton, what on earth is
12 the relevance of that to what I'm wrestling with here today?

13 MS. BURTON: Well, I think that there is a great
14 deal of relevance. The Petitioners here are very concerned,
15 being residents of this reactor community, which has played
16 pretty fast and loose with public health and safety in
17 running a very potentially dangerous nuclear operation. And
18 the public wishes to have the opportunity to be informed
19 when the licensee proposes to do anything that could
20 adversely affect them, particularly in this area of
21 radiological releases.

22 JUDGE YOUNG: Ms. Burton, this is Judge Young.
23 Let me just ask you, are you arguing that these potential
24 changes that could occur in the surveillance monitoring
25 mechanisms and methods, could lead to releases that would

1 violate the limits set in the rules and in Appendix I?

2 MS. BURTON: Certainly. They certainly could do
3 that. It doesn't take a rocket scientist to understand how
4 those kinds of things can happen.

5 I mean if two spent fuel components are
6 unaccounted for at Millstone 1, I think that the sky is the
7 limit in terms of what could happen there that could affect
8 the public health and safety. But I don't think we have to
9 go so far to postulate that. We can simply --

10 JUDGE YOUNG: Ms. Burton, if you don't go that
11 far, if you don't go that far and if you are just saying
12 that there could be releases that would be within the limits
13 set by the rules, then -- and the rules are the definition
14 of what the Commission has found to be safe for the public.
15 If those limits are met, and if they are not violated, how
16 would there be any safety significance of releases within
17 and under the limits of the rule?

18 MS. BURTON: Yes. Well, we certainly are of the
19 position that both routine permissible releases can occur,
20 but also our concern in this petition does go into the area
21 of impermissible accidental excessive releases.

22 For instance, at the stack, this notorious stack,
23 I believe it was in the 1970s that there was an explosive
24 type of event that involved a door being blown in and the
25 consequence of it was that, as I understand it, as it has

1 been reported to me, four workers were taken off-site in
2 body bags to a hospital that had no experience in dealing
3 with a radioactive event like that.

4 Accidents of all kinds are possible, and if these
5 standards were to change, and particularly if they were to
6 become looser, that would, I believe, increase the risk to
7 the public of a lack of a proper responsive mechanism here,
8 and that is exactly why we are petitioning to object.

9 JUDGE YOUNG: Okay. It's twenty to 12:00, and we
10 were not able to find anyone, we can check again in a
11 minute, and see if we can find someone who might be able to
12 extend this phone call for us, but we have not -- Mr. Repka
13 did not finish his argument, Judge Kelber and I would like
14 to hear from Mr. Joshi, and Ms. Hodgdon and the Staff have
15 not been able to give their argument, and I would like to
16 hear from them as well. Judge Moore is going to see if we
17 can someone who can extend this telephone conference, but --

18 MS. HODGDON: Judge Young?

19 JUDGE YOUNG: Yes, go ahead.

20 MS. HODGDON: I didn't mean to interrupt. I
21 thought you had paused. I think perhaps the most efficient
22 way of proceeding would be, since you would like to hear
23 from Mr. Joshi, hearing further from Mr. Joshi during Mr.
24 Repka's presentation, the Staff will take whatever time is
25 left and hope to get through, and if we don't, we can

1 continue.

2 JUDGE YOUNG: We can what?

3 MS. HODGDON: We can continue if we get
4 authorization to do so, and maybe take it up again this
5 afternoon, whatever might -- whatever anybody else agrees to
6 is fine with the Staff. We are available.

7 JUDGE YOUNG: How many phones are we talking
8 about? How many phone locations do we have? Because we may
9 be able to, if we get cut off, call each of you from this
10 phone and get us back on if we do cut off.

11 We've got Mr. Repka, and Ms. Hodgdon. Are there
12 other separate phone locations besides --

13 MR. BESEDE: Joe Besede, Waterford, Connecticut.

14 JUDGE YOUNG: You are with Ms. Burton, though,
15 right?

16 MS. BURTON: On separate lines. We're at separate
17 locations.

18 JUDGE YOUNG: That's four in addition to us. Are
19 there any others?

20 MR. JOSHI: Mr. Joshi are Northeast Utilities.

21 JUDGE YOUNG: So that's five in addition to us, so
22 we do need the operator. Was there anyone there that could
23 extend it? They are going to try to see if we can extend
24 it. We can only get, I think, three additional, maybe, or
25 maybe four, but not five, I'm sure.

1 THE REPORTER: Your Honor, this is the court
2 reporter and, of course, I need to be there.

3 JUDGE YOUNG: Yes, you do. Thank you for
4 interrupting. That's six.

5 We're seeing if we can call and ask them to extend
6 the --

7 JUDGE KELBER: We need to hear from Mr. Joshi.

8 JUDGE YOUNG: Yes, but we don't want to hear from
9 him and then have him be cut off in mid-sentence.

10 MS. HODGDON: Judge Young, I meant to say that --
11 I think I did say, maybe, that Stephen Klementowicz is now
12 here and, of course, he's the Staff's expert regarding some
13 of these matters and also we have, of course, Mr. Zimmerman
14 who is the project manager.

15 JUDGE YOUNG: Right. And I think that I would
16 like to hear what they have to say.

17 [Pause.]

18 JUDGE YOUNG: We are waiting for Judge Moore. Let
19 me just go and see who's around.

20 [Pause.]

21 JUDGE YOUNG: We are working on it.

22 [Pause.]

23 JUDGE YOUNG: Okay. They will let us know --

24 TELEPHONE OPERATOR: Your conference is scheduled
25 to end in 15 minutes.

1 JUDGE YOUNG: Warning No. 1.

2 Why don't we wait for her to come and tell us?

3 JUDGE MOORE: It's been extended for another hour.

4 JUDGE YOUNG: For another hour. Great.

5 Wonderful. Okay.

6 So, let's see, where were we? We had gone to Ms.
7 Burton, and then we were going to go to Mr. Joshi, so why
8 don't we go to Mr. Joshi at this point, and then let Mr.
9 Repka finish up, and then I would like to hear from the
10 Staff, and then leave a little bit of time for short
11 rebuttal, and then before we wrap up, I have a couple of
12 concerns that I would like to bring up in terms of where we
13 go from here.

14 So, Mr. Repka, if you want to ask Mr. Joshi -- and
15 again, I think it's pretty clear at this point that what our
16 concerns are, singularly and collectively, as to the
17 specific risk that we are talking about, and I would like to
18 just read a couple of things of introduction. There's a
19 couple of references in Volume 60 of The Federal Register at
20 pages 36955 and 56:

21 The Commission encourages all licensees to submit
22 technical specifications related submittals based on these
23 criteria, to emphasize human factors principle, practical,
24 consistent with the format and the content of their current
25 technical specifications.

1 If you use any plant-specific probabilistic risk
2 assessment or risk survey in any available literature and
3 probabilistic risk assessments, and then on page 36956, the
4 Commission expects that licensees will utilize probabilistic
5 risk assessment insights to indicate whether the provisions
6 to be relocated contain constraints of importance in
7 limiting the likelihood or severity of the accident
8 sequences that are commonly found to dominate risk.

9 So, with that, Mr. Repka and Mr. Joshi.

10 MR. REPKA: Let me start.

11 Just to respond to, one, some of what Ms. Burton
12 said, I mean we keep -- the recurring issue is there will be
13 no right of a hearing on future changes, and whatever
14 postulated hypothetical pressures are going to create those
15 changes, be they cost savings or whatever, my response is
16 that's exactly what the Commission contemplated. That's
17 exactly what the entire 50.36 rulemaking and the tech spec
18 improvement were intended to do, to take the details out of
19 tech specs to eliminate unnecessary efforts, to eliminate
20 unnecessary uses of resources, and to focus those resources
21 on what's significant.

22 JUDGE YOUNG: Right. But the significance is the
23 issue as set forth in the standards that we have talked
24 about earlier.

25 MR. REPKA: Correct.

1 Now, with respect to the standards, what we are
2 talking about relocating are limiting conditions on
3 operations, LCOs, and not safety settings. And that's the
4 point that Mr. Joshi made earlier, that section 2 of the
5 tech specs is the safety system settings. There are no
6 changes in that section being contemplated.

7 In section 3/4 of the tech specs, that's what
8 binds the LCOs and the surveillance requirements, that's
9 where the changes are being made. And what needs to be in
10 LCO -- well, it's part of the four criteria in that section
11 of the regulation. The four criteria addressed in the
12 rulemaking --

13 JUDGE YOUNG: And also, let me just ask, it's also
14 that they are reserved for those conditions or limitations
15 upon reactor operation necessary to obviate the possibility
16 of an abnormal situation or event giving rise to an
17 immediate threat to public health and safety.

18 And so what I need to understand, I feel, in order
19 to make an objective decision, is how these limiting
20 conditions of operation that you are proposing to relocate
21 are or are not necessary to obviate the possibility of an
22 abnormal -- in other words, by catching a release that the
23 surveillance mechanisms and methods that could conceivably
24 be changed, that would or would not, depending upon the
25 change, catch a release that could be an abnormal situation,

1 an abnormal release, giving rise to an immediate threat to
2 public health and safety.

3 That's sort of what I'm looking at at this point,
4 and I would like to get sort of a plain English explanation
5 that -- not so much conclusively, but that explains to me in
6 a way I can understand how the types of limiting conditions
7 of operation we are talking about, are or are not necessary
8 to obviate those possibilities. And I have to look at
9 possibilities there.

10 MR. REPKA: Would you explain to me exactly -- are
11 you referring to page 36955 of the statement of
12 considerations, column one?

13 JUDGE YOUNG: Yes, I am.

14 MR. REPKA: Okay. Now the first thing I would
15 point out is that's not the rule itself. The rule is what
16 needs to be in the LCO --

17 JUDGE YOUNG: I know, but there is also case law
18 that talks about standard, and so -- and also there is
19 discussion in this introduction to the rule in Volume 60
20 that talks about the Commission recognizing that other
21 structures, systems and components that are not in the list
22 may meet the criterion, and that they specifically declined
23 to limit criterion 4 to a specific list, but left it
24 open-ended. And so it seems to me that -- in the Perry
25 case, they talked about issues of obvious safety

1 significance. So it seems that we are being asked to look
2 at these issues, rather than just with the approach to does
3 it fall within this list or that. I think we are being
4 asked to look at the safety significance as defined by the
5 standards that I just read to you, which has been also used
6 in case law on this type of issue.

7 So that would be helpful to me if in your
8 presentation you address that in a plain English kind of
9 way.

10 MR. REPKA: In a plain English kind of way, I
11 would say that they are not necessary to be in the LCOs
12 because, A, they don't meet the criteria directly by their
13 terms. The fact is that a move to the REM ODCM provides the
14 necessary level of safety relative and commensurate with the
15 safety functions.

16 The fact of the matter is that effluent and
17 monitoring equipment is not necessary to obviate the
18 possibility of an abnormal situation or event giving rise to
19 an immediate threat to public health and safety because
20 sufficient controls are provided by regulation, by the REM
21 ODCM, and the fact that we might in the future change the
22 surveillance interval from 31 days to 28 days is not
23 necessary and has not been shown to be necessary to prevent
24 the situation that you are quoting in that language.

25 I think that really is the plain answer.

1 JUDGE YOUNG: I understand your answer. What I
2 don't understand is the reasoning that supports it.

3 MR. REPKA: What I would ask is if Mr. Joshi has
4 anything he would like to add to that.

5 Mr. Joshi, could you add --

6 MR. JOSHI: Okay. A couple of things, if I may.

7 First of all, I just want to refer back to the
8 limiting safety system regarding the question about whether
9 these particular tech specs are covered by. They have a
10 separate, the tech specs that are in section 2.1, and 2.12.

11 Basically the limiting safety system, they are
12 really tied to the reactor power, pressure and maximum --

13 JUDGE YOUNG: I don't understand what you said.

14 MR. JOSHI: Okay. The limiting safety system, the
15 intervenor indicated that 50.36.C.1.ii.A, limiting safety
16 system settings are covered under the technical
17 specification 2.1 and are really according to the reactor
18 pressure coolant boundary level of the pressure and
19 temperature of the reactor coolant system. And those are
20 not impacted by the proposed change. And those are the ones
21 really, these are the limiting safety system on what they
22 call safety limits there.

23 JUDGE YOUNG: But you are saying that the
24 technical specifications 2.1 and 2.12 are those that set the
25 intervals and the levels and the methodology of

1 surveillance, such that those are maintained in the license?
2 Is that what you said?

3 MR. JOSHI: Yes. What I am saying is that
4 limiting safety system settings are described in our tech
5 spec 2.1 and 2.12 of the Unit 2 technical specifications, as
6 well as Unit 3 also, and those are not impacted by the
7 proposed amendment.

8 JUDGE YOUNG: The settings for the
9 instrumentation?

10 MR. JOSHI: That's correct.

11 JUDGE YOUNG: And what about the frequency that
12 Mr. Repka just mentioned?

13 MR. JOSHI: Those are related to the specific
14 effluent monitoring instrumentation.

15 Now going back to the criterion 4, I think in our
16 application we identified why the criterion 4 is not
17 impacted or not required to be satisfied, okay? The mention
18 about the structure, system, component requiring risk
19 monitoring is not part of this particular situation. It is
20 not part of what we need to take a look at it from the
21 criterion 4.

22 JUDGE YOUNG: I'm sorry, I didn't understand
23 everything you said. A structure, system or component that
24 what?

25 MR. JOSHI: The structure, system, component

1 requiring risk review or unavailability monitoring.

2 JUDGE YOUNG: Or what? Monitoring?

3 MR. JOSHI: Unavailability. So basically we are
4 going back to the component has to be part of the tech spec
5 or not part of the tech spec, is based on criterion 4, and
6 this criterion 4 is not required for this kind of
7 implementation.

8 MR. REPKA: And, Mr. Joshi, am I correct that that
9 is -- when you say that, you are referring to the
10 maintenance rule 10 CFR --

11 MR. JOSHI: That's correct, 10 CFR 50.65.

12 JUDGE YOUNG: 50.64?

13 MR. JOSHI: No, 65.

14 JUDGE YOUNG: 65. And you are saying that the
15 effluent monitoring is not something that operating
16 experience or probabilistic risk assessment has shown to be
17 significant to public health and safety?

18 MR. JOSHI: That's correct.

19 MR. REPKA: And that they are not systems
20 requiring risk review or unavailability monitoring under the
21 maintenance rule.

22 JUDGE KELBER: It seems to me there's a lot of
23 discussion focused on somehow a further release, for
24 example, on the accident in the hydrogen recombiner, or an
25 activated charcoal not somehow being caught by the monitor.

1 What happens in a plant if, in fact, there is an explosion
2 in the hydrogen recombiner, which did happen quite a few
3 years ago, or a fire, for example, or saturation in an
4 activated charcoal bed? What does happen? Does anyone out
5 there know?

6 MR. REPKA: Perhaps that's something the Staff
7 could address, or Mr. Joshi. That's not something I can
8 address.

9 JUDGE KELBER: It's not a legal question, but it
10 might help some of the people here.

11 MS. HODGDON: Are you referring to the incident at
12 Millstone, Judge Kelber?

13 JUDGE KELBER: I'm not referring to any particular
14 incident.

15 MS. HODGDON: Oh.

16 JUDGE KELBER: I do remember vaguely many, many
17 years ago an accident in the hydrogen recombiner.

18 MS. HODGDON: At Millstone?

19 JUDGE KELBER: I don't know where.

20 MS. BURTON: Well, I think Mr. Besede, who is
21 here, may be able to shed some light on that?

22 JUDGE KELBER: Well, I'm looking for someone who
23 is a technical expert.

24 MS. BURTON: Well, Mr. Besede worked at Millstone
25 for, I think, something like --

1 JUDGE KELBER: I want a technical expert to tell
2 me what happens in the plant if something like that goes on.
3 What might light up, or what alarms sound? What happens?

4 JUDGE YOUNG: Why don't we just go through all the
5 technical experts, one by one, starting with Mr. Joshi, and
6 then the Staff, and then Mr. Besede, based on whatever
7 knowledge or experience he has.

8 MR. JOSHI: Let me just understand the question
9 before I answer. You are saying that for any kind of
10 hydrogen explosion or any other -- in order to have a
11 hydrogen explosion, you have to reach a certain amount of
12 concentration which is about 4 percent, and all of our
13 calculations, at least on a pressurized water reactor, have
14 shown that it will never reach -- in fact, I can give you an
15 example about the Southern California Edison --

16 JUDGE KELBER: Let me take the hydrogen recombiner
17 out of the discussion for a moment.

18 MR. JOSHI: Okay.

19 JUDGE KELBER: You do have activated charcoal beds
20 in the off-gas system? What happens if there's a failure
21 there?

22 MR. JOSHI: In the off-gas system, I think we do
23 have a surveillance as to monitor those ones. Those
24 surveillances are not again -- this is not a part of the
25 current tech spec also. Those are covered by other

1 programs.

2 JUDGE KELBER: Surveillances that would cover a
3 failure in the activated charcoal bed are not covered under
4 these technical specifications?

5 MR. JOSHI: That's correct. We have a separate,
6 what I call a heat resistant tech specs, those are not
7 impacted by this.

8 JUDGE KELBER: What about liquid effluent?
9 There's a liquid treatment, it's water chemistry, really,
10 somewhere, and you do have some liquid effluents. What
11 about failure on those systems?

12 MR. JOSHI: Again, those systems are also not
13 covered by current technical specifications also.

14 JUDGE KELBER: They are not covered by these
15 technical specifications?

16 MR. JOSHI: That's correct.

17 JUDGE KELBER: I see.

18 Solid waste is a different matter. I don't know
19 what.

20 MR. JOSHI: Solid waste is a program, actually.
21 It is not a part of the LCO or any technical specifications,
22 per se.

23 JUDGE KELBER: So if there were an accident which
24 would lead to a release that is more than abnormal, it would
25 be detected under the conditions of technical specifications

1 not within the scope of the current amendment? Is that what
2 you are telling me?

3 MR. JOSHI: Yes, that's correct.

4 JUDGE KELBER: Thank you. That answers my
5 question.

6 JUDGE YOUNG: Let me just follow up. Are you
7 saying that there are no technical specifications that are
8 being relocated that contain monitoring surveillance
9 methodology or approaches that could allow for any failure
10 to catch any release that might occur as a result of an
11 accident? There are no technical specifications that would
12 allow for any type of changes like I have described that are
13 being relocated?

14 MR. REPKA: I don't think that is what was said.

15 MR. JOSHI: That's right.

16 MR. REPKA: There were some specific systems
17 mentioned that are covered by their own tech specs that are
18 not being impacted by this amendment.

19 JUDGE YOUNG: I understood that, and that's why I
20 am asking, the ones that are being relocated, do they
21 contain any of the sort that address monitoring and
22 surveillance that could catch excess effluent releases as a
23 result of an accident, for example, and that could be
24 changed in the future?

25 MR. REPKA: I don't think you can say that because

1 these tech specs clearly relate to monitors, for example, at
2 the stack.

3 JUDGE YOUNG: That's what I am trying to
4 understand. If we have a technical expert, what I would
5 like to hear from him is if the nature of the technical
6 specifications that are being moved are such that they could
7 allow for changes in the monitoring methodology that -- such
8 that they could fail to catch a release, such that they
9 could fail to catch a release that could lead to immediate
10 public health and safety consequences.

11 MR. JOSHI: The answer to the question, actually
12 if we make a change, is what Dave was saying before, will
13 still -- if we will make a change, we got to make sure that
14 we are still within the regulation with the limits. So we
15 cannot go beyond the limit.

16 JUDGE YOUNG: Right. But what I'm trying to
17 understand is, are the things that you could make changes to
18 the sort of monitoring and surveillance mechanisms and
19 methodologies that are there to catch releases that might
20 result from an accident?

21 I'm hearing Judge Moore say no. Is the answer no?
22 Is that what you're saying? That they are not of that
23 nature?

24 MR. REPKA: That they would not address accidental
25 releases?

1 JUDGE YOUNG: They are not of the sort that
2 monitor -- that provide monitoring that would catch an
3 accidental or unusually high release?

4 JUDGE MOORE: I believe, Mr. Repka, I asked that
5 question and you answered it that these systems involved
6 with these tech specs do not do that.

7 JUDGE YOUNG: I thought -- and I thought I heard
8 you say, Mr. Repka, that it would be possible that they
9 could do that. So that's what I'm trying to understand.

10 MR. REPKA: Well, I mean I think the answer has to
11 be that, yes, these are radiation monitors so they would
12 detect accidental normal or abnormal releases.

13 JUDGE KELBER: Let me try and straighten this out.
14 Are we talking about redundant systems? In other
15 words, are we talking about a system that monitors the
16 equipment in the off-gas -- let's focus on the off-gases --
17 that monitors the operation of the off-gas system, those
18 technical specifications covering those systems are not of
19 the current amendment, and also the radiation monitor which,
20 of course, will detect an abnormal release. It seems to me
21 we are talking about redundant systems.

22 MR. REPKA: I believe that is correct, Judge
23 Kelber.

24 JUDGE KELBER: Well, then, the technical
25 specifications covering one set of the redundant systems, I

1 am not finding them in technical specifications called for
2 in other parts of the redundant system are part of the
3 technical amendment. Like the Perry license amendment.

4 MR. REPKA: Correct.

5 JUDGE KELBER: Thank you.

6 JUDGE YOUNG: While we are with Mr. Joshi, or Dr.
7 Joshi, can you explain anything more about the monitoring
8 methodologies, systems, that are part of the redundancy that
9 Judge Kelber referred to, more specifically?

10 MR. JOSHI: No, I don't have a specific answer at
11 this point right now. I need to go back.

12 JUDGE YOUNG: Do we want to go then to the Staff
13 experts next, who might be able to shed some additional
14 light on this?

15 MS. HODGDON: Yes, Ann Hodgdon for the Staff.

16 Before we hear from our expert, Mr. Klementowicz,
17 whose role I have identified before, and Mr. Zimmerman, I
18 would like to read from the definitions in Part 50, Part
19 50.2.

20 Safety-related structures, systems and components
21 -- this is the definition -- means structures, systems and
22 components that are relied upon to remain functional during
23 and following design basis events to assure (1) the
24 integrity of the reactor coolant pressure boundary; (2) the
25 capability to shut down the reactor and maintain it in a

1 safe shutdown condition; and (3) the capability to prevent
2 or mitigate the consequences of accidents which could result
3 in potential off-site exposure comparable to the applicable
4 guideline exposure set in, et cetera.

5 Design basis events are, of course, accidents.
6 This is to be distinguished from what we are talking about
7 now. These monitors monitor radiological effluent in normal
8 operation. Of course, since they are monitors, they
9 continue to monitor, but they are not the monitors that are
10 designed to monitor accidents. Those are in NUREG 0737. I
11 think I maybe got a little bit into Mr. Klementowicz's
12 territory, so he will follow on with that. I just wanted to
13 make that point in that that term is defined and therefore
14 there was a lot going on with regard to 50.36. It should be
15 quite clear that these things, these particular monitors are
16 not the monitors that are required to remain in 50.36 by
17 virtue of the operation of that regulation.

18 JUDGE YOUNG: Well, just let me ask you a question
19 about that. Reading the third part of the definition there,
20 the capability to prevent or mitigate the consequences of
21 accidents which could result in potential off-site exposure
22 comparable to the applicable guideline exposures. Now,
23 obviously we don't have those applicable guideline
24 exposures, but we are talking about exposures comparable.
25 And I think what we are talking about is the possibility

1 that there could be a release, a release that could be
2 dangerous to the public health and safety, that could
3 violate the limits, caught by the monitoring equipment and
4 methodology that we are talking about. And if it's of that
5 type of methodology that could catch that type of thing, to
6 prevent or mitigate the consequences and so forth, then how
7 is it different? That is sort of what I am trying to
8 understand. And how is it not? I assume when you refer to
9 50.36, you are talking about a structure, system or
10 component which experience and probabilistic risk assessment
11 has shown to be significant to the public health and safety,
12 and that you are saying that excess radiological effluents
13 are not caught by monitoring would not be significant? Or
14 if -- I'm just not following that.

15 MS. HODGDON: I'm saying that safety-related
16 structures, systems and components is defined as those
17 structures, systems and components that are relied upon to
18 remain functional during and following design basis events.

19 Now this equipment is not that. This equipment is
20 not relied on to remain functional during and following
21 design basis events. At least it would work, there's
22 nothing to keep these monitors from monitoring in those
23 events; it's just that there are other monitors required by
24 NUREG 0737, the ones that are described in NUREG 0737, which
25 monitor accident releases. What we are talking about here

1 is not accident releases, it's normal releases. The
2 operation of a reactor results in radiological effluents, in
3 very, very, very small amounts. That's what we are talking
4 about here.

5 JUDGE YOUNG: Okay, let me see if I can understand
6 you. You are saying that we are not talking about systems
7 that are relied upon to remain functional during design
8 basis events.

9 MS. HODGDON: Those things that I talked about in
10 the first place.

11 JUDGE YOUNG: But you're saying that the
12 monitoring systems and methodologies and surveillance, and
13 so forth, they are not relied upon to remain functional
14 during a design basis event to assure capability to prevent
15 or mitigate the consequences of accidents which could result
16 in potential off-site exposures?

17 MS. HODGDON: That is correct. They do not
18 prevent or mitigate the consequences of accidents that could
19 result in potential off-site exposure, as further described
20 in that -- whatever that is, subparagraph 3.

21 JUDGE YOUNG: Okay. If that's the case, then I
22 think I am understanding what you are saying. You are
23 saying they are only routine operation. I guess what I need
24 to understand more is how that is. I understand you're
25 saying that it's sort of a conclusion, and I am trying to

1 understand how you draw that conclusion.

2 MS. HODGDON: I am offering a definition which I
3 believe makes clear that 50.36 requirements does not include
4 this equipment.

5 JUDGE YOUNG: You are saying that this equipment
6 -- it does not include this equipment because?

7 MS. HODGDON: Because it's not those things,
8 safety-related structures, systems and components whose
9 operation is described in 50.36, required by virtue of that
10 regulation to be in tech specs.

11 JUDGE YOUNG: They are not relied upon to remain
12 functional during a design basis event?

13 MS. HODGDON: That's correct.

14 JUDGE MOORE: And, Ms. Hodgdon, real quickly in
15 the same line under 50.36.C.1, the issue here are not safety
16 limits; is that correct?

17 MS. HODGDON: That's correct.

18 JUDGE YOUNG: To maintain control settings?

19 MS. HODGDON: It's not any of those things. You
20 need to go to C.2, limiting conditions for operation, to see
21 whether any of those criteria there, which we have already
22 discussed, states a requirement that would include these
23 tech specs. And you have already discussed criterion 4
24 where it says structures, systems or components which
25 operating experience and probabilistic risk assessment have

1 shown to be significant to public health and safety. In
2 this case, there has been no such operating experience or
3 probabilistic risk assessment. Operating experience has
4 shown to the contrary, that it doesn't need to be in tech
5 specs.

6 JUDGE YOUNG: So then I guess earlier when I was
7 asking Mr. Repka about whether the surveillance mechanisms
8 and methodologies could be changed in such a way that it
9 would be possible to have a release that constituted an
10 immediate threat to public health and safety, and I think he
11 said that that would be possible, he didn't think it was
12 likely, but it would be possible, then you disagree with
13 that, that that's not the -- that that could not occur?

14 MS. HODGDON: I believe that the better answer
15 might have been that if it will be possible after these tech
16 specs are moved to the licensing control document, that it
17 would have been possible before these tech specs were moved.
18 It has nothing to do with this action.

19 JUDGE YOUNG: But it --

20 MR. REPKA: I agree with that statement of the
21 issues, Ms. Hodgdon's response. I think that's exactly
22 correct.

23 JUDGE YOUNG: You are saying that there is no
24 difference, but if they were changed while they were in the
25 technical specifications, there would have to be a license

1 amendment application, whereas if they were not, there would
2 not have to be a license amendment application?

3 MS. HODGDON: Some things could have been changed
4 without a license amendment application. You could change
5 out all of the monitoring equipment that's there without a
6 license amendment because it's just mentioned by function
7 and not by who made it, whether it's Everline or -- who
8 makes things? -- Westinghouse, a lot of people make these
9 things, and that's all. It's not in there. So you could
10 have changed the whole system out without a license
11 amendment.

12 JUDGE YOUNG: I think the relevant change that
13 came up earlier in the discussion was changing the
14 frequency, et cetera, not the instruments, but the frequency
15 or the points, the monitoring points, that those types of
16 things -- are they the types of things that could be changed
17 without a license amendment if the technical specifications
18 stayed in the license?

19 MS. HODGDON: Whatever is in the tech specs
20 specifically, those details cannot be changed or could not
21 be changed prior to this license amendment without a license
22 amendment.

23 However, just to stray a little bit from that,
24 these Petitioners -- the public would not have a right to
25 intervene. They would have a right to notice. But since

1 this has no off-site consequences, no hearing would be
2 granted on these amendments dealing with small changes to
3 the kind of details that should never have been in tech
4 specs in the first place, as the Commission makes clear in
5 the statement of considerations on 50.36.

6 JUDGE YOUNG: So what you are saying is that there
7 could not be any changes of any sort involving discretion
8 that could lessen the probability that an accidental or
9 unusually high release would be caught by the monitoring?

10 MS. HODGDON: That could not -- no, I don't think
11 that that would be possible, because that would involve an
12 unresolved safety question if that were true.

13 JUDGE YOUNG: That would involve what, an
14 unresolved --

15 MS. HODGDON: It's a reach even to get there,
16 because this monitoring equipment really doesn't do what it
17 apparently seems to the Petitioners that it does do. It
18 just monitors normal releases which are very, very, very
19 small amounts.

20 JUDGE YOUNG: That, I guess, is what we really
21 need to have your experts address, is what exactly it does
22 do, and what are the parameters of what could happen if they
23 were changed.

24 MS. HODGDON: I think Mr. Klementowicz is going to
25 volunteer to do this.

1 MS. BURTON: I'm sorry, but just before he does
2 that, may I interrupt, stepping in just to raise another
3 procedural objection to the use of experts here without
4 notice for proceedings that were noticed as oral argument.
5 We don't have an expert here to respond. I don't have the
6 expertise myself at hand to respond, and so I would request
7 an opportunity, should the Board feel so inclined, to let us
8 share the expertise that we may bring to bear, to the extent
9 that we may differ with what has been presented and is about
10 to be presented.

11 Thank you.

12 JUDGE YOUNG: I would suggest that we overrule
13 your objection, and we will take it under advisement for
14 now.

15 MS. BURTON: Thank you.

16 JUDGE YOUNG: Go ahead.

17 MR. KLEMENTOWICZ: Okay. My name is Stephen
18 Klementowicz. I'm a health physicist. And the part in the
19 NRC regulations, Part 50 of 6.i, that defines the level of
20 radiological effluent control that the NRC considers to be
21 as low as reasonably achievable. It is a design objective.

22 JUDGE YOUNG: Give me the number again. Are you
23 talking about Appendix I?

24 MR. KLEMENTOWICZ: Appendix I to Part 50. That is
25 how the Commission establishes what is as low as reasonably

1 achievable for radioactive effluent. It is not a limit as
2 considered in 10 CFR Part 20. 10 CFR Part 20 defines the
3 public dose limit to be 100 millirem in a year.

4 Appendix I to Part 50 establishes the ALARA
5 concept, so those values are typically on the order of 3
6 millirem in a year from radioactive effluent; whereas Part
7 20 is a limit of 100 millirem. That's the first
8 distinction.

9 The NRC imposes the dose values of Appendix I to
10 Part 50 as a license condition in the technical
11 specification that was put in place in the early '80s and
12 remains there today.

13 When the NRC issued Generic Letter 89-01, its
14 purpose was not to change the dose criteria for effluents.
15 It remains to be Appendix I to Part 50. So licensees with
16 the original radiological effluent technical specifications
17 were -- the ALARA
18 criteria was imposed in the technical specifications, along
19 with all of the other detailed monitoring tech specs.

20 In Generic Letter 89-01, the Commission decided
21 that it was not appropriate to have all of these details of
22 the monitors and the surveillances and the calibrations in
23 the tech specs. So the Commission said you can take out
24 that level of detail. However, we maintained the overall
25 dose controls, consistent with Appendix I to Part 50.

1 So Appendix I to Part 50 was in effect before
2 Generic Letter 89-01, and it remains a license condition
3 with Generic Letter 89-01. So the overall level of effluent
4 control does not change. The dose to Appendix I, Part 50
5 stays exactly the same.

6 JUDGE YOUNG: I think -- if I understood that
7 before, I guess what I was looking at in what way would the
8 specifications to a structure, system or component which
9 operating experience or probabilistic risk assessment has
10 shown to be significant to public health and safety, in that
11 they would catch the type of release that might end up
12 violating --

13 MR. KLEMENTOWICZ: These monitors only serve a
14 monitoring function. So if there was a reactor accident,
15 these monitors don't do that. They monitor what goes out
16 the release pathways. They do not prevent the severity of
17 the reactor accident, nor do they mitigate the consequences
18 and severity of this accident. They only monitor what goes
19 out. So it is not appropriate to look at that
20 classification.

21 JUDGE YOUNG: So you're saying that they're not --

22 MR. KLEMENTOWICZ: Let me rephrase that.

23 If there is a reactor accident, these monitors
24 will not change the course of events. If the reactor is
25 going to have an accident, it will have an accident

1 regardless of whether these monitors are in the technical
2 specifications today or tomorrow. They are for routine, low
3 level effluent release monitoring and control systems of
4 Appendix I to Part 50.

5 JUDGE YOUNG: So, in other words, an increase in
6 effluents, for whatever reason, for whatever reason, that
7 increase would never rise to the level that these monitoring
8 systems could alert someone to, such that they could prevent
9 an excess release that would be dangerous to public health
10 and safety?

11 Did that make sense?

12 MR. KLEMENTOWICZ: Not entirely. These monitors
13 do their intended purpose of monitoring radioactivity being
14 released. Their main objective is to control low level
15 routine radioactive effluent releases, and that's what the
16 REM ODCM is designed to -- it has the calculational
17 methodology to assess what is being released.

18 So they monitor radiation, whether -- its design
19 is for low level. The Commission in NUREG 0737, after the
20 TMI accident, required each licensee to install high range
21 monitors that again only monitor what goes out. It does not
22 affect the severity or mitigate the consequence of an
23 accident. It only monitors.

24 So in answer to your question, all they do is
25 monitor. They cannot change the course of the reactor

1 accident.

2 JUDGE YOUNG: If a person working at a reactor saw
3 that a monitor had tripped and caught an unusually high
4 release, that person could not then take some action that
5 would prevent some immediate threat to the public health and
6 safety? Is that what --

7 MR. KLEMENTOWICZ: Yes, of course, if the monitor
8 alarms, and these monitors do have alarm functions to keep
9 effluents low. So if there is an alarm, it alerts somebody
10 that something unusual is happening, and that operator can
11 take action to terminate the release.

12 JUDGE YOUNG: So if the monitoring frequency or
13 methodology were changed such that an alarm that would go
14 off under the way it is presently set, were changed in the
15 future, the person who is doing that operating and could
16 take action might not receive that alarm as quickly as she
17 would receive it the way it is now? That's a possibility?

18 MR. KLEMENTOWICZ: I disagree with your
19 assumption, that that assumption could occur even with these
20 monitors in the tech specs. There can still be human error.
21 There can still be faults in the system. The monitors are
22 not -- the monitors can be taken out of service for routine
23 calibration, and there are alternate controls that the
24 licensee must institute for releases to occur. But your
25 basic assumption -- the answer is yes, but the same

1 condition can occur today as tomorrow.

2 JUDGE YOUNG: Wait a minute. I didn't follow
3 that. The answer is yes, that there could be changes such
4 that the alarm would not go off as quickly to tell the
5 person you need to do something?

6 MR. KLEMENTOWICZ: No. I'm disagreeing with that
7 assumption.

8 JUDGE YOUNG: What's the assumption you're
9 disagreeing with?

10 MR. KLEMENTOWICZ: You're stating that because of
11 a surveillance change or something, that there would be a
12 failure. And as with anything mechanical, I'm saying there
13 could be a failure today with the monitoring being in the
14 technical specifications.

15 JUDGE YOUNG: But I think maybe I didn't ask my
16 question very clearly. What I was talking about was just
17 simply the question of by moving these technical
18 specifications out of the license -- I'm trying not to
19 assume anything, I'm trying to ask a question. Could it
20 occur that there could be changes in the surveillance and
21 monitoring methodology that, under the new methodology
22 frequency, whatever, the alarm might not ring as quickly or
23 the alarm might not sound as quickly, so that there could be
24 a greater release, and less time once the alarm was sounded,
25 for the operator to take appropriate action? It's a

1 question. Could that occur?

2 MR. KLEMENTOWICZ: No. I believe that could not
3 occur. If the monitor -- the monitor, when operational,
4 will indicate how much radioactivity is going out and the
5 licensee will have established alarm setpoints. So, no, the
6 monitor, if operational, will function and will do its
7 intended purpose to alert personnel that there is an
8 increased level of radiation going out.

9 JUDGE YOUNG: So this is not a question of these
10 -- I checked on a certain -- these operate on a certain
11 frequency of every so many days, as someone mentioned
12 earlier, these are sort of automatically always there at the
13 same level, and there never could be any changes to that,
14 such that any increase could ever occur that would not be
15 caught, which was discussed earlier, in a way that was
16 discussed earlier by Mr. Repka?

17 MR. KLEMENTOWICZ: These monitors are required to
18 be operational whenever there is the potential of
19 radioactive material to be released.

20 JUDGE YOUNG: So you're saying that there never
21 could -- so we're not talking about a situation of they're
22 checked every so often and that could be changed?

23 MR. KLEMENTOWICZ: That's correct.

24 JUDGE YOUNG: That could be changed?

25 MR. KLEMENTOWICZ: The monitors are required to be

1 operable whenever a release -- whenever there could be any
2 radioactive material being released. So I believe the
3 answer is it would have no effect.

4 JUDGE YOUNG: What I said was, what types of
5 things could be changed in the future under the manual?

6 MR. KLEMENTOWICZ: The manual specifies, or the
7 tech specs specify the surveillance, the calibration.
8 That's really the main thing, the calibration and the daily
9 check for verification of the monitor to determine their
10 operability.

11 JUDGE YOUNG: The daily what?

12 MR. KLEMENTOWICZ: Daily check source. It means
13 they push a button -- well, this is a typical monitor, you
14 push a button, it inspects the radioactive check source and
15 the monitor gives an output reading, and that indicates that
16 the monitor is still in service.

17 So the licensee could change that from whatever
18 their surveillance period was to extend to some other
19 frequency.

20 The other issue I must point out is that this is
21 part of the NRC's inspection program. Any changes made to
22 the licensee's REM ODCM is subject to inspection and/or
23 technical oversight of whether or not those changes were
24 appropriate. It is an after-the-fact inspection, but it can
25 cause -- if we find that the licensee did something

1 inappropriate, we would issue a notice of violation and the
2 licensee would have to correct the situation.

3 JUDGE YOUNG: I understand that, but I wanted to
4 stay with you just a minute on what you were talking about
5 before. You said that there could be changes to setpoints,
6 I think, and also to the frequency with which an operator
7 would push a button to get a readout. Did I understand that
8 right?

9 MR. KLEMENTOWICZ: That is correct.

10 JUDGE YOUNG: Setpoints are the level that it's
11 set at, the level of radiation?

12 MR. KLEMENTOWICZ: That's correct. Typically
13 licensees have two setpoints. One is their absolute high
14 alarm setpoint, which is consistent with 10 CFR Part 20,
15 public dose limit, that's the 100 millirem limit. Licensees
16 typically have a lower setpoint that corresponds to the
17 ALARA Appendix I to Part 50 value. And they also have a
18 third setpoint for each release, for each batch release that
19 occurs. So they impose an administrative setpoint based on
20 the calculations of what they are releasing.

21 JUDGE YOUNG: So what you are saying is there is
22 no way that these setpoints could be changed or the
23 frequency of the readout in such a manner that there could
24 be an increase in the release that could be an immediate
25 threat to public health and safety, that there is no way

1 that that could occur? And the reason I am asking you that
2 question, and that I'm sort of confused, is that I thought I
3 heard you to say right after that, was that if that did
4 occur, that the NRC could take an enforcement action, and
5 that suggests that it is possible that it could occur.

6 Could you explain that a little bit better so that
7 I can understand the --

8 MR. KLEMENTOWICZ: Well, first of all, it could
9 always occur at any time that a licensee calculates an
10 inappropriate setpoint for a particular release. There is
11 documentation across the industry that that has occurred.
12 So this license amendment doesn't change the fact that human
13 error could calculate an incorrect setpoint for a particular
14 release.

15 However, the tech spec on the dose limitation
16 consistent with Appendix I to Part 50 remains as a tech spec
17 item. So assuming a licensee conforms with their tech spec
18 for the total dose, their setpoints could never exceed that
19 value.

20 JUDGE YOUNG: Mr. Klementowicz, let me just back
21 up and let me see if I can understand now.

22 The setpoints could be changed -- if the technical
23 specifications remained in the license, could those
24 setpoints be changed without a license amendment?

25 MR. KLEMENTOWICZ: Yes. Yes. They are changed at

1 some plants on an almost daily basis, depending on what they
2 are releasing. But the absolute high setpoint -- see, the
3 concept that is difficult to explain to you, is there an
4 absolute setpoint that conforms to the tech spec dose limits
5 of Appendix I to Part 50. And for routine operation, they
6 institute an administrative setpoint for each specific
7 release. Each licensee has to do a calculation for each
8 release, and that's typically very low, a very small
9 fraction of that upper limit that conforms to Appendix I to
10 Part 50.

11 So what we have is multiple setpoints that change
12 depending on what is being released, but the highest value
13 setpoint does not change, would not change before and will
14 not change after this amendment.

15 JUDGE YOUNG: You were talking before about the --
16 if something occurred, the NRC could take an enforcement
17 action. Are any of the types of things that you were
18 referring to there, where there could be an enforcement
19 action brought if XYZ occurred? Are any of those XYZ
20 universe of things that could occur, are they the types of
21 things that under the technical specifications being in the
22 license, require a license amendment, but in the manual
23 could be changed without a license amendment?

24 MR. KLEMENTOWICZ: Those items can be changed
25 right now. The REM ODCM defines where are the release

1 points, what are the calculational methodologies, what are
2 the radionuclides, details like that.

3 Now let me give you a concrete example. If a
4 licensee -- and most of the industry calls it an ODCM,
5 off-site dose calculation manual. This particular licensee
6 has the REM in front of it.

7 Let me speak generically. In the ODCM, if a
8 licensee decides to say they will no longer monitor their
9 units at release points, and they make that change in their
10 ODCM through their own review process, the NRC would come
11 and inspect that, and if the licensee is still making
12 effluent releases via that pathway, but deleted it from
13 their ODCM, we would say that is a violation of regulations.
14 They failed to monitor an effluent release point.

15 That is an after-the-fact situation. We would
16 take enforcement action against them.

17 JUDGE YOUNG: But you're saying that they could
18 make those types of changes even with the technical
19 specifications in the license?

20 MR. KLEMENTOWICZ: That's correct. The technical
21 specifications, what we retain is the dose limits, the
22 license condition to limit annual doses to Appendix I to
23 Part 50.

24 JUDGE YOUNG: And what you are also saying is that
25 there is no way that any of the types of changes that would

1 be permitted by moving the technical specifications to the
2 manual, that none of those changes could ever result in a
3 release that could -- or an unusual release that could lead
4 to an immediate threat to public health and safety?

5 MR. KLEMENTOWICZ: That's correct. The only way
6 for that to occur is the licensee would have to violate NRC
7 regulations intentionally.

8 JUDGE YOUNG: But let's look at that. Is there a
9 way that they could violate regulations intentionally and
10 change something with these specifications moved to the
11 manual, that having them in the license could not occur?

12 MR. KLEMENTOWICZ: No. It would be a -- if they
13 did that today, it would be a violation, and after this
14 license amendment, it would be the same violation. There's
15 no difference.

16 JUDGE YOUNG: Okay.

17 MR. KLEMENTOWICZ: Removing these monitors does
18 not give them any extra leeway in their annual dose from
19 routine effluents. The dose limits do not change.

20 JUDGE YOUNG: Could it lead to any greater
21 likelihood of there being excessive releases?

22 MR. KLEMENTOWICZ: I believe no.

23 JUDGE YOUNG: You say you believe no based on
24 what?

25 MR. KLEMENTOWICZ: Based on that the license

1 condition remains to limit doses to Appendix I to Part 50.
2 That control was in place under the old reg and it remains
3 in place under Generic Letter 89-01. So unless the licensee
4 wants to intentionally violate that provision, which they
5 can do regardless of their tech spec or not, I see no
6 benefit to them to try to violate that.

7 JUDGE YOUNG: If I could understand one last thing
8 from you. Am I correct in understanding that there are
9 several different types of monitoring radiological
10 effluents, some of which would catch and prevent the
11 consequences of an accident or an unusually high release,
12 and that those are the types that are being kept in the
13 technical specifications, and that there are other types of
14 monitoring that are done to monitor extremely low levels on
15 an ongoing basis to assure that the quarterly and yearly
16 dosage allowed under Appendix I are maintained, that those
17 could never help to prevent the type of release increases
18 that could turn to any threat to public health and safety?

19 MR. KLEMENTOWICZ: I -- yes, I believe that to be
20 true. The one nuance is I believe the accident range
21 monitors were imposed by order under NUREG 0737, so that is
22 an order. I do not believe those monitors are a tech spec
23 item. They were imposed by order.

24 JUDGE YOUNG: That order was a monitor that we are
25 talking about moving now, are they -- were they relied upon

1 more in the nature that you are describing?

2 MR. KLEMENTOWICZ: No. The monitors in question
3 in this license amendment are only for low level routine
4 effluents.

5 JUDGE YOUNG: So even before the accident range
6 monitor order, that there were still other protections in
7 place that would protect against the increases in releases
8 that would be significant?

9 MR. KLEMENTOWICZ: You mean prior to the
10 implementation of NUREG 0737?

11 JUDGE YOUNG: No. That was the lessons learned
12 from the TMI accident that the Commission needed to require
13 licensees to install these high range monitors, and so
14 therefore they were imposed by order.

15 The low level routine monitors that were across
16 the board in the industry were found to not be adequate to
17 monitor high range releases. So there are two separate and
18 distinct classifications of radiation monitors.

19 JUDGE YOUNG: But they were not adequate because
20 by the time it happened, it was too late? Is that basically
21 what you are saying?

22 MR. KLEMENTOWICZ: No, not at all. It's that they
23 could not see the high levels of radiation. Monitors can
24 only have a certain range in which they can respond. The
25 monitors we are talking about in this amendment monitor low

1 levels of activity. The accident monitors imposed by NUREG
2 0737 monitor much higher levels of radioactivity.

3 JUDGE YOUNG: So you're saying that if there were
4 an accident or an unusually high release, it would happen so
5 quickly that it would go straight through the range by the
6 monitors covered without them being able to catch it quickly
7 enough?

8 MR. KLEMENTOWICZ: There are many theories. There
9 are many theories; that an accident could progress slowly,
10 and others that state you have to be able to monitor
11 graphically.

12 When the Commission imposed NUREG 0737, they
13 stated that you must be able to follow an accident from a
14 low range fully to high range, but they only monitor, does
15 not mitigate or lessen the consequences of the reactor
16 accident.

17 JUDGE YOUNG: Even with what you said before about
18 providing information to the operator so that the operator
19 could take some action?

20 MR. KLEMENTOWICZ: The monitors will function
21 through low-, mid-, and high-range. This will not change
22 how quickly they respond.

23 JUDGE YOUNG: You're saying that the monitors that
24 are at issue in these technical specifications that are
25 being relocated, monitor in low, medium, and high ranges,

1 and that there could be no changes to how quickly?

2 MR. KLEMENTOWICZ: No. These monitors in question
3 with this license amendment are designed to specifically
4 monitor very low levels of radioactivity.

5 JUDGE MOORE: This is Judge Moore. How do trip
6 functions come into this, if at all, with these technical
7 specifications at issue?

8 MR. KLEMENTOWICZ: As I have stated, the limits,
9 the dose limits consistent with Appendix I to Part 50 do not
10 change from -- do not change, regardless of this amendment.

11 So, the setpoints for the upper dose limits do not
12 change. What is a variable and has always been a variable
13 --

14 JUDGE MOORE: I understand that. And it can be
15 done now under the current tech specs without a change in
16 the tech specs?

17 MR. KLEMENTOWICZ: Correct.

18 JUDGE MOORE: Okay, I understand that's your
19 setpoint.

20 MR. KLEMENTOWICZ: There is on one other point I'd
21 like to make, and that is that these monitors --

22 JUDGE YOUNG: Could you hold on for one second? I
23 don't think you're going to be able to finish in the next
24 ten minutes and have us do everything.

25 Okay, well, then we'll stop. I would like to hear

1 the remainder of his answer, and since we've got about 13
2 minutes left, I think we probably need to plan at this point
3 what we're going to do from here out.

4 [Pause.]

5 Who else -- were you going to have Mr. Zimmerman
6 speak?

7 MS. HODGDON: No. I believe that Mr. Zimmerman
8 would just confirm what Mr. Klementowicz had said, from a
9 Project Manager's point of view, and he said that it's not
10 necessary, nor do I think it's necessary. So the answer is
11 no.

12 JUDGE YOUNG: Okay, then, Mr. Klementowicz, do you
13 want to just finish the answer that you were giving before,
14 and then we can move on?

15 MR. KLEMENTOWICZ: Yes, thank you. I just wanted
16 to make the point that these monitors do not have
17 termination. When we're talking about setpoints and trip
18 functions, they do not all have a trip function to terminate
19 the release.

20 They have alarm functions, but that is different
21 from a trip function. Typically, a liquid effluent monitor
22 can have or will have a trip function, so if the monitor
23 alarms, it automatically terminates the release.

24 JUDGE YOUNG: If you could -- when you refer to
25 these monitors, if you could talk about -- if you could

1 specify whether you're talking about the ones that are
2 governed by the technical specifications that are being
3 relocated or the technical specifications that are staying;
4 that would be helpful for me.

5 MR. KLEMENTOWICZ: I am concentrating only on
6 those low-level routine effluent monitors per this
7 amendment. So, the low-level liquid release, those monitors
8 typically have a trip function, that if there is a high
9 alarm, it will terminate the release.

10 That is contrasted from the routine effluent
11 monitor on, say, a unit vent. That always discharges air
12 and must be monitored.

13 If that alarms, the air will continue to be
14 released, but it will notify people that something unusual
15 is occurring, and cause an investigation.

16 I just wanted to make a point: People have said
17 alarm trip function. Not every monitor, not every low-level
18 monitor has a trip function. It's just an education point.

19 JUDGE YOUNG: Each time you raise a new issue, I
20 guess I have more questions like what is the relevance of
21 talking about the distinction between the two, if what
22 you're saying is that there could never be any changes to
23 either one, the setpoint for the trip function or the
24 setpoint for the alarm or the frequency of checking that
25 could have any safety significance?

1 MR. KLEMENTOWICZ: Well, it was to explain the
2 difference. Early on, you were focusing on accidents and
3 reactor accidents and whether or not this could mitigate the
4 consequences.

5 And my point is, for a reactor accident being
6 released by a certain pathway, these monitors could do
7 nothing. It was just to reiterate that they simply monitor
8 radioactive material and don't serve a function to mitigate
9 or reduce the consequences of an accident. They only
10 monitor what's happening?

11 JUDGE YOUNG: Even the ones with trip points?

12 MR. KLEMENTOWICZ: The ones with trip points are
13 for the low-level routine effluents, and specifically for
14 the liquid effluents.

15 JUDGE YOUNG: But they do or do not do anything to
16 stop it?

17 MR. KLEMENTOWICZ: They can.

18 JUDGE YOUNG: Well, I'm still not following, but
19 we're running out of time. Did we get an extension?

20 I think what we're going to need to do is --

21 [Pause.]

22 One minute. Okay, I think Ms. Hodgdon, you said
23 that was all you needed to offer. I'm not totally -- I must
24 confess that a certain level of confusion was just
25 introduced by drawing the distinction between the trip point

1 -- and I'm getting a sign from Judge Kelber.

2 I think I'm trying his patience, anyway, and I
3 hope I'm not trying everyone else's that much, because I
4 really am trying to understand this.

5 I'm not sure of the relevance of the distinction.
6 I think that what you're still saying is that
7 notwithstanding all of those distinctions, there still could
8 not be any changes to any of those things that could ever
9 cause any safety-significant --

10 MR. KLEMENTOWICZ: That's correct; that's the
11 bottom line.

12 JUDGE YOUNG: Okay. We were going to go next to
13 Ms. Burton, and Mr. Besede to provide whatever information
14 they would like to provide on this, all these issues.

15 MR. BESEDE: Excuse me, this is Joe Besede. I'm
16 going to forfeit my time to Attorney Burton.

17 MS. BURTON: Before you do that, Mr. Besede, Judge
18 Kelber asked a question about the hydrogen recombiner
19 incident at Millstone.

20 Do you have a moment just to comment on that?

21 MR. BESEDE: I believe it was a welder that worked
22 for C.N. Flagg Company that used his stinger to check to see
23 if he was grounded, and that's what ignited the hydrogen
24 that was in the line. That's the way it was explained to
25 me.

1 And I was not on that jobsite, but I was on the
2 condensate polishing building, and then I saw the ambulances
3 come and take the -- put the men in the body bags and take
4 them away. As far as qualifications, I'm a licensed Master
5 Plumber and Steamfitter, holding the highest in the state
6 with a P-1 and S-1 for the past 30 years.

7 And I was working over there as a nuclear
8 pipefitter, and I was trained under the Atomic Energy
9 Commission, and then followed through with the NRC.

10 I won't inject my opinion of the NRC at this time,
11 but Attorney Burton, would you care to take over?

12 MS. BURTON: Well, just one further followup on
13 any information that you may have as far as alarms. I think
14 that's what Judge Kelber was asking.

15 MR. BESEDE: Well, the other thing is, as far as
16 alarms and what they said when we worked there, we had to
17 work in the reactor, and they wanted us to take and move
18 fuel while they were -- they wanted to move fuel, and they
19 wanted us to work on the hangers after the Three Mile Island
20 incident.

21 So, we said we were in the drywell of Unit I and
22 we said we didn't wish to work in there when they were
23 moving the fuel. Well, they told us, well, there's only one
24 chance in a million that they would drop the fuel.

25 And so we still insisted that we didn't want to

1 work in, and they said, well, we'll put in alarm systems.
2 And here we are three stories high on ladders, and if the
3 alarm went off, we were to climb down and come out. If the
4 alarm went off, we already bought it; we already received
5 the radiation or whatever would become of the accident.

6 So, we refused to go in, and sure enough, they
7 dropped a bundle four inches, the one in a million chance
8 that we always were told. So I'll leave it there.

9 MS. BURTON: Well, I meant alarms when the event
10 occurred with the hydrogen recombiner explosion.

11 MR. BESEDE: Oh, I was on Unit III, and we weren't
12 notified. We were all taught and trained that if anything
13 should happen, that alarms would go off and we were to meet
14 in the parking lot.

15 Unit III was a new construction job and nobody on
16 it was trained like I was. And we got no information like
17 we were told we were going to get, so that's what takes
18 place when there's an incident.

19 MS. BURTON: And that occurred when, as far as you
20 recall, and at what unit?

21 MR. BESEDE: That happened on -- I believe it was
22 Unit I, the recombiner building. I remember working on the
23 recombiner building when it was installed, when the systems
24 were being modified.

25 MS. BURTON: Was it at the stack it self?

1 MR. BESEDE: Where the -- the stack -- when the
2 explosion went off, the stack, it blew the door off the
3 stack into the building, 50 feet away, maybe 25-30 feet in
4 the air.

5 That was the concussion. And all those stacks all
6 emit -- 1, 2, and 3 all emit to the atmosphere, which sets
7 off the alarms at the submarine base and has been for the
8 past few years.

9 MS. BURTON: At the sub base in Groton?

10 MR. BESEDE: Yes.

11 MS. BURTON: Okay, thank you.

12 JUDGE YOUNG: Ms. Burton, if you would like to
13 add, and then let's have wrap-up from each of the attorneys,
14 unless there's anything else that we're missing.

15 MS. BURTON: I have actually quite a lot to add.
16 First of all, I protest that there has been apparently
17 expert evidence here. The experts haven't been identified
18 and I have no information about who they are, what their
19 qualifications are, their backgrounds.

20 They haven't been cross examined, and I wasn't on
21 notice to have an expert; I did' have one. I could have had
22 one; I'd like to have one, because I -- and I'm not in a
23 spirit to accept everything I've heard.

24 That having been said, I have reference to a
25 letter from the NRC to the licensee dated May 26, 1998, and

1 I think it has pertinence because it concerns a notice of
2 violation and NRC combined inspection report, and it does
3 have reference to many open items concerning NUREG 0737. In
4 fact, at that time, there -- if I'm reading this correctly,
5 nine other items were -- I'm sorry --

6 Well, I'm just calling attention to that.
7 Apparently there has been an issue about compliance with
8 that NUREG at Millstone and that would implicate, I would
9 think, to some extent, the technical specification Criterion
10 Number 4 concerning expert -- operating experience at
11 Millstone that could implicate safety considerations.

12 The gentleman who just spoke for the NRC staff, I
13 have a comment about what he said about the trip functions
14 being limited to those that monitor liquid effluents.
15 That's not the impression that we have from reading the
16 application materials.

17 And, specifically, I reference page 5 of
18 Attachment 1 of the application and the discussion which
19 does concern a general discussion of the purpose of the
20 monitoring instrumentation which is the subject of this
21 proceeding.

22 And it very clearly states, quote, "This
23 instrumentation provides the surveillance of potential
24 release points and initiates automatic alarm and trip
25 functions which will terminate the release prior to

1 exceeding the limits of 10 CFR Part 20," unquote.

2 I believe we have a factual, potential factual
3 issue here and a dispute as it has been presented as far as
4 the issue of the trip mechanisms. Because, if, in fact,
5 there are such mechanisms that would block or impede or
6 serve as barriers to the release of radioactive effluent to
7 the air, then it would seem that they would have potential
8 to do that in the event of a large excess accident-grade,
9 high-range release.

10 That is what would seem to be suggested by this,
11 but again, I don't have the technical backup to make such an
12 affirmative statement. I'm simply suggesting that there may
13 well be some dispute there that gives rise to the need for
14 further proceedings.

15 I do have a few other points on the enactment or
16 the order that was issued as NUREG 0737. I think it's very
17 important to understand that as the Staff indicated, that
18 was ordered after the partial meltdown incident at Three
19 Mile Island in 1979.

20 At the same time, the NRC issued its own internal
21 order to independently monitor each and every commercial
22 nuclear reactor in the United States of America.

23 And it did so for some period of time, up until
24 very recently when, as we understand it, pressure from the
25 licensees drove the NRC to terminate its own independent

1 monitoring.

2 Now, that has occurred -- that occurred prior to
3 this license amendment application. And, therefore, I think
4 this application needs to be considered in light of that,
5 and in light of what has already been said with respect to
6 NUREG 0737, because the public no longer has that added
7 protection of independent monitoring offsite from each of
8 these reactors, and namely, here, the Millstone Station.

9 And --

10 JUDGE KELBER: This is Judge Kelber.

11 MS. BURTON: Yes?

12 JUDGE KELBER: Do the high-range monitors that are
13 mentioned in 0737 have anything to do with the type of
14 releases we're talking about here?

15 MS. BURTON: Do they have anything to do with
16 this? Of course, they do, because they are -- the NRC's
17 response to the public furor after the Three Mile Island
18 accident and the state of bedlam that I understand existed
19 in the State of Pennsylvania and parts beyond, extending as
20 far as New York City and probably beyond, because of the
21 great unknown as to the radiation and what path it took.

22 JUDGE KELBER: Well, the discussion about range of
23 monitors, now, high-range monitors would typically read
24 radiation doses perhaps at thousand times those that we're
25 talking about or even more than those that we're talking

1 about in day-to-day releases.

2 Would you be able to notice that on a high-range
3 monitor?

4 MS. BURTON: I don't have the technical
5 information to respond to that, with all due respect, Judge
6 Kelber. But I'm suggesting that the monitors --

7 JUDGE KELBER: I don't think it's --

8 MS. BURTON: Pardon me?

9 JUDGE KELBER: I don't think it's relevant to this
10 question. We're talking about low-range.

11 MS. BURTON: Well, the issue of high range has
12 been brought in, and what I'm suggesting is that it would
13 seem to make sense, from a lay perspective, that if
14 monitors, for instance, at the stack, set off alarms at a
15 low level, in the end it happens that something very big is
16 happening, that they would -- if they were to perform a trip
17 function at a low level, it would certainly suggest that
18 whoever designed them, would have probably been well advised
19 to make sure that it kept out what was big as well as what
20 was small.

21 So, I think that there may be a further issue
22 there. I have just a couple of other points.

23 [Pause.]

24 I think that there was perhaps some evasiveness on
25 the part of the licensee during this questioning period, but

1 ultimately, I think that the licensee agreed that there
2 could be accident conditions and changes to the monitoring
3 instrumentation and surveillance, such that there could be a
4 response-delayed reaction or complete failure to catch the
5 release, depending on what changes might be made.

6 JUDGE YOUNG: Are you about finished, Ms. Burton?

7 MS. BURTON: I'm going through my notes. I'm
8 sorry. I've scribbled a lot of notes here. Is our time up?

9 JUDGE YOUNG: No, I just -- what I want to do is,
10 I want to take a few minutes to just confer with Judge Moore
11 and Judge Kelber on where we go from here. I don't want to
12 cut you off, so you can finish now, or we could sort of put
13 you on mute and have our --

14 MS. BURTON: That sounds like a good idea while I
15 get my notes organized.

16 JUDGE YOUNG: Then I'm going to put us on mute, so
17 that we can confer here.

18 MS. BURTON: Thank you.

19 [Pause.]

20 JUDGE YOUNG: Okay, we're back on. At this point,
21 what we have decided is that we may -- and we need to confer
22 further -- we may be issuing an order that would ask for
23 further briefing on certain points.

24 If we decide to do so, we will do so. Meanwhile,
25 we'd like to hear closing argument from each of you, very

1 briefly. And Judge Moore has one thing that he would like
2 to ask each of you to address in your closing arguments.

3 JUDGE MOORE: This can be answered yes or no, and
4 I would appreciate if you would just answer yes or no: Mr.
5 Repka, Ms. Hodgdon, and Ms. Burton, does the relocation of
6 the technical specifications at issue, from the license to
7 the Radiological Effluent Monitoring and Offsite Dose
8 Calculation Manual, give the Applicant greater operating
9 authority than previously authorized by the license?

10 By that I mean operating authority as the
11 Commission used that phrase in Perry in its decision.

12 Mr. Repka?

13 MR. REPKA: Yes, sir, I will answer that question
14 first. The answer is no, it does not give greater operating
15 authority.

16 JUDGE MOORE: Ms. Hodgdon?

17 MS. HODGDON: We addressed that in our two
18 previous filings, and our answer there -- or at least in one
19 of them -- our answer there is no, it does not.

20 JUDGE MOORE: Ms. Burton, did you hear my
21 question?

22 MS. BURTON: Yes, I did, and our position would be
23 that it certainly does, or at least it certainly gives it
24 greater potential of exercising a greater operational
25 authority.

1 JUDGE MOORE: Thank you.

2 JUDGE YOUNG: Okay, any closing arguments? We've
3 only got a few minutes, so I'm going to limit it to like one
4 minute. Mr. Repka?

5 MR. REPKA: Yes, in one minute, very quickly, I
6 would -- I certainly appreciate and support the Board's
7 effort to understand the nature of the amendment and the
8 facts behind it.

9 But having said that, I wanted to emphasize that
10 both with respect to the finding of a chain of causation on
11 standing, and even more importantly, on the admissibility of
12 a contention, the burden of coming forward at this stage is
13 entirely on the Petitioner.

14 With respect to the scope of this particular
15 amendment and this particular hearing opportunity, what the
16 Petitioner has provided in its Petition and in its
17 Supplemental Petition are completely inadequate to establish
18 standing, or, even more importantly, an admissible
19 contention.

20 The issue of compliance with 50.36 is one we've
21 discussed at length here today, and that is a matter that's
22 addressed in the application in some detail. Petitioner
23 never bothered to address the application, and certainly has
24 presented no expertise, no documentary evidence of a type
25 contemplated by 2.714 to support an admissible contention on

1 the issue of whether or not these requirements need to be in
2 tech specs.

3 JUDGE YOUNG: Ms. Hodgdon?

4 MS. HODGDON: Excuse me -- yes, we will not repeat
5 anything that we have stated in our previous filings, in
6 order to save time.

7 One thing that I failed to do was to cite a case
8 on which we would rely. Ms. Burton argued that because
9 they've been found to have standing through Joseph Besede in
10 the previous proceeding, that they have standing here.

11 I would also point out that the Commission decided
12 in CLI 98-20, 48 NRC 183, 1998, that Citizens Regulatory
13 Commission, which was also represented by Ms. Burton -- and
14 I don't know the relationship between that organization and
15 this organization, the Coalition -- but in any event, they
16 found -- they affirmed the Licensing Board's -- have found
17 that because there were no offsite consequences or injury,
18 in fact, connected with the amendment in question, that they
19 did not have standing through their member, Mr. Besede, who
20 lived and continues to live apparently some two miles from
21 the plant.

22 So I would cite that case, and otherwise rely on
23 my argument. I want to say that with regard to Ms. Burton's
24 argument about a notice of violation issued on May 26, 1998,
25 that there were, she says, open items regarding NUREG 0737

1 items.

2 We had already established that NUREG 0737 is to
3 be distinguished, the monitors required of -- by order, by
4 that NUREG, in connection with that NUREG, are to be
5 distinguished from the monitors we're talking about here.
6 And also I would point out that there was nothing whatsoever
7 that Ms. Burton indicated that would lead one to believe
8 that those items -- some two and a half years, a time that
9 they were mentioned in that notice from the Commission.
10 That's all I have.

11 JUDGE YOUNG: Okay.

12 MS. BURTON: Nancy Burton. I'm not going to have
13 a chance here, I guess, to finish off my list, but I will
14 try to be very brief.

15 JUDGE YOUNG: Ms. Burton, I did say you can do
16 that, so I'll give you a few extra minutes.

17 MS. BURTON: Thank you so very much. Well, I'll
18 try to combine them with my argument.

19 I think it's terribly important to keep in mind
20 here, and perhaps it's the most important aspect of the
21 application for purposes of these proceedings, to keep in
22 mind page 4 of the cover letter of the application, as it
23 references the licensee's urgent need for this amendment
24 because of some connection of this amendment to Units II and
25 III dependence on the Millstone Unit I stack gas high range

1 radiation monitor.

2 Now, it would seem that most of this or all of
3 this discussion seems to have focused on the stack and the
4 emissions through that stack, and if, in fact, this
5 amendment has reference to the high-range of radiation
6 monitor there which may be deactivated, taken apart,
7 disabled -- I don't know; I don't have that information -- I
8 believe then that it certainly raises factual issues as to
9 be directed to the lengthy and very thorough questioning by
10 Judge Young during these proceedings as far as the
11 applicability of the monitors in question here to accidental
12 releases and whether changes to surveillance equipment and
13 all the other possible changes might affect both the
14 awareness of an unusual accidental release and the means to
15 respond quickly, as well as the means to achieve a barrier
16 to a further release of it.

17 So I think that's terribly important. I also want
18 to note and emphasize Mr. Besede's comments about what he
19 commented about, because I believe that this application,
20 although it's -- our intervention focuses on the loss of
21 intervention rights, it does assume a degradation of
22 standards in the future and a reliance on fewer
23 surveillances, given what we know will be a cutback in
24 staff.

25 And that will implicate and potentially worsen and

1 increase the risk of human error, which apparently had
2 something to do with that hydrogen recombiner explosion
3 which was very serious.

4 Also, I want to comment on Attorney Hodgdon's
5 reliance on that definition of safety function. If, in
6 fact, the NRC is going to take the position that safety, as
7 it used in NRC proceedings, only relates to catastrophic
8 incidents or design basis accidents, then I think that it
9 will be freeing up a great deal of area that it had
10 previously exercised jurisdiction over.

11 If it doesn't have safety jurisdiction over
12 routine releases of radiation, then I think that's something
13 that all the states need to be aware of, and that need to do
14 something about. And I don't think that per the definition
15 she relied on, in any way reduces or impacts adversely, our
16 contention or our intervention petition here.

17 JUDGE YOUNG: Okay.

18 MS. BURTON: That's about all I have to say,
19 except that I did want to -- on the question of the
20 standing, because I think that there is an issue here
21 involving emissions from the stack that could be accidental
22 higher level than routine, certainly Mr. Besede's ownership
23 of land and his residence within two miles, as well as Ms.
24 Guilliomo, who is 20 miles away -- when there was a terrible
25 fire in Monteville, ten or so miles north of here, a cloud

1 found its way swiftly across the Sound, because the winds
2 were blowing that way, and people on Long Island perceived a
3 problem that they -- many feared was Millstone-related.

4 So there's no question that they are within the
5 path of danger over there from both low-level and
6 higher-level emissions, and that should the standards change
7 in the future, they would be very directly and adversely
8 affected, and therefore they have rights which they have
9 properly asserted in this petition. Thank you.

10 JUDGE YOUNG: Okay, we will be getting a
11 transcript of this, and Judge Moore and Judge Kelber and I
12 will be conferring. And as I said, we may be issuing an
13 order seeking further briefing or we may not. If we do,
14 you'll receive it; if we don't, then we will issue an order
15 on the issue standing in contention.

16 MR. BESEDE: Judge, Joe Besede. May I have just a
17 second? As far as the credibility, I am still a member of
18 the Citizens Regulatory Commission, Fish Unlimited,
19 Connecticut Coalition Against Millstone, and now the latest
20 is New England Coalition on Nuclear Pollution. Thank you.

21 JUDGE YOUNG: Okay, thank you. Is there anything
22 further before we sign off?

23 MS. BURTON: Nancy Burton. I just wanted to thank
24 you all for your very careful consideration of these issues.

25 MR. BESEDE: I also want to say thank you.

1 JUDGE YOUNG: Anyone else? I'm not inviting you
2 to thank us; I'm just asking if you have anything further to
3 say before we hang up?

4 MR. REPKA: Nothing further to add.

5 JUDGE YOUNG: Thank you.

6 MS. HODGDON: The Staff doesn't need to add
7 anything further.

8 JUDGE YOUNG: Okay, thank you all very much. Bye,
9 bye.

10 [Whereupon, at 1:25 p.m., the conference call was
11 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: CONFERENCE CALL TO DISCUSS
THE MILLSTONE UNITS 2 AND 3

Docket Number:

Place of Proceeding: Rockville, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission transcribed by me from recorded tapes provided by the Nuclear Regulatory Commission, and that the transcript is a true and accurate record of the foregoing proceedings to the best of my belief and ability.



Ann Riley

Transcriber

Ann Riley & Associates, Ltd.