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20 ALSO PRESENT:

21 VICTOR NERSES, NRR

22 MICHELLE McKOWN, ESQ., ASLBP

23 PETE REYNOLDS, CCAM

24 PAUL CHOINIERE, The Day Newspaper

25 DICK WINN, Dominion Nuclear, Connecticut

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

10:02 a.m.

1
2
3 CHAIRMAN BECHOEFER: This is Judge
4 Bechoefer.

5 JUDGE COLE: This is Judge Cole. Good
6 morning.

7 JUDGE KELBER: Judge Kelber. Good
8 morning.

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

11 MS. MCKOWN: Good morning, everyone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 MS. HODGDON: I think I said --

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

13 MS. HODGDON: Excuse me?

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

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

25 We used to have also in our division a

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

12 CHAIRMAN BECHOEFER: Well, my next
13 question is we've deferred for the OI report basically
14 because of the policy statement that was issued on --
15 MS. HODGDON: I think it's in the board's
16 order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 CHAIRMAN BECHOEFER: Not completely
25 supporting.

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

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

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

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

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

16 MR. REPKA: I did not say that.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MR. REPKA: And we would distribute it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MS. HODGDON: Thank you.

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

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

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

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

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1 go out with the report.

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

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

6 JUDGE KELBER: Yes.

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

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

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

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

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

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

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

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

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

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

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

16 MS. HODGDON: Of course it develops facts.

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

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

20 JUDGE KELBER: Thank you.

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

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

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

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

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

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

2 JUDGE KELBER: -- the checkbook.

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

5 JUDGE KELBER: In a way.

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

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

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

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

23 JUDGE KELBER: It is.

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

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

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

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

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

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1 that?

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

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

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

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

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

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

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

25 CHAIRMAN BECHOEFER: So should we set a

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

3 MR. REPKA: I would agree with that.

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

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

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

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1 documents have been provided to the parties.

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

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

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

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

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

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

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

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

4 CHAIRMAN BECHOEFER: Are there any?

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

7 CHAIRMAN BECHOEFER: Are there any
8 inspection reports?

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

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

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

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

20 MS. HODGDON: That's it.

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

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

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

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

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

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

20 MS. HODGDON: That is correct.

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

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

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

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

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

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

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

25 CHAIRMAN BECHOEFER: I didn't hear that.

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1 What?

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

4 CHAIRMAN BECHOEFER: One or two?

5 MR. REPKA: Two.

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

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

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

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

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

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

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

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

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

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

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

12 MS. HODGDON: Guy Fawkes Day.

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

14 MS. HODGDON: Do.

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

19 MS. BURTON: Okay.

20 MR. REPKA: Correct.

21 MS. HODGDON: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. REYNOLDS: I hope so.

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

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

22 JUDGE COLE: Mr. Reynolds. All right.

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

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

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

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

8 MS. HODGDON: That's correct.

9 MR. CHOINIERE: And who prepares that?

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

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

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

22 JUDGE COLE: All right.

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

1 NRC staff?

2 CHAIRMAN BECHOEFER: No.

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

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

7 CHAIRMAN BECHOEFER: No.

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

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

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

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

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

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

20 CHAIRMAN BECHOEFER: Okay.

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

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

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

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1 R-E.

2 MR. CHOINIERE: Correct. Thank you.

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

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

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

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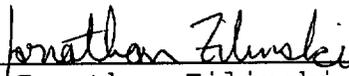
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CERTIFICATE

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

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

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



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