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Millstone Nuclear Power Station, Unit 3

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

(9:30 a.m.)

JUDGE BECHHOEFER: Good morning, ladies and gentlemen. I hope you can hear me. This is Charles Bechhoefer, chairman of the Licensing Board. With me is the remainder of the Licensing Board.

Could you introduce yourselves?

JUDGE COLE: Yeah. This is Judge Richard F. Cole, C-o-l-e.

JUDGE KELBER: This is Judge Kelber, K-e-l-b-e-r.

JUDGE BECHHOEFER: We've called this conference call. Well, let's have the various parties introduce themselves as well so that the court reporter can hear your voices and know who it is. And actually, before making various statements, we would appreciate your identifying yourself for the benefit of the court reporter. So various parties may introduce themselves.

Ms. Burton, may you want to start?

MS. BURTON: Yes, certainly. I'm Nancy Burton, B-u-r-t-o-n, and I represent the intervenors, Connecticut Coalition Against Millstone and the Long Island Coalition Against Millstone.

MR. BESADE: Okay. Joe Besade from

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1 Waterford, Connecticut. I'm also a member of the
2 Connecticut Coalition Against Millstone. The name is
3 spelled B-e-s-a-d-e. Thank you.

4 MR. REYNOLDS: Pete Reynolds, Coalition
5 Against Millstone.

6 JUDGE BECHHOEFER: Next? Mr. Repka?

7 MR. REPKA: Yes. This is David Repka with
8 Winston & Strawn for Dominion Nuclear Connecticut.
9 With me here in Washington, D.C. is my associate,
10 Donald Ferraro. And on a separate line from
11 Connecticut are Lillian Cuoco, C-u-o-c-o, and Peter
12 Hyde, H-y-d-e. Mr. Hyde is with the company's
13 Corporate Communications department.

14 MS. HODGDON: Ann Hodgdon for the NRC
15 staff, and with me is Victor Nerses, N-e-r-s-e-s, who
16 is the project manager for Millstone 3.

17 JUDGE BECHHOEFER: Thank you.

18 With us here at the moment is Lee Dewey,
19 who is chief counsel to the ASLPB, Atomic Safety and
20 Licensing Board Panel. I'd like to start by inquiring
21 whether the documents that we're expecting have been
22 prepared, and whether they can be or will be
23 circulated.

24 The root-cause analysis, first. Is that
25 completed, and has anyone tried to circulate it?

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1 Because with the various problems with the mail
2 service, the routers might not be adequately
3 circulated, at least by mail.

4 MR. REPKA: This is Mr. Repka for
5 Dominion. The root-cause analysis is completed and
6 was circulated from my office on Monday. That was
7 sent by hand to the board, and I'm surprised if the
8 board didn't receive that. And it was sent to Federal
9 Express to Ms. Burton on Monday.

10 JUDGE BECHHOEFER: No, we haven't received
11 it.

12 MS. BURTON: The staff has also, at least
13 OGC, has not yet received a copy. And I was not aware
14 that -- I am not aware that there are copies anywhere
15 here. And we, too, are having difficulties with the
16 mail, and I expect that's the problem.

17 MR. REPKA: I will undertake to resend
18 that today. I'm surprised. I thought that -- we sent
19 that on Monday.

20 JUDGE KELBER: This is Judge Kelber.
21 Where was the messenger instructed to go? If he went
22 to the mailroom, we won't see that mail for quite a
23 while.

24 MR. REPKA: I think they were instructed
25 to go to White Flint, and they can't get beyond

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1 security. So, perhaps, the mail goes immediately,
2 even by hand-carry to the mailroom.

3 JUDGE BECHHOEFER: I suspect, sir, that
4 you're correct.

5 MS. BURTON: This is Nancy Burton.
6 Mr. Repka is correct. I did receive by FedEx the
7 root-cause analysis. However, I spent a good part of
8 yesterday in a hospital emergency room. I haven't a
9 chance to, a) really read through it, nor b) circulate
10 it to those folks who are on our side.

11 JUDGE KELBER: Is it possible to send it
12 electronically?

13 MR. REPKA: I do have that electronically.
14 I can do that. I don't have it with the signed cover
15 letter electronically, but you'll have the report
16 itself. I will do that today.

17 JUDGE KELBER: Thank you, sir.

18 JUDGE BECHHOEFER: Yeah, that will help.

19 And now, let me inquire. Is the OI
20 Report -- it wasn't required to be circulated at least
21 before today. Is this done and ready to go?

22 MS. BURTON: The OI Report is ready for
23 release. And I have been struggling with the on and
24 off of whether the mail goes out. Apparently, the
25 mail will go out today, and so a paper copy will be

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1 sent out today. The region puts out these reports for
2 the licensee, and apparently it's considering doing it
3 electronically because of the difficulty that we've
4 had. So they won't be -- but they'll say exactly the
5 same thing. And we've had a lot of back and forth
6 about that. So, anyway, those reports will both go
7 out today.

8 JUDGE KELBER: It would be best if an
9 electronic copy were sent.

10 MS. BURTON: Excuse me?

11 JUDGE KELBER: It would be best if an
12 electronic copy were sent.

13 MS. BURTON: I'll have to get an
14 electronic copy. I don't have one; I have a paper
15 copy. So I could send paper copies and also send
16 electronic copies when I get them from the region.

17 I have the commitment to do this today.
18 We've been having some problem, as you know, with
19 regard to all sorts of things, because of the mail
20 problem. In any event, it will be done today, and
21 we'll try to get -- of course, for the board copies,
22 we can carry them over there, but that doesn't take
23 care of the need to get copies to others. I think I
24 can -- I'm sure I can get it. If the region has an
25 electronic copy, then I can get an electronic copy,

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1 obviously. So we'll try to do both.

2 Is that okay?

3 JUDGE BECHHOEFER: Yes.

4 MS. BURTON: Thank you.

5 JUDGE BECHHOEFER: I understand that
6 Ms. Burton had some problems with receiving by e-mail
7 the order that we put out setting up this telephone
8 conference. I'm not sure why that happened. I
9 personally sent a copy to her as well as the other
10 parties, and Becky did also. So I'm not sure what the
11 difficulties were.

12 MS. BURTON: Judge Bechhoefer, Nancy
13 Burton. When I tried to download your message, I got
14 an access denied on the screen. And so I've been
15 awaiting the hard copy in the mail, and it hasn't
16 turned up yet. So that is why I had to make a call
17 this morning to get the number for this conference.

18 JUDGE BECHHOEFER: I see. Well, I
19 apologize. We sent out both. The hard copies went
20 out last Friday.

21 JUDGE KELBER: No, we did not.

22 JUDGE BECHHOEFER: No, it was signed and
23 sent over to the place which would circulate them.

24 JUDGE KELBER: But the mail has not left
25 the establishment.

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1 JUDGE BECHHOEFER: Yes, that's correct.
2 They've had various mailroom investigations, scares,
3 whatever. Be that as it may, for the future we urge
4 that -- although paper copies still are required by
5 the rules to be serve, we urge parties -- I think
6 they've been doing this in any event -- to serve
7 various matters by e-mail where possible. It would
8 make it easier, and we would receive it in time to act
9 on it, or even information copies. E-mail is far
10 preferable. So to the extent you can, we would
11 appreciate your adding that to the server.
12 Fortunately, or unfortunately, the official service
13 under the commission's rule still has to be on paper.
14 That may change, but e-mail service is not technically
15 approved for sole service.

16 Next, we would like to establish a
17 discovery schedule. I assume with the exclusion of
18 the OI Report there's no further reason to defer
19 further activities. We can start discovery, and we
20 should set a time period for that discovery.

21 Basically, the board had thought that
22 60 days might be adequate, which would allow two
23 rounds, and we'd allow a few extra days for the
24 holidays, et cetera. If we started the 60-day period,
25 it would start, say, November 7th, which is next

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1 week -- a week from now -- and run through
2 January 11th, which is a Friday.

3 Would that type of schedule -- what do the
4 parties think an appropriate schedule would be.

5 MS. BURTON: This is Nancy Burton. I
6 gather that the licensee spent something like
7 \$9 million on its own special researches into this
8 issue, and that it took them about 10 months to round
9 up all the information and prepare their various
10 reports. It seems as though there is a great deal of
11 information here and many, many documents that were
12 assembled. And in light of that, I would like to
13 request an additional period of time. Since we have
14 that information now as to the depth of the
15 information that's involved here, I think that it
16 would be reasonable to ask for more time, 90 days
17 let's say.

18 MR. REPKA: This is Mr. Repka.

19 JUDGE BECHHOEFER: The subpart has a
20 maximum of 90 days -- or not a maximum, but
21 beyond -- absent good cause, 90 days is -- but that's
22 discovery for all the issues. And we've already had
23 at least one 90-day period. But if this issue is
24 sufficiently different, then I think a new discovery
25 period should start.

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1 Mr. Repka, you had comments?

2 MR. REPKA: Yes. First, I certainly agree
3 with the board that any discovery schedule could not
4 exceed 90 days because that's the maximum under
5 subpart K. But having said that, we are in the second
6 round of the discovery and second round of the
7 proceeding.

8 The issue here is a fairly narrow one
9 related to whether there's any commonality between the
10 events at Unit 1 and the fuel-handling procedures at
11 issue with respect to the Unit 3 license amendment.
12 The scope of the discovery, therefore, has to be
13 appropriately tailored to what the issue is in that
14 proceeding.

15 And the issue is certainly not the Unit 1
16 FRAP investigation; the issue is certainly not one of
17 recreating the entire FRAP investigation. So,
18 therefore, to compare the scope of discovery to the
19 scope of the investigation itself I think is
20 inappropriate right at the outset. Beyond that, I
21 think our reaction is, the 60-day discovery proposed
22 by the board should be sufficient.

23 JUDGE BECHHOEFER: Of course, in a
24 schedule-like outline, we've allowed a few days to
25 make up for a bunch of holidays coming in and that

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1 type of thing.

2 MR. REPKA: Judge Bechhoefer, this is Dave
3 Repka again. The only thing I would request on the
4 discovery schedule, though, is that the schedule be
5 clear as to the dates for when any requests for
6 discovery be filed. I think that we had a problem in
7 the last round in which we had a 90-day window in
8 which we received request for discovery on about
9 Day 88. It's a specific request up front, and then
10 that we'll allow responses within the 60-day schedule.

11 MS. BURTON: Judge Bechhoefer, Nancy
12 Burton.

13 JUDGE BECHHOEFER: Yes?

14 MS. BURTON: In the spirit of candor here,
15 I feel constrained to report that the coalitions are
16 planning to make a further filing in this matter, not
17 expressly within the scope of our conference call this
18 morning but related to our intervention generally.
19 And the papers that will be filed are expected to be
20 filed perhaps as early as this morning. They're being
21 proofread at the present time.

22 I'm only bringing this up because there
23 may be some issues of overlap that may make it
24 necessary at some point here for us to ask for some
25 kind of a waiver of the discovery. I'm not sure that

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1 that will be the case, but I didn't want it to come as
2 a complete shock and surprise when this new material
3 is filed later today. I can't really, however, say
4 anything further about it until it's filed.

5 JUDGE BECHHOEFER: Well, when you say
6 waiver of discovery, you mean waiver of --

7 MS. BURTON: Waiver of discovery
8 limitation if it becomes necessary to request
9 additional time, depending on how the board treats
10 this new prospective filing. I don't expect you to
11 rule on that now, but I just wanted to be sure that
12 the record showed that we're making other efforts in
13 this case to bring new information before the board so
14 that it can fully weigh all of the pertinent issues.

15 JUDGE BECHHOEFER: Okay. Does staff any
16 views on discovery schedule?

17 MS. HODGDON: As the staff has already
18 pointed out to the board, the staff is preparing its
19 inspection report on the FRAP and presumably also on
20 the root-cause analysis. Whether that's included in
21 the document that they intend to have in by the end of
22 the month, I'm not entirely clear on. But the staff
23 documents won't be ready until the end of the month,
24 and, therefore, the staff won't be in a mode to answer
25 discovery requests until after that time.

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1 If discovery starts on the 7th, then
2 any -- well, the staff will not, as I said, be in a
3 position to answer discovery requests until after the
4 end of November, I think, when its document is out and
5 its position is made clear with regard to these
6 documents that have been produced by the licensee, the
7 staff's new section of that. And that will, of
8 course, be the staff's case.

9 The board said something in the last
10 pre-hearing conference that this would trial
11 preparation. Of course, it's not because these are
12 documents that the staff would write whether this
13 proceeding was taking place or not. So, obviously, it
14 is not a trial preparation. That's all I have to say
15 about that.

16 The staff also believes that 60 days is
17 plenty of time for discovery. And it's not only a
18 very narrow issue, it's really a non-issue. Because
19 what it is is an allegation that there is commonality
20 between this matter of Unit 1 and the issues that have
21 already been determined in the Unit 3 license
22 amendment, specifically Contention 4 that had to do
23 with the increased risk of criticality because,
24 essentially, of the creation of three regions instead
25 of where there were formerly two. So that is how

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1 narrow this issue is. It seems to me -- it seems to
2 the staff -- that 60 days would be plenty of time for
3 that.

4 As regard to Ms. Burton's announcement
5 that the coalition is planning to make a filing today,
6 we have no idea what that filing is. And so we can't
7 say in any way whether the board will accept it, and
8 what it is, whether it's a contention, what it is.
9 But in any event, we certainly can't plan for any
10 discovery on that at this time.

11 MS. BURTON: Judge Bechhoefer, Nancy
12 Burton. Given what we've just heard from the staff,
13 I would propose that the discovery period commence
14 upon the distribution of the staff review of the FRAP
15 and root-cause analysis now said to be filed by the
16 end of November.

17 MS. HODGDON: Staff again. Ann Hodgdon.
18 There's no reason that discovery against the licensee
19 could not begin earlier than discovery against the
20 staff. And that might, in fact, be more efficient.
21 And so we should have the parties' views about that as
22 well.

23 MR. REPKA: Mr. Repka for Dominion. I
24 concur with Ms. Hodgdon, that there's no reason to
25 defer beginning the discovery until the staff report

1 is ready.

2 MS. BURTON: Judge Bechhoefer, Nancy
3 Burton. It would seem to be to everybody's advantage
4 to begin the discovery period at the point I've
5 suggested because we may I think that way proceed more
6 efficiently and potentially even narrow issues down;
7 whereas, if we're confronted after we are already a
8 month into discovery with issues that hadn't occurred
9 to us before, that might then trigger discovery
10 questions in our hearts that would take more time
11 necessarily.

12 MR. REPKA: Mr. Repka again.

13 MS. BURTON: I think we can just best
14 coordinate it if we have that date as a starting-off
15 point.

16 MR. REPKA: Mr. Burton's suggestion is
17 really a request for deferral of this proceeding,
18 which is exactly the request for deferral that the
19 staff asked for before, which we, Dominion, opposed
20 and the board has denied. And I believe Ms. Burton
21 opposed that request as well, although I can't recall
22 specifically. So I don't see that that request to
23 defer the proceeding until the staff inspection report
24 is any more appropriate now than it was a month or two
25 ago.

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1 MS. HODGDON: Ann Hodgdon for staff again.
2 If Ms. Burton, as she suspects or as she stated, there
3 might be something in the staff report that would
4 change discovery plans and so forth, something that's
5 surprising. If there were something that cataclysmic
6 that that might be good cause for extending discovery.
7 But then, again, that's a bridge that we can cross
8 when we get to it. We're not there now.

9 MS. BURTON: Judge Bechhoefer, Nancy
10 Burton. It seems to me that we have objected, as
11 Mr. Repka has noted accurately, to deferral of this
12 case. We've been overruled on that twice at the
13 request of the staff and I believe with the agreement
14 of the licensee. Now we're being put at another
15 disadvantage, which is that we're being -- because the
16 staff hasn't produced this report -- and I think it
17 was indicated earlier that it should have been ready
18 by now, if I'm not mistaken -- we will definitely be
19 put at a disadvantage and be prejudiced if we don't
20 have the benefit of the staff's report before we begin
21 discovery. So it's not at all that we want to defer
22 the proceedings; we just don't want to be put at a
23 disadvantage at the starting gate.

24 MS. HODGDON: Ann Hodgdon again for the
25 staff. Ms. Burton said that the staff report should

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1 have been ready by now. The staff report is, of
2 course, based on the licensee's reports and the
3 licensee's FRAP, the whole investigation and not just
4 the report of it. And that is the way the staff does
5 its business; that's the way it does things. It
6 reviews licensee documents. Therefore, there's no way
7 that the staff can be ready on any item at the same
8 time as the licensee is. And that is not
9 extraordinary, that's not unique to this case; that's
10 the way staff work takes place.

11 Therefore, the staff suggestion was that
12 discovery proceed against the licensee and against the
13 staff when the document comes out. And contrary to
14 what Ms. Burton says, it would seem extraordinarily
15 inefficient to file something on non-existent
16 documents. Once the staff document comes out,
17 discovery on this document is appropriate and should
18 be available. And it should take less time in that
19 discovery against the licensee already has taken
20 place.

21 MS. BURTON: Judge Bechhoefer, Nancy
22 Burton. I don't see how it would be fair to begin
23 discovery when the staff is saying they will be
24 unavailable for discovery during part of the period.

25 MS. HODGDON: Ann Hodgdon again. The

1 staff has not changed its position in any regard,
2 regarding this whole matter. And the board has ruled
3 against the staff about deferring it. Now, when
4 Ms. Burton is making the same argument, but for a
5 different reason the staff made, it's really, in
6 effect, asking the board to reconsider that ruling,
7 which there's nothing here that hadn't already been
8 argued.

9 JUDGE BECHHOEFER: Let us go off the
10 record for a minute. We'll be right back. The board
11 wants to talk about it.

12 (Whereupon, the foregoing matter went off
13 the record at 9:58 a.m. and went back on
14 the record at 10:00 a.m.)

15 JUDGE BECHHOEFER: Okay, we're back on the
16 record.

17 MR. GUNTER: Judge Bechhoefer?

18 JUDGE BECHHOEFER: Yes?

19 MR. GUNTER: This is Paul Gunter, Nuclear
20 Information and Resource Service. And I just wanted
21 to get my notice of appearance on the record.

22 JUDGE BECHHOEFER: Okay. On this
23 discovery matter, the board has decided to authorize
24 90 days of discovery starting November 7th, but no
25 discovery against the staff until December 4. That

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1 would give, using the same period, about 60 days
2 discovery with regard to the staff and 90 with regard
3 to the licensee. And that would end on February 8,
4 the way I calculate it, which is a Friday I think.

5 Well, anyway, that's the resolution. I
6 might say that if there's a need for further discovery
7 on new items or different matters, we can receive
8 requests, and we'll act on them accordingly when or if
9 we get them. But I think the 90-day schedule from
10 November 7th is -- well, it's all that subpart K
11 really would authorize absent special circumstances.

12 But withholding it against the staff I
13 think makes sense, given their investigation and
14 completion of their reports and analyses. So 60 days
15 against the staff I think is fine. And if you start
16 December 4 and end February 8th, rounding things off
17 to the ends of weeks and that type of thing. I think
18 that's satisfactory. So for the time being, we will
19 establish that as a discovery schedule. And we'll
20 issue a formal order once we get the transcript back
21 probably early next week.

22 MR. REPKA: Mr. Repka for Dominion. Could
23 I just request again that we have some board guidance
24 on the issue of the last discovery request. We would
25 request that they be filed at a time that would allow

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1 a response on the schedule authorized by the rules at
2 a minimum. Before February 8th.

3 JUDGE BECHHOEFER: Off the record for one
4 second again.

5 (Whereupon, the foregoing matter went off
6 the record at 10:03 a.m. and went back on
7 the record at 10:05 a.m.)

8 JUDGE BECHHOEFER: Okay. The board has
9 decided we will set -- we think the last request for
10 discovery and production should be filed by
11 January 25th, which is two weeks before the February
12 8th date. Of course, again, this will have to exclude
13 special circumstances, newly arriving information,
14 that type of thing. But for the matters at issue
15 right now, we will set that deadline. So that's a
16 Friday, the 25th of January, for which all discovery
17 requests must be filed. As I say, we'll formalize all
18 of this in an order which we'll issue probably early
19 next week.

20 Any further comments on this subject?

21 Next, we would go on to propose dates for
22 the filing of prepared statements. And I would guess
23 that should be probably at least 30 days beyond the
24 end of discovery, if not more, but 30 days maybe,
25 which would be --

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1 Under this schedule, March 11th, which is
2 a Monday, prepared statements would be filed. And
3 then oral argument would be -- well, let's see.

4 MR. REPKA: Mr. Bechhoefer, it's 15 days
5 under the rule, but I don't have in front of me a
6 calendar that would show when Easter is next year.
7 And I really would suggest you take some
8 consideration -- a day or two -- if that falls in that
9 interim, but I don't --

10 JUDGE BECHHOEFER: Our calendar doesn't
11 show when it is either. If Easter doesn't intervene,
12 it would make either March 26th or March 27th a day
13 for oral argument. But that would be in New London.

14 JUDGE KELBER: This is Judge Kelber. Palm
15 Sunday is Sunday, March 24th. So the next week, then,
16 is -- let's see. Well, Good Friday would be
17 March 29th. Also, Passover begins on Wednesday, March
18 27th. So that whole week is inadvisable for meetings.

19 JUDGE COLE: You may want to just make it
20 the following week.

21 JUDGE BECHHOEFER: How about Tuesday,
22 April 2nd for oral argument in New London? And let us
23 just travel up on Monday.

24 JUDGE COLE: It sounds fine.

25 MS. HODGDON: Judge Bechhoefer, you might

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1 want to consider putting off the prepared statements
2 by a week, then, so as to make the 15 days, give an
3 extra week there instead of -- that would be more
4 consistent with the rules; although, the rules are
5 being a little -- they're not being -- well, whatever.
6 It might be preferable to do that. That's just a
7 suggestion. This is Ann Hodgdon for the staff.

8 JUDGE BECHHOEFER: I think it's a good
9 thing. Let me check my dates again. So that would be
10 February 15th for the -- I'm sorry.

11 MS. HODGDON: You said March 11th. So it
12 would be seven days after that.

13 JUDGE BECHHOEFER: March 18th, right.

14 Okay. And then, Tuesday, April 2nd, for
15 oral argument. Okay. We'll do that. We'll establish
16 that schedule.

17 About the only other matter we have left
18 is, we would urge the parties, if they were able to
19 during the period of discovery, to discuss among
20 themselves whether they might be able to find a way of
21 settling this proceeding. The commission does
22 encourage settlements where possible, and if you could
23 determine a way to do it, that would be fine. So we
24 urge you to, perhaps, consider talking about
25 settlement.

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1 MR. REPKA: Dave Repka for Dominion. We
2 are certainly always open to considering any specific
3 proposal. Apart from that, however, we're fully
4 prepared to demonstrate through this proceeding that
5 there's no connection between the issue of Unit 1 and
6 the issues in the license amendment.

7 JUDGE BECHHOEFER: Okay. Well, we just
8 thought we would extend the suggestion, and if the
9 parties follow up on that, that would be fine.

10 Is there anything further that any of the
11 parties wish to consider before we adjourn for the
12 day?

13 MR. REPKA: Nothing from Dominion.

14 MS. HODGDON: I don't believe the staff
15 has anything further.

16 MS. BURTON: And Judge Bechhoefer, for the
17 intervenors, that's all we have for now.

18 JUDGE BECHHOEFER: Okay. Well, we enjoyed
19 talking with you, and the discovery schedule, et
20 cetera, will go into effect as we described it. I'll
21 issue an order once I get the transcript, which should
22 be early next week. If it comes in Friday, I won't be
23 here, so it will have to be next week.

24 With that, we bid you farewell.

25 MS. BURTON: Thank you very much.

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MS. HODGDON: Thank you.

MR. REPKA: Thank you.

(Whereupon, the foregoing matter went off
the record at 10:13 a.m.)

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, Inc.

ASLBP Number: 50-423-LA-3

Location: (Telephone Conference)

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.



John Mongover
Official Reporter
Neal R. Gross & Co., Inc.