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NUCLEAR REGULATORY COMMISSION

SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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Millstone Nuclear Power Station, Unit 3

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1 APPEARANCES:2 On Behalf of Dominion Nuclear Connecticut:

3 DAVID A. REPKA, ESQ.

4 Winston & Strawn

5 1400 L Street, N.W.

6 Washington, D.C. 20005

7

8 CHARLES THEBAUD, ESQ.

9 Counsel

10 Northeast Utilities

11

12 LILLIAN M. CUOCO, ESQ.

13 Dominion Nuclear Connecticut, Inc.

14 Millstone Nuclear Power Station

15 Building 475/5

16 Rope Ferry Road (Route 156)

17 Waterford, Connecticut 06385

18

19 PETER HYDE, Spokesman

20 Millstone Station

21

22

23

24

25

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WASHINGTON, D.C. 20005-3701

1 APPEARANCES: (CONT.)2 On Behalf of the Nuclear Regulatory Commission:

3 ANN P. HODGDON, ESQ.

4 SARA BROCK, ESQ.

5 Office of the General Counsel

6 Mail Stop - 0-15 D21

7 U.S. Nuclear Regulatory Commission

8 Washington, D.C. 20555-0001

9 ALSO PRESENT:

10 VICTOR NERSES, Project Manager, Millstone-3

11 JOHN HICKMAN, Project Manager, Millstone-1

12 ANTONE SIRNEY, Senior Resident Inspector

13 MARTHA WILLIAMS, NCNA Inspector

14 DANIEL MEEKHOFF, Supervisor

15 in Nuclear Operations Support

16 RICHARD SWANSON

17 DAVID DODSON

18 ROBERT FAIRBANK

19 HUGH MCKENNEY

20 CARL WHITTAKER

21 MICHELLE MCKOWN, ESQ., ASLBP

22

23

24

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

(9:45 a.m.)

1
2
3 CHAIRMAN BECHHOEFER: Good morning, ladies
4 and gentlemen. We are here this morning for a
5 resumption of the oral argument concerning the request
6 of Dominion Nuclear Corporation, DNC, which is the
7 successor to Northeast Nuclear Energy Company, to
8 expand the capacity of the spent fuel pool at the
9 Millstone Unit 3 Nuclear Power Plant.

10 Specifically, we are here to consider the
11 effect, if any, of Northeast Nuclear's, and now
12 Dominion's, inability to account for the location of
13 two spent fuel rods from Millstone Unit I and whether
14 this inability has implications for Dominion's ability
15 or willingness to locate fuel rods or bundles in the
16 Millstone 3 spent fuel pool.

17 At the outset, we would like to
18 congratulate the State of Connecticut for it's
19 national women's basketball crown, The Huskies, I
20 guess, and likewise, we congratulate Marylanders on
21 the men's title, which we spent some time watching
22 last night.

23 At this stage, I would like to introduce
24 or have introduced various people. With respect to
25 the Board, on my left is Dr. Charles Kelber, to my

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1 right is Richard Cole, Dr. Richard Cole, and I'm
2 Charles Bechhoefer. I'm the Chairman of the Board.

3 On my far right is Michelle McKown, who's
4 a law clerk at the Board, legal advisor to the Board
5 as such. She is over here. And I'll start with, I
6 guess I'll go from my left to right with Dominion
7 first.

8 MR. REPKA: Yes. Thank you. I'm David
9 Repka, counsel for Dominion Nuclear Connecticut. Let
10 me also introduce the rest of my support here today.
11 On my right is Mr. Daniel Meekhoff, who's supervisor
12 in Nuclear Operations Support, and he's filed an
13 affidavit in this proceeding.

14 Starting behind me in the first and second
15 rows, you'll see a number of individuals who have also
16 filed testimony in this case. Starting to my, moving
17 right to left is Mr. Richard Swanson; next to him is
18 Mr. David Dodson, who filed an affidavit in the first
19 phase of this hearing; seated next to Mr. Dodson is
20 Mr. Robert Fairbank, who has filed an affidavit in
21 this case related to the FRAP report.

22 Next to Mr. Fairbank is Mr. Hugh McKenney,
23 who is also with Dominion Nuclear Connecticut, who has
24 also filed an affidavit; and then in the second row is
25 Ms. Lillian Cuoco, counsel for Dominion Nuclear

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1 Connecticut.

2 Seated next to Ms. Cuoco is Mr. Charles
3 Thebaud, T-H-E-B-A-U-D, who is counsel for Northeast
4 Utilities, and last, but not least, is Mr. Carl
5 Whittiker, of Dominion Nuclear Connecticut.

6 CHAIRMAN BECHHOEFER: NRC staff,
7 Ms. Hodgdon?

8 MS. HODGDON: I'm Ann Hodgdon for the NRC
9 staff, NRC staff counsel, and with me, to my left
10 today -- you can't hear me? With me, to my left
11 today, is Sara Brock, who is co-counsel. She joined
12 OGC in August of 2001 as an underlaw graduate in our
13 underlaw graduate program, and she has just, it's a
14 rotational program. She just joined our office early
15 in March of, just a month ago.

16 And also with me today is, on my right, is
17 Victor Nerses, you may remember as the project manager
18 for Millstone Unit 3 and NRR, and to Ms. Brock's left
19 is Antone C. Sirney, who is the resident inspector,
20 senior resident inspector at Millstone Unit 3, and
21 he's also previously filed affidavits in this matter
22 and was with us for the oral argument in June 2000.

23 Also with us, but not at counsel table, is
24 Martha Williams, who is in NMSS. She's a
25 statistician, and she is an NCNA inspector. She is

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1 the NCNA inspector who was a member, or one of the
2 members, of the team that conducted the special
3 inspection at Millstone Unit 1 in October of 2001 of
4 the FRAP and the root cause assessment.

5 I think that's everybody. I don't think
6 I've missed anybody. I think that's everybody.

7 CHAIRMAN BECHHOEFER: Was she part of the
8 OI investigation?

9 MS. HODGDON: No. She was the special
10 inspection team.

11 CHAIRMAN BECHHOEFER: Oh, okay.

12 MS. HODGDON: She is an NCNA inspector.
13 She's one of the authors of the inspection report. I
14 think all of us have relied, for some reason or
15 another, on that report that was published on February
16 26th and forwarded to the licensee on February 27th of
17 this year.

18 CHAIRMAN BECHHOEFER: Ms. Burton?

19 MS. BURTON: Yes. Good morning. I'm
20 Nancy Burton. I'm representing the intervenors here,
21 the Connecticut Coalition against Millstone and the
22 Long Island against Millstone, and present today is
23 Mr. Joseph Besade. He is the secretary of the
24 Connecticut Coalition against Millstone, and he has
25 also provided a declaration in this matter.

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1 I just wanted to note for the record that
2 I seem to be sitting closest to a recreational area
3 here at this hotel which seems to be a swimming pool
4 in which some gaiety is occurring, and I would just
5 like to note that it, at a certain point, seemed to
6 have almost reached a point of criticality of noise,
7 but it was cheerful noise, and I will do my best to
8 try to filter out that sound as we proceed.

9 Thank you.

10 CHAIRMAN BECHHOEFER: Mr. Besade, would
11 you like to identify yourself for the record since
12 you're not sitting at the table?

13 MR. BESADE: Joseph Besade, Connecticut
14 Coalition against Millstone, whistleblower at
15 Millstone, licensed master plumber and steamfitter.
16 I've been around for 40 years in the Town of
17 Waterford. I've watched the plants come up through.
18 Now I want to see them closed.

19 Thank you.

20 CHAIRMAN BECHHOEFER: Are there any
21 preliminary matters that any party wishes to raise
22 before we get into the substance of the presentations?

23 (No response.)

24 CHAIRMAN BECHHOEFER: Seeing none, I'd
25 turn to Ms. Burton. You're first. We've allocated

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1 approximately an hour for the intervenors, followed by
2 Dominion Nuclear, an hour, and then an hour for the
3 staff, which will probably be after lunch, and we'll
4 have rebuttal for more than an hour.

5 MS. BURTON: Perhaps I will be shorter
6 than one hour in my original--

7 CHAIRMAN BECHHOEFER: Oh, that's
8 permissible--

9 MS. BURTON: --my initial, but I just
10 wonder if it might be possible to reserve some of that
11 time, given the schedule that you have outlined, if it
12 seems appropriate for the rebuttal.

13 CHAIRMAN BECHHOEFER: Well, do you think
14 you'll need more than an hour? We've already
15 allocated you an hour for rebuttal.

16 MS. BURTON: Well, I think I'd be more
17 comfortable giving up some of the initial time if I
18 could potentially reserve some of it for later.

19 CHAIRMAN BECHHOEFER: We don't have a
20 problem with that.

21 MS. BURTON: Thank you.

22 CHAIRMAN BECHHOEFER: But you're welcome
23 to start.

24 MS. BURTON: Okay. Yes, thank you. Yes.
25 Good morning again. Nancy Burton representing the

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1 petitioning intervenors here in these proceedings at
2 which we are requesting a full evidentiary hearing on
3 the issues that pertain to the contention that the
4 Board, one of the contentions that the Board accepted
5 in the earlier proceedings, that concerns the
6 application of administrative controls with respect to
7 controlling criticality in the spent fuel pools at the
8 Millstone Nuclear Power Station, and we are addressed
9 to all of those pools because they have an interface
10 and an interconnection here.

11 There is a substantial dispute as to
12 material facts which can only be resolved
13 appropriately through a full evidentiary hearing, and
14 we are, therefore, entitled to that opportunity.

15 We have, essentially, three questions that
16 we raise at this stage of the proceedings, and the
17 questions are as follows:

18 The first one is this. The question is,
19 When does the energy level taken to create a paper
20 mountain in these proceedings equal the energy that is
21 being given off and will be in the future from two
22 missing high level radio active spent fuel rods, and
23 is there a point when that energy level will be equal
24 to the energy being emitted by those spent fuel rods,
25 and is there a point under law that will make it all

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1 right at that point, if the rods are never found?
2 That's the first question for these proceedings.

3 The second question is, of course, Where
4 are the rods? And perhaps there will be an answer to
5 that, and we will know, before today's proceeding is
6 out, where the rods are.

7 And the third question is, Why wasn't the
8 fact of the missing rods disclosed during the earlier
9 portion of these proceedings when we went through a
10 rather intensive time limited discovery process, and
11 we, specifically, asked for all information at the
12 entire station concerning failures of controls over
13 movement of spent fuel at the Millstone Station?

14 MR. KELBER: Excuse me. Is that a direct
15 quotation from your interrogatory? I do not have your
16 interrogatory.

17 MS. BURTON: No, it is not, Dr.--

18 MR. KELBER: Well, do you--

19 MS. BURTON: --Kelber--

20 MR. KELBER: --have the exact quotation?

21 MS. BURTON: Right in front of me, at this
22 moment, no, I do not, but it is, certainly, part of
23 the voluminous record--

24 MR. KELBER: Yes, no, we'll find it--

25 MS. BURTON: --of the proceedings, but we

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1 did ask that question, and just to go back to that for
2 a moment because that aspect is, thank you, critical
3 here because we are here under proceedings which are
4 very limited and constrained by the regulations in 10
5 CFR, but when we went through that process, we did,
6 specifically, ask the licensee to produce all records
7 and all incidents of fuel errors in movement, and we
8 received, in response, from the licensee, if I recall
9 correctly, eleven specific episodes of fuel errors in
10 response to that request, and none of those errors
11 related in any way to this extraordinary error of the
12 failure of the licensee to account for high level
13 radioactive spent fuel at this facility for a period
14 of several decades, during which we had understood the
15 licensee was under close scrutiny and monitoring by
16 various agencies, including, of course, the United
17 States Nuclear Regulatory Commission.

18 CHAIRMAN BECHHOEFER: Ms. Burton, of
19 course, at the time of your interrogatory, at least as
20 far as we know, they had no, the Dominion or NNECO,
21 had no knowledge of the missing rods, so is your, are
22 you really saying that when the obtained such
23 knowledge or suspicion, perhaps as early as, according
24 to affidavits before us now, September, I guess, in
25 2000, they should have reported it at that time; is

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1 that what you're claiming?

2 MS. BURTON: I believe that the rules of
3 discovery in administrative proceedings, and those
4 rules are not, of course, confined to proceedings
5 before this Board, they are, they have application to
6 all administrative proceedings, do provide that if
7 information becomes known to a party who is under a
8 valid discovery request, and such information is
9 material to the proceedings and could affect the
10 outcome, that there is a burden on the part of that
11 party to come forward to disclose the information
12 during a proceeding.

13 Now, we know, in hindsight, that this body
14 has determined that the information of the missing
15 fuel rods did rise, in its view, to the level of
16 materiality in these proceedings. That is why we are
17 here today, because the Board determined to reopen the
18 proceedings on this issue.

19 Therefore, it seems very clear that when
20 the licensee and/or the staff first became aware that
21 this was an issue, and we know from this voluminous
22 record that this had become an issue, and they were
23 well aware of it, while the proceedings were going on,
24 prior to the Board's decision, if I'm not mistaken, in
25 October--

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1 CHAIRMAN BECHHOEFER: October 26th, to be
2 precise.

3 MS. BURTON: October 26th, yes, and
4 neither the licensee, nor the staff, came forward to
5 alert this Board or the intervenors as to that
6 material issue.

7 So, yes, what I am saying is there was a
8 burden, and it is a continuing burden, as long as
9 these proceedings are underway at this level, for the
10 licensee to come forward and to supplement its
11 discovery responses to provide the information that we
12 requested.

13 Now, of course, I am addressing this issue
14 in the context of what occurred in the earlier
15 discovery proceedings, and most particularly, that
16 involved the questioning of Mr. Michael Jensen, who I
17 understand is not here today. He was deposed.

18 He was selected as a deponent because he
19 filed an affidavit in which he indicated he was
20 authoritative on the issue of fuel movement at
21 Millstone, and, in fact, as I recall, it was over his
22 affidavit that there was a disclosure in the earlier
23 proceedings of eleven fuel errors. He was questioned
24 about those in the earlier proceedings, and in those
25 proceedings, of course, we have submitted to you the

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1 full transcript of his deposition.

2 He had been selected by the licensee to
3 provide authoritatively the full scope of facts known
4 to the company at that time with respect to fuel
5 failures and errors and administrative controls with
6 respect to fuel, and he did not disclose it.

7 He did not supplement his disclosure
8 later, and that was a clear mistake, and, clearly,
9 under the rules of administrative practice, we believe
10 that the time is not too late for a full disclosure to
11 be made, as well as -- for a full disclosure to be
12 made.

13 So, having said that, if I answered your
14 question --

15 (Pause.)

16 MS. BURTON: On the, addressing the second
17 question that I formulated, as far as where are the
18 missing rods, in the event that potentially we don't
19 have an answer to that today, I think that that will
20 be very telling in terms of the culture at Millstone
21 which is, of course, the underlying issue in our
22 Contention 4 as to, as the Board Chairman has put it,
23 the commitment of the licensee to administer, to carry
24 out administrative controls and procedures at the
25 Millstone Station.

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1 Now, we know that there has been a passage
2 of authority from the Northeast Nuclear Energy Company
3 to the Dominion Nuclear Connecticut, Inc., an entity
4 that was created after another company was a winning
5 bidder in the recent sale of the company.

6 We know that there has been a significant
7 transition in the intervening time from leadership
8 positions of the licensee, and we know from what has
9 been disclosed in this discovery process that there is
10 a continuing failure to face the facts and be
11 accountable to the NRC, to the public and to the
12 intervenors in these proceedings that has to do with
13 the entire course as, as it has followed its way
14 through in these proceedings in which we have now
15 learned that there was awareness of these missing rods
16 for quite a period of time while these proceedings
17 were underway.

18 And there was a failure during the very
19 period that there was a proposal to transfer ownership
20 and operation of Millstone from Northeast Nuclear
21 Energy Company to Dominion when this information
22 should have been reported to the U.S. Nuclear
23 Regulatory Commission.

24 Now, my understanding of the present
25 status is that the NRC is considering what to do, if

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1 anything, about this late disclosure which is,
2 apparently, not contested. That has been clear
3 violation of law.

4 There is no question but that, in the view
5 of the intervenors, there was a delay in reporting the
6 proceedings for reasons not related to protection of
7 the public health and safety, but other reasons,
8 reasons which we believe relate to the culture at
9 Millstone and its continuing inability and disinterest
10 to put public health and safety first, and therefore
11 -- and thereby, follow the laws that we have, which
12 may not be as adequate to the task as they could be,
13 but nevertheless, to follow the laws, the regulations
14 and the procedures that have been adopted in order to
15 protect the public health and safety.

16 It seems that these very proceedings have
17 highlighted the continuing failure, not just of the
18 licensee, but the -- the predecessor licensee, but the
19 current licensee, and that gives rise to concern about
20 the present culture at the Millstone Nuclear Power
21 Station.

22 Now, we know that the plant is trying to
23 establish records of longevity of operation such that
24 it may highlight to the public some sense that things
25 are all well and good at Millstone because the plant

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1 is able to operate for a long period of time without
2 shutting down.

3 Well, we have submitted to these
4 proceedings evidence that suggests, once again, that
5 this pattern of conduct of running these plants to try
6 to achieve records and to try to achieve headlines
7 giving the public the impression that all's well are
8 very misleading and very dangerous.

9 CHAIRMAN BECHHOEFER: Ms. Burton, let me
10 just pinpoint your claims at this point. The
11 affidavit of Mr. Meekhoff, who I guess is here today,
12 but be that as it may, states that on or about, I'm
13 reading this from Page 6 of his affidavit that's filed
14 currently, Page 6, Paragraph 17, he states that on or
15 about September 12, 2000, a visual inspection was made
16 of the northwest corner of the spent fuel pool and of
17 the top fuel burn hole MS-557 with an underwater
18 camera.

19 Although the two fuel rods were not found,
20 the results of this inspection were not sufficiently
21 conclusive to any degree that rods were still in the
22 Unit 1 spent fuel pool.

23 Do you think that that particular judgment
24 is incorrect and that, at least as of September 12th,
25 the company should have made some sort of a report

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1 either to the NRC, and I'm not sure about whether
2 their LER requirements were satisfied or not, but they
3 did submit an LER eventually, but to this Board which
4 was in session at the time; do you think a report of
5 that sort should have been made at that time,
6 September 12th? That's the date we have. That's the
7 only specific date, I think, we have.

8 MS. BURTON: This was September 12, 2000?

9 CHAIRMAN BECHHOEFER: Two thousand.

10 MS. BURTON: Right.

11 CHAIRMAN BECHHOEFER: Yes.

12 MS. BURTON: Well, as I recall the--

13 CHAIRMAN BECHHOEFER: I'm just reading it
14 from the affidavit.

15 MS. BURTON: Yes.

16 CHAIRMAN BECHHOEFER: Now, we don't know
17 whether there was prior knowledge or not, but--

18 MS. BURTON: Well, clearly, there is a
19 conflict in these proceedings involving the
20 observations that have been made visually and by
21 camera in the Unit 1 spent fuel pool, and the
22 intervenors were led to understand, by Mr. Jensen,
23 when he was deposed, and, again, his deposition is
24 part of these -- the transcript is in these
25 proceedings.

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1 We were led to believe by him that he had,
2 in fact, been in charge of a visual and video
3 inspection of the spent fuel pool at Unit 1, and he
4 was, therefore, in a position to pronounce at that
5 time that there was nothing about that visual
6 inspection that would have given rise to any
7 information that should have been presented in
8 discovery that was not.

9 I think that we have some potentially
10 conflicting facts here, and they have to do with the
11 ability of the company to, even at this stage, in the
12 year 2002, perform an investigation of its own
13 facility.

14 This is a facility, the spent fuel pool at
15 Unit 1, that we understand has potential to cause
16 great harm to this community, and we would think that
17 this licensee and its predecessor would have the
18 ability, after all these millions of dollars have been
19 spent, all these plateaus of paper have been created,
20 all this effort has been put into addressing this
21 issue, and, yet, it can't tell us today that it's able
22 to inspect its own spent fuel pool to the degree that
23 it can tell us one way or another if there's a missing
24 spent fuel rod in it. We find this almost
25 unbelievable.

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1 MR. KELBER: Ms. Burton, I think I
2 understand what you're saying here, but I don't know
3 that you've answered Mr. Bechhoefer's question.

4 I think that the question was related to
5 the exercise of judgment on September 12th of the year
6 2000 that it was not necessary simply because they had
7 not been able to find, to find the missing pins in the
8 fuel assembly box that was assigned, that was
9 supposedly assigned, and at that point, it was not
10 necessary to go to 5-4.

11 Now, that was, now the question is whether
12 that was, I think Mr. Bechhoefer is asking you whether
13 the judgment that was made then was correct.

14 MS. BURTON: Not to report it?

15 CHAIRMAN BECHHOEFER: Not to report it,
16 yes.

17 MS. BURTON: Yes. Well, we believe that
18 we are in an area of disputed fact where we are
19 entitled to have a full evidentiary hearing because
20 that, a decision not to report that can't be isolated
21 from all other laws, the rules, the standards, the
22 policies and the regulations that govern keeping
23 accountability of spent fuel pool, maintaining
24 accountability and being sure that there's a context
25 whereby a level of confidence can be achieved that

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1 things don't reach the level of what they did on
2 September 12, 2001, such that there was a, there might
3 have been any factual vacuum or unawareness that there
4 was, there had been a failure of accountability with
5 the rods.

6 MR. KELBER: In other words, the, your,
7 are you, is it your statement that as soon as they
8 noted some discrepancy, no matter what it was, they
9 should have told us?

10 MS. BURTON: I don't believe that was my
11 statement, but if you could perhaps refine that
12 question a bit.

13 MR. KELBER: Well, what we're still trying
14 to get to is, is, is Mr. Bechhoefer's question.
15 Should they, on September 12th, having failed to
16 identify any, the pins that were supposedly in that,
17 that box, have notified the Board?

18 MS. BURTON: I'm sorry. Was it Judge
19 Bechhoefer's question to notify the Board--

20 MR. KELBER: Yes--

21 MS. BURTON: --or notify the NRC? I
22 thought it was the NRC.

23 MR. KELBER: The Board.

24 CHAIRMAN BECHHOEFER: Mine was the Board.

25 MS. BURTON: Pardon me.

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1 CHAIRMAN BECHHOEFER: Mine was the Board.

2 MS. BURTON: I see.

3 MR. KELBER: Should they, at that point,
4 on September 12th, have notified the Board?

5 MS. BURTON: I believe that, at that point
6 they should have, certainly, notified the intervenors
7 in this proceeding because--

8 MR. KELBER: Well, I hope they would
9 notify the Board, too.

10 MS. BURTON: Well, they would notify the
11 Board indirectly through the petitioners because, at
12 that point, at least, by that point, they would have
13 put the intervenors on notice that their earlier
14 discovery information was incomplete and potentially
15 inaccurate, and potentially, at that point, the
16 proceedings should have been reopened so that there
17 could have been a further development of discovery
18 pertaining to what clearly would be a major issue in
19 the proceedings.

20 MR. KELBER: Now, this was, this was the
21 day, September 12th, when they, on a vis -- using a
22 camera, a standard technique, they couldn't find the
23 pins.

24 Now, let me give you a similar
25 circumstance that happened in my household a few weeks

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1 ago when my wife complained that using her -- on
2 visual inspection, she could not find a favorite pair
3 of black slacks. Should I, at that time, have called
4 the police? We did find those slacks, by the way, but
5 it took us some time. But isn't there a question of
6 judgment here?

7 MS. BURTON: I'm struggling to relate your
8 wife's slacks to missing a spent fuel rod.

9 MR. KELBER: Well, let me put it this way.
10 I have been in the business, and sometimes, and I have
11 been in the household for some time, too, and
12 sometimes an initial circumstances does not lead to a
13 conclusion that you have, for example, drawn that
14 there has been a violation.

15 MS. BURTON: Well--

16 MR. KELBER: The fact that, the fact that
17 the slacks were missing was not an indication that
18 they had been stolen. The fact that the pins located
19 at that time may not, in the individual's judgment,
20 and I'm using that word carefully, have been an
21 indication that they were lost.

22 MS. BURTON: We were led to believe,
23 through Mr. Jensen's testimony, that there had been
24 adequate video and other analysis of what was present
25 in the spent fuel pool, if I'm not--

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1 MR. KELBER: Well, what about my
2 question--

3 MS. BURTON: --mistaken, months before--

4 MR. KELBER: Well, answer my question of,
5 Should they, on the afternoon of September 12th, have
6 notified the Board and other parties?

7 MS. BURTON: I don't believe there's any
8 question of that.

9 MR. KELBER: Okay.

10 MS. BURTON: Given the context--

11 MR. KELBER: That's fine. All I wanted to
12 get from you was whether that is your belief.

13 MS. BURTON: Given the context.

14 MR. KELBER: Okay.

15 MS. BURTON: That can't be taken out of
16 context.

17 MR. KELBER: All right, all right.

18 CHAIRMAN BECHHOEFER: Ms. Burton, let me
19 follow up. There is an NRC decision that's, I
20 believe, on point which says that, at least, the
21 Board, maybe not the NRC staff, maybe a formal report
22 wasn't required, I don't know, I won't say, but
23 there's a decision some time ago, it's not a recent
24 decision, September 6, 1973, it's ALAB-143, and it's
25 in the matter of McGuire which I'm sure various

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1 parties here are familiar with.

2 I have copies of the decision, but not
3 enough to pass around to everybody. It's, let me see
4 if I can --

5 (Pause.)

6 CHAIRMAN BECHHOEFER: Let me just give you
7 the citation.

8 MR. KELBER: Well, while Judge Bechhoefer
9 is doing that, let me read some words that are in some
10 of the material we've prepared on this.

11 It says, "Before submitting information to
12 the Board, pursuant to its notification obligations,
13 a licensee or applicant is entitled to a reasonable
14 period of time for internal review of the documents
15 under consideration wherever an obvious exception
16 exists for information that could have an immediate
17 effect on matters currently being pursued at hearing
18 or that disclose possible serious safety or
19 environmental problems requiring immediate attention."

20 So there is some question of judgment here
21 as to whether or not information could have an
22 immediate effect or that it has possible serious or
23 safety or environmental problems arising from it, and
24 your judgment, your conclusion is based on the idea
25 that it does have an immediate effect; is that

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1 correct?

2 MS. BURTON: I'm sorry. That what has an
3 immediate effect?

4 MR. KELBER: The suspicion that the rods
5 might be missing has an immediate effect on the
6 matters currently being discussed by the Board at that
7 time.

8 MS. BURTON: Could you, Doctor, you're so
9 sensitive to the English language, I know, if you
10 wouldn't mind refining that question?

11 MR. KELBER: Is it your statement that the
12 observation that the fuel pins could not be located
13 was such that it could have had an immediate effect on
14 the matters that were under consideration by the Board
15 at that time?

16 MS. BURTON: That would seem to be fairly
17 self-evident.

18 MR. KELBER: That's your statement, that's
19 your position?

20 MS. BURTON: Yes.

21 MR. KELBER: Thank you.

22 CHAIRMAN BECHHOEFER: Let me read you from
23 the same document, one paragraph earlier. This
24 document, by the way, which I prepared by xeroxing a
25 staff digest to relevant cases, a recent version of it

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1 which was issued in January, I believe, and that's
2 what this comes from. I have copies; however, I don't
3 have enough for everybody.

4 But it says, "If a licensee or applicant
5 has a reasonable doubt concerning the materiality of
6 information in relation to its Board notification
7 obligations or duties, under Section 186 of the Atomic
8 Energy Act, the information should be disclosed for
9 the Board to decide its true worth."

10 That appears in, well, that, that's from a Three Mile
11 Island Decision based on the McGuire Decision that I
12 just read. By the way, the citation to McGuire is 680
13 C, no, sorry, yes, 680 C 623. That was that 1973
14 decision.

15 (Pause.)

16 MR. KELBER: Judge Bechhoefer has the
17 material available for the parties' inspection. We
18 don't have enough copies to circulate--

19 CHAIRMAN BECHHOEFER: For everybody--

20 MR. KELBER: --for everybody.

21 MS. BURTON: Perhaps, might I suggest that
22 we perhaps see if this facility could run off some
23 copies for us, if we might, if we recess at some
24 point?

25 MR. KELBER: Why don't we pursue that at

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1 the break?

2 MS. BURTON: Thank you.

3 (Pause.)

4 CHAIRMAN BECHHOEFER: You may proceed with
5 the remaining, you know, the rest of your
6 presentation.

7 MS. BURTON: Yes. I'm just wondering, how
8 are we doing for time?

9 CHAIRMAN BECHHOEFER: Well, it's about--

10 MR. COLE: You've used less than a half an
11 hour.

12 MS. BURTON: Okay. I'd like to address
13 the point that Judge Bechhoefer has been raising
14 concerning the immediate effect and the materiality of
15 information because what makes these proceedings so
16 extraordinary is that they involve the failure to
17 account for highly radioactive special nuclear
18 material, and, of course, that takes on all kinds of
19 significance and has since recent tragic events in our
20 nation.

21 And we know that, and, in fact, the NRC
22 Chairman, himself, Mr. Meserve is aware of, and there
23 have been many, many comments about the fact that
24 there has, at Millstone and elsewhere, been a loss of
25 the ability to maintain accountability of nuclear

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1 materials, and that has become ever more serious,
2 certainly, in the public's mind since these
3 proceedings began a couple of years ago.

4 We understand that the missing rods do
5 contain plutonium, they contain uranium 235, and these
6 are materials that can be diverted to bad purposes by
7 people who are out to do harm.

8 So, with respect to immediate effect and
9 materiality, we believe that, in these proceedings,
10 this body should consider very, very closely this
11 business of the failure of the licensee to come
12 forward forthrightly with the information that we were
13 entitled to obtain through discovery at the first, at
14 the first opportunity.

15 And, certainly, the fact that there were
16 later investigations of the pool after we had received
17 this communication from Mr. Jensen as to his belief
18 that all was well at that time at Unit 1's spent fuel
19 pool, I think, really, the Board is best advised to
20 consider that issue here as its primary issue and the
21 related issues giving rise to the need for an
22 evidentiary hearing on disputed facts.

23 Clearly, the issue of the culture at
24 Millstone is the pervasive issue. The Board
25 recognized Millstone's history of failure to maintain

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1 its accountability and adherence to administrative
2 controls in considering the contentions that we
3 presented and in rendering the decision that it did in
4 October of 2000; however, the Board's confidence in
5 the licensee's ability to do so, we believe, should
6 have been, if, in fact, it has not been, shaken by the
7 disclosures as to the licensee's failure to account
8 for its missing fuel.

9 We need to keep in mind that this
10 information came out late, that is, to the public
11 during the period of time that a transfer was being
12 contemplated between the predecessor licensee and
13 Dominion, and I know that an effort will be made here
14 and has been, and will in the future, to suggest to
15 this Board that the plague of poor culture that
16 Northeast Utilities harbored for so many years at
17 Millstone went away when another company came in and
18 took over, but we know from the way these facts have
19 been developed and the present posture of the present
20 licensee that there really is no reason for this Board
21 to have the confidence that it indicated that it had
22 when it rendered its decision in October of 2000.

23 We are amazed that, in fact, the present
24 licensee would even take the step of formally asking
25 the U.S. Nuclear Regulatory Commission to rewrite the

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1 history of Millstone by taking out the word "nuclear"
2 from historical nuclear licensing documents.

3 We have referenced that in Mr. Besade's
4 affidavit. I'm not sure if the NRC has fallen for
5 this one yet, but as you're aware, Dominion Nuclear
6 Connecticut, Inc., has petitioned the NRC to remove
7 "nuclear" from the name, the Millstone Nuclear Power
8 Station, and beyond that, to go back to basic legal
9 licensing documents and take out the word "nuclear."

10 I bring this up because I think it
11 pertains to these proceedings and the culture that the
12 present owner seeks to foster at this facility. If
13 this facility does not want to look nuclear in the
14 face, then how is it going to be expected to foster a,
15 an environment where workers will believe it's
16 necessary to keep public health and safety related to
17 nuclear issues at the forefront?

18 It seems to be so symptomatic of the poor
19 safety culture that developed, the safety culture that
20 eroded so seriously at Millstone, to the extent that
21 the entire station had to be shut down for two years,
22 and one of these reactors never even got up again
23 after that. That was Unit 1.

24 It seems extraordinary that this company
25 should take that position now and try to consign away

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1 to the dust bin of history that word "nuclear."

2 The present company needs to face up to
3 these issues, but was part, we believe, of this effort
4 to keep the public unaware, and the NRC unaware, and
5 the petitioners here unaware, of the serious issue of
6 the missing rods.

7 CHAIRMAN BECHHOEFER: Ms. Burton, would
8 your arguments here be influenced, in part, by the
9 fact that Dominion appears to be using the same people
10 as worked for NNECO in the past?

11 MS. BURTON: Well, I'm not so sure that
12 that is correct.

13 CHAIRMAN BECHHOEFER: Well, some--

14 MS. BURTON: What I do recall--

15 CHAIRMAN BECHHOEFER: --some of them
16 appear to be the same.

17 MS. BURTON: I'm sure that's true.

18 CHAIRMAN BECHHOEFER: Right.

19 MS. BURTON: And it appears to be true
20 that there are people who still work for, who still
21 work at Millstone for the successor purchaser, such as
22 Mr. Jensen, and I'm not trying to isolate Mr. Jensen
23 here, but we did get to know him a bit during his
24 deposition, and we did get to know him because he was
25 the individual the predecessor company put forward as

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1 being authoritative.

2 In fact, it may be that that is part of
3 the problem, that the people associated with this
4 historical failure, with the failure which the NRC has
5 found to report the missing rods timely, that the same
6 people who have been part of that are the same people
7 who were there before, so that really doesn't give us
8 confidence.

9 We also know that there are other people
10 who were in high positions at Millstone when we first
11 began this proceedings. It was suggested, as I
12 recall, in these proceedings that there would be a
13 continuation, there would be continuity, of such
14 people, but we know that certain high level people
15 aren't there anymore, such as a Mr. Mike Brothers. I
16 believe that he was a, in a high position at Millstone
17 at the outset of these proceedings, and he has left,
18 and I think he left just before the auctioning process
19 that involved the transfer of this company to Dominion
20 Nuclear Connecticut, Inc.

21 We know, for instance, that the chief
22 nuclear operating officer, and I probably have his
23 title not exactly correct, but Mr. Olivier, Lee
24 Olivier, I believe that he occupied the top nuclear
25 position at Millstone when these proceedings began,

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1 and he's not there anymore. He's been replaced by
2 somebody else.

3 I'm not exactly sure what that means in
4 terms of these proceedings, but you're hearing it both
5 ways. You're hearing, both, that the responsible
6 people from the predecessor company are still there,
7 so they will make sure that things are, that there's
8 continuity, but at the same time, we're finding out
9 that people who were at the company before and are
10 there now may well have been part of the problem.

11 So, I don't believe that this Board should
12 make any particular findings as to that, and, in fact,
13 this issue, itself, presents an issue that I think can
14 only be fully and fairly aired through a full
15 evidentiary proceedings.

16 For instance, information about people who
17 were involved in the whole process of discovering, and
18 I'll put that in quotes, that there were missing spent
19 fuel rods, the whole decision making process that
20 involved not telling anybody about it right away, the
21 process that involved those who told people not to
22 tell about it, knowing that there are certain legal
23 requirements that very clearly set forth parameters
24 during which this must happen, I think that that is an
25 issue that should be fully explored at an evidentiary

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1 hearing because it goes to the issue of the ability
2 and willingness of the present owner and operator of
3 Millstone to follow administrative procedures which
4 have to be precise in order to avoid criticality in
5 the spent fuel pools.

6 And to suggest that if there are people
7 there who are in positions of authority, and there are
8 people who, at Millstone, are subject to that
9 authority, and in the past, in this very area, have
10 been circumscribed, for whatever reason, from coming
11 forward to doing what they are required to do under
12 law, then I think that that information which could be
13 developed only at an evidentiary proceeding would lead
14 this Board to have to conclude, under the facts and
15 circumstances, that this license amendment should not
16 be granted because this licensee cannot be accorded
17 the level of confidence that is required to allow a
18 substitution of additional complex administrative
19 controls for physical controls and barriers to guard
20 against criticality of the spent fuel pools.

21 So, I think that we are in this are of
22 human issues in a critical area in terms of this
23 Board's responsibilities in this proceeding, and I
24 don't believe that either the licensee or the staff
25 has provided this body, in any of this, with

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1 information that suggests that the people who were
2 involved before in what could be, and probably was,
3 violation of law, that those same people have been in
4 any way put on notice that they shouldn't continue to
5 carry out that kind of conduct in the future.

6 CHAIRMAN BECHHOEFER: Ms. Burton, I've
7 heard the question now, different, somewhat different,
8 topic. Does the circumstance that Dominion is now
9 using two separate programs to keep track of fuel
10 rods, fuel bundles, one, a paper system and the other
11 a--

12 MR. COLE: Computerized--

13 CHAIRMAN BECHHOEFER: --computerized
14 system, instead of the fact they only had a paper
15 system for Millstone 1, this is my understanding now,
16 does that make a difference, the fact that they now
17 have a computerized program supplementing the paper
18 program or in addition to the paper program?

19 MS. BURTON: Well, what I think we need to
20 understand is, Does Dominion consider this fuel to be
21 nuclear fuel?

22 CHAIRMAN BECHHOEFER: I don't know.

23 MS. BURTON: Well, the body here, the
24 Board, may make that assumption, but we're having a
25 hard time understanding how this new company regards

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1 its role at this plant, if it's just a plant, and it's
2 not a nuclear plant, and we understand that there may
3 be new computer technology or old computer technology
4 that was not implemented before, but until the company
5 is in a position to recognize, which it, apparently,
6 is not today, that it operates a nuclear power plant,
7 they can set up any computer system in the world, and
8 that isn't going to satisfy what this body needs to
9 have the company provide to it to satisfy it that it
10 is committed to nuclear health and safety.

11 CHAIRMAN BECHHOEFER: Well, I can assure
12 you--

13 MS. BURTON: And not simply keeping
14 computer records in some room at some location at the
15 facility.

16 CHAIRMAN BECHHOEFER: Well, I can assure
17 you though that if they remove the title "nuclear"
18 from the title of their plant, they're still going to
19 be bound by the rules applicable to nuclear
20 facilities.

21 MS. BURTON: Well, I think the company has
22 been bound to those rules for a long time.

23 CHAIRMAN BECHHOEFER: That's correct.

24 MS. BURTON: And they haven't followed
25 them all the time, and I think that's why we're here.

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1 CHAIRMAN BECHHOEFER: I'm just trying to
2 say the name change won't affect their, their--

3 MR. COLE: Obligations--

4 CHAIRMAN BECHHOEFER: --obligations,
5 right, under NRC regulations.

6 MS. BURTON: Well, we're not so sure about
7 that because we think that if, at Millstone, if you're
8 a worker at Millstone, and you used to say that you
9 worked at the Millstone Nuclear Power Station, but you
10 can't say that anymore, you only work at the Millstone
11 Power Station, then I think we need to recognize that
12 there's something going on here that may be somewhat
13 subtle and may, in some way, interfere with the
14 ability and willingness of the, of the good folks at
15 Millstone who are out there trying to protect our
16 health and safety because that name change business
17 really, I believe, has potential to have a chilling
18 effect on the workers who are there.

19 And the computer technicians, they say in
20 their computer Millstone Power Plant, and not
21 Millstone Nuclear Power Plant, and if that's what it
22 says, they may approach that computer in a different
23 way than they would if they knew they were sitting at
24 a computer and the burden of health and safety is on
25 them because this is a nuclear power plant.

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1 It's different from any other plant, so I
2 don't think that we can so easily separate out and not
3 pay attention to this maneuver on the part of Dominion
4 to take "nuclear" out of the name of Millstone.

5 But in answer to your question about
6 adding a, adding some, a new computer system, that's
7 all very nice, but I don't think that that eliminates
8 the issues before the Board.

9 CHAIRMAN BECHHOEFER: You may continue.

10 MS. BURTON: But just--

11 CHAIRMAN BECHHOEFER: You're not going to
12 be able to reserve much time because you've only got
13 ten more minutes.

14 MS. BURTON: Okay. Well, I just on that
15 computer system, we do know that in that remarkable
16 refueling outage, I think it was six at Unit 3, there
17 was, of course, heavy reliance on a computer system,
18 as I recall, and that computer system proved to be
19 extraordinarily unreliable.

20 It kept breaking down. It kept
21 interfering in the entire process of the refueling
22 outage. The engine, it was driving engineers crazy.
23 It was driving them nuts, and they were making
24 comments in their logs such that the computer system
25 had lost its brains.

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1 The computer was driving the failure of
2 the refueling outage to proceed in a safe way. I
3 think there were no fewer than six breakdowns of that
4 system, so it's all very well to try to substitute
5 proper physical barriers to control and prevent
6 spontaneous criticality in the spent fuel pools, but
7 computers alone won't do that.

8 Fundamentally, what you need are people
9 who are committed to carrying out the law and doing
10 what has to be done precisely in accordance with
11 administrative procedures, and there we are again back
12 at the old bugaboo of making the job harder for the
13 workers to do because you're making their requirements
14 more complex, and in a way, it almost seems to be a
15 mistake for the company to come up with this new
16 system of having computer duplicates rather than
17 perhaps focus on what it can do to achieve what needs
18 to be achieved in terms of training and addressing the
19 human issues in the spent fuel pool activities.

20 So, at this point, if the Board--

21 CHAIRMAN BECHHOEFER: Well, I'd like to
22 just follow up. How do you relate the Unit 2 LER that
23 you've relied on to -- within the scope of your case?

24 MS. BURTON: Yes. This LER which concerns
25 the "discovery" at Millstone Unit 2 on October 22,

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1 2001, as to a very, what seems to us to be a
2 potentially very serious problem, historical problem,
3 involving potentially movement of fuel and refueling
4 activities, this LER relates very specifically to the
5 issues that we raise here for several reasons.

6 One, of course, Unit 2 can't be isolated
7 from Millstone. It's one of the three reactors. It's
8 part of the facility. The same people who are
9 responsible for Unit 2 are responsible for one, two
10 and three. That goes for the spent fuel pools.

11 We know that Unit 2 has had a lot of
12 problems and has a sketchy history, and we also know
13 that the predecessor company gave some serious
14 thought, when the plants were all shut down, beginning
15 in 1996, to whether it was in the realm of reason to
16 consider reopening Unit 2.

17 But this disclosure tells us that, not
18 that we're so surprised to hear it, but there have
19 been, for years, at that Unit 2 potentially very
20 safety related issues concerning fuel filtering, and
21 our reading of this tells us that, and this impacted
22 Southeastern Connecticut community, we have just be
23 very lucky so far that something didn't go wrong
24 because of the problem that has now been identified
25 that has been in existence historically for a very

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1 long time.

2 Now, we know that historical problems came
3 to light, hundreds of them, maybe thousands of them,
4 at Unit 1 and 2 and 3 during the period of time that
5 Millstone had to be closed after the Time Magazine
6 article came out in 1996, and even with that, this
7 wasn't found at that time.

8 This is a "new" discovery. We don't
9 underst -- we're having a hard time trying to
10 understand how this could just have been found out or
11 discovered now, and it has to do with the very issue
12 which is the issue before this Board, the ability and
13 commitment of the company to maintain administrative
14 control to guard against criticality in the spent fuel
15 pools. They haven't done that at Unit 2.

16 There is a problem, apparently,
17 historically, with inadequate engineering at
18 Millstone, and that's not just Unit 2, that's Unit 1
19 and Unit 3, all together. There have been very
20 serious issues related to engineering at Unit 1.
21 Engineering deficiencies are implicated in the failure
22 of the company to maintain control over its spent fuel
23 pool.

24 So, we believe that the, this LER, in
25 fact, let me quote from it, "The root cause for the

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1 failure to identify heavy load paths is inadequate
2 engineering work practices in the Millstone
3 Engineering Department in the area of programs.

4 Now, we understand that today it's the
5 same Engineering Department that still runs these
6 programs for the whole station, so, therefore, for
7 this body to have the level of confidence that it
8 expressed in its October 2000 decision, that level of
9 confidence should be undermined by learning about this
10 problem at Unit 2.

11 And on that point, if I'm not mistaken, I
12 think the present company has tried to capture some
13 headlines, again, by saying that they've run for a
14 record long period of time or they approached that or
15 whatever, without saying at all anything about this,
16 and this issue of the LER, clearly, was not going to
17 be addressed until the time came for Unit 2 to shut
18 down for refueling, which it recently did. That's a
19 problem.

20 Why was the company operating Unit 2 and
21 not shutting it down prior to the scheduled refueling
22 outage to deal with this?

23 Well, it's the same issue of the
24 unwillingness and inability of the licensee to put
25 health and safety first and to rely on physical

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1 barriers to protect the public from unapplied
2 criticality.

3 MR. KELBER: Ms. Burton--

4 MS. BURTON: Yes--

5 MR. KELBER: --it seems to me that you're
6 raising really an issue which, while it pertains to
7 the scope of this floor, actually goes well beyond it.

8 Have you considered approaching the
9 Commission with a case regarding the safety culture?
10 Because you're raising an issue, very serious issue,
11 which goes well beyond the scope of this Board.

12 CHAIRMAN BECHHOEFER: I don't think so.
13 I would disagree with you--

14 MR. KELBER: I mean, it bears on, it bears
15 on this case--

16 CHAIRMAN BECHHOEFER: Yes. Well--

17 MR. KELBER: --but it goes, it bears on a
18 lot of other activities, too.

19 MS. BURTON: Well, my answer is I think
20 I'm agreeing with Judge Bechhoefer that that really is
21 close to the heart of what these proceedings--

22 MR. KELBER: I don't argue that your case
23 goes to this issue, but does it go to other issues as
24 well?

25 MS. BURTON: It may very well. I'm sure

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1 it does. I mean, if you don't have a culture at this
2 nuclear power plant, maybe they can't even say
3 "nuclear" anymore. I don't know.

4 But if you have a culture that is not
5 appropriate to address Unit 2 spent fuel issues, then
6 you don't think should have confidence that it's a
7 culture that is appropriate for addressing any issues
8 at all, and that's very serious, and that's led to--

9 MR. KELBER: I agree--

10 MS. BURTON: --the plant being--

11 MR. KELBER: I agree with you that, that
12 if that is the case, it is very serious. That's why
13 I asked the question.

14 CHAIRMAN BECHHOEFER: There may be
15 something broader than--

16 MR. KELBER: Yes. I mean, in other words,
17 is there something broader than we can consider?

18 MS. BURTON: Well, I think what it does,
19 highlighting this does provide more fuel to the
20 argument that the intervenors are entitled to a full
21 evidentiary hearing here because this very serious
22 issue, if it's not addressed here, it may be harder to
23 address it elsewhere.

24 MR. KELBER: Okay.

25 MS. BURTON: I will--

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1 MR. KELBER: I see your point. You would
2 want to use an evidentiary hearing to lay a
3 foundation; is that the idea?

4 MS. BURTON: To lay a foundation?

5 MR. KELBER: For a more, for a broader
6 case.

7 MS. BURTON: I'm not sure I'm following
8 you.

9 MR. KELBER: Well, you've made a very
10 serious charge that the safety culture is, essentially
11 deficient, and, of course, that involves all the
12 activities of the plant, not just this spent fuel pool
13 at Unit 3.

14 Now, all we can decide upon is a specific
15 amendment with respect to operations at the spent fuel
16 pool at Unit 3, but you're making a charge which goes
17 well beyond that, and I was wondering the extent to
18 which you are pursuing that.

19 MS. BURTON: All I can say is that we are
20 pursuing issues which we believe are pertinent to
21 these proceedings. What may happen outside of these
22 proceedings I can only speculate about, but I would
23 agree with you that the issue is serious and should be
24 addressed. Beyond that, I don't know--

25 MR. KELBER: Well, no, what I was asking

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1 you is, are you planning to address them, and I think
2 the appropriate body would be with the Commission?

3 MS. BURTON: At this time, I'm really not
4 prepared to respond to that.

5 MR. KELBER: Thank you.

6 MS. BURTON: Thank you.

7 (Pause.)

8 MS. BURTON: At this time, I would like to
9 conclude my opening remarks.

10 CHAIRMAN BECHHOEFER: Okay.

11 MS. BURTON: Thank you.

12 CHAIRMAN BECHHOEFER: We'll take a break
13 now for maybe 15 minutes, and then we'll be back.

14 (Off the record from 10:55 a.m. until
15 11:14 a.m.)

16 CHAIRMAN BECHHOEFER: Back on the record.

17 I guess, Mr. Repka, it's your turn.

18 MR. REPKA: Yes. Thank you, Judge
19 Bechhoefer.

20 My objection this morning is to be
21 concise. Dominion Nuclear Connecticut--

22 CHAIRMAN BECHHOEFER: Well, you have an
23 hour--

24 MR. REPKA: Thank you. I may or may not
25 use it all.

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1 CHAIRMAN BECHHOEFER: Okay.

2 MR. REPKA: Dominion Nuclear Connecticut
3 has filed a substantial document on the issues that
4 are before the Board. It includes the affidavits with
5 the views of six experts, and we feel that the written
6 filings adequately summarize our position, adequately
7 address the issues before the Board, and other than
8 repeat those arguments here this morning, there's very
9 little I can add to the record.

10 Having said that, I do want to address and
11 highlight a few of the key points. In addition, I
12 want to respond to some of the issues raised by
13 Ms. Burton already this morning.

14 Before I do that, however, as an
15 administrative matter, I need to make a couple of
16 corrections in the filing that was made to make sure
17 the record is absolutely 100 percent clear and
18 correct.

19 First, in the affidavit of Mr. McKenney,
20 which is Tab A in our filing, Paragraph 11, Page 4,
21 second line, there's a reference to a procedure,
22 EN-31022. The correct reference for that procedure is
23 SP-31022.

24 MR. COLE: F what?

25 MR. REPKA: SP.

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1 MR. COLE: FP.

2 MR. REPKA: As in Sam Polo.

3 CHAIRMAN BECHHOEFER: Instead of EN, SP?

4 MR. REPKA: Correct, SP-31022. And I
5 believe that reference may appear a couple of places
6 in there. I have not highlighted them all, but
7 anywhere that reference appears, it should be SP, not
8 EN, in connection with 31022.

9 The other EN procedures are correctly EN procedures.

10 The second thing is in Paragraph 49 of
11 Mr. McKenney's affidavit, Page 17, fourth line. It
12 states that since Unit 3 began commercial operation,
13 Unit 3 procedures have defined an individual rod
14 removed from a fuel assembly as an item of SNM, and it
15 continues.

16 It should say that since approximately
17 1990, Unit -- instead of since it began commercial
18 operation, it should say since approximately 1990.
19 Unit 1 commercial -- Unit 3 commercial operation began
20 in 1986, approximately.

21 Those procedure changes in effect at that time do
22 predate any fuel rod movements or disassemblies at
23 Unit 3.

24 Then the last correction, which is really
25 the same correction, is in the expert panel affidavit,

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1 which is Tab 6, Paragraph 38, second line, Page 15.

2 CHAIRMAN BECHHOEFER: One second.

3 Thirty-eight?

4 MR. REPKA: Paragraph 38, Page 15.

5 CHAIRMAN BECHHOEFER: Okay.

6 MR. REPKA: Second sentence says, "This
7 began with the first Unit 3 SNM procedure issues in
8 1984." The correct statement is this began in
9 approximately 1990. Again, that procedure changes do
10 predate any fuel disassemblies at Unit 3.

11 With those corrections, and the Board's
12 forbearance, I'll continue with what I have to say.
13 The issue today before the Board is License Amendment
14 189. License Amendment 189 is a very specific license
15 amendment related to storage of spent fuel assemblies
16 at Unit 3.

17 It relates to increasing the storage of
18 assemblies by inserting new racks into the Unit 3
19 spent fuel pool, and it includes the use of defining
20 regions for storage based upon reactivity limits, and
21 there are specific administrative controls or
22 procedures attached to implementing those reactivity
23 limits.

24 We've provided a substantial record that
25 addresses exactly the question of whether the Unit 1

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1 issue has any bearing on either the increase in
2 storage capacity or the, more specifically, the
3 administrative controls involved in implementing
4 License Amendment 189, and the answer is that there is
5 no bearing.

6 There's no, there is no commonality
7 between the procedures that were involved in SNM
8 control at Unit 1 in the 1970s and 1980s and those
9 that are used to implement License Amendment 189.
10 Those statements, those conclusions, are based upon
11 the opinions of a number of experts. They're based
12 upon the conclusions of the fuel rod accountability
13 project.

14 They're based upon the conclusions of the
15 root cause assessment team that was part of the fuel
16 rod accountability project, and they reflect a
17 substantial commitment of resources and expertise to
18 address the issues involved in the Unit 1 case, as
19 well as any link or nexus to this proceeding, and the
20 bottom line is, there is no nexus whatsoever.

21 Ms. Burton claims--

22 CHAIRMAN BECHHOEFER: Pardon me. Is the
23 system of paper records that is now being used, in
24 addition to computerized records, is the paper record
25 provision substantially different from that used at

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1 Millstone 1?

2 MR. REPKA: Is the paper record
3 substantially different? Yes, in two ways. First, as
4 the root cause team addressed specifically in their
5 report, the procedures at Unit 3 have been, since
6 1990, at least, have been substantially different than
7 the procedures in Unit 1 that were in effect at the
8 time the unit, accountability of the Unit 1 rods were
9 lost.

10 Specifically, at the time the Unit 1
11 problem arose, there was no expectation that fuel
12 assemblies would ever be disassembled. It simply
13 wasn't an expectation at that stage in the industry
14 that there would be leaking fuel rods and fuel rods
15 would be removed from assemblies, so the SNM
16 procedures at the time did not call for specific
17 accountability over individual fuel rods.

18 The item of SNM, special nuclear material,
19 addressed in the procedure was, among other things,
20 the fuel assembly.

21 At Unit 3, since 1990, the procedures have
22 always called for individual fuel rods that have been
23 permanently removed from their assembly to be tracked
24 as an item of SNM, so that's a significant difference
25 in the procedures right there.

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1 Second big difference is one highlighted
2 by the root cause assessment team, and that relates to
3 the inventory of record. At Unit 1, there was never
4 a clearly defined inventory of record that served as
5 the basis for the periodic surveys, so once
6 accountability was lost for the two fuel rods, there
7 was nothing in doing a survey to go out and say, I
8 need to look for a fuel rod, and, therefore, the fuel
9 rod couldn't be identified.

10 It's sort of like a situation, I was in
11 New York last week, and I was in Times Square. I was
12 walking down the street following a class trip of some
13 kind, and they were taking an accountability on who
14 was there, how many kids did they have, and some
15 fairly funny person said, everybody who's not here,
16 raise their hand. Well, that's kind of what the
17 situation was with the inventory of record at Unit 1
18 at the time, once the accountability was lost.

19 At Unit 3, there has been an inventory of
20 record, and most importantly, that inventory of record
21 has been even more clearly defined in the aftermath of
22 the root cause report to clearly be the map.

23 In addition, the procedures have been
24 enhanced such that the inventory of record is
25 reconciled, it has been reconciled against all other

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1 records, internal and external, to assure that there
2 is an up to date inventory of every SNM item that
3 needs to be on site, is on site and needs to be
4 inventoried. Going forward, that will be reconciled
5 periodically.

6 In addition, there have been procedural
7 enhancements related to the verification of
8 assemblies--

9 CHAIRMAN BECHHOEFER: "Periodically"
10 meaning yearly?

11 MR. REPKA: Once a year, at least, once a
12 year, and that will include a serial number
13 verification of assemblies that have been moved since
14 the last verification.

15 So, that's kind of a long answer to your
16 question, but there are significant procedural
17 differences today between what exists at Unit 3 and
18 what existed back then.

19 Having said all that, Ms. Burton claims
20 that there is a substantial and genuine dispute that
21 would justify an evidentiary hearing in this case.
22 The Nuclear Waste Policy Act and Subpart K of the
23 Commission's regulations clearly create a very high
24 burden of proof in order to justify an evidentiary
25 hearing.

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1 The burden of proof is on the intervenors,
2 and to put to not too bluntly, but to meet that
3 burden, one has to have facts, one has to have
4 evidentiary support. Ms. Burton and the intervenors
5 have offered a lot of argument, but they've offered no
6 facts.

7 The only affidavit or declaration that
8 they've entered into the record in this case is a
9 declaration from Mr. Besade. With all due respect to
10 Mr. Besade in his commitment and his passion for his
11 cause, he has no discernable qualifications, and even
12 having said that, his affidavit does not address at
13 all the particulars of what's at issue here.

14 There, frankly, are no facts that would
15 justify an evidentiary hearing. There's a lot of
16 argument, a lot of bluster, but no facts that support
17 any of that.

18 I'm going to return to some of the
19 highlights of our factual record later, but for the
20 time being, I just want to point out that what we have
21 put in represents not only the work product of many
22 people who were involved in the fuel rod
23 accountability project and the root cause assessment
24 team, but just limited to what is in the record here
25 before the Board are the affidavits of six individuals

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1 that I, in doing a quick addition yesterday, came up
2 with 147 man years of experience in the nuclear
3 industry and at the NRC. It's a substantial body of
4 expertise focused directly on the issues in this case.

5 I don't believe that there's any basis
6 whatsoever to suggest that the intervenors have met
7 their burden of proof justifying an evidentiary
8 hearing.

9 CHAIRMAN BECHHOEFER: What about alleged
10 failure to update discovery responses?

11 MR. REPKA: I'm going to address that
12 right now.

13 CHAIRMAN BECHHOEFER: Okay.

14 MR. REPKA: I think that the core of what
15 we heard this morning is an argument that the safety
16 culture is somehow, a generalized and vague complaint
17 that the safety culture is deficient. That, quite
18 frankly, is an unsupported attempt to cast doubt on
19 everything that the licensee does at Millstone
20 Station.

21 I think to make those kinds of charges
22 without any factual support is unwarranted and,
23 frankly, beyond the scope of what this Board should be
24 considering, but having said that, I want to focus on
25 the reporting issue because I think that's where a lot

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1 of attention has been given, and I find that what's
2 been said here this morning to be, even on that narrow
3 point, assuming it was somehow relevant, to be,
4 frankly, incorrect and not dispositive.

5 First, the whole issue of reporting, it's
6 based on the charge that there was a failure to come
7 forward and that somehow that's prejudicial or
8 reflective of poor culture.

9 Well, in the first place, it's not in any
10 way prejudicial. The licensee did come forward. It
11 was a contract engineer working for the licensee that
12 found this issue. He didn't bury the issue. He came
13 forward. It worked through the process, and we can
14 have a debate as to what the exact date was that it
15 should have been reported, but it was reported.

16 Ms. Burton became aware of it. She filed
17 to reopen, the Board reopened, and we're here today to
18 address the facts of what that means. Where's the
19 prejudice? There is no prejudice whatsoever. This is
20 much ado about nothing.

21 CHAIRMAN BECHHOEFER: Well, I might say,
22 in the motions to reopen, one of the claims made was
23 that the obligation for discovery, that the report
24 should have been made earlier, and one of the, one of
25 our holdings, at least, in our first decision, turning

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1 down reopening, was that discovery didn't have to be
2 updated because the proceeding was over with in
3 November when the information was formally developed
4 and turned over.

5 Now, if you compare that to September, the
6 date, at least, where some knowledge of it came to
7 light, and we'd been told in September that, at least,
8 that there was a suspicion that there was some problem
9 with locating fuel rods at Millstone 1, it's
10 conceivable that we would not have issued the decision
11 in October to terminate the proceeding.

12 So, that, therefore, even though the issue
13 was reopened, the question is, Would it have ever been
14 needed to be reopened if the information had been
15 reported earlier? I can't say how we would have
16 reacted to such report at the time, but, at least, the
17 time frame, and we had rejected this one claim that
18 discovery should be updated because the proceeding was
19 over in November, and that reasoning might not have
20 governed, and it's our own decision, based on the
21 facts we had before us, but I just call that to your
22 attention, this potential effect.

23 MR. REPKA: And I appreciate that, but my
24 first point, and I'm going to get to the exact date of
25 when, perhaps, it should have been reported in a

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1 minute, but--

2 CHAIRMAN BECHHOEFER: I'm not talking
3 about to, under the staff's LER requirements or
4 anything like that.

5 MR. REPKA: And I understand that.

6 CHAIRMAN BECHHOEFER: I'm not raising that
7 question at all.

8 MR. REPKA: I understand that, but the
9 fact remains, we can speculate about what ifs, but we
10 are here today, and that's the fact of the matter.
11 The issue came to light, was brought to light. There
12 was a motion to reopen. Whether that should have been
13 granted or not is another question entirely. You know
14 our position on that. We filed our position at that
15 time, but we are here today.

16 We have an opportunity to address the
17 relevance of that information to this proceeding to
18 License Amendment 189, and, frankly, there has been a
19 complete null said offered on that in that department.

20 Now, let me address the issue of the
21 timing of reporting. First, Ms. Burton here this
22 morning has repeatedly cast aspersions on the
23 character and the testimony or the deposition
24 testimony of Mr. Jensen, and she's done that without
25 any reference to transcript pages, any specific

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1 statements of when Mr. Jensen said the things that she
2 says that he said.

3 But putting all of that aside, the fact of
4 the matter is Mr. Jensen was deposed in this case in
5 the spring of 2000. His testimony was filed in June
6 of 2000. There's no evidence anywhere that Mr. Jensen
7 had any knowledge of the Unit 1 issue. There's no
8 evidence developed by the Office of Investigations to
9 the NRC in looking at the reporting issue that
10 Mr. Jensen, or anybody else, exhibited any bad faith
11 or intended to delay reporting intentionally.

12 The fact of the matter is Mr. Jensen, when
13 he testified and he was deposed, can't report, he
14 can't address, he can't testify to things he doesn't
15 know so, number one, the attack on Mr. Jensen is
16 completely unwarranted.

17 CHAIRMAN BECHHOEFER: What about updating?

18 MR. REPKA: Now, the second issue is when
19 do you update. I think any obligation to update, if
20 you assume, even assume materiality, and I'm not
21 willing to concede materiality of this issue,
22 particularly, in light of everything that we've got in
23 the record today, but even if you were to assume that
24 this issue was somehow material, the question is, When
25 does that knowledge, when does that obligation arise?

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1 It, clearly, was not prior to September
2 12th. The NRC has indicated in their notice of
3 violation that they think September 12th is maybe a
4 date that a report should have been filed with the
5 NRC.

6 I think that all of that is subject to
7 significant judgment, and even if September 12th were
8 the date for report to the NRC, that doesn't equate to
9 a date that there would have been any obligation to
10 update the record in this case.

11 The fact of the matter is it was reported
12 to the NRC in November. It came to Ms. Burton's
13 attention almost immediately. It is a fact that, that
14 I, in fact, learned of the issue from Ms. Burton, and
15 so there is a lot of judgment involved.

16 Now, let's talk about September 12th.
17 Mr. Meekoff, in his affidavit, has testified a little
18 bit to what the issue was--

19 CHAIRMAN BECHHOEFER: I've read some of
20 his statements already.

21 MR. REPKA: Okay. And I think he really
22 addresses it very well. Judge Kelber raised the
23 question of the black slacks. The example Mr. Meekoff
24 gave to me, and I'll, he didn't put it in his
25 affidavit, but I'll feel free to borrow it is --

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1 actually, he gave me two.

2 The first one is, if you lose your car
3 keys, when do you consider them to be lost, the minute
4 you can't find them or after you've searched the
5 logical places they might be?

6 But perhaps the better example is one of
7 your credit card, and you had it in the house, can't
8 find it. You know that somebody used, your wife used
9 it to make an online purchase, you have a record of
10 that, so now do you call the credit card company
11 immediately or do you look in the logical places first
12 before you call them knowing that it was used to make
13 a purchase recently, and you have a record of that?

14 So, there, clearly, is judgment involved
15 in any reporting issue of this type, when do you
16 report it, and that goes even before any judgment that
17 might be implied with respect to an obligation to
18 updated the Licensing Board. First, you have to have
19 an issue that you think, as a licensee, is reportable
20 before you even consider whether or not that's
21 material to the proceeding. None of that happened.

22 What happened on September 12th?
23 Mr. Meekhoff talks a little bit about that.
24 Additional information is presented in Dominion
25 Nuclear Connecticut's response that was filed last

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1 week, March 28th, to the NRC's apparently violation on
2 this issue. This is, obviously, not included in the
3 filings because it postdates the filings, but it is a
4 matter of public record.

5 September 12th was a date in which -- let
6 me back up. What we had, what the engineer had who
7 found this issue, he was doing a reconciliation of
8 Unit 1 records, and he was, for purpose of preparing
9 for possibly moving to dry cast storage to understand
10 completely what was there.

11 He found a piece of paper which he
12 couldn't explain, and he decided he wanted to pursue
13 that. Specifically, what he found was a May 15, 1979,
14 memorandum that was attached to the card file, and
15 among other things, it identified two particular fuel
16 rods by serial number or what they thought were the
17 serial numbers, that came from a fuel bundle, MS-557.

18 It says in the memo, "These rods will be
19 stored in the fuel rod storage rack in the northwest
20 corner of the spent fuel pool until they can be
21 incorporated into a scavenged fuel assembler," and
22 then it says, "A fuel card has been issued to maintain
23 accountability."

24 Now, there was no further accountability,
25 and that's the story of the fuel rod accountability

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1 project, but what this memo tells everybody who's read
2 it is that there's two rods that have been removed
3 from MS-557.

4 Now, on September 12th, what the engineers
5 and what the unit was doing in the Unit 1 spent fuel
6 pool was not looking for the rods. They were doing a
7 serial number verification inspection of all the fuel
8 assemblies in the spent fuel pool, again, as part of
9 this project to prepare for Unit 1 decommissioning and
10 potential dry cast storage.

11 They were reading the serial numbers that
12 appear on the bail handle on the top of the fuel
13 assemblies. They weren't looking for rods. They were
14 looking for serial numbers. When they looked at 557,
15 they said, let's just look in there and see what's
16 there.

17 Now, what they saw was, in the spot where
18 the center space, or capture rod, should be, they saw
19 a rod. They didn't know whether it was a dummy rod or
20 a real rod, but they saw a rod. I think that they
21 assumed it may be a dummy rod because one would have
22 been replaced in there, but they don't know that the
23 center space, or capture rod, is not there.

24 In addition, they did not see indication
25 of the tie rod being there, but they also knew that

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1 the tie rod had been bent, and that's why it wasn't
2 put back in 557 in the first place, and so, at least,
3 it was possible that the tip may have been cut off,
4 the rod reinserted and it would no longer be visible
5 at the top of the assembly.

6 They, at that point, they don't know,
7 therefore, that the two rods aren't in MS-557. Might
8 they have issued a condition report, might they have
9 done other things, yes, perhaps, as a matter of
10 judgment, but this is what they know on September
11 12th.

12 It turns out that they don't know for sure
13 that the rods are not there until, in order to pursue
14 the matter, they retained General Electric. General
15 Electric comes on site, lifts the fuel assembly out,
16 put it in the fuel prep machine, looked for the rods
17 and found that the rods weren't there. That didn't
18 occur until December, sometime in December, after the
19 report to the NRC had already been made.

20 Now, what else do they know on September
21 12th? They know that, they know that this memo that
22 raises the very issue they have in front of them says
23 these rods will be stored in the fuel rod storage rack
24 in the northwest corner of the spent fuel pool.
25 That's not in 557.

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1 So, the fact that they look in 557, and
2 they don't conclusively know it's not there, that
3 doesn't say that, so they went and looked in the
4 northwest corner of the pool, didn't see it there
5 either, but the memo goes on to say they'll only be
6 stored there temporarily until they can be
7 incorporated into a scavenged fuel assembly, so that
8 doesn't mean anything.

9 They also know at the time that there's a
10 couple logical places that that, those fuel rods could
11 be stored. They could have gone into a particular
12 container that relate -- that was used to store the
13 segmented test rods from the General Electric
14 segmented test rod program. They could have been
15 stored in a different container that was used to store
16 MS-508, which was a different damaged assembly that
17 was used for storing damaged rods, so there were other
18 logical places those rods could be.

19 The keys hadn't definitively been lost.
20 It is a matter, in hindsight, you can exercise
21 judgment and say that, yes, a report should have been
22 made instantly at that time. At that time, that
23 wasn't done. I'm not sure that that reflects on
24 anything at all relevant here. It, certainly, doesn't
25 reflect on character. It reflects on a particular

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1 judgment, in a particular case, with some engineers
2 who were aggressively pursuing a very old paperwork
3 issue.

4 I think that to come here and cast
5 aspersions on the safety culture at Millstone based
6 upon the reporting of this one issue, I think that's
7 far overreaching, and to challenge the safety culture,
8 which is an issue far beyond the scope of License
9 Amendment 189, far beyond the scope of what the Board
10 needs to look at, in any event, if it were before the
11 Board, would require a lot more evidence than that.

12 CHAIRMAN BECHHOEFER: Well, I think
13 they're asking for an evidentiary hearing to discover
14 that.

15 MR. REPKA: But one does not, in Subpart
16 K, ask for an evidentiary hearing to discover an
17 issue. One has to have evidence to justify an issue.
18 The burden of proof is on the intervenors to come
19 forward.

20 CHAIRMAN BECHHOEFER: Well, what about any
21 obligation in September to advise the Licensing Board,
22 under the McGuire Doctrine?

23 MR. REPKA: Well, again, McGuire cannot
24 apply to something you don't know about, and at
25 September 12th, the company does not know that there

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1 are lost fuel rods. It also does not know that that's
2 material to this proceeding because it doesn't know
3 enough facts in order to make a judgment as to whether
4 it has anything to do with License Amendment 189.

5 When the issue did come to light and was
6 reported, in November, and a motion to reopen was
7 filed almost instantaneously, we responded, and in our
8 very first response, we, the company, took the
9 position, the licensee at the time, that it was not
10 material to License Amendment 189 for several reasons.

11 First and foremost was the fact that this
12 proceeding deals with fuel assemblies, not fuel rods.
13 The procedures that are relevant to License Amendment
14 189 relate to the control and handling of fuel
15 assemblies and putting them in the right storage
16 location. Fuel rod inventory at Unit 1, in 1979,
17 really has little, if anything, to do with that.
18 That's what we said at the time; that's what the root
19 cause assessment team validated; that's our position
20 here today.

21 So, even if the issue had come to light in
22 a way before it was raised directly by the
23 intervenors, and, again, there was a passage of just
24 a matter of months there, I'm not sure that we would
25 have determined that it was material. Based upon our

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1 filings, I think we would have determined that it was
2 not material.

3 Having said that, I think that the idea
4 that there's a continuing discovery obligation is,
5 there's simply no precedent for that, so I think we're
6 really in the domain of materiality, and, again, I
7 come back to the proposition that whether it was
8 material and should have been reported or when it
9 should have been reported is, at this stage of the
10 game, simply unimportant, given that we are here.

11 CHAIRMAN BECHHOEFER: Does not McGuire say
12 let the Board, whether or not it's material or not,
13 tell the Board and let it decide? There's a footnote
14 to that effect, I think.

15 MR. REPKA: Yes, but I submit that we
16 never even had the opportunity because the motion to
17 reopen would precede any change for us even to
18 understand what the scope of the issue was and what
19 the relevance of the issue or materiality at issue
20 was. The timing here was a matter of weeks, not
21 years.

22 CHAIRMAN BECHHOEFER: Right. It just
23 happened that our proceeding terminated in the
24 interim.

25 MR. REPKA: Well, it didn't terminate. It

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1 was still before the Commission at the time.

2 CHAIRMAN BECHHOEFER: Oh, yes, but our
3 decision was issued, I believe.

4 MR. REPKA: Right. But, again, I would
5 not concede necessarily--

6 CHAIRMAN BECHHOEFER: If you hadn't known
7 with the issue of decision--

8 MR. REPKA: Didn't know that, didn't know
9 the scope of the issue, didn't know that there were
10 two missing rods whatsoever. We knew at, you know, at
11 the most, we knew that there was a paperwork issue,
12 and there were other paperwork issues at the time that
13 were resolved, so, you know, to presume that it was --
14 you know, it's a big leap to conclude that it was
15 reportable.

16 It's also a leap to conclude that it's
17 material, but even if you make those leaps, the timing
18 of it is such that it really became irrelevant. It
19 became a moot issue very quickly because by virtue of
20 the condition report that was initiated in the prompt
21 report made to the NRC, it quickly came to the light
22 of day and to the attention of the Licensing Board.

23 MR. COLE: So, Mr. Repka, you're saying
24 that it wasn't anywhere close to being ripe for
25 reporting in September/October time frame?

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1 MR. REPKA: Certainly, ripe for reporting
2 to the Board, that's correct, sir.

3 MR. COLE: Thank you.

4 MR. REPKA: If there are no other
5 questions on reporting, I would, I'm going to move on
6 to the LER that's been referenced.

7 MR. COLE: The one about heavy weights?

8 MR. REPKA: Heavy loads. The second piece
9 of so-called evidence that the intervenors present to
10 try to justify an evidentiary hearing is LER 2001-007,
11 which is a Unit 2 LER, reported on December 17, 2001.

12 Now, what this issue does is, it reports
13 -- what this LER does is, it reports an issue related
14 to safe load paths in the Unit 2 spent fuel area and
15 whether or not moving from the access area across the
16 task washdown pit was a safe load path.

17 The LER reports that the most recent
18 evaluation suggests that this should not be considered
19 a safe load path without corrective action, and,
20 therefore, was reported.

21 The first thing I'll say is that this is
22 Unit 3 -- Unit 2. It has nothing to do with Unit 3,
23 and it really has nothing to do with the kind of
24 procedures involved in implementing License Amendment
25 189, but that goes without saying.

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1 Beyond that, Ms. Burton suggests that this
2 relates somehow to safety culture or engineering lack
3 of capability. In fact, it really shows just the
4 opposite. It shows, it shows a willingness to
5 identify an issue; it shows a willingness to report an
6 old issue; and it shows a willingness to resolve that
7 issue.

8 What, and the third thing I'll say is this
9 LER doesn't involve a procedural compliance issue at
10 all. There was no procedure that said don't move
11 heavy loads over the cask washdown pit. That was, in
12 fact, the procedure would allow that movement.

13 What had occurred here was the heavy loads
14 issue is a very old issue. It dates from the 1980s,
15 and there was a new reg in some NRC bulletins on the
16 issues and some evaluations that were done.

17 There was a specific movement of the
18 reactor coolant pump replacement motor into the Unit
19 2 area some time ago, and at the time, the issue of
20 the load path was identified, and it was evaluated.
21 It wasn't ignored; it wasn't missed. But it was
22 evaluated by a probabilistic analysis, and the
23 conclusion was it's a very low probability issue;
24 therefore, it's not a problem when measured against
25 the acceptance criteria of the relevant new regs, not

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1 requirements, new regs and other guidance documents
2 that existed.

3 Looking at that issue in a more
4 contemporary light, the licensee took a much more
5 conservative approach and said, let's question what we
6 did in the past. Can we really rely on a
7 probabilistic risk approach here? Expectations are
8 changing. The conservatism being applied is much
9 different.

10 And what they did is, they took a more
11 classic deterministic single failure licensing type
12 approach and said, it's not a single failure proof
13 crane, even though it's a high reliability crane, et
14 cetera, et cetera.

15 We have to assume it will fail; therefore,
16 we may have a problem with a load such as the RCP
17 motor crashing through the floor of the cask washdown
18 pit and perhaps creating a problem, and, therefore, it
19 was reported. That really reflects a much more
20 conservative, a much more conservative approach to the
21 heavy loads issue, and it doesn't at all reflect a
22 lack of willingness or capability of implement
23 procedures.

24 Now, the, sort of, the kicker on this
25 story is if you go back to the probabilistic

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1 assessment that was done of this particular movement
2 of the RCP motor, and this is an old PRA analysis, I
3 understand, that has since been documented again, but
4 the conclusion of that is the particular issue that
5 we're talking about involves core damage, a core
6 damage probability increase of 6.08E to the minus 12.
7 That's what we're talking about.

8 Now, Ms. Burton claims this is a
9 substantial safety issue. I submit that there's no
10 basis for that whatsoever. If there are any other
11 questions on the heavy loads LER, I'll be happy to try
12 to address them.

13 (Pause.)

14 MR. REPKA: The bottom line is that it
15 reflects a current approach that is conservative and
16 highly safety conscious.

17 CHAIRMAN BECHHOEFER: Well, I think the
18 question that the intervenors are trying to raise is
19 that how long does it take to determine that some,
20 some event is not compliant with regulations.

21 MR. REPKA: Well, if that--

22 CHAIRMAN BECHHOEFER: And to follow up on
23 that.

24 How long should the system take to discover that?

25 MR. REPKA: Well, again--

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1 CHAIRMAN BECHHOEFER: As I say, that's
2 what I think they were--

3 MR. REPKA: To the extent that issue is
4 relevant at all to License Amendment 189, and I don't
5 think it is, but to the extent it is at all, that's
6 not really what's happening in this heavy loads issue.
7 This was a relook at an issue that had been addressed
8 and had been determined to be safe and appropriate and
9 in compliance.

10 It's simply a different look at an old
11 issue that had been identified and resolved, not
12 necessarily from a safety perspective, resolved
13 inappropriately. From a, from a strict licensing
14 perspective, you can take a different approach, and
15 that's what they've done, but it's not a case where an
16 issue was not timely addressed. This is part of a
17 continuing self-assessment process of which that's
18 what corrective action processes do every day at the
19 plant.

20 Having addressed those, I want to return,
21 briefly, to some of the, just highlight some of the
22 key points in our filing with respect to the real
23 issue of, that the Board raised in reopening this
24 case.

25 In its decision reconsidering and

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1 accepting the motion to reopen, the Board phrased the
2 issue here as, "The scope of this reconsideration is
3 limited to the procedures or controls from management
4 of the SFPs and their modes of execution that may be
5 common to Millstone 1 and Millstone 3."

6 And the answer to that is there really is
7 little, if anything, in common, and that's what's
8 addressed in our testimony.

9 MR. KELBER: Could you repeat that,
10 please? I didn't catch it.

11 MR. REPKA: Well, what I said was that the
12 issue is whether the procedures or controls from
13 management of the SFPs and their modes of execution
14 that may be common to Millstone 1 and Millstone 3, and
15 what I'm saying, what I said is that there is little,
16 if anything, in common, at least, between those
17 controls that were involved in the Unit 1 fuel rod
18 event and the Unit 3 license amendment that we're here
19 today to discuss.

20 If you want a short encapsulation of why
21 that's so, you could look at the Dominion Nuclear
22 Connecticut outside expert panel testimony of
23 Mr. Fairbank, Mr. Swanson and Mr. Thompson, Paragraphs
24 51 and 52. Those two paragraphs kind of encapsulate
25 most of the key points right there.

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1 Having said that, again, let me reiterate
2 some of those points. First, the record that we put
3 into evidence here shows that Dominion Nuclear
4 Connecticut has comprehensive fuel handing controls to
5 implement License Amendment 189. This includes the
6 controls necessary to address reactivity limits, as
7 well as the controls necessary to implement and move
8 fuel assemblies to the right region. None of that has
9 been put into question.

10 The record also shows that Dominion
11 Nuclear Connecticut has SNM accounting procedures at
12 Unit 3 today. The key elements of that include
13 procedures, as I mentioned earlier, that track, both,
14 assemblies, fuel assemblies, and rods that are removed
15 from fuel assemblies. That was not the case at Unit
16 1 when this, when the Unit 1 issue arose.

17 The location of fuel SNM at Unit 3 is also
18 tracked today, and as the Board has recognized in,
19 both, the paper card file and in Shuffleworks
20 electronic computer base program. That was not the
21 case when the Unit 1 issue existed, when it occurred.

22 The procedures today do require surveys
23 and inventories. Those procedures have been improved
24 over what was in place at Unit 1 at the time that the
25 issue, the Unit 1 fuel rod issue occurred, and I

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1 highlighted some of those improvements earlier,
2 including additional baseline verifications, first, a
3 reconciliation of the records to clarify the inventory
4 record and, second, improvements with respect to the
5 frequency and nature of the surveillances, the
6 surveys, of fuel assemblies that are present.

7 No specific deficiencies in any of these
8 procedures, any of the enhancements, have been
9 addressed at all by the intervenors.

10 To summarize some of the key points made
11 by the witnesses with respect to why things were
12 different at Unit 1 and the Unit 3 issue that we're
13 here today, first, the Unit 1 event didn't extend at
14 all to handling and control over fuel assemblies
15 either at Unit 1 or at Unit 3. It was a fuel rod
16 issue. It was restricted to two fuel rods. There
17 were no other fuel rods at Unit 1; there were no other
18 fuel rods at Unit 3.

19 The vulnerabilities that allowed Unit 1
20 rods to be lost didn't extend to fuel assemblies,
21 again, either at Unit 1 or at Unit 3.

22 Now, even if you assume the storage of
23 fuel rods was somehow linked to License Amendment 189,
24 and, again, it's not because we're talking about
25 moving fuel assemblies, not individual rods, into

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1 regions for which they're qualified, the Unit 1 event,
2 as it relates to fuel rods, was limited to Unit 1.
3 That's an issue the root cause assessment team looked
4 at very specifically.

5 They found no evidence of any rods having
6 been lost at Unit 3, and they, specifically, found
7 that the vulnerabilities at Unit 1 with respect to
8 fuel rods didn't apply to Unit 3. This is referenced
9 in our testimony. This is the attributes of the
10 procedures, the attributes of the program and the
11 colored windows that you see in the root cause
12 assessment report.

13 Anywhere where there were opportunities
14 for enhancements, those have been implemented through
15 the corrective action process, but there were no
16 significant deficiencies in any way found at Unit 3
17 with respect to handling fuel rods.

18 We also addressed--

19 CHAIRMAN BECHHOEFER: Let me ask one
20 question.

21 MR. REPKA: Yes.

22 CHAIRMAN BECHHOEFER: There's a
23 description of a current system or isolated fuel rods,
24 and maybe other material, are stored in certain boxes,
25 I think they were referred to, and then the boxes are

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1 located, as are any other fuel bundles, I guess, and
2 this is a layman describing something. Maybe I don't
3 understand all the details, but was there nothing
4 comparable to the so-called boxes at Unit 1 where
5 isolated fuel rods could be located or how did that
6 work?

7 MR. REPKA: Thank you for bringing that up
8 because I didn't want to--

9 CHAIRMAN BECHHOEFER: No. I thought that
10 was--

11 MR. REPKA: --forget that. That's the--

12 CHAIRMAN BECHHOEFER: --a significant
13 part, and I wanted to make sure I understand it.

14 MR. REPKA: That's extremely significant,
15 and that's crucial. At Unit 1, what the root cause
16 team found was that the mechanism by which the rods
17 were lost was that they were stored in an undefined
18 way outside the storage racks apart from fuel. They
19 were tied in containers to the side of the pool next
20 to local power range monitors, LPRMs.

21 This created the vulnerability for what is
22 the most likely scenario, that the fuel rods were cut
23 up, mistaken for LPRMs and, and went out to, to a low-
24 level waste repository. They were stored outside the
25 storage racks.

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1 In Unit 3, and there was no defined
2 storage means at Unit 1.

3 At Unit 3, there has always been what's
4 known as the fuel storage box, and it, again, in
5 anticipation, I suppose, of leaking fuel, fuel rods
6 that would be removed from reconstituted assemblies,
7 there is a place defined to store fuel rods.

8 That box is kept in the, in the spent fuel
9 racks, themselves. It, it can't be mistaken for, the
10 mechanism that existed at Unit 1 to be mistaken for
11 local power range monitors can't exist. I mean, it,
12 beyond the fact that there are no LPRMs at Unit 3,
13 because it's a PWR, but the existence of that storage
14 box is a cr -- is a crucial distinction really.

15 That, that fuel storage box, as we reflect
16 in the testimony, is tracked in both the card file and
17 in the short work program; so, if you look at Exhibit
18 3, which we submitted, which is the map of the Unit 3,
19 an illustrative map of the Unit 3 spent fuel pool,
20 this is generated from information and shuffle works--

21 CHAIRMAN BECHHOEFER: Just one second.
22 We're--.

23 (Pause.)

24 MR. COLE: Exhibit 3?

25 MR. REPKA: Exhibit 3. It says,

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1 "Millstone Unit 3 Current Spent Fuel Pool, Cycle 8."

2 (Pause.)

3 MR. REPKA: The key is that a fuel storage
4 box, the FSB is tracked like a fuel assembly, through,
5 through both shuffle works and a card file.

6 If you look in the upper left hand grid,
7 at grid space horizontal four and, I'm sorry, vertical
8 column four and horizontal column 3U, you'll see
9 "FSB", fuel storage box. There it is. That's
10 tracked.

11 CHAIRMAN BECHHOEFER: And that's the one
12 that contains one spent fuel rod?

13 MR. REPKA: And it contains one spent fuel
14 rod,--

15 CHAIRMAN BECHHOEFER: Which--

16 MR. REPKA: --which has been verified
17 visually to be there.

18 MR. COLE: But more could go in?

19 MR. REPKA: More could go in, and it would
20 be tracked. Those, those rods would be tracked into
21 the fuel storage box, and then any movement of the
22 fuel storage box would be tracked through the card
23 file and through shuffle works located, and it would
24 be located on the map.

25 The key, from a criticality standpoint, is

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1 with one rod, there is no criticality effect of
2 significance if more rods go in. That would be
3 treated as any other fuel assembly. It would be
4 evaluated to determine which regions it could be
5 stored in, and, you know, right now, it can be stored
6 in any region of the pool.

7 If it ever got to a point where some
8 restriction would apply, it would be treated just as
9 a fuel assembly with restrictions.

10 That's a relevant procedural point with
11 respect to our particular license amendment.

12 CHAIRMAN BECHHOEFER: Well, within a box,
13 is there any necessity, and I ask this from a
14 technical standpoint now, really not knowing too much
15 about it.

16 Is there any necessity that rods be
17 separated or kept apart from the rods of different
18 enrichment?

19 MR. REPKA: Is there any--

20 CHAIRMAN BECHHOEFER: If, if you put them
21 in a fuel storage box, or does the, does the entire
22 box--

23 MR. REPKA: Is, is your question, is there
24 a criticality issue with respect to storage of the
25 rods in the box? Because of location of rods in the

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1 box?

2 CHAIRMAN BECHHOEFER: Is there diff --
3 rods of different--

4 MR. REPKA: Enrichment or burn off?

5 CHAIRMAN BECHHOEFER: --enrichment; yes.

6 MR. McKENNEY: That's all analyzed.

7 MR. REPKA: The only thing I could say is
8 that, that would be analyzed. It is, it is borated,
9 and it would be addressed, but, certainly, none of
10 that is being changed by License Amendment 189 in any
11 way.

12 I, if you like, I could get, try to get
13 more information on that.

14 (Pause.)

15 MR. REPKA: I, I've consulted with Mr.
16 McKenney, and, and the answer is that, with respect to
17 inserting any rod, it would be addressed at the design
18 control process. It wouldn't be anticipated to be an
19 issue.

20 It, it wouldn't say definitively it's not,
21 but it would be addressed, and, and the point is you'd
22 be putting rods into the box. The box is a, is a
23 matrixed array of spaced storage locations, and,
24 therefore, just like inserting individual rods into a
25 fuel assembly, they would be held in a certain

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1 configuration that's presumptively safe.

2 MR. COLE: Is the configuration in the
3 fuel boxes similar or identical to those
4 configurations in the, in the other fuel bundles?

5 (Pause.)

6 MR. REPKA: Again, relying on Mr.
7 McKenney, the, the fuel assembly at Unit 3 contains
8 261 pins. The fuel storage box is an eight by four
9 array that stores 56 pins. They're spaced a much
10 greater distance than the normal fuel assembly.

11 MR. COLE: All right.

12 CHAIRMAN BECHHOEFER: And just to repeat,
13 they would be stored in, in the area where storage of
14 the highest--.

15 (Pause.)

16 MR. REPKA: It, right now, they could be
17 stored anywhere.

18 CHAIRMAN BECHHOEFER: Yeah, I know, but
19 that's just the one. That's--

20 MR. REPKA: Correct, and, and, again,--

21 CHAIRMAN BECHHOEFER: But I was saying
22 that it would be stored in the area of the highest, I
23 don't know, radioactivity or, or, the rod in the box--

24 MR. MCKENNEY: Based on analysis--

25 CHAIRMAN BECHHOEFER: Radioactivity of any

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1 rod in the--

2 MR. REPKA: Again, it would depend upon
3 what's stored at a given time in the box. So, when
4 you, you add a pin to the box, that, the process would
5 then redefine the regions that it could be stored in
6 if there is any change.

7 MR. COLE: You would make a calculation
8 every time you changed the configuration of the box--

9 MR. REPKA: Correct.

10 MR. COLE: --or the rods in the box?

11 MR. REPKA: That's correct, and, and, you
12 know, the only other feature of the box that I think
13 is important, with respect to distinction from what
14 happened at Unit 1, is that the rods cannot be easily
15 removed from, from the box. It requires special
16 tooling.

17 MR. KELBER: I appreciate the fact that
18 this is the right time to do some of these features at
19 Unit 3 just to refresh our memory.

20 First off, by the way, I'd like to thank
21 Mr. McKenney for a very thoughtful and thorough
22 consideration of my questions. I appreciate it.

23 When the, it, it seems to me that there
24 are two points in the procedure where administration
25 of the code is strictly dependent upon human

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1 performance.

2 When you identify a fuel assembly using
3 the, the camera, there are two people involved to
4 verify the serial number of that assembly; is that not
5 correct?

6 MR. REPKA: What are you doing with the
7 assembly? Are you moving it now from the core to the
8 pool?

9 MR. KELBER: Yeah, you're moving it into
10 or out of the core.

11 Now, do these two people, when they
12 identify, does one say, "Well, this is Serial No.
13 XYZ," and somebody says, "Oh, yeah, that's what it
14 is", or do they write it down separately or how is
15 that administered so that the first one who looks at
16 it doesn't influence the second one?

17 (Pause.)

18 MR. REPKA: Okay. There is still
19 verification at that, at that point. When you're
20 moving the fuel assembly, do a verification of the
21 serial number and the location. The two, the mover
22 and the checker are both present.

23 The first one says that that's Assembly
24 XYZ going to where it's going, and the second verifies
25 that and says that I concur or not concur.

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1 MR. KELBER: Looking at the same monitor?

2 MR. REPKA: Looking in the same monitor.

3 Now, they are trained that they are not, they are not
4 to be, to influence one another. They, by training,
5 know that they, they are looking separately.

6 MR. KELBER: And a similar procedure is
7 used when they actually move the assembly into its
8 place; let's say, in the fuel storage pool? That is--

9 .

10 (Pause.)

11 MR. REPKA: For, for the location, in, in
12 that case, you have somebody on the refueling bridge
13 and somebody on the floor. They're, they're
14 separately located.

15 MR. KELBER: And they, and they, and they
16 independently verify that location?

17 MR. REPKA: That's correct.

18 (Pause.)

19 MR. REPKA: That's, that's correct. There
20 are two, two, for verification of the location,
21 they're in two separate locations.

22 MR. KELBER: Okay. That, that, I just
23 wanted to make sure that my memory was correct.

24 In thinking about this problem, I had
25 considered that one could, in fact, automate it. The

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1 technique is actually, it goes back to the design of
2 bowling alleys in the 1950.

3 (Laughter.)

4 MR. KELBER: But that doesn't mean that
5 it's necessarily any more accurate, and the accuracy
6 of this procedure depends upon the independence and,
7 of the verifiers.

8 MR. REPKA: That's true.

9 MR. KELBER: Automating it might not be
10 economically worthwhile, but that's another point
11 altogether.

12 (Pause.)

13 MR. REPKA: Yeah. Just, just two, two
14 thoughts to respond to that.

15 One, as you recognize, the automation
16 could introduce other failure mechanisms.

17 MR. KELBER: Yes.

18 MR. REPKA: And, second is, again, the
19 serial number verification--

20 MR. KELBER: That's, that's one of the big
21 ones.

22 MR. REPKA: Yeah, it's not, it may not be
23 easily done by automation. It's, it's perhaps one of
24 those things better left to human beings to, to
25 observe and try to read.

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1 MR. KELBER: If you use sodium coolant, by
2 the way, that wouldn't be a problem.

3 (Laughter.)

4 MR. REPKA: It's probably too late for
5 that.

6 MR KELBER: I think so.

7 MR. MCKENNEY: There are other issues for
8 sodium.

9 (Pause.)

10 MR. REPKA: If, if there are any other
11 questions, I, I will just sum up here unless there is
12 questions.

13 Go ahead, Dr. Cole?

14 CHAIRMAN BECHHOEFER: Go ahead?

15 MR. COLE: Ms. Burton mentioned some
16 problems with refueling outage No. 6, and I don't know
17 whether you were going to address that; so, I kept
18 quiet about it.

19 MR. REPKA: Well, I was, but I opted not
20 to, but I will address it since you asked.

21 We, we addressed that--

22 MR. COLE: Okay.

23 MR. REPKA: --the last time around.

24 MR. COLE: Yes, I believe so, and my
25 recollection might or might not be accurate; that's

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1 why I wanted to pursue it.

2 There were some operational problems
3 associated with, with outage No. 6, but I didn't
4 recall them as being computer problems. I thought
5 they were more with, with equipment problems that did
6 or did not necessarily involve safety issues; just
7 time and, and other kinds of problems.

8 Could you, do you have somebody there who
9 could verify that?

10 MR. REPKA: Well, you're, you're exactly
11 right on all counts. It was, it was problems with the
12 refueling machine. It was not computer problems, per
13 se. They were, they were time and cost related, not
14 safety related.

15 The corrective action at the time,
16 identified at the time, which I think we mentioned at
17 the time, was plans to replace the refueling machine.
18 That has, in fact, been done.

19 MR. COLE: All right. That's what, what
20 I was going to ask.

21 Thank you.

22 CHAIRMAN BECHHOEFER: I have a question
23 concerning refueling outage 7. That is, apparently
24 there were no problems with that, but it was subject
25 to verification. A staff inspector was there.

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1 Would it be useful to always have some
2 sort of independent verification when you have
3 refueling outage changes?

4 MR. REPKA: I don't think there is any
5 reason to suggest that's necessary whatsoever. I
6 think that, that the procedures, themselves, call for
7 oversight and verification.

8 You know, there has been no, no documented
9 problems of, of, with, with respect to implementing
10 the procedures. The answer is, no, I don't think
11 that, that would serve any purpose.

12 CHAIRMAN BECHHOEFER: I'm going to ask the
13 same question of the staff, but--

14 MR. REPKA: And, and we presume that the,
15 that the staff will, will, will oversee those kinds of
16 activities at the same level that they presently do,
17 or whatever level they feel appropriate, but in, in,
18 you know, we, certainly, welcome that, and, but beyond
19 that, we don't see any further need.

20 CHAIRMAN BECHHOEFER: Okay. Why don't you
21 proceed with your summary?

22 MR. REPKA: Okay. The bottom line is
23 we're here to talk about License Amendment 189, which
24 is now in two phases of this, this Sub-Part K hearing.
25 I think we've put in a substantial record.

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1 It shows that it's, it's a, an approach to
2 increasing the storage capacity of the spent fuel pool
3 at Unit 3 that's safe, reliable. It's based upon
4 defense in depth.

5 I didn't even get into, again, the
6 criticality calculations that we put in the last time
7 around that show the tremendous margin of safety that
8 exists with respect to criticality events, which was
9 the focus of the contention.

10 It's a safe, reliable approach to, to
11 spent fuel storage. It's consistent with the Nuclear
12 Waste Policy Act, and, and, therefore, based upon the
13 facts, the license amendment should certainly be
14 sustained.

15 Beyond that, the, the relevant standard
16 here for a evidentiary hearing is one of showing a
17 genuine and substantial dispute that could only be
18 resolved in a, in a evidentiary hearing, and could be,
19 and must be central to the Commission's decision on
20 the license amendment that's at issue, and, and I
21 think that, in this case, through a complete lack of,
22 of any evidence, whatsoever, or any logical nexus to
23 this particular license amendment, the intervenors
24 have not, failed to show either a genuine or
25 substantial dispute; much less one that's central to

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1 the decision on License Amendment 189; much less one
2 that could only be resolved in, in an evidentiary
3 hearing.

4 So, therefore, under Sub-Part K, there
5 really is, there really is no doubt about the result
6 that this Licensing Board needs to reach. I think
7 that it, it's time to bring this case to a close.

8 CHAIRMAN BECHHOEFER: I guess now we'll
9 take a lunch break, and then after lunch, we'll hear
10 from the staff, and we'll hear Ms. Burton's rebuttal.

11 We, we thought about an hour and 15
12 minutes would give people enough time. If any party
13 wants more than that--

14 MR. COLE: Speak up now.

15 CHAIRMAN BECHHOEFER: Speak up now; right.

16 There is a restaurant in the hotel. There
17 are probably numerous other restaurants close by; so,
18 is an hour and 15 minutes enough? We'll be back at--

19 MR. REPKA: It sounds fine to us.

20 CHAIRMAN BECHHOEFER: --1:30.

21 Pardon?

22 MR. REPKA: Sounds fine.

23 CHAIRMAN BECHHOEFER: Approximately 1:35.

24 (Whereupon, at 12:19 p.m., a lunch recess
25 was held.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 (1:40 p.m.)

3 CHAIRMAN BECHHOEFER: It's now time for
4 the staff to make a presentation.

5 MS. HODGDON: Ms. Brock will present the
6 staff's argument, the staff's presentation. Thank
7 you.

8 CHAIRMAN BECHHOEFER: Thank you.

9 MS. BROCK: As a preliminary matter,
10 before we start--

11 CHAIRMAN BECHHOEFER: Could you talk
12 closer to--

13 MS. BROCK: Sure.

14 CHAIRMAN BECHHOEFER: --a microphone.

15 MS. BROCK: Sorry.

16 CHAIRMAN BECHHOEFER: I'm having trouble
17 hearing you.

18 MS. BROCK: Sorry.

19 (Pause.)

20 MS. BROCK: Okay. Is that, is that
21 better?

22 CHAIRMAN BECHHOEFER: Yes.

23 MR. COLE: Yes.

24 MS. BROCK: As a preliminary matter,
25 before we start, on Page 18 of the staff's filing, we

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1 left out a word. The--

2 MR. KELBER: Page 18, you say?

3 MS. BROCK: Page 18; yes.

4 It's, it's not a big word. It's the
5 second paragraph down. It should have read, "The
6 Commission addressed a Licensing Board rejection of a
7 contention concerning removing radiological effluent
8 technical specifications."

9 MR. KELBER: Okay.

10 MS. BROCK: Which is add the word
11 "effluent". That's it.

12 MR. KELBER: I'm sorry. I missed what you
13 wanted me to do with that sentence?

14 CHAIRMAN BECHHOEFER: Yeah.

15 MS. BROCK: It, currently, it reads,
16 "concerning removing radiological technical
17 specifications".

18 MR. KELBER: Yes?

19 MS. BROCK: It should read, "concerning
20 removing radiological effluent technical
21 specifications."

22 MR. KELBER: Oh, okay. You want to add
23 the word "effluent"--

24 MS. BROCK: Effluent; yes.

25 MR. KELBER: --between radiological and

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1 technical?

2 MS. BROCK: Yes. Thank you, very much.

3 MR. KELBER: Okay. Thank you.

4 CHAIRMAN BECHHOEFER: Okay.

5 MS. BROCK: Okay.

6 (Pause.)

7 MS. BROCK: There are no disputed issues
8 of fact or law requiring resolution in a adjudicatory
9 hearing in this case; accordingly, the Board should
10 dismiss this proceeding.

11 The burden of going forward and of
12 demonstrating the existence of a substantial and
13 genuine issue of material fact is on the intervenors.

14 General allegations are insufficient to
15 trigger the evidentiary hearing. Factual allegations
16 must be supported by experts or documents that
17 demonstrate that an evidentiary hearing is warranted.

18 Although, the ultimate burden of
19 persuasion is on the licensee, the proponent of the
20 contention has the initial burden of coming forward
21 with factual issues, not merely conclusory statements
22 and vague allegations.

23 I'm going to briefly address the lack of
24 a link between the unaccounted for fuel rods in Unit
25 1 and the administrative controls in Unit 3.

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1 I will then quickly summarize the root
2 causes of the loss out of Unit 1 and how those causes
3 are not present in Unit 3.

4 I will explain how the loss of
5 accountability for the rods out of Unit 1 does not
6 increase the risk of criticality in Unit 3.

7 In conclusion, I will demonstrate that the
8 intervenors have failed to support their claim that
9 the apparent failure to follow reporting guidelines
10 for loss of the accountability of special nuclear
11 material demonstrates anything of relevance.

12 The Board reopened this proceeding on a
13 very narrow issue. The only issue is whether there is
14 any common link, either in procedures or execution of
15 procedures, that led to the accountability failure at
16 Unit 1 and the present methods of personnel in use at
17 Unit 3.

18 The record is only reopened to determine
19 the extent to which the loss of two fuel rods out of
20 Unit 1 bear upon both the adequacy of administrative
21 controls at Unit 3 and DNC's ability or willingness to
22 implement such controls successfully.

23 As has been demonstrated by the written
24 filings and the presentations of the licensee and
25 intervenor, the loss of accountability of the two fuel

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1 rods out of Unit 1 does not bear upon the ability or
2 willingness to implement administrative controls at
3 Unit 3.

4 The actual events that led to the loss of
5 accountability of the fuel rods out of Unit 1 are not
6 in dispute. The staff and licensee mostly agree on
7 the events that took place, and the intervenor has
8 failed to address those events.

9 Everyone agrees that accountability for
10 the fuel rods was lost around 1980; significantly
11 before the shutdown and restart of the Millstone
12 plant.

13 As the staff affidavit stated, the
14 procedural controls and their implementation at
15 Millstone Station have greatly improved since the 1980
16 time frame; indeed, the Licensing Board noted, in its
17 October, 2000 ruling, that events that occurred prior
18 to the 1996-1998 shutdown and restart do not
19 necessarily reflect the licensee's ability to carry
20 out administrative controls.

21 Similarly, there is no real disagreement
22 about the root causes that initially caused the loss
23 of accountability of the two fuel rods, and the fact
24 that these causes are not at issue in Unit 3.

25 For example, Unit 1 formerly permitted

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1 fuel to be stored outside of the fuel racks. This may
2 have caused the rods to be mistaken for radiated
3 hardware.

4 Unit 3 requires all fuel to be stored in
5 the fuel racks. Unit 3 stores one individual fuel rod
6 that is not part of a fuel assembly in an approved
7 storage container in the fuel racks.

8 The intervenor did not challenge this or
9 any other finding regarding the specific root causes
10 of the loss of accountability of the fuel rods.

11 The original contention in this matter was
12 that the complexity of administrative controls, in the
13 Unit 3 spent fuel pool posed an undue risk of a
14 criticality accident in the pool.

15 It is uncontested that the loss of two
16 fuel rods out of the Unit 1 spent fuel pool does not
17 pose a criticality concern in the Unit 3 spent fuel
18 pool. Even if, hypothetically, the two Unit 1 rods
19 were in the Unit 3 spent fuel pool, this would not
20 pose a criticality concern.

21 The concentration in the Unit 3 spent fuel
22 pool precludes criticality in the event of an entire
23 fuel assembly being misplaced. Two fuel rods are but
24 a small fraction of a small assembly.

25 CHAIRMAN BECHHOEFER: Ms. Brock, you took

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1 two to represent merely the number that were, number
2 of rods that were misplaced, and if you view the
3 misplacement as a programmatic problem, there is no
4 necessary correlation between two and what, what you
5 have to defend against, I guess, I should say.

6 Can you comment on that? What if they
7 lost 25?

8 MS. BROCK: Are you saying that does the
9 programmatic, is your question is whether the
10 programmatic loss indicates a problem, not just rather
11 the two, but--

12 CHAIRMAN BECHHOEFER: Correct.

13 MS. BROCK: Sure.

14 CHAIRMAN BECHHOEFER: Because they
15 happened to have lost two, but does that mean that--

16 MS. BROCK: That if they had lost more--

17 CHAIRMAN BECHHOEFER: Or misplaced or
18 whatever you want to say, but is two just a number to
19 look back at or is it a--

20 MS. BROCK: Well,--

21 CHAIRMAN BECHHOEFER: Is there a limit to
22 what they could misplace before any problems arise?

23 MS. BROCK: Well, in terms of the
24 criticality concern, they could misplace an awful lot
25 more than two. They could misplace a whole fuel

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1 assembly within that pool, which I believe is, is it
2 260? There is 264 rods in a fuel assembly.

3 In terms of the programmatic breakdown,
4 whether they lost two or 25 in 1980, I would still say
5 that the causes that caused that loss, whether it had
6 been two or whether it had been more, in 1980, are not
7 present today, and are not present in the Unit 3 spent
8 fuel pool.

9 The only item that's actually contested in
10 this proceeding is whether Northeast Utilities
11 apparent failure to report the loss of the
12 accountability of the two fuel rods to the NRC within
13 30 days demonstrates that personnel in Unit 3 are
14 unwilling or incapable of following administrative
15 procedures.

16 The apparent reporting violation is of no
17 relevance to these proceedings. This proceeding was
18 reopened to look at whether there was any common link
19 between the accountability failure at Unit 1 and the
20 present methods in use at Unit 3.

21 An apparent violation of a reporting
22 requirement has nothing to do with the loss of
23 accountability of the rods in 1980.

24 The intervenor submitted four documents
25 and one affidavit along with its filing. The staff

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1 believes that none of these documents should have any
2 influence on, in the reopening proceeding.

3 Intervenor's first exhibit is the Special
4 Inspection Report done by the NRC. The inspection
5 report is not in controversy. All parties agree on
6 the facts contained in the inspection report. The
7 intervenor has failed to demonstrate how the
8 inspection report shows that there is a disputed issue
9 of fact that requires resolution in an adjudicatory
10 hearing.

11 The second document by intervenor is the
12 Office of Investigation's report done by the NRC. The
13 OI report is of no relevance to these proceedings. It
14 was initiated to determine whether there was any
15 deliberate effort to delay reporting the loss of
16 accountability for the fuel rods to the NRC. The OI
17 report found that there was no such deliberate effort.

18 The OI report was focused solely on
19 whether any apparent reporting violation was willful;
20 something that is of no relevance to these proceedings
21 since it does not show a common link between the loss
22 of accountability of the fuel rods and the current
23 operating procedure in the spent fuel pool in Unit 3.

24 The intervenor has failed to demonstrate
25 how the OI report shows that there is a disputed issue

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1 of material fact that requires resolution in an
2 adjudicatory hearing.

3 One of the documents attached to the
4 intervenor's filing is a newspaper article, "Data Show
5 World of Stolen Nuclear Material". The article
6 discusses, in very general terms, international loss
7 of nuclear weapon's material.

8 While it is unclear to this staff what
9 relevance the article has to this proceeding or for
10 what purpose it was introduced, it should be
11 categorically excluded. It is well established that
12 a newspaper article is hearsay and cannot be admitted
13 to prove the truth of the assertions stated therein.

14 The fourth document is LER 2001 007 out of
15 Millstone Nuclear Power Station Unit 2 on movement of
16 heavy loads. This document should not have any
17 influence because it has absolutely no relevance to
18 the proceeding at hand. The reopened contention to
19 Unit 2, the extent to which the loss of two fuel rods
20 out of Unit 1 bear upon both the adequacy of
21 administrative controls and the DNCs ability or
22 willingness to implement them.

23 This LER comes out of Unit 2. By its
24 terms, it cannot demonstrate anything about Unit 1 or
25 Unit 3; furthermore, it's an example of the reporting

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1 corrective action process working as intended. The
2 licensee reported that safe load paths were not marked
3 correctly in Unit 2. It proceeded to correct this
4 deficiency by marking the location of the pipe trench
5 on the bay floor. This LER applies only to Unit 2.

6 The LER states that no similar events or
7 conditions were identified during the 24 months
8 preceding this condition.

9 If Unit 3 had a similar condition, it
10 would have had to have been identified. One of the
11 specific boxes on the LER form is, "Other facilities
12 involved". If an additional unit is involved, the
13 licensee writes it in that box. The box was left
14 blank on this LER demonstrating that neither Unit 1 or
15 Unit 3 are involved in this LER.

16 The intervenor appears to be arguing that
17 inadequate engineering practices caused the loss of
18 accountability of fuel rods in Unit 1, and the LER in
19 Unit 2. The Engineering Department is system wide,
20 and, hence, demonstrates a problem in Unit 3.

21 In fact, as a preliminary point, the group
22 in Engineering responsible for engineering programs is
23 separate and distinct from the group that conducts
24 fuel movements in Unit 3.

25 MR. KELBER: Would you say that again,

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1 please?

2 MS. BROCK: Yes. The group in Engin --
3 this is coming from our resident inspector, who told
4 me this morning.

5 The group in Engineering is respon --
6 that's responsible for engineering programs is
7 separate and distinct from the group that would
8 conduct the fuel movements.

9 The intervenor appears to be, the
10 intervenor appears to be making a management character
11 argument in saying that there is something wrong with
12 the Engineering Department in Millstone station wide;
13 indeed, the intervenor stated this morning that the
14 culture is the pervasive issue.

15 The Commission has placed strict limits on
16 management and character arguments. There must be
17 some direct and obvious relationship between the
18 character issues and the licensing action in dispute.
19 They must relate directly to the proposed action and
20 cannot be merely of historical interest. That's all
21 coming out of a recent the, a decision by the
22 Commission. It came down December 5th, 2001.

23 The loss of accountability of the fuel
24 rods took place in 1980. A matter solely of
25 historical interest. The intervenor has failed to

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1 demonstrate the direct and obvious relationship
2 between the engineering management practices in Unit
3 2 that missed marking a safe load path, and the
4 ability to follow administrative procedures in the
5 spent fuel pool.

6 As an additional point, all of
7 intervenor's documents should be excluded because none
8 of them were disclosed to the staff in discovery. The
9 staff specifically asked for all documents that each
10 witness has reviewed and is expected to rely on, on
11 his or her testimony.

12 After a motion to compel, the intervenors
13 provided the answer that the intervenors do not have
14 the requested information available at this time.
15 None of the documents were provided to the staff.

16 Sub-Part K requires simultaneous filings.
17 The ability of the staff to response to arguments that
18 it had no notice of through discovery was
19 substantially prejudiced by the intervenor's failure
20 to disclose the documents in discovery. An
21 appropriate sanction for failure to disclose the
22 documents in discovery is to disregard the documents.

23 The only affidavit submitted by the
24 intervenors in this proceeding is the affidavit of Mr.
25 Joseph Besade. The Licensing Board should give Mr.

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1 Besade's affidavit no weight for several reasons.

2 The affidavit of Mr. Besade fails to state
3 his qualifications as an expert or a fact witness.
4 The only basis for Mr. Besade's affidavit is that he
5 has attended all public meetings and read all
6 documents.

7 In order to go forward, the intervenor
8 must substantiate factual allegations with experts or
9 documents. Mr. Besade is not an expert on anything;
10 furthermore, the affidavit of Mr. Besade has no
11 relevance to these proceedings. This is nothing other
12 than that he has read the documents and attended the
13 meetings.

14 As an additional matter, the fact that Mr.
15 Besade might be called as a witness was not disclosed
16 to the staff on discovery. In response to a specific
17 interrogatory asking who the intervenor is intending
18 to present as experts, the only person disclosed was
19 David Lachbaum. Mr. Lachbaum did not submit an
20 affidavit in this case.

21 The intervenors have today raised the
22 application of Millstone to amend its name. That
23 license amendment application was published in The
24 Federal Register, on October 17th, 2001. The 30,
25 there is a 30 day period for written comments and

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1 requests for a hearing. That period has long since
2 run. That would have been the appropriate time to
3 raise any objections to the name change. The
4 Commission did not, in fact, receive any comments or
5 hearing requests.

6 Judge Bechhoefer asked the licensee and
7 indicated that he wanted to know from the staff
8 whether it would be useful to always have an
9 independent verification during a refueling outage.

10 NRC inspection activities are audit
11 activities. This is because of our resource
12 limitations. We try to cover as much as possible of
13 those activities that are very important. Part of the
14 refueling outage inspection procedures does involve
15 witnessing the fuel movements.

16 When we see that there is an issue, the
17 staff dedicates more resources; especially, the
18 resident inspectors, but, at Unit 3, there have not
19 been fuel movement problems; so, they're unlikely to
20 dedicate the 24 hour resources that you might suggest.

21 CHAIRMAN BECHHOEFER: My question was a
22 little--

23 MS. BROCK: Oh, sorry.

24 CHAIRMAN BECHHOEFER: --broader--

25 MS. BROCK: Okay.

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1 CHAIRMAN BECHHOEFER: --and what, because,
2 mostly because I was not limiting it to NRC oversight.

3 MS. BROCK: Um-hum.

4 CHAIRMAN BECHHOEFER: We don't, we don't
5 have authority to direct the staff to perform certain
6 inspection activities. I, I don't believe we do
7 anyway.

8 My question was broader. Should, should
9 there be some independent oversight, NRC staff or
10 otherwise?

11 (Pause.)

12 MS. BROCK: There is, well, on the fuel,
13 the actual fuel movements, there is a verification
14 process, but, over and above that there is, Mr.
15 Sweeney has just informed me that we require them to
16 have a Quality Assurance Program, which is called the
17 Nuclear Fuel--

18 MR. SWEENEY: Nuclear Oversight.

19 MS. BROCK: The Nuclear Oversight Program,
20 which is run by the licensee, but is an independent
21 verification of all activities, as quality assurance.

22 As stated in Mr. Sweeney's affidavit,
23 human errors can never be totally eliminated. The
24 entire body of administrative controls and the
25 refueling operations in Unit 3 contain both a

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1 procedural specificity and the redundancy necessary to
2 preclude a single human error from presenting a
3 challenge to nuclear safety at Unit 3.

4 The administrative controls possess
5 sufficient rigor and defense in depth that, when
6 implemented by trained and properly supervised
7 workers, criticality will be precluded. There is no
8 disputed issue of fact or law requiring an
9 adjudicatory hearing, and the Board should dismiss
10 this proceeding.

11 I'll take any questions you have.

12 (Pause.)

13 MR. KELBER: Just one question. You
14 indicated that the OI Report found no violation with
15 respect to the reporting--

16 MS. BROCK: Yes.

17 MR. KELBER: --of the, the lost fuel rods.

18 Did any other group, within the NRC, also
19 found no violation with respect to that?

20 MS. BROCK: The OI Report found no willful
21 violation with respect to the loss of--

22 MR. KELBER: Willful violations.

23 MS. BROCK: --fuel, with respect to the
24 lost fuel rods.

25 The Special Inspection Report by the NRC

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1 found two apparent violations. One was an apparent
2 violation of the reporting requirement, failure to
3 report it within the 30 day time period, and the other
4 was failure to account.

5 That is still, we just received the
6 licensee's response to those violations, and it will
7 now go to, will go to, it will be evaluated by the
8 staff.

9 MR. KELBER: So, so, you're still
10 evaluating that? You have not determined, yet,
11 whether there was an actual violation?

12 MS. BROCK: Yes.

13 MR. KELBER: It's an alleged violation up
14 to now?

15 MS. BROCK: Yes.

16 MR. KELBER: And the--

17 MS. BROCK: We received the licensee's
18 response late.

19 MR. KELBER: The 30 day requirement, what
20 sort of requirements are there with respect to the
21 threshold of the problem or identification of a
22 problem when the 30 days starts counting, or is that
23 the thing you're trying to determine now?

24 MS. BROCK: I'm not sure I understand your
25 question.

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1 MR. KELBER: Okay. You say that there is
2 a 30 day reporting requirement?

3 MS. BROCK: Um-hum.

4 MR. KELBER: A reporting requirement for
5 what? Does the pro -- how carefully does the problem
6 have to be identified before the 30 days starts
7 ticking is my point?

8 MS. BROCK: I, I think that's a, that's a
9 good question, and that would, certainly, be a matter
10 of much debate.

11 (Pause.)

12 MS. BROCK: It's within 30 days after the
13 occurrence of any lost, stolen or missing licensed
14 material becomes known to the licensee.

15 So, it goes back to this definition of,
16 "When are things actually lost?" That's
17 20.2201(a)(2).

18 (Pause.)

19 MR. KELBER: All right. Thank you.

20 MS. BROCK: You're welcome.

21 (Pause.)

22 CHAIRMAN BECHHOEFER: I have just a small
23 follow-up question.

24 MS. BROCK: Sure.

25 CHAIRMAN BECHHOEFER: Has the staff yet

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1 decided whether to initiate any, either notice of
2 violation or notice of civil penalty or some penalty
3 with respect to whether September of 2000 or November
4 of 2000 was the appropriate date to submit a report?

5 MS. BROCK: No.

6 CHAIRMAN BECHHOEFER: Has the staff
7 decided on anything there?

8 MS. BROCK: Not to my knowledge. We
9 received the response from the licensee on Friday--

10 CHAIRMAN BECHHOEFER: All right.

11 MS. BROCK: --to the apparent violation,
12 and that should be coming forward, and when it does,
13 we'll give the Board notification.

14 CHAIRMAN BECHHOEFER: Now, if we were to
15 decide that there is a disputed fact on that
16 question,--

17 MS. BROCK: Um-hum?

18 CHAIRMAN BECHHOEFER: --would that
19 disputed fact be better resolved in, in conjunction
20 with a proceeding based on the violation?

21 MS. BROCK: Well,--

22 CHAIRMAN BECHHOEFER: If, if raised. I
23 mean, if there were a notice of violation or notice of
24 civil penalty or notice of licensing action of some
25 sort, and it were challenged, it could be litigated

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1 then. If it weren't challenged, if it were just
2 acknowledged, then the staff remedy, whatever it
3 proposed, goes into effect.

4 Would that be a, a more appropriate forum
5 to, to litigate such questions?

6 MS. BROCK: Well, yes, certainly the
7 question of whether or not there was, in fact, a
8 reporting violation is more appropriately litigated in
9 the enforcement process; instead of in this
10 proceeding, partially because it's difficult to see
11 how this, that would be the type of disputed facts
12 that would rise to the level necessary in Sub-Part K.

13 That would be the kind of, that, that
14 would be the issue that this Board's decision about
15 whether or not to allow an increased capacity in spent
16 fuel, if Unit 3 should go forward.

17 It's difficult to see how the Board's
18 decision could rest on the enforcement question of the
19 reporting violations. So, yes, I think my answer to
20 your question would be, yes, that would be more
21 appropriately litigated in the enforcement proceeding.

22 CHAIRMAN BECHHOEFER: Assuming one was
23 brought.

24 MS. BROCK: Assuming there was one; right.

25 CHAIRMAN BECHHOEFER: Right. Right.

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1 (Pause.)

2 CHAIRMAN BECHHOEFER: Now, what if I
3 changed the scope to say, what about the reporting
4 requirement, if any, which McGuire would raise, the
5 McGuire decision, informing the Licensing Board of
6 ongoing activities that may have an affect on
7 licensing requirements?

8 MS. BROCK: We don't believe that McGuire
9 would require this particular notification. One
10 thing, partially, because looking back at the record
11 in this case and the question of whether or not this
12 would even be considered relevant, well, there is,
13 there is two sort of separate issues.

14 One is the issue of whether they even
15 knew. It's easy to see in hindsight that the material
16 was missing, and that there was, and it was stolen or
17 that it was unaccounted for, but, at the time, there
18 was no reason to think that it was, there wasn't even
19 a question that it was material to these proceedings,
20 partially because this was at Unit 3, and that took
21 place in Unit 1.

22 The Board had actually limited the
23 intervenors discover -- in looking back at this, the
24 Licensing Board's memorandum and order from a
25 telephone conference in May of, May 26th of 2000,

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1 limiting -- let me try to get the exact--.

2 (Pause.)

3 MS. BROCK: Limited the discovery to
4 Millstone Unit 3 since the last refueling or restart,
5 whichever was earlier, which would have tended to
6 exclude the fuel, the response of the fuel rods out of
7 Unit 1.

8 (Pause.)

9 CHAIRMAN BECHHOEFER: I think you've
10 answered my questions. Thank you.

11 MS. BROCK: Thank you, very much.

12 MR. KELBER: Thank you.

13 MS. BROCK: Thank you, very much.

14 (Pause.)

15 CHAIRMAN BECHHOEFER: Ms. Burton, before
16 you, your rebuttal, would you like a short break or
17 not?

18 MS. BURTON: Oh, I would appreciate that.
19 Thank you, very much.

20 CHAIRMAN BECHHOEFER: All right. Maybe a
21 10 minute break?

22 MS. BURTON: Fine. Thank you.

23 (A brief recess was held from 2:13 to 2:19
24 p.m.)

25 CHAIRMAN BECHHOEFER: We're back on the

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1 record.

2 Ms. Burton?

3 (Pause.)

4 MS. BURTON: Yes. Thank you.

5 I'm going to begin by addressing the
6 comments of the licensee first, and then the staff
7 comments, and then I will summarize; so, you'll know
8 how I am proceeding.

9 Beginning with Mr. Repka, he indicated
10 that there is no commonality of procedure between the
11 Unit 3 spent fuel pool and the issue here with Unit 1.

12 We disagree with that because, clearly,
13 there are several areas of commonality. One is the
14 human element that applies to both Unit 1 and what
15 happened there, and it applies, as well, to the
16 application to increase the storage capacity at Unit
17 3, and it will continue to be a factor.

18 Other commonalities, of course, include
19 the, the management of, of the station, and the
20 various departments that have shared jurisdiction over
21 the spent fuel pools.

22 It may be that Engineering is a separate
23 department from the department that actually directs
24 actual fuel movement, but there, certainly, would be
25 station commonalities that would, would be involved

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1 here.

2 Mr. Repka indicated that, in the view of
3 the licensee, the issue of the missing spent fuel rods
4 from Unit 1 is an accident of history and, and
5 represents something in the deep past.

6 Well, it's true, there is an aspect of it
7 that is historical; however, the continuing failure by
8 that licensee to come to grips with its loss of
9 control and accountability continued for several
10 decades, and, ultimately, the disclosure was made, as
11 I think we are all recognizing, under circumstances
12 that are, at the very least, problematical, and that
13 is an issue of history as well, but current history,
14 and the current history is, is still being created.

15 We understand that the NRC staff has not
16 yet made a final determination as to its review of all
17 of these matters.

18 What hasn't changed; however, have, has
19 been the requirement of maintaining closely precise
20 inventory over nuclear fuels, and the requirements to
21 report the loss.

22 Perhaps, I should, at this point, mention
23 something that the staff brought up, and the reference
24 to 10 CFR 20.2201(a)(2), which states, "Within 30 days
25 after the occurrence of any lost, stolen or missing

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1 licensed material becomes known to the licensee, all
2 licensed material in a quantity greater than 10 times
3 the quantity specified in Appendix C to Part 20 that
4 is still missing at the time."

5 Well, that particular sentence is
6 certainly subject to a variety of interpretations
7 because it may be that it's correctly interpreted to
8 mean, "Whenever the occurrence occurred or should have
9 been found to have occurred; such as to maintain a
10 continuing responsibility to report it."

11 Then I have further reference to 10 CFR
12 Part 74.4, which is part of Sub-Part A which defines
13 an abrupt loss, and, apparently, that's what this was,
14 which is to say a loss occurring in the time interval
15 between consecutive, sequential performances of a
16 material control test, which is designed to detect
17 anomalies potentially indicative of a loss of
18 strategic special nuclear material from a specific
19 unit introduced into a process. I've left out cause
20 in there.

21 I recognize that it has been assessed that
22 the nuclear material here is of so-called low
23 strategic significance, but the loss is one that has
24 been continuing. The failure to appropriately
25 recognize it and report it is a matter of, of current

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1 history.

2 Mr. Repka has tried to distinguish away
3 the failure to maintain accountability as to the rods
4 by pointing out that there is a difference at Unit 1
5 from Unit 3, because at Unit 3 the rods are finally
6 put, are placed in fuel assemblies in the spent fuel
7 pools.

8 While that may be true, that really is a
9 distinction of no substantive significance. It would
10 just vary with degree as far as what potential
11 quantity of material might be missing, and I think
12 Judge Bechhoefer was quite correct to question the
13 staff as to whether it made any difference in its
14 analysis as to whether 25 rods had been missing, as
15 opposed to two or some other number.

16 Mr. Repka has indicated that Unit 3 has
17 been able to reconcile its spent fuel in, in the pool.
18 That's comforting to hear. We would hope so. A great
19 deal of attention has been spotlighted here on this
20 company and its conduct with regard to spent fuel.

21 There have been negative comments here
22 casting aspersions on, not personally necessarily, but
23 Mr. Joseph Besade, the Secretary of the Connecticut
24 Coalition against Millstone.

25 Mr. Repka said that he appears to have no

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1 discernable qualifications, and he was similarly
2 disparaged by the staff.

3 We take exception to those
4 characterizations. I'm sure that the Board is well
5 aware, by now, in these proceedings, as to Mr.
6 Besade's significant background in, unlike the members
7 of the Board, unlike Mr. Repka, and, and various other
8 people here, Mr. Besade actually spent time and worked
9 at the Millstone Nuclear Power Station, and, and
10 brings the information that he gleaned from that
11 experience here today, as well as other occasions.

12 When he indicates in his affidavit that he
13 has attended meetings, as, as this meeting, and that
14 he has read materials, that covers a very wide body of
15 time, effort and attention to what has been said at
16 all these meetings and what appears in the documents;
17 so, he may not be expert with a Ph.D, but he is a
18 reliable declarant in these proceedings.

19 Now, Mr. Repka was asked to address
20 himself to the issue as to whether or not the licensee
21 should have notified this Board at a different, should
22 have notified this Board, this proceeding, as to the
23 "discovery" of the missing fuel rods.

24 If I understood him correctly, I think
25 that his answer was, "No", but I, we find that very

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1 curious, and we heard him say here today that he first
2 became aware of the issue of the missing rods after
3 the Connecticut Coalition Against Millstone brought
4 that issue to the attention of this Board.

5 That is simply something that we cannot
6 accept in light of the circumstances.

7 We understand that the failure of a
8 licensee in this country to account for its own highly
9 radioactive spent fuel is, if it can be established
10 that that is the case, can subject a licensee to very
11 serious penalty; potentially, criminal penalty, and
12 I'm not suggesting that there has been anything of a
13 criminal nature here, but apart from that, there,
14 certainly, are other penalties. For instance, the NRC
15 could revoke the licensee's license, could shut it
16 down within the proper realm of it's jur --
17 jurisdiction.

18 It could, also, impose fines and
19 penalties, which, if we wanted to calculate the period
20 since the abrupt loss that I referenced earlier in 10
21 CFR Part 74, to the present time, and we calculated a
22 maximum penalty because this is a, a violation of
23 great seriousness -- if we calculated the maximum
24 penalty that the NRC could impose for this period of
25 time, it would, it could reach a level that would make

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1 the 1.3 billion dollar purchase price of this company,
2 this site, by Dominion, seem to be a mere triviality.

3 We would represent here that given the
4 prospect of such potentially serious enforcement
5 response from the NRC, it simply does not appear to us
6 to have very much credibility that Mr. Repka indicated
7 that he first heard about this from the intervenors
8 here.

9 I just want to mention for the record, and
10 I'm sure the Board must be aware of it, but the
11 disclosure of the, public disclosure of the fact of
12 "discovery" of the missing fuel rods was made by the
13 NRC. It was not made publicly by the licensee, and,
14 in fact, the licensee presumably would have heard from
15 the NRC after the NRC published a little notice not
16 prominently.

17 When it had a very full, very informative
18 webpage where it published a lot of press releases on
19 matters of potentially far less interest than a
20 discovery of missing spent fuel rods at the Millstone
21 Nuclear Power Station, the NRC decided to publish it
22 in a probably less frequently visited part of the
23 site, which was its weekly reports, and it only
24 happened that somebody happened to see that, that,
25 ultimately, everybody in the whole world, I think,

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1 came to find out about this.

2 It, it's very surprising to us to hear
3 that the attorney for this company did not know about
4 that until after he heard about it in this proceeding
5 because of what this public interest, civic group
6 found out from looking at the NRC's website.

7 MR. COLE: Now, clearly, there is an
8 obligation, and we're appreciative of the distribution
9 by Judge Bechhoefer of some authority here, on the
10 obligation on the part of a licensee to share
11 information with a Licensing Board.

12 Clearly, the licensee had an obligation to
13 share this information as soon as it had it; at least,
14 by September 12th if not before then, and there is
15 some reason to believe that it had the information
16 before then.

17 These proceedings were ongoing at that
18 time. The company was very well aware of that. It
19 was a very public proceeding that was going on. It
20 was reported widely in the press that there was a
21 proceeding before the Atomic Safety & Licensing Board
22 regarding expansion of Millstone 3 Unit, Unit 3 spent
23 fuel pool.

24 Clearly, there is an obligation, under all
25 of these authorities, for the licensee to notify, if

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1 not the parties, which, in this case, would be the
2 intervenors, but, at least the Board and, even if
3 there were issues of confidentiality, those could be
4 entrusted to the Board, and, and it appears from this
5 authority that that is what should have been done, and
6 the Board could have and should have exercised its
7 discretion as to whether or not the information seemed
8 to rise to the level that it ought to be formally
9 disclosed in these proceedings.

10 I don't think that the Board would have
11 had to struggle very much with that issue, as to
12 whether or not the information should have been
13 presented to the participants here once the
14 information became known to the Board, if it had been,
15 prior to the Board's decision.

16 There doesn't seem to be any proper reason
17 for the licensee to have failed to bring that
18 information to the attention of the parties here and
19 this Board during the proceedings; other than to try
20 to stem the tide of public indignation over this and
21 to try to orchestrate the disclosure of information
22 such that it would not interfere in anyway with the
23 proposed sale of this plant to Dominion.

24 We can't think of any good purpose, in
25 terms of the public interest, that could have or was

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1 served by the failure of the licensee to share this
2 information with the parties in this proceeding.

3 Mr. Repka asked, perhaps somewhat
4 rhetorically, "What was the prejudice since we found
5 out about it eventually?"

6 Well, as I was saying, we found out about
7 it only because the NRC put it on the website in an
8 obscure place that somebody happened to see. If
9 nobody had seen that, we wouldn't have known about it
10 still, and there would be this very serious issue and
11 these proceedings.

12 It's possible that years ahead somebody
13 might have said, "Well, these proceedings should be
14 reopened," in the year 2040 because of this issue.

15 We were prejudiced because we should have
16 had this information when we did discovery in the
17 summer of, of the year 2000 because we believe that it
18 that would have led to a different result, and we
19 wouldn't be here going through this sequence.

20 Mr. Repka said that we attached Michael
21 Jensen. We never did that. We didn't intend to do
22 that. We called attention to him because he had been
23 put forward by Mr. Repka as the authoritative,
24 authoritative person, at Millstone, for us to depose.

25 We haven't been given any information that

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1 explains to us why Mr. Jensen did not come forward at
2 that time. He was very authoritative in his
3 statements, and, as I recall, I believe that he
4 indicated that been in charge of video, monitoring
5 inside the Millstone 1 Unit fuel pool.

6 This was at the very time, if I'm not
7 mistaken, when there was going to be the initiation of
8 the so-called independent verification of the spent
9 fuel inventory. He never mentioned that to us.

10 Clearly, Mr. Jensen, in his capacity, as
11 he identified it, would have known that this process
12 was going on, or, in fact, wasn't, gave us the
13 impression it wasn't necessary because there had been,
14 essentially, he gave a green light to the conditions
15 of the Unit 1 spent fuel pool at that time.

16 We are troubled at the timing of the
17 disclosure, and the fact that it came, that it was
18 publicized. This was the disclosure of the failure to
19 maintain accountability of the spent fuel rods. That
20 it was publicly disclosed such a short time after this
21 Board's decision in October.

22 We don't believe in conspiracy theories,
23 but we do know that there had been at least two
24 individuals involved in these proceedings in the
25 general counsel's office at the NRC who have so-called

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1 jumped ship to join Mr. Repka's law firm while these
2 proceedings have been underway.

3 They have indicated that they will not be
4 involved now that they've left, but the question is,
5 "Were they involved before they did leave?"

6 We think that it, that there are some
7 questions here that have given us some concern, and
8 we're not suggesting that any party here was privy to
9 any information about when a decision would come out,
10 but it, looking at the closeness of the dates, some,
11 it just doesn't look quite right from, in terms of the
12 licensee's disclosure to the NRC.

13 MR. COLE: Ms. Burton,--

14 MS. BURTON: Yes?

15 MR. COLE: --we didn't even know when it
16 was going to--

17 MS. BURTON: I'm sure, and I'm not
18 suggesting that anything like that was going on. It
19 just, can't help but be brought up in terms of the
20 closeness of the dates.

21 I'm not suggesting, in anyway -- please,
22 don't misunderstand what I've said -- that this Board
23 had any, would have had any, anything to do with any
24 of this. I hope I've been understood on that point.

25 Now, there is this question of judgement.

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1 Was it just an issue of judgement whether or not the
2 NRC should be notified in September or whenever, and
3 there has been discussion here of a pair of black
4 slacks and a credit card and lost keys.

5 Well, I know, the next time that I loose
6 my keys, that the State of Connecticut is not going to
7 revoke my driver's license because that doesn't
8 happen, and I don't think that Dr. Kelber's wife has
9 any legal obligation to report her missing slacks to
10 anybody. I'd be surprised if she did.

11 I think that by even thinking in these
12 terms and thinking about a class of school children at
13 Times Square or whatever, in New York, is only to
14 trivialize the seriousness of what's at stake here.

15 It really isn't a question of a judgement
16 at all. It's a question of the law, and what does the
17 law require, and what would any reasonable person
18 believe that the law requires if there is a potential
19 issue of a lose of control over radioactive waste at
20 a nuclear power plant?

21 (Pause.)

22 MS. BURTON: Another point by Mr. Repka
23 was suggesting our whole case here is based on some
24 tiny historical incident, a mere bleep on the radar
25 screen, has no large significance for anything.

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1 I understand why he's here to make those
2 remarks, but, really, what I think the Board needs to
3 understand, and I'm sure it probably does, is that all
4 of this occurred under a very, very bright spotlight.
5 It's not as though this were something insignificant
6 that nobody was watching.

7 It really does boggle the mind to believe
8 that while there are these proceedings underway on
9 this very issue of spent fuel pool mishandling and
10 mismanagement and, and the plant is up for sale, and
11 there are very high stakes, it's very hard to believe
12 that this could have occurred, and that there would be
13 an issue today as to whether the company violated law
14 by not reporting this when it should have.

15 The very thought that Mr. Repka would say
16 here today that, even had he known or had the company
17 known about this issue earlier on in the proceedings
18 when we were conducting discovery, that he wasn't sure
19 that it would have been reported to this body -- I
20 think he said that he wasn't sure that it would have,
21 it would, he and they would have found it to be
22 material -- that's a very disturbing concept for us to
23 have to swallow here, and it only, I believe, lends
24 further credence to our central claim here, which is
25 that there is no valid factual basis here for the

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1 Board to conclude that the present company does have
2 the ability or willingness to implement new and more
3 complex administrative controls in the Unit 3 spent
4 fuel pool.

5 I think Mr. Repka said that company never
6 had the chance to tell the Board because the
7 Connecticut Coalition Against Millstone beat the
8 company to it. I don't think that is correct.

9 Again, not, Mr. Repka, in addressing the
10 Unit 2 License Event Report, put it, put the Millstone
11 spin on it, which is that a historical event that
12 keeps coming back to bite has been dealt with properly
13 if it keeps coming back because it shows that at least
14 when it came back again, they were looking.

15 I think we've heard that before. I don't
16 think that that, again, entitles the Board to make the
17 finding that I've just mentioned.

18 Now, there were questions about the fuel
19 storage box. I may be mistaken, but I'm not sure that
20 the issue of the fuel storage box was actually
21 presented before to this Board and the parties in the
22 earlier proceedings. If it was, I may be mistaken.

23 I think that, in that area, we have some
24 new issues that weren't addressed in the, in the prior
25 proceedings, and the business of one spent fuel rod

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1 being in that fuel storage box today, if I'm not
2 mistaken, may be new information.

3 In the questioning that took place, the
4 colloquy between the Board and Mr. Repka, I, if I'm
5 not mistaken, I think that there may be potentially
6 more significant issues as to what may end up in that
7 box, and where that box may end up in that pool, that
8 bear some closer scrutiny here.

9 In fact, Mr. Repka answered one of the
10 questions, if I'm not mistaken, such that it would
11 depend on what was at the bo -- in the box at the
12 time, but then, I think, may have contradicted himself
13 by saying that it wouldn't matter what was in the box,
14 because whatever was in the box would belong there,
15 and everything had been thought of in advance.
16 I think that that area gives rise to further concern.

17 I don't believe that when Mr. Lachbaum had
18 an opportunity to analyze the information that he
19 addressed that issue; so, I'm concerned that that
20 information may, may not have been part of what was
21 presented earlier. He did a very careful review.

22 Judge, Dr. Kelber addressed a couple of
23 questions, addressed questions as to two procedures,
24 and I just wanted to comment.

25 I think that one, some of those or one of

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1 those questions to Mr. Repka was, was certainly
2 leading, and I'm not sure if Dr. Kelber knows that
3 leading questions are generally not favored because
4 they have the answer in the question, and they seem to
5 make it easy for somebody to give an answer one way or
6 another based on the question, but one of the
7 questions to Mr. Repka was whether there would be
8 independent verification as to the location of the
9 spent fuel in the pool.

10 Mr. Repka said, "Yes," but what he didn't
11 answer completely, and maybe he didn't have a chance
12 to, was how that occurred because, as I recall the
13 question from Dr. Kelber, it was, "How would the
14 independent verification occur? Would it be verbally?
15 Would it be in writing or how?"

16 I don't think we got complete answers
17 there, and those should be readily, those questions
18 should have been, it seems to me, readily answerable.

19 As far as the first one, there was concern
20 that if the verification were being done by two people
21 close together at the same time looking at the same
22 instrument or whatever, then there might be a problem
23 that, after the first one spoke, the second might be
24 influenced by what he said and want to agree with him.

25 For instance, if he were in a superior

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1 position, I don't know exactly what Dr. Kelber may
2 have had in mind, but we didn't get true clarification
3 of that issue, and I think that's of concern, and,
4 also, the business of the loading of the fuel in the
5 pool because, we may remember from the earlier
6 proceedings, that sometimes it was, it was kind of
7 dark in the spent fuel room, and, in fact, there were
8 some potential mistakes, if not mistakes, made and
9 admitted to by one of the gentlemen there. He
10 couldn't see because it was too dark, and he was too
11 tired because he had been working too long.

12 If he's the guy who is going to make an
13 independent verification to the guy he's talking to,
14 I think we may have some problems if, if these issues
15 aren't adequately addressed, and it seems to be so
16 simple, but big mistakes can happen out of simple
17 things, simple miscommunication.

18 On the Sigma machine, Mr. Repka indicated
19 that after that refueling outage 6, it was replaced
20 with something else, but my understanding is that the
21 Sigma machine actually was a computer, and that it
22 frequently malfunctioned. Mr. Repka indicated that it
23 was used to save time and cost.

24 I think he said that it was not safety
25 related. I, I don't know how he could say that when

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1 we're talking about the movement of this fuel and, and
2 the reliance of people on it. I think it is safety
3 related. I just wanted to make that clarification.

4 I detected some antagonism on the part of
5 Mr. Repka to Dr., Judge Bechhoefer's question about
6 whether it would be useful to have an independent
7 monitor during refuelings; not that Mr. Repka was
8 antagonistic to Judge Bechhoefer, but that he was, he
9 seemed to be somewhat antagonistic to that concept
10 because it might, that was what I, I detected, and,
11 also, detected some negative thought about that from
12 the staff because it doesn't have resources to keep
13 these Millstone operations under watch for 24 hour,
14 round-the-clock periods of time.

15 We've now heard that; so, we now can
16 recognize more clearly perhaps that there is not very
17 much prospect that there will be an on site 24 hour or
18 less inspector, who is qualified from the NRC, to keep
19 watch over the fuel movements at Millstone, and that,
20 therefore, makes it even more important that this
21 Board reach the right decision here, and, and is very
22 careful to look out for the health and safety of the
23 public.

24 We understand from some recent disclosures
25 that Dominion is thinking about trying to get a

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1 license extension here for another 20 years or so.
2 That, we're looking ahead to a great deal of increased
3 density in the storage at Millstone 3 potentially,
4 and--.

5 (Pause.)

6 MS. BURTON: That's all I wanted to say
7 about that.

8 (Pause.)

9 MS. BURTON: Turning to the staff's
10 comments, the staff seemed to be completely supportive
11 here of the licensee, and completely dismissive of
12 anything that the intervenors have put forward.

13 It was somewhat paradoxical for the staff
14 to belittle the filing of the petitioner's, but then
15 to say that the staff would be substantially
16 prejudiced if the Board considered what we filed.
17 Well, I don't, I don't think the Board would be at
18 all, but I'm having trouble reconciling those two
19 positions.

20 The staff, also, indicated that reporting
21 violations have no relation to these proceedings. We
22 disagree with that. It should be obvious that we
23 disagree with that. We think that there has been a
24 real problem with respect to untimely reporting, not
25 just to the NRC but to this Board.

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1 On the name change, it may be correct that
2 nobody has filed comments with the NRC, but it might,
3 also, be that nobody thought that this application
4 would be taken seriously enough by the NRC to warrant
5 comment, but I suppose time will tell.

6 (Pause.)

7 MS. BURTON: The question that Judge
8 Bechhoefer presented to the staff with respect to
9 which would be the best form for litigation as to the
10 issue of the reporting requirement and the possible
11 late reporting, and it's our position that that issue
12 is before this Board.

13 We've raised it. We've raised it that the
14 Boa -- that the licensee should have notified this
15 Board and the parties as soon as it was aware that
16 there was a problem with the fuel accountability at
17 Unit 1, and that the, the parties, the intervenors
18 here will be prejudiced if they don't have a full
19 opportunity to litigate that issue here.

20 We're, also, concerned that even at this
21 late date, the NRC -- excuse me. The NRC currently
22 has not figured out what to do about this. We
23 understand that these proceedings were delayed at the
24 request of the staff because of the possible prospect
25 of a criminal prosecution being undertaken, and, as it

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1 turned out, there has not been a decision that there
2 should be a criminal prosecution, and, in fact, what
3 was, finally, it came to light what was, what our
4 proceedings were interrupted for had really very
5 little to do with substance and, in fact, did delay
6 our proceedings, and I can say, at this point, that
7 our efforts in these proceedings were, were prejudiced
8 by that, and we don't believe that the staff, now,
9 that we can look back in hindsight, had proper cause
10 to request the stay that was granted.

11 So, those are my comments with respect to
12 the prior comments of the other parties, and I have a
13 few now, a few additional comments and my closing
14 argument.

15 (Pause.)

16 MS. BURTON: This is how I will begin.

17 We are here pursuant to the Board's order
18 of May 10th, 2001, in which it agreed and ordered that
19 the proceedings be reopened to the extent, on, on
20 contention for to the extent that it bears upon both
21 the adequacy of administrative controls at the
22 Millstone 3 spent fuel pool, and Dominion Nuclear
23 Connecticut's ability or willingness to implement such
24 controls successfully.

25 We believe that there are disputed issues

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1 of material fact, and that they need to be addressed
2 in a full evidentiary hearing, and the disputed facts
3 have to do with the adequacy of administrative
4 controls, as well as the ability or willingness of
5 Millstone, of -- excuse me, of Dominion to implement
6 the controls as needed.

7 On this issue, the issue of character
8 really is germane. I'm not particularly familiar with
9 the case, the recent case cited by the NRC staff, but
10 it's very clear from the authorities that were
11 distributed by Judge Bechhoefer that the char -- that
12 character issues do have a play in these proceedings.

13 I'm particularly referencing the Three
14 Mile Island case, Metropolitan Edison Company, in
15 which the paraphrase here is that the untimely
16 provision of significant information is an important
17 measure of a licensee's character; particularly if it
18 is found to constitute a material false statement.

19 There is another paraphrase here from the
20 Houston Lighting & Power Company case. An applicant's
21 failure to notify a Board of significant information
22 may reflect a deficiency in character or competence if
23 such failure is a deliberate breach of a clearly
24 defined duty or pattern or conduct to that effect or
25 an indication of bad faith.

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1 Well, the very issue here is the good
2 faith and whether or not the company has good faith.
3 In other words, ability and willingness to implement
4 administrative controls that are more complex to
5 insure the public health and safety at the Unit 3
6 spent fuel pool.

7 If, in these proceedings, the company
8 wilfully withheld information, and I think we would
9 all agree now that the information about the Unit 1
10 spent fuel pool problem is significant, whether or not
11 Mr. Repka agrees it's material to these proceedings,
12 that is a matter of significance here.

13 We're not saying that the licensee
14 submitted a material false statement, but if it knew
15 that the information that this Board had was
16 incomplete, and the incompleteness has to do with
17 information that it had regarding the loss of
18 accountability of the spent fuel rods at Unit 1, then
19 I think the law could imply that it would be
20 tantamount to presenting a material false statement
21 because this Board relied upon the information that
22 the licensee presented, as did the intervenors.

23 Ultimately, this Board will have to decide
24 as to its estimation of Dominion's ability or
25 willingness to carry out administrative controls in

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1 the context of what it knows about how they operate,
2 and that has come out here in these proceedings in
3 this unusual way.

4 (Pause.)

5 MS. BURTON: As I have been reviewing my
6 notes here -- I apologize that my presentation has,
7 perhaps, been somewhat disjointed -- there was a
8 comment that I had wanted to make further with respect
9 to the staff's statement.

10 Referencing the newspaper article that we
11 submitted concerning the loss of nuclear materials
12 here and abroad, I'm not sure if the staff's comment
13 indicates that it was not aware that this is a
14 phenomenon or that it's something that the NRC doesn't
15 know about, but I'm certain that the NRC should be
16 aware of it, as well as other reports through
17 Congressman Markey's office, I believe, that the NRC
18 does not even know whether people who work at these
19 power plants, and that could include Millstone, have
20 gone through any security checks; such as, to indicate
21 whether or not they may be, have been, at anytime,
22 subject to criminal penalties outside the United
23 States.

24 As these proceedings continue in--

25 MR. REPKA: Judge Bechhoefer, I let this

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1 go on for a very long time, and this, at this point,
2 I am going to object because this discussion is beyond
3 the scope of this proceeding, beyond the scope of
4 anything that was in the affirmative cases of, of the
5 licensee and the staff, and I think it really has no
6 business being discussed here today.

7 (Pause.)

8 CHAIRMAN BECHHOEFER: Yeah, I would like
9 to comment that the matter, in general, of security
10 personnel is one that I don't think we have any
11 authority to do anything about.

12 We have referred to a ruling on that to
13 the Commission, and the Commission hasn't decided yet
14 what to do with it, whether to allow the Boards, like
15 ours, to hear evidence on this, but I think that issue
16 is beyond our authority right now to consider.

17 So, if I, if I read your comments in that
18 context, and Mr. Repka, I guess, did, also, we,
19 certainly, don't have the authority now, and I say,
20 "now", because you never know what the Commission will
21 hold, but--

22 MS. BURTON: Yes, I, I appreciate that
23 comment.

24 In closing, I would ask that the Board
25 determine that, in fact, there are issues of disputed

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1 fact which are material and which can only be
2 adjudicated in a full evidentiary hearing.

3 They go to the ability and willingness of
4 the licensee to adhere to the new and more complex
5 administrative controls, and really what these
6 proceedings have done is they have highlighted how
7 there is apparently a culture at Millstone which is
8 adverse to, and has animosity toward compliance with
9 the law, legal requirements of reporting the loss and
10 continuing failure to account for spent nuclear fuel.

11 This is why, while the full spotlight and
12 public attention has been focused on this issue, the
13 question has to be asked, "If this is what they do
14 when everybody is watching, what do they do when they
15 don't think anybody is watching?"

16 It's, that, that's the case that they have
17 presented by their own conduct, which they are now
18 apparently in full agreement with the staff, has
19 occurred, at least since September 12th, recently, and
20 there may be reason to believe that it existed even
21 before that.

22 So, having said those, made those
23 comments, I thank you very much. If you have any
24 further questions?

25 MR. KELBER: Well, Ms. Burton, in general

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1 support of your arguments, you cited as a commonality,
2 an element of commonality between Unit 1 and Unit 3,
3 the human element.

4 Can you be more specific? Is that a
5 general comment, similar to the, the question of
6 ability and willingness, or are you talking about
7 specific elements of human performance?

8 MS. BURTON: I think I'm, I'm speaking as
9 to both, but as you recall, in our fourth contention,
10 that is the contention that holds that substituting
11 administrative controls that are subject to human
12 error, is, should not be allowed at the expense of
13 physical barriers and protections.

14 So, it has to do with that, as well as the
15 culture at, at Millstone. That, that's what I was
16 speaking about.

17 MR. KELBER: And, and there is a link
18 there with Unit 1? I mean, this, this is what I'm
19 trying to understand; the commonality between
20 procedures at Unit 1 and procedures at Unit 3?

21 MS. BURTON: There is a commonality
22 between the requirements--

23 MR. KELBER: You said, you talked about
24 the human element as being one of the common links, as
25 one of the links between the two units under the

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1 general topic of commonality?

2 MS. BURTON: Yes.

3 MR. KELBER: And I'm trying to understand
4 what you meant by, when you said, "human element"?

5 MS. BURTON: Yes. The human factor plays
6 a critical part here in avoiding criticality in the
7 spent fuel pools at Millstone, and the human element
8 is subject to procedures, and the safety conscious
9 work climate, to the extent there may be one at
10 Millstone.

11 The safety of the public depends on the
12 human element acting in a way that honors the
13 practices and procedures that have been--

14 MR. KELBER: All right. Now,--

15 MS. BURTON: --enacted.

16 MR. KELBER: --what I understand, when you
17 were trying to establish a link between the offense at
18 Unit 1 and Unit 3 is, you're referring, in a general
19 way, to human performance at those plants?

20 MS. BURTON: Generally, but, also,
21 specifically.

22 MR. KELBER: Well, that's what I'm trying
23 to, what specifically?

24 MS. BURTON: Yes. Well, generally,
25 because--

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1 MR. KELBER: Not generally.

2 MS. BURTON: Okay.

3 MR. KELBER: Specifically?

4 MS. BURTON: Yes. Specifically, as to the
5 fact that the human element presently at the plant,
6 which extends to Unit 3, is linked with the whole
7 sequence of events concerning the "discovery" and
8 disclosure of the lack of accountability of the Unit
9 1 spent fuel rods.

10 MR. KELBER: Okay. I understand what
11 you're saying now. Thank you.

12 MS. BURTON: Okay. Thank you.

13 CHAIRMAN BECHHOEFER: I believe that I
14 would like to get the record clarified a little bit,
15 and that means that I'll have to ask the questions to
16 Mr. Repka, and maybe I should have posed these
17 earlier, but concerning personnel employed at
18 Millstone 1 and 3 or 3, do the same management
19 officials supervise operations or activities at now
20 Units 1, 2 and 3 currently, both now and in the past?
21 Are, are they interchanged between units?

22 MR. REPKA: I, I think the answer to that
23 question varies over time. In, in the past, there may
24 have been different in, in what level of what
25 management you're speaking to.

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1 In the past, there may have been more
2 independence between the units than there might be
3 now. Now, at this point in time, there is the same
4 management that oversees all three units.

5 At the time that this Unit 1 issue was
6 being addressed, that was not necessarily so. Unit 1
7 was in the process of being decommissioned. Personnel
8 from Entergy (phonetic) had been brought in and had
9 substantial autonomy with respect to the management
10 and oversight of that unit.

11 Before that, the management at Millstone,
12 and the approach at different times, has varied over
13 the years.

14 So, I'm not sure there is a single good
15 answer to that question, but, in general,
16 historically, the units were fairly independent, and
17 when Entergy came in with respect to Unit 1, there was
18 probably more independence than there is today.

19 MR. KELBER: Well, now, I guess we'd like
20 to more about that and what level this occurs.

21 Clearly, the reactor operators, senior
22 reactor operators, shift supervisors are dedicated to
23 certain units? They, it's very rare that a shift
24 supervisor, for example, is licensed for more than one
25 plant at a time?

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1 MR. REPKA: That would be correct;
2 particularly, at Millstone.

3 MR. KELBER: So,--

4 MR. REPKA: Well, at Millstone, the units-
5 -

6 MR. KELBER: Now, at what level do they,
7 does commonality between units begin?

8 MR. REPKA: It, it really depends upon the
9 point in time. Are we talking today, or are we
10 talking in the past?

11 MR. KELBER: Well, let's talk today for
12 the moment.

13 (Pause.)

14 MR. REPKA: Yeah. As Mr. Meekhoff is
15 explaining to me, today, it would become a common
16 management at the operations management level.

17 MR. KELBER: And the--

18 MR. REPKA: At that point, reporting up
19 to, to site management.

20 (Pause.)

21 MR. REPKA: And, and Mr. Meekhoff is an
22 example of that with respect to his current position.
23 As a supervisor for nuclear operations support, he
24 manages and has responsibility with respect to all
25 three spent fuel pools, but that's very much a today

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1 thing.

2 (Pause.)

3 CHAIRMAN BECHHOEFER: My next question,
4 still, still dealing with management officials, are
5 they the same as, to what extent are they the same for
6 DNC as for, previously for NNECO, to the extent
7 they're still, still working? I noticed Mr. Meekhoff
8 did serve both. Does and did serve both companies.

9 MR. REPKA: And, and that's true. There
10 are many individuals who, who continued on at
11 Millstone after the transfer.

12 There are a number of managers who are
13 from Dominion, and the, the--.

14 (Pause.)

15 MR. REPKA: Yeah, the site vice-president,
16 the chief nuclear officer are both individuals from
17 Dominion, for example, and they, of course, are common
18 to all three units.

19 CHAIRMAN BECHHOEFER: Were these persons
20 from DNC brought in, and others, who were serving in
21 a similar position, let go? Is there, are these newly
22 acquired positions?

23 MR. REPKA: They are newly acquired
24 positions in, around the time of the transfer. Every
25 individual case of reasons people left varies, and I

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1 couldn't make a single statement as to why any one
2 particular personnel change was made.

3 CHAIRMAN BECHHOEFER: Well, I'd like to
4 ask the same couple of questions concerning
5 engineering personnel first between Units 1, 2 and 3
6 now.

7 (Pause.)

8 MR. REPKA: First, with respect to the
9 organizations today, mechanical engineering and
10 reactor engineering are two different things, but
11 there is a common reactor engineering management for
12 all three units, and a common Mechanical Engineering
13 Department for all three units, but, again, keeping
14 those two disciplines separate.

15 (Pause.)

16 MR. REPKA: And, and, and with respect to
17 reporting relationships, Mr. McKenney points out that
18 reactor engineering today reports to corporate
19 Dominion, not to site management, but corporate
20 Dominion management based in Virginia.

21 CHAIRMAN BECHHOEFER: Not to the
22 operations manager?

23 MR. REPKA: That's correct.

24 So, the re -- the reporting relationships
25 for different departments vary, and, again, I'm trying

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1 to stay away from making any categorical statement
2 that applies to all departments, but you have, have to
3 keep in mind that there is two different managements.
4 There is site management, and there is, also,
5 corporate management in Virginia.

6 MR. KELBER: Well, Judge Bechhoefer has--

7 MR. REPKA: If you, if you wanted to make
8 a global statement, you would say, in general, in
9 general terms, Millstone has a history of siloed
10 organizations by the units, unitized organizations.

11 Clearly, the trend is to get away from
12 that and move away from that to bring it within the
13 umbrella of the Dominion Virginia plant structure, to
14 mirror those organizational structures and, and to
15 have some common management.

16 We see that in the position of Mr.
17 Meekhoff, again, as he explained in his affidavit,
18 where his position mirrors the position at the other
19 Virginia units, and allows some interaction and some
20 sharing of best practices.

21 MR. KELBER: While Judge Bechhoefer is
22 looking over his reference, I'd like just to make an
23 observation here based on something that Ms. Burton
24 said earlier.

25 I, generally, felt, Ms. Burton, that the

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1 plant is safest when it's operating at full power
2 because then you have the most information about
3 what's going on.

4 I'm not casting any slant one way or the
5 other on your particular remarks, but there is a lot
6 to be said for operating at full power as much as you
7 can, and I think the, the plant is safest then.

8 In the long held technical position that
9 I've had, I've never hold the industry, or anybody
10 else, on that. It's just something that I, I
11 developed out of my own experience.

12 MR. REPKA: I think we believe, as a
13 general proposition, that a well run plant is a plant
14 that operates, and operates consistently and operates
15 well.

16 So, the fact that it's operating for long
17 cycles or, or at high capacity factors is a positive
18 not a negative.

19 MR. KELBER: Did you--

20 CHAIRMAN BECHHOEFER: Yeah, I found it.

21 MS. BURTON: May I just have a rejoinder
22 to that?

23 MR. KELBER: I just, I'm not casting any
24 aspersions one way or the other, but--

25 MS. BURTON: Well, then may I, may I just

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1 then respond Mr. Kelber?

2 CHAIRMAN BECHHOEFER: Yeah, I found what
3 I wanted.

4 MS. BURTON: While Judge Bechhoefer is
5 looking?

6 CHAIRMAN BECHHOEFER: That's okay. You
7 may respond. I have one further follow-up question
8 for the licensees.

9 MS. BURTON: I just wanted to mention that
10 I think a world record was created at our nearby plant
11 in Hadam, Connecticut Yankee. It was well over a year
12 that it ran without shutting down, but then it never
13 ran again because when they did shutdown, they found
14 so many serious problems that, that I think the
15 decision was made, at the corporate level, that they
16 couldn't risk not being able to restart without making
17 a major economic investment in the plant.

18 So, I think that there are different
19 aspects to operating at full power sometimes.

20 CHAIRMAN BECHHOEFER: What I've found,
21 finally, was in connection with, let's see?

22 (Pause.)

23 CHAIRMAN BECHHOEFER: Mr. Meekhoff's
24 position. He says, in Paragraph 13 of his affidavit,
25 that DNC management believes that the supervisory

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1 position described has been one key to the success of
2 fuel handling at North Adam, and having a supervisor
3 with an operations background in this role helps to
4 assure that administrative controls are recognized and
5 followed.

6 Is, Mr. Meekhoff, is your appointment as
7 an individual, or is there now a job description, so-
8 to-speak, that requires that kind of expertise on a
9 continuing basis?

10 The question is, when you quit, whoever
11 replaces you, will they have the same operational type
12 experience that you described?

13 MR. MEEKHOFF: The answer to your question
14 is "yes" to both.

15 There was originally an individual
16 appointment based on my experience; both, my extensive
17 experience, both at Unit 1 and across the station, and
18 there is now a job description that backs that up.

19 So, if I leave and go on to some other
20 thing, somebody with similar qualifications to mine
21 will fill this position.

22 MR. KELBER: We know you can't really be
23 replaced.

24 (Laughter.)

25 MR. REPKA: That's true.

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1 CHAIRMAN BECHHOEFER: Okay. I have no
2 further questions.

3 Follow-up from--

4 MR. REPKA: Yes, Judge Bechhoefer, may I
5 say one quick thing?

6 CHAIRMAN BECHHOEFER: Sure.

7 MR. REPKA: I have no desire to extend
8 this beyond what it needs to be extended, but having
9 listened to Ms. Burton's soliloquy for the last hour,
10 I, I feel constrained to, to say that it was a very
11 stunning and, at times, unattractive exercise in
12 misdirection, failing to engage the facts and what's
13 really at issue here, and I don't want the fact that
14 I did not object or didn't respond to many of the
15 specific items that were mentioned to be seen in
16 anyway as acquiescence or agreement with what she
17 said.

18 There were many things that flat out
19 mischaracterized and misstated what I said, and I want
20 the record to reflect that that's my view.

21 Beyond that, I want to just make one
22 further point on this, this discovery issue, and, and
23 Ms. Brock made a very excellent point in her
24 presentation, that I think, if I was judging body
25 language, kind of, I'm not sure the Board quite

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1 understood what she was saying.

2 Clearly, there is some judgement involved
3 in any kind of materiality decisions; so, even if you
4 assume that Dominion, or, or the licensee at the time,
5 had the knowledge base before the motion to reopen in
6 order to make that determination, which is a
7 hypothetical situation, the operative discovery order,
8 in this case that had been issued by the Board in, I
9 don't have it in front of me, but in the, in the early
10 part of 2000, had restricted discovery on, in terms of
11 fuel loading, fuel handling errors and issues to Unit
12 3 issues that postdated the recovery.

13 So, that's an important point; that had
14 that, this ever become an issue, clearly, would have
15 entered into any materiality discussion, and I just
16 wanted to make sure the Board did not miss that point
17 because that was an excellent point.

18 (Pause.)

19 CHAIRMAN BECHHOEFER: Does the staff have
20 any further follow-up?

21 MS. BROCK: The only, the only follow-up
22 is very small.

23 Ms. Burton mentioned that she was not
24 familiar with, with the case that I was citing having
25 to do with management, character arguments.

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1 CHAIRMAN BECHHOEFER: Yes?

2 MS. BROCK: For the Commission, I wanted
3 to give the cite for that. It's in the matter of
4 Dominion Nuclear Connecticut, Millstone Nuclear Power
5 Station Units 2 and 3. It was CLI 0214, 54 NRC 349,
6 2001, on December 5th, 2001. That was actually a
7 Millstone case.

8 (Pause.)

9 CHAIRMAN BECHHOEFER: Ms. Burton?

10 MS. BURTON: Yes, just two brief comments
11 if I may?

12 Thank you for that citation.

13 With respect to Mr. Repka, if I have
14 misstated or mischaracterized anything that you said
15 here, I didn't mean to. I've been going through my
16 notes which may be in error, but I have tried to be
17 accurate.

18 As, as far as the issue of, of judgement,
19 certainly, there is a threshold of judgement that
20 would be expected to be applied here.

21 (Pause.)

22 MS. BURTON: I'm sorry. I just lost track
23 of what--

24 (Pause.)

25 MS. BURTON: I'm sorry. I just, I have

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1 lost track of what, what I wanted to say about that.

2 (Pause.)

3 MS. BURTON: But, ultimately, of course,
4 it's a, a legal determination of what the, what the
5 requirement is by law, and to simply say that it's
6 easy to look back in hindsight and, and forgive poor
7 judgement, I think the issue that we have here goes
8 way beyond excusing poor judgement in terms of the
9 recognition of the failure of accountability and the
10 failure to make a timely report.

11 That's all I wanted to say. Thank you.

12 CHAIRMAN BECHHOEFER: Okay.

13 (Pause.)

14 CHAIRMAN BECHHOEFER: I guess the various
15 presentations are concluded for the day. We will take
16 all of this into account, and it probably will take us
17 several months to issue a decision. I don't know
18 precisely when.

19 Judge Cole and I have a long trial down in
20 Tennessee that's in our future.

21 MR. COLE: Near future.

22 CHAIRMAN BECHHOEFER: Near future. So, we
23 will be spending a lot of time doing that, and we will
24 try to bring you a decision as soon as we can.

25 So, thank you for being here.

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MS. BURTON: Thank you.

(Whereupon, on April 2nd, 2002, at 3:30
p.m., the above-entitled hearing was closed.)

CERTIFICATE

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

Name of Proceeding: D o m i n i o n N u c l e a r
Connecticut, Inc.

Docket 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.



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