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NUCLEAR REGULATORY COMMISSION

Title: Dominion Nuclear Connecticut

Docket Number: 50-336-LR, 50-423-LR

Location: New London, Connecticut

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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

+ + + + +

BEFORE ADMINISTRATIVE JUDGES:

DR. PAUL B. ABRAMSON
 RICHARD E. COLE
 ANN MARSHALL YOUNG

+ + + + +

In the Matter of:

DOMINION NUCLEAR CONNECTICUT,
 INC.

)
)
) Docket Nos. 50-336-
) LR, 50-423-LR
)
)

Wednesday,
 June 30, 2004

The Initial Prehearing Conference in the above-entitled matters convened at 9:02 a.m., in Ballroom 1, Radisson Hotel, 35 Governor Winthrop Boulevard, New London, Connecticut.

APPEARANCES:

On Behalf of the Petitioners:

of: DAVID R. LEWIS, ESQ.
 Shaw Pittman LLP
 2300 N Street, N.W.
 Washington, D.C. 20037
 (202) 663-8474

LILLIAN M. CUOCO, ESQ.
 Senior Counsel
 Dominion Resources Services, Inc.
 Rope Ferry Road
 Waterford, Connecticut 06385
 (860) 444-5316

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APPEARANCES: (cont'd)

On Behalf of Connecticut Coalition Against
Millstone:

NANCY BURTON, ESQ.
147 Cross Highway
Redding Ridge, Connecticut 06876

On Behalf of the Nuclear Regulatory Commission:

CATHERINE L. MARCO, ESQ.
MARGARET J. BUPP, ESQ.
BROOKE D. POOLE, ESQ.

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

(9:02 a.m.)

CHAIRMAN ABRAMSON: Let's go on the record, please.

Good morning. Today we are here to conduct an initial prehearing conference in the Dominion Nuclear Units 2 and 3 License Renewal Application proceeding.

We are pleased to see public interest in this proceeding and thank you for attending.

Let me note that in contrast to the townhall meeting, which was conducted by the NRC's Office of Nuclear Reactor Regulation on May 18th in Waterford, this is a formal legal proceeding, and only the attorneys representing the parties to this legal proceeding will be permitted to address this Board.

Also, in that regard, we expect to maintain the customary courtroom decorum, and no banners, signs, or the like will be permitted in this hearing room, and no photographer or member of the press or public will be permitted to enter the region in the front of this hearing room reserved for the parties and their counsel.

In response to a notice of opportunity for a hearing published on March 21, 2004, in Volume 69 of

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1 the Federal Register, at page 11,897, Petitioner
2 Connecticut Coalition Against Millstone -- CCAM -- has
3 requested an adjudicatory hearing. The subject of the
4 requested hearing would be the January 22, 2004,
5 application of Dominion Nuclear Connecticut for
6 renewal of the Millstone Units 2 and 3 operating
7 licenses.

8 As is our usual practice, we scheduled
9 this prehearing conference to provide these
10 Petitioners and participants with an opportunity to
11 make oral presentations on the contested matters that
12 are now before the Licensing Board as a result of
13 their various filings over the past several months.
14 The focus of this prehearing conference will be the
15 admissibility of the contentions proffered by the
16 Petitioner.

17 Before we begin hearing the parties'
18 presentations on these matters, I would like to
19 introduce the Board members. To my left is Dr.
20 Richard Cole. Dr. Cole is an environmental engineer
21 and a full-time member of the Atomic Safety and
22 Licensing Board Panel. And to my right is Judge Ann
23 Marshall Young. Judge Young is an attorney and a
24 full-time member of the Panel.

25 I'm Dr. Abramson. I'm an attorney and a

1 scientist, serving the Panel as both a Technical Judge
2 and a Legal Judge, and I am the Chairman of this
3 Licensing Board.

4 At this point, I'd like to have counsel
5 for the various participants identify themselves,
6 commencing with counsel for CCAM.

7 MS. BURTON: Good morning. I'm Nancy
8 Burton. I'm an attorney, and I represent the
9 Connecticut Coalition Against Millstone in these
10 proceedings.

11 CHAIRMAN ABRAMSON: Thank you, counselor.

12 MR. LEWIS: My name is David Lewis. I'm
13 with the law firm Shaw Pittman, representing Dominion
14 Nuclear Connecticut. With me is Lillian Cuoco, who is
15 Dominion's Senior Nuclear Counsel.

16 MS. MARCO: Good morning. My name is
17 Catherine Marco, and I represent the Staff of the
18 Nuclear Regulatory Commission. And with me at the
19 table is Brooke Poole.

20 CHAIRMAN ABRAMSON: Thank you, counselor.

21 So there is no misunderstanding, I would
22 note, as we stated in our June 8 issuance,
23 presentations to the Board may only be made by the
24 participant counsel who have just identified
25 themselves.

1 We note at this point that, according to
2 our records, counsel for the Petitioner has not
3 complied with that portion of our June 8 order
4 requiring all attorneys or other representatives of
5 the parties to file notices of appearance with this
6 Board by June 15th; and, further, that we expect the
7 parties to adhere strictly to the rules and
8 regulations which govern our proceedings.

9 The first matter before today's prehearing
10 conference will be Petitioner's request for a stay of
11 our proceeding pending the outcome of CCAM's petition
12 to the Second Circuit. And, thereafter, our
13 proceedings will focus singularly on admissibility of
14 Petitioner's six contentions, the determination of
15 which is subject to the very concise requirements
16 described in the Commission's March 12th notice, as
17 set out fully in 10 CFR 2.309(f).

18 Bearing in mind that each member of this
19 Board has read all of the filings in this matter, we
20 established in our June 21 order time allocations for
21 presentations that affords an opportunity for the
22 participants to address the key substantive matters
23 raised in the filings now before the Board.

24 This Board intends to follow that schedule
25 as closely as is possible in terms of the issues and

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1 allocated times for arguments. In that regard, before
2 starting on an issue for which a participant has been
3 afforded an opportunity for argument and rebuttal,
4 counsel should indicate how much of the total time
5 allocation he or she wishes to reserve for rebuttal.

6 It is our policy that the Petitioners will
7 always have the last word, so CCAM will -- no matter
8 whether you elect to rebut, she'll have a chance to
9 respond to that.

10 The Board will be providing counsel with
11 notice of the need to finish his or her presentation
12 toward the end of its allocated argument time. I have
13 asked our legal clerk, Susan Lin, to give you a notice
14 when there's one minute left.

15 Our approach will be that we will let you
16 speak the full allotted time. We will not ask
17 questions during that period, with the possible
18 exception of asking for clarification of an acronym
19 that we aren't familiar with.

20 In addition, we have allocated at the
21 outset of this proceeding five minutes to each party
22 to address Petitioner's stay motion. We remind the
23 participants that the scope of this hearing is
24 narrowly focused upon the effects of the aging of
25 plant systems, structures, and components upon plant

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1 safety and to environmental issues generally referred
2 to in 10 CFR 51.95(c). We would appreciate if you
3 would confine your arguments to those issues.

4 While members of the public are not
5 permitted to address this Board in this proceeding,
6 if, following the Board's ruling on admissibility of
7 the contentions of the Petitioner, we find that there
8 are contentions which require a hearing, the Board
9 will issue a notice of hearing that, in accordance
10 with 10 CFR 2.315(a), will afford the members of the
11 public an opportunity to provide oral limited
12 appearance statements on the issues.

13 In that event, the Board will outline in
14 the issuance the times, places, and conditions of
15 participation regarding the opportunity for oral
16 limited appearance statements.

17 Finally, while this proceeding is in
18 session, all cell phones should be turned off or
19 placed on vibrate, and any cell phone conversations
20 should be conducted outside this room.

21 With that, let's turn to Petitioner's stay
22 motion. We have allocated five minutes to each, and
23 I don't -- counsel, do you want to reserve any of your
24 five minutes for rebuttal?

25 MS. BURTON: I would like to reserve two

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1 minutes, if I may.

2 CHAIRMAN ABRAMSON: You may.

3 MS. BURTON: Thank you.

4 CHAIRMAN ABRAMSON: Excuse me. Members of
5 the press are not permitted in this area. So if
6 you're going to take photographs, please take them in
7 the back of the room.

8 MS. BURTON: Actually, this is the
9 Coalition's camera.

10 CHAIRMAN ABRAMSON: Okay.

11 MS. BURTON: Is that permissible?

12 CHAIRMAN ABRAMSON: Well, we'd prefer if
13 you're going to take photographs that you stay behind
14 this area. Behind, please.

15 PARTICIPANT: Behind what area, sir?

16 CHAIRMAN ABRAMSON: In the area that's
17 reserved for the audience, please. We do not want
18 infringement on this.

19 PARTICIPANT: Perhaps if I just leave the
20 camera where it is?

21 CHAIRMAN ABRAMSON: That will be all
22 right, if it doesn't bother any of the participants.
23 Okay?

24 PARTICIPANT: Thank you.

25 CHAIRMAN ABRAMSON: Counselor?

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1 MS. BURTON: Yes, thank you, Mr. Chairman.
2 The Coalition has moved for a stay of the proceedings,
3 and also I will note we e-mailed a second motion for
4 stay. I have copies here. I've distributed hard
5 copies to the parties' counsel in the case.

6 I will address initially the first motion
7 for stay. This relates to the fact that -- I believe
8 it was last Friday -- that the Coalition filed a
9 petition for review to the U.S. Court of Appeals
10 concerning the decision of the NRC Commissioners
11 rejecting the filing that was submitted on
12 February 12th of this year by the Coalition to
13 intervene in the proceedings and also to request a
14 hearing.

15 And I pointed out in the motion that there
16 is another separate appeal pending in the First
17 Circuit Court of Appeals. The Connecticut Coalition
18 Against Millstone is not a party to that. However,
19 the Attorney General of the State of Connecticut I
20 understand is as an amicus party. That appeal was
21 brought by the Citizens Awareness Network, and it
22 seeks to address the issue of the propriety of the
23 Commission's adoption of revised 10 CFR Part 2 rules.

24 In the event that that appeal is
25 successful -- and I understand from Counsel for the

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1 Appellant that there is a reasonable prospect that
2 argument may be scheduled as early as August or
3 September on that -- in that matter, it may very well
4 be if the Petitioner is successful that the Court of
5 Appeals will determine that the Commission should be
6 considering relicensing proceedings under the old
7 rules.

8 And if that is the case, it would
9 certainly frustrate all the parties to these
10 proceedings if we commenced them, and the proceedings
11 are underway under new rules, it may very well mean
12 that all of our time and effort here will have been
13 squandered needlessly, and the parties made to suffer
14 economic -- unfortunate economic consequences.

15 It would seem very reasonable to request
16 that the Board consider a stay through the duration of
17 the appellate process of the matter pending in the
18 First Circuit Court of Appeals as well as our own
19 petition for review to the U.S. Court of Appeals.

20 Otherwise, it would seem that there would
21 be a prospect of potential waste of resources on the
22 part of the parties, the NRC Staff, and certainly this
23 Board.

24 I will address, if I may, very briefly our
25 second motion for stay. I don't know if you -- one

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1 minute left. I'll reserve that for rebuttal, then, if
2 I may.

3 CHAIRMAN ABRAMSON: She has one minute of
4 her five left or one minute of her three?

5 MS. LIN: One of her three.

6 CHAIRMAN ABRAMSON: You have one more of
7 your three.

8 MS. BURTON: Oh, okay. If I may address
9 very briefly the second motion for stay, that was
10 filed -- submitted when we became aware that the
11 county government of Suffolk County -- which is
12 located across the Long Island Sound and includes
13 Fisher's Island, which is 10 miles from here, and Plum
14 Island, which is also close, as well as a large
15 portion of Long Island, the legislative body for
16 Suffolk County voted Monday unanimously to authorize
17 an expenditure of \$25,000 for that governmental agency
18 to participate in some way in these proceedings.

19 I understand that --

20 JUDGE YOUNG: Excuse me. Participate in
21 what?

22 MS. BURTON: In the proceedings involving
23 the application of Dominion to renew its licenses for
24 Units 2 and 3. I understand that in accordance with
25 the charter rules that govern that legislature it was

1 not free immediately to file papers. It had to go
2 through a formal process of putting to bid the quest
3 for a law firm to represent it to even file initial
4 papers.

5 But I would think that it would be very
6 appropriate, given the high population of that county
7 -- I understand it's 1,750,000 people or so -- with
8 many -- I would consider it to be many valid concerns
9 about this relicensing process, it would seem to be
10 very reasonable for this Board to grant a stay for the
11 further reason to --

12 CHAIRMAN ABRAMSON: Time.

13 MS. BURTON: -- enable the county to
14 consider and further its participation in these
15 proceedings.

16 Thank you.

17 JUDGE YOUNG: Do we want to get a copy of
18 that before we -- all parties have copies?

19 JUDGE COLE: You're talking about
20 something different than the one that I have in front
21 of me?

22 CHAIRMAN ABRAMSON: Yes. Yes.

23 JUDGE YOUNG: Thank you.

24 CHAIRMAN ABRAMSON: It's an additional
25 stay motion. Have you provided it to the parties

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1 also?

2 Is the Applicant ready?

3 MR. LEWIS: Yes, sir.

4 CHAIRMAN ABRAMSON: Do you need to reserve
5 any time?

6 MR. LEWIS: Just a minute.

7 CHAIRMAN ABRAMSON: Okay. Thank you.

8 MR. LEWIS: CCM has not provided any
9 justification for a stay. The NRC applies the
10 traditional Virginia Jobbers standards. This is
11 Virginia Petroleum Jobbers Association v. PFC,
12 259 F.2d 923. And those same standards are
13 incorporated into the NRC's rules at 10 CFR 2.342.

14 They include a showing of irreparable
15 injury and likelihood of success on the merits of
16 those two factors are clearly the most important.
17 Here the likelihood of success on the merits is not --
18 the Commission has already ruled on the arguments that
19 CCM is advancing, and they are the law of the case.

20 So as far as this Board's determination of
21 what is the likelihood that CCM will prevail in its
22 interlocutory petition for review before the Court of
23 Appeals, I think the assumption has to be zero
24 likelihood of success on the merits based on the
25 Commission's explicit rulings in this case.

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1 As far as irreparable injury -- again, the
2 answer is none. There is none. CCM is, in effect,
3 seeking some extra procedures that it thinks it would
4 be entitled to under the old rules if there were
5 remand, and I believe that, again, the likelihood of
6 that is slim to none. Those procedures could clearly
7 be offered to CCM.

8 In addition, of course, the period of
9 extended operation won't occur for another 20 years.
10 Clearly, there is nothing going to happen in the short
11 run that's going to irreparably injure CCM. So for
12 all those reasons, there is absolutely no
13 justification whatsoever for a stay.

14 In addition, the old rules and new rules
15 have no bearing whatsoever on the admissibility of
16 contentions. The standards have not changed. It
17 would certainly be inappropriate to delay ruling on
18 CCM's contentions. In fact, if CCM's contentions were
19 found inadmissible under the standards, the same
20 standards under either set of rules, their procedural
21 squabble would just be moot. I mean, it would have no
22 bearing at all on the outcome of this proceeding.

23 Quickly, on the second motion, I've only
24 skimmed it. But as far as I'm aware, Ms. Burton isn't
25 representing the County of Suffolk. Whether the

1 County of Suffolk decides -- whether the County of
2 Suffolk ever decides to intervene or file an amicus
3 brief is up to them. They haven't done either, and I
4 see no basis to stay this proceeding and stay action
5 on CCM's hearing requested based on what some other
6 entity may or may not do.

7 Again, clearly, there's been no showing of
8 any justification for a stay under the Virginia
9 Jobbers factors.

10 CHAIRMAN ABRAMSON: Staff?

11 MS. MARCO: Thank you. CAM filed its
12 motion to stay the Licensing Board proceeding pending
13 an adjudication on appeal to the Second Circuit.
14 While styled as a motion for a stay of a proceeding,
15 because the requests seeks to prospectively stay this
16 proceeding pending the outcome of the appeal, this
17 filing is more appropriately considered to be a motion
18 to hold the proceeding in abeyance.

19 The Staff believes that, notwithstanding
20 the characterization of the filing, the standards to
21 be applied are those that are applicable to stay
22 requests filed pursuant to Section 2.342, which was
23 formerly Section 2.788, of the Commission's
24 regulations.

25 We refer to the Yankee Atomic case, that's

1 CLI-94-3, 39 NRC 95, page 100, note 5, which states
2 that all requests for emergency relief should address
3 these criteria. These criteria are: 1) whether the
4 proponent has made a strong showing that it is likely
5 to prevail on the merits, 2) whether the party will be
6 irreparably injured unless a stay is granted;
7 3) whether the granting of a stay would harm other
8 parties; and, finally, where the public interest lies.

9 These four factors are traditionally
10 applied in judicial proceedings. They are, as counsel
11 had just stated, from the Virginia Petroleum Jobbers
12 case. And the proponent of the stay request has the
13 burden of demonstrating these factors are met.

14 Irreparable injury is the most important
15 factor in determining the need for a stay. CAM refers
16 to the prospect of duplicative administrative
17 proceedings, contrary results, which could cost -- be
18 wasteful, costly, and be inefficient to all parties.
19 These concerns, however, fail to establish irreparable
20 injury. The Commission has held that the incurrence
21 of litigation expenses does not constitute irreparable
22 injury in the context of the stay decision.

23 And, in addition, in ruling on a license
24 renewal request to hold a proceeding in abeyance, the
25 Commission declared that they have repeatedly rejected

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1 such resource-related arguments in prior proceedings.
2 That's the Catawba/McGuire case, CLI-01-27, 54 NRC
3 385, at page 391, 2001 case. And CAM's motion fails
4 to allege, let alone demonstrate, any irreparable
5 injury.

6 Now, with respect to the second criterion
7 -- this is the probability of success on the merits --
8 it is clear that Commission juris prudence says that
9 absent a showing of irreparable injury only virtual
10 certainty of success on the merits is required. And
11 in the appeal CAM's request does not rise to that
12 level.

13 CAM raises the same arguments in its stay
14 request made twice before the Commission and twice
15 rejected by the Commission. CAM states that it
16 intends to argue before the Court of Appeals that an
17 examination of the old and new rules for Part 2, and
18 a review of the pertinent material on the NRC's
19 website, that the motion to vacate should have been
20 granted.

21 In particular, CAM raises issues
22 concerning NRC's guidance on its website regarding
23 whether the old or new rules should apply. The
24 Commissioner, however, in CLI-04-12, stated and
25 provided a reasoned basis for its determination that

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1 scenario number five did not apply.

2 Petitioner has not proffered any new
3 information which would controvert that conclusion or
4 demonstrate any error that would result in a reversal
5 on appeal.

6 In addition, CAM argues that the
7 Commission erred in not permitting limited discovery
8 on the issue of whether NRC deliberately withheld
9 publication of the March 12, 2004, notice for hearing
10 until after the new Part 2 took effect.

11 The Commission held that these were
12 unsupported innuendo and failed to demonstrate that
13 the NRC's review was in any way improper. And CAM
14 still fails to provide support for these claims.
15 Accordingly, it has not demonstrated a likelihood that
16 it would prevail on the merits.

17 So if the proponent fails to demonstrate
18 that it has met its burden on the first two factors,
19 it is not necessary to give a lot of consideration to
20 the other factors. But we would just state, with
21 respect to the fourth factor where the public interest
22 lies, the public interest does lie in the timely
23 completion of these adjudicatory proceedings.

24 Thank you.

25 CHAIRMAN ABRAMSON: Thank you, counsel.

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1 Rebuttal?

2 MS. BURTON: Yes. I'd like to begin by
3 addressing the important element of the public
4 interest, which I think weighs so strongly in favor of
5 a stay that it certainly very easily counterbalances
6 any objection that has been raised by the NRC or
7 Dominion.

8 And that is that these proceedings have
9 potential to effect millions of people. I would guess
10 probably in excess of five million people certainly
11 live within 50 miles of Millstone, and probably very
12 many more. And there is a very great deal of concern
13 that has been expressed, both by the Connecticut
14 Coalition Against Millstone, the Suffolk County
15 Legislature, as well as Attorneys General of I believe
16 five states, which have joined as amicus curiae
17 parties to the First Circuit appeal, which is now
18 pending.

19 Obviously, the issue that is raised in the
20 First Circuit is one that has sweeping potential for
21 all of the relicensing proceedings that are underway
22 by the NRC. And I believe that in terms of public
23 interest benefit the public interest would be very
24 well served, and neither the Staff nor the Applicant
25 has demonstrated any harm to either if the stay is

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1 granted.

2 It was pointed out that the application,
3 if granted, will not take effect for a long period of
4 time. That is correct, but -- and that also helps to
5 establish how there can't be any demonstration of harm
6 if there is a delay, and we're speaking of a delay of
7 only a very few months in these proceedings.

8 So, therefore, we request that the Board
9 give good consideration to our motions.

10 MR. LEWIS: No further argument.

11 CHAIRMAN ABRAMSON: Anything further from
12 either Staff or --

13 MS. MARCO: I have one minute, correct?

14 CHAIRMAN ABRAMSON: You may.

15 MS. MARCO: I'd like to address the second
16 motion.

17 CHAIRMAN ABRAMSON: Please.

18 MS. MARCO: With respect to the potential
19 for a new Petitioner to come into the proceeding, the
20 Staff notes that it is typical Commission juris
21 prudence that a new Petitioner takes the proceeding as
22 they find it. So this proceeding should be allowed to
23 go on, and any newcomer would have to adapt to where
24 they stand at that time, should they be allowed
25 intervention.

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1 That's all the Staff has.

2 MS. BURTON: May I just briefly --

3 CHAIRMAN ABRAMSON: Yes, please.

4 MS. BURTON: -- respond to that? It is,
5 of course, a possibility that this Board might
6 determine to dismiss the efforts of the Connecticut
7 Coalition to participate in these proceedings.

8 Should that occur, then the County of
9 Suffolk of the State of New York will be out of luck,
10 because there will be no proceedings to participate
11 in, and there will be nearly two million people at a
12 loss for the exercise of rights that their elected
13 officials have chosen to pursue for them. And that
14 would be I think a very, very unwise and unjustified
15 turn of events that should be avoided.

16 We're not asking for a lengthy, lengthy
17 stay. We're simply asking for a reasonable stay based
18 on the pendency of legitimate good faith proceedings
19 before the Courts of Appeals of this country.

20 Thank you.

21 CHAIRMAN ABRAMSON: Any questions from the
22 Panel?

23 JUDGE YOUNG: Yes, I have a couple. With
24 regard to Suffolk County, assuming that there is no
25 way that at this point they could meet the original

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1 filing requirements under either the old rules or the
2 new rules. Correct?

3 MS. BURTON: I am not so sure about that,
4 because I believe that the -- this Board has
5 discretion to permit parties to join proceedings
6 within its discretion, and we appealed to that
7 discretion.

8 I'm sure that the -- I don't represent the
9 County of Suffolk in any way, although I have
10 previously represented the Long Island Coalition
11 Against Millstone, which was found to have established
12 standing in other proceedings concerning Millstone.

13 JUDGE YOUNG: What I'm really trying to
14 direct you to is the timing issue. And if they could
15 not meet the original timing requirements, do you have
16 any reason to believe that they could meet the late
17 filing criteria? Since you're aware of it, do you
18 have any other knowledge about that? If you don't,
19 just say no.

20 MS. BURTON: My understanding is that this
21 action by the legislature of the County of Suffolk was
22 almost unprecedented. And it was -- it came about as
23 a result of a strong feeling that something needed to
24 be done very, very quickly, and that the county will
25 move with all due haste, as it has attempted to do, to

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1 participate in these proceedings.

2 JUDGE YOUNG: But what I was trying to get
3 you to address is the late filing criteria, the timing
4 issue specifically. If you don't have any information
5 on that, then that's fine. I just wanted to know
6 whether you did.

7 MS. BURTON: The only information that I
8 have that might be helpful is my understanding that
9 the county is very interested in participating in a
10 substantive way in this matter.

11 JUDGE YOUNG: Okay.

12 MS. BURTON: And that if this body were to
13 grant a stay and set a deadline for participation, I'm
14 sure that that would get things moving very quickly
15 over -- across the Sound.

16 JUDGE YOUNG: I have one more question.
17 Have you, in your petition to the Court of Appeals, or
18 do you know whether the Petitioners in any of the
19 other cases involving the new rules, have asked for
20 any stays?

21 MS. BURTON: With regard to the First
22 Circuit case, I'm not aware of any motions for stay.
23 With regard to our own petition, I am familiar with
24 the expectations of the Second Circuit with regard to
25 motions for stay. That circuit expects parties to

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1 pursue whatever administrative remedies may be
2 available with respect to stays prior to asking for a
3 court stay.

4 So I would anticipate that if we are
5 unsuccessful in obtaining a stay here that our next
6 step would be to possibly ask the Commission to rule
7 in our favor. And should we be unsuccessful in those
8 two steps, then we would have the opportunity to go to
9 the Court of Appeals. But it would have been
10 premature to ask for a stay because I believe the
11 court would not have entertained it to our advantage.

12 JUDGE YOUNG: I do have one more. You
13 mentioned the lack of harm of doing this later based
14 on the fact that the -- any new license, if granted,
15 would take effect at some time in the future. By the
16 same token, there would not be any harm in terms of
17 anything going into effect.

18 If, for example, the Court of Appeals were
19 to grant a stay or to strike down the new rules, there
20 would be time to conduct a new proceeding at that
21 point prior to any new license going into effect.
22 Wouldn't that be correct?

23 MS. BURTON: That may very well be.
24 However, I don't believe the courts ever look kindly
25 upon duplication of proceedings, either before courts

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1 or before administrative agencies, because it so
2 clearly suggests that time is being wasted and
3 squandered, and, therefore, I think looks to agencies
4 and courts to exercise considered discretion in
5 avoiding those kinds of situations. And I think this
6 -- these circumstances present just such a case for I
7 think proper exercise of that kind of discretion.

8 JUDGE YOUNG: Thank you. That's all I
9 have.

10 CHAIRMAN ABRAMSON: Okay.

11 (Pause.)

12 The motion for a stay as to these
13 particular prehearing conference proceedings is
14 denied. We will take under advisement and issue a
15 ruling on the general -- more general issue of the
16 motion for a stay, and issue that when we issue our
17 ruling on the contentions which are at issue today.

18 So with that, let's proceed with the first
19 contention. And we're going to start with
20 Contention 1 as to which we have allocated 10 minutes
21 to CCAM, 10 minutes to the Licensee, and five minutes
22 to the Staff.

23 JUDGE YOUNG: I just wanted to say,
24 assuming we ruled against you on the stay, then we
25 would issue that ruling with our ruling on the

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1 contentions. If we ruled in favor of you, then
2 obviously there would not be any ruling on the
3 contentions at this point.

4 CHAIRMAN ABRAMSON: Counsel, are you
5 prepared to start on your first contention?

6 MS. BURTON: Yes, I am.

7 CHAIRMAN ABRAMSON: And how much of your
8 10 minutes would you like to reserve for --

9 MS. BURTON: I would like to reserve five
10 minutes.

11 CHAIRMAN ABRAMSON: Five minutes for
12 rebuttal. Okay. So you'll have five minutes. Ms.
13 Lin?

14 And, Dominion, do you want to reserve any
15 time for rebuttal? Do you want to wait until we hear
16 what they --

17 MR. LEWIS: I'd like to.

18 CHAIRMAN ABRAMSON: Let's wait. Okay.
19 Commence.

20 MS. BURTON: Thank you. I would like to
21 commence by, first of all, apologizing which I meant
22 to do a moment ago for failing to file a notice of
23 appearance. In strict compliance with the orders I
24 will endeavor to do that my first opportunity.

25 With respect to the first contention, that

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1 is that the Coalition alleges that the operations of
2 Millstone Units 2 and 3 have caused death, disease,
3 biological and generic harm, and human suffering on a
4 vast scale.

5 I will preface my remarks by noting -- and
6 I hope not to the great chagrin of the Board -- that
7 I have also filed by e-mail and served the Staff and
8 Dominion with a motion for leave to supplement our
9 petition with the declaration of Michael Steinberg,
10 who is an investigative reporter, a local author, of
11 Millstone and me.

12 And I have copies of that, if I may
13 present those to the Board.

14 CHAIRMAN ABRAMSON: We've received those.
15 Thank you.

16 MS. BURTON: You have. Thank you.

17 In my discussion, I hope I will not be out
18 of line if I draw upon Mr. Steinberg's declaration and
19 matters that he has referred to in his papers. This
20 contention is the first contention because the
21 Coalition considers it to be of the most -- let me
22 just start that again. Thank you.

23 The Connecticut Coalition Against
24 Millstone has raised health issues as its first
25 contention, because it believes that this issue is the

1 most important issue facing the community of
2 southeastern Connecticut, and that the facts that the
3 Commission -- Coalition, pardon me, is prepared to
4 prove with respect to this issue are -- really go to
5 the heart of these proceedings.

6 We do intend to prove the fact alleged and
7 to rely on documents which include official documents
8 that are maintained both by the State of Connecticut
9 and by other state agencies, and they include the
10 Connecticut Tumor Registry, which has recently -- as
11 recently as January 2003 -- released a report in which
12 it has found that cancers affecting women are at their
13 highest level in this very area where we are today in
14 New London County over every other area in the state.
15 And with regard to cancers affecting men, this area is
16 only second to Tolland County in the State of
17 Connecticut.

18 We rely on other information that others
19 have prepared based on researches into available
20 epidemiology as well as anecdotal data, suggesting
21 that since Millstone has been in operation since 1970
22 there have been conservatively estimated 2,500 excess
23 instances of cancers, at least 800 of those fatal.

24 We are aware of very many anecdotal
25 reports of cancer clusters in the area directly around

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1 Millstone, and most particularly many of these cancers
2 we know are medically associated with the kinds of
3 radioactive releases that Millstone -- that Dominion
4 reports in its filings to the NRC and also to state
5 agencies.

6 In fact, those kinds of diseases, such as
7 breast cancer, thyroid cancer, leukemia -- and there's
8 a high incidence of childhood leukemia in this area --
9 lymphomas, these are all diseases that were recognized
10 by Congress when it passed the Radiation Exposure
11 Compensation Act as being compensable diseases to
12 those individuals who have been identified as
13 suffering from cancer downwind from atomic blasts
14 carried out by the Defense Department in Nevada and
15 elsewhere.

16 In other words, the same ionizing
17 radiation which Congress has determined is a
18 compensable injury in the west we maintain is the same
19 -- bears the same causative relation to what we
20 believe is an epidemic of cancer in this area.

21 We are familiar with the criticism of the
22 Staff and Dominion with regard to this contention, but
23 we believe that the Board needs to consider most of
24 all what is meant by the term "safe" as it goes
25 through this process of relicensing.

1 Safe is a relative term, and we point out
2 the fact that the European Committee on Radiation Risk
3 released a very important study in the year 2003 in
4 which it took issue with the standards then prevailing
5 in this country and elsewhere, and concluded that
6 radiation standards are 100 to 1,000 times higher than
7 they should be. And it is our belief that if the
8 standard were reduced to that level recommended by the
9 European Committee on Radiation Risk that the health
10 of the community would be substantially protected.

11 We believe that this is an issue that the
12 Board needs to address and confront in relicensing
13 proceedings as we look to a period of time as far
14 ahead as the year 2045. And I must say that I don't
15 think very many of us now in the room today will even
16 be alive at that time. We're looking here to protect
17 the health and safety of the public and especially our
18 children, who are more vulnerable to the radiation
19 effects of nuclear power than others.

20 Thank you. I'll reserve my time for
21 rebuttal.

22 CHAIRMAN ABRAMSON: Dominion?

23 MR. LEWIS: Yes. Let me speak first to
24 the motion for leave to supplement the petition.

25 CHAIRMAN ABRAMSON: Sorry. Before you

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1 start, do you want to reserve any time for rebuttal?

2 MR. LEWIS: One minute.

3 CHAIRMAN ABRAMSON: Okay. Thank you.

4 MR. LEWIS: That motion should be
5 rejected. This supplement is clearly untimely. It's
6 an amendment to the original contention, and under
7 2.309(f)(2) a contention may only be amended with the
8 leave of the presiding officer after the original
9 deadline, upon a showing that there is new
10 information, and that the submission is timely based
11 on that new information.

12 As far as I can determine, nothing in the
13 declaration is new. In fact, Mr. Steinberg spoke in
14 a public meeting on Millstone on February 17th, made
15 the same general assertions. Ms. Burton was at that
16 meeting, so she has known about Mr. Steinberg and his
17 book and his assertions since February 17th. There's
18 absolutely no excuse whatsoever for this eleventh hour
19 supplement, or maybe it's twelfth hour supplement, or
20 12:30 -- I don't know. It's so late it's
21 unimaginable.

22 Even if you were to extend it, though,
23 this does not establish a basis for their contention.
24 Mr. Steinberg is an author. There is no showing that
25 he has any expertise, and, therefore, this does not

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1 qualify as a reference to any expert opinion.

2 In addition, even now, having handed this
3 to us this morning, the attachments, which are I guess
4 meant to be the basis part here -- there is some sort
5 of summary, I guess prepared by Mr. Steinberg. But,
6 you know, the documents aren't there, and so there is
7 -- again, there is no basis for her assertions.

8 With respect to Contention 1 itself,
9 Contention 1 is outside the scope of the proceeding as
10 explained in our pleadings, and I'm not going to
11 belabor that. I will add, however, that in her reply
12 CCM referred to the provision in 10 CFR 54.4 on the
13 scope of equipment that has to be evaluated for aging
14 and pointed out that it covers safety-related systems,
15 structures, and components.

16 All that provision does is establish what
17 is the scope of equipment that has to be evaluated for
18 aging. It does not make safety a general license
19 renewal issue. That doesn't mean that radiological
20 impacts are something that the Commission ignores.
21 Radiological releases are governed by current day
22 regulations. And they are inspected, and if there is
23 an issue with radiological releases, it should be
24 looked at any time it occurs in the current license
25 term.

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1 The Commission has made it very clear that
2 license renewal focuses on aging, because it has other
3 mechanisms to look at the everyday-to-day issues
4 including compliance with the NRC's regulations and
5 guidance on what can be released from the plant.

6 CHAIRMAN ABRAMSON: Thank you, counsel.
7 Staff?

8 MS. MARCO: Yes. I'll reserve maybe 30
9 seconds of my five minutes.

10 The Staff opposes the admission of
11 Contention 1, because, as we stated in our pleading,
12 it fails to satisfy the Commission's regulatory
13 requirements for the admission of contentions. The
14 contention is outside of the scope of this licensing
15 renewal proceeding, and it does not set forth a
16 specific factual or legal basis as is required by the
17 Commission's regulation.

18 The Staff also opposes the most recent
19 motion for leave to supplement the petition to
20 intervene with declaration of Michael Steinberg on the
21 basis that there is absolutely no showing of good
22 cause for the late submittal of this supplement.

23 The scope of the license renewal is to
24 focus on the potential detrimental effects of aging
25 that are not routinely addressed by the ongoing

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1 regulatory oversight programs. Nowhere in this
2 contention does CAM raise any issue related to the
3 potential detrimental effects of aging. And,
4 therefore, this contention falls outside of licensing
5 renewal.

6 CAM also fails to set forth this detailed
7 -- necessary detailed fact-based showing that a
8 genuine or material dispute of law or fact exists.
9 None of the alleged facts stated in the contention are
10 supported by any references to specific sources,
11 expert opinions, or documents on which the contention
12 is based.

13 And just perusing the latest submittal,
14 Mr. Steinberg is a journalist and does not appear to
15 have any specific scientific or technical background
16 related to the matters that he has proffered to
17 demonstrate an expertise on. Therefore, this
18 contention is not admissible.

19 The Staff further notes that CAM did not
20 amend this contention as part of its June 14th amended
21 petition. In its June 16th reply, the Petitioner
22 invokes the Commission's regulation at 10 CFR
23 Section 54.4(1)(a)(2) for the proposition that the
24 applicant must demonstrate that during aging in the
25 licensing renewal period it will be able to maintain

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1 the capability to shut down the reactor and maintain
2 the shutdown in -- maintain it in a safe shutdown
3 condition.

4 According to the Petitioner, a safe
5 shutdown condition contemplates that releases will not
6 occur. CAM's characterization of the regulatory
7 requirements is not accurate. The regulation does not
8 require the Applicant, as part of its license renewal,
9 to show that during aging it will be able to maintain
10 the safe shutdown. Rather, this regulation identifies
11 the plant systems, structures, and components that are
12 subject to an aging management review as is required
13 by 10 CFR Section 51.21(a)(1).

14 CAM does not identify any system,
15 structure, or component that was overlooked, and does
16 not identify any deficiency in the Applicant's
17 demonstration that with respect to the systems,
18 structures, or components within the rule, the effect
19 of aging will not be adequately managed. Therefore,
20 CAM's reliance on Section 54.4(a)(1)(2) is overly
21 broad.

22 That's it for the Staff. Thank you.

23 MR. LEWIS: Judge Abramson?

24 CHAIRMAN ABRAMSON: Yes.

25 MR. LEWIS: One correction. There were

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1 two meetings, public meetings. I said that Mr.
2 Steinberg was at I think the initial one on
3 February 17th. That's the danger of doing things on
4 the fly. It may be that Mr. Steinberg spoke at the
5 environmental scoping meeting, but it was still at
6 least a month ago.

7 I talked to my co-counsel, and we are now
8 debating which meeting he was at. But it was -- it's
9 been a while back.

10 CHAIRMAN ABRAMSON: Thanks, counsel.

11 Ms. Burton?

12 MS. BURTON: Yes. I believe Mr. Steinberg
13 did make statements at the May 18th meeting, not the
14 February meeting.

15 CHAIRMAN ABRAMSON: Okay.

16 MS. BURTON: In response to these
17 comments, I may ask rhetorically, concerning the
18 meaning of the word "safe" -- I thought that "safe"
19 meant that people weren't getting hurt.

20 Well, is it safe if 2,500 people get hurt,
21 or if 800 people die, or if four children in the
22 booming tourist community of Mystic suffer from
23 leukemia in their early years? And some children in
24 the area die very young, even in infancy?

25 I thought that "safe" would mean that that

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1 would not happen. And, frankly, it's a little bit
2 shocking to hear the NRC say here today that, "By
3 'safe,' we don't mean that the public won't be killed
4 by what we do." I think that there is a
5 misconception of the use of the term "safe" and
6 "safety" in these regulations.

7 I have some reliance on a study that a
8 nuclear engineer of eminence, David Lochbaum, recently
9 published for the Union of Concerned Scientists, "U.S.
10 Nuclear Plants in the 21st Century." That report
11 involves a discussion of the thousands of unexpected
12 safety problems that have arisen throughout the
13 nuclear industry in this country. And he points out
14 that the risks for catastrophe change as nuclear
15 reactors age just -- much like the risks for death by
16 accident and illness change as people get older.

17 Millstone is in the category now of mid-
18 life to its wearing out phase, and, therefore, there
19 is, it seems, more of a need to be sure that if
20 problems are to occur that the plant be able to shut
21 down in a safe way. We believe that that means that
22 the public will not be exposed to risks of radiation
23 releases which cause harm.

24 We have spent some time reviewing this
25 application, and we have not seen a demonstration by

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1 Dominion that it has taken the care to assess this
2 issue at all. And we would stand corrected if they
3 can point out to us where they have done that, but we
4 do not believe that that has occurred. And it doesn't
5 seem here that they believe that they need to do that.

6 We don't believe that this application
7 shows a care and consideration to doing those things
8 to the plant that would make releases both accidental
9 and routine that will cause harm to the workforce and
10 the public not occur during the period of time when
11 they are most likely to occur, at least according to
12 David Lochbaum, because during the aging, according to
13 his bathtub curve, the most problems occurs with the
14 reactors in their infancy and in their aging period.

15 And we would tend to agree with that, and
16 so we believe that the application should have set
17 forth how it was going to assure that in routine
18 operation and in emergency operation Dominion would be
19 able to maintain, for instance, safe shutdown without
20 releases of radiation that will harm the public.

21 We know that these days still Millstone is
22 shutting down in unplanned outages at a high rate, and
23 recently has acknowledged releasing radiation into the
24 environment. Even very, very, very tiny doses of
25 radiation can cause fatalities.

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1 And I rely on this report I referenced
2 before -- the European Committee on Radiation Risk.
3 It's very important, we believe, in these proceedings
4 that there be a demonstration, that there be evidence
5 and proof that this will not occur. We have a
6 difference as to the material facts here that are
7 significantly in dispute, and we believe that we have
8 proffered a proper and compelling contention in
9 number 1.

10 Thank you.

11 MR. LEWIS: Nothing further.

12 CHAIRMAN ABRAMSON: Anything further from
13 the Staff?

14 MS. MARCO: Yes. I would like to state
15 that the U.S. Nuclear Regulatory Commission is very
16 concerned about safety. We believe that these matters
17 are -- that have been addressed in this contention are
18 part of our ongoing regulatory process. And just
19 because it is outside of the limited scope of this
20 licensing renewal proceeding does not mean that we do
21 not address it and take care of it.

22 And that's what I'd like to say. Thank
23 you.

24 CHAIRMAN ABRAMSON: Counsel, do you wish
25 to say anything in response to the Staff's comment?

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1 MS. BURTON: No, I do not.

2 CHAIRMAN ABRAMSON: Okay. Thank you.

3 Any questions from the Panel?

4 JUDGE YOUNG: Should I start?

5 CHAIRMAN ABRAMSON: Sure.

6 JUDGE YOUNG: Ms. Burton, you've raised
7 quite a number of allegations that if true would be
8 extremely significant. There is no doubt of the
9 significance of the issues that you raise.

10 I guess when I read your filings, and I
11 hear what you say, what I think about is sort of
12 matters of basic legal practice of providing authority
13 for statements, some indication of the source of
14 information that you put forth. You are aware, I
15 know, that the -- even under the old rules the
16 Commission has a heightened pleading requirement, and
17 you're also aware that pleadings -- that contentions
18 are required to be reasonably specific.

19 When I look at issues of what is
20 reasonably specific, and what support you've provided,
21 I ask myself: what information would have been
22 available? What would have been reasonable to supply?
23 And I ask: how do you know X, Y, or Z?

24 For example, you say, "At the original
25 licensing, the licensee and the government withheld

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1 from the public various things -- that men, women, and
2 children would die or suffer disease, and so forth."
3 You mentioned the European report. Now -- and the
4 Lochbaum material now.

5 Could you tell me, first of all -- I could
6 go through these individually, but I guess as a
7 general matter -- and I may have more specific
8 questions, but as a general matter, why, for example,
9 didn't you provide the information from Mr. Steinberg
10 earlier? Or from Mr. Lochbaum?

11 You talk about numbers of people getting
12 hurt or getting cancer or dying. You talk about a
13 tumor registry, Millstone recently acknowledging
14 releases. And the question that keeps coming to my
15 mind is: how do you know these things? And
16 especially given the Commission's pleading
17 requirements, why haven't you given us more
18 information about these things at some point, since
19 February 12th and within the timeframe for contentions
20 under either the old or new rules?

21 Because it sort of puts us I think in a
22 difficult position to be given a number of very
23 serious allegations, but not -- not a whole lot to
24 indicate to us: how do you know this? Where did it
25 come from? What's the source for it? And what would

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1 seem to have been reasonable to provide earlier?

2 Now, that's the general question. And
3 I've gone on at some length, so that you can fully
4 understand what my concerns are, because I think we
5 want you to understand that we recognize the
6 seriousness of the issues. But I'd like to hear from
7 you on why you haven't provided more and more earlier
8 on your sources and authority and how you -- for how
9 you know what it is you're alleging.

10 MS. BURTON: Yes, I will try to respond to
11 those very thoughtful comments.

12 First of all, all of the information that
13 I have relied on today, and in the filings that we
14 have presented, are in the public domain. For
15 instance, Mr. Steinberg's --

16 JUDGE YOUNG: But -- but -- I'm going to
17 interrupt you now. Now I'm going to interrupt you,
18 because I'm wanting to get something -- answer my
19 concerns.

20 When you file a pleading with us, and you
21 make allegations having to do with serious things like
22 safety and allegations of withholding information, you
23 don't expect that we would go out and research the
24 public domain for ourselves when you're making the
25 allegations, and so presumably you would be able to at

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1 least say where in the public domain. How do you know
2 it?

3 MS. BURTON: Well, with all respect, my
4 understanding of the hearing process is that at a
5 hearing a party is burdened to come forward with proof
6 to establish contentions.

7 JUDGE YOUNG: Right. But what I'm trying
8 to get you to focus on is, one, the NRC's contention
9 requirements. And then, two, I think also totally
10 apart from that, just a matter of general legal
11 practice, the general professional expectation that
12 you will provide authority for statements and some
13 indication of the basis for how you know a certain
14 thing.

15 And you refer to quite a lot of things
16 now, or have done so lately. But even today the
17 reference to the Lochbaum material and the tumor
18 registry, just to give two examples -- have we been
19 provided that before today?

20 MS. BURTON: Not in these proceedings by
21 the Coalition

22 JUDGE YOUNG: And why didn't you provide
23 those earlier? Because obviously if you're raising
24 issues of significance and seriousness, such as those
25 you're raising, they should be addressed in such a way

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1 that a body like this Board can address them
2 appropriately.

3 And without the information, you put not
4 only the Board but the other parties in a difficult
5 position of not being able to respond. Do you see
6 what I'm saying?

7 MS. BURTON: I do hear what you're saying,
8 Judge Young. But I will point out that in this
9 particular proceeding the ordinary course has been
10 derailed somewhat by virtue of the fact that the
11 petition that was filed on February 12th under the old
12 rules was rejected by the Commission, and that led to
13 a focus on the part of the Coalition on addressing
14 what it believed was true error on the part of the
15 Secretary and the Commission in rejecting it, leading
16 to our --

17 JUDGE YOUNG: I understand. I understand
18 that.

19 MS. BURTON: -- going to an appellate
20 process.

21 JUDGE YOUNG: I understand that, and I --
22 I don't want to get off onto that. At the same time
23 as that was going on, you knew that another deadline
24 was coming up. And, quite frankly, when I got the
25 materials in this case I looked to see, is there

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1 something else out there? Because you had a
2 subsequent deadline after February 12th that if you
3 had -- that -- it seems like a couple of months passed
4 at least. I was wondering why you didn't provide
5 anything new to the February 12th document.

6 But I think what we got prior to receiving
7 your amended petition was the same thing that you had
8 filed on February 12th. And so sometime during that
9 interim it would have seemed reasonable to beef up
10 your petition so to speak, and thereby to address the
11 kind of concerns I'm presenting to you.

12 And what I'd really like you to focus your
13 response on is those concerns, because that's the real
14 crux of the issue at this stage.

15 CHAIRMAN ABRAMSON: If I may, Judge Young,
16 just interject here. The Commission's proceeding
17 rules are quite clear about what must be provided in
18 contentions.

19 And to cut through the softness of Judge
20 Young's question, our rules require very specific
21 materials to be provided. They don't seem to have
22 been provided initially. They don't seem to have been
23 provided in late-filed supplements. The late-filed
24 supplement had no justification.

25 What we're asking you is: do you have a

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1 justification for not complying with the Commission's
2 rules and regulations?

3 MS. BURTON: In answer to that, with all
4 respect, when the original petition was filed, which
5 I filed -- I filed it in a manner that I believed, and
6 continue to believe, is fully in accord with the
7 standards and the requirements of the Code of Federal
8 Regulations.

9 It may be that the contentions may appear
10 to be rather general and rather broad, but that
11 doesn't mean that they are legally defective. It may
12 be very appropriate to raise a safety issue with
13 respect to an entire application with regard to all of
14 the safety systems of a nuclear powerplant if there
15 are deficiencies that are systemic to the entire
16 operation.

17 JUDGE YOUNG: Let me --

18 MS. BURTON: That doesn't --

19 JUDGE YOUNG: Let me interrupt you, okay,
20 because I don't -- I think we understand that you have
21 very significant concerns about safety. But just to
22 give you an example, looking at the February 12th
23 petition, and then also looking at your amended
24 petition, there is a statement on page 3 at the top.

25 "Since the Millstone reactors went online,

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1 cancer clusters have been identified in many areas
2 close to Millstone. The cancers are scientifically
3 and medically linked to the routine unplanned
4 emissions of Millstone."

5 Now, just reading that, that is an
6 extremely serious statement. I would assume that the
7 lawyer writing that would know -- would have had to
8 have obtained the information about the cancer
9 clusters from somewhere. And just as a matter of
10 general legal practice, I would wonder, why hasn't
11 this lawyer provided me with the source of that
12 information? A citation to the source of the
13 information? Just like you cite to law.

14 And the information that the cancers are
15 scientifically and medically linked to the routine and
16 unplanned emissions -- I would expect that to say that
17 you would have to have some source of knowledge for
18 that. And I wonder, why haven't you provided that to
19 us? And I think if the standard is reasonable
20 specificity, it would seem to be reasonable that if
21 you know the information you would be able to tell us
22 at -- where you got the information from, and give us
23 some document that provides some support for your
24 allegation.

25 MS. BURTON: I understand what you're

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1 saying, but I also hear you saying that the statements
2 that are made are very specific.

3 JUDGE YOUNG: But what I'm asking you to
4 focus on is: why couldn't you give us any -- anything
5 whatsoever, anything, to support that? Whether it be
6 the statement of an expert, a document, a report,
7 anything. Surely you had it. If you're saying this,
8 surely you had some basis.

9 MS. BURTON: There is a complete and
10 overwhelming basis for every statement that is set
11 forth.

12 JUDGE YOUNG: But it doesn't appear -- it
13 doesn't appear on the face of the document. And
14 that's sort of, one, required by the rules; and, two,
15 a matter of basic legal practice that you need to give
16 authority for things that you say.

17 MS. BURTON: I believe that in terms of
18 formulating contentions, we are, again, fully in
19 compliance with these standards. We have been very
20 specific, and we are prepared in these proceedings to
21 establish beyond any doubt the truth of every
22 allegation that we have submitted.

23 We would be very happy, if it would be of
24 help to the Board and the parties, to provide further
25 documentation in an amended petition that would

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1 include the same contentions and --

2 JUDGE YOUNG: Let me interrupt you. Let
3 me interrupt you again.

4 MS. BURTON: -- back it up with all of our
5 references.

6 JUDGE YOUNG: Let me interrupt you.

7 MS. BURTON: Some of which we thought --

8 JUDGE YOUNG: Ms. Burton?

9 MS. BURTON: -- should be self-evident.

10 JUDGE YOUNG: Ms. Burton, let me interrupt
11 you. I understand you're very concerned about this.
12 I'm going to sort of wrap up my questioning at this
13 point, but what I'd like to ask you to close on is,
14 you're offering to provide all of this. Why didn't
15 you provide it earlier? Why didn't you provide it at
16 some point, either with the February 12th petition or
17 on the deadline under the new rules? At some point,
18 why didn't you provide all of this information that
19 you say you have?

20 MS. BURTON: We are here today to provide
21 all of this information.

22 JUDGE YOUNG: No. I'm -- no, you're not
23 answering my question.

24 MS. BURTON: It didn't --

25 JUDGE YOUNG: Ms. Burton?

1 MS. BURTON: Yes.

2 JUDGE YOUNG: Ms. Burton, I understand
3 you're very concerned. I understand you're here to
4 provide it. I want you to just answer the question:
5 why didn't you provide it earlier?

6 MS. BURTON: My answer to that is that I
7 believe that the petition that was filed initially,
8 and one that was amended with a few additional
9 allegations in them, fully complied with the
10 requirements of the CFR -- are fully understandable.
11 It may be that this body and the parties are not --
12 are resistant to some of the concepts that we are
13 setting forth as allegations, and to the Coalition
14 some of these things seem to be fairly self-evident.

15 JUDGE YOUNG: Ms. Burton, I'm going to
16 interrupt you, and I'm going to say one last thing
17 here. I don't think that this Board is -- and I'm
18 certainly not resistant to any of the issues that
19 you're raising. But as a lawyer, I would expect that
20 you would provide some support for them as a matter of
21 basic legal practice.

22 And to raise such significant concerns,
23 and not provide the support, and then fall back on an
24 argument that there is resistance to the issues, I
25 think really evades the question that I'm asking you.

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1 So I'm going to give you one more chance,
2 and then that's going to be the end of my questioning
3 at this point. We'll certainly hear you out on all of
4 the contentions, but I -- I really would like to get
5 a direct answer.

6 MS. BURTON: Let me try this way. First
7 of all, we are very willing to provide you with an
8 amended petition that will set out every authority for
9 every statement that we've set forth. But there's one
10 point that hasn't been made yet, and that is that, of
11 course, the Petitioner in this case is a grass-roots
12 organization. It consists of volunteers, members of
13 the community, Millstone whistleblowers.

14 It is not funded by the government. It is
15 not funded by corporations. It is powered by the
16 concerns of people in the community. I am not paid
17 for my services, and there are issues of economics
18 that may indeed serve as part of the cause for some of
19 your concern -- for instance, disclosures of experts.
20 Experts are very expensive, and it's difficult to
21 engage experts when a grass-roots organization has
22 difficulty raising funds.

23 And there are political pressures that
24 this Board may be aware of that have been going on in
25 the State of Connecticut that may contribute to some

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1 of these issues. But I don't believe that in any
2 sense of professional standards there has been -- that
3 there has -- that that has led to any loss of
4 professional -- meeting professional standards to file
5 papers here.

6 If we were delayed in providing
7 information and coming in, so to speak, at the last
8 hour here -- and I recognize the declaration of Mr.
9 Steinberg is rather late -- but I also recognize this
10 book was published in 1998. All of the people here
11 I'm sure are familiar with it, have seen it.

12 This book is based on numbers that were
13 provided to the NRC by the licensee. We're not giving
14 you anything that isn't already out there, and it
15 shouldn't be so shocking that we would need to give a
16 citation for it, since this is all --

17 JUDGE YOUNG: Just to make the record
18 clear, I'm not familiar with it, and I would have
19 appreciated getting it sooner. I think that answers
20 my question.

21 Thank you.

22 MS. BURTON: I also --

23 CHAIRMAN ABRAMSON: Yes. Can --

24 MS. BURTON: May I just also point out, we
25 have declarations of Mr. William Honan. That was

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1 filed, admittedly perhaps a little bit into these
2 proceedings, but Mr. Honan is familiar, as the Acting
3 Secretary of the organization, with a great many
4 specific facts of technical problems with the
5 facility, and is prepared to come forward at further
6 proceedings in documentation of that.

7 I also want to briefly reference the
8 declaration of Clarence O. Reynolds, formerly for a
9 number of years a skilled mechanic at Millstone.

10 CHAIRMAN ABRAMSON: Counsel, while we
11 realize that Judge Young's questions may have opened
12 the opportunity for you to raise these, we don't
13 believe that it's appropriate at this point to be
14 raising things which should have been raised in your
15 initial argument on this.

16 And your time has been allocated. We have
17 read all of the pleadings. Perhaps we can return to
18 the proceeding.

19 MS. BURTON: Certainly.

20 CHAIRMAN ABRAMSON: We understand your
21 position.

22 MS. BURTON: Thank you.

23 CHAIRMAN ABRAMSON: Okay. Do you have any
24 questions?

25 JUDGE COLE: Just a comment or two.

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1 Ms. Burton, you've raised a lot of
2 allegations, and I've heard some of them before and
3 have been in litigation on similar issues in a lot of
4 nuclear powerplants all over the country. Possibly,
5 some of the issues you raised have been litigated in
6 other Millstone cases. They do not seem to be really
7 new. That doesn't mean they're not important.

8 Both the licensee and the Staff indicate
9 that there's a lack of a nexus to the aging issue
10 associated with those issues, and they contend that
11 the existing regulatory system is designed to take
12 care of those kinds of issues.

13 And I think for those reasons you have a
14 problem with this contention, and I'll give you a
15 chance to respond to that.

16 MS. BURTON: You're directing your
17 comments to the first contention.

18 CHAIRMAN ABRAMSON: Yes.

19 MS. BURTON: In other words, that the NRC
20 has a policy of not considering radiological effects
21 of ordinary/routine operations of plant during the
22 relicensing proceedings, because that's an issue that
23 it's supposed to be dealing with on a day-to-day
24 basis. Is that a correct understanding of your --

25 JUDGE COLE: The normal regulatory process

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1 is designed to handle those kinds of systems, those
2 kinds of problems.

3 CHAIRMAN ABRAMSON: The point --

4 JUDGE COLE: And I hope they do.

5 CHAIRMAN ABRAMSON: But the point is, our
6 hearing has a very narrow focus.

7 MS. BURTON: Well, I think that we can
8 fairly bring up as an issue in this proceeding that we
9 do not believe that this issue has been properly
10 addressed, and that, therefore, that leads to a
11 consideration and relicensing that may be a little bit
12 different from a consideration that other boards may
13 give to other plants elsewhere in the country.

14 JUDGE COLE: Thank you.

15 CHAIRMAN ABRAMSON: Okay. Thank you,
16 counsel.

17 Let's move on to the second CCAM
18 contention relating to terrorism.

19 MS. BURTON: And with respect to this
20 contention, I would like to reserve five minutes for
21 rebuttal.

22 CHAIRMAN ABRAMSON: Okay.

23 MS. BURTON: Thank you. We raise in
24 Contention 2 the issue that Millstone Units 2 and 3
25 are terrorist targets of choice, and we believe that

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1 that is an issue that is properly brought before the
2 Board in these proceedings.

3 We recognize that there is a complete
4 absence of any reference to terrorism or malevolent
5 attack on nuclear powerplants in virtually any of the
6 guides, rules, regulations, Nuclear Energy Institute
7 guides, that are referenced by the NRC as places for
8 people to go to look to see what is appropriate to
9 raise or consider in relicensing proceedings.

10 But we do not believe that because the NRC
11 website does not reference this as an issue that it's
12 not one that shouldn't be considered, because it is
13 central to the concerns of the Coalition today, and
14 certainly the entire community.

15 We recall that very recently the 9/11
16 Commission, in holding hearings in New York City, has
17 pointed out that nuclear powerplants in this country
18 were considered to be reasonable prospects for
19 terrorist attack, and we know that these plants --
20 Millstone at least -- was not built to withstand
21 terrorist attacks.

22 We believe that the NRC has acknowledged
23 certainly that the spent fuel pools are not -- were
24 not built to withstand jet attacks and other kinds of
25 attacks. Yet we are left with the prospect that the

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1 nuclear powerplants here will operate until the year
2 2045 without any consideration to refurbishing or
3 making other improvements or repairs or performing
4 other kinds of maintenance to the facility to assure
5 that, in the event of malevolent attack or terrorist
6 attack, the plant will be able to, for instance, shut
7 down safety without harming the public.

8 It looks as though, having reviewed this
9 application, absolutely no regard has been paid to
10 this issue. This is a credible, serious issue. We
11 know that the NRC, in earlier rulings, has decided
12 that it will not permit adjudication of issues related
13 to terrorism. This is inconsistent with the -- with
14 what we believe to be a fair reading and
15 interpretation of the standards for relicensing.

16 I think I'll reserve my remaining time for
17 rebuttal.

18 CHAIRMAN ABRAMSON: Counsel for the
19 Applicant?

20 MR. LEWIS: Yes. I really have very
21 little to add to our pleadings. The McGuire case that
22 we cite, CLI-02-26, is directly on point and holds
23 that this is neither an aging issue nor an issue
24 cognizable under NEPA.

25 JUDGE COLE: You reserving nine minutes

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1 for your --

2 (Laughter.)

3 Okay.

4 CHAIRMAN ABRAMSON: Staff?

5 MS. MARCO: Thank you. I'd like to
6 reserve one minute, please, for rebuttal.

7 CHAIRMAN ABRAMSON: Okay.

8 MS. MARCO: The Staff opposes the
9 admission of Contention 2, because it fails to satisfy
10 the Commission's regulatory requirements for the
11 admission of contentions. Chiefly, the Commission has
12 determined in its 2002 McGuire decision that terrorism
13 contentions are beyond the scope of, not material to,
14 and inadmissible in a license renewal proceeding.

15 The McGuire decision was issued post-9/11
16 and addressed whether contentions related to terrorism
17 are admissible in a license renewal proceeding. The
18 Commission said that because terrorism issues and
19 security issues were unrelated to the detrimental
20 effects of aging, they are outside the scope of
21 license renewal adjudicatory proceedings.

22 We also oppose Contention 2 on the basis
23 that it fails to set forth the specific factual or
24 legal grounds and does meet the standards for
25 admissibility.

1 CAM's June 14th amended petition merely
2 added the sentence that the application contains no
3 proposal to modify the facility to enhance its
4 protection against an act of sabotage. However, as
5 mentioned above, the Commission has determined that
6 such issues are beyond the scope of license renewal.

7 CAM asserts in its June 16th reply that
8 the Applicant fails to demonstrate "capability to shut
9 down the reactor and maintain it in a safe shutdown
10 condition," in the event a credible terrorist event
11 occurs. Similarly, CAM asserts that the Applicant
12 fails to demonstrate the capability to maintain the
13 integrity of the coolant pressure boundary in the
14 event of a terrorist event. For these propositions,
15 CAM cites to 10 CFR Section 54.4(a)(1)(2).

16 And as I mentioned, with respect to CAM's
17 contention -- first contention, Contention 1, its
18 characterization of that regulation is not accurate.
19 This regulation addresses which plant systems,
20 structures, and components are subject to an aging
21 management review. And it has not identified any of
22 the components, structures, or systems that were
23 improperly excluded from an aging management review.

24 CAM's attempt to inject aging issues into
25 its terrorism contention fails, because the Commission

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1 noted in its 1995 statement of consideration for
2 license renewal, and in the 2002 McGuire decision,
3 that the portion of the current licensing basis that
4 can be impacted by the detrimental effect of aging is
5 limited to design basis aspects of the current
6 licensing basis.

7 All other aspects of the current licensing
8 basis -- "physical protection, security" -- are not
9 subject to the physical aging process. And that's
10 from the McGuire decision at page 364.

11 So, therefore, the Staff opposes admission
12 of CAM Contention 2.

13 Thank you.

14 CHAIRMAN ABRAMSON: Counselor? Ms.
15 Burton?

16 MS. BURTON: Yes, I was just -- may I have
17 just a moment, please?

18 CHAIRMAN ABRAMSON: You may.

19 MS. BURTON: Thank you.

20 (Pause.)

21 JUDGE YOUNG: Are you ready?

22 MS. BURTON: Oh, yes.

23 CHAIRMAN ABRAMSON: Okay. Go ahead.

24 MS. BURTON: With respect to the McGuire
25 decision, I'm not aware that that decision has gone

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1 further in the legal process. But it is clearly in
2 error in not affording the public an opportunity to
3 present and litigate this important issue.

4 The Millstone Nuclear Powerplant -- I
5 think we have asserted here that the Federal Office of
6 Homeland Security has identified it as a primary
7 terrorist target in this community. It is a key
8 element of the infrastructure of southeastern
9 Connecticut.

10 The northeast corridor of the Amtrak train
11 system runs through the very site, and because it's
12 located where it is -- at the tip of a peninsula,
13 jutting into a body of water on three sides -- that
14 fact alone raises very serious issues with respect to
15 the vulnerability of this plant to problems.

16 I had the opportunity the other night to
17 be on a ferry and watching the night sky and all of
18 the traffic of all the lights of planes -- low level
19 and high level -- flying right over Millstone as
20 though it were a navigational marker. In fact, I
21 think it is pointed out as a navigational marker by
22 the Grotton/New London Airport air traffic controller.

23 For the NRC, in the year 2004, to refuse
24 to consider the prospect of terrorism in proceedings
25 where we're looking forward to almost half a century

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1 of time without requiring any attention to be given to
2 even the most basic ways that the plants could be
3 refurbished and strengthened to resist attacks seems
4 to be well beyond the realm of what is reasonable for
5 a federal agency.

6 Certainly, addressing just the spent fuel
7 pools alone, if they were to be hardened and
8 protected, and particularly those that may be -- may
9 have their pools elevated above ground level, and,
10 therefore, are especially vulnerable to terrorist
11 attack -- if this can't be raised as an issue in these
12 proceedings, then I think it's a major oversight on
13 the part of the NRC through no fault of its
14 regulations.

15 Thank you.

16 CHAIRMAN ABRAMSON: Counselor, the McGuire
17 ruling is a Commission ruling. Do you believe that
18 that is not binding on this Board as a Board whose
19 rulings are subject to the appeal of the Commission?

20 MS. BURTON: Well, each ruling of course
21 is limited to the facts of its particular case. And
22 we don't know all the facts of that case, but we do
23 know that Millstone has been identified by a federal
24 agency, the Office of Homeland Security, as a primary
25 terrorist target in the northeast.

1 And though this Board is certainly bound
2 as a matter of law by legal principles that the
3 Commission issues, we believe that there is room for
4 this Board to find cause to differ, and recognize that
5 in the case of Millstone, which is in a population
6 zone of millions of people -- the capital of the State
7 of Connecticut is within 50 miles, New Haven is within
8 50 miles, three states are within 50 miles, the
9 outskirts of Providence, Rhode Island, are within 50
10 miles -- it seems to be high folly for the Commission
11 to adopt this position.

12 And we believe the facts are present here
13 for the Board to take a stand that would require the
14 owners and operators of Millstone to take steps to
15 look into what needs to be studied in terms of the
16 aging process over the next couple of decades.

17 CHAIRMAN ABRAMSON: Dr. Cole?

18 JUDGE COLE: Yes. Ms. Burton, this is a
19 question for you to answer, and maybe -- and I'd also
20 like to get the response of the other parties to it.

21 It appears that the Commission has spoken
22 in the McGuire decision that issues of terrorism are
23 not to be litigated in these types of hearings. You
24 also indicated that the Office of Homeland Security
25 has identified Millstone as something to be looked at

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1 from a terrorism viewpoint.

2 The Commission speaking on -- to the
3 boards on not going into that issue in these hearings,
4 does that mean that the Commission does not have an
5 interest in terrorism or security of the nuclear
6 powerplants?

7 MS. BURTON: Well, you raise an
8 interesting question.

9 CHAIRMAN ABRAMSON: Perhaps let me
10 rephrase it. Does that lead you to believe that the
11 Commission isn't concerned about those issues?

12 MS. BURTON: It's very difficult for an
13 organization such as the Coalition to answer that
14 question, because we don't happen to be privy --

15 CHAIRMAN ABRAMSON: I'm only asking you
16 whether you believe it or not. I mean, you're asking
17 us to consider something the Commission has spoken to,
18 and what we're asking you -- you're asking us to
19 basically take into consideration an issue the
20 Commission has said to us is not within our purview.
21 And we're asking you: do you believe -- do you have
22 a belief that the Commission is not concerned about
23 terrorism?

24 MS. BURTON: I think that it would be fair
25 to say that we are concerned that the Commission

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1 hasn't done enough to address the vulnerability of the
2 Millstone Nuclear Powerplant to a terrorist attack.
3 And we found it extremely disconcerting, to be quite
4 honest, when the former Chairman of the NRC, Mr.
5 Richard -- Dr. Richard A. Meserve, both an engineer
6 and an attorney, highly respected, actually made a
7 statement recently at an academic forum that if there
8 were to be a terrorist attack at an elevated pool,
9 such as at Millstone Unit 1, there shouldn't be a real
10 problem, because there would be enough time for a
11 squad of workers with firehoses to point their hoses
12 at the fuel and cool it down.

13 We thought that that was an
14 extraordinarily insensitive remark if it was meant to
15 represent the --

16 CHAIRMAN ABRAMSON: Dr. Meserve is no
17 longer the Chairman. He was out of office when he
18 made this statement.

19 MS. BURTON: It was curious that he was
20 speaking in the first person plural when he made his
21 remarks. I recognize he is no longer the Chairman of
22 the Commission, but he certainly was on 9/11 and has
23 -- we were, frankly, quite shocked at that comment and
24 had to assume that it in some way reflected upon the
25 attitude of the Commission, since he was speaking in

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1 the first person plural.

2 In any event, we aren't given any
3 confidence in this process that the NRC has paid any
4 attention whatsoever to terrorism if it is considering
5 allowing this nuclear powerplant to operate to the
6 year 2045, without making any terrorism protective
7 improvements or refurbishments.

8 And if it rejects a citizens' group with
9 interest in these proceedings because many of its
10 members live very close to Millstone and are in the
11 true zone of danger, if they can't raise that issue
12 here, then we do lack confidence that the NRC has a
13 commitment to protect the public from credible threat.

14 CHAIRMAN ABRAMSON: Counsel, we understand
15 that this is a serious concern for everybody in this
16 country, not just for the residents near Millstone.
17 And it may be you -- you obviously are here, and you
18 feel it may be very serious, more serious, for you
19 than it is in a -- for people who live near another
20 nuclear powerplant. And we feel that the Commission
21 has an approach to this, and certainly has advised us,
22 directed us, what we can and cannot consider.

23 I'd like to just hear briefly from the
24 Staff. And also, counselor, in the future when we ask
25 questions, I'd appreciate it if you could be a little

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1 more concise in your answer, so we can finish this
2 proceeding today.

3 Staff, can you tell us, is there any
4 reason to believe that the Commission is not
5 addressing security issues related to terrorism
6 outside this proceeding?

7 MS. MARCO: No. There is absolutely no
8 reason to believe that. In fact, in the McGuire
9 decision, the Commission, the very first thing it did
10 was it stated its concern regarding the possibility of
11 terrorist threat to operating reactors. And it said
12 that it was conducting a comprehensive review of the
13 effects of terrorist attacks, and that it was looking
14 at its safety and security rules and procedures, and
15 it's continuing to work with other agencies regarding
16 these matters.

17 And they are looking at upgrading security
18 requirements with additional adjustments. And, in
19 fact, there have been a number of orders following
20 this related -- to operating reactors regarding
21 security and safety enhancements. In fact, several
22 orders were issued to Millstone.

23 And the Commission also established a
24 separate office within the Nuclear Regulatory
25 Commission itself that looks at these issues as part

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1 of its primary objective. So I would say that there
2 is no basis for that assertion.

3 CHAIRMAN ABRAMSON: Thank you. I don't
4 think that we need to have any rebuttal on that. And
5 I'd like to, in the interest of trying to move this
6 along, see if we can deal with Contention 3 before we
7 take a break.

8 JUDGE YOUNG: I still have a question.

9 CHAIRMAN ABRAMSON: I'm sorry. Judge
10 Young has a question.

11 JUDGE YOUNG: Just to shift the focus on
12 this just a little bit, our legal system provides for
13 a structured and organized way of resolving disputes
14 that has been developed over centuries as the fairest,
15 rights-based, really, method for resolving disputes
16 that cannot be resolved through any alternative means.

17 And part of this involves the concept of
18 precedents. The basis for the integrity of the legal
19 system is -- includes this Board's following
20 precedent, following the law, wherever it takes us.
21 And this protects parties like you; this protects the
22 public, because this requires us to follow the law no
23 matter what anyone says. No matter what a licensee
24 says or the Staff says, we're required to follow the
25 law, and precedent is part of that.

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1 And in this case we're all aware, and the
2 Commission's decision in the McGuire case has been
3 discussed. This is precedent for us to follow, and as
4 part of that decision the Commission indicated, I
5 think as Staff counsel pointed out, that it was going
6 to be handling terrorism issues generically, because
7 these issues affect all nuclear powerplants, and a
8 series of orders were issued.

9 And, actually, I was involved in one case
10 involving a challenge to one of the compensatory
11 orders, not with regard to a powerplant but with
12 regard to another type of facility.

13 Are you aware of any other precedent that
14 would require us not to follow the Commission
15 precedent? Because I'm not, and I just want you to
16 tell me if you're aware of any other, because this
17 would be the time to bring that out. If you could
18 just focus your answer on that.

19 CHAIRMAN ABRAMSON: Counselor, please
20 confine your answer to: do you or do you not have a
21 precedent? Let's not go off into another realm.

22 MS. BURTON: I share Judge Young's vast
23 respect for our system of law and order and government
24 and precedent, but with the qualification that our
25 respect for precedent has to allow for considered

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1 judgment of precedent in light of facts presently
2 before a board.

3 And, therefore, although I don't have a
4 precedent of the NRC --

5 JUDGE YOUNG: How do you distinguish the
6 McGuire precedent, then? That would be the way that,
7 in effect, you're asking us -- you're, in effect,
8 asking us to distinguish it. How is it
9 distinguishable?

10 MS. BURTON: As I said, I'm not very, very
11 familiar with the facts of that case. But I am very
12 familiar with the facts of this case, and I know that
13 Millstone is different from that facility and needs to
14 be considered with respect to its location, the
15 population zone, the geography, the infrastructure,
16 the trains, the sub-base, Plum Island, which is a
17 federal facility for infectious diseases within the
18 nuclear evacuation zone, and the presence of a --

19 JUDGE YOUNG: Are you able to compare
20 those to the situation in the McGuire case? I think
21 you said you're not. Because, really, what I'm asking
22 is --

23 MS. BURTON: I believe that I -- our
24 position is that Millstone should be considered,
25 should be given fair consideration on its facts. And

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1 if this Board determines that the facts don't present
2 a case for distinguishing from the precedent in some
3 way, then that is within the discretion of this Board.

4 JUDGE YOUNG: Okay. Thank you.

5 CHAIRMAN ABRAMSON: What time is it?

6 JUDGE YOUNG: Twenty to 11:00.

7 CHAIRMAN ABRAMSON: Twenty to 11:00.

8 Well, we've taken more time than I had hoped on these
9 two issues. But let's take a 10-minute recess, and I
10 want to confine it to 10 minutes. We'll go off the
11 record now. We'll resume at 10:48.

12 MS. BURTON: May I make a request, which
13 I should have made earlier, that we proceed into the
14 next contention and take a recess, mid-morning recess,
15 at 11:00? I would very much appreciate that.

16 CHAIRMAN ABRAMSON: Is that acceptable to
17 the other counsel?

18 MS. MARCO: That's fine.

19 CHAIRMAN ABRAMSON: Okay. Then we'll go
20 back on the record.

21 All right. Let's proceed to the next
22 contention, CCAM Contention 3 relating to the NPDES
23 permit.

24 MS. BURTON: Thank you.

25 CHAIRMAN ABRAMSON: And we've allocated 20

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1 minutes here, 15, and 10.

2 MS. BURTON: Our third contention alleges
3 that Millstone Units 2 and 3 -- there's a typo here --

4 CHAIRMAN ABRAMSON: How much time do you
5 want to reserve?

6 MS. BURTON: Oh, pardon me. I would
7 request to reserve half of the time for rebuttal.

8 CHAIRMAN ABRAMSON: Ten, okay.

9 MS. BURTON: Thank you. Millstone Units
10 2 and 3 operations require the uninterrupted flow
11 through intake and discharge structures of cooling
12 water, which conduct requires a valid national
13 pollution discharge elimination system permit, and the
14 facility lacks such a valid permit.

15 We maintain that a permit was issued to
16 Millstone in 1992 under the Clean Water Act, that that
17 permit expired five years later under the terms of the
18 permit, federal law, and the facts of the case, and
19 that it has not been renewed in the intervening nine
20 years.

21 Furthermore, we maintain that there have
22 been violations of that permit. In fact, it's a
23 matter of fact that the prior owner, Northeast
24 Utilities, pleaded guilty to felonies involving
25 violations of that permit, and that involved, among

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1 other things, illegal discharges of a potent
2 carcinogen, hydrazine, from various locations where it
3 was prohibited into the Long Island Sound.

4 As a point of factual reference, we'd like
5 to point out that after Northeast Utilities did plead
6 guilty to felonies under the Clean Water Act it then
7 went to our State Department of Environmental
8 protection for legal permission to do the same thing,
9 under a state law, Section 22(a)-6K, that allows, in
10 some rare instances, issuance of what are called
11 emergency authorizations.

12 And the facts of this matter are that
13 since 1998, and that is now six years ago, the DEP has
14 issued continuously emergency authorizations and
15 renewed them, into an infinite period of infinite
16 duration, authorization to do such things as release
17 hydrazine, which was previously illegal, increase the
18 output, the use of water by more than 100 million
19 gallons at Unit 3, and a host of other variations on
20 the permit that we maintain expired in 1997.

21 We have raised -- the Coalition has raised
22 some issues that pertain to this in various court
23 proceedings, and at the present time there are issues
24 that remain to be resolved on appeal with respect to
25 this permit.

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1 However, the fact is that for purposes of
2 this proceeding we believe that the company needs to
3 be able to represent to the NRC that it has a lawful
4 ability to use water to cool the reactors, to prevent
5 meltdown, and to clean out the systems, and that it
6 has -- it cannot do that, and that it has not done
7 that in its application.

8 And we understand that there is a vast
9 difference of opinion here between the Coalition and
10 Dominion and the Staff, leading to the clear presence
11 of material facts and issues in dispute that can only
12 be resolved through a hearing process.

13 One of the issues concerning the NPDES
14 permit is that the State Department of Environmental
15 Protection has failed to convene a hearing to consider
16 renewal of the permit since it last considered the
17 issue and issued a permit in 1992.

18 One of the issues that we have raised here
19 -- I believe it's through Mr. Reynolds' declaration --
20 is that there has been an effort, we believe, at the
21 DEP whereby the State of Connecticut has not acted in
22 compliance with the law in allowing the conduct that
23 has been going on involving the cooling system at
24 Millstone.

25 We would intend to prove these facts at a

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1 hearing and rely, for instance, on the handwritten
2 memo of the present Commissioner of the Department of
3 Environmental Protection to the effect that he doesn't
4 believe he has authority to allow the company to do
5 all of these things he has allowed it to do in
6 variance to and in violation of the permit that
7 expired in 1997.

8 All of these issues we believe are
9 appropriate for consideration with regard to
10 relicensing. It's not at all clear that Millstone
11 will ever obtain lawfully a permit to use cooling
12 water.

13 Under the state regulatory framework,
14 which derives from federal law, if a company has
15 wilfully violated a permit, the Commissioner has
16 authority to -- on the basis of that alone to deny
17 reissuance or a renewal of a permit. And the facts
18 are present here such that discretion would lie within
19 the realm of the state agency to deny the permit.

20 At this time, I would like to reserve my
21 rebuttal time and add to it from what I haven't used
22 up.

23 Thank you.

24 CHAIRMAN ABRAMSON: How much time does she
25 have left, Ms. Lin?

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1 MS. LIN: Fifteen minutes.

2 CHAIRMAN ABRAMSON: Fifteen minutes, okay.

3 Thank you.

4 Dominion?

5 MR. LEWIS: I will be succinct. This
6 issue is unrelated to any of the Category 2 issues
7 that Dominion is required to address in its
8 environmental report, and it's really unrelated to
9 license renewal. What, in effect, the Petitioner is
10 asking is that you litigate -- that you allow
11 litigation in this forum of Connecticut's
12 determination that Dominion's license renewal
13 application for the NPDES permit was timely and
14 sufficient. And that's clearly an issue within the
15 exclusive domain of the State of Connecticut.

16 The Commission has made it clear that the
17 Licensing Board should avoid issues that seek to
18 litigate the permitting authority of another agency,
19 particularly when it's not germane to the issues
20 before the Board. And that is exactly the case here.

21 Petitioner just suggested that perhaps the
22 NPDES permit renewal application could be denied,
23 because of past violations. And in the affidavit or
24 declaration of Mr. Reynolds there was a reference to
25 the prior criminal penalty, an assertion that it was

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1 levied against the corporation.

2 The corporation was not Dominion Nuclear
3 Connecticut. It was Northeast Utilities, and they are
4 not the same company.

5 That's all I have.

6 CHAIRMAN ABRAMSON: Thank you.

7 Staff?

8 MS. POOLE: Thank you. The Staff takes
9 the position that the proposed contention is beyond
10 the scope of this license renewal proceeding, and, in
11 any event, does not raise the material issue -- excuse
12 me -- a genuine dispute on a material issue of law or
13 fact.

14 First, as stated in our papers, with
15 respect to compliance with 10 CFR Section 51.45(d),
16 CCAM has not provided a basis for its assertion that
17 Dominion does not possess a valid NPDES -- that's
18 National Pollutant Discharge Elimination System for
19 the benefit of the Reporter -- permit for Units 2 and
20 3.

21 Dominion has demonstrated in its license
22 renewal application that it possesses a current, valid
23 NPDES permit, and CCAM has not provided a basis for
24 its assertion that the permit is invalid, either in
25 its original petition or in the supplements thereto.

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1 Moreover, and more importantly, validity
2 of the NPDES permit is properly within the
3 jurisdiction of the Connecticut Department of
4 Environmental Protection. The NRC has been barred by
5 statute from making substantive determinations of
6 compliance with the Clean Water Act, with the
7 implementation of Section 511(c) (2) of the Clean Water
8 Act in 1972. Accordingly, the resolution of questions
9 pertaining to the validity of the NPDES permit are
10 properly before the Connecticut DEP.

11 As stated in the final rule amending
12 Part 51 to establish new requirements for the
13 environmental review of license renewal applications,
14 and I quote, "Agencies responsible for existing
15 permits are not constrained from reexamining the
16 permit issues if they have reason to believe that the
17 basis for their issuance is no longer valid." That's
18 at 61 Federal Register at page 28,475.

19 However, the NRC will not second-guess or
20 undercut those determinations. In its June 16th
21 reply, CCAM attaches the affidavit of Mr. Reynolds,
22 but that affidavit does nothing to remedy the
23 inadmissibility of this proposed contention.

24 They do not -- CCAM does not provide
25 information suggesting that this contention is about

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1 anything more than compliance with the Clean Water
2 Act, which is beyond the scope of the agency.
3 Specifically, paragraph 11 of Mr. Reynolds' affidavit
4 states that, in 1998, "the Corporation" entered a
5 guilty plea in Federal District Court to Clean Water
6 Act violations.

7 As stated by Mr. Lewis, this reference
8 pertains to Northeast Nuclear Energy Company,
9 Dominion's predecessor licensee at Millstone, who is
10 no longer the licensee and is not the applicant in
11 this license renewal proceeding.

12 The affidavit does not provide any nexus
13 between any past violations, assuming they are true,
14 and the current license renewal application. And Mr.
15 Reynolds, who is not held out to be and has not
16 demonstrated to be an expert on this subject, provides
17 no further explanation or documentation for the
18 statement, or, indeed, states how any allegations of
19 past misconduct by a different licensee relate to the
20 proposed license renewal application.

21 That's all the Staff has at this time.

22 CHAIRMAN ABRAMSON: Thank you, counsel.

23 Rebuttal, Ms. Burton?

24 MS. BURTON: Yes, thank you. The
25 Coalition intends to establish at the hearing of these

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1 proceedings that the Applicant is conducting its
2 operations illegally, in violation of federal law, and
3 that those illegal operations may be a product of
4 certain misconduct on the part of state officials.

5 We believe that with these serious but
6 ultimately supportable allegations cause is present
7 here for the Board to consider this contention in
8 these proceedings. If the Applicant is unable to
9 establish that it will be able to maintain cooling
10 water flow during its ordinary operations, or during
11 sudden unplanned shutdowns, then the application won't
12 be able to establish that during the aging process the
13 plant will continue to be maintained in a safe manner.

14 Certainly, the ability of the plant to
15 cool itself -- and I think it takes hundreds of
16 millions of gallons a minute to cool Units 2 and 3 --
17 without that ability, I don't believe the company can
18 demonstrate compliance with requirements for safe
19 operations.

20 Clearly, there is a difference of opinion
21 here. Clearly, there is a difference of opinion as to
22 the facts of the matter, and those facts need to be
23 adjudicated in this proceeding because they are
24 pertinent to the issue of the matters that the Board
25 and the Commission must consider under the standards

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1 that we have cited in our papers.

2 I note that the licensee did, in its
3 environmental report, submit a copy of the 1992
4 permit. The version is not very readable, but what
5 they did not submit was a copy of an emergency
6 authorization that was originally issued to Northeast
7 Utilities and transferred to Dominion in, I believe,
8 the year 2000 to enable activities that violate and
9 are not allowed under the permit.

10 Dominion is trying to distinguish itself
11 from the prior owner -- Northeast Utilities -- but the
12 fact is if that transfer of a permit, an emergency
13 authorization, to conduct activities that violate
14 federal law ultimately is not a lawful document, then
15 Dominion can't derive any lawful authority from the
16 fact that it was simply a transferee of an illegal
17 permit.

18 It would mean that Dominion does not have
19 lawful authority to carry out the activities that are
20 required to keep Millstone operating in a condition
21 that is not unsafe.

22 I think it is quite clear from the
23 documents that have been filed by all of the parties
24 that this is an area that is hotly contested by all of
25 the parties to this proceeding, and it is set forth

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1 with sufficient specificity so that it is in the
2 contention set forth by the Coalition. There is no
3 argument to the contrary.

4 I believe that we have set forth a
5 contention that is admissible and needs to be
6 litigated in these proceedings.

7 Thank you.

8 CHAIRMAN ABRAMSON: Dominion?

9 MR. LEWIS: Nothing.

10 CHAIRMAN ABRAMSON: Staff?

11 MS. POOLE: Nothing further. Thank you.

12 CHAIRMAN ABRAMSON: Board? Ann?

13 JUDGE YOUNG: Yes. I'd like to ask
14 Dominion counsel, do you disagree with the assertion
15 that water flow for cooling requires a permit?

16 MR. LEWIS: No.

17 JUDGE YOUNG: Okay. What would happen if,
18 ultimately, the permit were denied by the state?

19 MR. LEWIS: We would not be able to
20 operate, and operation wouldn't continue.

21 JUDGE YOUNG: Okay.

22 MR. LEWIS: And, actually, for that very
23 reason, you know, this is a very material issue.

24 JUDGE YOUNG: Okay. Ms. Burton, if the
25 permit is denied and the plant can't operate, where is

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1 the danger with regard to any lack of a permit?

2 MS. BURTON: There would be a great deal
3 of danger without a permit.

4 JUDGE YOUNG: If they can't operate -- if
5 they cannot operate.

6 MS. BURTON: If they cannot use water to
7 cool Millstone, Millstone will melt down. And that
8 will raise a very big question, and that --

9 JUDGE COLE: Could you speak a little
10 louder?

11 MS. BURTON: Yes, I'm sorry. Millstone is
12 a three nuclear reactor unit facility. Unit 1, in my
13 understanding, is shut down and is no longer using
14 cooling water. It's being -- it's cooling its spent
15 fuel with fans. So I don't think water is a real
16 issue with Unit 1. Unit 1 isn't part of the scope of
17 these proceedings.

18 But with respect to Units 2 and 3, the
19 spent fuel at those facilities is in pools, which has
20 to be recirculated. And the recirculation system
21 requires inflow continuously from the Sound. The
22 reactors at Unit 2 and 3 both require constant
23 cooling. The system for cooling relies upon a
24 continuously-operating cooling system that uses --

25 JUDGE YOUNG: Okay.

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1 MS. BURTON: -- hundreds of millions of
2 gallons of water.

3 Even if Unit 2 or 3 were to stop their
4 operations of generating electricity, as, in fact, a
5 Judge of the Superior Court ordered in the year 1999
6 in a case entitled Fish Unlimited v. Northeast
7 Utilities. Still, sufficient water was permitted to
8 be used to continue cooling the reactor and the spent
9 fuel.

10 I'm not sure that this is a real issue
11 that can be addressed in these proceedings, but the
12 fact is that everybody recognizes that as long as
13 there is -- there are two hot reactors with spent
14 fuel, as a practical matter they need to be cooled.

15 JUDGE YOUNG: Okay. I want to ask in a
16 moment --

17 MS. BURTON: That's a --

18 JUDGE YOUNG: -- in a moment I want to ask
19 -- in a moment.

20 MS. BURTON: Okay.

21 JUDGE YOUNG: I want to ask Dominion to
22 respond to what you're saying and indicate whether or
23 why, assuming the worst, Units 2 and 3 couldn't be
24 treated the same as Unit 1.

25 But let me ask you just a couple more.

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1 Are you, as the authority for this environmental
2 contention, are you asserting that there is a
3 Category 2 issue?

4 MS. BURTON: I believe, Judge Young, that
5 this issue relates to our fourth contention with
6 respect to Category 2, because --

7 JUDGE YOUNG: Which Category 2 issue?

8 MS. BURTON: Well, this is the issue with
9 regard to the entrainment fish and shellfish,
10 because --

11 JUDGE YOUNG: So you're tying this to that
12 particular Category 2 issue. Any other Category 2
13 issue?

14 MS. BURTON: That's the only one I'm aware
15 of.

16 JUDGE YOUNG: Okay. Is there any other
17 authority besides that particular Category 2 issue?

18 MS. BURTON: That's the only one I --

19 JUDGE YOUNG: Any other legal authority?

20 MS. BURTON: That's the only one I'm aware
21 of.

22 JUDGE YOUNG: Okay. Then, just on the
23 issue of our authority to, in effect --

24 CHAIRMAN ABRAMSON: Address?

25 JUDGE YOUNG: -- potentially overrule the

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1 state board or authority, do you have any authority
2 that would give us jurisdiction to do that, any legal
3 authority? Just yes or no.

4 MS. BURTON: I'm not really sure, because
5 I don't believe there has ever been a case.

6 JUDGE YOUNG: Okay. Then, with regard to
7 you talked about the state law 22(a)-6K, and you made
8 reference to hydrazine, and you talked about the
9 felony conviction. And I know you provided the
10 affidavits regarding that, albeit late.

11 Again, I want to indicate my concern that
12 with regard to the issue of reasonable specificity you
13 are raising some very significant issues here, and you
14 haven't provided a whole lot of authority.

15 What I gleaned from everything I've heard
16 and read is that the matter of the state -- the NPDES
17 permit is currently before the state authority. It
18 will be making a determination whether to grant a
19 renewed permit. And if it grants it, then as far as
20 any of us know there is no authority for us to
21 overrule the state, although presumably there is some
22 method of appealing that.

23 And I'm assuming that you would be
24 involved in that, to whatever extent you can legally;
25 and, if the permit is denied, that Dominion would then

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1 have to determine how it is going to cease operation
2 of the plants pending any subsequent granting of a
3 permit.

4 I guess that's more a statement, but do
5 you have anything -- have I left anything out in my
6 analysis? Just concisely, have I left anything out?

7 MS. BURTON: I think one omission -- and
8 it's through no fault of your own, certainly -- has to
9 do with representations that Dominion, through
10 Northeast Utilities, has made to the state. And also
11 to these proceedings with respect to the sufficiency
12 and the lawfulness of its use of water at this
13 facility.

14 JUDGE YOUNG: But what you're getting into
15 there is the issue of the state's authority. And
16 without any jurisdiction for us to intrude on that,
17 then that's before the state authority, and presumably
18 you can raise challenges to that in that forum.
19 Right?

20 MS. BURTON: Well, I'm not sure, and I
21 haven't, as I say, seen any case like this where a
22 state has denied a permit to generate -- to use water
23 to generate electricity while being certain that
24 operating -- that the plant can be cooled and not melt
25 down, other than the case that I am personally

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1 familiar with where Judge Hale issued a temporary
2 restraining order while at the same time assuring that
3 the plant would not create -- produce electricity, but
4 it also would not melt down.

5 Because of the potential for that kind of
6 situation, I do believe that there may well be -- but
7 I haven't researched it -- an issue of the NRC's
8 jurisdiction over the plant, to the extent that it not
9 be without water to perform essential safety-related
10 cooling.

11 JUDGE YOUNG: Okay. Let me just ask
12 Dominion counsel, could you just respond to the issue
13 of the --

14 CHAIRMAN ABRAMSON: How much water it
15 takes to cool it?

16 JUDGE YOUNG: And what you would do to
17 protect safety, assuming you had to cease operation?

18 MR. LEWIS: Well, the heat removed from
19 the spent fuel pool by the spent fuel pool cooling
20 system is exhausted to service water presently. There
21 would be nothing that, within the timeframe of the
22 modification, that -- I mean, you could certainly
23 exhaust to atmosphere.

24 But let me just say that this isn't a
25 license renewal issue. The NPDES permit is a permit

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1 that's issued for five-year terms. If you're in an
2 extended operation, this isn't kicking in for another
3 20 years. Whether we get a permit that allows us to
4 operate for the next five years has no bearing on any
5 environmental impact in the period of extended
6 operation.

7 JUDGE YOUNG: So what you're saying is
8 that assuming there were a problem, you would deal
9 with that prior to the renewal period. And I presume
10 you'd do that either by correcting any situation or
11 figuring a way to cease operations and terminate --

12 MR. LEWIS: I mean, in the hypothetical
13 situation -- and it is hypothetical -- then I believe
14 there is no basis for it, that we did not receive a
15 renewed NPDES permit. Yes, we would have to look at
16 how we would shut down the plant.

17 JUDGE YOUNG: Okay. Thank you.

18 CHAIRMAN ABRAMSON: Thank you.

19 Judge Cole, do you have any questions?

20 JUDGE COLE: Just a comment. I believe,
21 Ms. Burton, you said the plant needs hundreds of
22 millions of gallons per minute. That's a little bit
23 large for what the plant needs. Do you agree, Mr.
24 Lewis?

25 MR. LEWIS: I'm not sure I heard per

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1 minute. I heard --

2 JUDGE COLE: Yes. I heard hundreds of
3 millions of gallons per minute, and that's --

4 CHAIRMAN ABRAMSON: I didn't hear the per
5 minute.

6 JUDGE COLE: -- several orders of
7 magnitude larger than the --

8 MR. LEWIS: Yes, I didn't hear the per
9 minute, and, therefore --

10 CHAIRMAN ABRAMSON: I didn't either.

11 MR. LEWIS: -- I didn't know what period
12 she was commenting on. And, you know, if it's over a
13 long period --

14 JUDGE COLE: Well, the record will speak
15 for itself.

16 MS. BURTON: I apologize. I think another
17 number is about two billions gallons per day.

18 CHAIRMAN ABRAMSON: Two --

19 MS. BURTON: Billion --

20 CHAIRMAN ABRAMSON: -- billions gallons
21 per day.

22 MS. BURTON: -- per day.

23 CHAIRMAN ABRAMSON: Counsel?

24 MR. LEWIS: I don't have the number in
25 front of me. That sounds wrong.

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1 CHAIRMAN ABRAMSON: Okay. In any case,
2 that's not a matter before us at this point. So I
3 think unless we have something more to say on this
4 issue -- any other questions from the Board?

5 Okay. Then, let us now take our break.
6 It is currently -- what time do you have?

7 JUDGE COLE: 11:06.

8 CHAIRMAN ABRAMSON: 11:05. We will resume
9 at 11:15. Thank you.

10 Off the record.

11 (Whereupon, the proceedings in the
12 foregoing matter went off the record at
13 11:05 a.m. and went back on the record at
14 11:36 a.m.)

15 CHAIRMAN ABRAMSON: Let's go back on the
16 record.

17 What's the time now? It's 11:36.

18 Counselor, you have kept these proceedings
19 waiting for 20 minutes. A 10-minute break turned into
20 20 -- a 30-minute break. If you had needed more than
21 10 minutes, we would have appreciated if you had
22 asked, and perhaps we could then have all been
23 prepared to take a 30-minute break instead of a 10-
24 minute break.

25 That said, let's go back on the record,

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1 and let's proceed. We are at your Contention
2 Number 4.

3 MS. BURTON: I apologize for my delay.

4 Contention 4. The operations are --

5 CHAIRMAN ABRAMSON: Sorry. How much time
6 do you want to reserve for rebuttal?

7 MS. BURTON: Half the time, please.

8 CHAIRMAN ABRAMSON: Okay.

9 MS. BURTON: Thank you. The operations of
10 Millstone Units 2 and 3 have caused irreversible harm
11 to the environment. The Connecticut Coalition Against
12 Millstone maintains in this contention that the
13 operations of Millstone Units 2 and 3 have caused
14 devastating losses to the indigenous Niantic winter
15 flounder population.

16 In addition, we maintain the operations of
17 Millstone Units 2 and 3 have caused irreversible
18 damage to the marine environment, and that continued
19 operations will increase the severity of the
20 environmental damage.

21 We rely in this contention upon the
22 applicability of 10 CFR Part 51, Appendix B,
23 Category 2, as providing the means for us to raise
24 this issue in the license renewal process. I believe
25 that we have fully set forth facts with sufficient

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1 specificity to put everybody on notice as to what we
2 have set forth as a contention here, and that the
3 arguments to the contrary by the Staff and Dominion
4 are without merit.

5 More particularly, this contention has to
6 do with facts that have been submitted over the course
7 of almost 35 years now. In fact, probably going back
8 before that, before Millstone even began to operate,
9 when it was applying for a license to operate and
10 making projections as to the impact that the plant
11 operations would have on the marine environment.

12 Certain predictions were made that there
13 would be adverse effects. For instance, that there
14 would be the phenomenon of entrainment. Entrainment
15 is the capture into the cooling system of very, very
16 small marine organisms. They are captured by the
17 force of the intake structure. They are spun through
18 the loops in the coils of the reactor, ultimately
19 heated and discharged as debris and pollution into the
20 waters of the Long Island Sound, very, very dead.

21 The effect of entrainment on a species
22 that is subject to it may very well be that the
23 population dynamics will suffer, and, in fact, in this
24 particular case Dominion has demonstrated over a
25 course of three decades now to the State Department of

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1 Environmental Protection that there has been a very
2 significant effect on this indigenous winter flounder
3 that returns and has returned for thousands of years
4 to the same breeding location on the Niantic River.

5 It happens that every spring it can be
6 predicted that whatever Niantic River winter flounder
7 are in the river ready to spawn will gravitate down
8 toward the sea at a certain point, usually in the
9 springtime, and over the years it has been accepted by
10 Dominion, by DEP, by independent biologists, that a
11 very great many of these larvae are captured by
12 Millstone and are not in a position to maintain the
13 population dynamics of the species.

14 It was not represented to the NRC three
15 and a half decades ago that operations of Millstone
16 would have a devastating effect on any marine life,
17 and including the Niantic River winter flounder. The
18 projections were in low percentages, and there were
19 also projections that apart from entrainment there
20 would be adverse effects from the phenomenon known as
21 impingement.

22 Impingement occurs to larger organisms
23 which are also swept into the intake structures under
24 vast force, and essentially smashed against grates
25 that are there to keep out larger organisms from the

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1 cooling system. Most of the time I think it is
2 generally accepted the organisms that are subject to
3 this phenomenon are hurt. If they survive, they
4 become part of the food chain out at sea.

5 And, therefore, there are consequent
6 losses to the population dynamics. Again, Northeast
7 Utilities made certain projections as to over time
8 what the effect would be on the population dynamics
9 of, in particular, the Niantic River winter flounder
10 due to impingement. Certain projections were made,
11 and those projections are not in agreement with what
12 we know today.

13 Strangely enough, the impingement was
14 overestimated. However, the entrainment was very,
15 very much underestimated.

16 In the course of proving this contention,
17 the Coalition has indicated that it will rely very
18 principally on documentation that has been provided to
19 state authorities by Northeast Utilities and its
20 successor owner, Dominion. Studies have been
21 undertaken independently by the State of Connecticut
22 Marine Fisheries Bureau, and we are aware of
23 preliminary conclusions that the Department of
24 Fisheries for the State of Connecticut have drawn with
25 respect to this phenomenon.

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1 And, increasingly, the state is casting a
2 skeptical eye upon the work, the assessment, the
3 modeling that has been relied upon by the Millstone
4 owners and operators over all of these years, because
5 the fish are gone. And it wasn't projected that that
6 would happen, but that has occurred.

7 The problem is not limited, of course, to
8 Niantic River winter flounder, but they are in a very
9 special category for several reasons. One, they are
10 indigenous to the area. That means they are not found
11 other places, and they cannot replenish if their
12 habitat here is such that it's so hostile to them that
13 they are killed off as tiny members of their
14 community.

15 Another is that the Niantic River winter
16 flounder have been recognized for a very long period
17 of time as a bountiful source of food for the human
18 food chain, and, in fact, they have helped to support
19 a healthy marine industry in southeastern Connecticut,
20 which is suffering from the effects of this as are the
21 fish themselves.

22 So a great deal of attention has been
23 placed on the Niantic River winter flounder. More
24 attention is -- as they have, however, disappeared,
25 more attention has been paid to other species, which

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1 also suffer the adverse effects.

2 We know that if the Millstone powerplant
3 were to stop the -- were to utilize a cooling system
4 other than the one it has now, which is the closed
5 cooling system, if it were to use another kind, that
6 would not draw in the water the way it does and
7 discharge it the way it does, that there would be a
8 minimization, very substantially, of the impacts both
9 with respect to entrainment and impingement of these
10 species.

11 And I believe that, in fact, the federal
12 EPA has recently ordered another powerplant -- non-
13 nuclear -- in Rhode Island on the Narragansett Bay to
14 convert from a once through to a closed cooling
15 system, principally because of the adverse -- serious
16 adverse effects to the fish, which are substantially
17 undone if such a conversion occurs.

18 I know that the EPA has given significant
19 attention to once through cooling at the Indian Point
20 Nuclear Powerplant, and, in fact, certain consent
21 orders have been issued with respect to that facility,
22 although it has not converted as of this time.

23 Given all of these facts, it is certainly
24 a reasonable prospect that if the operations of
25 Millstone continue as they have been in operation

1 since 1970, and nothing is done to mitigate the
2 effects of these phenomena on the marine life, that
3 the Niantic River winter flounder, for one, if they
4 are not at the brink of extinction now will be driven
5 to extinction.

6 With respect to other fish species, they
7 also are endangered, and the continuing operations
8 will only make the matter worse.

9 MS. LIN: One minute.

10 MS. BURTON: Okay. Thank you.

11 Associated issues relate to the continuing
12 discharges of highly toxic chemicals into the waters
13 that these fish inhabit. We have in the past relied
14 upon an expert witness -- I'd like to share this
15 little bit of information -- who was the Director of
16 the Tumor Registry of Small Reptiles at the
17 Smithsonian Institution in Washington, a Dr. John
18 Harshbarger, who inspected a lot of fish and
19 determined himself, and through the aid of others,
20 that one of these chemicals that Millstone is known to
21 discharge -- hydrazine -- is a carcinogen to fish,
22 among other chemicals that are known carcinogens to
23 fish that are discharged by Millstone, at least
24 according to documentation that we have seen.

25 The continuing discharge of these

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1 chemicals we believe -- and we believe we can support
2 this in a hearing -- is not helpful to the community
3 of the marine environment and is harmful.

4 We have other issues to raise with respect
5 to the irreversible harm to the marine environment
6 that has to do with conditions which have changed in
7 the sea bed just beyond the out-take structure of
8 Millstone. And we have information with regard to the
9 extent and the effect of the thermal plume, which is
10 released from Millstone.

11 At this time I'll reserve my further
12 comments for rebuttal.

13 Thank you.

14 CHAIRMAN ABRAMSON: Dominion?

15 MR. LEWIS: Yes. There is a remarkable
16 lack of basis for Petitioner's assertions. There were
17 many allegations just made, but you can review their
18 pleadings in depth, and you won't find references to
19 expert opinions or references or documents
20 substantiating any of those allegations. And without
21 them, this issue is inadmissible.

22 The winter flounder has declined, but it
23 has declined on a regional basis in the Long Island
24 Sound. The Niantic River is one of a number of
25 spawning grounds. It's one of the smaller ones on the

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1 Niantic River, and the operation of Millstone
2 certainly doesn't explain the regional decline in
3 winter flounder.

4 More importantly, however, the contention
5 is inadmissible, because it does not present a dispute
6 with Dominion's application. And, in particular,
7 there is no dispute of compliance with 10 CFR
8 51.53(c)(3)(ii)(b), which is the provision that
9 requires us to address entrainment and impingement.
10 And that regulation states that where an applicant can
11 provide 3.16(b) determinations and 3.16(a) variance,
12 a further analysis of impacts is not required.

13 The reason for that stems from Section 511
14 of the Clean Water Act, which makes the determinations
15 by the agencies responsible for implementing the Clean
16 Water Act dispositive. And for that reason, the
17 Commission requires the submission of those
18 determinations and the documentation, but it does not
19 its own further independent analysis.

20 We have complied with that provision, and
21 there is simply no dispute about our compliance in
22 this proceeding, and, therefore, no basis for a
23 contention.

24 That's all.

25 CHAIRMAN ABRAMSON: Thank you, counsel.

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1 Staff?

2 MS. POOLE: Thank you. The Staff opposes
3 admission of this proposed contention on the grounds
4 that it does not set forth sufficient information to
5 show that a genuine dispute exists with the Applicant
6 on a material issue of law or fact. In particular,
7 CCAM does not take issue with any of the information
8 provided in the environmental report, or ER,
9 pertaining to aquatic impacts of license renewal as is
10 required by 10 CFR Section 2.309(f)(1)(vi).

11 In its reply, CCAM repeats its assertion
12 that the operations of Units 2 and 3 have caused
13 "devastating impacts" to the winter flounder
14 population and "irreversible damage" to the marine
15 environment. However, CCAM provides no basis
16 whatsoever for these conclusions.

17 It reiterates in the reply that it plans
18 to rely on Connecticut Department of Environmental
19 Protection Records in support of this contention, and
20 says today that it will additionally rely on documents
21 provided to the Connecticut Department by Dominion and
22 its predecessor licensee.

23 However, as stated in our papers, a simple
24 reference to a large number of documents does not
25 provide a sufficient basis for a contention. That's

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1 Duke Cogema, Stone & Webster, LBP-01-35, 54 NRC 403 at
2 465.

3 Rather, the Petitioner is obliged to
4 specifically reference and then summarize the
5 information relied upon. This has not been done here.

6 In addition, I would remark that in its
7 reply CCAM argues with respect to impacts on the
8 winter flounder population that Dominion relies in its
9 ER on information considered prior to 1992. However,
10 CCAM appears to disregard several pertinent references
11 used in the ER that were prepared later than 1992.

12 I would refer to reference 2.2-7, which is
13 entitled Monitoring the Marine Environment of Long
14 Island Sound at Millstone Power Station, Annual Report
15 2002, and 4.2-1, which is a feasibility study of
16 cooling water system alternatives to reduce winter
17 flounder entrainment that was submitted to the
18 Connecticut Department of Environmental Protection in
19 January 1993.

20 JUDGE YOUNG: Did you say 4.2?

21 MS. POOLE: 4.2-1.

22 JUDGE YOUNG: Thank you.

23 MS. POOLE: An additional study, reference
24 4.2-2, was prepared in 2001. So this statement has no
25 basis.

1 Finally, I would just restate with respect
2 to CCAM's reliance in its reply on alleged Clean Water
3 Act violations by Dominion's predecessor licensee, as
4 we stated with respect to proposed Contention 3,
5 Northeast Utilities is not the license renewal
6 applicant. Even assuming these assertions are true,
7 the Petitioner has not established how any such
8 violations by a previous licensee are directly germane
9 to the license renewal application at issue here.

10 In any event, to the extent CCAM wishes to
11 litigate compliance with the NPDES permit, as we have
12 already discussed, the proper forum to raise such
13 issues is the Connecticut Department of Environmental
14 Protection.

15 That's all we have for now.

16 (Pause.)

17 MS. BURTON: Go ahead?

18 CHAIRMAN ABRAMSON: Yes.

19 JUDGE YOUNG: Yes.

20 MS. BURTON: In response, I'd like to
21 first of all point out that there is another party
22 here, which is the Town of Waterford, which has filed
23 certain documents with you. And we do have some
24 support, at least from the first --

25 JUDGE YOUNG: Excuse me.

1 MS. BURTON: I'm sorry.

2 JUDGE YOUNG: Do we have documents from --

3 CHAIRMAN ABRAMSON: No. Let's correct the
4 record. The Town of Waterford has indicated that it
5 would like to participate if there is a formal
6 hearing. The Town of Waterford is not a party to this
7 proceeding.

8 MS. BURTON: I stand corrected. I used
9 that term very loosely, and I should not have. But I
10 understand that you have received certain documents
11 requesting consideration of the Town of Waterford's
12 participation in a formal way in these proceedings.

13 MR. LEWIS: Your Honor, I'm not aware of
14 any filing with the Licensing Board, so --

15 CHAIRMAN ABRAMSON: There is none. They
16 are not a party to this proceeding. There were
17 some --

18 JUDGE YOUNG: To the Commission.

19 CHAIRMAN ABRAMSON: There were some
20 letters, some correspondence with the Commission.

21 MS. BURTON: On that point, I have
22 specific reference to a letter of March 2, 2004, and
23 one March 16, 2004. I had understood from these
24 letters that the town had acted upon its right to
25 request that it be permitted to be part of these

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1 proceedings in some --

2 CHAIRMAN ABRAMSON: The town has been
3 advised by the Commission of what actions it must
4 take. We have put them as a courtesy on distribution
5 to our orders. They are not a party to this
6 proceeding, counselor. You may continue your
7 rebuttal, but they are not a party to this proceeding.

8 MS. BURTON: Thank you. Then, I will not
9 refer to their material which has been submitted that
10 bears on this issue.

11 Having heard from the Applicant and heard
12 from the Staff, it is very clear that there is very
13 definitely a difference of opinion as to the material
14 facts here, and also the legal consequences of the
15 facts. I have not, however, heard from the Applicant
16 that the Niantic River fish population has not been
17 devastated by its operations.

18 That is -- although there is a reference
19 to documents that appear in the application, those
20 documents do not contradict the assertions with regard
21 to the plummeting population of the Niantic River
22 winter flounder. What they have to do with is
23 assertions of Dominion and it following along in the
24 tradition of its predecessor that the losses are
25 principally attributable to fishing, overfishing in

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1 the area, but there is no dispute that the fish are
2 mostly gone.

3 In fact, we would reference a recent
4 report from the State DEP as to the decline of the
5 adult flounder stock size by 90 percent, 95 percent
6 from 1986 to 2002 from some 76,180 fish to 4,124 fish.
7 I don't mean to suggest -- and I don't think the DEP
8 means to suggest that anybody went out there and
9 actually counted fish. But these are modeling
10 assessments that the DEP has undertaken I believe
11 independently of Northeast Utilities. There is no
12 dispute that there are hardly any of those fish left.

13 The contention of the Connecticut
14 Coalition Against Millstone here is that as Millstone
15 continues to operate into the coming decades, under
16 its current technology there will be ever-worsening
17 impacts not just to the winter flounder but to other
18 species of marine life that are in the area.

19 These include both species that tend to be
20 in the area for long periods of time as well as
21 migrators, as well as effects to the actual marine
22 environment itself, as I had mentioned before.

23 I don't think I really have anything to
24 add beyond what I have submitted in our documents, if
25 you have any questions.

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1 CHAIRMAN ABRAMSON: Thank you, counsel.

2 Rebuttal?

3 MR. LEWIS: No.

4 CHAIRMAN ABRAMSON: Staff?

5 MS. POOLE: No, thank you.

6 CHAIRMAN ABRAMSON: Okay. Questions from
7 the Panel?

8 JUDGE YOUNG: Yes, I have a couple of
9 questions. Let me go to Dominion first.

10 There is case law to the effect that it's
11 not Commission -- neither Congressional nor Commission
12 policy to exclude parties because the niceties of
13 pleadings were imperfectly observed. The most recent
14 case on that is CFC Logistics. Let's see, LPBO-320,
15 and then also there is the case of Houston Lighting
16 and Power Company from 1979, ALAB-549.

17 In light of that, I heard you to say that
18 there is not a problem, but let me just see if I can
19 get a better handle on this. CCAM has said that you
20 have acknowledged that Millstone's intake structures
21 and once through cooling system are responsible in
22 part for the losses. Can you -- well, first of all,
23 is that true?

24 MR. LEWIS: There are some larvae that are
25 entrained. There are genetic studies that have been

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1 conducted that are before the DEP now that trace where
2 the larvae are coming from. What those studies are
3 indicating is that the percentage of entrained larvae
4 that originate from the Niantic nursery is a fairly
5 small percentage.

6 The greater source of entrained larvae are
7 larvae from other nurseries, other estuaries that have
8 been washed out in the Long Island Sound, then brought
9 back in by the tides. And the natural mortality of
10 those larvae that have left the estuaries is very low,
11 so there are -- let me back up a second.

12 We have not tried to address the merits of
13 Ms. Burton's assertions. It's almost impossible to do
14 when there is not a single reference to a source or a
15 document or expert opinion to do so, and we're not
16 relying on the niceties of pleadings to argue against
17 this. I mean, there is a profound absence of basis
18 for the contention -- one that, you know, really
19 prevents any further response.

20 We do not agree with her many allegations.
21 The only reason we have not responded on merits is
22 it's not the time to respond on merits. It's the time
23 to argue that she hasn't met pleading standards and
24 hasn't presented a material dispute with our
25 compliance with the regulation and what it is that we

1 must provide in the environmental report.

2 JUDGE YOUNG: Right. And, actually, I'm
3 going to have some questions for Ms. Burton on the
4 specificity and support.

5 But just to sort of give this due
6 attention at this point, do you disagree that it is a
7 Category 2 issue? I was just looking to -- it seems
8 that --

9 MR. LEWIS: It is a Category 2 issue, but
10 it's a different type of Category 2 issue, because of
11 Section 511 of the Clean Water Act. The aquatic
12 impacts is not your typical NEPA issue, because there
13 is another federal statute that specifically dates
14 back -- NEPA authority, and specifically says this
15 issue belongs primarily to the agencies that are
16 implementing the Clean Water Act. And that's either
17 the EPA, or, if it's a state that's implementing it,
18 it's the state. Here Connecticut is an authorized
19 state.

20 They have the determination -- they have
21 the sole authority to determine, you know, what is the
22 best technology available to minimize aquatic impacts.
23 They have done so previously. They can reconsider it
24 any time. They are looking, again, in their current
25 renewal proceeding, but those issues belong to the

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1 state.

2 Because of that limitation on NRC's
3 authority, the issue that has to be addressed in the
4 environmental report, as reflected by
5 51.53(c)(3)(ii)(B), is constrained. It is narrow, and
6 it is narrow because the Commission's authority to
7 look at this issue is narrow.

8 JUDGE YOUNG: Give me that cite again, and
9 also --

10 MR. LEWIS: It's 10 CFR
11 51.53(c)(3)(ii)(B).

12 JUDGE YOUNG: And then, also, can someone
13 help me with where the Category 2 issue is found in
14 the appendix?

15 MR. LEWIS: It's Table B.

16 JUDGE YOUNG: No, I've got the table. I'm
17 trying to find the specific page on which it's found.
18 Do you know?

19 MR. LEWIS: Oh.

20 MS. POOLE: If I may, if you have the 2000
21 -- the Red Book, it's on page 48, Aquatic Ecology, at
22 the bottom of the page.

23 JUDGE YOUNG: Thank you. Okay.

24 MR. LEWIS: On that issue, though,
25 51.53(c) and Table B mesh, and 51.53(c) is the

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1 provision that explains how you address each of the
2 issues that's designated as a Category 2 issue in
3 Table -- in Appendix B to Part 51.

4 JUDGE YOUNG: And the part under
5 51.53(c)(3)(ii) -- what was it?

6 CHAIRMAN ABRAMSON: B. B as in boy.

7 JUDGE YOUNG: B?

8 MR. LEWIS: Yes.

9 JUDGE YOUNG: Okay. Ms. Burton, in the
10 old rules as well as the new rules, I think it says
11 that you need to include references to the specific
12 portions of the application, including the
13 environmental report. And I don't see any reference
14 in either your original or your amended petition, and
15 I -- maybe I'm overlooking it, but I don't think I see
16 it in the reply either.

17 Are there -- do you have a specific
18 reference to a portion of the environmental report?
19 Am I missing --

20 MS. BURTON: It's not specifically set
21 out, no.

22 JUDGE YOUNG: You made a reference in your
23 discussion to a recent report from the State DEP.
24 What's the date of that? It was the one you were just
25 reading from.

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1 MS. BURTON: August 28, 2003.

2 JUDGE YOUNG: And how long have you had
3 it?

4 MS. BURTON: Since yesterday.

5 JUDGE YOUNG: Since yesterday.

6 CHAIRMAN ABRAMSON: How long have you
7 known about it, counselor?

8 MS. BURTON: That particular report?

9 CHAIRMAN ABRAMSON: Yes.

10 MS. BURTON: That particular report I'm
11 not sure. I went to the DEP in Old Lyme, where they
12 have their headquarters, Monday to see if there was
13 any more current information on this application, and
14 I made a copy of this. I may have seen it before, but
15 I did not have my -- all my records. I have
16 frequently gone there to look at records to see
17 updates. I didn't have a specific recollection of
18 having seen this before, however. It's not anything
19 unusual, however. Years ago --

20 JUDGE YOUNG: Well, let's not -- let's not
21 go off into that.

22 MS. BURTON: Okay.

23 JUDGE YOUNG: I'm really trying to get you
24 to focus on -- again, I'm wrestling with this
25 reasonable specificity issue, along with, as I had

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1 indicated in my question to Dominion, the degree to
2 which this is a substantive issue, despite your
3 failure to present specific documents.

4 You mentioned hydrazine again. You
5 mentioned that a while ago, and I'm -- how long have
6 you known about that?

7 CHAIRMAN ABRAMSON: The effect of
8 hydrazine.

9 MS. BURTON: I think in probably 1999.

10 JUDGE YOUNG: And I presume you obtain
11 information about that from, what -- how do you know
12 about that?

13 MS. BURTON: From a wide variety of
14 sources, from the DEP, going through records that are
15 maintained at the Department of Environmental
16 Protection. There was a newspaper article after
17 Northeast Utilities pleaded guilty to felonies
18 involving hydrazine. I have been involved in court
19 proceedings at which there has been disclosure of
20 records concerning hydrazine.

21 JUDGE YOUNG: So you're fairly familiar
22 with all of this.

23 MS. BURTON: I am very familiar with it --

24 JUDGE YOUNG: And have been for some time.

25 CHAIRMAN ABRAMSON: -- as is Dominion,

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1 as --

2 JUDGE YOUNG: And the reason I'm asking is
3 because I don't see any reference to any of these
4 things in either your original or your amended
5 petition. And your -- we base our decisions --
6 another part of the legal system, we base our
7 decisions solely on the record before us, solely on
8 the arguments before us.

9 We're hearing what you have to say today,
10 but even today we don't have in front of us any
11 documents. And I'm wondering why you were not able to
12 -- or why you did not provide these or make reference
13 to these earlier.

14 MS. BURTON: If I may respond to that,
15 first of all, I have not heard Dominion dispute
16 anything that we have said today about hydrazine.

17 JUDGE YOUNG: Well, first, answer my
18 question.

19 MS. BURTON: Why was this not -- why was
20 hydrazine not specified in the petition?

21 JUDGE YOUNG: Why were none of the
22 documents or sources of which you have apparently been
23 aware for some years not mentioned in either your
24 original or amended petition?

25 MS. BURTON: I believe we made a reference

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1 to records and documents maintained by the Connecticut
2 Department of Environmental Protection and other
3 state, federal, and local agencies. These records are
4 voluminous.

5 JUDGE YOUNG: All right. But here's what
6 I'm, again, coming back to. We all know the
7 requirements for contentions, and the substantive
8 requirements are pretty much as they were before with
9 regard to reasonable specificity.

10 And you make reference to these generally,
11 but in terms of my analysis and looking to whether
12 you've provided reasonable specificity, if you've
13 known about these for so long and you've been involved
14 -- and I know you've been involved, and I think I've
15 been involved in two cases before with you on
16 Millstone, I'm sort of wondering why you didn't
17 provide any specificity with regard to these sources
18 and documents, because that's what we have to -- we
19 have to follow the rules in the law, and you know what
20 it is.

21 CHAIRMAN ABRAMSON: If you came in here
22 and said to us, "All of these records are available in
23 the Library of Congress," how would you expect us to
24 deal with that? Or they're all available in the
25 Connecticut State Library? Would you not expect, when

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1 our regulations require that you provide with your
2 petition specific references, that you would have to
3 do so rather than tell us they're available in the
4 state agencies' general records?

5 JUDGE YOUNG: And I'll add to that,
6 particularly, even in your reply filed on the 16th of
7 June, you talk about reports in which -- and you and
8 Dominion have acknowledged that Millstone's intake
9 structures and once through cooling system are
10 responsible in part for the loss of sufficient
11 shellfish.

12 And yet even today -- presumably you have
13 seen those reports. Even today we don't have those
14 reports before us, so we can look to see whether there
15 is enough to warrant further inquiry, which is another
16 part of the standard for our admitting contentions.

17 And, you know, again, you seem to be
18 raising very significant issues. But in spite of
19 knowing what the requirements for contentions are, and
20 filing several documents since -- what would have been
21 the deadline under the old rules, we still don't have
22 the sources and documents to which you refer.

23 MS. BURTON: I would be very happy to
24 provide an appendix with all of the --

25 JUDGE YOUNG: But what I'm asking is --

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1 CHAIRMAN ABRAMSON: That's not the point.

2 JUDGE YOUNG: -- why not now? Why haven't
3 we -- why didn't you file them with your petition or
4 your amended petition, or at the -- I mean, even prior
5 to this point? Did you really think that making these
6 general references would satisfy the rules?

7 MS. BURTON: First of all, I beg to differ
8 with the characterization about these general
9 statements. I believe our -- I don't want to say this
10 again, but -- because I'm being very repetitious, but
11 I believe that our contentions do satisfy the
12 standards.

13 JUDGE YOUNG: Well, let me --

14 MS. BURTON: Obviously --

15 JUDGE YOUNG: -- let me stop you. Let me
16 stop you. I'm talking about under your C, under
17 Contention 4, C, source and documents on which
18 Petitioner intends to rely. The very first one says,
19 "The Licensee's license amendment application and
20 attachments and reference contained therein."

21 And the rules, since '98 at least,
22 possibly before that, say that the -- you must include
23 references to specific portions of the application.
24 And so just looking at that paragraph, I'm having a
25 hard time seeing how you are arguing that that

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1 satisfies the rule, when the rule specifically says
2 specific portions of the application. And you
3 certainly had that.

4 MS. BURTON: I agree with you, it is not
5 very specific. However, I think it still is valid,
6 and it can have reference to the entire application
7 if, in the entire environmental application, there is
8 information that is contrary to our contention.

9 Then, I would maintain that it is
10 sufficient to meet the standard, and I still have not
11 heard from the Staff or Dominion that they in any way
12 misunderstand any of the contentions that have been
13 propounded thus far. They seem to be very capable of
14 responding to them.

15 JUDGE YOUNG: Ms. Burton, as I said
16 earlier, we have responsibility to follow the law, to
17 base our decision on the record, and at this point to
18 make rulings on the admissibility of contentions based
19 on the contention admissibility rule.

20 To the extent that these issues may be
21 valid issues, I think you do your client a disservice
22 by not providing the specificity that the rules
23 require. And I'm asking you whether there is some
24 reason for your not having provided this information
25 in a timely fashion.

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1 MS. BURTON: Again, I can only respond by
2 saying that the Coalition submitted contentions which
3 we believe are legally sufficient, all meritorious,
4 all substantive, and all easily addressed by the
5 licensee and the Staff in their responses, and all
6 appropriately to be determined following a full
7 evidentiary hearing, at which we are prepared to prove
8 the truth --

9 CHAIRMAN ABRAMSON: Thank you, counselor.

10 MS. BURTON: -- of each of the
11 contentions.

12 CHAIRMAN ABRAMSON: We understand that
13 view.

14 MS. BURTON: Thank you.

15 CHAIRMAN ABRAMSON: Anything further,
16 Judge Young?

17 JUDGE YOUNG: Just one other thing. Today
18 you mentioned verbally -- you mentioned that another
19 kind of cooling system could be used at Millstone.

20 MS. BURTON: Correct.

21 JUDGE YOUNG: I don't see any reference to
22 that earlier. And today you made that reference, but
23 is that a matter that's common knowledge, what other
24 type of cooling system could be used? I don't know
25 from what you're telling me.

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1 MS. BURTON: I perhaps presume too much,
2 but there is -- has been an ongoing controversy since
3 at least 1973 with regard to cooling systems of
4 nuclear powerplants that are located on water bodies
5 such as Millstone is on the Long Island Sound or the
6 Indian Point plant on the Hudson River in New York.

7 There has been a controversy that has been
8 ongoing involving the impacts of cooling towers and
9 cooling systems on the marine environment. It is well
10 recognized --

11 JUDGE YOUNG: So you're familiar with it.

12 MS. BURTON: I'm not --

13 JUDGE YOUNG: It sounds as though you're
14 quite familiar with it.

15 MS. BURTON: I'm not alone in a vacuum in
16 being familiar with it.

17 JUDGE YOUNG: Okay. But --

18 MS. BURTON: I believe that --

19 CHAIRMAN ABRAMSON: Counselor?

20 JUDGE YOUNG: But I'm trying to get you to
21 address your comments to the requirements for
22 contentions that assist us in making our
23 determinations that we're required by law to make at
24 this point. And you're asking us to be aware of
25 things that are apparently common knowledge since

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1 1973, and yet there is no specific reference to them.

2 MS. BURTON: Well, perhaps I presume too
3 much, but it would be very easy for us to --

4 CHAIRMAN ABRAMSON: Counselor, we
5 understand. Judge Young is simply pointing out that
6 you could have, and you've had lots of opportunity to,
7 comply with our regulations which require certain
8 degrees of specificity, and you have failed to do so.
9 I think we should return to the proceeding.

10 Judge Cole, do you have any questions or
11 comments?

12 JUDGE COLE: Yes, just one or two.

13 Mr. Lewis, you referred earlier to
14 entrainment studies. Do you recall that, sir?

15 MR. LEWIS: There are feasibility studies.
16 There was a feasibility study at the time of the last
17 NPDES permit issuance that looked at whether there
18 should be any changes to the plant to represent best
19 technology available.

20 JUDGE COLE: With respect to
21 entrainment --

22 MR. LEWIS: Yes, with respect to --

23 JUDGE COLE: -- who conducted those
24 studies?

25 MR. LEWIS: Dominion.

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1 JUDGE COLE: And when were they done?

2 MR. LEWIS: There was one in 1992.

3 CHAIRMAN ABRAMSON: Would that be NUSCO,
4 not Dominion?

5 MR. LEWIS: Yes, I'm sorry. It was --
6 Northeast Utilities was the 1993 study, and then
7 there's a 2001 feasibility study submitted in
8 connection with the current NPDES permit renewal
9 application. That was submitted by Dominion.

10 JUDGE COLE: And did that make an
11 assessment of the impact of entrainment on larvae and
12 other organisms?

13 MR. LEWIS: I know the 2001 study has an
14 extensive discussion of entrainment of the winter
15 flounder. It has mass balance analyses of what are
16 the impacts of entrainment, it looks at where the
17 larvae are coming from, and it considers other
18 impacts, and it looks at mitigation measures. It
19 looks at what might be done to reduce entrainment.

20 JUDGE COLE: All right, sir. Thank you.

21 MR. LEWIS: Okay. Let me say I'm sure
22 there were also entrainment studies back in the
23 original licensing of the plant. I don't know the
24 references to those studies, though.

25 CHAIRMAN ABRAMSON: Are those studies

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1 available to members of the public, they are part of
2 the public record of DEP?

3 MR. LEWIS: They are on Adams, the -- both
4 the --

5 CHAIRMAN ABRAMSON: Okay.

6 MR. LEWIS: -- 1991 study and the 1993
7 study. The '93 study, I believe, and the 2001 study
8 I think are both on Adams. I know for sure the 2001
9 is. I think the '93 one is, too.

10 CHAIRMAN ABRAMSON: Thank you.

11 JUDGE COLE: Ms. Burton, just one
12 question/comment. On page 8 of the -- your filing of
13 June 16th, Connecticut Coalition Against Millstone,
14 reply to licensee and NRC, answers to petition. In
15 the middle of that page you have a quotation that
16 reads, "The operations at Millstone Units 2 and 3 have
17 caused devastating losses to the indigenous Niantic
18 winter flounder populations. The operations at
19 Millstone Units 2 and 3 have caused irreparable damage
20 to the marine environment." And you've got that
21 sentence in quotation marks.

22 What is the source of that quotation? Is
23 that from some document, or is that just from one of
24 your previous filings of a contention, versions of the
25 contention?

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1 MS. BURTON: I believe that's a direct
2 quote from the contention itself, but --

3 JUDGE COLE: But it --

4 MS. BURTON: -- what does it derive from,
5 is that what you're asking?

6 JUDGE COLE: Yes. Is that on page 7 of
7 your February 12th filing, and on page 7 of your --

8 MS. BURTON: Yes.

9 JUDGE COLE: -- June 14th filing?

10 MS. BURTON: Yes. But, of course,
11 ultimately --

12 JUDGE COLE: But it's not referenced here,
13 it's just -- I wonder why you put it in quotation
14 marks.

15 MS. BURTON: Well, because I am replying
16 to a suggestion that it -- there is a deficiency, and
17 so I'm simply quoting it, because it appears in an
18 earlier statement.

19 JUDGE COLE: All right. Thank you.

20 CHAIRMAN ABRAMSON: Judge Young? Okay.

21 JUDGE YOUNG: That's fine.

22 CHAIRMAN ABRAMSON: I think rather than
23 break for lunch, if you are all up to it, we can
24 proceed through this, or would you like to -- how do
25 you feel about that?

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1 MR. LEWIS: I'm up for proceeding.

2 CHAIRMAN ABRAMSON: Is Staff okay?

3 MS. MARCO: That's fine.

4 JUDGE YOUNG: Let's take like five
5 minutes?

6 CHAIRMAN ABRAMSON: Well, the last five
7 minutes turned into half an hour. Okay. Let's -- can
8 we count on you, counselor, to make this five minutes?
9 We will take five minutes. We will adjourn for five
10 minutes, and then we will return and try to wrap this
11 up.

12 Let's go off the record at this point,
13 then.

14 Thank you.

15 (Whereupon, the proceedings in the
16 foregoing matter went off the record at
17 12:24 p.m. and went back on the record at
18 12:29 p.m.)

19 CHAIRMAN ABRAMSON: Let's go back on the
20 record. Time, please, Dick?

21 JUDGE COLE: 11:29.

22 CHAIRMAN ABRAMSON: 11 -- no, 12:29.

23 JUDGE COLE: 12:29.

24 CHAIRMAN ABRAMSON: Okay. We're going to
25 start on CCAM Contention 5. We want -- how much do

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1 you want to reserve for rebuttal, counsel?

2 MS. BURTON: Again, if I may reserve half.

3 CHAIRMAN ABRAMSON: Ten? Okay.

4 MS. BURTON: In this contention, the
5 Coalition states, "Millstone Units 2 and 3 suffer
6 technical and operational defects which preclude safe
7 operation." The petition further states, "System
8 malfunctions and failures recur without adequate
9 correction. Both units have suffered excessive
10 occasions of unplanned emergency shutdown. Both units
11 suffer from premature aging."

12 In our amended petition, we assert that we
13 intend to rely upon the following documents and
14 sources to establish the facts alleged, including:
15 1) the licensee's license amendment application and
16 attachments and references contained therein,
17 including correspondence with the U.S. Nuclear
18 Regulatory Commission with regard to waivers of
19 technical specifications, relaxation of technical
20 requirements, relaxation of surveillance schedules,
21 and application Table F-3-1 ("Initial List of
22 Candidate Improvements for the Millstone Point Station
23 2, SAMA, S-A-M-A Analysis") and application Table
24 G-3-2 ("Summary of MPS3 SAMAs Considered in Cost-
25 Benefit Analysis").

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1 In addition, the Coalition intends to rely
2 upon various other documents within state and federal
3 and local agencies, and matters of public record. I
4 will note that we did submit late -- admittedly rather
5 late the declaration of Clarence O. Reynolds, and that
6 particular declaration has reference to some of the
7 specific problems that Mr. Reynolds outlined that have
8 been identified at Millstone in paragraphs 9, 10, 11,
9 12, in his declaration. And I believe others.

10 In addition, we have submitted the
11 declaration of William H. Honan, and in part his
12 declaration has reference to the receipt of many
13 documents attesting to the problematical operational
14 record of Millstone, and the numerous occasions when
15 the NRC has granted waivers of technical requirements
16 and suspended surveillance standards and requirements,
17 thereby relaxing safety standards where such
18 relaxation is contraindicated by the premature aging
19 of the Unit 2 and Unit 3 nuclear reactors.

20 One of the specific issues that I would
21 like to address is the one that concerns the unusually
22 frequent, unplanned shutdowns at Unit 2, for several
23 reasons. One is that these are anomalies. The
24 plants, when they're not operating at 100 percent
25 power, are not operating to the best of their design.

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1 According to Mr. Reynolds' affidavit, Unit
2 2 has suffered -- and this was as of some time ago,
3 it's not exactly up to date -- but he states that
4 Unit 2 has suffered 122 unplanned outages since going
5 online in 1975, this representing an average of one
6 every three months and does not include the planned
7 refueling outages, which have kept the reactor shut
8 down for 1,481 days, or 4.6 years, or 13.6 percent of
9 its operational life.

10 We will readily admit that we may have
11 overlooked it, if we did -- but we didn't see in the
12 application materials any particular analysis by
13 Dominion of this phenomenon at Unit 2 -- the
14 phenomenon of a multiplicity of unplanned outages.

15 And going back through the records which
16 the NRC has been accumulating over all of these years,
17 and correlating some of the factual circumstances of
18 some of these events, we are aware that some of these
19 or many of these outages have occurred because of a
20 failure to correct previous problems that have
21 occurred and recurred and recurred in the operating
22 life of the plant.

23 We believe that it's very important in a
24 relicensing proceeding for the NRC to give full
25 consideration to this phenomenon, because -- partly

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1 because we are informed by David Lochbaum's assessment
2 of what happens when nuclear powerplants are in their
3 aging phase that they are more prone to have problems
4 and failures and accidents, and we know from this
5 application that Dominion is not planning to replace,
6 for instance, its reactor core or its containment
7 building.

8 But we know that those structures are
9 subject to great variations in heat and pressure,
10 particularly during these unplanned shutdowns when
11 they go from full power to zero power in less than a
12 second.

13 When a plant does that so many times --
14 and, of course, Dominion is not relying upon an
15 operational record of any nuclear powerplant that has
16 ever run for 60 years -- we have difficulty
17 understanding how they have adequately assessed the
18 prospect of having even more of these unplanned
19 outages during the next period of time through the
20 year 2035 without identifying it and submitting
21 information that shows it has adequately figured out
22 how to manage the continued operations of the plant
23 during aging.

24 I think that's a major omission in the
25 application, and that thereby we raise a very

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1 substantial issue that is sufficient for these
2 purposes today.

3 We are also familiar with the issue at
4 Unit 2 in particular of the cracks or beginning cracks
5 from corrosion, and the reactor vessel head. We
6 understand that the NRC has been aware of this problem
7 and has permitted Unit 2 to continue to operate
8 through the next scheduled refueling outage -- I
9 believe that's in the year 2005 -- before it
10 undertakes a capital improvement with regard to that
11 reactor vessel head.

12 We mention that in particular here because
13 of the very heightened concerns that have arisen
14 concerning the Davis-Besse plant in Ohio and
15 legitimate criticisms, we believe, that direct
16 themselves to the ability of these nuclear reactors to
17 continue to operate even in their initial life period,
18 let alone for extended periods into the unknowable
19 future.

20 We have made reference to the SAMA -- and
21 I hope it's okay to call that SAMA, S-A-M-A --
22 analysis concerning both Units 2 and 3, and with
23 respect to those portions of the application we are
24 concerned that despite an identification of potential
25 safety issues there is a reasonable prospect that in

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1 the course of these proceedings the -- there will be
2 a decision that Dominion can forego certain safety-
3 related improvements and enhancements that may lead to
4 problems during the aging period.

5 And we are aware that Dominion has
6 presented information seeking to be relieved of
7 pressure from the NRC to undertake some of the kinds
8 of capital improvements that might be called for from
9 a strictly safety perspective, and that the failure to
10 implement the safety improvements that are identified
11 as presenting some kind of a prospect of a problem in
12 the future operations of the plant is an oversight
13 that should not be allowed, and raises, therefore, an
14 issue that we should be permitted to litigate in these
15 proceedings.

16 MS. LIN: You have one minute left.

17 MS. BURTON: Okay. It can't be any
18 secret, given the history of Northeast Utilities and
19 Millstone and the problems that have become a matter
20 of public record over the years that the facility was
21 not very well managed for a long period of time.
22 That, of course, led to a shutdown of the entire
23 station in 1996, all three reactors closed.

24 Unit 1 never recovered, never reopened.
25 Unit 2 -- Unit 3 started again in 1998, but that was

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1 the same year that the Connecticut State Department of
2 Public Utility Control declared Unit 2 to be no longer
3 used and useful. Yet somehow Unit 2 was revived,
4 started up, and despite all kinds of expectations that
5 that would not, could not, or should not happen in the
6 state.

7 I'll reserve my time for rebuttal.

8 Thank you.

9 CHAIRMAN ABRAMSON: Dominion?

10 MR. LEWIS: I won't repeat what is in our
11 answer already. Let me just respond to three new
12 assertions that were made in the reply and in the
13 arguments today.

14 First, there was a discussion that there
15 needed to be analysis of unplanned shutdowns. And in
16 the reply Petitioner has suggested that such an
17 analysis is required as what's known as a TLAA, a
18 time-limited aging analysis. The definition of time-
19 limited aging analysis is provided in 54.3 -- 10 CFR
20 54.3.

21 The most important portion of that for --
22 with respect to this argument is that TLAAs are those
23 analyses that are contained in and incorporated in the
24 current licensing basis. In other words, what the
25 license renewal regulations require is for you to

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1 identify those time-limited aging analyses that are in
2 your current licensing basis, like fatigue analyses,
3 and then you need to make sure they remain valid for
4 the period of extended operation.

5 They don't require you to invent new
6 analyses to be performed, and so the assertion that
7 there is a requirement to perform an analysis of
8 unplanned shutdowns per se is incorrect. However,
9 shutdowns are considered in fatigue analyses, and
10 fatigue is a time-limited aging analysis. And a
11 number of different components are subject to fatigue.

12 Fatigue analyses consider how many cycles,
13 how many heatups and cooldowns the plants undergo,
14 and, therefore, are addressed in our discussion of
15 fatigue in Section 4.3 of each application. And there
16 is absolutely no identification of any deficiency in
17 that analysis. There is no basis to question the fact
18 that we have looked at fatigue and addressed it and
19 showed that it remains -- the analyses that we have
20 remain valid.

21 Petitioner referred to some waiver of
22 requirements for the Unit 2 vessel head. They
23 asserted that there was a weakness in the Unit 2
24 vessel head and that there had been some previous
25 waiver that allowed Unit 2 to continue to operate to

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1 the next outage. I'm not sure I know exactly what
2 waiver they're referring to, but it is absolutely
3 irrelevant to license renewal.

4 The Unit 2 reactor vessel head is
5 scheduled to be changed out in the next outage.
6 They're putting in a brand-new reactor vessel head in
7 Unit 2. The Unit 3 vessel head is a low
8 susceptibility vessel head. That does not need a
9 changeout at this point in time.

10 So I see absolutely no bearing or
11 connection or relevance between the assertions about
12 a past waiver of some surveillance requirement and,
13 you know, the adequacy of the aging management of the
14 reactor vessel head in the period of extended
15 operation.

16 Our application does address pressurized
17 water stress corrosion cracking, which is the
18 phenomena that has caused cracking in reactor vessel
19 heads. We have an aging management program that is
20 described in our application. Again, the Petitioner
21 has not identified any error, any omission, any
22 deficiency in that program or in our analysis or
23 anything in our environmental report.

24 I think one of -- maybe it was Judge Young
25 was asking about whether there is any reference to our

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1 application on the previous contention. I don't think
2 there is a single reference to our application in the
3 petition, in the amended petition, or in the reply,
4 except maybe in reference to the portion on SAMAs.

5 With respect to SAMAs, SAMAs are severe
6 accident mitigation alternatives that are looked at in
7 the environmental report to see if there is anything
8 that should be considered under NEPA that goes beyond
9 what's required to meet NRC regulations and meet
10 safety. They are, by definition, beyond design basis
11 requirements.

12 I think Ms. Burton characterized the SAMA
13 analysis as indicating that we were seeking relief
14 from things that might otherwise be required for
15 safety. That's absolutely not the case. The SAMAs
16 are not things that are required for safety. They are
17 measures that go beyond the NRC safety requirements.

18 They are looked at in the NEPA evaluation
19 to determine, even though these aren't required by the
20 Atomic Energy Act, should something still be
21 considered to mitigate severe accident risk under
22 NEPA? And we have analysis of a whole host of these
23 mitigation alternatives, and we look at them following
24 the NRC's standards for looking at whether
25 improvements are cost beneficial. And we have a

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1 conclusion on each one of them, and there isn't a
2 single assertion that any of our analyses or
3 conclusions is incorrect or improper in any respect.
4 So there is absolutely no assertion that there is any
5 deficiency in our SAMA analysis.

6 That's all.

7 CHAIRMAN ABRAMSON: Staff?

8 MS. MARCO: I believe I have 10 minutes,
9 and I'd like to reserve one of those minutes for
10 rebuttal, if I may.

11 CHAIRMAN ABRAMSON: Okay.

12 MS. MARCO: The Staff opposes admission of
13 Contention 5 on the basis that it is outside of the
14 scope of the license renewal proceeding, and it does
15 not set forth a specific factual or a legal basis as
16 required. It is outside of the scope of license
17 renewal proceeding, because it addresses technical and
18 operational defects that preclude safe operation and
19 does not raise an issue directly related to the
20 detrimental effects of aging.

21 The Petitioner asserts in one sentence
22 that "both units suffer from premature aging." This
23 assertion, along with all of the others supporting
24 this contention, fails to provide a sufficient
25 specific factual or legal basis for supporting the

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1 contention. And, therefore, this contention should be
2 rejected.

3 Regarding scope, as it relates to the
4 June 16th reply, CCAM asserts that the application
5 does not contain a specific analysis of such
6 continuing unplanned shutdowns as an aging issue. In
7 its reply, CCAM cites to 10 CFR Section 54.3, defining
8 the term "time-limited aging analyses," and 10 CFR
9 54.4 related to scope.

10 Regarding 54.4 regarding scope of issues
11 to be considered, Petitioner does not allege that, as
12 I mentioned, what that entails. I won't get into that
13 again, but Petitioner does not allege that any
14 particular system, structure, or component required to
15 be considered as a part of the license renewal was
16 not. And it has not raised a genuine dispute with the
17 Applicant.

18 CCAM's June 14th amended petition provides
19 a little more detail on what documents the Petitioner
20 intends to rely, but the Petitioner's showing still
21 falls far short of what is required to support a
22 contention. In this regard, Petitioner references
23 general NRC correspondence regarding waivers of
24 technical specifications, relaxation of technical
25 requirements, and surveillance requirement schedules.

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1 The amended petition also includes broad
2 references to Table F.3-1 and Table G-3-2, included in
3 the Applicant's environmental report related to severe
4 accident mitigation alternatives. Nowhere in the
5 amended petition, however, does the Petitioner set
6 forth the dispute with respect to these tables or the
7 supporting reasons for each dispute as is required by
8 the Commission standards for the admission of
9 contentions.

10 Table F.3-1, for example, lists 168
11 potential improvements and the Applicant's evaluation
12 as to each. Table G-3-2 lists 52 potential
13 improvements and the Applicant's cost estimate and its
14 analysis for them. A blanket reference to these
15 tables is insufficient to support a contention based
16 on them.

17 The amended petition also asserts that the
18 contention will be of consequence in the proceeding to
19 the extent that the application does not propose to
20 undertake such modifications to address defects.
21 Again, here the petition fails to specify the
22 particular defects and the dispute as to the
23 Applicant's consideration of each modification.

24 In its June 16th reply, the Petitioner
25 raises these same matters and, additionally, asserts

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1 that it relies on NRC-generated documents related to
2 Millstone's operating record, equipment failures and
3 defects, and instances when the NRC has granted
4 relaxation and waivers.

5 In the reply, and again today, Petitioner
6 refers to weak areas in Millstone Unit 2 vessel head,
7 declaring it a "unsafe condition." CCAM does not
8 refer to a single specific document or demonstrate a
9 dispute with the Applicant with respect to these
10 assertions. CCAM does cite to the declaration of two
11 individuals in this contention -- William Honan and
12 Clarence O. Reynolds.

13 A review of both of those declarations
14 shows that neither one is helpful to CAM, because
15 neither identifies any document with specificity, and
16 neither declarant is offered as an expert in matters
17 related to license renewal or the material contained
18 in the unreferenced documents.

19 Therefore, these matters are unsupported,
20 and a contention cannot be based on them. Moreover,
21 Applicant asserts in its application that the reactor
22 vessel is in the scope of license renewal because it
23 meets 10 CFR 54.4(a)(1).

24 Finally, the Staff notes that CCAM raises
25 the fire protection system at Unit 3 but not identify

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1 any documentary support regarding the system, and
2 neither of its two declarants refer to the fire
3 protection system at Unit 3. Therefore, assertions
4 regarding the system are completely unsupported.

5 Moreover, fire protection for Unit 3 is
6 addressed in the application. That's at Section
7 2.1.3.7.1.

8 For this reason, the Staff does not --
9 opposes admission of this contention.

10 And we wish to address one matter that was
11 heard today regarding pressure from the NRC regarding
12 specific SAMA -- its specific SAMA analysis that the
13 Applicant performed, and what the NRC is doing is we
14 are reviewing it as part of the application. We are
15 aware of no specific pressure that we have applied
16 with respect to any particular SAMA analysis.

17 Thank you.

18 CHAIRMAN ABRAMSON: Rebuttal, Ms. Burton?

19 MS. BURTON: Thank you. Let me begin with
20 the difficulty here with the SAMA, as I understand it,
21 the application is under review by the Commission.
22 But with respect to the SAMAs, there seems to be an
23 ongoing dialogue between the NRC and Dominion with
24 respect to what may or may not be appropriate, and
25 what may or may not be required.

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1 That to me seems to look like a moving
2 target, very difficult to address. How can one
3 criticize something that hasn't happened yet? It may
4 very well be that each of the instances involved in
5 each of the SAMAs for each of the reactors may be
6 determined to be something that should be done.
7 Notwithstanding cost, we wouldn't have any problem
8 with that.

9 But sitting here today, we don't know if
10 that may be the case or not. So I'm scratching my
11 head a little bit about how anyone is expected to be
12 in a position to address a moving target like that.

13 I have gone back through the application
14 materials that I have with respect to the issue of the
15 unplanned outages. We do stand on our contention with
16 respect to what we have said about those. I am not
17 sure that I can locate in the application where
18 Dominion addresses the prospect that in the future
19 there may be increasing unplanned outages or what the
20 standards are to review them where you have a plant
21 that has a history of unplanned outages that doesn't
22 respect any particular plan.

23 I haven't seen in the application where
24 that issue truly is addressed. I heard the attorney
25 for the Applicant say that a number of components were

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1 analyzed with respect to fatigue. I'm not sure what
2 that means with regard to which components were not
3 analyzed. It's difficult to glean that information
4 from the application.

5 And in light of that -- the state of the
6 information that we have with regard to that issue, it
7 seems to me that there is a viable valid issue with
8 regard to the prospect for unplanned outages beyond
9 what could reasonably -- or beyond what is anticipated
10 in all of the documents that the NRC has been using to
11 review applications, and the cumulative effect on a
12 plant such as Unit 2, which has had such a
13 problematical operational history, and how that may
14 implicate its future operations.

15 I think that's about all I have to say.

16 CHAIRMAN ABRAMSON: Counsel, before we go
17 to rebuttal, I just want to clarify your view on the
18 unplanned outages, because in the course of your
19 presentation and your materials you have discussed the
20 economic effect as well as made general allusions to
21 safety effects. Can you clarify for me -- are you
22 raising the unplanned outages purely as a technical
23 safety issue? Or are you raising an economic issue?

24 MS. BURTON: Well, the economic issue came
25 up with respect to the SAMAs, because each one is

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1 subject to a cost-benefit analysis.

2 CHAIRMAN ABRAMSON: I'm sorry. I'm only
3 asking whether your concern about unplanned outages is
4 one of the economics of the operation of the plant, or
5 is it one of the safety of the plant.

6 MS. BURTON: Our concern is safety. I
7 understand that economics isn't technically part of
8 your purview.

9 CHAIRMAN ABRAMSON: Okay. And when one is
10 concerned about the safety of a plant, and one is
11 focused on the aging issue, then what the Applicant
12 has said here and said in its reply is that it has
13 focused on the stress-related issues that would arise
14 as a result of aging, and they have given you a
15 specific reference to a section in the application,
16 which you have not commented on other than to say you
17 can't find anything in the application that relates to
18 unplanned outages.

19 Would you help me understand why -- what
20 else it is you are worried about other than the
21 stress- and fatigue-related issues that would occur as
22 a result of aging?

23 MS. BURTON: Yes. We are concerned that
24 because of what we believe to be an unusually high
25 number of unplanned outages, and an unusually long

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1 period of being out of operation, that assessing
2 the --

3 CHAIRMAN ABRAMSON: Sorry, counselor.
4 What's the relevance of an unusually long period of
5 being out of operation on the stress on the plant or
6 the effects of aging?

7 MS. BURTON: I think it suggests a pattern
8 of problems with the systems of the facility.

9 CHAIRMAN ABRAMSON: The number of outages
10 may suggest that, but how does the period for which it
11 is out of operation suggest that?

12 MS. BURTON: Well, I think I understand
13 that a plant that has a little problem that's easily
14 fixed will stay out of operation for a short time,
15 because economically it doesn't make sense to stay
16 shut down longer than you need to. But if you have
17 problems that are more complex, the resolution of
18 which may lead to a discovery of related problems that
19 weren't addressed before, let's say, these things can
20 lead to longer outages.

21 And what I'm suggesting is longer outages
22 suggest that there are -- the problems are more
23 serious than you might think they would be for a
24 shorter outage. That has been the history of Unit 2.
25 Unit 2 was --

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1 CHAIRMAN ABRAMSON: Let's not go off into
2 that. I'm trying to understand: what is your concern
3 that relates to aging here? And I think I understand
4 that what you're saying is when the plant has an
5 outage, it relates to a problem. That problem arises
6 or could be the source of a fatigue or stress problem
7 that could be exacerbated by aging. Are you saying
8 something more than that?

9 MS. BURTON: In addition to that, we are
10 concerned about the actual mechanical shutdown. Each
11 time the plant goes from 100 to zero in less than a
12 second --

13 CHAIRMAN ABRAMSON: Does that mechanical
14 shutdown in your mind do something more than make a
15 particular component weaker as a result of the stress
16 it went through due to that shutdown?

17 MS. BURTON: I believe that that's exactly
18 what we're talking about. That is what aging is all
19 about -- embrittlement, metal fatigue, and all of
20 that. All of those factors are related to what
21 happens to a facility that goes through that kind of
22 a physical phenomenon.

23 CHAIRMAN ABRAMSON: And since fatigue and
24 stress is addressed in a section of the application,
25 and which you have said you haven't reviewed -- or are

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1 you telling me you have not been able to find that
2 section, or you haven't been able to comprehend that
3 section? What am I --

4 MS. BURTON: It may be a combination of
5 all three. I'm not an expert. I'm not a nuclear
6 engineer, which you my have figured already. But we
7 have reviewed the application. I have been sitting
8 here trying to find any kind of a more specific
9 reference to the history of Unit 2 having an unusually
10 high number of unplanned shutdowns and how that
11 particular aspect may or may not have been assessed in
12 all of this.

13 CHAIRMAN ABRAMSON: I understand.

14 MS. BURTON: Other than simply boilerplate
15 assessment. And it sounds like not every component
16 was assessed --

17 CHAIRMAN ABRAMSON: Thank you, counsel.

18 MS. BURTON: -- since only -- it was only
19 identified that some were.

20 JUDGE YOUNG: Could I just --

21 CHAIRMAN ABRAMSON: Yes, go ahead.

22 JUDGE YOUNG: I thought I was following
23 everything, and then I just got confused with the last
24 thing you said. I thought I understood you to agree
25 that the only place that the unplanned shutdowns could

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1 have an effect would be in the stress and fatigue
2 issues. Did I hear you correctly? I thought I
3 understood you to agree with Judge Abramson that that
4 was the case.

5 MS. BURTON: That is the case. However,
6 I think it needs to be understood in the context of a
7 plant that's had a history of an unusually high
8 number.

9 JUDGE YOUNG: Right. But if the only
10 place that it could have an effect would be in the
11 stress and fatigue area of problems, and -- but there
12 is a section of the application that deals with those
13 issues, which I think I understand to be the case, and
14 you haven't given us any specific reference to
15 portions of those sections of the application that are
16 somehow lacking. What is it that would remain after
17 those?

18 MS. BURTON: Well, it may very well be
19 that we simply aren't fully able to understand the
20 application. The information may be here, but we --

21 JUDGE YOUNG: So are you saying that you
22 don't know whether the application -- you don't
23 understand enough about the application to tell
24 whether it's sufficient or not with regard to stress
25 and fatigue tests?

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1 MS. BURTON: Looking at the application,
2 I haven't seen a specific reference to an analysis of
3 Unit 2 with respect to its unusually frequent
4 unplanned shutdowns. And how that may or may not --

5 JUDGE YOUNG: But if you --

6 MS. BURTON: -- affect the analysis --

7 JUDGE YOUNG: If you --

8 MS. BURTON: -- of --

9 JUDGE YOUNG: If you agree that that would
10 fall into the area of stress and fatigue, and you're
11 saying you don't understand enough about the parts of
12 the application dealing with that, I guess I'm just
13 not following where -- you're saying there could be a
14 problem. I guess I'm not following where you're
15 alleging there -- with any specificity --

16 MS. BURTON: Maybe I should say this --
17 started out by saying that we didn't see or understand
18 -- we didn't see in the application a section devoted
19 to the issue of these sudden shutdowns fairly
20 frequently at Unit 2. We did not see that set out in
21 those terms.

22 We declared that to be an apparent
23 insufficiency/deficiency in the application,
24 because --

25 JUDGE YOUNG: Have you been satisfied by

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1 what you've heard today about the fatigue testing
2 having been done?

3 MS. BURTON: Not at all, because what I've
4 heard today is that I: a) haven't been directed to a
5 page of the application where the Applicant has said,
6 "Yes, this is where we discuss all of these unplanned
7 outages, when we had them, why we had them, and what
8 the effects were, and what the cumulative effects are,
9 and what we can expect is going to happen in the
10 future if this keeps going on or gets worse." They
11 haven't told me --

12 JUDGE YOUNG: Given that you have a
13 responsibility to look at the application, you haven't
14 pointed out where there are any problems in that
15 testing, have you?

16 MS. BURTON: What I'm saying is I haven't
17 -- I'm not aware that it's even in the application,
18 and I haven't heard the Applicant point to the page
19 where that is --

20 CHAIRMAN ABRAMSON: Okay. Let's wait
21 until we hear from the Applicant.

22 MS. BURTON: And I haven't said that --

23 CHAIRMAN ABRAMSON: Let's --

24 MS. BURTON: -- they completely -- and I
25 haven't --

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1 CHAIRMAN ABRAMSON: Okay. Let's hear the
2 rebuttal. I've got the answers to my questions.
3 Let's hear the rebuttal from the Applicant and from
4 the Staff, and then perhaps you'll have something that
5 you can respond to.

6 MR. LEWIS: The license renewal rule does
7 not require an analysis of every component in the
8 plant. It requires analysis of systems, structures,
9 and components that were in the scope of the rule, and
10 those are a number of different types.

11 There are safety-related components, there
12 are components to our non-safety but whose failure
13 could impact the safety-related equipment, and there
14 are components that are relied on to meet a number of
15 regulations including ATWS, the pressurized thermal
16 shock regulation, the EQ regulation, the fire
17 protection regulation. That's from memory; there may
18 be more.

19 We've analyzed the components that are
20 required to be included by virtue of the rule, and
21 those go beyond what's required for just meeting the
22 safety-related criteria. There is additional
23 components in there.

24 Those components are evaluated for all
25 appropriate aging mechanisms that could prevent them

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1 from accomplishing their safety functions. You have
2 to look at which components are subject to what
3 effects, so you look at what components are subject to
4 fatigue, and you look at the original fatigue
5 analyses, and you determine how many cycles were these
6 components designed to meet.

7 A fatigue analysis typically takes a
8 component and it looks at the number of different
9 cycles, the number of different thermal stresses,
10 heatup and cooldowns, expansions and contractions, the
11 number of transients it is expected to accrue over its
12 lifetime, what you do typically. There's lots of
13 components, lots of analyses, so I'm talking in broad
14 terms.

15 You take a look at, you know, what has
16 been the exposure history of that component, and you
17 try and see with the extrapolated number of additional
18 cycles that you expect will you remain within the
19 original fatigue analysis. And basically you qualify
20 that component for a certain -- what's known as
21 effective full power years to show that it remains
22 qualified for the thermal transients that it is
23 expected to see over the period of extended operation.

24 CHAIRMAN ABRAMSON: So if I may interrupt
25 just for a second, counselor -- sorry, I don't want to

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1 eat into your time -- but in that sense, you're
2 looking at the number of cycles historically. So you
3 would be incorporating this unusually -- as counsel
4 for CCAM puts it, this unusually large number of prior
5 shutdowns.

6 MR. LEWIS: Yes.

7 CHAIRMAN ABRAMSON: Thank you.

8 MR. LEWIS: Now, there may be certain
9 circumstances where some particular component isn't
10 qualified for its entire period of extended operation.
11 In that case, the rules that require you to address
12 time-limited aging analyses require you to do
13 something about it. You may have to commit to change
14 it out. You may have to commit to do a further
15 analysis before you operate past its effective full
16 power years. You may have to commit to different
17 inspections and surveillances.

18 But all of that is addressed in the
19 application for a whole multitude of components. We
20 really -- unless Petitioner refers to the specific
21 components and the specific issues and says, "Here is
22 a problem. Here is why this is wrong," it's just too
23 much information for us to address every component of
24 the plant that is addressed for fatigue and how it is
25 addressed and how many cycles and what we're doing.

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1 And it's also not one page. I mean,
2 Chapter 4 is devoted -- of each application, and
3 there's two applications, is devoted to time-limited
4 aging analyses, and Chapter 4.3 is devoted entirely to
5 fatigue. And there is a number of different
6 structures and components that are susceptible to
7 fatigue. It's not one answer.

8 Just on SAMAs, this contention alleges
9 that there are -- that Units 2 and 3 suffered
10 technical and operational defects. SAMAs have nothing
11 to do with addressing defects. They are not in our
12 application to address any operational problem or any
13 defect or any problem. They are simply there to say
14 as a part of NEPA there is severe accident risk. What
15 might you do beyond NRC requirements to further
16 mitigate risk? So the whole issue of SAMA is just
17 entirely relevant to this contention.

18 That's all.

19 CHAIRMAN ABRAMSON: Staff?

20 MS. MARCO: Yes. I just would like to use
21 my minute to address a bit about the Staff's review
22 process and how it interacts. It's an iterative
23 process in the Staff's review with the Applicant. We
24 issue requests for additional information normally.
25 That's a normal part of our process.

1 Our schedule for when we issue the various
2 requests for environmental requests for additional
3 information and the safety requests for additional
4 information are set forth on our website. The
5 anticipated response dates are also on there. It's
6 not a hidden secret.

7 And, furthermore, despite this -- or in
8 any event -- the Commission has declared that the
9 contentions are to be based on the application and not
10 on other types of documents. There could be a case
11 made for later contentions, but that's based on
12 entirely new information received from any source.

13 That's all the Staff has to say.

14 CHAIRMAN ABRAMSON: Finished?

15 MS. MARCO: That's it. Thank you.

16 CHAIRMAN ABRAMSON: Okay. Ms. Burton?

17 MS. BURTON: Yes. On this -- the Unit 2
18 history of unplanned outages, I guess then perhaps
19 what we need to do, not now, but to see if we can
20 fully satisfy this is to look at the comparative
21 analysis of Unit 3 and Unit 2 with respect to the
22 components and assume that the data for each of those
23 are sufficiently in contrast to reflect the different
24 histories of unplanned outages.

25 So I am just maybe kind of thinking out

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1 loud here that if, in fact, the applications are
2 different in that respect it would tend to suggest
3 that perhaps our concern about this contention was not
4 as well placed as we thought it was. But I can't sit
5 here and say I am fully satisfied that the particular
6 peculiarities of Unit 2 and its operating history have
7 been addressed such that sitting here we can't
8 continue to propound the contention.

9 JUDGE YOUNG: You can't continue to --

10 MS. BURTON: We can't stop propounding it.
11 We continue to propound it.

12 (Laughter.)

13 CHAIRMAN ABRAMSON: We understand.
14 Anything else?

15 MS. BURTON: That's all. Thank you.

16 CHAIRMAN ABRAMSON: Well, let's move on to
17 Contention --

18 JUDGE YOUNG: I do have a question.

19 CHAIRMAN ABRAMSON: Sorry.

20 JUDGE YOUNG: Yes. First, to Dominion,
21 there was a reference to seeking some waivers with
22 regard to SAMAs. Is -- are there --

23 MR. LEWIS: No.

24 JUDGE YOUNG: You're shaking your head no.
25 There are no waivers sought with regard --

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1 MR. LEWIS: There is no waiver request.

2 JUDGE YOUNG: -- to SAMAs?

3 MR. LEWIS: No.

4 JUDGE YOUNG: Okay.

5 MR. LEWIS: And SAMA doesn't involve
6 waiver requests. Again, SAMA is analyses of
7 additional mitigation measures beyond what's required
8 by NRC regulations in safety that might be considered
9 under NEPA to mitigate risk.

10 JUDGE YOUNG: And you're not asking for
11 waivers of any of that.

12 MR. LEWIS: No.

13 JUDGE YOUNG: Okay. Do you know of any
14 other components other than those that are required to
15 be considered in the rule that would be affected by
16 shutdowns? Or, alternatively, can you say that there
17 are no other components that would be affected by
18 shutdowns besides those listed in the rule?

19 MR. LEWIS: I'm not aware of anything
20 that's specifically related to shutdowns beyond the --
21 you know, the cyclic aging mechanisms which are
22 addressed. I mean, our application looks at all of
23 the aging mechanisms that are identified based on
24 operating experiences occurring.

25 And, in fact, looking at operating

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1 experience is part of the license renewal process.
2 You have to look at operating experience to identify
3 what are the mechanisms that are occurring, and then
4 you have to implement an aging management program.
5 And if it's an existing program, again, you look at
6 operating experience to look at the effectiveness of
7 it.

8 I mean, there is lots of mechanisms.
9 There is -- you know, in addition to fatigue there is
10 wear and cracking and things like that, but all of
11 those are addressed by aging management programs to
12 address those mechanisms, so that there is assurance
13 that components will continue to perform their
14 function.

15 So I guess I'm not -- I can't think of
16 something else that's specifically unique to a
17 shutdown.

18 CHAIRMAN ABRAMSON: I think it's a very
19 difficult question to ask if you know of something
20 else. Maybe I can come -- address Judge Young's
21 question another way. You said -- and I didn't catch
22 the exact terminology, but you said when you're
23 looking at -- when you're required to look at things
24 that go through cycling, that means -- and you're
25 required to look at every type of cycling, which would

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1 mean thermal and radiation and physical wear and
2 stress, both from pressure and from thermal, when you
3 look at those -- when the list is established of what
4 components to look at, is that a list that's
5 established by the Commission, or is it a list that's
6 established by Dominion?

7 MR. LEWIS: No, there is a scoping and
8 screening process to identify. You start with the
9 systems, structures, and components that meet the
10 license renewal scope, which is important to safety
11 and --

12 CHAIRMAN ABRAMSON: So they basically look
13 at everything that's important to safety, right?

14 MR. LEWIS: Yes. Well, there are certain
15 components that are outside the scope of license
16 renewal. Active short-lived components, which are
17 components that are replaced at regular intervals,
18 aren't looked at. The license renewal rule is focused
19 on long-lived passive components, components that have
20 remained there in the long run. And because they are
21 passive, there isn't an active, you know, way of
22 detecting failures, at least that's the theory.

23 So we don't look at everything in the
24 plant. We look at everything in the plant within the
25 scope of the license renewal, which, again, is focused

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1 on passive long-lived components. And we don't
2 evaluate necessarily every component for every aging
3 mechanism. There is a process that associates aging
4 mechanisms with particular types of components based
5 on the environment they're in, the stresses they're
6 in.

7 So, you know, some component may not be
8 subject to thermal heatups and cooldowns, and,
9 therefore, fatigue doesn't apply to it. So you
10 identify which components are passive and long-lived
11 and within the scope of the rule and subject to
12 fatigue, and then you have to address that aging
13 mechanism.

14 JUDGE YOUNG: Yes, that's helpful. I have
15 a couple more. With regard to operating experience,
16 are there particular parts of the plan where that
17 comes into play? Or does that come into play with
18 regard to more than one? How does that reflect itself
19 in either the application or the --

20 MR. LEWIS: The requirement to look at
21 operating experience comes out of the standard review
22 plan and the NRC guidance documents. And my
23 recollection is, in going through the license process,
24 there is two points where you really look at operating
25 experience. One is in identifying, you know, what are

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1 the aging mechanisms that are occurring? And, you
2 know, have you looked at everything you need to look
3 at? And so you definitely look at operating
4 experience.

5 There is today an NRC staff report, which
6 is a great big voluminous report called the Generic
7 Aging Lessons Learned Report, or GALL Report, which is
8 trying to capture all of the operating -- all of the
9 lessons learned from prior license renewal
10 applications and identifies what are aging mechanisms
11 for different components. And that very much
12 reflects, you know, the learnings from all of the
13 license renewal applications which in turn is based on
14 operating experience.

15 The second point where you look at
16 operating experience is looking at the effectiveness
17 of aging management programs. And the NRC has 10
18 attributes that a good, effective aging management
19 program has to meet, and there are different things
20 like, you know, feedback and particular -- I can't
21 remember what the 10 criteria are, but one of them is
22 that it reflects operating experience, that operating
23 experience is looked at to look at the effectiveness
24 of your aging management --

25 CHAIRMAN ABRAMSON: That's within your own

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1 plant operating experience.

2 MR. LEWIS: I'm sorry. This is both
3 industry-wide operating experience and plant operating
4 experience, though it's not limited to what's in your
5 plant.

6 CHAIRMAN ABRAMSON: But what is in your
7 plant would be incorporated in your --

8 MR. LEWIS: Absolutely, yes.

9 JUDGE YOUNG: So I guess what I was trying
10 to get at is that apart from the fatigue testing and
11 the parts of the application that relate to the
12 different components that are in the rule, are there
13 any particular parts of the application that address
14 operating experience specifically? Or is it addressed
15 in different portions of various different parts of
16 the application?

17 MR. LEWIS: With respect to the
18 effectiveness of aging management programs, there is
19 an appendix at the back of each application that
20 describes the programs, and the operating experience
21 relevant to each of those programs is addressed there.
22 So it's with respect to each program.

23 With respect to identifying the aging
24 mechanisms for each component -- no, it -- I mean,
25 that just permeates the entire application, and it's,

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1 you know, the basis for the GALL Report. It went into
2 identifying it, but there's -- with respect to every
3 component, there is not a discussion of that
4 component, here is what the operating experience is.
5 Instead, there is an indication, here are the aging
6 mechanisms that have been identified.

7 JUDGE YOUNG: The earlier part that you
8 mentioned, that there was a part that talked about
9 operating experience, in that portion is there any
10 specific discussion of the shutdown history or --

11 MR. LEWIS: I don't think so. I don't
12 think that there is -- I mean, and I think that the
13 experience that's looked at is: when have failures
14 occurred, and why have they occurred, and what have
15 people done to fix them? So I don't think that there
16 is a specific discussion of, you know, what's been the
17 shutdown history of the plant.

18 JUDGE YOUNG: Okay.

19 MR. LEWIS: I mean, there is a reverse
20 side to a shutdown. Millstone was shut down for a
21 number of years for -- not for aging issues but for
22 design basis verification activities. You know, of
23 course during that period the plant in fact was
24 subject to, you know, far fewer stresses than an
25 operating plant would be.

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1 JUDGE YOUNG: All right. I don't know
2 whether this would -- there would be any relevance to
3 this, but you mentioned there were -- you do
4 projections with regard to full power years. Does
5 that include projected number of shutdowns? Is that
6 -- is there any relevance there? And would the
7 shutdown history of Millstone -- of the -- I think
8 they made reference to both units, but particularly
9 Unit 2, be relevant to that?

10 MR. LEWIS: It should be, because the
11 fatigue analyses, you know, look at a number of
12 transients and a number of cycles that are expected
13 over a certain number of effective full power years.
14 And the typical analysis that one does is look at,
15 okay, how many cycles were in fact racked up during
16 this period? And, you know, what is the projected
17 number of cycles in the future? And were any of your
18 cycles outside your stresses that you assumed?

19 And your first approach to showing that a
20 component remains qualified for a fatigue life for the
21 remainder of the extended period of operation is
22 trying to show that you're going to fall within, you
23 know, the original analysis, that you're going to have
24 -- you're still going to be bounded by the number of
25 cycles, heatups and cooldowns and transients, and that

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1 was included in the original analysis. So --

2 JUDGE YOUNG: So that would include the --
3 every time there is a shutdown there would necessarily
4 be a cooldown and heatup again, and so the projection
5 would include the history of the shutdowns.

6 MR. LEWIS: Yes, that's correct.

7 JUDGE YOUNG: Okay. Ms. Burton, let's
8 see. I had a couple of questions for you. First of
9 all, are you aware of any other components not
10 mentioned in the rules or by Mr. Lewis that would be
11 affected by the shutdowns?

12 MS. BURTON: I have difficulty answering
13 that, because they -- I believe they are identified as
14 systems --

15 JUDGE YOUNG: Well, systems -- let's see,
16 they're identified as systems, structures, and
17 components. Any of those.

18 CHAIRMAN ABRAMSON: Which are not required
19 by the rule to be analyzed.

20 JUDGE YOUNG: Right.

21 MS. BURTON: Right.

22 JUDGE YOUNG: Or not mentioned by Mr.
23 Lewis.

24 MS. BURTON: No, I am not.

25 JUDGE YOUNG: You did make reference in

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1 your amended petition to two tables. And I think Mr.
2 Lewis, and possibly Staff, indicated that there was
3 nothing specific pointed out in these tables that
4 would support your argument. How do the two tables
5 provide specific support for your argument?

6 MS. BURTON: Well, I believe --

7 JUDGE YOUNG: Or show that there is any
8 reason for further inquiry?

9 MS. BURTON: I think each of the tables
10 cited is fairly representative of all of the SAMAs.
11 It seemed to us in reviewing that part of the
12 application we were very persuaded that perhaps not
13 having a complete understanding of how this fit into
14 the context of the relicensing that -- well, we
15 wondered how there could be any question but that
16 these mitigation measures would be required to be
17 implemented if it could be established that they might
18 be helpful in the event of the kind of accident that
19 they were thought of to potentially mitigate.

20 JUDGE YOUNG: I'm not following what
21 you're saying.

22 MS. BURTON: Okay. I'm sorry.

23 JUDGE YOUNG: Have these -- the tables --
24 tell me what the tables include, and then explain your
25 last statement with regard to that. Maybe I'm missing

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1 something. I got the impression from what you just
2 said that the tables indicate things that they're not
3 planning to do.

4 MS. BURTON: The tables indicate -- the
5 tables list different items that are being considered
6 as possibilities for implementation. Perhaps that's
7 one way of putting it -- not being considered for
8 possibilities of implementation but for -- being
9 considered for analysis with respect to whether or not
10 they might be useful, if there ever were an
11 accident --

12 JUDGE YOUNG: Right.

13 MS. BURTON: -- would they help to
14 mitigate the accident. I think that these two tables
15 that were particularly cited aren't -- these were just
16 excerpts from the SAMAs. They're no different from
17 other pages or other tables within the SAMAs. There
18 was something about those two tables, though, that
19 seemed to suggest that some of the items seemed like
20 awfully good ideas that a licensee should be required
21 to implement.

22 I mean, it just seems --

23 CHAIRMAN ABRAMSON: So you're raising a
24 general policy question, are you, that these issues
25 which are required to be looked at from a NEPA

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1 perspective should be required to be implemented? Is
2 that what I hear you saying?

3 MS. BURTON: No, I'm not saying that at
4 all.

5 CHAIRMAN ABRAMSON: Okay.

6 MS. BURTON: All right. If I said that,
7 I didn't mean to give you that impression. Not from
8 a policy perspective, no, from an actual operational
9 perspective.

10 JUDGE YOUNG: Let me see if I can
11 understand what you're saying. These tables provide
12 lists of measures that are being considered --

13 MS. BURTON: Are being analyzed.

14 JUDGE YOUNG: -- and analyzed. And what
15 you're saying is that because they don't go further
16 and say, "We will do it," rather than, "We are
17 analyzing them," that that's the only problem that the
18 tables, in your view, illustrate?

19 MS. BURTON: It seems to me if the
20 information is there because it has passed a threshold
21 -- in other words, that it has -- that it has been at
22 least preliminarily established that this particular
23 measure might, to some extent -- and it might be only
24 to a very tiny extent -- mitigate a serious accident.

25 But yet the decision of whether or not it

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1 will actually be implemented is something that right
2 now is up in the air and it -- and if I'm
3 understanding it, the NRC can't even require it, even
4 if it seems that the analysis shows that it would work
5 in a particular accident.

6 JUDGE YOUNG: You sound to be -- you sound
7 like you're talking about a challenge to the whole
8 scheme of how it's done rather than -- what my
9 question was, was how do these tables support your
10 argument that you've made that the unit suffered
11 technical and operational defects which precludes safe
12 operation, that they suffer from premature aging,
13 etcetera.

14 How do these support your arguments? And
15 maybe you can't tell me anything more than you've told
16 me. And, if so, just let me know and I'll move on.
17 I have just a couple more quick questions. And the
18 reason I'm focusing on those is because they are the
19 only two specific documents that you've listed.

20 MS. BURTON: Okay. I think I can be a
21 little bit helpful. I reference the entire
22 compilation. I'm looking at page EF-31. I reference
23 the entire compilation, because I think they are all
24 subject to the same concern.

25 However, I think that we could be more

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1 specific if that -- I think this is sufficient, but we
2 could be more specific to point out certain of these
3 which seem to present a situation where it would beg
4 understanding to accept that something that seems so
5 promising in terms of mitigating a safe -- mitigating
6 a serious accident would not be implemented, and in
7 this process wouldn't be required to be implemented.

8 JUDGE YOUNG: Okay. Let's move on from
9 that. I'm still not following how that relates --
10 supports your specific arguments, but just a couple
11 more.

12 You made reference to -- a couple of times
13 today to a report by Mr. Lochbaum. And I was
14 wondering two things. One, are there any specific
15 references in that to Millstone? And, two, given your
16 reliance on it, why was it never mentioned before or
17 provided to us at any time? I don't know if it's Dr.
18 Lochbaum or Mr. Lochbaum.

19 MS. BURTON: Okay. I guess I don't need
20 to find it to answer your question.

21 CHAIRMAN ABRAMSON: I think that's right.

22 MS. BURTON: Okay. Because I've misplaced
23 it.

24 CHAIRMAN ABRAMSON: Two parts.

25 MS. BURTON: Yes.

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1 CHAIRMAN ABRAMSON: Are there any specific
2 references? And why don't we have it?

3 MS. BURTON: Maybe I do need to find it.
4 I didn't -- I don't recall a specific reference to --

5 CHAIRMAN ABRAMSON: In your petition, any
6 of the various forms, did you make any specific
7 reference to any specific part of Dr. Lochbaum's --

8 MS. BURTON: No.

9 CHAIRMAN ABRAMSON: -- document?

10 MS. BURTON: No.

11 CHAIRMAN ABRAMSON: Okay, fine. And is
12 there a reason why that document has not been provided
13 to us, other than your general assertion earlier that
14 everything is available to us because it's in the
15 public realm?

16 MS. BURTON: First of all, it only came to
17 my attention very recently, within the past week or
18 so. That could account for it in part. I don't
19 recall a specific reference to Millstone, but it talks
20 about plants that Millstone -- Millstone meets the
21 description of plants that are in the aging area.

22 CHAIRMAN ABRAMSON: In your petition
23 itself, have you made any reference to any specific
24 portions of Lochbaum's treatise, or whatever it is?

25 MS. BURTON: Specifically, no.

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1 CHAIRMAN ABRAMSON: Okay.

2 JUDGE YOUNG: That's all I have.

3 CHAIRMAN ABRAMSON: And we don't have the
4 report. Okay, fine. That's -- Dr. Cole, do you have
5 any questions? Okay. Then, I think we're -- did we
6 not yet hear from the Staff on rebuttal?

7 MS. MARCO: I'm sure I did. I did, yes.

8 JUDGE YOUNG: We did.

9 CHAIRMAN ABRAMSON: Okay.

10 JUDGE YOUNG: We did.

11 CHAIRMAN ABRAMSON: All right. Let's move
12 on to the -- to Contention 6, then, if everybody is
13 finished with that one.

14 And, again, you want to tell us how much
15 you'd like to -- this relates to evacuation of
16 Connecticut and Long Island. How much time would you
17 like to reserve of the 10 minutes you have, counsel?

18 MS. BURTON: Five minutes, please.

19 CHAIRMAN ABRAMSON: Okay.

20 MS. BURTON: In this contention, we
21 maintain that Connecticut and Long Island cannot be
22 evacuated in the event of a serious nuclear accident
23 at Millstone which today is credible. And in a
24 serious accident, substantial portions of this state
25 and New York state and Rhode Island, probably

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1 Massachusetts and parts -- other parts of New York
2 would be required to be evacuated.

3 And we maintain that this is an issue that
4 the Board and the Commission need to consider in the
5 process of considering whether or not to allow
6 Millstone Units 2 and 3 to continue to operate for the
7 next few decades beyond the termination of their
8 current licenses.

9 JUDGE YOUNG: Could I just clarify one
10 thing so I can follow you while you're going? When
11 you're talking about a serious nuclear accident, are
12 you talking about a terrorism-related accident, or
13 another kind of accident? Or are you meaning to
14 include both?

15 MS. BURTON: Well, I understand that you
16 people don't consider terrorism to be within your
17 jurisdiction, so I don't want to hazard the wrong
18 answer. But we -- it is our contention that we are
19 properly raising that issue as well as the issue of
20 the prospect of a possible serious non-terrorism
21 accident.

22 Now, we know that there are high
23 population zones within close proximity to Millstone.
24 Millstone is located next to residential zones. They
25 are fairly dense. New London is a metropolitan area,

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1 so is Hartford, so is New Haven, so is Providence.

2 Boston isn't so far away when you consider
3 the direction of the prevailing winds, yet -- and
4 apart from that, coming closer to home, there are very
5 many public schools for children very close to
6 Millstone, within two miles several of them,
7 facilities for elderly people who would have a very
8 difficult time if there were a serious accident at
9 Millstone, and there never has been an actual drill in
10 this community, even though Millstone has been
11 operating here for 30 years.

12 And there isn't any current plan to have
13 a drill now or next week or next year or 30 years from
14 now. And so whether or not the plans that were
15 devised some time ago would ever work is a big
16 question mark. I will point out that the plans were
17 not perfect to begin with, because one of them
18 required the people who inhabit Fisher's Island, which
19 is a lovely summer community southeast of here, to in
20 the event of an accident at Millstone to actually come
21 toward Millstone, sort of to travel into the dragon's
22 mouth.

23 That was a requirement under the emergency
24 evacuation plan. Presumably, marshall order would go
25 into effect, and I think it would be a very hard thing

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1 to enforce, if not impossible, if you told people that
2 they have to go toward the plume for safety. That has
3 been changed, but very little else has been changed
4 about the plan.

5 I don't believe that it takes into account
6 the fact that there are some very successful casinos
7 that operate very close to here, attracting a lot of
8 people, tying up the highways with a lot of people.
9 This is a very congested area. It's often tied up in
10 traffic. There have been events involving -- recently
11 the Amtrak train had to be discontinued because a
12 train bridge at the Niantic Bridge down the Sound from
13 Millstone didn't close. That contributed to a tie-up.
14 I don't know that that is a factor that's contemplated
15 in the evacuation plan.

16 We know that the current requirements are
17 that there only be one person qualified at local
18 hospitals to deal with a radiation contamination event
19 and equipment for one contamination event, in order
20 for these hospitals to maintain their certification to
21 operate. That we know would not suffice in an
22 emergency, yet there is nothing that's -- that
23 addresses that in the current plan.

24 And given the current state of affairs,
25 given the ballooning population of this area, given

1 the credible threat of a terrorist attack, given the
2 frequent unplanned outages at Millstone, given all of
3 the problems that have bene associated with that
4 facility, given a lot of other factors, given the fact
5 that it's in a highly populated area -- Long Island,
6 of course can't be evacuated -- all of these factors
7 point to the need to have this issue considered in the
8 relicensing plans that would look ahead to what the
9 population is going to be in the year --

10 CHAIRMAN ABRAMSON: Counselor, your time
11 is up. Sorry, we forgot to give you the one-minute
12 warning.

13 MS. BURTON: Oh, okay.

14 CHAIRMAN ABRAMSON: Do you want to
15 continue and --

16 MS. BURTON: Well, just that sentence.

17 CHAIRMAN ABRAMSON: Okay.

18 MS. BURTON: Just that sentence. There is
19 no project in this application as to the population in
20 2015, 2025, 2035, and 2045, correlating with the
21 timeframe of this application. And that's a very
22 serious oversight. We believe we have raised a
23 sufficient contention.

24 Thank you.

25 CHAIRMAN ABRAMSON: Dominion?

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1 MR. LEWIS: There are population
2 projections in the application, but they certainly
3 don't relate to emergency planning, because emergency
4 planning is a current term issue, not a license
5 renewal issue.

6 I think I'm just going to rely on the
7 pleadings that point out the Commission's statements
8 during the rulemaking proceedings in the Turkey Point
9 case where the Commission has clearly stated that
10 emergency planning is outside the scope of such -- of
11 a license renewal proceeding like this one.

12 JUDGE YOUNG: Are you finished?

13 MR. LEWIS: Yes.

14 CHAIRMAN ABRAMSON: Staff?

15 MS. MARCO: Yes. The Staff opposes the
16 admission of Contention 6, because it fails to satisfy
17 the Commission's regulatory requirements for the
18 admission of contentions. In particular, this
19 contention is outside of the scope of the license
20 renewal proceeding, and it does not set forth the
21 specific factual or legal basis that's required to --
22 by the Commission's regulations.

23 Emergency planning issues are already the
24 focus of ongoing regulatory processes. The Commission
25 has declared in both its Turkey Point decision and in

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1 the statements of consideration for Part 54 in 1991,
2 and again in 1995, that because the Commission ensures
3 that existing emergency plans are adequate throughout
4 a reactor's life emergency planning is one of the
5 safety issues that don't need to be reexamined within
6 the context of license renewal.

7 The Staff notes that CCAM did not amend
8 this contention as part of its June 14th amended
9 petition. In its June 16th reply, CCAM argues that
10 plant aging issues are implicated in emergency
11 planning because an aging reactor will be more prone
12 to accidents.

13 CCAM asserts that an evacuation plan is a
14 "system" created to mitigate the consequences of
15 accidents within the meaning of 10 CFR Section
16 54.4(a)(1)(3). However, this interpretation cannot
17 stand in light of the Commission's exclusion of
18 emergency planning from the scope of the SSCs that are
19 subject to an aging management review, which is the
20 focus of that Regulation 54.4.

21 CAM asserts that by stating that the
22 adequacy of emergency plans need not be considered
23 anew as part of its -- of issuing a renewed license,
24 the Commission did not preclude their consideration.
25 CAM's assertion is of no import here, however, because

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1 a contention cannot be based on a petitioner's view as
2 to what the regulatory requirements ought to be. Such
3 assertions do not raise litigable issues.

4 Finally, CCAM asserts in its June 16th
5 reply that in light of the events of September 11th
6 the NRC should allow consideration of this matter in
7 the proceeding. In this regard, CCAM asserts that the
8 statements of consideration addressing this issue were
9 published 10 years before September 11th.

10 The Commission, however, in the 2002
11 McGuire licensing proceeding, as discussed before,
12 relied on its assertion that the 1991 statements of
13 consideration -- that a "review of the adequacy of
14 existing security plans is not necessary as part of
15 the license renewal process." And that's at page 364
16 of that decision.

17 Therein, the Commission distinguished
18 contentions relating to security from those related to
19 the detrimental effect of aging. Therefore, the Staff
20 opposes admission of this contention.

21 CHAIRMAN ABRAMSON: Ms. Burton?

22 MS. BURTON: Yes. We still stand on our
23 contention and its admissibility. Given the NRC
24 Commissioner's statement that I cite at page 15, that
25 was quoted by the Staff a moment ago, that the

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1 adequacy of existing emergency preparedness plans need
2 not be considered anew as part of issuing a renewed
3 operating license, does not mean that it can't be or
4 it shouldn't be or that it wouldn't be completely
5 appropriate and necessary for it to do so.

6 And the call on that really is this
7 Board's call, given the information before it. The
8 company hasn't disputed that there has never been a
9 real drill in real life in this area, hasn't disputed
10 that there are elementary schools within two miles,
11 elderly care facilities, and a lot of people living in
12 this area, and very limited facilities and training
13 for emergency personnel, let alone resources for this.

14 So in light of these facts, it would
15 appear to be appropriate to the Coalition for this
16 Board to accept as admissible this contention.

17 Thank you.

18 CHAIRMAN ABRAMSON: Questions? Judge
19 Young?

20 JUDGE YOUNG: Well, I wasn't going to ask
21 any questions, but I'll just ask one.

22 CHAIRMAN ABRAMSON: Can you get a short
23 answer?

24 JUDGE YOUNG: I hope so.

25 Just looking at the last thing that you

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1 said, you said that it doesn't preclude consideration.
2 Assuming it did, I was just trying to think, where
3 would it fall? It would seem to have -- to fall under
4 SAMAs. And yet you haven't really argued it under
5 that theory. Otherwise, where would it fall within
6 the scope of what's included within license renewal?

7 MS. BURTON: Well, I think since the
8 Commission made the statement itself when it
9 promulgated 10 CFR Part 54 it didn't exclude or
10 preclude this consideration in license renewal
11 proceedings. They didn't preclude it. They expressly
12 did not preclude it.

13 I think the ordinary rules of statutory
14 construction would hold that they didn't mean to
15 preclude it, therefore, it's okay to pursue it within
16 the discretion of the body. And we think that we have
17 set forth good cause why it should be considered here.

18 CHAIRMAN ABRAMSON: Judge Cole?

19 JUDGE COLE: No questions.

20 CHAIRMAN ABRAMSON: All right. Well, I
21 think that concludes -- do we have any comments from
22 anybody at this point?

23 As we mentioned to you earlier, then, our
24 objective and the required goal by our regulations is
25 that we have a ruling on admissibility of these

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1 contentions out by the 29th of July. We will
2 certainly satisfy that obligation.

3 If in the interim we decide, as a Board,
4 that Petitioner's stay request should be granted, we
5 will issue a separate ruling on that before that date.

6 And with that, Judge Young?

7 JUDGE YOUNG: I was just going to say,
8 obviously, if the Court issues a stay, you'll notify
9 us of that, I'm sure.

10 CHAIRMAN ABRAMSON: I have no doubt.

11 In the meantime, we do not need any
12 further filings. The record is closed on these
13 matters, and we will take them under advisement and
14 issue our rulings.

15 Thank you. We're done.

16 (Whereupon, at 1:48 p.m., the proceedings
17 in the above-entitled matter were
18 concluded.)

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CERTIFICATE

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

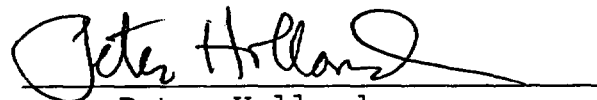
Name of Proceeding: Dominion Nuclear

Connecticut, Inc.

Docket Number: 50-336-LR, 50-423-LR

Location: New London, CT

were held as herein appears, and that this is the
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