

RAS 2110

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: **CONFERENCE CALL TO DISCUSS THE**
MATTER OF GRAYSTAR, INC.

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10 FOR THE APPLICANT:

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P R O C E E D I N G S

[10:00 a.m.]

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2
3 JUDGE YOUNG: I would like to tell you about my
4 background and my expectations and how I operate so that
5 everyone will know what to expect from me.

6 Judge Peter Lam is also joining us for possibly
7 the whole conference.

8 I don't know whether you know, but I was -- I
9 began work here about two weeks ago, I think that's correct,
10 a little over two weeks ago. Prior to that I was an
11 Administrative Law Judge in Tennessee for the Tennessee
12 Administrative Procedures Division, which is a sort of -- it
13 is called the Central Panel of Administrative Law Judges who
14 hear cases for a number of agencies, probably about 100
15 different agencies in Tennessee state government, including
16 everything from environmental cases to benefits cases,
17 direct forfeiture, securities, licensing, and so forth.

18 Nuclear subjects are obviously somewhat new to me
19 but I have done cases which involved similar types of issues
20 relating to licensing, enforcement, et cetera.

21 The way I generally operate in cases is to have a
22 lot of interaction between me and counsel, telling counsel
23 my expectations, sometimes my impressions, sometimes even my
24 inclinations on how I might rule on a particular issue, and
25 I do this to assist counsel in the preparation of your case

1 and your argument, to let you know what I am thinking so
2 that you can address it, so that you won't be in the dark
3 about that.

4 I do not do this to foreclose any argument or any
5 raising of issues that I may have overlooked, or to
6 foreclose any argument that maybe I am wrong, I should
7 consider another point of view. So, if there are different,
8 sort of different approaches to judging, I guess you would
9 probably say I am a bit more of an activist judge. I get
10 into and take part in the proceedings as they go.

11 Again, though, I want you to understand that if
12 you disagree, you are always free to disagree, and this is
13 to assist you and to try to move a case along a little bit
14 more efficiently.

15 So I thought with regard to this case, it might be
16 a good idea to give you some of my impressions of the case
17 to this point to get us into our discussion. Before I do
18 that are there any questions?

19 MR. THOMPSON: Not for me. This is Tony Thompson.

20 MR. HULL: No, none for me. This is John Hull.

21 JUDGE YOUNG: Thank you. And thank you for
22 identifying yourselves. I think that is probably a good
23 idea if each of us do identify ourselves for the court
24 reporter.

25 So my first impression, I guess, when I read the

1 pleadings, so to speak, the staff denial of the license and
2 GrayStar's response to that, the May 24th denial, the June
3 1st response, and then the June 8th letter back to the
4 applicant. Was that sent -- the parties seemed to be
5 talking past each other and not really -- that you are not
6 really on the same page on a lot of issues.

7 In terms of structuring the case, and I want to
8 get back to the issues in a minute, but in terms of
9 structuring the case, it appears to me that there are three
10 potential parts to this case. First, there is the issue of
11 whether the cesium chloride powder could ever be, quote, "as
12 non-dispersable as practical" in this particular irradiator
13 in the staff's view. And I think that the applicant is
14 asking the staff for a response on that because I get the
15 impression that the applicant doesn't see the need to spend
16 additional time and resources responding to the other parts
17 of the denial until they are assured whether or not cesium
18 chloride would ever be acceptable.

19 I would think that we could talk about that today.
20 Possibly, depending upon what Mr. Hull is able to say on
21 behalf of the staff, resolve that by agreement, or discuss
22 how that can be resolved.

23 The second part of the case obviously has to do
24 with the resolution of the issues set forth in the basis for
25 denial, the May 24th basis for denial of the application for

1 registration of the model GS 42 sealed source.

2 And then the third part of the case, which may or
3 may not be part of this case, has to do with the resolution
4 of issues set forth in the deficiencies, statement of
5 deficiencies and application for registration of the
6 GrayStar Model 1 irradiator.

7 In one sense, it appears that that issue may not
8 be ripe for consideration at this point. On the other hand,
9 I want to hear what the parties have to say about that
10 because you may want to proceed in this case to ultimate
11 resolution of those issues as well.

12 I want to hear your argument, I want to come back
13 and hear your argument on how the case should be structured
14 or discussion. I also want to suggest that on all of these
15 issues, it might be that this case is a good one for
16 mediation. Our Chief Judge can appoint another person in
17 our office to assist you in mediating the case and trying to
18 reach a settlement of all the issues.

19 I know that early on in the -- I think in the
20 first document in hearing trial, the staff in the person of
21 Mr. Larry Kemper, who was then Chief, I guess, of the
22 Medical, Academic and Commercial Use Safety Branch, he said,
23 we would like to stress the need for a collaborative effort
24 between all parties since this is a unique design, unique
25 product design, as such, obstacles may surface during

1 licensing and product registration that may be
2 policy-setting and require additional time to resolve.

3 So it may be that you want to pursue mediation and
4 possibly get the Department of Agriculture involved. I am
5 assuming that all of you know that Dr. Thayer, yesterday
6 afternoon, indicated that his letter, his Friday letter, was
7 submitted as a limited appearance, so I would expect that we
8 won't hear any more from him, except to the degree that you
9 may want to get him involved in any mediation or in any
10 other way.

11 The next thing that I have done in preparation for
12 this conference is to look at the issues in the case and to
13 address the circumstance that I have observed of the parties
14 sort of talking past each other, to try to pull together a
15 list or statement of issues that are drawn from the May 24th
16 denial and the June 1st response, which I would like to go
17 through with you at some point during this conference, so
18 that you can address your written presentations to the same
19 issues and get all this on the same page, so to speak.

20 I will be asking for written presentations to be
21 filed simultaneously to be addressing the same issues, so
22 that we can get the case sort of moving along in a little
23 bit more efficient fashion than it might otherwise.

24 A couple of -- one more thing that I did want to
25 mention before we got back and start talking about how to

1 structure the case is the reference in the staff's original
2 January 27th, 1997 letter to the possibility of
3 policy-setting issues. I would like to ask you to bring any
4 such issues to my attention as we go. I do understand that
5 the food irradiation business, someone, I believe Judge
6 Murphy said it is not just in its infancy, it is sort of in
7 its gestation period. So if there are new issues that might
8 possibly require Commission input, try to bring those to my
9 attention as soon as possible. And I am not sure that there
10 will be, but if there are, let's try to flush those out as
11 soon as we can.

12 So, I would like to hear from you at this point.
13 And I guess the first thing that it strikes me it would be
14 appropriate to discuss would be sort of how to structure
15 this case, and then along with that, whether you think
16 mediation might be an appropriate course to pursue.

17 Mr. Dewey, I should say is probably better trained
18 in mediation than anyone, any of the judges, and would
19 probably be available for that with you. So, why don't we
20 just start, Mr. Hull. Can you address the applicant's
21 question about whether the cesium chloride would ever be an
22 appropriate substance to use in an irradiator, and maybe get
23 us past that to start with?

24 MR. HULL: I would be happy to, Your Honor. Just
25 for the record, this is John Hull, representing the NRC

1 staff. I do have with me in the room this morning, John
2 Hickey and John Jankovich, both of NMSS, Nuclear Materials
3 Safety and Safeguards.

4 JUDGE YOUNG: Thank you. I appreciate your
5 spelling out the acronyms, because as you know, I am just
6 getting used to them, along with other things, including the
7 computer system.

8 MR. HULL: Okay.

9 JUDGE YOUNG: John Hickey and what was the second
10 person's name?

11 MR. HULL: John Jankovich.

12 JUDGE YOUNG: Thank you. Go ahead.

13 MR. HULL: Okay. The staff does view the cesium
14 chloride dispersability issue as being the key issue in this
15 case. The way the regulation is worded, for use in
16 irradiators, the source has to be as non-dispersable as
17 practical. That doesn't quite close the door completely to
18 use of cesium chloride in powder form, but a very strong
19 presentation would need to be made in order for the staff to
20 approve use of such cesium chloride powder in the type of
21 irradiator that GrayStar is proposing to use. So the staff
22 does view that as being a key underlying legal issue which
23 GrayStar has not even come close to satisfying the staff
24 that it would be safe to use cesium chloride powder in their
25 proposed irradiator.

1 JUDGE YOUNG: Let me just ask you, see if I
2 understand you correctly, to sort of rephrase it or look at
3 it from a slightly different perspective, I understand you
4 to be saying that the staff's view is not that cesium
5 chloride would never be appropriate, but that an applicant
6 would have to establish the "as non-dispersable as
7 practical," they would have to meet that standard by, I
8 presume, addressing all of the issues in Enclosure 1 to the
9 May 24th letter having to do with the various testing and
10 other requirements that are spelled out in that enclosure.
11 Is that a fair --

12 MR. HULL: I would go back even further, Your
13 Honor, to the staff's July 1999 request for additional
14 information which set forth clearly the staff's detailed
15 position about the proposed use of the cesium chloride
16 powder. And basically, the staff gave GrayStar an
17 opportunity there to convince the staff that such use should
18 be authorized. And in the GrayStar September 1999
19 submittal, GrayStar really didn't address that. They seemed
20 very firm on going forward with their plan to use the cesium
21 chloride powder, but didn't address the staff's safety
22 concerns.

23 JUDGE YOUNG: Let me -- it strikes me that perhaps
24 it might be helpful at this point for me to go over how I
25 have sort of -- go over my, quote, "list of issues" that I

1 have drawn up. But before I do that, Mr. Thompson, do you
2 have anything to say at this point on the cesium chloride
3 issue specifically?

4 MR. THOMPSON: This is Tony Thompson, Your Honor.
5 Thank you for the opportunity. Let me just say before I get
6 to that that I think that I agree with the way you have
7 characterized the material in the record. To my -- I
8 believe there has been a considerable amount of talking past
9 each other between the two parties. And I think that as a
10 general proposition, most of the denial, even in the cesium
11 registration, involves, if you will, notices -- sort of
12 notices of deficiency.

13 And so I guess would take -- would say that even
14 with respect to the -- the question was raised, is cesium
15 ever okay? And the answer is, you didn't make a strong
16 enough showing, and that appears to be what they said, you
17 didn't provide an adequate justification. It seems to me
18 that whether it is mediation or some other approach to this,
19 in some effort to define more precisely the issues between
20 the staff and the applicant, that perhaps, as you have
21 suggested, there may be some -- or perhaps you didn't
22 suggest it, maybe I am reading too much into it, that there
23 may be some value in the staff and the licensee refocusing
24 on a number of these issues to see if, indeed, they can
25 address these issues on the same page.

1 I think there is material in the record, for
2 example, that addresses the why using the cesium source that
3 frankly isn't as focused on that issue as it should be, and,
4 therefore, perhaps the staff didn't take that as relevant to
5 that issue. I think that the record is quite confusing, and
6 I think that to try to litigate all of the issues,
7 particularly since I agree with you that the GrayStar
8 irradiator is really more a notice of deficiency in toto.
9 But to try to address all these issues through written
10 pleadings may not make a whole lot of sense.

11 JUDGE YOUNG: Well, let me ask you something that
12 you just raised. Are both parties in agreement that the
13 issue of the application for registration of the irradiator
14 itself should not be part of this case? Or is this
15 something that the parties would like to ultimately be
16 resolved in this case?

17 MR. HULL: This is John Hull for the NRC staff.
18 Mr. Thompson and I have had discussions prior to this
19 teleconference about some of these issues. And the staff, I
20 think is in agreement with GrayStar's position, if I
21 understand it correctly, that the irradiator aspect of this
22 probably is not part of this case, and it would not be ripe
23 for adjudication right now.

24 If you read the May 24 denial letter, it was
25 really only denying the application for registration of the

1 sealed source and the staff just suspended its review of the
2 application for the irradiator design.

3 MR. THOMPSON: This is Tony Thompson. I concur.

4 JUDGE YOUNG: Okay. I guess then if you were both
5 in agreement that that will not be part of this case, then
6 certainly I am not going to force you to keep it in the
7 case. The only thing I would encourage you to think about
8 is whether -- is how you want to proceed in terms of getting
9 the quickest resolution of all the issues.

10 If you want to sort of put that in abeyance such
11 that it could be brought back into this case later, that is
12 one thing. Otherwise, taking your agreement at face value,
13 I think we just take this out of the case and that would be
14 a new case if that were ultimately denied.

15 MR. THOMPSON: I think that would be our position.
16 This is Tony Thompson for GrayStar.

17 JUDGE YOUNG: And Mr. Hull, you agree with that?

18 MR. HULL: Yes.

19 JUDGE YOUNG: Okay. Great. Then we will take
20 that out of the case. Meanwhile, before I get to the issues
21 that I have been trying to pull together for both of you to
22 address, I think I also heard Mr. Thompson say that you
23 think that mediation might be a good course to pursue in
24 this case.

25 Now, let me just tell you what I am used to in my

1 experience and what has worked well in other types of cases,
2 and that is, if we -- if I ask Judge Bollwerk to assign Mr.
3 Dewey or another judge to mediate this case, we would sort
4 of start going on two tracks. There would be the mediation
5 track and there would be the hearing track, I guess we would
6 call it, the part of the case that I would be presiding
7 over. And I am not real inclined to just completely drop
8 everything until I hear back from you, because I want to
9 have something out there to sort of encourage you to either
10 reach an agreement or come back to me and say we have not
11 been able to reach an agreement, and let's get back on this
12 track.

13 And for that reason, I do, even if you do decide
14 you want to go to mediation, I do want to go over these
15 issues with you so that you will sort of know what to expect
16 from me if your mediation is not successful. But with all
17 that said, Mr. Hull, -- well, first, Mr. Thompson, did I
18 read you correctly that you are interested in possible
19 mediation of the case?

20 MR. THOMPSON: Yes, I would be interested. Of
21 course, I would have to speak with my client first. But let
22 me just explain why I think that either mediation or
23 something like that makes some sense. I can, to be candid,
24 I can understand why the staff feels that some of GrayStar's
25 responses did not go directly to at least what the staff

1 perceives some of the issues to be.

2 I believe that there are answers for a variety of
3 these questions, and I think that if the key issue here is
4 the use of the cesium and whether there can be an adequate
5 justification, it would serve everybody well to try to
6 clarify, to get rid of, or narrow the focus of any of the
7 components of that issue. And if you look at the
8 registration issue, and you go down through, you know,
9 dispersability is the first issue, but if you go down
10 through two, and three, and four, all of those issues keep
11 talking about deficiencies or incomplete or this sort of
12 thing. And to the extent that we could more clearly and
13 directly address those issues, it may be that some of those
14 can come off the table, and then we can limit those that we
15 litigate, or perhaps we might not even need to litigate
16 them.

17 And I just think that if mediation is a way to do
18 that, then I would recommend to my client we do that,
19 because I know my client has prepared some materials for us
20 that address, for example, some of these issues under this
21 Enclosure 1, which is the sealed source registration. And
22 it seems to me that some of these issues would either be
23 answered or at least the issue would be very, very, very
24 much narrowed. And I think that would be in the interests
25 of all the parties, the staff, Your Honor, and certainly of

1 my client, so that we are not flailing away at some issues
2 that might, in fact, be resolvable, or if we are going to
3 flail away, that we have defined them a little more
4 precisely.

5 JUDGE YOUNG: That sounds great. Mr. Hull, what
6 do you think?

7 MR. HULL: Your Honor, John Hull. I have not had
8 an opportunity, I hadn't really considered even the
9 possibility of mediation in this case. I would not be
10 prepared to make any commitments right now one way or the
11 other regarding mediation. I would need to discuss it with
12 the NRC staffers here and also with OGC management.

13 One way, though, to try to narrow the issues that
14 would need to be addressed perhaps within the framework of
15 the subpart (L) proceeding that we are in would be to have
16 GrayStar undertake to narrow the issues in a written filing.
17 It wouldn't necessarily have to be termed a written
18 presentation on their part.

19 It occurred to me that perhaps GrayStar, up until
20 they hired counsel, may have been under a handicap in that
21 regard, and perhaps that explains the nature of some of
22 their earlier filings. Now that they are represented by
23 counsel, I would think they might be better able to narrow
24 down their issues.

25 JUDGE YOUNG: Okay. As I am going I am sort of

1 taking notes here for a pre-hearing order or a conference
2 order that I will be entering after our conference today.
3 And the first thing that I have on my list so far is that
4 the irradiator will not be part of this case by agreement of
5 the parties.

6 The second thing that I have on my list is that
7 the parties will be discussing the possibility of mediation
8 and will inform me as soon as possible whether this might
9 take place so that I can ask Judge Bollwerk to appoint a
10 mediator if that is what you would like.

11 MR. HULL: Your Honor, can I interrupt for second?
12 I meant to also add in my earlier remarks that --

13 JUDGE YOUNG: Mr. Hull?

14 MR. HULL: Yes. I'm sorry. Yes, I need to
15 identify myself. This is John Hull. I meant to add earlier
16 that, in my mind at least, the key legal issue here about --
17 on the dispersability question, I see everything else as
18 linked to that, and I am not sure that mediation would be
19 the best route to take, given that situation. I guess I see
20 the need to have, you know, the Presiding Officer, yourself,
21 Your Honor, make any necessary legal calls in that regard,
22 rather than have -- put that into mediation.

23 We are dealing here with regulation, it is 10 CFR
24 36.21 and subsection (a) (3) of the regulation requires that
25 the use of radioactive material in irradiator be as

1 non-dispersable as practical. Because you have that
2 regulatory requirement, I question whether mediation would
3 be the proper route to go to resolve that question.

4 JUDGE YOUNG: Okay. I mean obviously if both
5 parties don't agree, you can't have mediation. But at least
6 we are not -- I don't think that we are going to end up
7 having mandatory mediation yet. However, I would say that I
8 think I understood Mr. Thompson to be saying, and in any
9 event, I will say that if, through mediation, you were to be
10 able to communicate better with each other about how the
11 applicant could meet the staff concerns about
12 dispersability, that might narrow the particulars of that
13 issue to some degree.

14 And so I think I will just indicate in my order
15 that the parties will consider and, obviously, if you -- if
16 one party, if the staff doesn't think that it is possible to
17 proceed to any successful result, mediation, then that will
18 not occur, but that you will consider and inform me as soon
19 as possible. And I may even set a deadline on that, whether
20 mediation is possible, not forcing either party to engage in
21 it.

22 I think at this point it might be helpful if I
23 shared with you my -- what I have done with regard to the
24 issues in this case. And let me tell why, first of all,
25 that I did it. What I have done is I have gone through the

1 May 24th and June 1st documents and I have taken from them
2 the issues that I see both parties -- that both parties have
3 raised, and I have incorporated them into an outline
4 structure that is based on the outline structure that the
5 staff used in Enclosure 1 to the May 24th letter. And in
6 reading that document, the Enclosure 1, it struck me that
7 the issue of the dispersability is really pretty much
8 interrelated to most, if not all, of the other issues stated
9 in the Enclosure 1.

10 In other words, the cesium chloride would be more
11 likely be dispersable if there has been inadequate testing
12 of the sealed sources, if the source construction and
13 durability is not such that it would protect the integrity
14 of the source housing and prevent corrosion and so forth.

15 So unless there any more comments or questions,
16 maybe it would be helpful for me at this point to sort of go
17 through this listing. And the purpose of this would be to
18 have both parties, in your written presentations, address
19 the same issues, using the same numbering system, so that
20 your written presentations will be of more use to me, more
21 understandable to me, which I am sure you both have an
22 interest in my understanding what you want to say to me, and
23 move the case along a little bit more efficiently.

24 So before I do that, any further comments or
25 questions?

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1 MR. HULL: John Hull for the NRC. I certainly
2 agree with what you just said, Your Honor. The staff would
3 have no objection to adopting an outline as set forth in
4 Enclosure 1 to the May 24 letter. The staff does regard
5 that enclosure as providing a good framework for this
6 proceeding.

7 JUDGE YOUNG: Okay. Mr. Thompson?

8 MR. THOMPSON: I concur in your analysis, Your
9 Honor, that all of the issues as to the cesium sealed source
10 are indeed interrelated. And to the extent that we have an
11 affirmation from the staff that it isn't that cesium can
12 never be utilized in an irradiator, which would be an
13 astonishing position for the staff to take, because there
14 are a bunch of cesium irradiators out there already. I
15 think that all of these issues go to the question of
16 adequate justification for the non-dispersability, and that
17 is the testing, as you have suggested, and the other things.
18 So I think your approach makes sense.

19 JUDGE YOUNG: Okay. So I think I will put in my
20 order that the parties agree, and correct me if I am wrong,
21 the parties agree that the use of cesium is not foreclosed,
22 provided that adequate justification is shown, is
23 demonstrated with regard to all the issues set forth in
24 Enclosure 1.

25 MR. HULL: Your Honor, for the NRC staff, John

1 Hull. One of the key technical problems I think that the
2 staff has with GrayStar's proposal is we are talking about a
3 device that would have about 51,500 curies as opposed to a
4 more typical sealed source that are used in irradiators that
5 have about 30 curies. And that is a very significant factor
6 I think for the staff in its evaluation of whether to allow
7 the use cesium in powder form.

8 JUDGE YOUNG: But I think what I said, and let me
9 just say again, I was sort of a bit halting in the way I
10 said before, but I still think, from what I hearing, that
11 both parties would agree, that the staff agrees I guess is
12 the more salient question, that the staff agrees that the
13 use of cesium is not absolutely foreclosed, provided
14 adequate justification is demonstrated with regard to all
15 the issues set forth in Enclosure 1.

16 MR. HULL: John Hull for the staff. I think what
17 you said is correct. What I would add, though, is that I
18 think the burden of proof, if you will, for allowing use of
19 cesium chloride in powder form, that burden increases as you
20 get involved in the use of more and more curies of
21 radiation.

22 JUDGE YOUNG: But I think that is -- you state
23 that already in Enclosure 1. Doesn't the staff already -- I
24 believe that that is one of the issues that is discussed in
25 Enclosure 1?

1 MR. HULL: You are correct, Your Honor.

2 JUDGE YOUNG: Okay. So, and obviously the burden
3 is on the applicant to show that the registration should be
4 granted.

5 Judge Lam has a question that he would like to
6 raise.

7 JUDGE LAM: This is Judge Lam. I have a question
8 for the staff. Regarding the large amount of radioactivity
9 in this source cesium chloride powder form, that you just
10 mentioned, about 50,000 curies, does the staff have any
11 specific scenarios in mind regarding your safety concern of
12 the use of this source?

13 MR. HULL: I may need to get some technical input
14 here from my colleagues. Can I put you on mute for a minute
15 if we want to try to answer that question.

16 JUDGE LAM: Sure.

17 [Pause.]

18 JUDGE YOUNG: I'm trying to find the part in this
19 where they mention about compare -- that's okay. No, just
20 leave it on, I don't mind. The comparison of the --

21 MR. HULL: Judge Lam, I am going to have John
22 Hickey try to answer your question for you.

23 JUDGE LAM: Please.

24 MR. HICKEY: Good morning, Your Honor, Judge Lam
25 and Judge Young. I am John Hickey, H-i-c-k-e-y, of the

1 Materials Safety Branch.

2 The scenarios that we are concerned about and that
3 are the basis of the rule are leaks. If the dispersable
4 material leaks, it poses a greater hazard, if there is more
5 dispersal than a non-dispersable material.

6 JUDGE LAM: Thank you.

7 JUDGE YOUNG: Okay. Let me at this point sort of
8 go through this list of issues and see how you respond to
9 them in terms of both addressing their written presentations
10 to them. And basically looking at Enclosure 1, the only
11 issue, obviously, that we are going to be considering is the
12 sealed source, not the irradiator.

13 The first issue is dispersability under 10 CFR
14 36.21(a)(3), and as discussed in Enclosure 1 to the May 24th
15 letter. Subissues under that would be, first,
16 appropriateness, inappropriateness/practicality of other
17 sources as compared to cesium-137 chloride powder. And I am
18 sort of reading from Section 1 of the Enclosure 1.

19 The second issue would be the leak potential and
20 danger with regard to cesium chloride. And the design
21 features in the GS 42 to prevent leaks.

22 The third subissue, I will call small (c),
23 comparison to smaller irradiators using cesium-137 chloride,
24 which gets into the amount of curies that we are talking
25 about here as compared to other cesium chloride irradiators.

1 And then finally, I read the June 1st response of
2 Mr. Stein to be raising some other issues that -- and Mr.
3 Thompson, you may want to help me here, but I read Mr.
4 Stein's first letter raising some other issues that he is
5 essentially saying be taken into consideration in looking at
6 the safety issue.

7 First, the first issue he raised, and I put this
8 as small Roman numeral (i) or other unique circumstances
9 relating to the GS 42, including the applicant's response
10 numbers Roman numeral I through Roman numeral VI in the June
11 1st -- or VII in the June 1st letter. Small Roman numeral
12 (i) would be the general value of irradiation to help
13 prevent food-borne disease, which is a sort of general issue
14 which I doubt that -- I don't know, but I doubt that there
15 would a whole lot of discussion on that.

16 The next issue, small Roman numeral (ii) would be
17 comparison of the GS 42, the self-shielded gamma irradiator
18 with no onsite source transfer versus other irradiators,
19 including (a) water storage and/or water-irradiation
20 irradiators, (b) dry storage onsite loading irradiators, (c)
21 dry storage irradiators with inner locks, panoramic
22 irradiator where the source is independent of the radiation
23 chamber, and (d) machine source irradiators.

24 Then the second issue -- or the third issue that
25 Mr. Stein raises is a comparison of the cesium-137 with

1 other source types, both as to practicality and safety,
2 namely cobalt-60 electron beams and X-rays.

3 Then the fourth issue that Mr. Stein raises would
4 be the basis for the selection of cesium-137 compared to
5 cobalt-60.

6 The fifth subissue would be the practicality of
7 using the cesium-137 chloride as compared to other forms of
8 cesium-135 -- 137, and the unique design features of the GS
9 42, which are numbered 1 through 12 in the June 1st, 2000
10 letter.

11 And then I left another category, small Roman
12 numeral (vii), any other issues that I may have overlooked.

13 And, basically, this incorporates the response and
14 the general issues that Mr. Stein has raised as sort of a
15 catch-all category under dispersability called "other unique
16 circumstances."

17 And then as (e), the next subissue under
18 dispersability, the relationship of (a) through (d) to each
19 other in terms of relative importance, et cetera. Now, this
20 is based on my sort of gleaning from these two documents
21 that -- what Mr. Stein is saying. And please correct me if
22 I am wrong, but I think what Mr. Stein is saying is that,
23 notwithstanding the various problems and issues raised by
24 the staff having to do with leak testing and so forth, that
25 viewed from sort of an overall or broad perspective, Mr.

1 Stein is saying that the GS 42 still is relatively safer
2 than the cobalt-60 machines. And so -- and that was one
3 issue on which I did not see anything from the staff
4 addressing that particular issue.

5 So unless Mr. Thompson tells me that these issues
6 raised by Mr. Stein in the June 1st letter are not relevant,
7 then what I would want is to have both parties address those
8 to sort of give me some context for comparing the cesium --
9 the GS 42, assuming that all the correct testing had been
10 done, and the cobalt-60 irradiators. I think that is what
11 Mr. Stein seems to be saying.

12 Am I correct on that or totally off base?

13 MR. THOMPSON: This is Tony Thompson. I believe
14 that you are correct, Your Honor. I think he was trying to
15 provide the staff with some justification for why the cesium
16 is better in this particular type of irradiator
17 circumstances, why it is safer, why it is unique, and why
18 the uniqueness of what is proposed requires the cesium.

19 I would acknowledge that while I believe that much
20 of this is relevant to that issue, it was not presented, in
21 my view, perhaps in as concise and to the point manner as it
22 could have been perhaps to frame issues better for the staff
23 to respond to with questions.

24 So I think that there is much of what -- I think
25 you have correctly gleaned sort of the basic thrust of Mr.

1 Stein's response. I think there are other aspects of this
2 that, whether they are somewhere in the record, or whether
3 they are not in the record, but it sort of is assumed that
4 everybody would understand it, I can't tell you for sure. I
5 have looked at significant portions of the record, but I
6 cannot, and I am sure Mr. Hull is in the same boat, cannot
7 pretend to be completely conversant with everything that is
8 in the record.

9 But I think that you are right, that is what --
10 that is what Mr. Stein was getting at, and I think that
11 perhaps a more focused presentation would at least, again,
12 narrow the issues and address some of the questions that the
13 staff has raised.

14 JUDGE YOUNG: Okay. Well, I have, in that section
15 of my listing, added one last one, which is other matters
16 relating to the dispersability issue, so that, obviously,
17 you wouldn't be foreclosed from raising things in a
18 different manner that be more -- that might more effectively
19 and precisely get to the central issues.

20 Going back to the state's -- I'm sorry, you are
21 going to have to forgive me if from time to time I say
22 "state" because that is what I am used to dealing with. I
23 am going to try to switch to "staff." Going back to the
24 staff's outline in the basis for denial, I would say that,
25 before I go into the details of that, what I would expect is

1 that in one way or another, the applicant would address each
2 of the issues raised and tell you, and I am sure you
3 understand this already, but that an absence of a response
4 to an issue raised by the staff, I probably would have to
5 draw a negative inference if there is nothing presented in
6 response to it. And so that I think is another possible
7 value of just sort of laying out all these issues, and which
8 I would include in the order following up on this conference
9 for both sides to address.

10 So following the number 1, the dispersability
11 issue, the second issue, using Enclosure 1's number 2 would
12 be the testing of the sealed sources under 10 CFR 36.21
13 subsection (5), (a) being the design of the inner capsule
14 relative to leak potential, (b) being vibration testing,
15 small Roman numeral (i) along the weakest axis and small
16 Roman numeral (ii) with a range up to 500 hertz, and then
17 (c) another catch-all, other category.

18 The moving to 3, and if you any you have any
19 problems as I go, feel free to interrupt, but I think you
20 see how I am going. Go ahead.

21 MR. HULL: Your Honor, this is John Hull for the
22 staff. It occurs to me that if you are going to, as you
23 indicated earlier, call for simultaneous presentations, it
24 might be a problem for the staff in that up until this
25 point, many of their safety concerns stated both in the July

1 26, '88 request for additional information and in Enclosure
2 1 to the May 24 denial letter, the safety concerns the staff
3 raised there have not been addressed by Graystar, and if we
4 have simultaneous presentations, the staff really wouldn't
5 haven't anything to respond to without first having seen how
6 GrayStar is going to now address these.

7 JUDGE YOUNG: I would expect that if we proceed in
8 this manner, and, again, maybe I should give a little
9 background. In my experience I have found that where
10 possible, having simultaneous filings moves things along a
11 little bit more quickly, more efficiently by getting
12 everyone on the same page to start with. For one thing, by
13 sort of cutting the time in half for responses, because
14 after the simultaneous filings of the original written
15 presentations, each side responds to the other.

16 Now, I would expect that the staff would not have
17 very much additional, if anything, in some cases, to add
18 with regard to the issues that it has already raised.
19 However, there may be some parts of the discussion in
20 Enclosure 1 in which, for example, it might be helpful to
21 the applicant to have a little bit more fleshing out, so to
22 speak, of the issues raised by the staff.

23 And so I would expect that while the staff's job
24 in this -- in the staff's initial written presentation would
25 be easier than that of the applicant, and that the main

1 things that you would be responding to would be the concerns
2 about comparing the GS 42 to the cobalt, to cobalt
3 irradiators in terms of relative safety. There still might
4 be some either -- just simply repeating what you said
5 before, but also possibly some fleshing out and additional
6 specificity with regard to the issues contained in
7 Enclosure 1.

8 Does that make sense?

9 MR. HULL: I think I was following you. You said
10 earlier that you would envision a second round of filings to
11 respond to the initial presentations.

12 JUDGE YOUNG: Right. Each -- what I would
13 envision would be that both parties would file initial
14 written presentations using the same numbering system, the
15 same outline, just to keep everyone on the same page, and
16 then each side would have an opportunity to respond to each
17 other's.

18 MR. HULL: I don't think I would have a problem
19 with that.

20 JUDGE YOUNG: Okay.

21 MR. THOMPSON: This is Tony Thompson, Your Honor.
22 I wouldn't have a problem with that. And I think that -- I
23 suspect, based on what I have reviewed here, that some of
24 these issues are going to go away, because, for example, you
25 know, the issue of whether they were tested in the range.

1 If the record -- the record will demonstrate I think pretty
2 clearly that they were. So that kind of thing may go away
3 and we may narrow the field to other issues.

4 JUDGE YOUNG: And that would be great. And that
5 would be great. And, you know, I am not suggesting that the
6 particular outline that I have come up with is the best way
7 to analyze these issues. It may not even be the way I
8 ultimately analyze them, assuming I eventually am called
9 upon to issue an initial order in the absence of settlement
10 of all issues by you. But at least it gets us sort of
11 started so that we are at least talking about the same
12 things.

13 Okay. So just continuing on then, under 3, sealed
14 source construction durability under 10 CFR 36.21(4), the
15 first subissue (3)(1) has to do with the integrity of the
16 source housing. Under that (a) relevance of historical
17 evidence using different fabrication procedures, (b) the
18 possibility of corrosion during the filling process based on
19 conditions present during the filling process. And then
20 under that there are four categories listed by the staff.
21 First, pH; second, time; third, I have temperative -- I
22 think that should be temperature. Let's see -- temperature.
23 And concentration of impurities and then anything else that
24 would fall under that.

25 Then (c) the possibility of corrosion during

1 operation based on the adequacy of the evaporation procedure
2 to remove all the moisture in the source tube.

3 The next issue in Enclosure 1 is crevice
4 corrosion, which sort of to some degree duplicates the
5 previous one. It includes under that (a) relevance of
6 historical evidence using different filling procedures and
7 (b) the special -- any special difficulties removing
8 moisture from crevices.

9 And obviously under any of those, if there are
10 other categories, feel free to add those. I probably should
11 put them in under each one.

12 3.3, the role of materials impurities. The
13 relevance of historical evidence using different filling
14 procedures is also mentioned there, but with regard more
15 directly to the role of the materials impurities.

16 3.4, long-time reliability and failure modes.
17 Under that (a) relevance of historical experience with WESF,
18 and I don't know what that is, sources. What is WESF? Oh,
19 I am sorry, waste encapsulation and storage facility. And
20 then (b) potential failure mode specific to the GS 42, which
21 I think the staff is raising as a problem with regard to the
22 long-term reliability.

23 Then Section 4 would be sufficiency of information
24 about the design of the GS 42, specifically to provide
25 reasonable assurance that the radiation safety properties of

1 the source or device are adequate to protect health and
2 minimize danger to life and property under 10 CFR 30.210(c),
3 and, basically, that is finality and verifiability of the
4 design generally.

5 More specifically under that, 4.1, the sufficiency
6 of information about the final design of the source welding
7 procedures.

8 4.2, sufficiency of information about the final
9 design for the source filling. Under that (a) adequacy of
10 moisture route removal procedure and (b) prevention of
11 corrosion, which obviously are interrelated.

12 4.3, the sufficiency of information about source
13 filling to determine the effect of cesium chloride in
14 impurities on the silver sealant for the inner and outer
15 seal plugs, and the basis for the conclusion that contact
16 with the silver seal will not result in any degradation of
17 sealing properties.

18 And then finally, 4.4, sufficiency of information
19 about seal torquing, maximum allowable torque and uniformity
20 of construction, and another catch-all, other.

21 If both of you would be comfortable using that
22 outline that I have just gone over, I will reproduce it in
23 the order that I enter. If you have any problems, it might
24 be helpful to talk about those now so we can sort of fine
25 tune this a little bit if necessary.

1 MR. THOMPSON: This is Tony Thompson, Your Honor.
2 I would be -- I think it would be fine to go ahead and
3 provide us with that. And perhaps after we have had a
4 chance to look at it, if we have some other ideas, we could
5 get back on the phone and discuss them, or I could discuss
6 them with Mr. Hull and we could agree on something. Of if
7 we have differences, we could get back on the phone and
8 discuss with them.

9 I think it would be useful for us to sort of let
10 our clients take a look at it with us.

11 JUDGE YOUNG: Sure.

12 MR. THOMPSON: And give you -- if it looks that
13 pretty much fills the bill, then that is fine. If we have
14 some other suggestion, we can at least put it on the table
15 and see how the staff and Mr. Hull react, if it is something
16 that we come up with or vice versa.

17 JUDGE YOUNG: Okay. Mr. Hull?

18 MR. HULL: I don't have anything to add on that at
19 this point.

20 JUDGE YOUNG: Okay. So if you do see a need to
21 talk further, just -- I would suggest contact Alice Katoski
22 in my office and then she will try to come up with a date
23 that we could all get back on the phone together.
24 Otherwise, if the two of you meet and you decide that, well,
25 XYZ, these have all been taken care of, they are no longer

1 on the table, you can agree with each other, send me a
2 letter to that effect saying we have agreed that we will not
3 addresses issues 2(c), 3(d), et cetera.

4 And with that said, I think that probably we can
5 -- I can go ahead and just list the outline as I read it to
6 you. Let me just take a second to make myself a note. So,
7 yes, if I didn't say it, if you do agree, just send me a
8 joint letter confirming that and consider that to be a
9 filing, so that you would file it with the Secretary's
10 Office and so forth, and then that would be placed in the
11 record to indicate your agreement.

12 Okay. I think probably at this point the next
13 thing I think that we need to talk about is scheduling, and
14 both of the filing of the written presentations and of
15 anything else that either party would like to put in the
16 schedule. I think that my deadline would be -- my ultimate
17 deadline according to the Commission's policy would be 60
18 days from when I receive the final filing. I think that is
19 correct. And it may be once I have gotten the written
20 presentations and each side's response to the other's
21 written presentations, it may be that I will have more
22 questions, it may be that one or both of you would request
23 to have another conference or to -- if you were to have any
24 requests to have any kind of oral hearing, that would be the
25 time to do that.

1 It strikes me that probably that won't be
2 necessary in this case, but if it were, that would be the
3 time to do that. Apart from scheduling, is there anything
4 else that either one of you would like to raise and discuss,
5 or have me address in this conference?

6 MR. THOMPSON: This is Tony Thompson, Your Honor.
7 I would just like to make clear to Mr. Hull, with whom we
8 have fortunately dealt quite frequently, and to the staff,
9 that it is, on behalf of GrayStar, that we would like to
10 make every possible effort to address all of the technical
11 or other issues raised by the staff. And if we can narrow
12 them, and if we can to some extent get them off the table,
13 we very much want to do that. And perhaps even maybe we can
14 get them all off the table, or agree that there is
15 additional information that needs to be submitted on certain
16 of them.

17 We are certainly willing to work in every way
18 possible to satisfy the staff's health and safety concerns,
19 because that is their responsibility. We understand that.
20 We understand they take a fairly conservative view on these
21 issues. We understand that as well. And we just want them
22 to know, and you to know, Your Honor, that we are prepared
23 to do whatever it takes to get the information necessary to
24 satisfy the staff, and if we don't have the information,
25 then to at least determine what else we need to get.

1 JUDGE YOUNG: Okay. Mr. Hull, let me ask you, do
2 you have anything else? And, in addition, it just occurred
3 to me, I am assuming that from the way -- I am assuming from
4 the way we are proceeding, that there is no need to get the
5 Department of Agriculture involved in this proceeding.
6 Obviously, if you were to choose to attempt some mediation,
7 you might want to get them involved in that. But am I
8 correct in assuming that there is no need to involve the
9 Department of Agriculture any further in the proceedings --
10 in this proceeding that I am involved in?

11 MR. HULL: That would be my impression at this
12 point, Your Honor. This is John Hull.

13 JUDGE YOUNG: Okay.

14 MR. THOMPSON: This is Tony Thompson, Your Honor.
15 That is my impression. My impression is that Mr. Thayer set
16 out his interest in sort of, if you will, being kept
17 apprised of where things go. And I suppose if there is some
18 point in the future where they have something to offer, it
19 could be either at the behest of GrayStar, or Your Honor, or
20 perhaps an agreement by all of us that they may have
21 something to offer, then that is fine. But right now I
22 think what -- I agree with Mr. Hull.

23 JUDGE YOUNG: Okay.

24 MR. HULL: Your Honor, I need to put you on mute
25 for a minute. Hold on.

1 JUDGE YOUNG: Okay.

2 [Pause.]

3 JUDGE YOUNG: Judge Murphy just asked to go on
4 mute, so hold on just a minute.

5 [Pause.]

6 JUDGE YOUNG: Are we all back?

7 MR. THOMPSON: This is Tony Thompson, I'm here,
8 Your Honor.

9 JUDGE YOUNG: I guess Mr. Hull is not back yet.
10 Okay.

11 MR. HULL: This is John Hull, I am back now. One
12 question that the staff has, we wanted to make sure that
13 GrayStar would not be allowed in its written presentation to
14 submit new information or evidence to the staff that it did
15 not submit earlier, because, of course, the basis of the
16 staff's May 24 denial was the record that it had as of that
17 date. And the question or concern is that, well, if
18 GrayStar submits two volumes worth more of information, you
19 know, how are we going to handle that?

20 JUDGE YOUNG: I want to hear from Mr. Thompson on
21 that, but let me just tell you my sort of top of the head
22 feeling on that. What I am used to is doing de novo
23 proceedings, and so if something like that came in, that
24 would not present a problem for me in terms of making --
25 using any additional information to make my decision. On

1 the other hand, obviously, the other side would need to have
2 opportunity to respond to that.

3 And what I would encourage you to do, and Judge
4 Murphy was just raising this, is for you all to be talking
5 with each other, and if there is anything new, that you
6 might first talk to each other and say, look, here is
7 something that we didn't present before, would it make any
8 difference and issue X, can we take that one off the table
9 now? So that would seem to be the best way to use that
10 information.

11 On the other hand if, after sharing it, the staff
12 said, well, we read your new information and it doesn't
13 really change our mind, then the issue is still on the table
14 and the new information could be considered as part of the
15 record on which I would base my decision.

16 MR. HULL: I think the staff's concern would be
17 that it has already devoted a substantial amount of
18 resources in terms of time and effort into reviewing what
19 GrayStar has already submitted. And if they follow their
20 past practice of just dumping volumes worth of documents on
21 us, the staff would sort of feel like it is just going round
22 and round in a circle.

23 As I said, we have already spent a lot of time
24 reviewing the information that GrayStar filed. You will
25 recall that they submitted an initial application for

1 registration back in either 1995 or 1996 that was ultimately
2 rejected because of a host of problems. So staff does not
3 want to get into a situation in this proceeding where it is
4 just sort of starting from scratch and we will have to deal
5 with an unreasonable amount of new information.

6 JUDGE YOUNG: Well, one thing, and I want to hear
7 from Mr. Thompson on this, but one thing that I would hope
8 we would accomplish by using the same outline for the
9 presentation of information in the written presentations is
10 to keep us all on the same track and not sort of constantly
11 move -- having a moving target, so to speak, for any of us.

12 I doubt that you would argue that, for example, if
13 the applicant came up with evidence that it had done a
14 particular type of testing, that the staff said they had not
15 done, and if this testing that the applicant presents now,
16 whether it was new or whether it was done before and just
17 hadn't been presented adequately, if the testing showed that
18 there was not a problem with regard to the thing tested, I
19 doubt that the staff would want to say, well, we want to
20 deny it based on the procedural issue of it not having been
21 presented before. Probably what the staff would do would be
22 to agree to take that issue off the table.

23 I don't think you are arguing that if there is
24 relevant information out there that it should not be
25 considered. What you are saying is you don't want to have a

1 whole bunch of documents just dumped on everyone and that is
2 one of the things I am trying to prevent with this list of
3 issues.

4 MR. HULL: The staff's concern I think would be
5 that if there was information out there as of September 1999
6 when GrayStar responded to the staff's request for
7 additional information, I mean GrayStar should have
8 submitted that information, any existing information to us
9 at that time rather than wait until now to do so. I think
10 that would be the staff's chief concern.

11 If, on the other hand, there is some new research
12 out there that has just happened or been published within
13 the last six months or whatever, that would be a different
14 category the staff would have to look at. But the staff
15 would not want to have to review 10 more articles that were
16 written in the 1970s, that type of thing.

17 JUDGE YOUNG: Okay. Two things, one I want to
18 hear from Mr. Thompson. Mr. Dewey has just said that we
19 need to have a private conversation, and I just want to say
20 I wanted to try to avoid those. My view on these things is
21 I want to try to let both parties know as much as possible
22 everything that might go into a decision about their case.
23 So shall we listen to see what Mr. Thompson has first, Mr.
24 Dewey, or do you want --

25 MR. DEWEY: Well, okay, Your Honor, I can say it

1 if you want me to just say it.

2 JUDGE YOUNG: Okay. Okay. Yeah, go ahead.

3 MR. DEWEY: I would say that when the submittals
4 are turned in, there can be additional information in what
5 was presented by the staff earlier. They shouldn't be
6 foreclosed from putting all the information forward that
7 they have.

8 JUDGE YOUNG: Right. And I think that --

9 MR. DEWEY: And just because they haven't given it
10 to the staff six months ago doesn't mean they are foreclosed
11 from putting that in their presentations in the hearing.

12 Now, after the presentations are made, then you go
13 to Rule 2.13 -- 1235, and at point, if they want to add some
14 new stuff after that, then it is up to the Presiding Officer
15 whether they do it or not.

16 THE REPORTER: Excuse me. This is the reporter.
17 Who is speaking now?

18 MR. DEWEY: Lee Dewey.

19 THE REPORTER: Thank you.

20 JUDGE YOUNG: Thanks for interrupting. I meant
21 that.

22 Thank you, Mr. Dewey. That is very helpful. And
23 actually that is where I was trying to get to by saying that
24 this is a de novo proceeding, so we are not limited to just
25 the evidence that was considered before. But thanks for

1 spelling out the actual procedures on that.

2 And, again, Mr. Hull and Mr. Hickey, and Mr.
3 Jankovich, I think -- I agree, we want to avoid having a lot
4 of piles of documents submitted and that is why I am trying
5 to keep us all in the same sort of general outline so that
6 we will all be on the same page, all know what we are
7 talking about.

8 But if something relevant comes to the attention
9 of Mr. Thompson that may not have been provided before, I
10 would suggest that, first, you talk to each other about it
11 and see if it might promote taking some things off the
12 table, settling parts of the case. And then second, if not,
13 go ahead and include it and then the staff can respond to it
14 in their response presentation.

15 Mr. Thompson, do you have anything to add? And
16 then after that, Mr. Hull?

17 MR. THOMPSON: This is Tony Thompson, Your Honor.
18 Thank you. Well, first of all, I have no intention of
19 dumping a lot of material into the record. I have
20 acknowledged that I don't believe that some of the responses
21 of my client were as focused as they should have been, and I
22 can understand why the staff may have had either some
23 difficulty pulling all these things together, maybe all of
24 it is in the record somewhere, maybe it is not. To the
25 extent that there is something in the record that we can

1 call attention to, we will do so.

2 We intend to make our presentations as focused as
3 we can so that we can really understand what the staff's
4 concern are. I will be very candid and say that I don't
5 find the staff's letter a model of clarity. It was quite
6 confusing to all of us here at the firm who read this as to
7 what on earth they were saying in certain aspects. So I
8 think that there is room for focus on both sides.

9 My client thought they were in a process of
10 continuing to get questions and thought they were answering
11 them. Then all of a sudden this denial showed up. So,
12 clearly, I think they could have been helped with some
13 assistance, as Mr. Hull suggested, earlier on in the
14 process. And let me assure Mr. Hull and the staff that we
15 intend to do our very best to focus our responses to these
16 questions as outlined by the Judge based on what is in the
17 record, and to the extent that there is new information that
18 is relevant, we will identify it as such and try to make
19 that as part of as concise and focused a presentation as
20 possible.

21 JUDGE YOUNG: Right. And I may have been the one
22 who first used the sort of vernacular term "dumping," and if
23 so, I think we all know what I meant, but probably it would
24 be better to stay on a little bit more cooperative level
25 from all of us, and I am sure both sides will.

1 Mr. Hull, anything further from you. Does what
2 has been said satisfy your concerns?

3 MR. HULL: Yeah, it allays my concerns to some
4 extent. I don't have anything further to say on that at
5 this time.

6 JUDGE YOUNG: Great. Okay. Anything else before
7 we go to scheduling precise dates?

8 MR. THOMPSON: Your Honor, this is Tony Thompson.
9 I just have one question, and I don't know that we need to
10 answer it right now, but I would like to know a little bit
11 more about what you view the typical mediation procedure
12 might be, and just so I can discuss it with the client. If
13 there is at some point in time, you know, some reason to go
14 to mediation on one or more, or all of the issues as this
15 proceeds.

16 JUDGE YOUNG: I will say a few words and then
17 maybe Mr. Dewey can speak to that point also. I am an
18 approved mediator in Tennessee, and I don't think I have as
19 much training as Mr. Dewey does, but what -- the general
20 approach that I am used to is that the mediator would really
21 try to facilitate communication between the parties so that
22 the parties are able to get out their interests and see
23 where their interests coincide with each other, highlight
24 what issues still require resolution, and maybe the mediator
25 can facilitate some agreement about how outstanding issues,

1 remaining issues can be resolved. So basically just to
2 facilitate the communication and clarify the issues that
3 need resolution is how I would understand it.

4 Mr. Dewey, why don't you share what --

5 MR. DEWEY: Well, yeah, well, basically, I think
6 that it would be helpful for me and the parties to get
7 together and to go over the issues that are in conflict, and
8 for me to be there to work with the parties to try to get
9 these issues resolved as best we can. Sometimes that, to
10 the extent that we can do that at the meeting, that would --
11 we would work on it then. And then maybe after we left the
12 meeting and somebody is giving me something else, then I
13 could work between the parties, too.

14 And it is a process where, with my assistance,
15 sometimes these things can be worked out a lot easier than
16 if the parties are just working by themselves.

17 JUDGE YOUNG: Right.

18 MR. DEWEY: I have seen it happen innumerable
19 times in mediation situations.

20 So, basically, I would make myself available.
21 And, of course, anything that the parties would tell me
22 would be confidential if they wanted it to be confidential
23 from the other parties. And the mediation process is also
24 one in which I do not share my information with the Board
25 members either or the Presiding Officer.

1 JUDGE YOUNG: Right.

2 MR. DEWEY: So that is basically what I have in
3 mind. If you have any questions, just fire ahead right now.

4 JUDGE YOUNG: Well, also, that obviously while Mr.
5 Dewey would not share information with me or Judge Murphy or
6 Judge Shon, he would be free -- there would be -- there
7 would not be the ex parte prohibition of him talking to the
8 parties separately, and keeping their information private,
9 with a view towards helping each party sort of develop their
10 own understanding of the issue and then coming back together
11 after these caucuses, is what we call them, to see how far
12 you can get together.

13 Does that make -- does that help you?

14 MR. THOMPSON: Yes, Your Honor. This is Tony
15 Thompson. Yes, it does.

16 JUDGE YOUNG: Okay. Anything else before we get
17 on to scheduling?

18 MR. THOMPSON: Nothing for me. This is Tony
19 Thompson.

20 JUDGE YOUNG: And I must confess I think we have
21 everything in this room except a calendar, so it may be that
22 I need to take about one minute to go get a calendar. And
23 then if you all will be looking at your calendars and
24 thinking about how much time you are going to need, and
25 maybe you can even talk with each other during the minute I

1 run and go get my calendar. Okay.

2 MR. THOMPSON: Okay.

3 MR. HULL: Sounds good.

4 JUDGE YOUNG: All right. I will be right back.

5 [Pause.]

6 JUDGE YOUNG: I'm back. So if you are waiting for
7 me to answer that, I guess the first thing --

8 MR. HULL: I guess we just make clear to the court
9 reporter, we had gone off the record, so I guess we should
10 go back on the record.

11 JUDGE YOUNG: Yes. Thank you. Okay. I assume
12 everyone has their calendar. I would like to hear any
13 circumstances that you have in terms of -- as I came back
14 in, I heard one person saying that they are going on
15 vacation. Lucky you. And if there is anything else that
16 would play into setting these deadlines. Otherwise, I guess
17 -- as I came in, I also heard the question about what I
18 would be expecting.

19 I guess that normally, absent any special
20 circumstances, I would probably look at maybe 30 days for
21 the written presentations, and then two weeks or another 30
22 days after that, depending upon what you think you need for
23 responses. And then after that, setting a fairly short
24 deadline for requesting any further proceedings. And then a
25 time for me to submit additional questions and to issue an

1 initial order.

2 (1), have I left anything out there? And (2) what
3 special circumstances are there that we should take into
4 account here?

5 MR. HULL: John Hull for the staff. I had been
6 telling Mr. Thompson that I am going to be going off on
7 vacation immediately after this teleconference and will be
8 back on August 28.

9 JUDGE YOUNG: And Mr. Thompson, do you have any
10 special issues, or does your client, that play into the
11 scheduling?

12 MR. THOMPSON: I know that Mr. Stein is on
13 vacation now, Russell Stein. I am not sure when he is
14 getting back. The only thing I know for sure I have on my
15 calendar doesn't come up until the first week in October,
16 and I will be gone for about two weeks then.

17 JUDGE YOUNG: So then let me ask both of you, Mr.
18 Hull, if you are going to be back on the 28th, do you think
19 that you would need -- how long, Mr. Thompson, how long are
20 you going to be gone in October, did you say?

21 MR. THOMPSON: I am going to be gone from the 1st
22 -- the 1st and the 2nd through I think the 14th. I am going
23 to go to an international conference on nuclear stuff and
24 give a speech, and then I am going to take a little time.

25 JUDGE YOUNG: That sounds interesting.

1 MR. THOMPSON: Yes, it does.

2 JUDGE YOUNG: I just met some people from the
3 Canadian Atomic Energy Commission a month or so ago, and all
4 these international questions are quite interesting.

5 MR. THOMPSON: Yes.

6 JUDGE YOUNG: At any rate, Mr. Hull, if you come
7 back on the 28th, do you think you are going to need 30 days
8 after that, or can we try to get the -- should we try to get
9 everything in prior to October 2nd, or is that reasonable?

10 MR. HULL: Hold on just a second, please.

11 JUDGE YOUNG: Okay.

12 [Pause.]

13 MR. HULL: Your Honor.

14 JUDGE YOUNG: Yes.

15 MR. HULL: This is John Hull with the staff. The
16 principal staff person that I will be working with on this
17 is going to be unavailable from September 11 till the end of
18 September, so perhaps in order to move this thing along, you
19 know, we should try to get something, maybe have the initial
20 written presentations due by September 11. I think I could
21 accommodate that schedule.

22 JUDGE YOUNG: Mr. Thompson, could you?

23 MR. THOMPSON: As of right now, I can say yes. I
24 will have to check with my client and they aren't available
25 right this minute. But I would think we could probably do

1 that.

2 JUDGE YOUNG: Okay. And let me just say at this
3 point, if there is any need for any extensions, contact Ms.
4 Katoski to set up a telephone conference and we can just
5 talk about those and, obviously, prior to the deadline in
6 question, and you can talk to each other also about those,
7 and we can deal with those.

8 Obviously, once we set them, let's try to stick to
9 them, but if there is a good reason for an extension, we can
10 talk about those on the telephone. So, September 11th would
11 be the deadline for written presentations, and let me hear
12 from you -- since you are leaving on October 2nd, Mr.
13 Thompson, -- well, I guess, Mr. Hull, you are the one who is
14 going to be in a fix after September 11th.

15 MR. HULL: Yeah, I was just thinking about that,
16 Your Honor. As I indicated earlier, probably the bulk of
17 the staff's work is going to come in responding to
18 GrayStar's September 11 filing, and with Mr. Jankovich being
19 out of town from September 11 till the end of September,
20 that might make it rough.

21 JUDGE YOUNG: Okay. Well, let me ask you this, if
22 we set the response time as somewhere around the middle of
23 October, Mr. Thompson, would that work for you in terms of
24 getting your response out before you go and then -- but
25 making the deadline longer so that Mr. Hull can get his

1 response in after his experts get back, staff gets back?

2 MR. THOMPSON: I would think that we would have
3 some other people here who would be working on it, and even
4 if I am over there, I am sure they can get me some draft
5 materials. I am sure that we can find a way to get the
6 filings done sometime by the middle of October, the response
7 filings.

8 JUDGE YOUNG: Okay. Mr. Hull, would October 16th
9 be a good date for you?

10 MR. HULL: Yeah, that sounds fine, Your Honor.

11 JUDGE YOUNG: Okay. October 16th. Then I would
12 think that within a week after that, if either of you had
13 request any further proceedings or the opportunity to file
14 anything further, you would be able to do that by October
15 23rd. Does that sound reasonable?

16 MR. HULL: Yes.

17 MR. THOMPSON: Yes.

18 JUDGE YOUNG: Okay. And then I will set a
19 deadline for myself of October 30th to -- well, actually, I
20 think I will give myself two weeks since I am a little new
21 here, November 6th, to submit additional questions, which,
22 of course, would extend the final outcome. But if I do not
23 do that, I would try to get the initial order done by 60
24 days from October 16th, which would be right before the
25 holiday season. Let's see, November 15th, December 15th.

1 Okay.

2 Now, is there anything else that I have left out
3 or that either one of you think we need to talk about today?

4 MR. THOMPSON: This is Tony Thompson, Your Honor.
5 My only thought was, just to clarify in my own mind, that,
6 for example, if, after the initial responses, we were able
7 to narrow things down between us sort of informally, or if,
8 at any time on a particular issue, or perhaps more than one
9 issue, one or the other, or both wanted to request
10 mediation, I would guess that if we came to you with such a
11 request, that -- and that would change the schedule -- that
12 that would be permissible. And maybe it wouldn't change the
13 schedule, but if it were to. I am just thinking that, you
14 know, mediation may well be a way to solve some of the
15 issues that are on the table.

16 And, you know, I am not sure exactly at which
17 point or at what point in time any one of us, either the
18 staff, or GrayStar or both, would see merit to going forward
19 sort of with mediator to see if we can't solve some or all
20 of the issues, or at least wind up with perhaps one or two
21 issues that we need to go further on.

22 So I guess I would hope that if mediation makes
23 some sense at some point in time, that we can come to you
24 and suggest it, and then if the other parties agree -- the
25 other party agrees, that that might impact the schedule.

1 JUDGE YOUNG: Yes, I think so. If it really looks
2 as though mediation might be productive. And the second
3 thing I am going to put in this order is that I have
4 encouraged you to think about mediation and to inform me as
5 soon as possible whether you have agreed that that might be
6 a good course to pursue, in which case I would ask Judge
7 Bollwerk to appoint Mr. Dewey or someone else in our office,
8 if he is not available, to serve as your mediator.

9 And then if it looks as though having a little bit
10 more time on some of these deadlines would facilitate the
11 mediation, yes, we can talk about that. I want to go ahead
12 and set them because I want to try to keep you -- have you
13 keep these dates in view to maybe give you a little push
14 towards mediation. So I wouldn't want to just leave it
15 open-ended, but I would think that would be an extremely
16 good reason to give a short extension here or there if it
17 would result in a simpler and quicker resolution of the
18 case.

19 Mr. Hull, anything else from you?

20 MR. HULL: Nothing further from the staff, Your
21 Honor.

22 JUDGE YOUNG: Okay. One last question from me.
23 Did I hear something from one or the other of you earlier
24 about keeping Mr. Thayer informed. Do you want me to send
25 him copies of everything through my e-mail transmissions,

1 assuming I get that down? Or can we count on the applicant
2 to keep him informed? Just tell me.

3 MR. HULL: I think, Your Honor, this is John Hull
4 for the staff, you have a lot of discretion as far as how
5 you want to structure a participation by a person that is
6 not a party under 2.1211(a). I guess I would prefer to
7 minimize any contact between GrayStar and Dr. Thayer. I
8 would be more comfortable, I guess, if it was regulated, if
9 you will, through you. But I think you have discretion to
10 determine how best to keep Dr. Thayer advised.

11 JUDGE YOUNG: Well, do I hear suggestions from
12 either one of you on that? I mean because, certainly, it
13 would be easy enough for me to include him in the list of
14 people to whom copies of my orders go, and then if I did
15 that, I guess it would make sense to have you all do that as
16 well. But he may not want that. And since he has asked
17 that his letter be considered just as a limited appearance,
18 absent your asking me to, I doubt that I would do this, just
19 simply because a lot of people don't like to be receiving a
20 lot of papers. And once we start it, it could conceivably
21 lead to more than he would ever want to hear.

22 MR. HULL: I don't know what -- John Hull for the
23 staff. I don't know what the background is with respect to
24 Dr. Thayer and what contact he may or may not have had about
25 this litigation with Mr. Stein. Perhaps Mr. Thompson has

1 more information on that.

2 MR. THOMPSON: This is Tony Thompson, Your Honor.
3 My guess is that it would be appropriate for you to include
4 him on your service list. If he doesn't want to read it, he
5 doesn't have to. And he apparently, I don't know, they saw
6 the Federal Register notice and called -- my understanding
7 they called GrayStar and he wrote the letter and volunteered
8 to write the letter because he is interested in because of
9 their commitments and their contractual relationship.

10 So I would just as soon, as Mr. Hull has
11 suggested, that the court sort of include him, and I will be
12 happy to include him on what we send to Your Honor in terms
13 of pleadings and responses and so forth. And we can just
14 let him read what he wants.

15 JUDGE YOUNG: Okay. Unless, Mr. Hull, you have
16 any objection to that, then I certainly have no problem with
17 it. And I suppose I need to add into the order just an
18 indication that we did receive his notification that he only
19 wishes to participate as a limited appearance. He only
20 wishes his letter to be a limited appearance, but that
21 copies of all the orders and pleadings will be sent to him.

22 Do you have any objection to that, Mr. Hull?

23 MR. HULL: No, Your Honor.

24 JUDGE YOUNG: Okay. Well, I can't think of
25 anything else.

1 Judge Murphy or Mr. Dewey, can you think of
2 anything else that we need to address today?

3 [No response.]

4 JUDGE YOUNG: It has been very nice meeting with
5 you by telephone. And this is my first case, so I hope all
6 of them go so smoothly.

7 MR. HULL: Thank you, Your Honor. Welcome to the
8 NRC.

9 JUDGE YOUNG: Thank you very much.

10 MR. THOMPSON: Thank you, Your Honor. We
11 appreciate your thought that you have put into this and we
12 hope to be able to work with you and the staff to make this
13 a productive opportunity.

14 JUDGE YOUNG: Great. Thank you, both. Bye-bye.

15 [Whereupon, at 11:40 a.m., the teleconference
16 concluded.]

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REPORTER'S CERTIFICATE

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

NAME OF PROCEEDING: CONFERENCE CALL TO DISCUSS
THE MATTER OF GRAYSTAR, INC.

PLACE OF PROCEEDING: Rockville, MD

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



Ann Riley

Official Reporter

Ann Riley & Associates, Ltd.