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UNITED STATES OF AMERICA

MAY 27 1998

NUCLEAR REGULATORY COMMISSION

Title: PRIVATE FUEL STORAGE
PREHEARING CONFERENCE

Case No.: 72-22-ISFSI

Work Order No.: ASB-300-293

LOCATION: Rockville, Md

DATE: Tuesday, May 19, 1998

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of : Docket No. 72-22-ISFSI
: ASLBP No. 97-732-02-ISFSI
PRIVATE FUEL STORAGE, L.L.C. :
: (Independent Spent Fuel
Storage Installation) :
- - - - -X

U.S. Nuclear Regulatory Commission
11545 Rockville Pike
3rd Floor Hearing Room, T-3-E-10
Rockville, Maryland

Tuesday, May 19, 1998

The above-entitled prehearing conference convened
at 1:00 p.m., pursuant to notice, before:

THE HONORABLE G. PAUL BOLLWERK, III
Administrative Judge,
Atomic Safety & Licensing Board Panel

DR. JERRY R. KLINE,
Atomic Safety & Licensing Board Panel

DR. PETER S. LAM,
Atomic Safety & Licensing Board Panel

PRESENT FOR THE APPLICANT:

Ernest Blake
Jay Silberg
Paul Gaukler

PRESENT FOR THE NRC STAFF:

Sherwin Turk
Catherine Marco

PRESENT FOR THE STATE OF UTAH:

Denise Chancellor
Fred Nelson
Diane Curran

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1 PRESENT FOR THE CONFEDERATED TRIBES OF THE GOSHUTE
2 RESERVATION AND DAVID PETE:

3 John Paul Kennedy

4 PRESENT FOR THE SKULL VALLEY BAND OF GOSHUTE INDIANS:

5 Danny Quintana

6 PRESENT FOR THE ONHGO GAUDADEH DEVIA:

7 Joro Walker

8 PRESENT FOR CASTLE ROCK LAND AND LIVESTOCK, L.C. and SKULL
9 VALLEY:

10 Bryan Allan

P R O C E E D I N G S

JUDGE BOLLWERK: On the record.

Good afternoon or, as Mr. Silberg pointed out, good morning, depending on whether you are here with us in Rockville or you are participating from Salt Lake City by video conferencing.

Today we are here to conduct a prehearing conference in the Private Fuel Storage, L.L.C. proceeding. This proceeding was convened at the request of various petitioners seeking a hearing to challenge the June 20th, 1997 application of Private Fuel Storage, L.L.C. for a license under 10 CFR Part 72 to possess and store spent nuclear fuel in an independent spent fuel storage installation located on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah.

Since the initial prehearing conference in late January this year, the Board issued a decision, LBP 98-7, dated April 22nd, 1998, admitting parties and contentions to this proceeding. In that memorandum and order, the Board granted the intervention petition to the State of Utah, Onhgo Gaudadeh Devia, the Confederated Tribes of the Goshute Reservation, Castle Rock Land and Livestock Company, L.C., and Skull Valley Company, Ltd., and the Skull Valley Band of Goshute Indians, concluding each had standing and at least one admissible contention.

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1 The Board also denied the hearing request of
2 Confederated Tribes Chairman David Pete and the Scientists
3 for Secure Waste Storage as lacking standing to intervene,
4 and the intervention petition of Vincent Ranches of Utah,
5 L.C. for failure to set forth a litigable contention.

6 In light of these hearings, on April 24th, 1998,
7 the Board issued a notice of hearings proceeding which can
8 be found at page 23476 of Volume 63 of the Federal Register
9 to advise the public of our determinations and advised the
10 submission of written limited appearance statements under 10
11 CFR Section 7. -- or rather Section 27.715(a).

12 In addition, the Board noted that at a future date
13 it may receive oral limited appearance statements in the
14 Salt Lake City area.

15 Appeals related to the Board's action regarding
16 the Confederated Tribes and the Scientists for Secure Waste
17 Storage are pending before the Commission. The State, OGD,
18 Applicant PFS and NRC Staff also filed motions for
19 reconsideration and/or clarification of portions of LBP
20 98-7. The Board ruled on those yesterday in LBP 98-10.

21 In issuing LBP 98-7, we scheduled this prehearing
22 conference to discuss with the parties scheduling for
23 discovery and other aspects of the proceeding. To this end,
24 on May 15th, the parties filed a joint status report with
25 the Board which will be the focus of our discussions today.

1 Before we begin discussing these matters with the
2 parties, I would like to again introduce the Board members.
3 To my right is Dr. Jerry R. Kline. Dr. Kline, an
4 environmental scientist, is a full-time member of the Atomic
5 Safety & Licensing Board Panel. To my left is Dr. Peter
6 Lam. Dr. Lam, who is a nuclear engineer, also is a
7 full-time member of the panel. My name is Paul Bollwerk.
8 I'm an attorney and the Chairman of this Licensing Board.

9 At this point I would like to have the
10 representatives of counsel of the parties to identify
11 themselves for the record. As we did before, why don't we
12 go ahead and start with representatives for the various
13 Intervenors, and why don't we have the folks out in Utah
14 identify themselves first. Then we will move to counsel for
15 the Applicant, PFS, and finally for the NRC Staff counsel.

16 MR. ALLAN: I'm Brian Allan, and I'm here on
17 behalf of Castle Rock and Skull Valley.

18 JUDGE BOLLWERK: All right, Mr. Allan.

19 MS. CHANCELLOR: Denise Chancellor, State of Utah.

20 MR. NELSON: Fred Nelson, State of Utah.

21 MR. KENNEDY: John Kennedy, Confederated Tribes of
22 the Goshute Reservation.

23 JUDGE BOLLWERK: Anyone else?

24 MS. WALKER: Joro Walker for OGD.

25 MR. QUINTANA: Danny Quintana for the Skull Valley

1 Band of Goshutes.

2 JUDGE BOLLWERK: All right. Ms. Walker, I believe
3 you are new to the case; is that correct?

4 MS. WALKER: That is.

5 JUDGE BOLLWERK: All right. We welcome you to the
6 proceeding, and I think I had received something at one
7 point that indicated there might be someone from Washington
8 appearing on your behalf as well?

9 MS. WALKER: Right. That didn't happen.

10 JUDGE BOLLWERK: All right. So we are not
11 expecting anyone else here?

12 MS. WALKER: Correct.

13 JUDGE BOLLWERK: All right. All right, I think
14 that takes care of everybody out in Utah.

15 Ms. Curran?

16 MS. CURRAN: I'm Diane Curran, co-counsel to the
17 State of Utah.

18 JUDGE BOLLWERK: All right. Applicant PFS?

19 MR. BLAKE: Ernest Blake, with Jay Silberg and
20 Paul Gaukler for the Applicant PFS.

21 JUDGE BOLLWERK: All right, Staff.

22 MR. TURK: Sherwin Turk for the NRC Staff.

23 MS. MARCO: Catherine Marco, NRC Staff.

24 JUDGE BOLLWERK: All right. Does that take of
25 everybody? Anybody we've forgotten about back in Utah that

1 needs to say anything?

2 All right. With regard to the discussions today,
3 I would like to cover the following topics, the first one
4 being the schedule for issuance of the Staff's safety
5 evaluation report and the draft environmental and final
6 environmental impact statements. The second, pre-discovery
7 dispositive motions, if any. Third, the schedule for formal
8 and informal discovery. Fourth, the post-discovery
9 dispositive motions, if any. Fifth would be prefiled
10 testimony and other prehearing filings. Sixth, the hearing
11 schedule; and seven, any miscellaneous matters, including
12 settlement.

13 All right. I noticed someone else appeared at
14 Staff table. Is it someone we need to recognize?

15 MR. TURK: Your Honor, to my left is Mark
16 Dellagatti, who is the project manager for the NRC Staff for
17 this application.

18 JUDGE BOLLWERK: All right. Welcome, Mr.
19 Dellagatti.

20 All right. What I would like to begin with then,
21 obviously anyone else that has matters they want to raise at
22 some point, we'll be glad to listen and respond as well, but
23 let's begin with the schedule for the Staff SER, the DEIS,
24 the draft EIS, and the environmental impact statement, and
25 in this area I'd like to turn first to the Applicant's

1 counsel and ask whether in light of the Staff's revelations
2 up to this point in terms of scheduling, has there been any
3 revision to the Applicant's proposed schedule for the
4 facility construction as set out in Section 1.3 of the
5 Environmental Report?

6 MR. BLAKE: I would need to take a break, Judge,
7 to respond to that question.

8 JUDGE BOLLWERK: All right. You need a couple
9 minutes?

10 MR. BLAKE: Yes.

11 JUDGE BOLLWERK: Why don't we take a quick break,
12 then, and let you talk to someone, and we'll come right
13 back, because that is something we'd like to hear about.

14 [Recess.]

15 JUDGE BOLLWERK: All right, we're ready to go back
16 on the record.

17 MR. BLAKE: Judge Bollwerk, I really apologize. I
18 hadn't anticipated this question, and therefore I appreciate
19 a couple of minutes to react.

20 JUDGE BOLLWERK: No problem.

21 MR. BLAKE: The project has not made any formal
22 change in the schedules that were published. Some of our
23 sub-vendors, particularly cask vendors, have indicated that
24 they think they can do better than some of the schedules. I
25 think it's the Staff that relied upon when they set their

1 schedules. Whether or not that will turn out to be the
2 case, of course, we don't know. But at the moment we are
3 hopeful that we will be able to do better in the overall
4 schedule and be able to assist the Staff in attaining a
5 better schedule than what the Staff has been able to project
6 based on what they know from us and in their own staffing
7 needs, and that's about as much as I can say. I don't have
8 any specific dates and have no formal change.

9 JUDGE BOLLWERK: Okay. Excuse me. One question.
10 We're not talking about any kind of a limited work
11 authorization or anything like that, are we?

12 MR. BLAKE: No. The project to date has not given
13 any considerations to that. It might be, depending upon
14 what happens with the schedule, that we would, but we have
15 not given any notice of that to the Staff, and have given it
16 no internal consideration that I am aware of.

17 JUDGE BOLLWERK: All right. All right, let me
18 then turn to the Staff and see where -- the prehearing
19 report or the status report you gave us basically refers us
20 back to a document you filed back in October. Can you do
21 any better than that at this point?

22 MR. TURK: We have no basis to predict a change in
23 those, Your Honor. I believe what we have said back in that
24 status report was we have an SER I believe approximately the
25 low end of two years, if I'm not mistaken, two or three

1 years.

2 JUDGE BOLLWERK: All right.

3 MR. NELSON: We cannot hear Mr. Turk very well.
4 Could he speak closer to the mike.

5 MR. TURK: Yes. I'll repeat what I just said. We
6 have no basis at this time to change the dates that we
7 projected back in October of '97, and what we have projected
8 back in that status report in October was an SER which would
9 come out in the time frame of two to three years, was a
10 range of dates that we felt was possible for the SER. And
11 we also said that the Draft EIS would be out in
12 approximately two years, and that the Final FES would be
13 issued six to 12 months after that, in order to accommodate
14 the comments period and any necessary revisions in the
15 environmental impact statement.

16 At this time we don't have a basis to change those
17 dates. Everything will depend on the timeliness and
18 completeness of information we get from both this Applicant
19 as well as the vendors of the casks which they propose to
20 use on the site.

21 JUDGE BOLLWERK: What are you looking at in terms
22 of the cask vendors? What is the critical points there?
23 What are you expecting from them?

24 MR. TURK: May I have one moment, Your Honor?

25 JUDGE BOLLWERK: Sure.

1 MR. TURK: At this time we are still evaluating
2 the information that we have received from the vendors, and
3 we are trying to determine how much additional information
4 we are going to need.

5 I would note -- this may be of interest to the
6 parties here today -- that a public meeting is scheduled
7 with Holtec for two weeks from now, I believe it's May 29th
8 in Washington, and I believe that the status of Holtec's
9 submissions to the Staff and the Staff's needs concerning
10 that information will be discussed at that meeting. But at
11 this time, as I mentioned, we do not have a basis to change
12 our projected dates. It is possible that the cask review
13 will take longer than we have been projecting till now, but
14 until we get more information, I can't make that a
15 prediction.

16 JUDGE BOLLWERK: Do you have a question, Judge
17 Lam?

18 JUDGE LAM: Mr. Turk, the estimated date that you
19 have just given us, are these schedules based on a leisurely
20 activity level, or are they on an expedited basis?

21 MR. TURK: The Staff has contracted with outside
22 consultants for the preparation of the EIS as well as the
23 SER. Now we have the Oak Ridge National Laboratory working
24 on the environmental impact statement with us, and we have
25 the Center for Nuclear Waste Regulatory Analysis -- I always

1 seem to mess up that acronym -- looking at safety issues
2 with us. Both of those teams have devoted a good large
3 number -- I would say a good number and a large number of
4 reviewers to the task. I can't say that it's either
5 leisurely or expedited. I believe it should be classified
6 as a diligent review schedule.

7 JUDGE BOLLWERK: Do those contractors have a date
8 by which they are supposed to give back to you a final
9 product?

10 MR. TURK: There are projected schedules for the
11 review, but it's so dependent on the quality and timeliness
12 of the information that's received from the Applicant that I
13 don't think we can say those are dates that are necessarily
14 going to be met. That's a projected -- we have projected
15 schedules based upon a best-case scenario, but we are going
16 to need to see the answers that we had in response to our
17 review questions before we can really come up with some firm
18 predictions on schedule.

19 JUDGE BOLLWERK: When do you think you are going
20 to be in a position to give us some firm predictions?

21 MR. TURK: Well, with respect to the SER, I would
22 note that we did send out a round of requests for additional
23 information in April, I believe it was April 1st. You
24 probably see in front of you a letter from PFS dated April
25 29, 1998. That was attached to the Applicant's joint status

1 report of May 15th. If you look at the schedule that's
2 attached to that letter, you will see a large number of
3 issues which projected response dates of May 15th -- that's
4 the week that just passed -- as well as roughly a dozen or a
5 dozen and a half dates which are slightly longer, including
6 June, December, and September of '98.

7 We did receive the May transmission of
8 information. I believe it was submitted under a request for
9 confidential treatment which triggered people's ears over
10 here because that was not our understanding of what was
11 requested. A request for confidential treatment may infer
12 there is some sort of safeguards information or classified
13 information present.

14 JUDGE BOLLWERK: This wasn't proprietary, it was
15 something --

16 MR. TURK: The intent was proprietary. And we
17 have sent it -- I think they have sent the package back and
18 now are waiting for it to be received again so that we can
19 docket it under the proper request as proprietary. So
20 although that date says May 15th, in effect, it will
21 probably be received back here, I would estimate, in the
22 next week or 10 days, probably, end of May, we will have
23 that in hand. So that's not far back from what the
24 Applicant projected. And, in fact, they met their
25 projection but for that classification designation.

1 Now that was the first round of RAIs on the SER.
2 We don't know yet that there will be a second round, or if
3 there is a second round, how extensive it will be, because
4 we first have to evaluate the information we received in
5 response to the first round of questions.

6 With respect to the environmental statement, we
7 mentioned in our contribution to the joint status report of
8 May 15th that a scoping meeting will be held out in Utah on
9 June 2nd, 1998. That's one of the first steps in the
10 environmental impact statement preparation where we ask the
11 members of the public and any state officials or anyone else
12 who may have information concerning issues that may need to
13 be looked at, to come forward and tell us what sorts of
14 things we need to address in the EIS. That's June 2nd.
15 That meeting will be attended by NRC Staff as well as Oak
16 Ridge National Laboratory. Oak Ridge will be conducting a
17 site visit on that same trip, so they are getting underway
18 in the substance of their review now, and I cannot give you
19 any more in the way of a projected schedule than what we
20 have said already which, as I mentioned, back in October of
21 '97, roughly two years to the Draft EIS and another six to
22 12 months after that for the Final. And that schedule will
23 depend on, again, the -- what the reviewers find they need
24 upon reading the environmental report and what kinds of
25 responses they get in response to the first questions.

1 I hope that answers your question. It was a
2 rather lengthy explanation of where we are.

3 JUDGE BOLLWERK: Well, I guess what's bothering
4 the Board -- I'll let Judge Kline say anything about this
5 that he wants -- is I mean we are talking -- we have a
6 schedule based on a window of a year and in terms of the
7 SER, possibly the same with the EIS. It's really difficult
8 for us to sort of fashion any kind of a schedule in a way
9 that we probably should, which is to look at those documents
10 and work back from there, without any kind of information
11 --we don't even know what time of the year we're talking
12 about in terms of when these are going to come in.

13 I guess the one thing, you know, I'd really like
14 to see, at a minimum, is some kind of an estimate of when
15 we're going to get, you know, a firm schedule or,
16 alternatively, you know, give us your best-case schedules,
17 with the understanding that they could change. I'd really
18 like to see something a little more concrete. That's what
19 is causing us a problem.

20 MR. TURK: Let me give you one additional piece of
21 information, and that relates to the review of the casks. I
22 am informed by Mr. Dellagatti that the SER on the Holtec
23 cask could come out in early 2000. Now why is that relevant
24 here? It's my understanding that the Applicant -- that the
25 application seeks licensing of this site for use of a

1 certified cask, either Holtec or Sierra Nuclear. The
2 envelope of considerations in the SER here, as well as in
3 the EIS, should be broad enough to include that certified
4 cask. So those reviews are going on at the same time, and
5 properly to conclude the review of all site-specific issues,
6 I think we are going to need to await the -- at least the
7 issuance of the SER on the casks and even possibly
8 completion of the rulemaking proceeding.

9 JUDGE BOLLWERK: Well, then, that puts you sort of
10 in direct conflict with the schedule that, at least as I
11 understand it, that the Applicant set out here, which has,
12 just as an example, the access road and the storage facility
13 being started in January 2000. I mean --

14 MR. TURK: I would say that was a very optimistic
15 projection on their part. But I would leave it to them to
16 clarify what they reasonably expect.

17 JUDGE BOLLWERK: Do you want to speak to that at
18 all, Mr. Blake, or --

19 MR. BLAKE: Well, we are well aware of the
20 importance of providing the Staff with timely and complete
21 information as they request it. And we are also working as
22 hard as we can to assist and try to make that schedule
23 better. I indicated as well with respect to the vendors,
24 including Holtec in particular, we made those vendors aware
25 of the significance of their schedules to the significance

1 of this project. And to all those ends, I indicated
2 previously, we have not yet adjusted formally the schedule
3 that we had published, and are still hopeful that we will be
4 able to maintain it, Judge Bollwerk.

5 To the extent we do alter that schedule, if we are
6 going to change it or submit to others' views of what is
7 conceivable, we will be telling the Board and the parties of
8 any adjustment in schedule.

9 JUDGE BOLLWERK: I have to say from my
10 perspective, I feel like I'm pushing on a string here. You
11 know, I understand everybody's trying to retain their
12 flexibility and to let us know that these are all general
13 schedules and we need to take into account the fact that
14 things could slip, and I understand that, but I am still
15 looking for some concreteness here that I am not hearing
16 from anybody. Is there any way you all could talk to each
17 other directly and try to, you know, give us something a
18 little more concrete?

19 MR. BLAKE: We are talking and we will continue to
20 talk and to the extent we can provide you something which is
21 more satisfying, we will do it.

22 JUDGE BOLLWERK: Within what time frame? I mean,
23 you know, are we talking about a month, a year?

24 MR. BLAKE: I think it's somewhat iterative. The
25 Staff wants to take a look at our answers and see whether

1 they are sufficient. They are right that there is this
2 snafu with regard to the confidential and proprietary, but
3 of course that only affects some two of the questions in
4 here, not all of them that came in in May. And they are
5 going to have a chance to assess and see whether or not they
6 are getting good information. That will give them some
7 confidence about the schedule, some additional feel for
8 whether or not they think we can make it. When they talk
9 with Holtec and talk about the Holtec schedule, I think the
10 Staff will have a greater sense of what that side of it will
11 be, and as they move along and as we move along, we all will
12 have a greater confidence about what the schedule will be.
13 But I don't know how to better it, I don't know how to
14 improve, Judge Bollwerk, on what I have said, from at least
15 our perspective. We are at the Staff's will on this. We
16 simply can't complete without those documents. Everybody
17 understands that, and we will do everything in our power to
18 try to assist the Staff to protect our schedule and improve
19 on it.

20 JUDGE BOLLWERK: Well, let me go back to the Staff
21 one second. I know, looking at the document that we were
22 given on the status report, there's a number of different
23 questions that have to be answered. I guess the latest of
24 those were in December. Are you not going to be -- are you
25 telling me you're not going to be in a position until

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1 December to sort of give us something that's more -- that's
2 firmer because the first round of questions won't be
3 completed until then, or are we looking at something in the
4 little bit more near term?

5 MR. TURK: I think we will get a better feel for
6 that as we progress. For instance, I mentioned we are
7 having this meeting with Holtec two weeks from now. Based
8 on that meeting, we will have a better sense of how long the
9 Holtec review will take to complete. Not necessarily, and
10 probably not a firm view, but a better view than I can give
11 you today as we sit here. So that I can make a commitment
12 to get you a status report on a fairly regular basis, I
13 would say perhaps quarterly, if that would suffice for your
14 purposes, perhaps get you the first one in June, and then
15 three months or so later the next one, so that you are kept
16 up to date on where the review is.

17 The difficulty here, unlike a case such as a
18 nuclear power reactor licensing case, is that you have two
19 interconnected applications. Because the cask review has to
20 proceed separately from the site review, we can't wrap up on
21 issues raised on this application until we complete our
22 review of the issues that we see pertaining to the other
23 application and certification.

24 Part of the dilemma is also posed by the fact that
25 the Applicant has identified two potential cask vendors, and

1 it is my understanding that they have not yet narrowed that
2 down. Perhaps I am wrong. I don't believe they have
3 identified the cask vendor yet, so that the Staff's review
4 of not just one cask but two casks has to proceed in order
5 to support licensing of this facility.

6 JUDGE BOLLWERK: All right. Anything you want to
7 say on that subject, Mr. Blake?

8 MR. BLAKE: No. I just want to remind the Board
9 of our position, that it may be that some issues but not all
10 will need to wait until the last is complete and ready for
11 hearing; that we think a number of the safety issues will be
12 able to proceed once the Staff has completed its review and
13 has a stated position on it. And, therefore, from an
14 overall hearing perspective, we don't think we will need to
15 wait until the last one is complete before we can get going
16 with testimony in that hearing on some of the safety issues.

17 JUDGE LAM: Mr. Blake, is it clear to us that the
18 Applicant does not have any problem with the Staff's
19 approach of due diligence in setting the schedule? Is it
20 the right understanding?

21 MR. BLAKE: I am only going to shoot myself in the
22 foot so much, Judge Lam, on that one. We are working with
23 the Staff, I think they understand the importance that we
24 place on schedule, and we have made -- we will continue to
25 work with them and assist them and ask of them to move as

1 expeditiously as they can. To say -- to go further than
2 that and to say am I content with it, do I think that
3 everything is being done as expeditiously as possible? I
4 suspect not, and I suspect that's probably not true in our
5 organization as well at some level. But I have every belief
6 from our project people that the Staff is working hard to
7 give us the kind of review we need on this project, and will
8 continue to do so.

9 I think early on there were some questions about
10 what kind of commitment or whether or not they were moving
11 as rapidly as they might have, but my sense is that they
12 are, and that they will continue to. That's what I
13 understand from my people.

14 JUDGE LAM: Thank you.

15 JUDGE BOLLWERK: Judge Kline, anything you want to
16 say on this subject?

17 Anything anybody out in Utah wants to say on this
18 subject?

19 MS. CHANCELLOR: Yes, I have one concern,
20 particularly with respect to keeping confidential answers to
21 the RAIs. We have had difficulty obtaining information that
22 is being sent from PFS to the Staff, and we have not yet
23 received that May 15 response to the RAIs.

24 When we got together for the joint scheduling
25 conference before we submitted that report to you, PFS did

1 promise that in the future they would send all information
2 that they submitted to NRC, but I think there's a gap that's
3 occurring where we are not getting the information that PFS
4 is -- in correspondence that they are sending to the NRC.
5 And we keep checking the PDR, but in some instances it takes
6 quite a long while to assess documents in the PDR.

7 For example, there was a conference call with Mr.
8 Dellagatti in January, and that wasn't assessed until
9 May. And also there was some correspondence from a Mr.
10 Donnell who is a consultant at PFS, and that was sent to NRC
11 on April 24, and we haven't seen any of those documents.

12 So if we can work out something where PFS will
13 give us the information that they are submitting to NRC, it
14 would help expedite things from our end, and we would hope
15 that next to nothing is kept confidential.

16 JUDGE BOLLWERK: Let me just ask one question. I
17 know at the end of the last prehearing conference, we had a
18 discussion about what happened when someone was admitted as
19 a party and they were put on a service list, as I understood
20 it. Does that address any of this, or is that something
21 outside of this?

22 MR. TURK: The State is on our service list, that
23 service list that sends out NRC-initiated correspondence and
24 documents, and I believe the Applicant had at that time
25 committee to arrange for their correspondence to the NRC to

1 be forwarded to other parties.

2 MR. BLAKE: We had -- Mr. Turk is correct, we had
3 committed to do that, and have reconfirmed even since the
4 telephone call that we had with the parties that led to the
5 status report, Judge Bollwerk, that the project should send
6 copies of correspondence that they send to the NRC as well
7 to the admitted parties in the proceeding. So within the
8 project they are checking on that. If there's some lag
9 time, I would apologize for that today, but I think it will
10 catch up and we will get that in full form here.

11 MR. TURK: Incidentally, I should note that the
12 letter I referred to, the April 29th letter from PFS to the
13 NRC, was submitted as an attachment to the joint status
14 report which Mr. Blake sent you on May 15th. So the State,
15 if you look at that status report and the attachments that
16 were e-mailed to you at that time, you should see it just as
17 I received it at that time.

18 JUDGE BOLLWERK: All right. Let's do this, Ms.
19 Chancellor, let's continue to watch that. It sounds like
20 things take a while to get -- service lists and whatever
21 take a while to get going, but if you are having a
22 continuing problem, obviously, talk with either of the
23 parties. It sounds to me like they made a commitment to
24 give you documents, and if there is a problem, you can bring
25 it to the Board's attention.

1 MS. CHANCELLOR: Thank you.

2 MR. TURK: Let me note, also, Your Honor, I didn't
3 infer that there was a problem with Staff-initiated
4 documents, and I know that the State is on our service list,
5 and I think that they were having a problem with receipt of
6 some Applicant documents.

7 JUDGE BOLLWERK: She mentioned something about a
8 letter from Mr. Dellagatti -- was it to or from Mr.
9 Dellagatti?

10 MS. CHANCELLOR: Actually, it was records from a
11 telephone conference, but there was one other letter, and it
12 was from Mr. Shum to the Applicant dealing with permitting
13 of -- other permitting authorities, and I believe this deals
14 with the EIS scoping and that was a letter dated April 16,
15 '98. But by and large, the NRC Staff have been sending us
16 out everything. I think there are just a couple of things
17 that have slipped through the cracks.

18 MR. TURK: I haven't seen that April letter
19 myself. I wasn't even aware of it.

20 JUDGE BOLLWERK: All right. Let's continue to
21 monitor this situation, and if it becomes a problem again,
22 obviously talk to Mr. -- I guess, Mr. Blake, are you the
23 contact on this?

24 MR. BLAKE: Sure, me or Mr. Silberg.

25 JUDGE BOLLWERK: And if there is something that

1 can't be worked out, then, you know, come back to the Board
2 and let's talk about it. But it sounds to me like we just
3 -- things need to catch up a little bit here.

4 MR. BLAKE: We really did not address the second
5 element of Ms. Chancellor's concern, and that was with the
6 confidential. With respect to confidential, I think we are
7 going to have to do on an ad hoc basis what it takes to
8 satisfy the State or other parties. To the extent that this
9 correspondence relates to one of the contentions which is
10 admitted in the proceeding, then it seems to me we need to
11 work with that party in order to get that same material to
12 them in a timely way that -- as we provide it to the Staff.
13 But I can't make the same kind of blanket offer to provide
14 it at the same time we provide it to the Staff. I didn't
15 want to mislead Ms. Chancellor on that, but hopefully we
16 will be work that -- work our way through that as well.

17 MS. CURRAN: Judge Bollwerk --

18 JUDGE BOLLWERK: Which of you would like to speak?

19 MS. CURRAN: You go ahead, Denise.

20 MS. CHANCELLOR: Will the State be advised when
21 the Applicant is claiming that something is confidential so
22 that we will know that something has been sent to NRC and
23 maybe it has some sort of a topic as to what it covers, but
24 some sort of idea of what the subject matter is, and that
25 there is a claim of confidentiality?

1 MR. BLAKE: There may be an easier way to do this,
2 Denise, and it may be that just the cover letter which
3 submits it without an enclosure will alert you, and it will
4 work out all right that way for you, so that you get that
5 kind of notice. I'm not sure. We'll certainly be aware of
6 that and try to satisfy you on that. Maybe just the
7 affidavit which goes along which provides the 2.790 request
8 support. But there ought to be some way that we can satisfy
9 you, so that you know what's going on, and that we are
10 claiming confidentiality.

11 MS. CHANCELLOR: That sounds like it's a workable
12 system.

13 Just one final point. Could I clarify that the
14 State is going to receive a copy of the May 15 submittal
15 that PFS submitted to the Staff?

16 JUDGE BOLLWERK: My understanding is that that is
17 in the process of being resubmitted; is that correct?

18 MR. BLAKE: A portion of it only has to be
19 resubmitted, Judge Bollwerk. The bulk of it, I think, will
20 reside and stay with the Staff and is fine, and the answer
21 is yes, Denise.

22 MS. CHANCELLOR: Thank you.

23 MR. TURK: I think, in fact, just for
24 clarification, Your Honor, I believe the entire package had
25 to be returned because it was not possible to docket part of

1 it. So it's just a procedural snafu that will take a few
2 days to work out, but I believe the anticipation is that the
3 package will be resubmitted with the proprietary sections
4 marked as proprietary, and a non-proprietary version of that
5 submitted as well. That's my understanding of how things
6 are normally done.

7 JUDGE BOLLWERK: And then I guess Ms. Chancellor's
8 question is which part or all of that will she receive?

9 MR. TURK: She will receive the non-proprietary
10 portion of whatever is being withheld, as well as the rest
11 of the information that did not have a proprietary
12 designation. And that's -- you know, when you say which
13 would she receive, that's what would go into the --

14 JUDGE BOLLWERK: PDR?

15 MR. TURK: -- Public Document Room, and I assume
16 that's what the Applicant will send to her.

17 MR. BLAKE: That's correct. We will send you
18 everything, Denise, which is public, and with respect to the
19 proprietary portion, you will get an indication that a
20 portion of it is proprietary, and as I said, maybe the
21 affidavit as well makes sense so that you know what
22 precisely the basis for it being withheld as proprietary.

23 MS. CHANCELLOR: Thank you.

24 JUDGE BOLLWERK: All right, Ms. Curran, did you
25 want to say anything?

1 MS. CURRAN: My question has been answered.

2 JUDGE BOLLWERK: All right. Very good.

3 Let me come back to one point, then. The Staff
4 had mentioned a status report on what is going on, and the
5 Holtec meeting, you said, is the 29th?

6 MR. TURK: Yes, of May.

7 JUDGE BOLLWERK: Do you think you could give us
8 something by the 8th of June on where you're at?

9 MR. TURK: That following week we are going to be
10 in Salt Lake City with the Oak Ridge National Laboratory for
11 the EIS.

12 JUDGE BOLLWERK: How about the 15th?

13 MR. TURK: That's doable.

14 JUDGE BOLLWERK: All right. And I would urge both
15 the Staff and the Applicant, if they can, to begin to, in
16 order to try to mesh here and speak directly about this, I
17 recognize that your interests aren't necessarily the same in
18 all instances, but, you know, we want to know what the
19 schedule is so that we can conduct this proceeding in a fair
20 but expeditious manner, and without the schedule, it makes
21 it very difficult for us. We need to know what's going on,
22 frankly. So I'm going to, at this point, leave this
23 open-ended, but I have a continuing concern about our lack
24 of information and anything very concrete about where this
25 -- where the licensing side of this is going. All right.

1 MR. BLAKE: We hear you, Judge Bollwerk. Thank
2 you.

3 MS. CHANCELLOR: Judge Bollwerk, I have one more
4 question.

5 JUDGE BOLLWERK: Yes.

6 MS. CHANCELLOR: Mr. Turk mentioned contracts
7 between Oak Ridge Labs and another contractor for the SER,
8 and mentioned that there were milestones or some sort of
9 schedules in there. I was wondering, are those contracts
10 confidential, or is that something that the parties can have
11 access to, so that we can keep track of those schedules,
12 too?

13 MR. TURK: I don't believe those are public
14 documents, but to the extent that the information in there
15 is relevant to what we have to provide in a status report,
16 you'll see a summary or projected date that reflects our
17 understanding of how long our reviews would take. Those
18 milestone type dates are not fixed; those are subject to
19 negotiation as the review continues, and they are not really
20 worth much in the sense of what other parties can expect.
21 It really depends on how long the review takes and how good
22 the responses are to our questions.

23 JUDGE BOLLWERK: Let me just mention one other
24 thing in this regard. I am going to be -- I'm trying to be
25 flexible here, and I understand the need to have -- you

1 know, you have milestones, they are open-ended, you're
2 trying to work with the contractors, and the Staff has to do
3 what the Staff has to do, I understand that principle, I
4 respect it, and I know you are in charge of the licensing
5 side of this. But if there comes a point where we just
6 can't get the information we need, I know four people who
7 can ask you and get answers in terms of what we need to
8 know, so if I need to go talk to those four people, we will
9 do that. I don't want to do that, that's the last stab, you
10 know, the last step as far as I'm concerned. But again, we
11 want something concrete here at some point.

12 MR. TURK: I think what we would like to do is
13 keep you informed as we go. I don't want to mislead you and
14 give you a projected date --

15 JUDGE BOLLWERK: I understand that.

16 MR. TURK: So we will give you as much information
17 as we can to help you in your planning purposes.

18 JUDGE BOLLWERK: Okay. As long as we are all on
19 the same page here. All right. Very good. Thank you. I
20 appreciate it.

21 All right, let's then move to the next item that I
22 have here, which is the question about prediscovery
23 dispositive motions.

24 Now as of the status report, I guess, the parties
25 indicated they didn't think there would be any, but that was

1 subject to the Board's ruling on the reconsideration motion
2 which we have done. I don't know how many -- how much of a
3 chance you've had to look at our order, but if you have
4 anything pertinent further you want to say on this --

5 MR. BLAKE: No, only to -- we have not made any
6 determinations yet, Judge Bollwerk, about filing
7 prediscovery dispositive motions. We are aware that in
8 other instances, the reality of being able to file motions
9 before discovery, before the other parties have any
10 opportunity to discover, even in the case of Utah B here,
11 which might be purely legal and might be avoided with
12 respect to facts, we would not undertake to file without
13 talking to the other parties first. And we continue to --
14 we will be good to our word on that.

15 JUDGE BOLLWERK: All right. Anything -- let me
16 just -- since we're in the same room, let me see if Mr. Turk
17 has anything to say on that subject, and then I'll move to
18 the folks out in Utah.

19 MR. TURK: No, Your Honor.

20 JUDGE BOLLWERK: Nothing?

21 Anyone out in Utah have anything they want to say
22 about prediscovery dispositive motions?

23 MS. CHANCELLOR: No, Your Honor.

24 JUDGE BOLLWERK: All right. Well, since the next
25 subject is discovery, if you think you are going to do

1 something, if you have sort of a point at which you think
2 you'll make up your mind one way or the other, within a week
3 or two, or --

4 MR. BLAKE: No, I don't anticipate at this point
5 -- as I said, we really haven't had much of an opportunity
6 to discuss with the client the prospect of doing this before
7 discovery, but I would not let this stop us getting on with
8 informal discovery, Judge Bollwerk.

9 JUDGE BOLLWERK: All right. So I should leave
10 this then that if you think there's a motion you want to
11 file, you are going to go to the parties first and talk to
12 them and then come back to the Board?

13 MR. BLAKE: That's correct, sir.

14 JUDGE BOLLWERK: All right. Just so that I know,
15 that I don't get -- I won't say blindsided is a proper term,
16 but get surprised, how long do you think you're going to be
17 talking to them? A couple of weeks? If we haven't heard
18 from you in a couple of weeks, then we should assume there's
19 nothing?

20 MR. BLAKE: No, I don't think so. It might be
21 that at some point during informal discovery, it's apparent
22 that one or another motion would make sense, that that might
23 be the time I'd take it up with the other parties. I can't
24 give you a precise schedule. I'd like not to be cut off
25 from the opportunity to do it or have any other party be

1 able to do it any time during ongoing discovery. I just
2 want to try to minimize the need for false starts, where we
3 go forward and another party -- and Ms. Curran raised this
4 as a potential problem, and I kind of think she's right, you
5 start and you file something without consulting anybody
6 else, then there's a request and a need for discovery to
7 take place before it can be disposed of, and we all kind of
8 spin our wheels and waste time. That's what we're trying to
9 avoid.

10 JUDGE BOLLWERK: All right. We'll handle this for
11 the time being this way. There will be a series of status
12 reports or conferences that we'll have, and that'll be one
13 of the subjects that we'll raise every one; all right? Keep
14 us apprised of what you think.

15 MR. BLAKE: Yes, sir.

16 JUDGE BOLLWERK: I would appreciate that.

17 All right, let's talk then about discovery
18 schedule. The status report, I believe, talked about six
19 months of informal discovery. When we first talked about
20 it, we thought that was going to be the whole ball of wax,
21 but apparently you all have a different view of it, so why
22 don't you give us your views on why you need six months of
23 informal discovery.

24 MR. BLAKE: I don't know about need, but basically
25 when we talked, we talked about the potential for having a

1 month generally for people to frame their questions for
2 informal discovery; couple of months for people to respond
3 to that, making documents available; and then generally
4 three months following the review of those documents to
5 allow for the informal interviews that the Board had
6 outlined. And rather than putting in those kind of formal
7 subdivisions of the six months, we thought six months was a
8 good shot at trying to get as much in the way of exchange of
9 information informally as we could. I don't know that there
10 was a lot more thought that went into it and, frankly, on
11 the Applicant's side, we don't have any experience with the
12 informal discovery approach that the Board has suggested.
13 Ms. Curran, I believe did but was the only one, and so I
14 thought we would just go forward with that kind of an idea
15 and then see how it works. All these parties seem very
16 capable of discussing with each other problems or concerns
17 as of to date, and I would hope it would continue. If it
18 looks like six months doesn't make sense, presumably we
19 could get back together and get back to the Board and alter
20 that, by either elongating it or shortening it. But for
21 want of any other idea, that's the time frame we came up
22 with, Judge Bollwerk, and it may be from the Board's
23 experience that you have a different idea for us. That's
24 where the parties came out.

25 JUDGE BOLLWERK: All right. Again I'll stay in

1 the same room. Mr. Turk, do you have anything you want to
2 say on that subject?

3 MR. TURK: It's my recollection that the six-month
4 proposal was made by the Applicant, without objection by any
5 other parties. I think the big -- or for that time period
6 of six months of informal discovery takes into account the
7 fact that the Staff's review is ongoing and won't be
8 completed in those six months. So that there is that period
9 of time in which litigation in the hearing sense, in other
10 words, actually going into the court with witnesses, is not
11 going to proceed. So that is a good time period in which
12 the parties can gather information to support their cases
13 and understand each other's positions. And I think the date
14 was acceptable, or that six-month period was acceptable to
15 all parties.

16 JUDGE BOLLWERK: All right, anything further?

17 All right, anything Ms. Curran wants to say, or
18 anything from Utah? Anything anybody in Utah wants to say
19 on discovery?

20 MS. CHANCELLOR: No, Your Honor. We agree with
21 the schedule.

22 JUDGE BOLLWERK: All right.

23 MR. BLAKE: Judge Bollwerk, I can add for the
24 Board's knowledge and for the other parties, what our
25 intention to do, the Applicant's intention to do with regard

1 to documents is to provide a complete set of the project's
2 documents that are in our view related to any of the
3 contentions, and I mean that in a broad way, in Salt Lake
4 City, presumably at a law firm in Salt Lake City which has
5 been working with the project, and we'd establish any time
6 during regular business hours for people to be able to come
7 and look through those documents, and that's the kind of
8 approach which we had hoped would accommodate the informal
9 ideas the Board had.

10 JUDGE BOLLWERK: All right. Anything anybody in
11 Utah wants to say about that? I take it you've heard this
12 proposal before?

13 MS. CHANCELLOR: Yes, we have, and we think it's a
14 wonderful idea.

15 JUDGE BOLLWERK: All right.

16 MR. BLAKE: The only difference that we had in the
17 conversation about the interview aspect, which I don't think
18 we get to for some months from now, and maybe the status
19 get-togethers that the Board was talking about would take
20 place before that, was the question of whether or not we
21 would tape the interviews. And we all agreed to get off and
22 try to talk with other people who'd been involved in the
23 past in informal and try to get some advice or insight on
24 that. I don't think any of us knows, frankly, what the
25 history has been on that and how it might work.

1 JUDGE BOLLWERK: All right. I had thought about
2 that question as well, and I would urge you to try to reach
3 some accommodation between yourselves. If you can't, then
4 come to us and we'll deal with the problem.

5 MR. BLAKE: Yes, sir.

6 JUDGE BOLLWERK: I think it's probably something
7 you can work out.

8 All right. Well, I guess from the Board's
9 perspective, our concern is not so much -- it's the question
10 of the open-endedness of this, sort of six months and then
11 we'll come back to you, and where we'll go from there. And
12 I'm not sure that's something we're at this point
13 necessarily feel too comfortable with. It may be something
14 we need to talk more about among ourselves, given your
15 explanation today.

16 It may well be that we may issue something with a
17 deadline and leave some flexibility within that deadline for
18 you to allocate it between formal and informal discovery
19 among yourselves. Again, we'll have to talk about that, but
20 I wouldn't be surprised to see the Board issue an order that
21 has a discovery cut-off date with flexibility in there for
22 the parties to deal with it formally or informally, however
23 they see appropriate, subject to status reports back to the
24 Board. So that's sort of -- anything you want to say on
25 that subject?

1 JUDGE KLINE: No.

2 JUDGE BOLLWERK: Yes?

3 MR. TURK: Would you permit the parties to comment
4 first on what they feel would be an appropriate period of
5 time for that cut-off?

6 JUDGE BOLLWERK: If you wanted, please do.

7 MR. TURK: I think it would be appropriate for the
8 parties to talk to each other first.

9 JUDGE BOLLWERK: Okay.

10 MR. TURK: See if we can come up with what we
11 agree on, and then the Board is always free to tell us no,
12 that's not acceptable.

13 JUDGE BOLLWERK: All right. How long do you think
14 it would take you to do that?

15 MR. TURK: If we could take a break, perhaps
16 during our meeting today?

17 MR. BLAKE: If we could use your fancy system and
18 the Board were to take a break, it's possible we could do it
19 today, either during a break or even afterwards, if we could
20 have a couple of minutes if we used the fancy system.

21 JUDGE BOLLWERK: If you want, we can take a break
22 right now if it's something you want to do at this point.

23 MR. BLAKE: We could give it a try.

24 JUDGE BOLLWERK: All right. Right. Now is that a
25 problem? I guess you can't really turn off the recorders,

1 because the system is running; right? The video
2 conferencing system?

3 MR. CUTCHEON: Right.

4 JUDGE BOLLWERK: Would it be best to do it at the
5 end of the proceeding, then? I don't want to cut anybody
6 off.

7 MR. TURK: We could just get together by telephone
8 and come back to you with something.

9 JUDGE BOLLWERK: Okay. All right. Maybe that's
10 something we shouldn't try, at least not until the end.

11 MR. BLAKE: Why don't we agree to provide you with
12 a report within a week, if that would be soon enough for
13 you?

14 JUDGE BOLLWERK: Why don't we do that. That
15 sounds acceptable.

16 MS. CURRAN: I was just going to suggest, if
17 there's a phone back in this room, with a speaker phone on
18 it, we can all get on the telephone, can't we? We could try
19 it.

20 MR. BLAKE: Why don't we give the parties an
21 opportunity to talk alone and then together? We'll get back
22 to you within a week.

23 JUDGE BOLLWERK: That's acceptable to me. I'm not
24 trying to push you into something quickly -- well, put it
25 this way, something that will give you a chance to talk

1 among yourselves, but we would like to hear something. You
2 said a week? This is the 19th, and the holiday is coming.
3 How about the 27th? That's a week from Wednesday.

4 MR. BLAKE: That would be fine with me.

5 JUDGE BOLLWERK: All right. Can you give us
6 something back then on what you see as an appropriate
7 cut-off date, bearing in mind that we'll probably allow some
8 flexibility within that cut-off date for you all to allocate
9 how much formal versus informal you want.

10 MR. BLAKE: Yes, sir.

11 JUDGE BOLLWERK: Mr. Silberg, did you want to say
12 something? All right.

13 Anything anybody from Utah wants to say on this
14 subject?

15 MS. CHANCELLOR: Judge Bollwerk, are you talking
16 about a discovery cut-off prior to six months, or if we have
17 a rationale for extending it, are you prepared to entertain
18 something longer than six months? Because I know --

19 JUDGE BOLLWERK: At this point I am prepared to
20 listen to what you have to say. You tell me what you think
21 is appropriate, and if you obviously have some justification
22 for it, I'm willing to listen to what you have to say. You
23 all are the ones who are going to be doing this. Again, my
24 concern was that the way this was laid out at this point,
25 there was just no end to this, and that's something that

1 does concern the Board. So you can talk among yourselves,
2 see what you think is appropriate, and if we don't feel that
3 way, we will obviously tell you something different. All
4 right.

5 Anything else anybody wants to talk about in terms
6 of discovery? And let me just interject that I think the
7 interview process is something that can be very useful to
8 you. Obviously it can avoid a lot of depositions if you
9 talk to someone and you find that they have no information
10 that's going to be useful to you, obviously there's no
11 reason to depose them.

12 Also, obviously it's a way to get information that
13 you can then use to request admissions from someone if you
14 want to. So that's a way of using it. I mean there's
15 different uses. I hope that you will actively pursue the
16 interviews, because I think that's a way of avoiding a lot
17 of deposition practice on your part. Think about ways to
18 use the interviews and to avoid, you know, taking
19 depositions which you'll have a limited number of, anyway.

20 All right. Nothing else on discovery, then I'll
21 raise this question briefly. Post-discovery disposition
22 motions. I take it we're getting toward the outside now.
23 Is there anything you would see coming up in that respect?
24 Anything you know now that you probably, after you've had
25 discovery, you'd move for a dispositive motion, file a

1 dispositive motion?

2 MR. BLAKE: Well, speaking for the Applicant, I
3 suspect at some point Utah B will be ripe for dispositive
4 motion, be it some time into discovery when it's apparent
5 that we all know enough to be able to move with it, or a
6 determination that there just aren't a lot of facts that
7 need to play a role in it, or even at the end, but at some
8 point I suspect at least that one contention, Judge
9 Bollwerk, will be the subject of a request by Applicant.

10 JUDGE BOLLWERK: All right. Anything the Staff
11 wants to say on that subject?

12 MR. TURK: Well, as the Board knows, the Staff
13 also filed a motion for reconsideration on Utah B, and I did
14 note in your denial of the motions for reconsideration on
15 that contention that the Board flagged that as a matter
16 which might be addressed in summary disposition, and I think
17 that's appropriate.

18 As far as the timing, I couldn't tell you now
19 whether any facts would be required. In my own view, the
20 Applicant's response to our motion for reconsideration
21 provided the only open -- filled in the only open window
22 that I thought was necessary, and that is would they be
23 operating as a contract carrier, and they confirmed that
24 they would be. So I don't need a need for facts on that,
25 but I'm not willing to say that we'll move for summary

1 disposition on that right away rather than waiting until
2 informal discovery progresses.

3 And there was another contention referenced in
4 your decision with the some sort of analysis, where the
5 Board denied the motion for reconsideration and noted in a
6 footnote that you weren't foreclosing the option of a motion
7 for summary disposition. That's another type of issue that
8 we'll look at.

9 JUDGE BOLLWERK: All right. Anything that -- Ms.
10 Curran, do you want to say anything on that subject? Anyone
11 from Utah?

12 MS. CURRAN: I'll defer to Ms. Chancellor.

13 JUDGE BOLLWERK: All right. Anybody from Utah
14 want to say anything about post-discovery dispositive
15 motions or anything that's been discussed here about Utah B,
16 or I can't remember the other contention, but --

17 MS. CHANCELLOR: Judge Bollwerk, our concern with
18 dispositive motions is having to address the ripeness issue
19 at the same time that we address the substantive issues, and
20 if we can work that out with PFS and the Applicant with
21 respect to ripeness, then that issue may go away. But I
22 disagree with Mr. Turk that factual issues aren't important
23 at Raleigh Junction, because until we know exactly what the
24 Applicant is going to do and how they are going to bring
25 those casks in there, that factual determination is very

1 important with respect to Utah B.

2 JUDGE BOLLWERK: Well, let me just point out one
3 thing that the NRC's rules do provide for, which is if they
4 feel it's appropriate to file a dispositive motion, they can
5 do so, and one of the objections that you can make is that
6 you need discovery or further facts. So that's in the rules
7 and I'll leave it to the parties to figure out how that
8 plays itself out.

9 One thing I would respect with respect to Utah B,
10 that if there is going to be some kind of a dispositive
11 motion filed with respect to that at some point, that in
12 terms of the moving parties, this would appear to be perhaps
13 the Applicant, that the Staff may consider filing a schedule
14 that would give them some kind of response shortly after the
15 dispositive motion is filed. It looks like you're basically
16 on the same side with respect to this issue. And that will
17 let Ms. Chancellor or whoever else wants to, respond to both
18 those filings, rather than have some kind of seriatim filing
19 period. That's something we would look at in terms of
20 setting a schedule. And if you all begin to talk about this
21 and think it's something you want to do, you ought to think
22 about that in terms of schedule as well.

23 MS. CURRAN: Judge Bollwerk?

24 JUDGE BOLLWERK: Yes.

25 MS. CURRAN: We may also want to put an end date

1 on motions for summary disposition, just so that the parties
2 aren't involved in responding to them at the time they're
3 preparing testimony.

4 JUDGE BOLLWERK: I would agree with that
5 wholeheartedly. I want those in and dealt with so that
6 you're not being pulled in too many different directions.

7 And, frankly, once we see what you come up with in
8 terms of discovery end point, that may be the point at which
9 we begin to think seriously about what that should be coming
10 down the line.

11 Let me move to the next issue I have, which is --
12 and these are more discussion points, I think, than
13 necessarily setting a schedule. Questions about prefiled
14 testimony and other prehearing filings. Be aware that we
15 will issue a prehearing order at some point which will
16 require the parties to exchange witness lists, exhibit
17 lists. We want prefiled exhibits, we will want to use
18 prefiled testimony. I don't know if that's a common
19 practice in Utah in terms of the courts or the
20 administrative agencies you practice before, but that's
21 something the NRC uses on a regular basis, prefiled
22 testimony.

23 We'll probably also call for motions in limine
24 with respect to the prefiled testimony to try to deal with
25 any evidentiary problems we have with the prefiled

1 testimony. All those are things that you should look
2 towards in terms of procedures that we will be using and
3 setting schedules for.

4 Also with respect to the prefiled exhibits, let me
5 just -- and exhibits in general in terms of the hearing, I
6 want to make it clear that I -- we do not want a document
7 dump in terms of exhibits. We want to see exhibits that are
8 sponsored by a witness, someone that can answer questions
9 about them, that relate to the prefiled testimony, not
10 simply a number of documents that are handed to the Board
11 and say, here, go look through these and you'll find the
12 answers. I think, you know, witnesses and exhibits should
13 be tied together in some way. We just don't want stipulated
14 exhibits that are put in that we have no relationship in
15 terms of the testimony or what you're trying to show with
16 them other than they're there, go look through them and find
17 out what we're -- the point we're trying to make.

18 Is that clear? Is there anything I need to say
19 about that further? All right.

20 JUDGE LAM: That's a very important point I'd like
21 to emphasize. A big document dump on the Board will not be
22 acceptable.

23 JUDGE BOLLWERK: Send us documents, make sure
24 they're tied to a witness, and there's someone that can talk
25 about them, they have some relevance to the case, obviously,

1 other than just being put in for what they're worth.

2 All right. Anyone have any questions on those
3 subjects that I've just talked about briefly?

4 All right. Getting a little further out, in terms
5 of hearing requirements, just so that you'll know. We will
6 require cross examination plans. Those are discussed in our
7 rules under 2.743(b)(2). I think the rules are fairly clear
8 on what they require. Basically when you cross examine a
9 witness, you have to give the Board a cross examination plan
10 before you start your examination. It says with us, it does
11 not go out to the other parties, at least until the initial
12 decision is issued. That's another standard part of NRC
13 practice.

14 Also just again I'll remind you, the rules provide
15 for an original and two copies of exhibits, and I'm not
16 going to admit them unless I have got them. So don't show
17 up with less, all right? This is a word to the wise. We're
18 way down the line here, but I don't want you to come back to
19 me and say I never heard that before. That's in 2.743(f) of
20 the rules, 10 CFR.

21 The other thing I should mention, we talked among
22 ourselves and we sort of envision parts of this beginning to
23 go to hearing by next spring. I don't know what the parties
24 have in mind, but begin to see what you want in terms of
25 discovery and some of these other dates, but that's what

1 we're beginning to look towards, getting at least parts of
2 this, assuming we can get a little bit firmer schedule and
3 we get a look at particular issues, something going to
4 hearing in the spring time next year. It may be earlier if
5 we can arrange that, but that's certainly the outer side.

6 Anybody have anything they want to say about that?
7 All right.

8 Any comments on anything I've raised up to this
9 point?

10 MR. BLAKE: I have a couple of comments, Judge
11 Bollwerk.

12 JUDGE BOLLWERK: Sure.

13 MR. BLAKE: One, with regard to cross examination,
14 we were not able to tell from the Board's order whether or
15 not you were going to advocate lead party responsibilities
16 with regard to cross examination as well.

17 JUDGE BOLLWERK: The answer to that is absolutely.

18 MR. BLAKE: And the other --

19 JUDGE BOLLWERK: My preference is to see one cross
20 examiner, the lead cross examiner, or if the party needs to
21 have two counsel working on it. We will obviously entertain
22 requests from other parties that are involved with the
23 contention if they want to conduct cross examination, but
24 obviously then -- excuse me, the cross examination plan is
25 going to be very important. In fact, they may need to

1 probably present it to us up front so that we can see
2 there's something they want to talk about that is different
3 from what the lead counsel are going to get into.

4 MR. BLAKE: But you would expect us, for example,
5 to work with Mr. Quintana to develop a cross examination
6 plan in which one or the other of us would conduct?

7 JUDGE BOLLWERK: That's correct.

8 MR. BLAKE: And the same thing with regard to the
9 intervening parties?

10 JUDGE BOLLWERK: And obviously we've designated
11 you as the lead party for basically opposing the
12 contentions. Up to this point -- excuse me -- I haven't
13 heard anything from Mr. Quintana or from you saying you want
14 to change that with respect to any contention. That's
15 something you can do.

16 MR. BLAKE: The other point I wanted to make was
17 with regard to your comment about potentially going to
18 hearing next spring and to couple that with Ms. Curran's
19 suggestion which was a good one that you don't want to have
20 summary disposition motions at the same time you're trying
21 to prepare testimony and get on with hearing, it may be
22 apparent to everybody, but clearly we won't be ready with
23 everything. We'll be ready with some, and there's going to
24 be iterations, and we're going to have new information in a
25 variety of ways. We have said that we are studying, for

1 example, transportation routes, and we are going to have new
2 information all the way along with regard to each of the
3 areas. We are going to keep the Board and the parties
4 apprised as we develop or have new information, and that
5 will, I'm sure at times, occasion additional either informal
6 or formal discovery in different time frames for different
7 issues. I don't know what we provide a week from now, how
8 real helpful it's going to be to you to know one date when
9 we think something is going to happen, because I think there
10 are going to be a lot of different dates for a lot of
11 different subjects in this proceeding in order to make it
12 work really efficiently.

13 JUDGE BOLLWERK: One of the things I would see
14 with respect to -- and one of the things we'll talk about
15 -- is the status report on discovery. And one of the things
16 I'd like to see in terms of that status report is issues
17 that you're talking about, or contentions you're dealing
18 with, the witnesses you're interviewing, and some ideas
19 about, you know, where you think discovery on something has
20 ended, a particular issue.

21 I don't want to Balkanize this case too much in
22 terms of issue by issue. On the other hand, it doesn't
23 necessarily all have to go at once, I agree. So they're
24 subject to, you know, everyone's schedules. We can try this
25 in part, I have no problem. It will probably make it, to

1 some degree, less stressful on everyone if we are together
2 for a week or two and then break for several weeks, rather
3 than being together for a month, trying to try everything at
4 once. So -- but that's something we need to look at, you're
5 right. And the Board has some flexibility in that regard,
6 although again the ultimate goal being that all these issues
7 get tried in an expeditious manner.

8 All right. Anybody want to say anything on that
9 subject?

10 MS. CHANCELLOR: Judge Bollwerk.

11 JUDGE BOLLWERK: Yes.

12 MS. CHANCELLOR: With respect -- Ernie raises a
13 good point. There will be ongoing information that PFS is
14 developing; for example, the seismicity and soil stability,
15 they will be doing extra studies out there. And this may
16 bring in some additional late-filed contentions or
17 amendments to contentions that already have been filed, and
18 I assume that even if you have an absolute cut-off date for
19 discovery, if we have additional admitted contentions, that
20 that discovery schedule could somehow be changed to
21 accommodate that. Just given the ongoing nature of the
22 information that is being produced, it's going to be
23 difficult to say when a final contention will be filed.

24 JUDGE BOLLWERK: Well, that's something we have to
25 take into account, although we can't hold this case over

1 forever based on -- open forever waiting for information to
2 come in. I mean all good things must come to an end at some
3 point. So you're right, Ms. Chancellor, that a possibility
4 of late-filed contentions always opens the possibility of
5 discovery and a limited basis has to be reopened.

6 On the other hand, you know, there does come a
7 point where things need to get cut off and move forward. So
8 we'll just have to deal with that on a case-by-case basis
9 and see where we're at.

10 All right.

11 MR. TURK: Just to be sure I understand something,
12 I believe you just addressed it, cross examination.

13 JUDGE BOLLWERK: Yes.

14 MR. TURK: It is my understanding that the Staff
15 can cross examine on its own behalf; the Applicant or Skull
16 Valley would take the lead, depending on their agreement.

17 JUDGE BOLLWERK: That's correct.

18 MR. TURK: And the Intervenors would have a single
19 party doing cross examination on their behalf.

20 JUDGE BOLLWERK: Correct. Subject, of course, to
21 the -- someone having an interest they feel for whatever
22 reason is not being represented by the cross examination
23 that's been planned, and they can come to us then and
24 request that they be allowed to ask additional questions. I
25 would see that as an exception rather than a rule, frankly.

1 I think the lead parties can, for the most part, take care
2 of this. I wouldn't see that there'd be a need to break
3 things up extensively. I do want to leave some flexibility.
4 I don't want someone to feel that there's something they
5 want to raise and, for whatever reason, the lead party
6 doesn't feel it's appropriate, that they can't come to the
7 Board and request it. But I would really believe that the
8 lead parties can deal with the bulk of cross examination for
9 the issues.

10 MR. QUINTANA: With regards to Skull Valley, I
11 would anticipate that that would be the procedure that would
12 be followed. Absent some compelling reasons, I would expect
13 that the Applicant would be doing most of the cross
14 examination. Unless there was some urgency, then and only
15 then would we approach the Board for separate questioning.

16 JUDGE BOLLWERK: Okay. Thank you, Mr. Quintana.
17 Anything anybody else wants to say on this
18 subject?

19 All right. The last -- or the second last thing I
20 have on my list is the question of settlement, and I guess
21 it was raised in the -- excuse me, in the status report.
22 There were some discussions, I guess, about Utah T. We are
23 only several days beyond that. Is there anything else
24 anybody wants to say on that subject?

25 MR. BLAKE: No. We'd be happy to hear something

1 more, but we don't have anything more.

2 JUDGE BOLLWERK: All right.

3 MS. CHANCELLOR: No, we don't have anything.

4 JUDGE BOLLWERK: All right. Again let me urge you
5 to look at these issues. If there's a way that parts of
6 them, any part of them can be settled, that's something the
7 Board would encourage you to do. If there's some way we can
8 facilitate that, let us know. We don't -- given the
9 Commission's general policy about settlement, we can't get
10 too deeply into the merits with you, but if we can
11 facilitate it in some way, or we can always appoint a
12 settlement judge for a particular issue, and that's
13 something we are glad to entertain, if that's something the
14 parties would be interested in. So just let us know, and
15 we'll raise that question from time to time, and if there's
16 something in particular that we see as discovery goes along,
17 we think perhaps there's an opening, we may make some
18 suggestions about things that maybe they need to take a
19 careful look at.

20 All right. Anything else anybody wants to say on
21 settlement?

22 I have a couple other matters that fall into a
23 more general category. One with respect to the extension of
24 page limitations and filing dates. Recently Mr. Turk came
25 to me and asked for an extension basically sort of on the

1 three days I guess we set out in the motion, and at that
2 point it dealt with the reconsideration motion, which I
3 recognized you were responding to 200 pages in a fairly
4 short period of time. So when he indicated to me that other
5 parties were interested, at that point, hanging up the phone
6 didn't seem the appropriate response to me.

7 MR. TURK: Your Honor, to be fair to myself, I
8 would note it was two business days.

9 JUDGE BOLLWERK: Two business days.

10 MR. TURK: Right. And I made the mistake of not
11 realizing that I can't count the date itself that I
12 requested. If I was able to count that date, it would have
13 been three days.

14 JUDGE BOLLWERK: Right.

15 MR. TURK: And I apologize for that.

16 JUDGE BOLLWERK: Not a problem. And I understood.
17 I do want to reiterate, though, that I'd like to see those
18 within three business days, if at all possible. I recognize
19 that people get sick, problems arise, and you don't
20 necessarily not contact us, but please have a good reason if
21 you feel you can't make it within three business days, all
22 right? I don't want to cut that off, but that's a pretty
23 --I like to see that as a fairly firm rule absent something
24 extraordinary that you hadn't anticipated. All right. And
25 I think in this instance, it inured to everyone's benefit,

1 in any event, Mr. Turk, so you made the right call this
2 time.

3 One other thing. I guess there was a question
4 that came up about Board contacts with the parties regarding
5 scheduling, and this is sort of a related matter. When Mr.
6 Turk had called me, he mentioned one of the possibilities
7 perhaps of an alternate schedule moving the prehearing date.
8 At that point I couldn't make any commitment, basically
9 because of the interaction we have with the State of Utah,
10 with Utah University in setting this whole thing up.

11 I then got back to him and made a couple of
12 alternate suggestions, and I think there was some concern
13 that this constituted ex parte contact, so there was
14 something improper going on. I have to say, as the author
15 of this agency's ex parte and separation of functions rule,
16 I didn't see anything wrong with it, and I just want to make
17 it clear to you, I don't deal in a lot of off-the-record
18 contacts with parties. I will talk to you if you call me,
19 and I will cut it off if I think there's something
20 inappropriate going on. In this instance I felt that Mr.
21 Turk had made a request, the Board thought we could
22 accommodate it to a certain degree, and we'd asked him to
23 take the lead in checking with the parties and see who was
24 interested. I don't think there is anything inappropriate
25 with that. Frankly, if the State of Utah called me and made

1 the same call, I would have probably talked to Ms.
2 Chancellor and asked her to do it. It wasn't -- it was
3 simply an accommodation to the Board to see if we could work
4 something out that everybody would like a later date in
5 terms of the filing in the prehearing conference. It didn't
6 work out that way, so be it.

7 But again, I wanted to make clear to you, I didn't
8 -- I don't consider it an improper contact. I will do it
9 again if I think it's necessary, if it will help the Board
10 and expedite the proceeding. I don't think there's any
11 problem with it. But if anybody else wants to address that,
12 I'll be glad to listen at this point.

13 MR. TURK: I would just note for myself, Your
14 Honor, that I would never contact the Board to discuss
15 anything of a substantive nature, and as I view the ex parte
16 rule, contacts to discuss the schedule are permissible. But
17 even there I wouldn't have done it except to alert you to
18 the fact that I'd be coming in with a motion, and I think it
19 was appropriate. I did talk to the parties and I did
20 summarize their views and circulated their views among all
21 the parties and, in fact, I sent them out to the Board as
22 well. So there was no ex parte contact.

23 I would note that even if ex parte contact was
24 ever made in a proceeding, the way to redress that is for
25 full disclosure to be made so that all parties are aware.

1 So even if somebody had viewed this as ex parte, there was a
2 full disclosure and no concealment. So I really don't see a
3 basis to complain about what was done. But I'm perfectly
4 willing not to be the contact point. I'm perfectly willing
5 to let all parties participate in a conference call. I
6 would prefer it myself.

7 JUDGE BOLLWERK: And again, from the Board's
8 perspective, it was my hope that we could -- maybe next time
9 we'll call someone different, I guess, if we have to do
10 this, but as a way of expediting things, and it seemed to be
11 in the parties' interest to get this word out.

12 Ms. Chancellor, is there anything further you want
13 to say on the subject?

14 MS. CHANCELLOR: No. It's just very different
15 from the practice that we are usually involved with.

16 MS. CURRAN: I would like to say something.

17 JUDGE BOLLWERK: Sure.

18 MS. CURRAN: Just ask for some clarification that
19 contacts for purposes of seeing whether you would entertain
20 a motion are appropriate, but I'm just concerned that
21 although procedural issues aren't technically merits issues,
22 they can affect the merits of a determination in terms of
23 providing people with enough time or enough pages or
24 whatever to address the merits. So to me, there's a bit of
25 a gray area there, and that's why I feel more comfortable

1 if, when parties are contacting the Board about requests for
2 extension, that we get on the phone together.

3 JUDGE BOLLWERK: Well, let me just say one thing.
4 It is not my practice, and probably not something I'd --
5 other than when we're all appearing together, to grant
6 motions over the phone, other than if I receive a request
7 that says a motion is coming in, we talk to everybody and
8 this is what it says, and I might tell someone, all right,
9 given that, I'll have to talk to my colleagues, but it's
10 very likely that we would look favorably on it.

11 But I don't accept motions over the phone orally,
12 and I don't grant them orally, generally. So that's
13 something you can be sure of.

14 MS. CURRAN: Okay.

15 JUDGE BOLLWERK: I prefer to see them in paper, in
16 writing. I recognize that's a little bit of a hassle
17 sometimes. Nonetheless, I think that's the better practice.
18 Everybody put it in writing, and that way it's out there for
19 everyone to see. All right? Although I would hope from
20 time to time if we need something, we can come to you and
21 ask you to help us out with certain matters. I hope we're
22 not being -- you're not foreclosing us from that because of
23 the concern about ex parte considerations. Is that -- we'll
24 see. All right. We'll take that up if it comes up again.
25 All right.

1 We set a couple dates here. One, I guess you all
2 are supposed to get back to us by May 27th with a status
3 regarding discovery, a cut-off for discovery, and that's
4 something -- is that going to be a joint filing, I take it?
5 Something -- or if parties have disagreement, they can, you
6 know, express different views in the same document.

7 MR. BLAKE: We can find a way of getting the
8 information to you.

9 JUDGE BOLLWERK: All right.

10 MR. BLAKE: Hopefully in one letter.

11 JUDGE BOLLWERK: And then I think the Staff is
12 going to give us some kind of report by the 15th of June on
13 the status of schedules if they agree they can give us
14 anything more concrete?

15 MR. TURK: Yes, Your Honor.

16 JUDGE BOLLWERK: All right. I would suspect after
17 we -- I'm not sure if we'll do it after we receive the first
18 status report, the one on the discovery cut-off date, or
19 after the date of the 15th report, we will be issuing some
20 kind of an order relating to discovery cut-off at a minimum,
21 perhaps setting some other dates. We'll have to see what we
22 get from you all and talk among ourselves.

23 I think, given the status report you sent us
24 indicated you would be ready to start informal discovery
25 when we ruled on the reconsideration motion, having done

1 that, I guess you can go forth now and begin informal
2 discovery. I don't think there's anything that would
3 preclude that. Is anyone aware of anything, any reason they
4 should not begin at this point?

5 I would also indicate that when we issue an order
6 dealing with discovery, we'll have -- there will be a status
7 report probably -- the first one perhaps we'll have in
8 writing, then from there on, maybe we'll do oral contacts,
9 with another conference like this to talk about things. I
10 would see those probably occurring about every month, six
11 weeks. Again I'll look at that in terms of the cut-off,
12 discovery cut-off date that you all suggest and what we
13 finally decide to set. All right?

14 And again, one of the things we're going to want
15 to hear in those status reports is sort of a little detail
16 about what you're doing, not just "everything's going well,"
17 but "we're looking at this issue, this issue, this issue; we
18 talked with these parties," and also any problems that are
19 coming up, especially in the informal process, obviously.
20 If you are running into issues that are causing you
21 problems, let us know about those, and we may be able to
22 help, or if nothing else, we'll know that's something we
23 need to look for obviously toward formal discovery and the
24 amount of time you're going to need for that sort of thing
25 if you're running into a lot of problems.

1 Also we will be available if informal discovery
2 goes forward, if you need to talk with us at some point
3 about a problem, you know, feel free to call us. We're --
4 you've got our phone numbers, we're here. Judge Kline ruled
5 on a discovery request the other day when one of the legal
6 members wasn't available. So you can get him involved. It
7 was a different case, not this one.

8 Anything any of the parties want to raise with the
9 Board at this point?

10 MR. BLAKE: I can provide an answer to a query the
11 Board had in this motion for reconsideration. In footnote 3
12 on page 14 of that order, the Board referred to a request by
13 the State to recouch the language in one of the contentions,
14 and it had been, as the Board pointed out, a stipulated-to
15 or agreed-upon wording of the contention.

16 The Applicant doesn't have a problem with the
17 rewording. We had not intended it to be restricted to one
18 bird. But I must say, I am disappointed, having worked as
19 hard as we did to try to come up with language, that if
20 there was this fairly small difference or question about it,
21 that we just weren't contacted rather than feel the need to
22 put it into a formal motion. I would hope that we would
23 continue to work more closely as we have up to this point.
24 And other than that disappointment, I don't have a problem
25 with the rewording, to remove that from that question, Judge

1 Bollwerk.

2 JUDGE BOLLWERK: All right. Anything you want to
3 say on that subject, Ms. Chancellor?

4 MS. CHANCELLOR: No. Sorry, Your Honor. I do
5 have something on something else, though, if I could have a
6 moment.

7 JUDGE BOLLWERK: Let me just close the loop on
8 this, then. Given that representation, we will go ahead and
9 issue an order that reframes the contention in terms of the
10 way Ms. Chancellor had asked for it to be redrafted. If
11 there's no objection from the Staff.

12 MR. TURK: No.

13 JUDGE BOLLWERK: I'm not hearing any. I think you
14 would have said something by this point. So, all right,
15 then we'll go ahead and redraft it and issue an order that
16 indicates that the language as you suggested in your
17 reconsideration response.

18 All right, you had another matter you wanted to
19 raise?

20 MS. CHANCELLOR: Yes. There is one motion that we
21 have out there, and that's a change in designation of lead
22 party for financial assurance, Utah E. And I assume that we
23 will receive a ruling from you shortly on that?

24 JUDGE BOLLWERK: Right. And, in fact, there will
25 not be a problem with that. That's something I sort of

1 envisioned doing all in one order dealing with discovery,
2 but it may -- that may be delayed a little bit, so I'll go
3 ahead and issue something on that. But you can -- what will
4 happen is we will grant the request for the redesignation.

5 MS. CHANCELLOR: Thank you.

6 JUDGE BOLLWERK: And is there anything else with
7 respect to redesignation or any issue that we need to be
8 aware of? I don't think so. I think that was the only
9 request that was made formally. So, all right, anything
10 else anyone wants to raise with the Board at this point?

11 MR. TURK: I would point out one matter, just for
12 information, Your Honor. At some point we had addressed
13 physical security requirements. I know there is another
14 Board which has been appointed to rule on those kinds of
15 matters, but I would just want to note for the parties and
16 this Board's information that the final physical security
17 plan rule has been published. Reference can be found to it
18 and the rule is printed out in full at 63 Federal Register
19 26955, published on May 15, 1998. I recognize that the
20 physical security plan is not presently before this Board,
21 but I thought all parties and the Board should be aware of
22 that.

23 JUDGE BOLLWERK: All right. Did you get that
24 citation, Ms. Chancellor? You wanted it --

25 MS. CHANCELLOR: We already have the rule, thank

1 you.

2 JUDGE BOLLWERK: Okay. All right. Anything else
3 at this point that the parties want to bring to the Board's
4 attention?

5 All right. Anything that the Board members want
6 to raise at this point? All right.

7 All right, then I thank you all. We'll go off the
8 record at this point, and then if you've got a second, I'd
9 like to sort of get your impressions of how this worked from
10 the other end. And we can talk about that, we don't need to
11 do that on the record. So at this point we'll stand
12 adjourned. Thank you.

13 [Whereupon, at 2:25 p.m., the prehearing
14 conference was concluded.]

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REPORTER'S CERTIFICATE

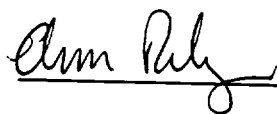
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DOCKET NUMBER: 72-22-ISFSI

PLACE OF PROCEEDING: Rockville, MD

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