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Title: Private Fuel Storage, LLC
Pre-Hearing Conference

Docket Number: 72-22-ISFSI; ASLBP No.: 97-732-02-ISFSI

Location: Rockville, Maryland

Date: Thursday, January 17, 2002

Work Order No.: NRC-178

Pages 2706-2869

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

PREHEARING VIDEOCONFERENCE

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In the matter of: :

PRIVATE FUEL STORAGE, LLC : Docket No. 72-22-ISFSI

(Independent Spent Fuel : ASLBP No. 97-732-02-ISFSI

Storage Installation) :

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Thursday, January 17, 2002

Room 3B45

Two White Flint North

Rockville, Maryland

The above entitled matter came on for hearing,
pursuant to notice, at 12:00 noon.

BEFORE:

THE HONORABLE MICHAEL C. FARRAR, CHAIRMAN

THE HONORABLE JERRY R. KLINE, ADMINISTRATIVE JUDGE

THE HONORABLE PETER S. LAM, ADMINISTRATIVE JUDGE

THE HONORABLE PAUL B. BOLLWERK, ADMINISTRATIVE JUDGE

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

12:00 p.m.

1
2
3 CHAIRMAN FARRAR: Good afternoon. We're
4 here for the pre-hearing conference in the private
5 fuel storage matter. I'm Mike Farrar. Before we do
6 the rest of the introductions, let me check with our
7 folks in Utah. Ms. Chancellor, are you there and
8 hearing us all right?

9 MS. CHANCELLOR: Yes, we are, Judge
10 Farrar.

11 CHAIRMAN FARRAR: Okay. Which one are
12 you? Okay. Thank you. The two Mr. EchoHawk, you're
13 on the conference phone?

14 MR. M. ECHOHAWK: Yes, Your Honor.

15 CHAIRMAN FARRAR: Okay. And Tim Vollmann
16 said he might be a little late calling in and will
17 only be with us for an hour, so we'll have him on when
18 he gets here.

19 As I said, I'm Mike Farrar. I was
20 appointed on December 19 by Judge Bollwerk to take
21 over part of this case with him maintaining with
22 Judges Lam and Kline, whom you know, other aspects of
23 it. I might say I'm delighted to be in the enviable
24 position of stepping into a case at this stage with
25 much of the work having been done ahead of time and

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1 for that of course I want to compliment Judge Bollwerk
2 who's here with us. Only those of us here who are
3 working here know how much effort he has put into
4 this, and that ought to be recognized.

5 Mr. Silberg, will you introduce your
6 group?

7 MR. SILBERG: Yes. Good morning, good
8 afternoon, Your Honors. I'm Jay Silberg, a partner
9 with the law firm of Shaw Pittman, representing the
10 Applicant, Private Fuel Storage. With me here today
11 are my partners Paul Gaukler and Matias Travieso-Diaz.

12 CHAIRMAN FARRAR: Thank you. Mr. Turk, do
13 the same.

14 MR. TURK: Thank you, Your Honor. Good
15 morning. My name is Sherwin Turk, I'm Counsel with
16 the NRC Staff. To my left is Catherine Marco and to
17 her left, Martin O'Neill, also Counsel with NRC Staff.
18 Behind us in the audience I'd like to introduce to
19 Your Honors some members of the technical staff who've
20 been working very hard in this proceeding. First --
21 and I would ask each of them to rise, if you don't
22 mind, just to identify themselves.

23 CHAIRMAN FARRAR: Fine.

24 MR. TURK: First, Mark Deligatti, Project
25 Manager with the Spent Fuel Project Office on this

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1 application. Next to him, Mr. Michael Waters, who's
2 backup Project Manager for the PFS application. And
3 next to him, Mr. Chester Poslusny, who is Project
4 Manager on the Environmental Impact Statement of the
5 PFS facility.

6 CHAIRMAN FARRAR: All right. Fine. Thank
7 you. The rest of the people in the audience are our
8 colleagues of one kind or another, except for one
9 woman in the back who's -- you can introduce yourself
10 if you want to or not if you don't want to. And we
11 have up here Will Kaiser who's one of our law clerks.

12 Ms. Chancellor, do you want to do the
13 introductions out there, please?

14 MS. CHANCELLOR: Good morning, Judge
15 Farrar. I'm Denise Chancellor from the State of Utah.
16 To my right is Connie Nakahara, and to her right is
17 Jim Soper, all the Assistant Attorney Generals
18 representing the State of Utah.

19 CHAIRMAN FARRAR: All right. Is anyone
20 else out there in the room with you?

21 MS. CHANCELLOR: Yes, Your Honor. We have
22 two other people from the state. They're not
23 necessarily official representatives. Jeanne Braxton,
24 Paralegal, and Helen Frolich, an attorney.

25 CHAIRMAN FARRAR: Okay.

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1 MS. CHANCELLOR: And there are some other
2 people in the audience.

3 CHAIRMAN FARRAR: Yes. We were expecting
4 Jero Walker from SUWA to be there. Is she there?

5 MS. CHANCELLOR: No, she isn't, Your
6 Honor.

7 CHAIRMAN FARRAR: And do the other people
8 there want to introduce themselves?

9 MS. MARTIN: I am Sue Martin. I handle
10 Public Affairs, Community Relations for Private Fuel
11 Storage. I'm here only as a spectator.

12 CHAIRMAN FARRAR: Okay. Thank you, Ms.
13 Martin. All right. Then let's get started. One
14 little housekeeping matter just to put on the record.
15 Mr. Gaukler, while it was a long time ago and we were
16 much younger people, you were once an intrepid law
17 clerk like Will for the Appeal Board when I was on the
18 AEC-NRC Appeal Board from 1973 to 1980. I think you
19 were a law clerk from '75 to '77. I don't think I've
20 seen you or spoken to you in the last 20 years, but I
21 just wanted that to be on the record. There's no
22 conflict or other matter there, but I just wanted that
23 to be stated.

24 JUDGE LAM: I'd like to add to Judge
25 Farrar's earlier remarks about Judge Bollwerk. For

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1 five long years, Judge Bollwerk has served this
2 Licensing Board as Chairman with dedication,
3 professionalism and hard work. He is an extremely
4 capable lawyer who's fair, who doesn't make up his
5 mind until he listens to everybody's argument. For
6 that I am appreciative of his service and am delighted
7 to state for the record that his service is immensely
8 appreciated.

9 CHAIRMAN FARRAR: Thank you, Judge Lam.

10 JUDGE BOLLWERK: Just for the record, let
11 me say, thank you for the eulogy, but I'm not dead
12 yet.

13 (Laughter.)

14 JUDGE LAM: And may I add, he's served
15 this Licensing Board with humor as well.

16 CHAIRMAN FARRAR: You all have the agenda
17 that we sent out. Second item in the first matter is
18 the purpose. We're here of course to get ready for
19 the hearing scheduled for April, but from the Board's
20 point of view we're looking farther ahead to the
21 preparation of an initial decision after that hearing.
22 So any of the burdens that we put on you that you may
23 think are unusual or difficult to deal with are all
24 designed so that after the hearing is over we are in
25 a position to write a decision that takes account of

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1 all the evidence, is fair and is done in a timely
2 fashion. So any suggestions or dictates that we have,
3 we hope you take them in that spirit.

4 In terms of procedures, we will go for
5 maybe an hour and a quarter, hour and a half and take
6 a break. Then maybe after two and a half hours take
7 a look at where we stand and then decide if we need to
8 take a lunch break. Ms. Chancellor, the Board had a
9 brown bag lunch a few minutes ago, so we're not
10 discriminating against you all in terms of what we
11 wanted to do at your end. Anyone who needs to leave
12 temporarily for the bathroom or whatever, feel free to
13 go. You each have other people here representing you,
14 so just slip out and slip back, and we may save some
15 time that way.

16 MR. TURK: Your Honor, if I may, before
17 proceeding, I'd like to introduce one more member of
18 the NRC Staff Legal Team. To my right is Robert
19 Weisman, Counsel with NRC Staff.

20 CHAIRMAN FARRAR: Thank you, Mr. Turk.
21 I've never used this precise equipment before. We
22 have the -- I'm sorry, Mr. EchoHawk, go ahead and
23 introduce yourself formally.

24 MR. M. ECHOHAWK: This is Mark EchoHawk,
25 and I have here with me Paul EchoHawk as well. We are

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1 Counsel from OGD, and we're linked into the
2 teleconference equipment.

3 CHAIRMAN FARRAR: Okay. And since I'm
4 juggling between us and the people in Utah, if I
5 forget you, please speak up. In terms of the other
6 people, if you get tired of holding up your hand,
7 since we don't have a real order of proceeding here
8 like we do in a trial, feel free to turn your name tag
9 on end instead of having your card up. Ms.
10 Chancellor, if you'll have some visual signal there so
11 I know not to forget you, we'll proceed the same way.

12 MR. VOLLMANN: Judge Farrar, my name is
13 Tim Vollmann, and I'm the attorney for the Skull
14 Valley Band, and I'm connected by telephone from
15 Albuquerque, New Mexico.

16 CHAIRMAN FARRAR: Okay. Thank you, Mr.
17 Vollmann. Last time we had polled you were not on
18 there, and I announced that you would be coming in
19 later. We will attempt to -- you still under a one-
20 hour time limitation?

21 MR. VOLLMANN: I can go a little longer
22 than that. Thank you.

23 CHAIRMAN FARRAR: Okay. Well, we will try
24 to take up your matters as early as possible.

25 Second item is a review of the pending

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1 contentions. By my count we have six. Someone
2 correct me if I'm wrong. We have the seismic -- what
3 are called the -- what look like the more complicated
4 issues, seismic and accidents. That's Utah
5 Contentions L and QQ and Utah Contention K. We then
6 have less complex issues: hydrology, Utah O, and
7 what's left of the species contention, Utah DD, which
8 involves the Perigrine Falcon. We have SUWA B's
9 railroad line issue. And, Ms. Chancellor, be sure to
10 speak up when Ms. Walker shows up.

11 MS. CHANCELLOR: Yes, certainly, I will,
12 Your Honor.

13 CHAIRMAN FARRAR: Okay. And then we have
14 the environmental justice contention, which is pending
15 before the Board. That's OGD's Contention O, which is
16 pending before the Board on a summary disposition
17 motion.

18 In terms of schedule activities, the Staff
19 has fairly recently put out the supplemental safety
20 evaluation report and the final environmental impact
21 statement, so I know that has triggered some
22 activities. We have the discovery going on on newly
23 admitted Contention QQ and on any new things arising
24 from the recent documents.

25 Tell me, in terms of me getting a feel for

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1 this, Mr. Silberg, you filed a number of motions for
2 summary disposition. The ones that are denied, is
3 the pre-filed testimony you'll do essentially the same
4 as the affidavits you submit with the motions for
5 summary disposition or do you -- this is not to pin
6 you down but just to give me a feel of what you all
7 are doing right now.

8 MR. SILBERG: With respect to SUWA B, Utah
9 O and Utah DD, we would estimate that our testimony
10 would look similar, largely similar to what was
11 submitted. There probably will be some additional
12 materials. With respect to Utah K, there's a very
13 large volume of material that has been prepared and
14 made available to all of the parties. That material
15 will be the basis for the testimony. I don't know
16 that it will look exactly like the affidavits that
17 were submitted, but I would think it -- the
18 information in the affidavits would certainly be
19 largely included, to the extent that there are issues
20 that haven't been dismissed.

21 Seismic will be significantly different,
22 largely because the QQ issues have not previously been
23 briefed. They were not the matter subject to summary
24 disposition. And there are some issues which have
25 been resolved and probably are not part of the unified

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1 contention, which we'll discuss later. So I think
2 there will be for seismic significant differences
3 between what has been submitted and what is not.

4 With respect to OGD O, we simply don't
5 know, a, whether there's going to be an issue, and if
6 so, what is the scope of that issue. So I'm not in a
7 position to make any statements as to the status of
8 that. And there's one other contention that was not
9 mentioned before, and that's Security J.

10 CHAIRMAN FARRAR: That's Judge Bollwerk's
11 Board's issue. That's been held in obedience --

12 MR. SILBERG: Correct.

13 CHAIRMAN FARRAR: -- and is awaiting the
14 lawsuit in Salt Lake where you have a hearing on April
15 11?

16 MR. SILBERG: That's correct. Well, the
17 status of that I think is something that we would like
18 to discuss today.

19 CHAIRMAN FARRAR: Let's hold that. You
20 reminded me in mentioning OGD O and for the benefit of
21 the two parties on by telephone, I would hope we would
22 have that decision out by Friday, February 1, but of
23 course we can't promise that. You'll all get it when
24 it's issued. For current, when we get to talking
25 about schedule, since that is still a pending issue,

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1 after I hear how long you think other issues will
2 take, we could say how much time would have to be
3 reserved for that in the event that issue were
4 required to go to hearing.

5 Now, since that's -- let me depart a
6 little from the agenda. Mr. Vollmann, let me ask you,
7 to what extent, and particularly since you have to
8 leave in the next hour or so, to what extent do you
9 plan to be an active participant in the issues other
10 than OGD O? Go ahead.

11 MR. VOLLMANN: At this point, Judge, I
12 don't expect to be particularly active. It probably
13 depends on the disposition of the Applicant's motion
14 on OGD O, but I do not expect to be very active in the
15 hearing process.

16 CHAIRMAN FARRAR: I meant on the issues
17 other than OGD O. Those you would not --

18 MR. VOLLMANN: That's correct.

19 CHAIRMAN FARRAR: How about on OGD O if
20 that did go to hearing?

21 MR. VOLLMANN: I would expect to be active
22 in that.

23 CHAIRMAN FARRAR: Okay.

24 MR. SILBERG: Excuse me, Judge Farrar,
25 there's one other contention that is still pending,

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1 pre-hearing pending. And that is there's a motion for
2 summary disposition, another of Judge Bollwerk's
3 issues, pending on the model services agreement aspect
4 of Utah E.

5 CHAIRMAN FARRAR: Okay. I didn't know
6 that. Judge Bollwerk, of course, knew it. Thank you.
7 Mr. EchoHawk, either one of you, on issues other than
8 OGD O, do you expect to be taking any kind of a role?

9 MR. M. ECHOHAWK: No, Your Honor.

10 CHAIRMAN FARRAR: Okay. Thank you. Ms.
11 Chancellor, in line with -- did you want to add
12 anything to the discussion we just had about the
13 pending issues and roles of people? I think I know
14 what your role will be in all of them, but I'll give
15 you a chance to be heard.

16 MS. CHANCELLOR: Similar to what Mr.
17 Silberg related to you, I don't think you will see any
18 surprises in the State's testimony. You will have had
19 a preview of the issues in Utah QQ, because they were
20 also raised in Utah L Part B as to what was in and
21 what was out with respect to the seismic exemption,
22 with respect to PSF's conservatism of the facility.
23 Hydrology, we may flush that out a little more,
24 because now it's limited to non-radiologics. DD
25 species should pretty much track the declaration. And

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1 with respect to aircraft crashes, to the extent that
2 there are new issues that have been raised since the
3 summary disposition stage or new information that has
4 come out since the summary disposition stage, we'll
5 need to evaluate that. And, of course, with QQ, we
6 won't know those issues until we've finished
7 discovery.

8 CHAIRMAN FARRAR: Now, am I correct for
9 all of you that the discovery that's now going on with
10 respect to the two recent Staff documents and the
11 discovery for QQ is all on the same schedule? Who
12 wants to help me with that?

13 MR. SILBERG: In terms of discovery for
14 the two Staff documents, I don't believe there is any.
15 The State has -- all parties have the right to propose
16 late filed contentions based on new documents, and the
17 State has filed a motion for an extension of time that
18 we received late yesterday with respect to the FEIS.
19 So I don't believe there's any discovery on the FEIS?

20 MR. GAUKLER: There's discovery on the
21 FEIS.

22 MS. CHANCELLOR: Judge Farrar?

23 CHAIRMAN FARRAR: Yes, ma'am?

24 MS. CHANCELLOR: With respect to new
25 issues in Utah L, based on the Staff supplemental

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1 SSER, the discovery window there is from January 2
2 through early February. It's 30 days, February 1. We
3 are considering submitting some written discovery to
4 the Staff. We don't anticipate taking any
5 depositions, but the new issues in Utah L, based on
6 the SSER, is -- the discovery on that is on a
7 different track than discovery for Utah QQ.

8 With respect to the seismic issues, we
9 focused on putting together a unified contention, and
10 that has taken all of our time, and so we haven't
11 started discovery on Utah QQ, and we're having some
12 problems working out a schedule, given the window that
13 we have before we need to pre-file testimony and the
14 amount of time that we will need to devote to pre-
15 filing testimony. So that's the status of the current
16 discovery that I'm aware of.

17 MR. SILBERG: Judge, I'm sorry, I
18 misunderstood the question. There is the discovery
19 with respect to the existing contentions, based on the
20 Staff documents.

21 CHAIRMAN FARRAR: Right. Ms. Chancellor,
22 what I had intended at the end of the day here was
23 after we decide on a new hearing schedule, and you all
24 have our suggestion for how we have to work slightly
25 differently -- slightly different from the old one,

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1 that we would then kind of back calculate from that
2 perhaps a new -- you know, slightly new dates on all
3 the filings, and I'll ask you to help me with so we
4 could reconcile a new hearing date with your pre-file
5 testimony date, with your discovery date. So I hope
6 to get to that later.

7 MR. TURK: Your Honor, may I be a little
8 bit more specific in terms of the existing schedule
9 for discovery? In the Board's most recent scheduling
10 order, which I believe was September 20, there's an
11 attachment which indicates that there are certain
12 discovery windows on Staff documents. On November 13,
13 the Staff filed its first supplement to the SER, but
14 that was on aircraft issues. The State has conducted
15 discovery on that, and the discovery period on that
16 has closed.

17 CHAIRMAN FARRAR: Okay.

18 MR. TURK: The discovery on geotechnical
19 matters that are stated in the SSER, which was issued
20 on December 21, expires February 1 under the Board's
21 schedule.

22 CHAIRMAN FARRAR: All right.

23 MR. TURK: And I would note, as the other
24 parties, that we have not yet had discovery on the QQ
25 issues that are part of the new unified contention.

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1 CHAIRMAN FARRAR: Right. Let me ask, Mr.
2 Vollmann, in order to get the most done that
3 influences you in the remaining time you have, is it
4 best for us to go into this question of the actual
5 dates of the hearings or is there something else you
6 need us to take up?

7 MR. VOLLMANN: Scheduling would be first
8 and foremost, and I'm not sure how much more I need to
9 hear.

10 CHAIRMAN FARRAR: Okay. Let me jump right
11 into that. The original hearing schedule had us three
12 weeks in Salt Lake City on April 8, starting on April
13 8. Unfortunately, -- this is Jack Whetstine coming
14 up. I thought that after the Olympics there would be
15 a lot of empty hotels, but apparently the Chamber of
16 Commerce has been hard at work filling up those
17 hotels, so we are unable to find some space April 8,
18 the week of April 8, which may not be too bad, because
19 you all have that April 11 hearing anyhow.

20 MR. SILBERG: If I might, Judge Farrar,
21 the April 11 hearing is not a conflict, because
22 neither the State nor ourselves would have overlapping
23 attorneys that need be in two places at once. The
24 State's lawyers involved in that case are different,
25 I understand, from Denise than the ones you see on

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1 television. And while I would be at that hearing, I
2 would not be the lead lawyer conducting the issues
3 that would likely come up on the April -- during April
4 8. So that would not be a conflict, as between the
5 State and ourselves.

6 CHAIRMAN FARRAR: Okay. Then we're left
7 with what is the irreconcilable conflict is we can't
8 find space. I think, in fact, that Jack had talked to
9 the State's people to see if we could get State
10 courthouses. We tried federal courthouses, we've
11 tried the hotels, and there's just nothing April 8,
12 the week of April 8, which is why I made the
13 suggestion in one of our orders that we start -- find
14 some issues that we could start a week early and do
15 that here, do the week of April 1 here, and a couple
16 of issues, obviously, suggest themselves for that
17 week.

18 Then go out the week of the 22nd. We can
19 get space and go for four weeks in the same location.
20 Our thought there was that by the time you come to the
21 end of the week of the 22nd, you've had two weeks of
22 hearing under this plan where you would have had
23 three. So you've only lost a week, and you have the
24 availability of going for a couple weeks longer to
25 make sure all the issues are finished.

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1 That raises -- well, anyone want to
2 interject a violent opposition to that scheme?

3 MR. SILBERG: The proposal that -- I'm
4 sorry, go ahead, Connie.

5 CHAIRMAN FARRAR: Go ahead in Salt Lake.

6 MS. CHANCELLOR: Yes, Your Honor. We
7 would be opposed to that. We think it's important to
8 have the hearings in Salt Lake City, especially given
9 the public interest in the issues, and the most likely
10 issue that would be heard in Washington, D.C. is the
11 aircraft crash issue, because that -- on the current
12 track, that testimony would be filed in advance of all
13 other testimony.

14 We've had very few hearings in Salt Lake
15 City with respect to the Licensing Board. There was
16 a pre-hearing -- given that we have started this in
17 1997, there has been a pre-hearing conference in
18 January of 1998 in Salt Lake City. There were some
19 public hearings on the environmental impact statement.
20 There was an ASLB hearing in June of 2000 but only one
21 day of that hearing, of that evidentiary hearing was
22 open to the public. The rest of the hearing, which
23 lasted about a week, was closed, because it dealt with
24 financial issues. There was an opportunity for
25 limited appearances.

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1 But there have been -- in terms of the
2 Licensing Board, there has been very little visibility
3 in the State, because all of the issues have been
4 resolved through paper filings, and so the public has
5 not had a chance to participate or to observe what
6 actually has been going on with respect to this
7 Licensing Board. And oftentimes the issues are
8 technical or the public has trouble wading through the
9 voluminous pleadings that we have filed over the past
10 four and a half years. I believe that the Board
11 recognizes that there is a substantial interest to the
12 citizens of Utah, as it said in its summary
13 disposition decision in Utah L Part A.

14 And in terms of the Commission's policy
15 with respect to holding evidentiary hearings, it does
16 seem to be the policy of the Commission, to the extent
17 possible, to hold the proceedings in the vicinity of
18 the facility. And I would strongly urge the Board to
19 arrange the schedule so that all of the hearings are
20 held in Salt Lake City. And if we are going to start
21 -- if the Board is allocating four weeks from April
22 the 22nd, then there would be sufficient time to hear
23 all of the issues that we have projecting out how much
24 time it would take for each contention I believe that
25 all of those issues could be heard in probably three

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1 weeks.

2 So I don't know what it gets us to go to
3 Washington, D.C. the week of April the 1st, given that
4 we would have to take two attorneys off the case and
5 run to Washington, D.C. They wouldn't be able to
6 assist us on any other issues. So I think that it is
7 burdensome on the State to have to go to Washington,
8 D.C., and it's a disservice to the public to not be
9 able to attend the hearings before the Licensing
10 Board.

11 CHAIRMAN FARRAR: Mr. Silberg, before I
12 call on you, let me respond briefly. Ms. Chancellor,
13 I appreciate those remarks, and let me say that from
14 my point of view, I have always believed that one of
15 the functions of government, sometimes overlooked, is
16 to help teach the people about government. So I don't
17 have any philosophical disagreement with what you just
18 said, but I also have a need to keep the proceeding on
19 track. So let's -- Mr. Silberg, before you speak --
20 well, let me ask the Staff or who wants to give me
21 just right now a ballpark estimate on how long each
22 issue would take, to make sure I know what I'm talking
23 about here?

24 MR. TURK: I think probably the State and
25 PFS should take the lead on that.

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1 CHAIRMAN FARRAR: Okay. Mr. Silberg, run
2 them down? Seismic, how long?

3 MR. SILBERG: Week and a half.

4 CHAIRMAN FARRAR: Accidents?

5 MR. SILBERG: A week.

6 CHAIRMAN FARRAR: Hydrology and species?

7 MR. SILBERG: A day and a half a day.

8 CHAIRMAN FARRAR: Okay.

9 MR. SILBERG: SUWA B, between a day and a
10 half a day. OGD O --

11 MS. CHANCELLOR: Judge Farrar?

12 CHAIRMAN FARRAR: Yes, Ms. Chancellor?

13 MS. CHANCELLOR: I think we should allow
14 two weeks for seismic.

15 CHAIRMAN FARRAR: But other than that Mr.
16 Silberg's guesstimates are in the ballpark?

17 MS. CHANCELLOR: Yes, I believe so.

18 CHAIRMAN FARRAR: Okay.

19 JUDGE LAM: So are we saying four weeks
20 would be sufficient to cover everything?

21 MR. SILBERG: I believe so. That excludes
22 OGD O, because we have no idea what the scope, if any,
23 of that is. With respect to the timing, we have
24 arranged, based on the schedule that was adopted last
25 September, to have our witnesses available for

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1 aircraft accident the week of April 8. Because of
2 schedule conflicts, it would be very difficult for
3 them -- it would be very difficult for us to get the
4 entire panel together the preceding week. One of our
5 witnesses would only be available through a half day
6 Tuesday, he would only be available that week for a
7 day and a half. And the next time that witness panel
8 could be available together is the week of May 14, I
9 believe.

10 We feel that the best option would be to
11 hold that hearing on Utah K the week of April 8 here
12 in Washington. All of our witnesses are essentially
13 east coast witnesses. At least one of the State's
14 witnesses is an east coast witness. I understand that
15 the State would have to travel here, but on the other
16 hand we would have to travel to Salt Lake.

17 We certainly support the idea that
18 hearings should be in the vicinity of the site to the
19 greatest extent practicable, and there will be
20 probably four weeks of hearings in the vicinity of the
21 site. We think that that could be ameliorated if the
22 hearings were held here by the same device we're using
23 today. It would be, I think, quite easy to televise
24 the hearings back to Salt Lake City so that members of
25 the public, should they wish, could watch those

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1 hearings and hear those hearings. They would not be
2 available to participate in them, but members of the
3 public aren't available to participate in hearings in
4 any case.

5 It might not be the optimum if everything
6 were equal, but everything isn't equal in this case,
7 and we think given that the schedule is one that we
8 have been looking forward to and planning towards for
9 six months or so and given the availability of or
10 unavailability of meeting spaces, that the best option
11 would be to go ahead the week of April 8 here in
12 Washington.

13 CHAIRMAN FARRAR: Let me ask the Staff if
14 they have any thoughts on that.

15 MR. TURK: We're available on the 8th as
16 well as on the 1st and afterwards, Your Honor. I
17 would leave it to the resolution of witness scheduling
18 problems. And I have heard from Mr. Silberg for quite
19 some time that his aircraft crash witnesses do have
20 several conflicts which require them to either hear
21 that issue during the week of April 8 or sometime
22 several weeks later in the process. And if the
23 Board's interested in resolving or getting through the
24 hearings on aircraft crash early, then I think the 8th
25 is probably the only doable week for that.

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1 CHAIRMAN FARRAR: Do you have any opinion
2 on the wisdom or lack thereof of having a hearing in
3 D.C. that's telecast to Salt Lake City or would you
4 rather not speak to that?

5 MR. TURK: I have no objection to it, Your
6 Honor. If the only week of hearings was going to be
7 that week and that week was in Washington, I would
8 have a problem for the reasons that we do want the
9 hearings to be available to the public in Salt Lake
10 City, in that area. But if there are going to be four
11 weeks of hearings anyway in the Salt Lake City region,
12 and if there will be an opportunity for limited
13 appearances for members of the public in the Salt Lake
14 City region, then I don't have a problem with holding
15 four or five days of hearings in Washington as part of
16 this process.

17 MR. SILBERG: Judge, we would also be
18 happy starting immediately to undertake a search for
19 hearing space in Salt Lake City. It may be that our
20 people on the ground might be able to do that, I don't
21 know. But that's at least something we would be happy
22 to undertake starting today and report back to you in
23 a few days.

24 CHAIRMAN FARRAR: I never turn down an
25 offer, and . . . Jack has done his usual good job, and

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1 I, as a Board member, got heavily involved with him,
2 and he has demonstrated to my satisfaction there's
3 nothing there, but if you can come up with something,
4 that obviously would be the better solution. So I'll
5 take you up on that offer.

6 Meanwhile, Ms. Chancellor, having heard
7 what Mr. Silberg said, do you have any thoughts?

8 MS. CHANCELLOR: First, Your Honor, I
9 forgot to mention that Jero Walker is here in the room
10 with us. She came in, and I didn't notice her come
11 in. Did you want her to introduce herself first?

12 CHAIRMAN FARRAR: Yes, please.

13 MS. WALKER: Good morning. I'm Jero
14 Walker, on behalf of Southern Utah Wilderness
15 Alliance.

16 CHAIRMAN FARRAR: Thank you, Ms. Walker.
17 I think we didn't do anything dealing with your
18 contention in your absence, but pipe up when you need
19 to.

20 MR. SILBERG: We did, at least I observed
21 a guesstimate that the time to litigate that might be
22 a day to a day and a half.

23 CHAIRMAN FARRAR: Yes. I'm sorry, thank
24 you. Ms. Walker, we did do a guesstimate on how long
25 each issue would take, and we're trying to figure out

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1 the time and location of the hearing, given the
2 scheduling problems we've run into. In light of that,
3 that might be a good time to jump ahead and ask you,
4 have you received the final environmental impact
5 statement yet?

6 MS. WALKER: Yes. Thank you. I have.

7 CHAIRMAN FARRAR: Do you have any thoughts
8 now on whether that's going to lead you to want to
9 amend your contention? Can you share with us anything
10 that would help us know how long that would take to
11 litigate or how we're going to get to that point or is
12 it too early to ask you that?

13 MS. WALKER: I think it's a bit early on
14 amending a contention, although I don't see it right
15 now. And in terms of the estimate of a half a day to
16 a day, that seems appropriate.

17 CHAIRMAN FARRAR: Okay. Thank you. Ms.
18 Chancellor, go ahead. You were going to speak to --
19 well, we have several --

20 MS. CHANCELLOR: First of all, Your Honor,
21 the State would be also happy to undertake a search to
22 accommodate the Board. Is it the hotel space or the
23 hearing space or both, so we know what we're searching
24 for is my first question?

25 CHAIRMAN FARRAR: We had started looking

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1 at courthouses where we seemed to strike out, either
2 because we're not viewed as the kind of people they
3 want --

4 (Laughter.)

5 -- or when you say, "We want it for four
6 weeks," they say, "We'll give it to you for a day, but
7 we can't give you a judge's courtroom for four weeks."
8 And then the more I learned about it, the more I
9 learned that while you naturally gravitate to the
10 notion of a courthouse, that hotels can be better in
11 terms -- even though the courtroom is not as nice,
12 that each of you then has rooms that you can go to,
13 that you can use as your war rooms and so forth. So
14 I would think at this time our thinking is more in
15 terms of hotels.

16 MS. CHANCELLOR: But it's the hearing
17 space that's a problem, not the accommodation; is that
18 correct?

19 CHAIRMAN FARRAR: Right. No one said
20 there were no rooms. It was not that there no
21 sleeping rooms; it was that there were no -- the
22 ballroom or whatever you use was not available. So if
23 you can get us a ballroom or whatever they're called,
24 a meeting space, then I think the accommodations were
25 not a problem.

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1 MR. SILBERG: Is there a -- would there be
2 a problem in looking in Tooele for hearing space? I
3 mean that is closest to the site, I guess. I don't
4 know if the Board considered that or would consider
5 that. And I don't know what's available in Tooele.

6 CHAIRMAN FARRAR: I think Jack had looked
7 at that. Jack?

8 MR. WHETSTINE: In Tooele, you have the
9 Tooele High School that has an auditorium. I have not
10 looked at the auditorium for that week. I am looking
11 for the auditorium for the end of April for limited
12 appearance statement sessions. But I can call -- I
13 can tell you, though, that what I have done, though
14 there are some 12 to 15 federal and state buildings
15 that I've looked at, the problem with them is that
16 either the benches aren't enough for the three-board
17 panel or the audience isn't large enough for the
18 public or the well of the courtroom isn't large enough
19 for four or five tables with all the associated
20 attorneys. There are bits and pieces of spaces that
21 are available for a day here and a day there, but you
22 put all the logistics together, they don't seem to
23 work out. And what I can do for Denise I can send you
24 what I've done in terms of the 12 federal facility, if
25 you want to pick up from there, and I can do the same

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1 to you, Mr. Silberg. If you want, I can email that to
2 you.

3 MR. SILBERG: Well, I'll have our folks
4 check into hotels in Tooele if there is any suitable
5 space there.

6 CHAIRMAN FARRAR: Let me tell you, I can't
7 speak for my Board members on this, but my bias is
8 I'll go anywhere for a day to hear an issue, but if
9 you have a five-day issue, with the documents that
10 that involves, the notion of not having, if I can use
11 the word, chambers for us and a war room for each of
12 you, it makes it very, very difficult to do a long
13 issue. You were saying the high school auditorium.
14 It's great when you're in the auditorium, but where
15 are you the rest of the time? And so I would think if
16 Jack is right that the federal and state buildings are
17 not available, then we're looking at a hotel in Salt
18 Lake City --

19 MR. SILBERG: Or Tooele. Is there space
20 in Tooele?

21 MR. WHETSTINE: I didn't look at hotels in
22 Tooele.

23 MR. SILBERG: I don't know for sure what's
24 available there.

25 MR. WHETSTINE: I know there are small --

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1 rather small facilities there, in terms of hotels.

2 MR. SILBERG: I believe there's a Best
3 Western at least.

4 MR. WHETSTINE: I don't think they have a
5 large enough space.

6 MR. SILBERG: We'll check.

7 CHAIRMAN FARRAR: Okay. Ms. Chancellor,
8 Mr. Silberg, why don't you all work on that, keep in
9 touch with Jack, and if you find something, we'd be
10 happy to go back to the original schedule. If you
11 don't find something, give me a moment here.

12 (Pause.)

13 Jack, we also had no space the 15th?

14 MR. WHETSTINE: Not at the hotel, that's
15 correct.

16 CHAIRMAN FARRAR: Okay. Then why don't
17 you all look for space the week of the 8th and the
18 15th. Let me tell you what we're thinking, but our
19 notion is given, Mr. Silberg, what you said about your
20 witnesses, that if we do this the week of the 8th here
21 or there, then we've got to be prepared to go long
22 hours to finish. I mean we don't want to start in one
23 place with an issue and then finish.

24 Ms. Chancellor, I think our conclusion is
25 given what Mr. Silberg has represented about the

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1 availability of his witnesses and the fact that we did
2 have an -- I mean he was entitled to rely to some
3 degree on the earlier schedule, which said we would
4 start the week of the 8th, that we will do aircraft,
5 the credible accidents contention the week of the 8th,
6 and we will be delighted to do it in Salt Lake City or
7 Tooele or anywhere out there that there's reasonable
8 space. If we can't do that, then our inclination
9 would be to do it here that week and to set up the
10 video conference for the citizens of Utah.

11 MS. CHANCELLOR: Your Honor, we're quite
12 amenable to the week of the 8th; that's just fine.
13 And to the extent that we can have certainty in the
14 schedule, that is better for us so that we can lock in
15 our witnesses' availability, and if we have to go to
16 D.C., we go to D.C., but we would prefer to do it here
17 in Salt Lake.

18 CHAIRMAN FARRAR: Ms. Chancellor, we're
19 excited about coming out there. You don't sound
20 equally excited about coming here.

21 MS. CHANCELLOR: Excitement is rather low
22 on this whole project, Your Honor.

23 (Laughter.)

24 CHAIRMAN FARRAR: Mr. Gaukler?

25 MR. GAUKLER: Yes. I just wanted to add

1 one point in working out the schedule with Ms.
2 Chancellor for the week of April 8. One of our
3 witnesses had a problem. He had to fly out the 8th,
4 and we could start first thing in the morning of the
5 9th, but everybody could work through Saturday, if
6 need be.

7 CHAIRMAN FARRAR: Okay.

8 MR. GAUKLER: If the hearing occurred in
9 D.C., that would not be a problem; we could start the
10 8th.

11 CHAIRMAN FARRAR: Okay.

12 MS. CHANCELLOR: Your Honor, I'm not sure
13 whether our witness is going to be available on
14 Saturday. I'm wondering if PSF's witness can take the
15 red eye and get out here on the 8th?

16 CHAIRMAN FARRAR: I'm sorry, I was talking
17 to Judge Bollwerk then. The question was if we're in
18 Salt Lake, can your witness get out there; was that
19 the question?

20 MR. GAUKLER: It would be very difficult
21 for him to get out there. He'd have to fly the red
22 eye, which I really would not rather do in terms of
23 putting him up on the stand. He's part of the panel,
24 three-member panel. He would be the first people we
25 put up would be the three-member panel of Generals

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1 Cole and Jefferson and Colonel Fly.

2 CHAIRMAN FARRAR: And that would be your
3 -- you could have that panel when?

4 MR. GAUKLER: First thing Tuesday morning.

5 CHAIRMAN FARRAR: Well, if we're in Salt
6 Lake, then -- okay, but you still -- are you saying we
7 need to finish that week?

8 MR. GAUKLER: I probably could have people
9 extend over to Monday the following week, yes, in Salt
10 Lake.

11 CHAIRMAN FARRAR: Okay. Then, Ms.
12 Chancellor, if you can get us space, then we will
13 start out there then on, I guess, the 9th. Or maybe
14 there's an issue we can -- some other issue we could
15 do on the 8th.

16 MR. GAUKLER: The last time there were
17 some preliminary matters that we took care of on the
18 first day, which took about a half day. When I talked
19 with Ms. Chancellor, we had talked about maybe we
20 could do those preliminary matters on Monday.

21 MR. SILBERG: The other possibility, as I
22 know it's on the agenda for later, is the possibility
23 of the site visit.

24 CHAIRMAN FARRAR: Right. Well, Ms.
25 Chancellor, then unless you have something to add, we

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1 will leave it to you to try to get us space beginning
2 if not on the 8th, the 9th, and the following week,
3 because I mean we have the notion once we get out
4 there we're staying till we're finished. So we would
5 like to get out there and go all the way through. So
6 if you'd work with Jack and Mr. Silberg to get us
7 space, we will -- that's where we'll be.

8 MR. TURK: Your Honor, can I suggest also
9 that if the 8th needs a little time to be filled, we
10 might also consider limited appearances then.

11 CHAIRMAN FARRAR: Yes. Our plan, as it
12 turns out, that first week under our scheme where we
13 were going to -- first week out there would have been
14 April 22, we didn't have space that Friday, so that's
15 when we would have talked about doing the suggested
16 tour and the limited appearances. But, obviously, if
17 we're going to be there for a month, we can do that --
18 we'd prefer to do that first rather than last, but we
19 were going to do it on the day that we didn't have
20 space.

21 MS. CHANCELLOR: Your Honor, do we need
22 check the space on the 26th of April as well?

23 CHAIRMAN FARRAR: No. What we would --
24 no. I think we're set, Jack, for the week of the 22nd
25 and the 29th.

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1 MR. WHETSTINE: We do not have space on
2 the 26th and 27th.

3 CHAIRMAN FARRAR: Right, but I think what
4 we would do if we're there for -- either there'd be
5 some -- we could do limited appearances then, we could
6 -- maybe that would be a long weekend for those who
7 would want to get home. I would not, Ms. Chancellor,
8 want to move -- in other words, I think we're set for
9 that week, and I wouldn't want to go somewhere else
10 for a day unless there were some simple issue we could
11 do.

12 MR. SILBERG: Could you identify where the
13 space is so we can start making our plans as well?

14 CHAIRMAN FARRAR: No.

15 (Laughter.)

16 Jack?

17 MR. WHETSTINE: It's at the same hotel,
18 the Sheraton City Center. I've got the overnight
19 rooms blocked. I've got up to 25 of them. If you're
20 interested and you're making your reservations, you
21 can contact the Hotel and the individual I'm working
22 with is Suzanne Loritz, L-O-R-I-T-Z. And her number
23 is 801-534-3475. She's got, like I said, 25 rooms
24 blocked out for our event. These are overnight rooms.
25 If you need special arrangements or meeting conference

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1 rooms, you'll have to work that through separately.

2 CHAIRMAN FARRAR: Ms. Chancellor, I've
3 never been in the building you're in now. I think the
4 room you're in is not their biggest room. If we were
5 -- did have to do the teleconference setup for the
6 week of the 8th, are you aware are there larger
7 videoconference facilities in Salt Lake that we could
8 use that might hold a larger crowd?

9 MS. CHANCELLOR: I'm just looking around
10 at the technical support here. In terms of this
11 particular location in the Eccles Broadcast Center, I
12 understand that this is the largest conference room.
13 I assume that -- is it as good as this? I mean is it
14 -- the facilities, are the technical capabilities the
15 same? I'm just speaking with the technician here. I
16 understand that there is another auditorium on campus,
17 but they don't have the technical capability as great
18 as what they do here, and in this room I assume that
19 if we took the tables out -- the technician says
20 probably 70 to 80 people could fit in this room if we
21 took the counsel tables out.

22 CHAIRMAN FARRAR: In terms of technical
23 capability, I assume for that setup we would not need
24 this interactive back and forth situation; in fact, we
25 would just be beaming out to them, and they would be

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1 observers in a theater as opposed to participants. So
2 that gives us a little more flexibility in terms of
3 not needing the two-way equipment.

4 MS. CHANCELLOR: The technician here says
5 that, yes, that's basically what that auditorium is
6 used for.

7 CHAIRMAN FARRAR: How many --

8 MS. CHANCELLOR: Your Honor, so are we
9 looking then at locking in the schedule for April the
10 8th, regardless of where it is, but we're uncertain
11 whether we're going to continue the week of the 15th
12 or alternatively we would continue the week of the
13 22nd if there was no hearing space available in Salt
14 Lake City on the week of April the 15th? I just need
15 to know so I can lock in our witnesses.

16 CHAIRMAN FARRAR: If you can't -- if we
17 were out there on the 8th and you couldn't get space
18 on the 15th, we would not try to get back here and use
19 that week and then go back there. I don't think that
20 would make a great deal of sense for everybody. Mr.
21 Silberg, you're agreeing with that?

22 MR. SILBERG: Yes.

23 CHAIRMAN FARRAR: Yes. So if you -- let
24 me recap for I hope the final time. We'll do the
25 credible accidents the week of the 8th in Salt Lake if

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1 you can get us space, here if you can't. If we do it
2 here, then we would take the next week off and go to
3 our space on the 22nd. If you can do it there, we
4 will continue in the week of the 15th if you can get
5 us space. If you can't get us space, we would resume
6 there on the 22nd. Anybody not like that? Good. Or
7 I guess, for the record, hearing nothing, good.

8 (Laughter.)

9 Then that eliminates the need to talk
10 about whether to do hydrology and the falcon here the
11 week of the 8th, because if we're here the week of the
12 8th, it will be accidents. Okay.

13 What's -- does anyone have a preference on
14 the order of the remaining contentions, whether that
15 starts on the 15th or the 22nd?

16 MR. SILBERG: I think our preference would
17 be to start with the environmental contentions. And
18 the reason for that is they're short, we can start
19 with a group of witnesses on a defined date, and then
20 they can go home. If we start with the seismic
21 issues, which, as Denise suggested, may take two
22 weeks, we won't really know when for sure our other
23 witnesses will start. And I think the other ones are
24 much more predictable, and we can get them on -- if we
25 allocate a day for each issue, we can start the next

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1 day or just have people waiting to go on. So our
2 preference would be to start with the environmental
3 issues. Again, OGD is not part of this discussion,
4 OGD O.

5 CHAIRMAN FARRAR: But if that were to be,
6 for example, if it were to go forward and if it were
7 to be a two-day hearing, that would also fall into
8 that group that you just talked about -- do it first,
9 get it over with and know when you're starting
10 seismic.

11 MR. SILBERG: I think so, but I really
12 need to know what that issue is about, because I think
13 we're far away from -- should that come in, we really
14 don't have a clue as to what the scope is. So I
15 couldn't tell you whether it's a one-day, two-day or
16 a five-day issue.

17 CHAIRMAN FARRAR: Ms. Chancellor, any
18 thoughts on Mr. Silberg's notion of start with the
19 simpler issues which happen to be the environmental
20 ones and do seismic last?

21 MS. CHANCELLOR: What I'd like to suggest,
22 Your Honor, is that the State and PFS work out the
23 availability of their witnesses, because I have a key
24 witness in seismic who's unavailable the week of the
25 6th of May. Dr. Bartlett has a -- oh, no, the week of

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1 the 13th, not the 6th. So to the extent that we can
2 work out witness availability and there's some
3 flexibility if witnesses can't come on a specific
4 date, it probably makes sense to get the simpler
5 environmental contentions out of the way first. Maybe
6 we do some of those the week of the 22nd and pick up
7 seismic towards the end of that week.

8 But it's been my experience from the past
9 hearing that the State and PFS were able to -- and the
10 Staff were able to work out their witnesses'
11 availability and come up with a logical order of
12 presentation if the Board isn't committed to hearing
13 certain issues in a particular order.

14 CHAIRMAN FARRAR: All right. Let me ask,
15 in that connection, whatever we decide on the order of
16 presentation on an issue, is your custom that if you
17 have a witness who's only available on a certain day,
18 for whatever side, that you can interrupt the orderly
19 chain of events and say, "Okay, I know it's Mr.
20 Silberg's turn, but we're going to put the State's
21 witness on today." Is that a problem for anybody?

22 MR. SILBERG: It's not a problem for PFS.

23 MR. TURK: We haven't had to do that yet,
24 Your Honor. I hope we don't, because it does tend to
25 detract from the understanding of the testimony

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1 sometimes. But I think the parties have always been
2 able to work out conflicts of witness scheduling
3 between themselves.

4 CHAIRMAN FARRAR: Okay.

5 MR. TURK: For the Staff, let me note that
6 we don't object to doing the environmental contentions
7 after aircraft. We do have a fairly sizable list of
8 witnesses that we're putting together, in part,
9 depending on the scope of OGD O. And our
10 environmental people appear to be available in April,
11 so those dates are okay. When we start getting
12 towards May, we do have some conflicts on
13 environmental issues here and there, primarily OGD O.

14 CHAIRMAN FARRAR: Ms. Chancellor, I think
15 then for any number of reasons we can assure you that
16 whatever we do we will -- if you have a key witness
17 who's got some very limited availability, we will make
18 sure that that witness is heard, even if we have to
19 interrupt things.

20 MS. CHANCELLOR: Thank you, Your Honor.

21 CHAIRMAN FARRAR: Okay. Mr. Vollmann, Mr.
22 EchoHawk, anything you all wanted to contribute on
23 this or --

24 MR. VOLLMANN: I have nothing.

25 CHAIRMAN FARRAR: Whichever of you that

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1 was, please say your name, because my court reporter's
2 watching two tennis matches here at once.

3 MR. VOLLMANN: That was Tim Vollmann.

4 MR. M. ECHOHAWK: Your Honor, this is Mark
5 EchoHawk, and I have nothing either.

6 CHAIRMAN FARRAR: Okay. In terms of the
7 suggested tour, I know my colleagues have all been on
8 that, but I would be interested in going unless
9 someone had an objection. And we do want to do
10 limited appearances, which I know in the old days used
11 to be the first order of business, but since the Board
12 has already been out there, I think we can work that
13 and use the tour.

14 I would want to do the limited appearances
15 in Tooele, so I think our notion would be one very
16 long day spent on the tour kind of doing, as I see it,
17 a great circle route and you end up in Tooele at 2
18 p.m. or something and do a two to five and seven to 10
19 p.m. limited appearances. That way working people and
20 non-working people can all get there and you've done
21 all that in one day.

22 Although, Ms. Chancellor, is there any
23 need to have limited appearances in Salt Lake City or
24 can all those -- anybody there -- in other words, I
25 think limited appearances have always, at least in my

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1 experience, been done near the site, and that, to me,
2 is Tooele. I assume anyone in Salt Lake could get out
3 there if they wanted to.

4 MS. CHANCELLOR: You Honor, I think it
5 would be in the public interest to hold limited
6 appearance sessions in Salt Lake as well as Tooele.
7 Last time there were a number of people who came to
8 the limited appearance sessions, and I think that you
9 would get a larger representation from the public if
10 you held them in Salt Lake City and that's our
11 preference. And I don't know if Ms. Walker would like
12 to add to that.

13 MS. WALKER: Yes. Your Honors, we
14 consider ourselves in Salt Lake City close to the
15 site.

16 CHAIRMAN FARRAR: Okay. From our point of
17 view, if there's demand in a location, then we would
18 be happy to be there. Anybody have a problem with two
19 sets of them, one in Tooele and one in Salt Lake?

20 MR. SILBERG: No, we don't have a problem.
21 They are not that close -- the two places are not that
22 close, and I suspect people from Salt Lake would not
23 be likely to come out to Tooele, so you will get
24 different people at both locations.

25 CHAIRMAN FARRAR: Just for the record,

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1 we'll take judicial notice of how many miles it is
2 between Salt Lake and the site. Each side has its
3 philosophical view about how far that is.

4 (Laughter.)

5 In terms of the tour, Mr. Silberg, your
6 letter had suggested doing the ITF and the
7 reservation?

8 MR. SILBERG: Yes, and the rail line route
9 as well.

10 CHAIRMAN FARRAR: Okay. How long would it
11 take you to start in Salt Lake City in the morning and
12 end up in Tooele in the afternoon? How many hours
13 would it take? And I'm not trying to cut it short,
14 but how long does that take to do what you just
15 described?

16 MR. SILBERG: You know, I think it's about
17 an hour, Denise can correct me, to get from Salt Lake
18 out to the intermodal transfer point. And then it's
19 another 25 minutes to get from there down Skull Valley
20 Road to the site. And then following, I guess, the
21 interstate over to the place where the rail line would
22 veer off is probably another 20 minutes.

23 So to make that loop and then perhaps go
24 off-road along the rail line, to the extent that's
25 practicable, and we can talk to Denise and some of our

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1 people to see what can be done, you know, my guess is
2 you're talking about an hour or two once you're out
3 there and an hour to get there from Salt Lake City.
4 Does that sound about right, Denise?

5 MS. CHANCELLOR: Some of your geography
6 isn't quite right, but --

7 MR. SILBERG: Wouldn't be the first time.

8 MS. CHANCELLOR: -- I think that if we
9 went to the intermodal transfer site and continued on
10 I-80 to the Low Exit, came back, went down to the
11 Reservation, down Skull Valley Road, then maybe came
12 back through Johnson's Pass, like we did last time and
13 then to Tooele, you'd have to allow at least four
14 hours, probably four hours.

15 CHAIRMAN FARRAR: So if we left the hotel
16 at eight in the morning, we'd be at the Tooele High
17 School by two, and we could set it up to do that.

18 MR. TURK: I think easily, Your Honor. I
19 think you could leave the Hotel at nine and be in
20 Tooele by one to 1:30.

21 CHAIRMAN FARRAR: Yes. Okay.

22 MR. SILBERG: No, I was referring to an
23 hour to make the loop within Skull Valley, and then
24 getting back would be additional time.

25 CHAIRMAN FARRAR: Now, is there any --

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1 I've seen in the credible accidents contention and I
2 think also in OGD O a lot of reference, of course, to
3 the U.S. government facilities to the west. Is there
4 any need or opportunity for us to see what that's like
5 or do all we need is an aerial map?

6 MR. SILBERG: Well, the government
7 facilities to the west would be the Utah Test and
8 Training Range, and I don't know that that's really
9 available to tour. The Board in its prior visit did
10 go down to Dougway. Is that -- and while that is
11 mentioned in OGD O, I'm not sure at this point that
12 that need be included in the tour. I don't have a
13 problem if it is, I'm just not sure that it's
14 necessary at this point. There are lots of other
15 facilities that are also mentioned in OGD O that are
16 similarly far from the site. Maps may be just as
17 good.

18 MR. M. ECHOHAWK: Your Honor, this is Mark
19 EchoHawk.

20 CHAIRMAN FARRAR: Yes, sir.

21 MR. M. ECHOHAWK: The site visit to the
22 Utah Test and Training Range or other government
23 facilities referred to in our contention are not
24 necessary. We feel like we can provide that
25 information sufficiently through maps.

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1 CHAIRMAN FARRAR: All right. Thank you,
2 Mr. EchoHawk. Then we'll limit the tour to what was
3 described and plan on doing that and the Tooele
4 limited appearances on the same day but not decide yet
5 what that day would be. A day for that could be the
6 26th when we don't have hearing room space, but we
7 could do it earlier, depending on how things shake out
8 and how much -- what the space turns out like. So
9 we'll just leave that open. I mean that's something
10 I assume we can arrange pretty much at the last
11 minute. It only involves us, not witnesses and so
12 forth.

13 Okay. I think that takes us through the
14 third item on our agenda.

15 MS. WALKER: Excuse me, Your Honor -- or
16 Mr. Chairman.

17 CHAIRMAN FARRAR: Yes.

18 MS. WALKER: In terms of limited
19 appearances and deciding it at the last minute, you do
20 need to give the public a fair amount of time to sort
21 of, you know, set down the schedule and also get the
22 groups involved rallying the troops, so to speak. So
23 giving the public a fair amount of warning would be
24 appropriate.

25 CHAIRMAN FARRAR: You're absolutely

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1 correct. When I -- I sometimes speak colloquially
2 when I -- if I said last minute, what I meant was
3 we're trying to decide here today on schedules for
4 witnesses that need to be somewhere. What I should
5 have said, Ms. Walker, was once we knew when we had
6 our hearing space in Salt Lake City, it wouldn't be
7 too late then to make a decision. I assume we'll know
8 that within the next ten days or so. So you're right
9 that we do want to give the public as much notice as
10 possible, and so I envisioned if it's two months
11 rather than three months, that's not a significant
12 difference. So thank you for clarifying that.

13 JUDGE LAM: So now you know Judge Farrar's
14 one minute is two months, right?

15 (Laughter.)

16 CHAIRMAN FARRAR: Or vice versa.

17 MR. SILBERG: That's a Rockville minute we
18 call it.

19 CHAIRMAN FARRAR: Let's turn to Issue 4,
20 dealing with all the issues. We had talked about the
21 pre-filed testimony, and in one of our orders
22 suggested that what would be very beneficial to us
23 with pre-filed testimony was having a one-page preface
24 on it done by counsel saying what you propose to prove
25 by that witness.

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1 And what we're getting at here is there
2 are a lot of documents in this case, and we're
3 certainly willing to do our work, but sometimes when
4 you're faced with several hundred pages of documents,
5 it's like did you ever have a friend who starts to
6 tell you a story and you're trying to listen but you
7 don't know where the story's going, so you know,
8 "What's your point?" And it's sometimes easier to
9 read 100-page document if you know at the beginning
10 why are you reading it, what are you looking for?

11 And so was there any problem anybody had
12 with putting on each piece of pre-filed testimony a
13 one-page statement of counsel just for our -- well, I
14 suppose it would be a public document, but it's
15 basically for our benefit. Where are you going with
16 this person? Help me read this document.

17 MR. GAUKLER: We have no problem with
18 that, Your Honor.

19 CHAIRMAN FARRAR: Mr. Turk?

20 MR. TURK: We don't have a problem with it
21 for the geotech and accident contentions, and maybe
22 counsel will need to go up to two pages.

23 CHAIRMAN FARRAR: Yes. And I think when
24 we wrote it we were saying, you know, don't give us --
25 yes, we want something short. If I asked you in the

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1 hall, "What's your witness going to talk about," that
2 kind of thing, and whether it's one or two doesn't
3 matter, but we don't want it up in five and ten pages.

4 MR. TURK: I don't want to recite the
5 testimony, I don't want the other parties to do that
6 either.

7 CHAIRMAN FARRAR: Right.

8 MR. TURK: On the other hand, if you could
9 set a limit of two pages, that would be helpful.

10 CHAIRMAN FARRAR: Ms. Chancellor?

11 MS. CHANCELLOR: Two issues, Your Honor.
12 And this also goes to the concise outline of key
13 determinations and what's the big issue for the
14 contention. We would not want to bound substantively
15 to what we found with the Board pre-hearing. A lot of
16 things may change by the time we come to writing
17 findings of fact. So if this is -- if the purpose of
18 this is for edification of the Board, then we don't
19 have a problem. We just don't want to be put in a
20 procedural box prior to the hearing.

21 And, secondly, we would prefer to serve it
22 only on the Board. I think we could be -- we could
23 pinpoint the issues better if we knew that it wasn't
24 going to be distributed to all the parties. And I
25 think it would serve the function that the Board seems

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1 to be looking towards is that we could be more
2 forthright if we served it only on the Board.

3 CHAIRMAN FARRAR: Let me -- the first
4 question you raised we had talked among ourselves this
5 morning and I think are in complete agreement with
6 you, that it's for our edification, at least that
7 first document. The preface to the testimony is for
8 our edification. If you fail to edify us and help us
9 read the document, you've only hurt yourself; you
10 haven't hurt the other parties. So that, I think
11 we're in total agreement.

12 Mr. Gaukler, you look like you want to
13 speak.

14 MR. GAUKLER: Yes. My view would be that,
15 to clarify the issues we should make public to each
16 other what we think the key determinations are that we
17 want the Board to make on the various contentions. So
18 I would say it should be made public.

19 CHAIRMAN FARRAR: Hold on to that. Let me
20 thought for a minute. So in terms of the one or --
21 Mr. Turk's two-page outline of the testimony, Ms.
22 Chancellor, you're right, that would not be limiting.
23 If you leave something out of there, we're not going
24 to later say, "Oh, you didn't tell us you were
25 attempting to prove that." All that happens is we

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1 wouldn't have been clued in to where you were headed
2 as soon as it would have been in your own interest to
3 do so. So that's not a problem.

4 But there's a part of that, and here I'm
5 speaking only for myself and only as a novice here,
6 getting back to our point earlier about the wisdom of,
7 as I said it, the government helping teach the people
8 about government or, as you and Ms. Walker have said,
9 the vital interest of the public in Utah in knowing
10 what's going on, there's a part of me that envisions
11 that outline as something that a reporter would use to
12 try to understand what the case is about.

13 Now, I understand the arguments that maybe
14 it's just better just that we see it and it is in fact
15 preliminary, but is there -- Ms. Chancellor, do you
16 have any thought on whether that type of document
17 would help the public learn what the case is about,
18 because it would help a reporter do a better case in
19 writing about what's happening? Because I assume
20 without denigrating their profession that most
21 reporters are not up to reading these 100-page
22 statements and figuring out what it means.

23 MS. CHANCELLOR: That gets at two
24 different purposes, and I think that if we were
25 writing it for the Board, we would write it a little

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1 differently than if we were writing it for a reporter.
2 And I think it makes a difference if we're talking
3 about what we want to prove through a particular
4 witness, rather than a concise outline of key
5 determinations with respect to the entire contention.
6 One way I think we could --

7 CHAIRMAN FARRAR: Just stay with the
8 witness one for now. Just stay with the witness one
9 for now. We're not yet to that key determinations
10 thing.

11 MS. CHANCELLOR: Okay. One way we could
12 educate the public is by having opening statements as
13 to what we're going to show in the hearing and through
14 each witness.

15 CHAIRMAN FARRAR: Okay.

16 MS. CHANCELLOR: I guess if push comes to
17 shove, we could file written -- a summary of what the
18 party hopes to prove through each witness, but it
19 would be more general than if we were writing
20 exclusively for the Board.

21 CHAIRMAN FARRAR: You're a good advocate,
22 you've already gotten me to change my mind. Let's
23 leave it this way, that the statement we're talking
24 about that preface the brief synopsis would be for us,
25 and we'll leave it -- rather than us force that into

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1 doing double public affairs duty, I assume if you all
2 want to deal with the press and tell them what your
3 witnesses are going to say, that's something you can
4 handle on your own. And maybe that's an area then
5 that I should not have gotten into. So let's limit
6 the preface about the witnesses that that's something
7 only -- we'll limit it -- we won't worry about the
8 press with that document. But, Mr. Gaukler, you said
9 you thought that was something we should exchange
10 among the parties?

11 MR. GAUKLER: I don't see any reason why
12 not to exchange it among the parties. It's going to
13 be basically an outline of the testimony.

14 CHAIRMAN FARRAR: Mr. Turk?

15 MR. TURK: Your Honor, I feel strongly
16 that the paper should not be given only to the members
17 of the Licensing Board for several reasons. First,
18 there should be nothing in that preface that's not in
19 the testimony already. So there's no unfair advantage
20 being given to other parties if we're allowed to see
21 what a party is serving on the Board. We'll be seeing
22 it in the testimony anyway. It's just a matter of
23 seeing condensed, upfront what the point of the
24 testimony is. We'll see that when we read the
25 testimony.

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1 Number two, what Your Honors are
2 suggesting is something on the order of what happens
3 in courts all the time with the filing of pre-trial
4 briefs or other matters to educate the judges before
5 the hearing commences. Those are public documents;
6 those are not to be held from other parties.

7 Third, Ms. Chancellor's statement that she
8 can see an opening statement being made is really
9 again nothing different from what Your Honors are
10 asking for in the preface upfront. It's the opening
11 --

12 CHAIRMAN FARRAR: Well, hold the opening.

13 MR. TURK: I'll hold off on that.

14 CHAIRMAN FARRAR: Yes, hold that, because
15 I see a different purpose. Let me ask you to hold
16 that thought. The reason being I can only focus on so
17 many --

18 MR. TURK: Okay.

19 CHAIRMAN FARRAR: -- different thoughts
20 and locations at once. So hold that thought. Ms.
21 Chancellor, refresh me on your thought about what you
22 want done with that preface?

23 MS. CHANCELLOR: Your Honor, if we're
24 going to serve it on the all of the parties and not
25 only the Board, I think that it's not going to be as

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1 helpful to the Board, because we'll be much more
2 general. If we're going to serve it only on the
3 Board, then I think that we would pinpoint the issues
4 much more precisely, because we don't want to lay out
5 in summary form our litigation strategy to counsel for
6 the Staff or PFS. So if we serve it on the -- maybe
7 I shouldn't be quite so frank, but if we serve it on
8 the parties, then I believe that we would be much more
9 general.

10 CHAIRMAN FARRAR: Hold on a minute.

11 MR. TURK: I have one point I'd like to
12 make in response to that.

13 (Whereupon, the foregoing matter went off
14 the record for a short period of time.)

15 CHAIRMAN FARRAR: We're back on the
16 record, having consulted with my colleagues here.
17 And, Mr. Turk, you had wanted to say something first?

18 MR. TURK: Yes, Your Honor. Ms.
19 Chancellor's last point was that she did not want to
20 reveal litigation strategy to her opponents. I agree
21 that for cross examination plans there's a valid
22 reason to keep that from other parties, but when
23 you're filing testimony and you're simply giving a
24 summary of the testimony that you're filing, the
25 litigation strategy is apparent on the face of the

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1 testimony itself, and there's no reason to make a ex
2 parte filing of the preface to that testimony.

3 CHAIRMAN FARRAR: Were you eavesdropping
4 on our conversation up here?

5 (Laughter.)

6 MR. TURK: No, Your Honor.

7 CHAIRMAN FARRAR: I think that's where we
8 were headed. One, you have -- there's always a
9 concern about the ex parte rule, and we take care of
10 that in the cross examination plans, but there's no
11 reason we think to go beyond that. Second, we agree
12 with the point you made that it's really nothing
13 different than the underlying testimony. And third,
14 if the party providing that document wants to hold
15 back on something, that's fine, it just means we get
16 edification later rather than sooner. So I think we
17 would stick with the notion of the one- or two-page
18 preface served with the pre-filed testimony and served
19 on everybody. And that would be a publicly available
20 document.

21 Let me skip on the agenda here. And Mr.
22 Vollmann and Mr. EchoHawk, please, since I can't see
23 you, please feel free to speak up and interrupt if
24 there's a point at which you want to be heard. Since
25 we touched on them in the discussion, let's look at

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1 the outline of proposed key determinations and the
2 cross examination plans and the opening statements,
3 all of which have been mentioned in the last few
4 minutes.

5 Let me make sure you understand what we
6 meant by the key determinations. At the end of the
7 case, you file proposed findings of fact and
8 conclusions of law. Some complex litigation manuals
9 will say courts can make you file those ahead of time.
10 If it's very complex, we want to know in advance
11 before the case what your ultimate theory is. That's
12 not what we had in mind, because here you have pre-
13 filed testimony, which you may not have in a court
14 case. And then you get a question later, wait a
15 minute, you filed your proposed findings and now you
16 have a different finding, and you get into all those
17 debates.

18 What we meant was again something to help
19 us understand your case, not to be limited, but when
20 we get your package, your pre-filed testimony and
21 again as we're reading it, we're reading it with an
22 eye to where do you want us to go. And let me tell
23 you why this is crucial to us. If we finish the
24 hearing and we haven't asked the right questions and
25 you get back here and you're sitting down to write

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1 something, sometimes you can't write it because you
2 didn't do a good enough job of developing the record.
3 And then you sit here and say, "Do we call for another
4 hearing? How do we handle this?"

5 So the purpose of the proposed key
6 determinations is to make sure we know where you want
7 us to go so that every step of the way we have our eye
8 on that ball, which is our ultimate job, writing a
9 decision that deals with the issues. So that's what
10 we had in mind for that. That might be one page on
11 the simplest issue, it might be 15 pages on the most
12 complicated.

13 And we envisioned it as not binding on
14 you. In other words, if during the course of the
15 proceeding you decide you have to make some other
16 point, that's fine. Again, you've only hurt -- you've
17 kept us from thinking about that until that point, but
18 you haven't injured your opponent. In other words,
19 your opponent is taking the case that you're
20 presenting, but we have an eye on where we're headed.

21 So with that understanding of it, does
22 anyone -- and with the recognition that we could find
23 authority to make you a file a whole lot more with us
24 ahead of time, does anyone have any serious problem
25 with that?

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1 MR. SILBERG: Could I just have some
2 clarification? I understand kind of the outline of
3 what the case is. Do you want that in this document
4 tied into which witnesses would be -- we would be
5 using to establish the various points or just, "Here
6 are the issues"?

7 CHAIRMAN FARRAR: Here are the issues and
8 the points, not tied to witnesses and nowhere near the
9 detail. In other words, Mr. Silberg, if you gave me
10 50 pages of proposed findings, a lot of it is going to
11 be stuff that everyone in the room agrees to. I don't
12 need to know about that. In other words, when I say
13 key determinations, what are the issues we're going to
14 have to wrestle with?

15 Now, obviously, you have to give a little
16 -- when you say, "Here's the background issue" and you
17 have to give me three subsidiary issues that lead me
18 to the background, but we're not looking for detailed
19 proof; we're looking kind of for an outline of your
20 case and where is the controversy that you're going to
21 try to convince us to rule in your favor.

22 MR. SILBERG: But not necessarily tying
23 each point to, "Witness X will deal with this point."

24 CHAIRMAN FARRAR: No.

25 MR. SILBERG: Okay.

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1 CHAIRMAN FARRAR: Not at all unless you
2 think it's beneficial to say that you know the State's
3 witness is going to say this, but you've got the
4 world's leading scholar who's going to say that. If
5 you want to put that in, you can, but you don't have
6 to. Mr. Turk?

7 MR. TURK: This one's a little more
8 complicated, it seems, because here I'll give you a
9 hypothetical case. The party that files no testimony
10 but hopes to make its case by cross examination, in
11 filing these key determinations they would, in
12 essence, be disclosing to you their cross examination
13 plan, what points they hope to make through cross
14 examination. That's something that the Board would
15 probably want to keep ex parte, to keep until the
16 close of testimony. So I'm not sure whether in
17 looking for these key determinations you're looking
18 for both our case-in-chief and our case through cross
19 examination or just the case-in-chief that is a
20 summary of all of our testimony on the points.

21 JUDGE LAM: Let me add to the discussion
22 here. What I have in mind, when I was talking to
23 Judge Farrar, was I remember when President Ronald
24 Reagan was in the White House. All major issues were
25 summarized on a one-page memo. For example, social

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1 security reform on a one-page memo. Now, of course,
2 on social security reform, one could submit thousands
3 and thousands of pages. And if I remember correctly,
4 the things that I had read was a one-page memo saying
5 background, issues and then proposed actions. I mean
6 I think perhaps we are at that level of focus and
7 clarity, because there's no need to repeat everything
8 that's in the record in front of us. Now, I'm not
9 saying, you know, things should be on a one-page basis
10 --

11 MR. TURK: I like the idea. My only
12 concern is what do we do in distinguishing between our
13 cross examination case and our case-in-chief? But I
14 think it's a great idea, especially for contentions
15 that are going to involve hundreds and hundreds of
16 pages of testimony.

17 MR. GAUKLER: I guess I wouldn't see it
18 getting down to that level of detail that you would
19 distinguish between cross examination and your direct
20 case. I can see this more as the major points, the
21 major issues that the Board's going to have to address
22 and what's our position on those major issues with
23 respect to that contention. So I wouldn't say getting
24 down to the details that I would see a concern, as Mr.
25 Turk says.

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1 CHAIRMAN FARRAR: I think Mr. -- I think
2 Mr. Gaukler's more closely reflecting what we had in
3 mind, but you mentioned the situation of the party
4 that may have no witness, which I take it Mr. Turk is
5 not you.

6 MR. TURK: No.

7 CHAIRMAN FARRAR: A party that will have
8 no witness. And Ms. Walker, let me direct that
9 question to you, since, if I recall correctly,
10 although that was the Board that Judge Bollwerk
11 chaired, if I recall correctly, when you opposed Mr.
12 Silberg's motion for summary disposition you did not
13 have a particular witness affidavit or anything, and
14 good for you, you won anyhow. So it's not critical,
15 but is this a concern you would have if in fact that's
16 how you were going to go after the SUWA B contention?

17 MS. WALKER: No. I think that I could
18 come up with issues or key determinations that
19 wouldn't reveal my case in any way that it hasn't been
20 revealed already. So I'm not worried about it.

21 CHAIRMAN FARRAR: You would touch on, I
22 suppose then that the Applicant failed to do this and
23 the Staff failed to do that or something, that kind of
24 thing? I mean your case is, in a sense -- I mean
25 they're proposing something, and your case is the

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1 negative side or the con side of that. Is that what
2 you're suggesting?

3 MS. WALKER: Well, I mean that's certainly
4 part of it, but I hope you're not saying I can't have
5 a witness.

6 CHAIRMAN FARRAR: Oh, no. No, no. Oh,
7 no. I was putting two and two together and as usual
8 I got five. Mr. Turk was worried about a party that
9 didn't have a witness. The only party I've seen so
10 far without a witness was you, so I thought he was
11 trying to protect your interests, so I wanted to give
12 you a chance to be heard. If you're going to have a
13 witness, that's terrific, but I thought he might have
14 been referring to you.

15 MS. WALKER: No. Actually, I took it to
16 mean that he was trying to protect me, actually. But
17 like I say, I'm not worried about revealing anything.

18 CHAIRMAN FARRAR: Okay.

19 MS. WALKER: So I appreciate the thought,
20 and I'm fine with the idea.

21 MR. TURK: Your Honor, I prefaced that
22 example with the statement that I wanted to give you
23 a hypothetical. I wasn't thinking of Ms. Walker.

24 (Laughter.)

25 Hypothetically or otherwise. But my point

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1 was not limited to a party that only makes their case
2 through cross examination. It would apply also to the
3 state. For instance, they may have a specific faults
4 that they can identify in Staff testimony. I'm not
5 sure none exist, but the state may have a different
6 view. So that in making their key determinations or
7 us in challenging their witnesses, we may be making a
8 proposal if you have a key determination that would be
9 elicited through cross examination, do you want that
10 level of detail or should we avoid it?

11 CHAIRMAN FARRAR: If it frightens you to
12 put that in -- or not -- you know, "frightens" the
13 wrong word again, colloquially. If you don't want to
14 do that for exactly the reason you cite, then I'd say
15 leave it out but still tell me generally where I'm
16 going.

17 MR. TURK: And I'm sure, Your Honor, that
18 we could do it in a general sense. We could say, "For
19 reasons that are disclosed in the cross examination
20 plan --

21 CHAIRMAN FARRAR: Fine.

22 MR. TURK: -- the other side's testimony
23 is full of holes."

24 CHAIRMAN FARRAR: Right. Fine. Ms.
25 Walker, speaking of needing protection, the only

1 person that needs protection between you and me is me,
2 because last night I was reading your brief where you
3 cited the Barnwell case from 1975, and I must have
4 been a very young man when I wrote that opinion. So
5 please don't make it quite so obvious how old I am.

6 MS. CHANCELLOR: Judge Farrar, I have a
7 practical concern. The key determinations have to be
8 filed the same time as pre-filed testimony. And
9 looking at the seismic issue and what we have ahead of
10 us, putting one layer on top of that is -- I mean the
11 boat's a bit rickety now. I don't want it to sink.
12 And to write, for example, a 15-page brief on what we
13 think the major issues are is going to be, as I said,
14 just one extra thing that we have to do, and I'm
15 really struggling with how we're going to get it all
16 done.

17 CHAIRMAN FARRAR: That's a good point.
18 Let me make a clarification first, and then let's
19 discuss it. I didn't envision this a brief. This is
20 not something where you're trying to convince us to
21 make that determination. You're just pointing out the
22 determinations you want us to make without any
23 argumentation. So I think I envisioned it as easier
24 document to construct than you just said. Having said
25 that, I fully appreciate that that is an extra burden

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1 at what might be a very dreadful time to do it. I
2 don't suppose -- well, refresh me on the schedule.
3 Customarily, how far in advance of the hearing date do
4 you file the pre-filed testimony?

5 MR. GAUKLER: We've been trying to make
6 sure we have at least four weeks before the hearing
7 when we file the pre-filed testimony. And I would
8 agree with Ms. Chancellor on some of the issues, like
9 seismic. I could see where we might want to have some
10 time delay between the filing of the pre-filed
11 testimony and this key determination document.

12 CHAIRMAN FARRAR: Ms. Chancellor, does
13 what I said -- why don't you respond to what I said or
14 if that changes your thinking at all.

15 MS. CHANCELLOR: It lightens the burden a
16 little bit, Your Honor, but there is a lot going on in
17 those four weeks. We've pre-filed testimony four
18 weeks before the hearing, and then two weeks -- and
19 then we have to digest the opposing side's testimony,
20 and then we have in limine motions two weeks after we
21 pre file testimony. And then two weeks after that we
22 start the hearings. And with respect to the seismic
23 issues, if we are going to do the environmental
24 contentions prior to that, we've also got to focus on
25 those as well. So there's just so much going on

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1 during that time period. I'm just concerned that we
2 really won't get a very good work product, let's say.

3 CHAIRMAN FARRAR: Okay. You've made,
4 although you didn't realize it, a point that I think
5 is very important here. The Applicant won't agree
6 with this but in a sense has unlimited resources. The
7 Staff -- but you know the point I'm making. You have
8 a big law firm and a lot of people. The Staff has a
9 lot of people. In this case, which is part of what
10 makes this case so fascinating, the Intervenor has a
11 lot of people. Many times we have a case where the
12 intervenor is very unfunded, and the state has decided
13 to put a lot of resources into this.

14 So the reasons you just said about the
15 burdens on you all don't get too much of my sympathy,
16 because you look up here and you see the three of us
17 and you see Will and that's it. And that's exactly
18 the reason -- I'm sorry, Michelle, there you are,
19 you're not sitting up with Will, there's also
20 Michelle.

21 JUDGE LAM: It's David versus Goliath, and
22 we are the David.

23 CHAIRMAN FARRAR: Yes. Ms. Chancellor,
24 everything you've said I agree with, and while I know
25 you have a position on behalf of the State that's very

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1 important for you to press, and so does Mr. Silberg,
2 Mr. Gaukler, so does the Staff, but when it comes down
3 to it, we have to write a decision. We have to run
4 that hearing, we have to understand this evidence that
5 you've put if not a career a good portion of a career
6 into learning, and we have to master that evidence,
7 and we have to put out a decision in a reasonable time
8 frame that deals correctly with that evidence.

9 And so while I concede that it's a burden
10 on you to do it, if you don't do it, you're leaving us
11 to try to get through that evidence, and we try to do
12 our jobs responsibly and diligently. But if we don't
13 have your help in getting through those documents,
14 we're reading them and we don't know -- well, when we
15 read them, it helps immeasurably to know why you're
16 reading them and where people want to take you with
17 those documents. Otherwise you're just reading.

18 So while I'm sympathetic, while I agree
19 with what you said, it goes double for us. So having
20 said that, let me ask -- before I ask the parties to
21 respond, my colleague, Judge Lam, has -- I thought
22 looked like he wanted to say something.

23 JUDGE LAM: Oh, no thanks. I was just
24 reading.

25 (Laughter.)

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1 PARTICIPANT: He's trying to get a head
2 start; he's reading.

3 CHAIRMAN FARRAR: Mr. Turk?

4 MR. TURK: Your Honor, I think I have a
5 practical suggestion that will lighten the burden for
6 the State and the Board and the rest of the parties.
7 Don't let us file 15 pages. If you set a tight page
8 limit, then our burden is less, and your burden in
9 reading is less.

10 CHAIRMAN FARRAR: Again, you've read my
11 mind, because when we first wrote that order I think
12 we had a five-page for complex and three for simple,
13 and at the last minute we changed it to page limits we
14 would set and where I pulled 15, maybe I've been
15 reading too many seismic documents lately, but where
16 I pulled 15 out, you're right. Ms. Chancellor, does
17 that help? Suppose we said, on seismic, which I take
18 it is the most complicated issue, five-page limit; on
19 accidents, three pages; and on the others, a page and
20 a half? Does that help?

21 MS. CHANCELLOR: That certainly helps,
22 Your Honor. Five on seismic, three on accidents and
23 was it one on the others?

24 CHAIRMAN FARRAR: Yes. And if you all
25 come to us and say, "Gee, we've talked about this and

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1 we'd like it to be six," fine. If we approve that
2 form of communication, send us an email. We'll get to
3 that later.

4 MS. CHANCELLOR: I'd like to correct the
5 record, Your Honor. The State does not have unlimited
6 resources. The three attorneys you see up here are
7 basically it, and Mr. Soper is just dealing with the
8 aircraft crashes and Ms. Nakahara and myself are
9 dealing with seismic. I didn't want you to think that
10 we have a whole contingent of support staff and
11 lawyers back in the office waiting at our command.

12 CHAIRMAN FARRAR: Okay. I thought, and
13 I'll have to read the transcript when the reporter
14 does it, but I think I only used that term of
15 opprobrium with Mr. Silberg and that I said, "You had
16 -- that the State had decided to commit a lot of
17 resources." But with that correction, I understand
18 that you too work for a government agency and have
19 your own budget and other resource limitations. And,
20 please, those of you who are observing have learned by
21 now that I sometimes speak colloquially or exaggerate
22 to make a point, so don't -- let's make sure we keep
23 that in mind.

24 MR. SILBERG: I would agree with that in
25 lieu of our assumed unlimited resources, which are,

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1 like Denise's, anything but. One thought I did have:
2 I don't know if you have a particular model in mind as
3 to what this outline might look like. If there exists
4 something from some other case that would be a model,
5 perhaps you could circulate it amongst us.

6 CHAIRMAN FARRAR: I have it in my mind.
7 I have in my mind what I think it would be, but I've
8 never seen one. In fact, that's why we use the word,
9 "determinations," as opposed to findings and
10 conclusions, because sometimes you read those findings
11 and conclusions, and they don't really focus. This is
12 focus us on the decisions you want us to make, and,
13 no, I don't have -- if I had a sample, I'd give it to
14 you, but I don't have a sample.

15 MR. TURK: Would it be helpful for this to
16 be in outline form rather than in narrative?

17 CHAIRMAN FARRAR: Yes. I thought we used
18 the word, "outline," somewhere in that order, because
19 I did not envision a narrative.

20 MR. SILBERG: It does say "outline" in the
21 --

22 CHAIRMAN FARRAR: Yes. Bullets, whatever.
23 Here's where you want us to go. In fact, distinctly
24 not a narrative.

25 JUDGE LAM: Right. The one thing I had in

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1 mind was perhaps the party can outline what is your
2 strongest argument -- what is your biggest strength
3 and what is your opponent's major weaknesses? Perhaps
4 that contrast would help us.

5 MR. SILBERG: That may be difficult to do
6 because at the point we file testimony we will not
7 have seen the other side's testimony.

8 MS. CHANCELLOR: Your Honor, could I
9 interject? We can't hear Judge Lam when he speaks.

10 JUDGE LAM: Can you hear me better?

11 CHAIRMAN FARRAR: Go ahead, talk.

12 JUDGE LAM: Can you hear me better?

13 MS. CHANCELLOR: That time we could. If
14 you speak directly into the mike, it may help.

15 CHAIRMAN FARRAR: Thanks, Ms. Chancellor.
16 Mr. Vollmann, you still there?

17 MR. VOLLMANN: Yes, I am, but with your
18 permission, I'd like to excuse myself?

19 CHAIRMAN FARRAR: Okay. Certainly, and is
20 there anything that you've heard so far or anything
21 else on the agenda that you want to bring up before
22 you have to leave?

23 MR. VOLLMANN: I don't believe so. Thank
24 you very much.

25 CHAIRMAN FARRAR: Okay. Thank you for

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1 making the effort to be with us on a day that was not
2 your easiest to do it.

3 MR. TURK: Your Honor, do you intend to
4 address the request for a protective order at today's
5 --

6 MR. VOLLMANN: Oh, I better stay on the
7 line for that.

8 CHAIRMAN FARRAR: Yes. I'm sorry. I'd
9 forgotten that. I assumed since it was agreed to by
10 everybody that we would enter it.

11 MR. TURK: I only have one clarification
12 point to make, Your Honor.

13 CHAIRMAN FARRAR: Okay.

14 MR. TURK: We certainly don't oppose the
15 request for the protective order. I would note,
16 however, that in one respect we would ask for a little
17 clarification. On Page 1 of the proposed protective
18 order, the bottom line indicates that exhibits shall
19 be served only on parties who are authorized to
20 receive them, the Licensing Board and the Commission.
21 There's no definition of Commission, but in the
22 attached confidentiality agreement, the NRC is defined
23 to include all NRC employees, consultants and
24 contractors, et cetera. I would just get a
25 clarification that if the Board enters the order as

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1 requested, the sense of the word, "Commission," would
2 include NRC Staff and others employed by the
3 Commission or contracting to the Commission. I think
4 that's the intent, but I just want it on the record.

5 MR. VOLLMANN: Yes, it is.

6 CHAIRMAN FARRAR: Mr. Vollmann, you agree
7 with that?

8 MR. VOLLMANN: Yes, I do.

9 CHAIRMAN FARRAR: Okay.

10 MR. SILBERG: The language also says,
11 "served on the parties who are authorized to receive
12 them," and the Staff would be one of those parties.
13 So I think you're covered both ways.

14 CHAIRMAN FARRAR: Okay. Any other
15 questions anyone has for Mr. Vollmann? Okay. Thank
16 you, sir.

17 MR. VOLLMANN: Thank you.

18 CHAIRMAN FARRAR: All right. Then let's
19 -- this proposed key determinations, let's have you do
20 it with your pre-filed testimony, limited to five,
21 three or one pages, as we said, depending on the
22 issue, and you're not graded on it. If it's not
23 exactly what we had in mind, as long as it's what you
24 have in mind that's going to help us understand your
25 case and focus on where we need to get, and it's not

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1 something that will later limit you. If you later
2 have other determinations you want made, fine. Again,
3 you will have only hurt yourself, not your opponent,
4 by not letting us see your case ahead of time. And
5 make sure all your opponents understand that, that
6 they cannot rely on that as a limitation of your case.

7 I promised you a break after an hour and
8 a half. That's my first promise that I've broken to
9 you. It's about -- I have 12 of. Let's take a 12-
10 minute break and be back -- I've got 12 of, so let's
11 be back here on the hour. And it's -- I think with
12 the progress we've made, we shouldn't have any trouble
13 finishing in another hour or so after that, in terms
14 of the Utah lunch arrangements. All right. Let's go
15 off the record. You all know you'll need an escort to
16 wander around, so hook up with a staff person who will
17 take you to the bathroom or whatever.

18 (Whereupon, the foregoing matter went off
19 the record at 1:48 p.m. and went back on
20 the record at 2:01 p.m.)

21 CHAIRMAN FARRAR: We weren't on the record
22 before that. We're back on the record now. Moving
23 right ahead on the same general subject matter, let's
24 get to the cross examination plans. Those, as you
25 know from our rules, are done on an ex -- not an ex

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1 parte basis, they're filed only with the Board,
2 because in fact those are your game plan or your
3 playbook, and those are filed only with the Board and
4 then put on the public record later.

5 And there's a two-fold purpose for those:
6 One, that let's us manage the hearing so when you
7 start asking aimless questions, we can tell that
8 they're aimless because they're not within your plan;
9 second, and I think equally important reason, is again
10 lets us read the other side's testimony knowing where
11 you see the holes in it are, and again lets us prepare
12 a little better.

13 So we had suggested the two-phase set up,
14 and my colleagues said, "Oh, no, the lawyers like to
15 hand you these right before they start cross examining
16 the witnesses." And I know we lawyers tend to do
17 things at the last minute, but we thought a two-phase
18 approach would be good. One, something, say, two
19 weeks in advance -- and we're not wedded to exactly
20 two weeks -- two weeks in advance that would let us
21 start reviewing the testimony and then something, if
22 I can use the term, "at the last minute," where that's
23 the night -- it would help us to have it the night
24 before, but if you're staying up all night the night
25 before and want to give it to us that morning, I

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1 suppose we could live with that. Any thoughts on
2 that? Time's up, good.

3 (Laughter.)

4 MR. TURK: I have a thought, Your Honor.
5 I was hoping that somebody else would address it
6 first. We will have a lot of tasks in the proceeding,
7 particularly now that we're going to be filing the key
8 determinations and prefaces. If Your Honors could
9 live with just the single filing of the cross
10 examination plan, perhaps two or three days before the
11 hearing on that issue begins, maybe that's the way to
12 get to you ahead of time but not to give us the burden
13 of two filings.

14 CHAIRMAN FARRAR: There's one vote. Mr.
15 Silberg?

16 MR. GAUKLER: Ideally, we would generally
17 like to have one filing too a little bit earlier than
18 normal.

19 CHAIRMAN FARRAR: Ms. Chancellor?

20 MS. CHANCELLOR: Same here, Your Honor.

21 CHAIRMAN FARRAR: Okay. I got my two
22 colleagues, so we have three votes.

23 (Laughter.)

24 And you all have three votes.

25 MS. WALKER: One filing.

1 CHAIRMAN FARRAR: Okay.

2 MS. WALKER: One filing the night before,
3 that's what I think.

4 CHAIRMAN FARRAR: Fortunately, this is not
5 a democracy. Hold on.

6 (Pause.)

7 CHAIRMAN FARRAR: The vote is now six to
8 one, but fortunately for me I'm the one. If it's only
9 a management tool, we can get it in at the last
10 minute; that's not a problem. But I see it, maybe
11 more so than my colleagues do, as something that would
12 help me as I'm preparing, you know, reading one side's
13 evidence to know where you think the holes are, and it
14 helps me mentally prepare for the thing. If we limit
15 it to one and are reasonably flexible in our
16 interpretation of -- in other words, the thing we're
17 going to use it against you for is here's a cross
18 examination plan that you're going to go into Areas A,
19 B and C and now you're wandering in Area Z, and we
20 say, you know, "That's it. Sit down, you're
21 finished." Certainly, we can be flexible there. If
22 your cross examination is going in a direction that
23 makes sense, the fact that it wasn't quite listed is
24 not a problem. If we give you just the one filing
25 instead of two, when can you get us that, not the

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1 morning of the hearing? In other words, say, okay,
2 we're cutting your burden in half. You don't have to
3 do it well in advance, but I need to be studying this
4 stuff. When can you get it to me?

5 MR. TURK: Speaking for the Staff, Your
6 Honor, I know that the steps involved in getting the
7 plan to you involve, first, receiving the testimony
8 four weeks before hearing --

9 CHAIRMAN FARRAR: Right. MR. TURK: --
10 distributing it to all of our experts, having them
11 evaluate it, having them give us questions, and then
12 we have to study the kinds of questions they would
13 raise, and then we have to draft them up in a
14 pleading. That process will certainly take three
15 weeks out of the four weeks before hearing, at least.
16 I would propose, if it's acceptable to Your Honor,
17 that we file cross examination plans approximately two
18 full days before the hearing on that issue.

19 CHAIRMAN FARRAR: Mr. Gaukler?

20 MR. GAUKLER: That sounds reasonable to
21 me. Two to three full days before the hearing.

22 CHAIRMAN FARRAR: Ms. Chancellor?

23 MS. CHANCELLOR: Always looking out for
24 seismic, in the seismic issues, we may end up
25 bifurcating or trifurcating that, and so to the extent

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1 that we don't have to pre-file a gigantic cross
2 examination plan for every witness that the Staff and
3 PFS are going to put on, if it's two days prior to the
4 proposed testimony, I think that would be workable.

5 CHAIRMAN FARRAR: Okay. And in light of
6 the adjective you used there, "gigantic," let me make
7 clear again shorter is better. In other words,
8 remember we have two purposes here: Number one, to
9 help us control you. If you're way off your plan,
10 where are you? Again, Mr. Turk, I think you mentioned
11 earlier not text -- or not prose, outline. And,
12 again, this is a document that -- I guess there's a
13 conflict of interest on this. On the one hand, you
14 want to limit yourself as little as possible; on the
15 other hand, the earlier you tip us off that here's the
16 holes in the other side's case and the more thorough
17 you are, the better off you are. So, again, we're
18 talking -- well, my colleagues have received these.
19 How long are these? Have you -- I mean they say
20 they've typically got them one or two pages long in
21 outline form. So let's do then the 48 hours, which
22 would mean -- I'll even give you a break. Give it to
23 us at the end of one day for the hearing that's two
24 days later. In other words, it's Wednesday evening,
25 we break in the hearing, and if you haven't given them

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1 to us before then, on Wednesday evening you give us
2 the plan for the Friday witnesses.

3 MR. SILBERG: And this is on a witness-by-
4 witness basis, rather than on part of that issue.

5 CHAIRMAN FARRAR: Right. It's a witness-
6 by-witness basis. So instead of 48 hours, that might
7 be as little as 36. But that way you've given us two
8 nights and a day to put it to use. Ms. Chancellor,
9 that all right with you? Go ahead.

10 MS. CHANCELLOR: Your Honor, can we amend
11 these plans if we're -- I mean if we're burning the
12 midnight oil and think, "Oh, we really want to go into
13 Area Z" and we don't have that on our plan, is it okay
14 to amend, provided we make a good faith effort to put
15 everything down two days in advance?

16 CHAIRMAN FARRAR: Absolutely, and that
17 kind of fits in with what we were doing initially,
18 give us something two weeks in advance and then amend
19 it very freely. Certainly here -- remember the only
20 people seeing this are us. They will eventually be
21 made part of the public record after the hearing is
22 over, but at that point the only people you're giving
23 them to is us, so you may amend them as freely as you
24 want. If someone tries to take advantage of that and
25 gives us one line 36 hours in advance and then gives

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1 us three pages the next day or before the hearing, if
2 that happens several times, we'll do something.

3 But otherwise -- maybe this is a good time
4 to say this: From what I've seen so far today, other
5 than Mr. Gaukler, this is essentially my first meeting
6 with all of you, I see a very -- as opposed as you may
7 be on the issues, a very cooperative spirit in terms
8 of how we manage this hearing and get to it. So as we
9 talk about these procedures, I, for one, assume that
10 everyone is acting in good faith, knows what we want,
11 and so, Ms. Chancellor, your suggestion of amending
12 because you did come up with something in the middle
13 of the night, that's fine with us.

14 MR. TURK: Can I ask for one
15 clarification? For testimony that would begin on a
16 Monday, when would you want the cross examination
17 plan?

18 CHAIRMAN FARRAR: Friday's fine. I think
19 for all of us, our plan is once we're out there we're
20 not coming home, so if we have it for a weekend,
21 that's fine.

22 MS. WALKER: Chairman, this is Jero. I
23 realize that I don't understand something, which is if
24 a deadline is based on the hearing, does that mean on
25 the beginning of the hearing or on when your

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1 contention is being dealt with within the hearing?

2 CHAIRMAN FARRAR: It depends. I mean like
3 just now the question came up if you're talking about
4 cross examination of witnesses, that's per witness.
5 You know, if we say such and such panel's going to be
6 on on Thursday, then you get me this stuff on Tuesday,
7 even if the contention started being heard two weeks
8 ago. In terms of discovery -- or in terms of where
9 someone mentioned pre-filed testimony is four weeks in
10 advance of the hearing, what has the practice been?

11 MR. GAUKLER: The pre-file testimony dates
12 are set in the schedule, and they've been set to be at
13 least four weeks in advance of the hearing.

14 CHAIRMAN FARRAR: Ms. Walker, your
15 question is a good one. I think we either -- when we
16 say so much in advance of something, we need to
17 specify to you exactly what that's in advance of,
18 whether that's the whole hearing, the contention or
19 something within the contention or, as Mr. Gaukler
20 said, we would say for this issue, they're due on a
21 certain date.

22 But if there's ever a problem with that,
23 let's discuss that under our Agenda Item 5 about
24 email, because there may be things like this where if
25 you get something you don't understand it, I don't

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1 want you filing a motion, we get responses. We have
2 to have a quick way to handle that kind of event, so
3 that's a good question, and remind me of it when we
4 get to the email setup.

5 Okay. Back on the agenda, under Number 4,
6 up to schedule for identifying exhibits. Mr. Silberg,
7 this was in your letter that you submitted on behalf
8 of the three parties. Tell me what you had in mind.

9 MR. SILBERG: The idea would just be that
10 if people were going to plan to introduce exhibits,
11 that those would be filed at the same time as the pre-
12 filed testimony was filed. For some exhibits where
13 the parties already have them, it would not be
14 necessary to physically serve the parties with
15 exhibits, but it would presumably be required to serve
16 those on the Board but at least notify the parties
17 which documents they plan to introduce. But it would
18 be on the same time as the schedule for the pre-file
19 testimony.

20 CHAIRMAN FARRAR: Do you ordinarily -- the
21 pre-file testimony of Dr. Jones and in his testimony
22 he refers to three other documents. Do you normally
23 append those?

24 MR. SILBERG: Not necessarily. Sometimes
25 they're merely references.

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1 CHAIRMAN FARRAR: Okay.

2 MR. SILBERG: Other times you want the
3 document introduced into evidence, and it's the latter
4 category that I had in mind. I don't know whether we
5 would have any, but it is something that happens.

6 CHAIRMAN FARRAR: As I understand it, from
7 other colleagues, sometimes there's been a practice,
8 and not the two colleagues here, there's sometimes a
9 practice of you listing some point pre-hearing all the
10 exhibits you plan to introduce, a numbered list, not
11 the same numbers that they're eventually going to get
12 when you introduce them, whatever numbering system we
13 adopt for that, but here's the list of the 100
14 exhibits. And I suppose we would do them on a
15 contention-by-contention basis. And so everybody at
16 some time in the proceeding has that list in front of
17 them and knows what all the exhibits are going to be
18 from the Applicant on that issue. Have you ever done
19 that in other proceedings?

20 MR. SILBERG: I don't recall that being
21 done. I don't know that a comprehensive list on all
22 the issues is important, from our standpoint, as long
23 as we know which exhibits belong with which pieces of
24 testimony.

25 CHAIRMAN FARRAR: Mr. Turk?

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1 MR. TURK: When I looked at this item for
2 the agenda, Your Honor, I was distinguishing in my
3 mind between exhibits that we would use in our direct
4 case and exhibits that we might use in cross
5 examination. I would not expect to identify to an
6 opposing party the exhibit I might use to cross
7 examine a witness on, but I think when someone intends
8 to put an exhibit as part of their direct case, it
9 should be identified at the time of the testimony so
10 that if we have any motions in limine to file, we can
11 get that filed in line with the Board's schedule.

12 CHAIRMAN FARRAR: Ms. Chancellor?

13 MS. CHANCELLOR: A couple of issues, Your
14 Honor. Sometimes we both have the same exhibits, and
15 sometimes those exhibits are quite voluminous. And
16 it's often ideal for us to consolidate those types of
17 exhibits. And -- I thought I had two points. As long
18 as -- there have been many documents that have been
19 exchanged in this proceeding, and so as long as the
20 document is identified with specificity as to title
21 and page number, if it's not the entire document, then
22 there isn't any need to serve it on the parties.

23 I don't know whether there's a need to
24 serve on the Board, for example, portions of the
25 application. And another issue that comes to mind is

1 the PFS aircraft crash reports. They are quite
2 voluminous. I don't know whether they have actually
3 been served on the Board in the past. So it's sort of
4 more from a practical standpoint that I think it's a
5 good idea to try and coordinate to make sure that
6 everybody isn't copying the same documents.

7 CHAIRMAN FARRAR: Hold on just a minute
8 here.

9 (Pause.)

10 CHAIRMAN FARRAR: A couple of things. We
11 certainly don't want duplication, but we do -- the
12 fact that you've sent us an exhibit and a motion for
13 summary disposition two years ago doesn't mean we
14 still have it, although the files here are pretty
15 good. Some exhibits may change, it may be an updated
16 version, so I think at some point we need the exhibit
17 but only -- you know, if different people are relying
18 on the same exhibit, we only want one. We're going to
19 give it the same number.

20 This is more a management -- we have a
21 more a management problem here and a duplication
22 problem. We don't have a vital interest in doing
23 this, unlike the previous issues where we were trying
24 to burden you with something you didn't want to do
25 that would help us, this we don't have a vital

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1 interest. So help us with --

2 MR. GAUKLER: I would suggest that the
3 parties consult on this and work out the mechanics of
4 doing it and coordinating and deciding what should be
5 filed and get back to the Board.

6 CHAIRMAN FARRAR: Yes. We need the
7 exhibits -- a new copy of the exhibits sometime in
8 advance, but this is unlike -- I mean whatever you all
9 work out that suits your logistical and duplicative
10 needs is basically fine with us, as Mr. Gaukler --

11 MR. GAUKLER: I recall that before the
12 last hearing I think all the parties filed their
13 exhibits and served the exhibits on everybody at the
14 time they filed the testimony. I know the State filed
15 a whole book of exhibits with numbers on it, and
16 certain of them were excluded, so then we went through
17 and we numbered them.

18 CHAIRMAN FARRAR: Yes, okay. So you
19 numbered them in advance.

20 MR. GAUKLER: We did last time, I know.

21 CHAIRMAN FARRAR: So those are numbers we
22 can use as handy references, but those aren't the
23 numbers that the court reporter gives them during the
24 hearing.

25 MR. GAUKLER: Correct.

1 CHAIRMAN FARRAR: That's fine.

2 MR. SILBERG: We can consult with the
3 parties and to the extent before testimony is filed we
4 can decide that we're both filing the same document
5 and one of us can just note when we serve it on the
6 Board that look in the other party's pleadings for it.
7 And we can try to -- it may not be perfect because of
8 the way it develops at the last minute, but I think we
9 can probably avoid much of this.

10 MR. GAUKLER: To give a good example, for
11 example, we will be filing the aircraft crash report
12 and supplement to that report. And, obviously, it's
13 going to be a fairly big exhibit, and there's no need
14 for the State or the Staff to file it as well.

15 CHAIRMAN FARRAR: Okay. Only thing I
16 would add to this, when you cite the Applicant's
17 safety evaluation report -- I'm sorry, Applicant's
18 safety analysis report, the Staff's safety -- or do I
19 have that backwards?

20 MR. SILBERG: You got it right.

21 CHAIRMAN FARRAR: I got it right. There
22 are a lot of revisions to those, so don't assume that
23 we have managed to put the right loose-leaf version in
24 when you've sent replacement pages. When you rely on
25 one of those documents, please include the pages

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1 you're relying on.

2 MR. SILBERG: Even if we don't intend to
3 introduce it as an exhibit into evidence? I mean a
4 lot of times we'll put that in just as a reference in
5 the testimony, but we don't intend to introduce it
6 into evidence.

7 CHAIRMAN FARRAR: Yet when I want to go
8 check that to see what in fact you said, I'm always
9 nervous that I don't have the right edition, and the
10 right edition can be very important. I mean you don't
11 mention something in one edition and then you do
12 mention it in the other.

13 MR. SILBERG: Then it may be that what we
14 ought to do is make sure that the Board has an updated
15 copy of all the documents before the hearing.

16 CHAIRMAN FARRAR: That's the other way to
17 do it. Just draw the curtain on some given day and
18 send us three copies.

19 MR. SILBERG: Or we'll let Mr. Deligatti
20 check your files and make sure they're okay.

21 MR. TURK: I don't think we'll do that,
22 Your Honor.

23 (Laughter.)

24 For the FEIS -- I'm sorry.

25 CHAIRMAN FARRAR: Do you know their pass

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1 cards don't work in our -- they can't get into our
2 quarters, so you can't do that. A good idea anyhow.
3 Mr. Turk?

4 MR. TURK: I'm sorry, Your Honor. The
5 Staff will be introducing the FEIS. We're required to
6 do that under the regulations. And as you know, it is
7 a very thick, approximately three-inch thick set of
8 two volumes, which all the parties and the Board now
9 have. That's probably something I would not
10 recirculate. I will assume you have it.

11 CHAIRMAN FARRAR: Right. And that's fine,
12 because that -- once you got to it, that's a document
13 and that doesn't change. I'm talking about these
14 other documents where there's always a revision -- you
15 know, there's a constant revision. But, no, no, we
16 have the draft statement, we have the final statement,
17 that's all we --

18 MR. TURK: For instance, the SER, on the
19 other hand, is one of the documents that has changed.

20 CHAIRMAN FARRAR: Right.

21 MR. TURK: Most recently we issued a
22 Supplement Number 2 --

23 CHAIRMAN FARRAR: Right.

24 MR. TURK: -- which instructs the reader
25 to delete certain pages and insert others. I think

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1 what you're asking for is a unified document so that
2 to the extent that introduce the SER -- we won't
3 introduce all of it, but to the extent that we
4 introduce it, it may show that some pages are the
5 original SER followed by a page that's Supplement
6 Number 1 --

7 CHAIRMAN FARRAR: Right.

8 MR. TURK: -- and perhaps a page of
9 Supplement Number 2, whatever is the correct
10 sequencing.

11 CHAIRMAN FARRAR: And what I want is your
12 latest version of that and for you not to rely on the
13 fact that as those different versions came in that I
14 followed the instructions and replaced the right pages
15 at the right time.

16 MR. TURK: We'll serve you with a unified
17 single document for the SER to the extent that we're
18 putting it into evidence.

19 CHAIRMAN FARRAR: Right. Okay.

20 MS. CHANCELLOR: Judge Farrar?

21 CHAIRMAN FARRAR: Yes, ma'am?

22 MS. CHANCELLOR: A point of clarification.
23 I assume that with regard to the management of all
24 these exhibits, we're only talking about pre-filed
25 testimony; we're not talking about exhibits that we

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1 may use on cross examination?

2 CHAIRMAN FARRAR: Is that right?

3 MR. GAUKLER: I believe that's right, yes.

4 CHAIRMAN FARRAR: Okay. Yes, you're
5 right. Okay. Schedule for identifying witnesses not
6 previously identified. I have to admit that this one
7 mystified me, because I can't believe that with all
8 the discovery you've done that there are witnesses
9 that nobody knows about, but maybe I missed something.
10 Who's going to help me on this?

11 MR. GAUKLER: Well, there's two
12 categories, Your Honor. First of all, there is with
13 respect to Utah QQ and the redefined Utah L
14 contention. There will be new witnesses with respect
15 to that that we haven't identified before to deal with
16 specific issues that we hadn't deal with before,
17 testimony or in the summary disposition. Then I
18 understand the State has a potential new witnesses or
19 may request the Board to consider which is an F-16
20 pilot with respect to Utah K, credible accidents.

21 My understanding was that the testimony if
22 fairly limited, the date is relatively close, February
23 7, for the filing, and I had talked to State counsel
24 before the hearing, trying to see whether we could
25 reach agreement, and I think as long as the testimony

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1 is going to relatively limited, I probably won't have
2 an objection. But she was going to provide me with
3 additional information at this point in time.

4 CHAIRMAN FARRAR: Okay. Is that something
5 then I can safely for now leave to you two to work
6 out? Or let me reframe the question. I assume, Mr.
7 Gaukler, that in discovery you said, "What witnesses
8 are you going to come up with," and this person was
9 not listed but the person will -- the State will say
10 that the person emerged -- they just discovered the
11 witness and so forth.

12 MR. GAUKLER: Yes.

13 CHAIRMAN FARRAR: Ms. Chancellor?

14 MS. CHANCELLOR: That's correct, Your
15 Honor. And just in terms of the mechanics, do we need
16 to file a motion to add a new witness? If we can work
17 it out with Mr. Gaukler and he agrees to the
18 conditions under which we bring in this new witness,
19 does it need to be approved by the Board? I guess
20 that's the main question I have.

21 CHAIRMAN FARRAR: I would say no. I mean
22 if -- I mean you ought to exchange something between
23 yourself that confirms the understanding. I mean at
24 this point we have no idea, I don't think, who you're
25 other witnesses are, so why would we need to know

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1 about this one? I don't think we know who your
2 witnesses are, do we?

3 MR. GAUKLER: We've identified witnesses
4 in exchange in discovery between each other.

5 CHAIRMAN FARRAR: Right, but --

6 MR. GAUKLER: To the extent you have the
7 discovery --

8 CHAIRMAN FARRAR: Right, but I haven't
9 been required to focus on that or to read it for any
10 purpose, so I would say if you agree on this, that's
11 fine. If you don't agree, somebody file a motion.

12 MR. GAUKLER: Just one thing: Normally
13 the discovery is closed and when somebody identifies
14 a new witness we usually agree that a deposition would
15 be held, and that would be -- the State has agreed to
16 make the person available for a deposition. And
17 normally we'd come to the Board to ask for an order to
18 take that deposition. If we agree between ourselves
19 to take the deposition, do we need to come to Your
20 Honor to request that?

21 CHAIRMAN FARRAR: My seat of the pants
22 feeling would be no, but I've -- Judge Bollwerk has
23 been here a long time, and I've been here a short
24 time.

25 JUDGE BOLLWERK: I'll just put it this

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1 way: My feeling about that is I prefer to know on the
2 record what's going on with something like that,
3 especially when you're beyond a discovery date.
4 Because the Board did -- while we allowed you a lot of
5 a latitude within discovery dates, when we extended
6 those dates for some reason, we at least want to know
7 the record. So, again, it strikes me if it's agreed
8 to between the two -- and I know my colleagues are not
9 going to have any problem with it, but we probably
10 ought to go ahead -- I think it makes better sense.

11 CHAIRMAN FARRAR: Yes. Send in a joint
12 notice or whatever that the parties have agreed to
13 this and absent Board veto that's what you're going to
14 do, and you'll never hear from us most times.

15 JUDGE BOLLWERK: Maybe I'll draft up a
16 little order for you to sign.

17 (Laughter.)

18 MR. TURK: Your Honor?

19 CHAIRMAN FARRAR: I've been properly
20 chastised.

21 MR. TURK: The Staff is possibly going to
22 identify witnesses also that we haven't identified
23 before. The State had filed discovery requests
24 against us many years ago asking for identification of
25 witnesses. And in some cases, we did not know who our

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1 witnesses would be, and in fact even only now are we
2 able to identify some people.

3 So we will go back through our discovery
4 responses. If there are additional people, we'll
5 provide notice to the State of that very quickly. And
6 I would notice also that for Contention QQ we've never
7 addressed that issue, the seismic design and the soil
8 cement issues, because only now have they been
9 admitted, and we'll have to identify witnesses for
10 that also.

11 CHAIRMAN FARRAR: Okay. So at this point,
12 you all are going to solve all of this and let us know
13 what your solution is.

14 MR. GAUKLER: In terms of QQ, I would
15 assume we would be filing discovery against each
16 other, "Please identify your witnesses," and then we
17 would be taking depositions thereafter.

18 CHAIRMAN FARRAR: QQ is later on the
19 agenda.

20 MR. GAUKLER: Right.

21 CHAIRMAN FARRAR: So what I just said goes
22 to everything but QQ. Opening and closing statements,
23 we had referred to those earlier -- I'm sorry, or we
24 didn't do order of presentation. Order of
25 presentation, what's the rule, what's the norm, and

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1 what do you want?

2 MR. GAUKLER: We would propose that we
3 have the order of presentation where the Applicant
4 will go first, followed by the Intervenors and then
5 the NRC Staff.

6 CHAIRMAN FARRAR: Hold on. Don't argue
7 it. Let me see --

8 MR. GAUKLER: And I would just note that
9 that's not what we did in June. It was different in
10 June. The Applicant went, the NRC Staff went, and
11 then the State went.

12 CHAIRMAN FARRAR: Okay. Staff, what do
13 you say?

14 MR. TURK: I like that idea, Your Honor.

15 CHAIRMAN FARRAR: Okay. Ms. Chancellor?

16 MS. CHANCELLOR: Your Honor, the rule, the
17 norm, and what we want is that the State goes last,
18 because we don't want the Staff to have a second shot
19 after PFS puts their case on, then the State puts its
20 case on. The Staff are aligned with PFS, and we think
21 it's unfair if we're sandwiched in between.

22 CHAIRMAN FARRAR: Ms. Walker, on your
23 issue, how would you like things?

24 MS. WALKER: I'd like the last word.
25 Thank you.

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1 (Laughter.)

2 CHAIRMAN FARRAR: Okay. Mr. EchoHawk, how
3 do you want it on your issue if that were to go to
4 hearing?

5 MR. M. ECHOHAWK: Our position is
6 consistent with that stated by Jero Walker just now.

7 CHAIRMAN FARRAR: Okay. Here's what we
8 think.

9 MR. GAUKLER: I just want to say it's my
10 understanding --

11 CHAIRMAN FARRAR: I'm sorry. I didn't --
12 I told you not to argue, because maybe if everybody
13 agreed, we wouldn't need any arguments. Everyone did
14 not agree, so tell me why you're right and they're
15 wrong.

16 MR. GAUKLER: We believe that typically in
17 NRC licensing proceedings the Staff has usually gone
18 last, and it gives the Staff a chance to take into
19 account any information that may be presented by the
20 other parties, in the communities, for example, to
21 adjust whatever adjustment they think they need to
22 make in their testimony. And that's been the
23 tradition, as far as I understand, with respect to NRC
24 proceedings. And we see no reason to deviate from
25 that here.

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1 CHAIRMAN FARRAR: Okay. Mr. Turk?

2 MR. TURK: That is the usual order of
3 presentation. We have varied it in this proceeding.
4 I want to say, however, that all testimony would be
5 filed according to the Board's schedule. All parties
6 would know what the Staff's testimony will say
7 upfront. The difference is that the witnesses would
8 not take the stand for the Staff until they've heard
9 the cross examination of other witnesses. And if, for
10 instance, the State has blown a hole wide open in the
11 Applicant's case, the Staff may then take the stand
12 and say, "We are retracting our position or we are
13 changing our position." And that's the benefit to the
14 government and to the Agency that the Staff is able to
15 hear the other testimony and change its position, if
16 necessary.

17 Your Honors will have had our cross
18 examination plans ahead of time, you'll have had our
19 testimony, the other parties will have had our
20 testimony, they will know how they want to challenge
21 us, regardless of when the Staff witnesses actually
22 take the stand, to be able to prepare their case
23 without any detriment. And the only difference that
24 this procedure allows is that government can hear the
25 evidence and decide whether there's any reason to

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1 change their pre-filed views of the case.

2 CHAIRMAN FARRAR: Okay. Ms. Chancellor,
3 I think you and Ms. Walker stated your views well
4 enough. Give us a minute here.

5 (Pause.)

6 CHAIRMAN FARRAR: Having consulted with my
7 colleagues, we're all in agreement. We think the
8 Staff should follow the Applicant for this reason and
9 with this caveat: Although it may not appear so to
10 the outside world, we know that the Applicant files
11 something and the Staff fights mightily with it for
12 longer or shorter period until we get to the hearing.
13 The outside world thinks, "Aha, the Staff is in
14 lockstep with the Applicant," and we know that's not
15 how it happened or that doesn't reflect the process,
16 but it certainly reflects the position by the time we
17 get to the hearing, that essentially the Staff is in
18 the same position as the Applicant. So when the State
19 and Ms. Walker say they want to go last, we understand
20 why they want to go last, and we think that's the way
21 it should go.

22 I would add this caveat, though: Mr. Turk
23 raises a good point. In other words, Staff can get up
24 and say, "Okay, here's why we've agreed with the
25 Applicant. We asked them the following questions, and

1 they -- or they did what we asked them, you know, we
2 said, 'Here's something else you have to do,' they
3 have to do it." If the State or any Intervenor in any
4 case then comes along and does knock holes in the
5 Applicant's case and your people say, "Whoa, how come
6 nobody ever told us about that before," I think that
7 would be the appropriate time for you to step up and
8 say, "Could we have another bite at the apple, because
9 what the State or what the Intervenor just said has
10 caused our people to change their mind." At that
11 point, you won't have the Intervenors objecting to you
12 having another chance and go after them, because you
13 will in fact be endorsing them at that point. The
14 Applicant will be distressed, but at that point, you
15 would have the opportunity to rebut that. So for
16 those reasons, we would set the order as Applicant,
17 Staff, Intervenor.

18 MR. TURK: Thank you, Your Honor. And I
19 want to say I appreciate your recognition of the
20 process, as it works, before we get to the hearing
21 room.

22 CHAIRMAN FARRAR: And, again, you'll find
23 me consistent. When I say it's important for the
24 government to teach people about government, that's
25 what I believe and that's why I particularly

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1 appreciate the spirit all the parties have brought to
2 this today, because particularly in a proceeding like
3 this, it's important that the public know what's
4 really going on. They may have one position or
5 another on the merits of the Applicant's proposal, and
6 that's fine. Everyone's entitled to do that. But I
7 think everybody should know how the process works so
8 that they have an understanding of government,
9 government at all levels.

10 JUDGE LAM: Well, in the past, we permit
11 the intervenor to have the last word, and I think it
12 has worked well for all the parties, particularly the
13 Staff. Also it was permitted to say something after
14 the Staff had heard all the evidence. So I think this
15 order will work well here, as well.

16 CHAIRMAN FARRAR: All right. Opening and
17 closing statements. We had talked about those earlier
18 on. Again, you don't have a jury. By the time we get
19 to the case, we kind of know if all these documents
20 have been filed properly, we know where you're headed.
21 But what's your practice been in other cases? Do you
22 have opening statements? How long are they? What do
23 they deal with? Who gives them?

24 MR. SILBERG: We did, as I recall, make an
25 opening statement in our last hearings. I think that

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1 was largely because the hearings were going to be
2 closed to the public and since there were members of
3 the public there at the beginning, I think we wanted
4 to put on the record what we were going to be talking
5 about in very general terms.

6 CHAIRMAN FARRAR: Oh. So you made opening
7 statements publicly and then went into a closed --

8 MR. SILBERG: I believe that's correct.
9 We won't have that issue here. I don't have a
10 particular problem with opening statements. I don't
11 have a particular need to give them either. I think
12 if one party wants to give them, the other parties
13 tend to want to stand up and give their own. So as
14 far as I'm concerned, I'm kind of neutral on the
15 matter.

16 Closing statements I think are kind of
17 unnecessary. You get the closing statement in the
18 form of proposed findings.

19 CHAIRMAN FARRAR: Right.

20 MR. SILBERG: And, typically, by the end
21 of the hearing, there aren't a lot of members of the
22 public who still have the patience to sit through it
23 all.

24 CHAIRMAN FARRAR: Ms. Chancellor, what's
25 your view on opening and closing statements?

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1 MS. CHANCELLOR: Last time what we did,
2 Your Honor, is that we had one day -- a hearing one
3 day on the emergency plan followed by a week of closed
4 session. And so at the very outset of the hearing we
5 did opening statements with respect to the public
6 portion as well as the closed portion. At the
7 upcoming hearing, I think a short opening statement
8 would be very helpful to the public who are there.
9 While the Board will be educated by the parties, the
10 public won't necessarily wade through the dense
11 documents that we've filed with the Board. So I think
12 a short opening statement would be helpful, and I
13 agree with Mr. Silberg that by the end of the
14 proceeding, not only are the public exhausted, the
15 attorneys are too, so I don't think we need a closing
16 statement.

17 CHAIRMAN FARRAR: Mr. Turk?

18 MR. TURK: I agree pretty much, Your
19 Honor. I usually don't make an opening statements, or
20 certainly I don't make them longer than a minute or
21 two. We don't need it to educate the Board. You'll
22 have the outlines of determinations and all the other
23 filings that you're requesting us. But I agree, it
24 could be useful for the public to understand the
25 issues that are going to be heard. I would only ask

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1 that you give us a time limit so that we don't run too
2 long.

3 CHAIRMAN FARRAR: The time limit, if we do
4 this, would be, again, very short as opposed to very
5 long. I mean my notion is since you've said you're
6 not doing them for our benefit, you're doing them for
7 the public's benefit, you're saying why you're there
8 and what you've done and what you hope to prove and
9 that's it. I don't think most members of the public
10 want the detail of all the seismological studies that
11 have been done and so forth. So I'm thinking three,
12 four, five minutes; is that right?

13 MR. SILBERG: Sounds about right to us.
14 Would you envisage these prior to each contention or
15 before the first public session or before the first
16 public session here and the first public session in
17 Salt Lake City?

18 CHAIRMAN FARRAR: I would think of them
19 for each contention, but if we have to move from one
20 place to another on a contention, you might repeat
21 them. It would be a middle -- saying, "We just came
22 from here and we did this, and now we're about to do
23 that." Ms. Chancellor, is that all right, three,
24 four, five minutes?

25 MS. CHANCELLOR: Yes, that sounds fine,

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1 and an opening statement before each contention, that
2 sounds perfect.

3 CHAIRMAN FARRAR: Okay. Then let's --
4 that was easy. Stipulations. And leave out seismic
5 for now where we talked about that. My thought was
6 always, and the reason for putting this in, was my
7 thought was in many cases you benefit by having a
8 stipulation, because now you get rid all of the stuff
9 everybody agrees on, and you're focusing on the real
10 issues. In thinking about it, I can see that given
11 the way we do things here, where you have lengthy,
12 pre-filed, expert testimony, that maybe you don't need
13 stipulations; in fact, maybe stipulations are more of
14 a problem than a help, because then later on some poor
15 witness says something, and you go, "Oh, that's
16 outside the stipulation, he can't say it," and then we
17 fight for two or three days over whether the person
18 can say it. So I'm -- as Mr. Silberg was on the last
19 one, I'm neutral on this. Ms. Chancellor, you've been
20 going last all the time here. Why don't you go first
21 on this one?

22 MS. CHANCELLOR: I see a use for it in
23 seismic, but I mean we can always get together and
24 stipulate certain items, but I don't think that that
25 is something that would necessarily be our primary

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1 focus for the other contentions.

2 CHAIRMAN FARRAR: And I take this would,
3 in terms of the workload that we've talked about
4 before, if now you all have to sit down and hammer out
5 some stipulation on the non-issues in the matter, that
6 that's time you could devote somewhere else. Okay.
7 Through the magic of television, I see her nodding her
8 head, Mr. Reporter, so we'll take that as a yes. Mr.
9 Turk?

10 MR. TURK: I have no strong views, Your
11 Honor, on this.

12 CHAIRMAN FARRAR: Mr. Silberg?

13 MR. SILBERG: I would say that I agree
14 with Ms. Chancellor. I think that it wouldn't be
15 worth the effort to try to get stipulation of facts
16 given the other workload that we have.

17 CHAIRMAN FARRAR: Okay. No stipulations.
18 That was easy. Now we'll take a little break from the
19 merits in procedure for the hearing, talk about some
20 information issues. I had thought of this use of and
21 conditions on email for procedural matters, because
22 one night about seven days ago I was here late in the
23 office, beginning to wear down, and I enjoyed, got
24 great pleasure out of the rapid exchange of emails on
25 the question of the redacted document. And it struck

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1 me while we have an issue about what that means in
2 terms of timing, it struck me, "Gee, that was a great
3 way to solve an issue." I'm not sure it's solved, but
4 that you all are exchanging emails. I can't open it.
5 Good. Send it this way. And instead of somebody
6 filing a motion saying, "I can't read the Staff's
7 document," okay, I give you each three days to reply,
8 you came close to solving the issue through the
9 exchange of email, which I was eavesdropping on, and
10 if someone wanted to call the next morning or find a
11 way to get a ruling, it would have worked fine. So I
12 wondered, particularly as we're getting close to the
13 hearing, when disputes like that come up, is that a
14 way that you all can solve them, you know, argue
15 amongst yourselves, and then at some point somebody
16 can file something with us, attaching the email
17 correspondence and say, "You know, here's what we need
18 to do." It struck me that that was a much more
19 efficient way than having to file a formal motion and
20 you get three days for a formal reply or we have to
21 write an order saying you only get one day.

22 But there is a problem with that. Email
23 is not an official record, and so maybe a condition on
24 its use is that when you eventually file your motion,
25 whoever the movant is, has to attach or refer to the

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1 relevant emails where you did agree on this, that or
2 the other. What do you all think? Mr. Turk, why
3 don't you go first on this?

4 MR. TURK: I think I was one of the people
5 involved in that email barrage.

6 CHAIRMAN FARRAR: You were. You were the
7 cause of it, sir.

8 MR. TURK: Well, not personally. The
9 Staff had released the redacted version of the FEIS
10 and apparently it was a huge set of data files that
11 were crashing the system.

12 CHAIRMAN FARRAR: Keep away from the --
13 we'll get to the merits of that.

14 MR. TURK: I'll stay away from the merits.

15 CHAIRMAN FARRAR: But what I'm focusing --
16 all it gave me was an idea, "Gee, this was great. The
17 parties solved this in 15 minutes."

18 MR. TURK: The exchanges between us had to
19 do with where the document could be found or how it
20 could be accessed.

21 CHAIRMAN FARRAR: Right.

22 MR. TURK: I think part of the exchange
23 involved complaints by some parties that their time
24 for taking certain action shouldn't begin to run until
25 they get some better access to the document. The

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1 email --

2 CHAIRMAN FARRAR: Which you then gave
3 them.

4 MR. TURK: Which I responded to. Well, we
5 had originally identified the site where the document
6 could be found on the web in the cover letter. But
7 staying away from the merits, the email exchanges were
8 never intended to be a substitute for a motion. If
9 some party wanted to ask for relief from you, they
10 would have had to do that by motion, and the emails
11 could have been attached as evidence of the
12 correspondence.

13 CHAIRMAN FARRAR: Except they got some
14 relief from you, because in bringing to you a problem
15 you said, "Aha, here's an alternative." I think Mr.
16 Silberg said, "Gee, I didn't have any -- try this.
17 Drop this keystroke." In other words, "Rather them
18 come to me and say, "Gee, I can't get this document,"
19 the exchange -- and what am I going to do at that
20 point?

21 MR. TURK: You should not have been copied
22 on the emails, Your Honor. I think somebody addressed
23 to the entire service and all the responses just went
24 back to all recipients because that process had been
25 put in motion. I think it's not appropriate for those

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1 kinds of things to go to the Board unless the parties
2 are asking for court relief.

3 MR. SILBERG: I think normally the parties
4 have tended to do a lot of this by phone, and we'll
5 get on two- and three-way phone conversations and try
6 to resolve problems, and sometimes we can, and
7 sometimes we can't. This one happened to start off
8 with an email rather than a telephone call, but I
9 think the way we've approached these things in the
10 past, which is, you know, we'll try to resolve
11 informally, and if we can't someone will go to the
12 Board, and sometimes we may even call the Board and
13 ask for a telephone conference on the spot.

14 I think we've pretty imaginative in
15 figuring out ways to get answers to problems amongst
16 ourselves, so I don't know that the Board needs to do
17 anything except encourage us to continue to work
18 together and bring to the Board issues which we can't
19 resolve amongst ourselves.

20 CHAIRMAN FARRAR: Mr. Turk --

21 MR. SILBERG: So that's what we've been
22 doing.

23 CHAIRMAN FARRAR: -- you made a very good
24 point. I thought that the email had put me in a
25 particularly good position to make a rapid ruling --

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1 and we'll get to that later -- but your point is a
2 good one, that if that's something that that rapid
3 exchange where you solve the problem, I have no
4 business being aware -- having to be aware at that
5 point that there was a problem.

6 MR. TURK: But, also, Your Honor, because
7 somebody had put the Board on the email transmission,
8 other parties, in order to make sure that their views
9 are understood, really were obliged to continue to
10 send the messages to the Board. I don't think anyone
11 should have gone to the Board in the place. I think
12 the parties could have worked it out.

13 CHAIRMAN FARRAR: Yes. I'm not saying
14 anyone's at fault, but what I think you're saying is
15 we should not look to this as an easy way to conduct
16 board business, that you all let us in on your
17 negotiations, and then suddenly someone says to the
18 Board, "Okay, now you've got all the emails; decide
19 it." You're not in favor of that.

20 MR. TURK: I think the formal method is
21 better -- motions with responses.

22 CHAIRMAN FARRAR: Mr. Silberg, you're --

23 MR. SILBERG: I would agree. If we can't
24 reach accommodation amongst ourselves, then we'll
25 either call you or email you with a pleading.

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1 CHAIRMAN FARRAR: Yes. Ms. Chancellor?

2 MS. CHANCELLOR: I think there may be some
3 use for email. For example, it was very helpful when
4 we got from, what's his name, Mr. Kutchin,
5 notification of when the Board expected to make a
6 decision, for example, during the holiday period.
7 That gave us some sense of how to schedule our
8 activities.

9 CHAIRMAN FARRAR: Well, let me tell you --

10 MS. CHANCELLOR: And maybe if we can't
11 understand a due date, some of those more minor
12 issues, maybe we can email Mr. Kutchin and serve
13 everybody else and get resolution of an issue. But
14 with respect to substantive issues, such as an
15 extension of time to file contentions, then,
16 unfortunately, I think we do have to go the formal
17 route. And I think my level of frustration showed
18 through in the email exchange and not being able to
19 open those documents.

20 CHAIRMAN FARRAR: We'll get to that in a
21 minute, because maybe you weren't the only one.
22 Getting back to the Christmas notice, which I know was
23 irregular, I did that because I had a son-in-a-law
24 once in a Wall Street firm, and he and my daughter
25 would plan a lot of trips, and it would always get

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1 canceled, because, Mr. Silberg, no offense meant, the
2 senior partner would tell them that they had to stay,
3 and so he eventually left the firm and went to a
4 smaller firm. So, particularly, given the setup this
5 year with the Christmas and the Monday and stuff, I
6 went beyond what we ordinarily would do and said,
7 "There's no reason for any of you in any of your
8 offices to stay waiting." And so if we're not going
9 to put something out in that kind of circumstance,
10 I'll let you know.

11 MR. SILBERG: And we appreciated that
12 advance notice.

13 CHAIRMAN FARRAR: Well, I wasn't concerned
14 about you. I was concerned about the young people
15 that you were --

16 (Laughter.)

17 JUDGE LAM: The truth of the matter is he
18 wasn't ready.

19 (Laughter.)

20 CHAIRMAN FARRAR: And that was a good use
21 of email. That was a fair question, you know, should
22 we all stay here on whatever the holiday is or can we
23 all go home? And that's a good use of it, and I don't
24 mind that. We obviously don't want to get into the
25 merits. The one of a couple weeks ago with the

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1 document is somewhere in between. Maybe we'd better
2 leave it as is, but particularly as we get toward the
3 hearing where there is confusion, Ms. Walker mentioned
4 before what about if she doesn't know if the deadline
5 runs from the beginning of the contention or the
6 witness, how do you suggest we solve those problems
7 without violating the ex parte rule but with a minimum
8 of fanfare and inefficiency?

9 MR. SILBERG: Well, if there are questions
10 like that that come up, I certainly have no problem
11 with people sending emails to the Board and getting
12 emails back.

13 MR. TURK: I would argue against that,
14 Your Honor, because we never know if someone's in the
15 office when the email arrives there. I think a
16 telephone conference call is the best method. And
17 you're sure that a party's representative is aware of
18 the issue.

19 MS. CHANCELLOR: I wouldn't be opposed to
20 email, Your Honor, provided that it goes to everybody
21 on the service list.

22 MR. TURK: One other thing, Your Honor.
23 I would note that NRC's email system has been very
24 spotty the last several months. We're not sure that
25 we get all messages on time. Some things get delayed,

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1 and I'd rather rely on the actual notice by telephone.

2 CHAIRMAN FARRAR: Only problem with the
3 telephone, supposed you call one of our support people
4 and say, "We'd like to have a phone conference with
5 the Chairman of the Board on Subject X." Then you
6 have the problem of when is the conference going to be
7 and if you're not relying on email, you having seven
8 phone calls to find the right time. But you're right,
9 if you send the email and not everyone's there --
10 okay. So I get an email from you, I assume everybody
11 has it, and so I give you an answer, but the other
12 people haven't had it.

13 MR. SILBERG: But if it's truly a
14 ministerial question, I think the risk associated with
15 that email traffic is quite low, and I think you will
16 get the information around the quickest.

17 CHAIRMAN FARRAR: How about this? Just
18 like, Mr. Silberg, you sent a letter the other day
19 with the agenda items, and it was not -- you know,
20 where you said, "Here are some things the three
21 parties would like to have on," and that didn't
22 indicate which party was promoting which ones, that
23 was fine. Would we want to do an email where one of
24 you writes an email on behalf of everybody; in other
25 words, you consult among yourselves and then delegate

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1 one of you to say, "Send the Board an email," and
2 maybe it's better with -- either it's a question or
3 it's an email with a joint request for something, and
4 that way I know when I get it that you all have at
5 least seen the incoming?

6 MR. SILBERG: The truth is it's not much
7 different than our normal electronic service. I mean
8 when we serve a pleading, we're serving it
9 electronically. You know, whether we attach a
10 pleading to an email or just type out a message in the
11 email itself, I don't know that it makes much
12 difference.

13 CHAIRMAN FARRAR: Okay.

14 MS. CHANCELLOR: Your Honor, I have a
15 suggestion.

16 CHAIRMAN FARRAR: Yes, ma'am.

17 MS. CHANCELLOR: When the Commission
18 serves electronic documents on the parties, they
19 request a receipt, acknowledgment, by return email.
20 If Mr. Turk is concerned that he may not have received
21 -- you know, he may be late in being notified, we
22 could say that if somebody is going to have this
23 informal procedure with the Board, that the parties
24 just acknowledge that they have received the email by
25 return email.

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1 CHAIRMAN FARRAR: Okay. I'm not sure what
2 I want to do, and I'm not sure we want to spend a
3 whole lot more time. Maybe the simple answer is let
4 me urge you all to continue what you've been doing and
5 consult with each other. Ms. Walker, going back to
6 your question, if a deadline is unclear to you,
7 instead of -- not that you've done this before, but
8 instead of filing a motion with the Board that says,
9 "What's the deadline mean or you want the deadline
10 changed," email not us but your colleagues here and
11 maybe you all come to an understanding that here's
12 what it means, maybe it's phrased badly, and then
13 someone file something with us that says, "We've all
14 agreed it should be reworded to say this." Or you'll
15 find out your colleagues are violently opposed to what
16 you're doing, and then you do have to file a motion.
17 So let's not try to hammer -- I thought maybe we could
18 come up with a new way of doing business, but let's
19 keep with the old way.

20 It is now one o'clock in Utah. I'm seeing
21 we have maybe 45 minutes yet to go. Do you all want
22 to take a break in Utah and go grab something to eat
23 over a 20-minute period or do we want to forge on? Or
24 do you want to eat in plain view of the video screen?

25 MS. CHANCELLOR: I think a 15-minute break

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1 either now or when we finish the next agenda item,
2 before we -- I'll need to eat before we get to
3 geotechnical I think is what I'm trying to say.

4 (Laughter.)

5 CHAIRMAN FARRAR: I'll take that in the
6 spirit it was given. Why don't we then do Number 6
7 and then we'll take a lengthy break. And since Judge
8 Bollwerk is the authority on this, let me give up the
9 chair and take a little walk myself.

10 JUDGE BOLLWERK: That's all right. You
11 can just stay right there. I'm just going to move
12 over here. Good afternoon, everyone. I've kind of
13 been lurking in the shadows over there. First of all,
14 thank you for your kind comments. In some ways, I'm
15 -- move this closer? I was a little sad to leave the
16 proceeding. On the other hand, other responsibilities
17 I've had have made it clear to me that I couldn't give
18 this the time that I thought it -- I knew it deserved,
19 so I felt it was better to give up what was going on
20 to make different arrangements. But I'm still in the
21 proceeding for some purposes, and I will remain so
22 until the matters that we have before us have been
23 resolved one way or the other, in terms of the
24 original Board.

25 Let me just raise a couple of things with

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1 you very quickly. I should also mention that I told
2 Judge Farrar when we were talking about the assignment
3 of this case that this has been a case for the
4 complexity of the proceeding that I thought that the
5 parties have done an extraordinary job in keeping to
6 the main issues and making the disputes ones that
7 really mattered, as opposed to all the other folderol
8 that sometimes comes with one of these cases when it's
9 highly contested and everyone has very strongly held
10 views. And I think what we've seen here today I think
11 he would agree with me now if he didn't before.

12 Again, I very much appreciate it, and I
13 would express to you my sentiment that this has been,
14 in terms of the cooperation among the parties, has
15 made it a much easier proceeding for the Board to
16 handle, given the complexity of it and what's been
17 involved. So, again, I think I've mentioned this to
18 you before, but I would express again my admiration
19 for your ability to deal with each other and to keep
20 things on a very professional level. Thank you.

21 Just a couple things, one that's on the
22 agenda and one that isn't. In terms of the EIE, the
23 Electronic Information Exchange pilot, we had started
24 that probably, oh, it's been a couple of years, and I
25 guess what we'd gotten was a lot of input from people,

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1 especially the State of Utah, when we first started
2 it. And our information technology people sort of
3 took all that and then went off somewhere else with
4 it. In fact, they come up with an EIE template and
5 project to deal with the acceptance of applications
6 from reactor materials licensees that they now are
7 using actually on a regular basis.

8 But they forgot about us, in terms of the
9 people that really started this and really brought a
10 lot of the problems and questions to them. They're
11 now ready to come back to us, and we're hoping that
12 you all will maybe put aside some of the problems or
13 the bad feelings you may have had -- I hope there
14 weren't too many -- in terms of the first part of the
15 project, and come back and cooperate with us again.
16 We have a new way in which we were thinking of doing
17 this. Hopefully our folks from the Office of
18 Information Technology are going to be contacting all
19 the parties in the next week to ten days to give you
20 some information about reviving the project and what
21 kind of tact we'd like to take now.

22 This is an important project for the
23 Agency. It's something that we're really looking
24 forward in terms of this proceeding and others, toward
25 eventually having, again, for parties that can do

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1 that, having filings that are electronic from start to
2 finish; in other words, there would not be the email
3 service that we have now with a paper copy to follow,
4 but what you file with email or send into the Agency
5 through email would be the pleading, and it would be
6 treated that way. So that's where we're headed
7 eventually.

8 I should say that in terms of the pilot,
9 we're not going to change what's gone on here, with
10 respect to the emails and the paper copies. We're not
11 to that point yet, but we do want to begin to take
12 that step forward and see how the, or at least as we
13 envision it, the opportunity to file from start to
14 finish electronically would work.

15 I don't think it's going to be a
16 significant burden for anyone involved, but we are
17 willing to work with folks in our Office of
18 Information Technology to try to make it so that
19 everyone, whether you're with a large firm, like Mr.
20 Silberg, or the Staff or the State of Utah or Ms.
21 Walker, to be able to use the information and get it
22 to us. So having said that, I think our folks should
23 be contacting you in the next week to ten days.

24 One thing I should mention, I know there
25 was some reluctance at the beginning of this case to

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1 use email, and that was several years ago, obviously.
2 I should mention you may not be aware of it, but we
3 had a significant delay with a lot of the paper
4 filings we were getting in September and October. We
5 are now just beginning to get some of those documents
6 in, because they were in the Brentwood facility, and
7 they come in somewhat yellow now since they've gone
8 through radiation.

9 Having said that, I don't know that you
10 were aware of that, because it was fairly seamless
11 with us. As long as we were getting electronic
12 filings and we could deal with them, some of the page
13 numbers may not be quite right, and I know I've got a
14 couple of opinions I may need to go back and change
15 some page numbers, but nonetheless we were able to
16 keep the proceeding moving forward really without any
17 effect on the Board, as far as I could tell. So it
18 has made a tremendous difference, I think, to the
19 proceeding in terms of the use of email. And, again,
20 that was something you all were willing to work with
21 us on, and I think at least in that aspect it's worked
22 pretty well.

23 But, again, the EIE filing project is a
24 little bit different in that we would eventually
25 contemplate this from start to finish coming in

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1 electronically. So I'll leave it at that as just sort
2 of a warning. If someone from the NRC's Office of
3 Information Technology sends you some documents or
4 tries to get in touch with you, that's what it's
5 about. I hope that you will at least listen to what
6 they have to say, because that would really be a great
7 assistance to the Agency.

8 The other thing I -- do you all want to
9 talk about Security J for a second? Mr. Silberg had
10 raised that. I don't know if this is a proper point.
11 I don't want to keep Ms. Chancellor from getting her
12 -- fortifying herself for the battle to come, but
13 Security J is outstanding. I had a couple, at least
14 one question. I know the last status report had
15 indicated that the District Court has set an April 11,
16 2002 hearing on the motion for judgment on the
17 pleadings which is pending. There's also a summary
18 disposition motion that's pending and a motion to
19 dismiss, and there was some kind of an agreed schedule
20 that was being worked out. Has that happened yet or
21 not?

22 MR. SILBERG: I don't know about the
23 agreed schedule. I believe that Judge Campbell has
24 set for the April 11 argument not only the motion that
25 was originally identified but also the motion for

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1 summary judgment and, I guess, the motion to dismiss
2 the counter claims. So at least on paper, it looks
3 like all items will be argued on that day. The
4 session starts at 2:30. I don't know Judge Campbell.
5 I understand that she runs a fairly tight ship.
6 That's a lot to cover in one session, and whether all
7 that can be done or not, I don't know.

8 JUDGE BOLLWERK: All right. So at this
9 point, as far as you know, there's a consolidated
10 argument then with all the pending motions, at least
11 the major -- looks like the major motions are --

12 MR. SILBERG: I believe that's right, but
13 there may be other filings. I've seen some papers
14 indicating that the State was going to be filing some
15 additional motions. So I'm not sure that everything
16 will get wrapped up in that one session. I would not
17 want to predict, however, that we would be in a
18 position to have a decision by Judge Campbell prior to
19 the scheduled licensing. I just don't know. That may
20 happen, it may not. It certainly not something that
21 I would want to bet a lot of money on.

22 JUDGE BOLLWERK: All right. Let me see
23 if, first, Ms. Chancellor has any comments about
24 Security J, in terms of the -- from the State's
25 perspective.

1 MS. CHANCELLOR: Your Honor, I haven't
2 been dealing with the federal proceeding. I usually
3 get in touch with the attorneys involved when we have
4 to file a status report. I think there was an
5 emergency motion filed. I think there's some dispute
6 as to whether the State believes the court should rule
7 on summary judgment at this stage, but I'm really not
8 up to speed on all the issues in the federal
9 litigation.

10 MR. SILBERG: Yes. The State's pleadings
11 did argue that the summary judgment motion had to wait
12 until the court had made a determination as to
13 standing and as to ripeness. The fact that Judge
14 Campbell's most recent order, which came out
15 subsequent to this fifth status report, would suggest
16 that at least she wants to hear arguments on
17 everything. Whether she will in fact decide one
18 before the other, I don't know.

19 We're also waiting to hear whether the
20 federal government is going to file an amicus before
21 Judge Campbell. The latest that I've heard about that
22 is that the government has asked until January 22 to
23 notify the court as to whether or not they will file
24 an amicus. I don't know whether that means they will
25 at that point file an amicus or at that point, "Now

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1 we're going to file an amicus, and you'll get it X
2 weeks in the future." So that is also pending.

3 In light of all these developments,
4 however, my own view is I'd like to see the Board
5 issue a decision on Security J. The decision that the
6 Board issued back in June of this year expressed a
7 view that there was good cause shown. As I read that
8 decision, it did not, however, go to the merits of
9 admitting the contention, not the merits of the issue,
10 but whether that was an appropriate contention, only
11 to the good cause issue.

12 And I think given the uncertainty as to
13 schedule, we would prefer that the Board would
14 complete the cycle and either admit or deny the
15 admission of that contention. Obviously, we've all
16 put our positions on the record, and they remain our
17 positions. So I think that would be most helpful to
18 have the Board issue a decision, because I think it's
19 unlikely that we will get a ruling by the court, at
20 least sometime beyond this set of hearings and maybe
21 sometime beyond even the schedule that the Board has
22 laid out for a decision. We just don't know.

23 JUDGE BOLLWERK: All right. Okay. Ms.
24 Chancellor, do you want to say anything about what Mr.
25 Silberg's just indicated, and then, Mr. Turk, I'll be

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1 turning to you.

2 MS. CHANCELLOR: I really didn't come
3 prepared to argue the merits of Security J, Your
4 Honor. I think that it is a sensible approach to look
5 to what the federal court is going to do, because that
6 will, in most respects, resolve whether Security J is
7 an issue or not.

8 JUDGE BOLLWERK: All right. Thank you.
9 Mr. Turk, anything you want to say on the subject?

10 MR. TURK: Your Honor, I'm not sure that
11 Mr. Silberg's reading of your decision on Security J
12 is correct or not. I leave it to you to clarify in
13 response to his question. But I would note that if
14 you do admit the contention, we would essentially be,
15 I think, ill-advised to go to hearing on it while the
16 federal litigation is pending, because the issue is
17 will Tooele County be able to serve in the LLEA role,
18 which is assigned to it in the Applicant's plan? Or
19 will it be prohibited by state law? And until we get
20 a resolution of the state court, I don't know what the
21 point is of going to hearing.

22 JUDGE BOLLWERK: Get resolution of the
23 federal court, I'm sorry?

24 MR. TURK: I'm sorry, of the federal court
25 litigation.

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1 JUDGE BOLLWERK: Hypothetically, if the
2 contention were being admitted, would you move for
3 summary disposition --

4 MR. SILBERG: Absolutely.

5 JUDGE BOLLWERK: -- or how would you
6 approach it?

7 MR. SILBERG: As a matter of law.

8 JUDGE BOLLWERK: Ms. Chancellor, what
9 would be your approach if you want to speak to that?

10 MS. CHANCELLOR: Well, if PFS filed for
11 summary disposition, of course we'd have to respond.
12 I don't really understand what else you're asking,
13 Your Honor.

14 JUDGE BOLLWERK: All right.

15 MR. TURK: The issue that you'd be looking
16 at then, Your Honor, is to rule on the same issue
17 that's before the federal court.

18 JUDGE BOLLWERK: Potentially, depending on
19 what the grounds for a summary disposition motion
20 were, but I'm assuming --

21 MR. SILBERG: But there were other grounds
22 that we briefed already, such as the realism doctrine
23 that was not addressed in your June order, and the
24 other grounds that we said for rejecting the --
25 finding the contention to be non-admissible apart from

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1 the good cause issue.

2 MS. CHANCELLOR: Your Honor, I'd just like
3 to interject. This is not on the agenda. We didn't
4 come prepared to discuss Security J, and I'm feeling
5 very uncomfortable with the substantive arguments that
6 are being made with respect to this issue. And if
7 this is going to influence the Board's decision, I'd
8 like to have the opportunity to prepare and address
9 this substantively, rather than sort of flying by the
10 seat of my pants.

11 JUDGE BOLLWERK: Okay.

12 MR. SILBERG: There was no intent to make
13 a substantive argument, Denise. It was just
14 reflecting what's on the record.

15 JUDGE BOLLWERK: What I was seeking was
16 basically status information. Perhaps we've gone
17 slightly further than that. I'll put it this way: If
18 you feel you want the opportunity to file something
19 else with the Board, why don't you do it, say, by
20 Monday or Tuesday. I don't know that we're going to
21 make any kind of ruling. I was just trying to get
22 status information, basically. Mr. Silberg has made
23 a point, and if you want to file something, that's
24 perfectly acceptable to me. I have no problem with
25 that at all.

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1 JUDGE LAM: I thought we were discussing
2 procedure matters here.

3 JUDGE BOLLWERK: Well, we were, but it's
4 gone -- it potentially has gone a little further than
5 that, and Ms. Chancellor is uncomfortable with that,
6 I, again, don't have a problem with her -- if you feel
7 you want to file something, is Tuesday a good date?

8 MS. CHANCELLOR: If we're going to cut off
9 the substantive conversation here, I don't need to
10 file anything, Your Honor.

11 JUDGE BOLLWERK: All right. That's fine
12 then. All right. Then I thank you very much for the
13 opportunity to speak with you. Why don't we go ahead
14 and stick with the schedule in terms of the next
15 status report, because it may well be that some things
16 happen between now and then. On the other hand, if
17 nothing is changed from what we discussed here, then
18 the report should be fairly straightforward. I think
19 February 11 is the next one that's due, which is
20 several weeks away. All right. Thank you very much;
21 I appreciate it.

22 CHAIRMAN FARRAR: I've got 16 minutes
23 after. It's been a long day so far. Why don't we
24 come back at 20 of?

25 MS. WALKER: Excuse me.

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1 CHAIRMAN FARRAR: Yes.

2 MS. WALKER: Chairman, before we adjourn,
3 may I be dismissed?

4 (Laughter.)

5 I feel as though most of the rest of the
6 agenda is between the State and the Applicant.

7 CHAIRMAN FARRAR: Right.

8 MS. WALKER: Or, alternatively, if when we
9 come back we could discuss non-geotechnical issues
10 first.

11 CHAIRMAN FARRAR: Why don't we take a
12 minute now. The reason we put them last was so that
13 everybody else could depart. If you're ready to do,
14 why don't we take up any other business you have right
15 now before we break, and then you can go.

16 MR. SILBERG: One thing would be post-
17 hearing schedules, proposed findings, reply findings.
18 I think that would be of interest to Jero.

19 CHAIRMAN FARRAR: Yes. Ms. Walker, let me
20 ask you, did you have a specific thing in mind you
21 wanted to bring up for us now or --

22 MS. WALKER: Well, I would appreciate a
23 clarification of the four weeks before the hearing
24 question and also a clarification of when discovery
25 against the Staff ends, those two issues.

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1 CHAIRMAN FARRAR: Okay. The four -- oh,
2 you mean the pre-filed testimony four weeks before the
3 hearing?

4 MS. WALKER: Right. So does that mean
5 four weeks before the first day of the hearing or is
6 it four weeks before when your contention is
7 scheduled?

8 MR. GAUKLER: Your Honor, it's in the
9 schedule, and --

10 CHAIRMAN FARRAR: Yes. Right now there's
11 a date certain.

12 MR. GAUKLER: Right.

13 CHAIRMAN FARRAR: I think, Ms. Walker,
14 when they talked about that, that was an example of
15 what had been done in other cases was four weeks
16 before a hearing. Right now we've got a date certain
17 which I guess will pretty much, since we're not
18 adjusting the hearing schedule then I guess that for
19 now that stays the same unless somebody moves to
20 change it on a particular contention.

21 MR. GAUKLER: For example, Your Honor, the
22 date we have for environmental is March 18, and that
23 was purposely set four weeks --

24 CHAIRMAN FARRAR: Right.

25 MR. GAUKLER: -- in advance of the hearing

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1 for environmental contentions.

2 CHAIRMAN FARRAR: Then, Ms. Walker, you
3 have that schedule?

4 MS. WALKER: Yes. I'm sorry, I understand
5 that now. I thought maybe we were changing it.

6 CHAIRMAN FARRAR: No. We at one point had
7 talked about changing it, but I think we decided not
8 to. So the deadlines that are in the schedule that
9 went out on September 20, those are the deadlines
10 unless somebody moves to change them for good cause
11 shown.

12 The second question you asked was about
13 the time for discovery against the Staff on the FEIS;
14 is that what you asked?

15 MS. WALKER: Right. So I understand
16 there's a date on the schedule, and if that's the
17 date, then I'm fine with that. I just wanted a
18 clarification.

19 CHAIRMAN FARRAR: Right, but then I
20 thought you had a second question, which was the -- I
21 thought I understood you that that's related to the
22 State's motion for an extension of time for discovery
23 -- no, for filing a new contention on the FEIS. Is
24 that a question of interest to you?

25 MS. WALKER: Not really.

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1 (Laughter.)

2 CHAIRMAN FARRAR: That's all right. You
3 didn't offend me. Okay. Then we'll hold that. Let
4 me -- as long as I have you and Mr. Silberg here, and
5 you don't have to answer if you don't want to, I had
6 asked you before, Ms. Walker, if you wanted to -- if
7 you were going to update or amend your contention, and
8 you're not prepared to address that. Mr. Silberg,
9 regardless of the action Ms. Walker takes, you will
10 then be faced with a choice of do you want to file a
11 summary disposition motion or do you want to just go
12 to hearing? We're now in that portion of the
13 Commission's rules where as you get close to hearing
14 we can say, "Don't file them."

15 MR. SILBERG: I'm sorry, summary
16 disposition as to which contention?

17 CHAIRMAN FARRAR: SUWA B.

18 MR. SILBERG: SUWA B has already been
19 ruled on. Summary disposition was denied.

20 CHAIRMAN FARRAR: I know that. It was
21 denied twice.

22 MR. SILBERG: So I don't know that we get
23 a third bite.

24 CHAIRMAN FARRAR: Okay.

25 MR. SILBERG: No, our assumption is we

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1 would just be filing our proposed testimony.

2 CHAIRMAN FARRAR: Okay. Hold on.

3 (Pause.)

4 CHAIRMAN FARRAR: Okay. Then I think, Ms.
5 Walker, that -- well, no. If you want to change your
6 contention because of the FEIS, you have to do that
7 within 30 days of something. So the State's motion,
8 which I had planned to take up here, is of interest to
9 you. You don't have to be here for it, because I
10 assume your position will be the same as the State's.
11 They're arguing it's 30 days from the last thing Mr.
12 Turk's people did rather than 30 days from the first
13 thing, if I can paraphrase loosely here. So if you
14 don't want to wait for that argument, you can leave
15 and you will get -- Ms. Chancellor can tell you what
16 happened, what our ruling is.

17 MS. WALKER: I can hold my breath and wait
18 until Denise tells me what happens.

19 CHAIRMAN FARRAR: Okay. All right. Then
20 why don't you go do whatever your other business is?
21 Thank you for coming in to be with us. As I'll say to
22 all the Utah people, I wish we could have done this in
23 person. I look forward to meeting you at the
24 appropriate time. Let's take -- let's come back at --
25 I've got 23 after. Let's come back at quarter of to

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1 give the Utah people enough time to grab a quick bite,
2 and we will take up geotechnical.

3 (Whereupon, the foregoing matter went off
4 the record at 3:23 p.m. and went back on
5 the record at 3:33 p.m.)

6 CHAIRMAN FARRAR: We've got food in our
7 courtroom, which is against the rules, but I'll
8 overlook that transgression. Back on the record. We
9 shortened our break, because we are losing our feed at
10 four o'clock, two o'clock.

11 Let's get onto the geotechnical issues.
12 Is Ms. Braxton there? You all introduced Ms. Braxton.
13 Is she there? Can I get her on camera?

14 MR. SILBERG: Denise, can you hear us?

15 CHAIRMAN FARRAR: Can you all hear me in
16 Utah? Can you all hear me in the conference room?

17 JUDGE BOLLWERK: Can you hear us in Utah?
18 Hello?

19 CHAIRMAN FARRAR: Can you all hear me?

20 MS. CHANCELLOR: Yes, we can.

21 CHAIRMAN FARRAR: Okay. I've been
22 shouting for the last five minutes, but somehow we had
23 the wrong button pushed. Where's Ms. Braxton?

24 MS. CHANCELLOR: She's right here.

25 CHAIRMAN FARRAR: I can't see here. Get

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1 her sitting next to you. I don't know if -- let me
2 repeat what I said, and we're back on the record here.
3 We're losing our feed. Did you hear me say that,
4 we're losing our feed on the hour?

5 MS. CHANCELLOR: No, we didn't hear that,
6 but we heard it from the technical people here.

7 CHAIRMAN FARRAR: Okay. Well, we're going
8 to zoom through this. Ms. Braxton, I wanted to see
9 you in person to tell you how delighted I was to get
10 your email last night with the joint unified
11 geological contention; made my day. I want to
12 compliment the parties for their effort on that. I
13 think that's a great step forward and furtherance of
14 what Judge Bollwerk had said about the cooperative
15 spirit of the parties.

16 I take it then there's nothing left to
17 discuss about that? That's the contention, that's the
18 road map for the hearing?

19 MS. CHANCELLOR: There's just one issue,
20 Your Honor.

21 CHAIRMAN FARRAR: Okay.

22 MS. CHANCELLOR: Which will help you.
23 With respect to Item Number A, surface folding, and
24 Item Number B, ground motions, the State has agreed to
25 use stipulations to obviate the need to have these two

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1 issues go to hearing. So A and B will drop out as far
2 as hearing is concerned.

3 And the other issue is the seismic
4 exemption request. That one we couldn't make any
5 headway on. It is as rewritten by the Board when it
6 came back from the Commission, and it really doesn't
7 codify the issues that are going to go to hearing. We
8 tried to bring those up, but in particular we couldn't
9 reach any resolution with the Staff.

10 CHAIRMAN FARRAR: What do we -- Mr. Turk,
11 in light of that, what, if anything, do we need to do
12 on the Board?

13 MR. TURK: Nothing, Your Honor. Let me
14 point out that the seismic exemption contention was
15 filed I believe three times. It was ruled upon by the
16 Licensing Board and the Commission. The view I
17 expressed to the State was you know what the
18 contention is, that's what the contention is. I
19 didn't see that the attempt to modify it was raising
20 issues that had been identified in the contention
21 before. I think it's a distinct issue to be resolved
22 as admitted. And the other issues, by the way, that
23 the State has raised are in the contention, just in
24 different spots.

25 CHAIRMAN FARRAR: Mr. Gaukler?

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1 MR. GAUKLER: I agree that the Board does
2 not need to do anything. I think the parties are
3 aware of the issues with respect to the seismic
4 exemption contention, as illustrated in the respective
5 filings filed with respect to our motion on a summary
6 disposition.

7 CHAIRMAN FARRAR: Okay. How are you
8 coming on the joint stipulation?

9 MS. CHANCELLOR: It's on hold until we got
10 this done, Your Honor.

11 CHAIRMAN FARRAR: I'm sorry, Ms.
12 Chancellor, I didn't hear you.

13 MS. CHANCELLOR: It was on hold until we
14 filed the unified consolidated contention. We just
15 concentrated on getting that to you with the idea that
16 we would be able to stipulate away A and B, and we
17 basically just finished putting the unified contention
18 together yesterday, so we haven't had a chance to get
19 to the stipulation. But probably by the end of the
20 month, in accordance with your schedule, we should be
21 able to do that.

22 CHAIRMAN FARRAR: Mr. Gaukler?

23 MR. GAUKLER: We understood the
24 stipulation could be stipulation of facts or just
25 stipulation of issues that were no longer at issue.

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1 CHAIRMAN FARRAR: Right. In other words,
2 and this is just my simple-minded example. I didn't
3 want the State to have to go through -- I'm sorry, not
4 the State, the Applicant of spending a day to prove
5 the studies that it had done if nobody disputes that
6 those studies have been done. Let's spend our time
7 arguing about what conclusions you can draw from those
8 studies. Now, that was what I had in mind when I
9 talked about a stipulation. Maybe that's not
10 consistent with what's really going on on the issue,
11 and I don't want to try your case for you, but it
12 struck me here as a massive contention. What can we
13 agree on that here's the baseline facts, now let's
14 argue about the conclusions. And so that's what I'm
15 looking for. Do you all still agree that's a useful
16 endeavor to engage in?

17 MR. GAUKLER: We believe it's a useful
18 endeavor to try to eliminate as many issues as we can.
19 I guess we were thinking in terms like, for example,
20 basis for the old contention is no longer there, and
21 the unified contention, as Ms. Chancellor said, we
22 believe that A and B will be able to stipulate out.
23 In terms of going into detail of stipulation of facts
24 on the remainder of the stuff, there may be some stuff
25 we believe would be useful in terms of time benefit,

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1 cost benefit in terms of having some stuff stipulated.
2 But the other side of the coin is it takes a long time
3 to go through that process, and often in your pre-
4 filed testimony you want some background anyway so the
5 Board knows what the basis for everything that follows
6 in the pre-filed testimony.

7 CHAIRMAN FARRAR: Well, in light of the
8 short time we have here today, and in what you all
9 have been able to accomplish together already, and in
10 light of our discussion about not having stipulations
11 on other issues, again, the cost/benefit you
12 mentioned, let me leave it up to you all to do by the
13 31st as much or as little as you think will help make
14 the hearing run more efficiently. If you all decide
15 it's, given all your other obligations and your
16 limited resources that you all stressed today, if this
17 is proving more effort than it's worth, then just let
18 us know that you've decided not to do anymore on it.

19 MR. TRAVIESO-DIAZ: If I could add
20 something to what has been said. The unified
21 contention that you have before you represents three
22 days of very hard work by all parties. In a way, it
23 encompasses and it assumes a number of things that we
24 have stipulated that we are going to disagree on and
25 agree on. I think the process has partly been carried

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1 out just by the fact that we were able to agree on the
2 text of the contention. I think we might be able to
3 narrow some facts additionally, but I don't have great
4 hopes as to beyond the core that we have in the
5 contention now that we're going to be able between now
6 and the end of the month to come up with much more.

7 CHAIRMAN FARRAR: Okay. Well, Mr. Turk,
8 if this is all right with you and Ms. Chancellor, then
9 let's just leave it that way. Don't spend more time
10 on this further stipulation than it's worth. And if
11 you all decide it's not worth any time, fine, you've
12 learned much from us today about what we need to get
13 ready for the hearing. And so let's spend your
14 efforts that way. And, again, echoing what Judge
15 Bollwerk said, I mean everyone seems to be proceeding
16 in the utmost of good faith, and so we'll rely on you
17 for that.

18 Is the discovery schedule an issue? Mr.
19 Silberg, I think you mentioned that in your letter.
20 I think we had asked you to work it out yourselves.
21 I take it you have not.

22 MR. GAUKLER: We have discussed discovery.
23 I can't say that we've reached a consensus yet. Let
24 me kind of summarize what we were talking about, where
25 we stand at this point. We were talking about having

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1 discovery on the QQ begin either now, I guess really
2 next Monday, January 28, I mean. Probably doesn't
3 matter whether you begin next Monday or the 28th,
4 because we won't get the discovery out till the 28th
5 anyway. Then have it continue through two weeks after
6 the close of the Olympics in Salt Lake City. The
7 Olympics close February 24. Because of travel to and
8 from Salt Lake City, we thought we should have two
9 weeks after that to try to complete depositions, which
10 I think extends it out to March 8.

11 In terms of pre-filing testimony then,
12 right now the current date for the filing of the
13 seismic testimony is March 11, and the parties all
14 agree that that date would have to be pushed back
15 some. And I believe that we have all agreed that
16 would be pushed back to --

17 MS. CHANCELLOR: March 25 or April 1.

18 MR. GAUKLER: Yes. March 25. I think
19 we've all agreed on March 25. At least it can be
20 pushed back that far and maybe farther, but we've all
21 agreed on March 25. And then the hearing on seismic
22 issues would begin no earlier than April 22, which,
23 assuming that we keep the current schedule, would mean
24 that we would have the environmental contentions the
25 week of the 15th, and then we would pick up seismic on

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1 April 22. But, again, no earlier than April 22,
2 because my witnesses have some conflict before then.
3 I don't know how the State's are, but in terms of our
4 witnesses we're okay after the 22nd. We need to work
5 around certain people, but --

6 CHAIRMAN FARRAR: Okay. Go ahead.

7 MR. GAUKLER: And so that's what we would
8 propose for a schedule.

9 CHAIRMAN FARRAR: Ms. Chancellor, how's
10 that with you?

11 MS. CHANCELLOR: Not great, Your Honor.

12 CHAIRMAN FARRAR: Okay. Tell me why not.

13 MS. CHANCELLOR: I think our major concern
14 is that we have four weeks to concentrate on pre-filed
15 testimony, and maybe there's the possibility of taking
16 an occasional deposition during that window, but at
17 the moment we're pushing discovery into the time
18 period where we need to be concentrating on pre-filed
19 testimony. So if we can push pre-filed testimony back
20 to April 1 and pick up the hearings on April 29, that
21 may be a more workable schedule. But I think what we
22 should do is continue to work with Mr. Gaukler and Mr.
23 Turk to see what is the most workable schedule that we
24 can come up with. And so establishing hearing dates
25 or getting some sort of certainty on hearing dates is

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1 fairly critical in terms of working out this discovery
2 schedule, because everything impacts everything else.

3 MR. GAUKLER: Your Honor, I would say that
4 Ms. Chancellor's correct. Say, for example, if we
5 decide we can't keep the current schedule in Utah and
6 we have aircraft crashes here the week of April 8, it
7 means we wouldn't start the hearing in Salt Lake City
8 until April 22, and then we still would propose to
9 have the environmental contentions first, April 22,
10 and pick up the seismic April 29.

11 CHAIRMAN FARRAR: Having heard all this
12 and trying to speed this up, why can't we just pick
13 the 29th to start the seismic hearing? Can we do
14 that? In other words, I take it right now you need
15 certain -- I mean you need to know for your witnesses
16 when we're doing the hearing. Does the 29th work?

17 MR. GAUKLER: The 29th works for us. If
18 we have the schedule in Salt Lake City, there may be
19 a hiatus where we would not have continuous hearings.

20 CHAIRMAN FARRAR: Right. Don't worry
21 about it. I mean we're going to -- one, we're going
22 to be in Salt Lake on the 22nd regardless wherever we
23 are the previous weeks. We may be there the 8th, we
24 may be there the 15th, but we'll certainly be there
25 the 22nd, so why not pick the 29th? That still gives

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1 us three weeks after that and seismic takes two weeks,
2 then we still have a fudge period there.

3 MS. CHANCELLOR: If we can get done in two
4 weeks, that schedule is workable for us, but one of
5 our key witnesses is unavailable the week of the 13th
6 of May. And we have a problem with one of the other
7 witnesses. And if we can -- if we're flexible in
8 working witnesses into the schedule, then that will
9 work for us.

10 CHAIRMAN FARRAR: We will do that.

11 MR. GAUKLER: I have a couple conflicts
12 with my witnesses too for a couple days, and we'll
13 have to work together.

14 CHAIRMAN FARRAR: At this point, we're all
15 committed to working together to get that done. Ms.
16 Chancellor, I meant to ask you at the very beginning
17 of the hearing, I forgot, what's your deal during the
18 Olympics? Can you get to your office? Do you work
19 from home with email? What's your situation?

20 MS. CHANCELLOR: Unknown, Your Honor.

21 (Laughter.)

22 We're really not sure what's going to
23 happen. What we do know is that there is going to be
24 40,000 to 70,000 people coming to the downtown area
25 starting two or three o'clock in the afternoon because

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1 of the activities. And we have just been reluctant to
2 make any commitments during the Olympics because of
3 that uncertainty. To the extent we can, we will
4 probably work from home, but especially with seismic
5 all the documents are at the office, and we certainly
6 wouldn't want to haul all of those home. So we do
7 have -- we are constrained during that time period,
8 but it's hard to predict.

9 CHAIRMAN FARRAR: Okay. Let me ask you
10 this: For some reason, I had the impression that you
11 didn't need a lot of discovery on QQ, that the
12 discovery you'd already done was kind of related to
13 that. Was I wrong? Go ahead, Ms. Chancellor.

14 MS. CHANCELLOR: I believe you're correct,
15 Your Honor, and certainly some of the issues on QQ
16 came out in discovery on the seismic exemption issue
17 where we were arguing what was in QQ and what was in
18 the seismic exemption. So I think that the issues
19 have been narrowed down, but where there are new
20 witnesses, we would certainly would want to
21 concentrate and have discovery on those witnesses.

22 CHAIRMAN FARRAR: Okay.

23 MR. GAUKLER: I would take a slightly
24 different view of that, Your Honor. I think there are
25 issues on QQ that we do need to have discovery on. We

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1 had touched on some of them in the seismic exemption
2 contention, but it only touched on them, and there are
3 some that obviously went into length with respect to
4 old Utah L. We don't expect to go back into those,
5 but to the extent that there is new issues that we
6 haven't really had full discovery on, we would expect
7 to.

8 CHAIRMAN FARRAR: Okay. They're going to
9 pull the plug on us in seven minutes. We'll leave
10 this hearing as begins April 29 on seismic. You've
11 got a lot of problems to deal with because of the
12 Olympic situation and the lateness of when this
13 contention -- you know, when we ruled that it was in,
14 but you're doing a great job of solving them. Put
15 yourself in our shoes and work out the solutions we
16 would work out if you came to us.

17 Someone had asked something about schedule
18 of Board activity. What was that about?

19 MR. SILBERG: My innate curiosity as to
20 the status of some of the open items, including the
21 motion to reopen on Utah E, the summary disposition on
22 the model services agreement and also the initial
23 decisions on Utah E and Utah S.

24 JUDGE BOLLWERK: They're pending, but we
25 haven't forgotten about them.

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1 (Laughter.)

2 CHAIRMAN FARRAR: Okay. In case we get
3 cut off at the last minute, Ms. Chancellor, I wish we
4 had the chance to meet all of you in person. This has
5 been a good substitute way of doing things, so in
6 anticipating we get cut off, let me say good bye in
7 advance, and we'll put the next five minutes to good
8 use. But I look forward to meeting with all of you.
9 You'll work with Jack on the space, and we'll get this
10 done somehow. Any other business anyone wants to do
11 in the next five minutes?

12 MR. SILBERG: Yes. The State filed a
13 motion for an extension of time for filing new
14 contentions.

15 CHAIRMAN FARRAR: Yes.

16 MR. SILBERG: I'm prepared to briefly
17 address it or we can --

18 CHAIRMAN FARRAR: No, I'm prepared to rule
19 on it, given the -- I hate to cut people off, but I'm
20 prepared to rule on it. Number one, it's not a motion
21 for an extension; it's a motion to set the time at
22 which the clock begins running. As a result of that
23 email, I tried to open those documents, my computer
24 crashed five times. I tried to read the redacted
25 FEIS, and I couldn't read it, because it was redacted

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1 and everything I wanted to know about where things
2 were was naturally redacted. And, Mr. Turk, this is
3 no criticism of your people. The Commission has been
4 hard at work on terrorism problems for several months.
5 They had to do what they had to do, and so this is --
6 I'm not blaming anybody that anything was late or that
7 there was confusion that evening.

8 It seems to me, in light of all that, the
9 State's time begins to run 30 days from the last thing
10 Mr. Turk did that got the document to you. It begins
11 to run from the time you got a copy of the document,
12 notwithstanding that you tried to get it to them other
13 ways, but I couldn't open it, I couldn't read it, and
14 so I'm very sympathetic to the State's position.
15 Having said that against you, Mr. Silberg, I'll give
16 you a chance to try to persuade I'm wrong, but I
17 wanted to shorten this.

18 MR. SILBERG: Well, two things. Which
19 document are you talking about, the redacted or the
20 unredacted?

21 CHAIRMAN FARRAR: The redacted one I
22 couldn't read.

23 MR. SILBERG: Because the redacted -- what
24 was missing from the redacted, and one of the reasons
25 I was so annoyed with the Commission is because they

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1 were redacting stuff which was obvious to anybody who
2 knows anything about this project, if you have the
3 redacted --

4 CHAIRMAN FARRAR: Let me interrupt you
5 there. You may be right, but don't be annoyed with
6 the Commission. This was a deadly serious matter that
7 they may have overreacted, but the nation I think was
8 in the position to have them overreact rather than to
9 underreact. We noticed that, that some of the things
10 they were redacting were things that we already had in
11 our possession, but I have no contact with staff. I
12 didn't meet Mr. Turk till today.

13 MR. SILBERG: My point, though, was that
14 anyone who had the draft EIS would know instantly what
15 was redacted. So getting the unredacted version was
16 not necessary for the State to start to begin its
17 review. Once it got the redacted version, whether you
18 start that from the electronic receipt or the receipt
19 of hard copy, I think is the appropriate date. I
20 don't know what that date is, but that was the only
21 point I was making.

22 CHAIRMAN FARRAR: The only problem I have
23 with that argument is I took the draft statement and
24 the redacted one and said, "Aha, I'll be able to
25 figure it out," and I wasn't. So if I'm the litmus

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1 test, I couldn't do it, and I'm not going to ask the
2 State to do it. And this is no one's fault, and when
3 the Commission says, "Make sure the terrorists don't
4 get their hands on something," and I'm a staff
5 employee, I overreact and then I straighten it out
6 later.

7 MR. TURK: Thank you for your recognition,
8 Your Honor. I'd like to make a couple of points about
9 the date.

10 CHAIRMAN FARRAR: Yes. Okay.

11 MR. TURK: Number one, the draft
12 environmental impact statement was issued June 2000.

13 CHAIRMAN FARRAR: Right.

14 MR. TURK: The State has had that. The
15 environmental report from the Applicant has been a
16 matter of evolution for the last four years. The
17 State has had all that information.

18 CHAIRMAN FARRAR: I'll cut you off. Their
19 time begins to run from the new one, but anything new
20 they come up with, if you're saying it has to be new
21 based on something new in the FEIS, not something that
22 was lurking in the other documents, you're correct.

23 MR. TURK: Yes. And I would note also
24 because we are going to be so pressed for time, if we
25 have to rebut a lot of new contentions and show where

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1 these things were filed previously, or could have been
2 known previously, then we're going to be asked to
3 waste a lot of time that we don't have. So I would
4 really ask the State to concentrate only on new
5 matters and be prepared that I may ask for sanctions
6 if we find ourselves spending days and weeks trying to
7 show where matters could have been raised sooner.

8 CHAIRMAN FARRAR: I have every confidence
9 that we're headed to a hearing that's going to deal,
10 by and large, with the real issues. Having observed
11 the State and you interact today, I'm assuming that
12 they will take advantage of the 30 days from the last
13 date, whatever that was, to file pleadings with us
14 that are serious and that relate to matters that they
15 couldn't have had before. I have every confidence
16 they will do that.

17 MR. SILBERG: Do we know -- I just want to
18 make sure we know what the date is.

19 MS. CHANCELLOR: Your Honor, I can clarify
20 that. We received a hard copy of the unredacted FEIS
21 on Monday, January the 14th.

22 CHAIRMAN FARRAR: Okay. Fine. You've got
23 30 days from then.

24 MR. SILBERG: I think that was longer than

25 --

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1 CHAIRMAN FARRAR: Yes. Is that what your
2 motion said?

3 MR. SILBERG: I thought the motion was
4 February 11.

5 MR. TURK: The motion asked for February
6 11, Your Honor.

7 CHAIRMAN FARRAR: Whatever your --

8 MS. CHANCELLOR: We'll take the 14th, Your
9 Honor.

10 CHAIRMAN FARRAR: Whatever your motion
11 asks for, that's what you've got. We've got one
12 minute left, and they're going to pull the plug. Do
13 we need another pre-hearing conference before the
14 hearing?

15 MR. SILBERG: I don't believe we do.

16 CHAIRMAN FARRAR: Call on us if you do.
17 If anybody thinks we do, call on us. And we will
18 continue our work, Judge Bollwerk's Board on his part
19 of the case, the pending matters, and my Board on the
20 OGD Contention O matter. And call us if you need to,
21 whether that's conference calls to resolve -- let's do
22 things in the most efficient manner possible to get
23 ourselves to a hearing and to get us ready to write a
24 good decision that deal with the evidence in a fair
25 and efficient manner.

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1 Ms. Chancellor, thank you for your
2 participation and thanks to the rest of your people
3 who were there. And, Mr. Turk, Mr. Silberg and your
4 group, thank you. And Mr. EchoHawk, you still there?

5 MR. M. ECHOHAWK: I am, Your Honor.

6 CHAIRMAN FARRAR: God bless you. It's not
7 easy to hang on to a phone when everyone else is
8 watching moving pictures, but thank you. And we'll
9 see you all at some future date. Thank you.

10 (Whereupon, at 3:59 p.m., the Prehearing
11 Videoconference was concluded.)

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CERTIFICATE

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

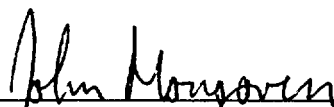
Name of Proceeding: PRIVATE FUEL STORAGE, LLC

Docket Number: 72-22-ISFSI

ASLPB: 97-732-01-ISFSI

Location: ROCKVILLE, MARYLAND

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



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