

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage, LLC  
Independent Spent Fuel Storage Installation

Docket Number: 72-22-ISFSI

Location: (telephone conference)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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TELEPHONE CONFERENCE

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IN THE MATTER OF: :

PRIVATE FUEL STORAGE LLC : Docket No.

: 72-22-ISFSI

(Independent Spent Fuel Storage :

Installation) :

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Monday, July 28, 2003

Teleconference

The above-entitled teleconference was conducted  
at 1:30 p.m.

BEFORE:

JUDGE MICHAEL C. FARRAR, Chairman

JUDGE JERRY R. KLINE

JUDGE PETER LAM

1 APPEARANCES:

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

1:37 p.m.

1  
2  
3 JUDGE FARRAR: Okay, we are here in the  
4 Private Fuel Storage proceeding for another pre-  
5 hearing conference dealing with scheduling. The  
6 parties have been talking to each other, and we've  
7 just received a document which has a State and Staff  
8 proposed schedule.

9 And then another one which just a couple  
10 of minutes ago came through by fax. Don't have it in  
11 front of us, but I think does that have -- we're  
12 having copies made right now. That's the Company's  
13 schedule?

14 MR. TURK: And it also has the State's  
15 schedule on there.

16 JUDGE FARRAR: Okay. Then while we're  
17 waiting for that to come in -- and here it comes --  
18 let us have everybody introduce themselves. For the  
19 Applicant?

20 MR. GAUKLER: Paul Gaukler. Jay Silberg's  
21 here with me and Sean Barnett.

22 JUDGE FARRAR: All right, welcome. Good  
23 to hear from you again. For the State?

24 MS. CHANCELLOR: Denise Chancellor, Jim  
25 Soper, Connie Nakahara.

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1 JUDGE FARRAR: Okay, good to have you all  
2 here. And for the Staff?

3 MR. TURK: For the Staff, Sherwin Turk and  
4 Cathy Marco. And Mark Delegadi has joined us also.

5 JUDGE FARRAR: All right. And I have --  
6 this is Judge Farrar. I have with me Judge Lam and  
7 our law clerk Susan Lin, and our staff support person  
8 Karen Valloch.

9 You all have been talking about schedules.  
10 As of the 22nd, I guess, of July, we had the last of  
11 the Company's I believe seven expert reports. Who  
12 wants to start the ball?

13 MR. GAUKLER: Your Honor, I will start the  
14 ball.

15 JUDGE FARRAR: Until she gets the hang of  
16 it, please identify yourself for the court reporter.

17 MR. GAUKLER: My name is Paul Gaukler.  
18 And we recognize that the reports we filed were late  
19 compared to what we had initially intended. On  
20 average, the last one was, like you say, July 21, 22,  
21 by the time the State received it. And other ones  
22 were filed earlier, beginning with the Benchmarking  
23 Report in June, June 26.

24 We understand also, based on that, just on  
25 that, we would propose some extension in the schedule

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1 which you see in the first column. I assume that your  
2 reports were delayed by twice weeks. We have since  
3 found out that the NRC is contemplating RAIs, and we  
4 have developed an alternate schedule that takes into  
5 account the RAI.

6 We have a meeting with the Staff set up  
7 for August 7. We hope to be able to answer a lot of  
8 their questions at that meeting. We want to find out  
9 from them what areas they have issues with beforehand  
10 so we will be ready to address them there. And we  
11 also want to be able to hit the ground running, so to  
12 speak, after that meeting. We're trying to have a  
13 clear idea on what topics and what issues we will get  
14 RAIs.

15 So we hope to be able to start working  
16 immediately after the August 7 meeting on any RAIs the  
17 Staff has. And that leads us to put down a -- we  
18 received a PFS response the last week in August,  
19 August 25 to 29. And I've kept it that way, not  
20 knowing exactly the breadth and nature of the RAIs,  
21 and also recognizing that we may -- as we get them  
22 done, we would serve them on everybody, instead of  
23 waiting till the end.

24 We believe that with that type of response  
25 to the RAIs, it's possible to have the hearing in

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1       October, first part of November, prior to the time  
2       that Judge Kline takes off, which I understand is  
3       November 7. As we feel very strongly that the hearing  
4       should be held prior to that time, that we have  
5       sufficient time in the schedule to build everything  
6       in.

7               The State, to the extent that they'll be  
8       filing new reports, doing independent work, they  
9       should have been doing that work already. To the  
10      extent that they are going to be critiquing what we're  
11      doing, we believe that the time allocated is  
12      sufficient for them to be doing critiques. Simpler to  
13      reviewing critiques, that is, to develop an  
14      independent expert report.

15             For those reasons, we believe that the  
16      hearing date from the middle of October to the first  
17      part of November will be possible, and it will meet  
18      the Commission's intent to move this proceeding as  
19      fast as possible. We believe that delaying the  
20      hearing till after Thanksgiving would run counter to  
21      the Commission's direction to the Board and parties to  
22      expedite this proceeding as quickly as possible, and  
23      to use whatever procedures, directions, the Board  
24      deems appropriate to the case involved.

25             So for those reasons we believe that given

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1 the RAI schedule, RAIs that we understand will be  
2 coming from Staff with the August 7 meeting that we  
3 have right now with the Staff, we believe that the  
4 hearing prior to Judge Kline's departure is timely and  
5 appropriate.

6 JUDGE FARRAR: Now, Ms. Chancellor, help  
7 me here. You're on one document with the Staff, and  
8 another document with the Applicant. I take it that  
9 means you let them start first, and then you modify  
10 what they're saying. Is that how I should read these?

11 MS. CHANCELLOR: The reason that you've  
12 got separate schedules is that we couldn't get a hold  
13 of the Staff to put the Staff schedule in the joint  
14 schedule. So what you see for the State's position  
15 will be essentially the same on either schedule,  
16 either the one that PFS sent, or the NRC sent.

17 JUDGE FARRAR: Okay, thanks Ms.  
18 Chancellor. Why don't we hear from you next. Mister  
19 Gaukler has made some points about what the Applicant  
20 thinks the schedule should be. Without going into the  
21 details, tell us your thoughts.

22 MS. CHANCELLOR: We received the last PFS  
23 report, the Cornell Report, on the 22nd of July. And  
24 in addition, we received the back-up data for the  
25 Holtec structural evaluation, we received that data on

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1 the 22nd of July.

2 PFS is giving us less than three weeks  
3 from that date to prepare expert reports. The expert  
4 reports are the crux of this hearing. And we believe  
5 that because PFS had a three week slippage in their  
6 schedule that it's equitable and realistic that the  
7 State be given an additional three weeks beyond the  
8 original schedule, and that's where we come out at  
9 September the 11th.

10 I believe what we have proposed is a  
11 realistic schedule. It is extremely time-consuming.  
12 It takes about two days out of everybody's time to go  
13 back and renegotiate these schedules. Given that  
14 there are going to be RAIs, and PFS' responses to  
15 RAIs, we don't know whether there will be some  
16 slippage there. We don't know whether there will be  
17 some slippage in the Staff taking a position.

18 So I think the schedule that we have  
19 proposed, given that there's going to be a -- that we  
20 can't have the hearings the 7th of November through  
21 the end of November, that the December 1 date -- well,  
22 actually we've gone to December 2 because of travel  
23 time -- that the December hearing date is realistic at  
24 this current stage, and that PFS is the one that has  
25 caused the slippage in the schedule, and that's why it

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1 should not be taken out of our hide.

2 JUDGE FARRAR: Let me ask you how -- You  
3 were concerned at the last conference call we had  
4 about your ability to work with the materials that  
5 indeed had a "Safeguards" classification. How has  
6 that been working so far? I know it's only been a  
7 week or so, but how has that been working?

8 MS. CHANCELLOR: It's very cumbersome.  
9 Some of us haven't even figured out how to open the  
10 safe yet. But it does involve having to be at --  
11 taking things home with us. Once we submit our expert  
12 reports to the NRC, that's really going to constrain  
13 our ability to discuss the details of the reports and  
14 the analysis with our experts.

15 And so it just adds another layer on top  
16 of a very difficult schedule.

17 JUDGE FARRAR: Let me ask the Staff, do  
18 you have your Safeguards guy there, whose name escapes  
19 me?

20 MS. CHANCELLOR: Beg your pardon? Oh.

21 JUDGE FARRAR: Let me ask the Staff, do  
22 you have your Safeguards fellow there who was on the  
23 previous call?

24 MR. TURK: No, we don't, but we can call  
25 him to come in.

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1                   JUDGE FARRAR: Why don't you do that. And  
2 the question I want to ask, and maybe you know the  
3 answer, Mr. Turk, is he had indicated perhaps we could  
4 get a ruling as early as a week after each report came  
5 in. I haven't seen anything yet.

6                   Has he made a tentative, and/or a final  
7 classification on the Applicant's seven reports?

8                   MR. TURK: He has made a tentative  
9 determination. His name, by the way, is Bernard  
10 Stapleton.

11                   JUDGE FARRAR: Right.

12                   MR. TURK: He indicated to me that the  
13 information in the reports includes what he would  
14 describe as Safeguards Information. He's done a  
15 wholesale review of the report, and made a  
16 determination that, with the exception of some  
17 attachments to one of the reports which came in  
18 without being designated Safeguards Information, that  
19 the reports would in fact qualify for that  
20 designation.

21                   And he will be issuing something this  
22 week, probably by the end of the week, with that  
23 determination. He will also provide us with the  
24 guidance that he's following so that we can then  
25 forward that to PFS, so that PFS could make a

1 redaction of the documents to allow portions of the  
2 documents to be made public.

3 But while that might benefit the public so  
4 they'll understand the nature of the report, it does  
5 have much impact on our ability to litigate the case  
6 in the open.

7 JUDGE FARRAR: Let me ask for  
8 clarification. In other words, he's not saying that  
9 he could call these non-Safeguards if the Applicant  
10 would merely remove some stuff permanently from the  
11 reports. In other words, he's just saying here's how  
12 you can make them public. He's not suggesting that  
13 they wouldn't lose anything in the translation, and  
14 could in fact be submitted without that material. You  
15 understand my question?

16 MR. TURK: Yes. What he has indicated to  
17 me is the reports include methodology as well as the  
18 airplanes being angled, and that would be Safeguards  
19 Information. So --

20 JUDGE FARRAR: And that is the central  
21 reason for submitting the reports?

22 MR. TURK: That's right, and that would be  
23 central for our litigation.

24 JUDGE FARRAR: Yes, okay.

25 MR. TURK: We would still be in the mode

1 of having to litigate Safeguards Information.

2 JUDGE FARRAR: Okay.

3 MR. TURK: We couldn't avoid it.

4 JUDGE FARRAR: All right.

5 MR. TURK: But we hope to get you that  
6 this week.

7 JUDGE FARRAR: But for -- right or wrong,  
8 I think we indicated in a previous conversation, it's  
9 not our business to be evaluating his work. So what  
10 you're saying, in essence, is his opinion to us is  
11 that, as you just said, we will be litigating  
12 Safeguards Information.

13 MR. TURK: Yes.

14 MS. CHANCELLOR: Your Honor, I would just  
15 like to make a point about our expert reports. PFS  
16 says that we could have been working on these all  
17 along, but we really needed to know what PFS' position  
18 was. We had no idea what PFS was -- how they were  
19 going to do their analysis.

20 So based on the reports that we got from  
21 PFS, that has caused us to go out and have to look for  
22 additional experts, some of whom we haven't even found  
23 yet. So that's another reason why we think that we  
24 need the additional time built into the schedule.

25 JUDGE FARRAR: Mister Gaukler, let me ask

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1 you this. You made an excellent presentation there of  
2 why your schedule would work. But let me ask you,  
3 just from a simple point of view, even if we only  
4 start the clock on our May 29 pre-hearing conference,  
5 you said you were going to take a month for your  
6 reports, and you took three weeks extra.

7 Why doesn't that push everything back  
8 three weeks. And then why isn't the State entitled to  
9 say, 'You all took three weeks extra. We should also  
10 get three weeks extra if we're going to adhere to  
11 basic fairness here.'

12 If you add six weeks to the original --  
13 again, without getting into the details of the  
14 columns, which we'll all talk about in a minute, why  
15 aren't we dealing with a minimum of a six-week delay  
16 from what we thought we had agreed on in our good  
17 faith effort to carry out the Commission's directive  
18 based on the facts they had in front of them at the  
19 time to finish by year end?

20 MR. GAUKLER: Two points, Your Honor.  
21 One, like I said, to the extent the State was going to  
22 be doing anything independent of what we were doing,  
23 the filing of our reports wouldn't affect that.

24 To the extent that they're critiquing and  
25 reviewing us, we believe that the critique and review

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1 would not take as long as preparing the initial  
2 report, having to do the computer modeling run,  
3 various things like that.

4 Also, we've tried to write the report so  
5 that they're very clear to enable people to understand  
6 them, to understand the points we're trying to make.  
7 So we've gone to a lot of effort trying to make the  
8 technical reports as clear as possible in terms of the  
9 basis of what our case is. That's number one.

10 Number two --

11 JUDGE FARRAR: So looking at it that way,  
12 you don't see it then that the automatic three plus  
13 three equals six weeks applies?

14 MR. GAUKLER: Right. I would say it takes  
15 the automatic three weeks. That gives them what they  
16 had before. And then if you look at what I proposed  
17 in terms of the alternate RAI schedule, you'll see  
18 that extra week, and their additional week as well.

19 So I think they have maybe five weeks from  
20 the filing of our last report August 22. So the  
21 actual schedule that we're taking into account RAIs,  
22 the time that they have from the filing of our last  
23 report is five weeks.

24 And some of the reports they had -- most  
25 of the reports they had at least by the middle of the

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1 previous week. So you're talking almost six weeks  
2 there.

3 JUDGE FARRAR: So the first disagreement,  
4 as I look at the document you all submitted, is that  
5 bottom line on the first page, "Receipt of State  
6 expert reports." You're giving them five weeks rather  
7 than the four we had talked about initially, and they  
8 want seven weeks.

9 MS. CHANCELLOR: They've added three weeks  
10 to the 30 days you gave us.

11 JUDGE FARRAR: Right.

12 MR. SOPER: Your Honor? Jim Soper here.  
13 Good morning.

14 JUDGE FARRAR: Good morning, Mr. Soper,  
15 how are you?

16 MR. SOPER: I'm fine, thank you. I would  
17 just like to note that this idea that these reports  
18 are clear and in some notion simple under the point.  
19 I would suggest that if the Board hasn't looked at  
20 them, they ought to take a quick peek and see if  
21 that's the case, because I think you'll find it's  
22 anything but the truth.

23 Particularly, you look at the last one,  
24 it's almost unreadable in its complexity. We haven't  
25 digested it, nor even located an expert to evaluate

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1 it. . . And the PFS has had, since the Board's decision,  
2 four and one-half months to come up with something,  
3 knowing what their strategy is.

4 It's almost impossible to do this before  
5 September 11. That is, provide an expert report. And  
6 I think that is even pushing it, and we might even  
7 expect that delays would have to be anticipated. But  
8 I can't imagine anything earlier than September 11 to  
9 file our reports.

10 MR. GAUKLER: I would say in response to  
11 that, Your Honor, I think the logic is clearly set  
12 forth. In the last report we filed it sets forth the  
13 rationale and the approach, and all the building  
14 blocks that go into it, all the technical building  
15 blocks that go into the last report, or the previous  
16 technical reports, which were received at least a week  
17 before.

18 JUDGE FARRAR: Let me say this in response  
19 to both of your comments. The Board has read the  
20 reports, and without characterizing the way you did,  
21 Mr. Soper, or you did, Mr. Gaukler, they are --  
22 regardless of how well prepared they are, they are --  
23 deal with a very complicated subject. So without  
24 saying either one of you is right or wrong, they  
25 certainly are complicated.

1                   Mister Gaukler, how do you respond to --  
2                   You all said that the State should have started back  
3                   on May 29 preparing the reports. Kind of in parallel  
4                   to you, I just had Mr. Soper say you should have  
5                   started back on March 10.

6                   Now I know a lot else was going on then,  
7                   and you exercised your right to ask the Commission to  
8                   review our decision. But I'm hearing the State say  
9                   you've had since March 10.

10                   MR. GAUKLER: In terms of the report,  
11                   well, they had from March 10, too, or the end of March  
12                   in terms of developing something independently. And -

13                   -

14                   JUDGE FARRAR: Except that I don't think  
15                   they knew at that point that you were going to proceed  
16                   on --

17                   MR. GAUKLER: I said the end of March.  
18                   March 10, obviously they didn't know that. But in  
19                   terms of we started developing ideas and thoughts in  
20                   April in terms of the basic approach, and how to  
21                   approach these reports -- approach the analysis.

22                   And so, like I say, it's one thing to  
23                   develop and execute, implement, a study that is going  
24                   to be the basis for a Board decision, or a Commission  
25                   decision, to make sure it has all the sufficient

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1 technical bases and support that you need for the  
2 Commission decision.

3 It's a different thing to critique and  
4 take issue with, necessarily, a report that somebody  
5 else has developed. To the extent the State was going  
6 to develop its own independent report to show the  
7 Commission affirmatively, which it could have done.  
8 It didn't have to do it. It's up to the State.

9 They had the same amount of time we did to  
10 develop their own independent basis, apart from us, to  
11 show that the consequences would be more than the NRC  
12 limit. But they apparently chose not to do that, and  
13 they're going to attack our reports.

14 And all I'm saying is that in that  
15 context, you're in a different context where you're  
16 reviewing and evaluating something as opposed to  
17 developing it initially, and making sure you have all  
18 the technical justification basis to support a  
19 Commission action.

20 MS. CHANCELLOR: A response, Your Honor?

21 JUDGE FARRAR: I was going to ask you, Ms.  
22 Chancellor, are you just doing critiques, or are you  
23 going to develop your own positive reports?

24 MS. CHANCELLOR: Probably a little of  
25 each. Certainly won't be just resting on critiquing

1 of PFS' report. We'll be developing some affirmative  
2 scenarios as well.

3 MR. GAUKLER: And on that I would say  
4 they've had the same amount of time we've had, Your  
5 Honor.

6 MR. SOPER: For instance, the last report  
7 filed by Dr. Cornell deals with the subject matter  
8 that we didn't even think was within the scope of this  
9 proceeding. We're probably going to have some  
10 hearings on that. But I didn't know we went back and  
11 plowed through the probability ground again.

12 I mean, I had no -- not the foggiest  
13 notion that that was what consequence was about, to  
14 try to recharacterize the probability that's already  
15 been determined by the Board.

16 MR. GAUKLER: No, that's not what we're  
17 doing Mr. Soper.

18 JUDGE FARRAR: Let's not -- I understand  
19 what both of you are going to say on this. How are we  
20 going to -- or go ahead, Mr. Gaukler, but keep it  
21 short, and then I'll --

22 MR. GAUKLER: Very short. What we're  
23 doing, as is clearly explained in Dr. Cornell's  
24 report, we're looking at the first stage of effects --  
25 of consequences, and doing an assessment based upon

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1 the structural integrity, without going to the second  
2 or third steps to breach of containment -- breach of  
3 cask or confinement, or radiological dose.

4 And --

5 JUDGE FARRAR: So you're saying you are  
6 doing consequences, namely on those there are no  
7 consequences.

8 MR. GAUKLER: Right. I mean, therefore,  
9 just by doing -- So there's basically three levels you  
10 can look at it, three barriers, okay? One, you have  
11 the structural integrity of the cask and the cask  
12 transfer building. That's what we focused our  
13 analysis on.

14 Second, you have the actual MPC  
15 confinement, the multi-purpose canister confinement,  
16 the stainless steel canister. You can focus on that,  
17 which we did not -- we touched on several respects,  
18 but we did not focus on that.

19 And third, you get into the actual  
20 radiological release. And each one of those steps you  
21 can conclude that you are sufficiently below the NRC's  
22 limits such that it's not credible that you're going  
23 to have a radiological release greater than five rems.

24 JUDGE FARRAR: Do I understand your  
25 reports correctly that there are some small category

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1 of incidents that you've chosen not to address.

2 MR. GAUKLER: Right.

3 JUDGE FARRAR: In effect, conceding that  
4 the consequences would be, if I can use the word, bad.

5 MR. GAUKLER: We're assuming, for purposes  
6 of the analysis, to the extent we don't analyze an  
7 event, we count that as bad. Even though if we went  
8 forward to analyze it we believe that the great  
9 majority of those would not be bad.

10 JUDGE FARRAR: But so on that you would  
11 then be relying just on the probability of those quote  
12 "bad" events is sufficiently small that the Board can  
13 ignore them?

14 MR. GAUKLER: That's correct, Your Honor.

15 JUDGE LAM: Judge Lam. Let me chime in,  
16 Mr. Gaukler. Although Professor Cornell's report is  
17 reasonably detailed, and the approach is reasonably  
18 clear. However, the results are not entirely immune  
19 from a litigative attack from the opponent.

20 You know, I share Mr. Soper's sentiment.  
21 This matter is not settled before it is settled.

22 MR. GAUKLER: We're not arguing that, Your  
23 Honor, that the State's going to have issue with it.  
24 If the NRC has some questions that we have to answer,  
25 we can answer them. We're not saying that this is a

1 summary disposition type of situation, that there's no  
2 facts that could reasonably be disputed.

3 JUDGE FARRAR: Okay, let me then go back  
4 to Mr. Soper's -- I don't want to call it a threat --  
5 that there's going to be something that sounds like a  
6 challenge to the approach or the testimony. That's  
7 certainly not something we want to hear in an in  
8 limine motion being argued the morning of the trial.

9 How do we get that in front of us in  
10 sufficient time to give that the thought it's going to  
11 require or deserve? Mister Soper, are you planning to  
12 file something sometime before the hearing starts?  
13 Are these before the in limine motions?

14 MR. SOPER: Well, that's a very good  
15 question, Your Honor, and you're more insightful and  
16 sensitive to those issues. I only realized that the  
17 standard that we're trying to measure against in this  
18 proceeding is eluding everyone, since these reports  
19 are addressing various issues.

20 And I had no idea that what we're talking  
21 about is reassessing the probability of certain  
22 events. I thought that we were talking about  
23 screening credible events has not -- has been met in  
24 the 10 to the -6 standard. Now we look at the  
25 consequences, and I didn't know that this was another

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1 probability. But it was just to assess the  
2 probability of crashes.

3 So I think this matter, having said that  
4 again. I don't mean to dwell on minutiae, but I think  
5 it's an issue that ought to be addressed, really, up  
6 front, because everything else kind of follows that in  
7 what evidence is even relevant.

8 JUDGE FARRAR: Let's hold that thought for  
9 a minute on how and when we'll address that. Let me  
10 ask the Staff, having heard the discussions so far,  
11 and having put in front of us a -- in conjunction with  
12 the State, two sets of hearings. Two sets of dates.  
13 One with November hearings, one with December.

14 And having heard what's gone on so far,  
15 what are you -- which of these columns are you  
16 recommending?

17 MR. TURK: Well, Your Honor, the two  
18 columns were developed with the idea that we'd like to  
19 propose the hearing as promptly as possible,  
20 recognizing that the Commission has instructed all  
21 parties, and has asked the Board as well to conclude  
22 hearings as quickly as possible.

23 We believe that we could be ready to go to  
24 hearings in the final column of my proposal, which  
25 would have hearings start in November. We recognize,

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1       however, that all parties, and the Board members  
2       themselves, have been stating the hearing could take  
3       place in September. And people have made other plans  
4       which may get in the way of hearings in November.  
5       Nonetheless, we're prepared to do that if the Board  
6       directs us to.

7               I would like to note a few things with  
8       respect to previous discussion. First, we had  
9       anticipated that when PFS would submit its reports, we  
10       would see something on the order of one to two inches  
11       of paper, because that's what PFS had described as  
12       what it would be submitting.

13               In fact, though, we see something on the  
14       order of anywhere from six to eight inches of  
15       material, which does take more review time than we had  
16       anticipated when we were thinking we'd see one to two  
17       inches.

18               So it's not just a matter of saying, well  
19       PFS is three weeks late. Let's digest those three  
20       weeks, and come up with a schedule that's only three  
21       weeks later than PFS' original schedule would have  
22       allowed.

23               So we do see that we need more than just  
24       a 21-day extension of the total schedule. Based on  
25       what we've seen from PFS, we've determined that we

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1 will need to issue requests for additional  
2 information. It is possible that a portion of those  
3 requests may call for PFS to submit some rather  
4 detailed information, which frankly they may not be  
5 able to get to us in the two-week period that their  
6 schedule anticipates that they could meet.

7 I think they're assuming that the  
8 questions won't require more from them than a two-week  
9 period to respond to, but that may be unrealistic on  
10 their part. Therefore, we're suggesting that they  
11 allow three weeks to get their responses to us.

12 And that's why in both of our columns, for  
13 our proposed schedule, you'll see that we're expecting  
14 responses back from them during the first week of  
15 September. I put in September 3. That date could  
16 also be September 5, Friday. It won't make a  
17 difference in the overall schedule, however.

18 We're also anticipating --

19 JUDGE FARRAR: Okay, hold on there. I'm  
20 trying to follow the two different -- In which you  
21 just said when their responses would be in.

22 MR. TURK: Okay. If you look at what PFS  
23 had submitted today, they call for the receipt of  
24 their RAI responses in the period of August 25 to 29.  
25 We don't think that's realistic. We think that they

1 should plan to have their RAI responses in by  
2 September 5, or maybe at the earliest September 3.

3 JUDGE FARRAR: Which is what the State is  
4 suggesting.

5 MR. TURK: Yes.

6 JUDGE FARRAR: Okay.

7 MR. TURK: Also, with respect to when our  
8 RAIs go out, there's only a one-day difference. PFS  
9 is proposing that we issue August 14. We've allowed  
10 ourselves until the next day, Friday the 15th,  
11 recognizing that we will have met with PFS during the  
12 week of -- or on August 7th. That will take a day or  
13 two out of our review time, to get ready for that  
14 meeting and to have that meeting.

15 So we're allowing for RAIs to go out on  
16 August 15, and their responses September 5.

17 JUDGE LAM: And also -- this is Judge Lam.  
18 Are you only thinking of only one round of RAIs?  
19 Could there be a second round from the Staff?

20 MR. TURK: At this point, we're only  
21 anticipating one round of RAIs based on what we  
22 received from PFS. There's always the possibility  
23 that if their responses to us are inadequate, that we  
24 would have to ask follow-on questions. But we're  
25 assuming in this schedule that we will not need to do

1 that.

2 JUDGE FARRAR: All right. Then, in that  
3 same document, the Company's ultimate schedule has the  
4 Staff's written evaluation between September 15 to 19.  
5 Is that something you're comfortable that you can do,  
6 or do you -- or is the State's proposal of October 1  
7 closer to the mark?

8 MR. TURK: The State is closer to the  
9 mark. We're proposing a period until essentially  
10 October 1, possibly October 3, to issue our  
11 evaluation. And that represents about three and one-  
12 half to four weeks after we get the RAI responses to  
13 develop our final position and to issue it.

14 JUDGE FARRAR: All right.

15 MR. TURK: For us, that's the pacing item.  
16 Once we issue our evaluation, we're prepared then to  
17 be deposed by the State and PFS, and to develop our  
18 testimony. To issue testimony two weeks after our  
19 evaluation goes out, and then to be ready for hearing  
20 two weeks after that. Which is why in my submission  
21 of today I put in November 3, Monday, as the first  
22 date that we can see going to hearing.

23 Assuming that that was possible, that  
24 other parties and the Licensing Board had a schedule  
25 that could accommodate that.

1 JUDGE FARRAR: Wait a minute. If you get  
2 your evaluations in on October 1, and then are ready  
3 for depositions, which are roughly scheduled for at  
4 least three weeks under the different schedules, when  
5 would you be anticipating your pre-filed testimony?

6 MR. TURK: Under the initial schedule that  
7 the parties had agreed to, depositions of State and  
8 PFS experts would have commenced before the Staff  
9 evaluation was issued.

10 So I would expect that if we move to go to  
11 hearings in November, that that same sort of scenario  
12 would play out, where the State and PFS have their  
13 experts deposed before the Staff evaluation was  
14 issued, until maybe a few days after the Staff  
15 evaluation comes out those depositions would conclude.  
16 And then there would be approximately two days'  
17 depositions of Staff experts.

18 That's what had been proposed originally.  
19 I was just assuming that that same scenario was played  
20 out here.

21 JUDGE FARRAR: And how soon after your --  
22 given that they would be going through depositions,  
23 how soon after your evaluation do you prepare your  
24 testimony? Is your testimony essentially a rehash of  
25 the evaluations?

1 MR. TURK: As I --

2 JUDGE FARRAR: No, I don't want to use  
3 that word pejoratively.

4 MR. TURK: Right, well we wouldn't rehash  
5 them. I think with respect to the position that the  
6 Staff takes, we would probably just attach that  
7 position to some cover sheets in which the witnesses  
8 identify themselves, and they say this report  
9 constitutes my best work, and I hereby adopt it as my  
10 sworn statement in this proceeding.

11 JUDGE FARRAR: So then --

12 MR. TURK: But we would also then possibly  
13 want to put in testimony that addresses what came out  
14 of discovery. So the testimony might be more than  
15 simply saying here's our evaluation.

16 JUDGE FARRAR: If you'll turn to the third  
17 column on the second page. Oh, wait. Well, if your  
18 evaluations come out October 1, you say then you could  
19 file your testimony within a couple weeks of that. Is  
20 that what you're saying?

21 MR. TURK: Yes.

22 JUDGE FARRAR: But meanwhile, when would  
23 the Applicant and the State be filing -- Under that  
24 view, when would they be filing their testimony?

25 MR. TURK: Well, the dates that I would

1 propose, which are slightly different from what the  
2 State put into its paper. I was proposing that the  
3 testimony by all parties be filed on October 22.

4 JUDGE FARRAR: All right. That's the  
5 third column of your paper.

6 MR. TURK: Right. And that would be  
7 followed the next week with motions in limine. And  
8 then hearings November 3, if that would be possible.

9 JUDGE FARRAR: Okay, now, problem we have  
10 there is you've got the motions in limine, one side  
11 filing them. And without getting a reply, we'd have  
12 an oral argument with the hearing started, and that's  
13 the first time we would hear the reply.

14 MR. TURK: That's correct, and that's not  
15 a preferable outcome.

16 JUDGE FARRAR: That made me nervous the  
17 first time that was suggested in the original  
18 schedule.

19 MR. TURK: That's not the optimal way to  
20 deal with it. Preferably the parties would have a  
21 chance to file written responses, and the Board would  
22 be able to receive the motions and the responses.

23 But it's a matter of whether we try to  
24 squeeze the schedule or not. The original plan would  
25 not have allowed for written responses, as I recall.

1 MR. GAUKLER: I guess, Your Honor, in that  
2 respect, I would think -- Noting in the last  
3 conference call that you had that the parties should  
4 note the Board's past ruling on motions in limine, and  
5 the Board's hesitation to grant them, particularly  
6 when it comes to issues of expertise. So it basically  
7 goes to questions of weight and testimony as opposed  
8 to trying to exclude testimony.

9 JUDGE FARRAR: So you're reserving space  
10 here for the motions in limine, but you're not  
11 anticipating that they would be dealing -- Are you  
12 anticipating there might be none?

13 MR. GAUKLER: It might be none, yes. In  
14 other words, I wouldn't anticipate motions in limine  
15 going to the weight of testimony, or lack of expertise  
16 based upon the Board's rulings on previous motions in  
17 limine.

18 MS. CHANCELLOR: Your Honor, I think this  
19 depends on what happens with the probability that Mr.  
20 Soper was talking about, and whether that gets  
21 resolved before we get to the motions in limine stage.

22 MR. GAUKLER: You still would not want to  
23 resolve that issue at the motion in limine, so if the  
24 State's going to raise that as an issue, I would urge  
25 that we set a schedule to raise that early on, and

1 have that resolved early on.

2 JUDGE FARRAR: Let's hold that, again, for  
3 a minute. And I appreciate all your good work that  
4 you've put into trying to come up with a schedule like  
5 this. My concern is that the one part of this that I  
6 thought would have been fairly easy to predict was the  
7 Company predicting how long it would take them to do  
8 their expert reports. And they were off by 75  
9 percent.

10 I'm concerned about driving this forward  
11 under a schedule that proves to be unworkable by the  
12 same degree. The Staff has said maybe they won't have  
13 just one round of RAIs, maybe they'll have two.

14 Now, there's another possibility that I  
15 broach just to put it on the table, but I don't  
16 support it. We're trying to work around Judge Kline's  
17 travel schedule, and I suppose it would be possible  
18 not to work around it, and to reconstitute the Board.

19 But my first reaction to that is the three  
20 of us have been through the earlier proceeding. That  
21 gives us a substantial leg-up on this. We worked very  
22 well together on that, and that, to me, is a last  
23 resort that we would try to work around.

24 Jerry, what exactly are the dates you'll  
25 be gone?

1 JUDGE KLINE: It'll be -- I will depart  
2 November 7 and return November 22.

3 JUDGE FARRAR: And then the week after you  
4 get back is Thanksgiving week. So looking at this  
5 now, even if we did the Staff, with the hearings in  
6 November, that's the last column, then that means  
7 Judge Kline isn't available for those days.

8 MR. TURK: For the second half of the  
9 hearing, that's correct.

10 JUDGE FARRAR: Yes, the 11/3 through  
11 11/21. He would be here for -- yes, okay. Well --

12 MR. TURK: He would be here from 11/3 to  
13 11/6, from what I understand.

14 JUDGE FARRAR: I suppose there's -- Well,  
15 let me ask this question. Mister Gaukler, how long is  
16 this hearing going to take?

17 (Laughter.)

18 MR. GAUKLER: You know if I've extended  
19 the time from two to three weeks from what I  
20 submitted, I think that three weeks is probably more  
21 than that what we would need, and we would look to  
22 trying to -- we're considering putting all our experts  
23 on at once. And that also assumes that there's really  
24 no conflicts with anybody, with respect to our  
25 experts, which I'm exploring right now.

1                   But if we did that, then I think we might  
2                   be able to get done in two weeks.

3                   JUDGE FARRAR: Well, but you have -- and  
4                   not that inches of material is necessarily the most  
5                   accurate measure, but it does reveal something about  
6                   the complexity of the case, then this is complex. And  
7                   we started with five reports, and now we have seven.  
8                   And presumably each of the other parties is entitled  
9                   to, if not equal numbers, equal weight of their  
10                  opinions. And now you're in the 20 or 21 reports in  
11                  a 15-day hearing. And so far, that's not been our  
12                  experience.

13                  Now we've all learned something in the  
14                  previous hearing, and maybe we can improve on what we  
15                  did before. But it just seems like we're asking a lot  
16                  of everyone.

17                  MR. SILBERG: Judge Farrar, this is Jay  
18                  Silberg. There are a couple options that you put on  
19                  the table, and there's one other. I think the option  
20                  of reconstituting the Board is not one that I think I  
21                  personally, and I think my clients, would favor.

22                  There's another option, and that is to go  
23                  forward -- and this also obviously isn't optimum, but  
24                  a lot of what we've done in this hearing has not been  
25                  optimum -- is to go forward with the hearing for as

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1 long as Judge Kline is physically available, and then  
2 to have him try to catch up when he returns by  
3 reviewing the transcript, but have Judge Kline remain  
4 on the Board.

5 There are other cases where boards have  
6 held hearings with two of their three members present,  
7 but all board members were involved in deciding the  
8 case. And that's certainly the case with other  
9 tribunals.

10 Again, that's not an optimal suggestion,  
11 but I would think that's preferable over  
12 reconstituting the Board at this point.

13 MR. GAUKLER: Your Honor, if I could add -  
14 - Paul Gaukler. If I could add one thing. Just  
15 looking at the Staff's proposed schedule, in which  
16 they have the hearing start 11/3. If we're able to  
17 start the hearings a week earlier, basically we would  
18 have Judge Kline there for two weeks of the hearing,  
19 and then as it went into the third week, that would be  
20 the period of time he would have to read the  
21 transcript.

22 Also at this point in time, one unknown is  
23 the extent of the RAIs, and how long it's going to  
24 take us to respond to the RAIs. At this point in  
25 time, we've been urging the Staff to get back to us

1 with any issues or questions, et cetera, that they're  
2 going to have, that they know before the meeting so  
3 that we can address those at the meeting in a hope to  
4 minimize the RAI time.

5 And I would hate at this point in time to  
6 slip the hearing way into December, which I think  
7 would be contrary to the Commission's direction to  
8 expedite this case when we're within -- you know, I  
9 think it's possible to have the hearing if not all, or  
10 at least most before Judge Kline goes.

11 MR. TURK: May I respond briefly, Your  
12 Honor?

13 JUDGE FARRAR: Yes, Mr. Turk.

14 MR. TURK: Sherwin Turk. First, I'd like  
15 to respond to a suggestion that Judge Kline review the  
16 transcript after having missed one or two weeks. I  
17 think that really is far less than optimal. Having  
18 worked on proposed findings in this case, I know that  
19 the testimony can be very complex. It's a tedious job  
20 to go through the transcript, much less try to  
21 understand what was said when you weren't there to  
22 physically hear it, and remember how things appeared  
23 as they were being stated. So I think that's a very  
24 undesirable outcome. I would prefer that the hearing  
25 be held with all three judges present.

1 We are going to be meeting with PFS --

2 JUDGE FARRAR: Let me interject at that  
3 point from my own perspective. I have great  
4 confidence in Judge Kline's ability to come back and  
5 read something, and comprehend it and understand it.  
6 I have less confidence in my ability to run a hearing  
7 without both of these gentlemen beside me. In order  
8 to create the right record, we all have to ask the  
9 right questions, the things that are troubling us.  
10 And doing it right the first time is a lot different  
11 than Jerry coming back and saying, gee, this doesn't  
12 make sense here. We should have asked something.

13 And so while obviously if someone's sick  
14 one day out of three weeks, or something, you press on  
15 without them. But I am not at all in favor of  
16 prolonged absence of either one of my colleagues.

17 MR. TURK: I recognize that, Your Honor.  
18 I recall from the hearing that the judges frequently  
19 entered into colloquy, and decided on questions to ask  
20 the witnesses. And I think that's certainly very  
21 probative, and good for the hearing process.

22 I made the suggestion because we will be  
23 meeting with PFS on Thursday, August 7, and at that  
24 time we'll be giving PFS our preliminary look at the  
25 questions that we'll be raising in RAI, or at least

1 some of them. Certainly by the end of the following  
2 week we'll have developed additional questions that  
3 perhaps we didn't mention at the meeting on August 7.

4 But during the week of August 11, I think  
5 it might be this week we have another telephone  
6 conference call with the Board, the State, and PFS.  
7 And at that time, maybe we'd be better able to predict  
8 how long our RAI -- or how many RAIs we might have,  
9 and how long it might take us and PFS to address the  
10 RAIs and the responses.

11 So maybe we could do a better job of  
12 predicting the schedule during the week of August 11  
13 than we can do today.

14 JUDGE FARRAR: Before I ask the others to  
15 respond to that suggestion, we've been looking at  
16 starting a hearing and going for two, three, four  
17 weeks, whatever it takes. Since we don't have a jury  
18 to worry about, would there be any problem with  
19 starting before Judge Kline leaves, and resuming after  
20 he returns?

21 I mean, while that's not the way we  
22 usually do things, I think, Jerry, weren't you on --  
23 was it on Shoreham where you all would meet for a  
24 couple of weeks, and then ...

25 JUDGE KLINE: And then recess for a week

1 or so, just to catch up on things, yes.

2 JUDGE FARRAR: And the longer the hearing  
3 goes, the more that recess, I assume, is important for  
4 the lawyers to be reviewing transcripts, and planning  
5 their next moves.

6 What's the State think of this suggestion  
7 Mr. Turk has just made that we not -- Mr. Turk, if I  
8 can paraphrase. You're saying we not set a final  
9 schedule now. We, I guess decide not to reconstitute  
10 the Board, and you all -- Is the State going to be at  
11 that meeting?

12 MR. TURK: The State is welcome to attend.  
13 I haven't heard from them if they will be or will not  
14 be.

15 MS. CHANCELLOR: No, Your Honor, we're  
16 busy reviewing reports. We don't have -- Oh, we might  
17 go? Oh. I beg your pardon. We might go. We haven't  
18 made a decision on that.

19 In terms of defining when we should  
20 actually hold the hearings, I think that's an  
21 excellent idea, that there's no reason to set this in  
22 stone right now. And reconstituting the Board, or  
23 having the hearings while Judge Kline is away we think  
24 is a very bad idea.

25 With respect to splitting the hearing, and

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1 having a recess in the middle, does that mean that all  
2 of the hearings would be in Rockville?

3 JUDGE FARRAR: We hadn't made any decision  
4 yet on that. But the factor that Safeguards are  
5 involved obviously means it creates a huge problem for  
6 us in terms of trying to protect that material in a  
7 hotel meeting room made up to look like a courtroom.  
8 It means no one, including reporters from the  
9 environs, would be able to come in. So those are two  
10 strong factors that would motivate us to hold the  
11 hearing here, mostly for the protection of the  
12 material.

13 And I suppose -- well, given that, finish  
14 the point you were ...

15 MS. CHANCELLOR: If we have to travel  
16 twice to Washington, D.C., we're going to have to pack  
17 up everything twice and send it there, and bring it  
18 back. And it's going to be quite burdensome,  
19 especially if we -- if the schedule is really tight,  
20 and we're doing depositions up till the last minute,  
21 filing testimony, packing up our stuff, getting to  
22 Washington, and then having to come back again. And  
23 just all that additional travel is a lot of wear and  
24 tear on the lawyers.

25 MR. TURK: The other side of that, Denise

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1 -- Sherwin Turk -- is that you wouldn't have to be  
2 away from home for three weeks at a stretch. You'd  
3 have some time to be back with family, and then come  
4 back again. From a personal perspective, it might be  
5 a little easier.

6 MS. CHANCELLOR: I'm not sure I'd be  
7 spending much time with family, Sherwin, if I flew  
8 back here.

9 JUDGE FARRAR: Mister Gaukler, you've  
10 heard these last few suggestions, and you've mentioned  
11 the Commission, and the year-end deadline. We all  
12 took that seriously. We know what they were getting  
13 at. And I think in our last two conferences, we used  
14 that as our marching orders.

15 The Commission wrote that in May. They  
16 did not have all the facts in front of them that we  
17 now have. And I think an element probably underlying  
18 their thinking is it's fair to the Company not to have  
19 these proceedings drag on inordinately long.

20 The flip side of that is, of course, it's  
21 -- you have to have fairness to all the litigants.  
22 And I'm disinclined -- even if it ends up going beyond  
23 year-end -- disinclined to let one party take 75  
24 percent more time than was predicted, and then tell  
25 the other parties they can't.

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1                   And of course, the Commission, if we go  
2 this way, the Commission is entitled to an explanation  
3 from us, since they did give us that directive. We're  
4 prepared to give that if it's necessary. But I don't  
5 think the fact that they said that on May 28 means  
6 that they want us to trample on anyone's rights to a  
7 fair hearing. I think anything I've ever seen them  
8 write says they want the hearings to move along  
9 quickly, and they want them to be fair. They've never  
10 left the word "fair" out of anything I've ever seen  
11 them write.

12                   So given the suggestions thus far, and the  
13 Board's views, do you want to offer some more  
14 suggestions?

15                   MR. GAUKLER: Yes. In terms of that, Your  
16 Honor, you know, we recognize in terms of the schedule  
17 that it's going to go beyond the end of the year and  
18 everything that will be submitted has decisions by the  
19 Board after the end of the year.

20                   And my point was that there is a  
21 difference between ensuring that this is a fair  
22 hearing, ensuring the State has enough time, the Staff  
23 has enough time. And with respect to the schedule we  
24 put together that takes into account often RAIs, the  
25 State will have more time.

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1                   And they will have two additional weeks  
2 with every hearing -- with most reports, and then one  
3 additional week with Dr. Cornell's report. If you  
4 were to extend the time that they filed another week,  
5 you could do that and still keep the schedule for the  
6 hearing before Judge Kline leaves.

7                   So I think that we can accord the State  
8 time to develop its case to ensure that it has a fair  
9 opportunity to develop its case, and still proceed  
10 expeditiously, which I think we can do with the  
11 hearing prior to December.

12                   My belief that holding off the hearing  
13 till December would not be in accordance with the  
14 Commission's directions, recognizing that obviously  
15 there's going to be some slippage because the reports  
16 that we wrote evolved, and that was unexpected.

17                   So I would make that point, and also I  
18 would buy in with what Mr. Turk said, because a lot  
19 depends upon exactly the extent and breadth of the  
20 RAIs.

21                   JUDGE FARRAR: Let me ask this, then. The  
22 first -- putting aside the RAIs, a first crucial date  
23 is when do we get the State expert reports. And there  
24 we have the Company -- We've got several dates here.  
25 We've got August 25 from the Company, September 11

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1 from the State, and the Staff not objecting to that.

2 MS. CHANCELLOR: If I may make one point,  
3 Your Honor. If PFS has asked to do additional  
4 analysis under the RAIs and gets them to the Staff  
5 early September, we could take that into account in  
6 our expert reports. But under PFS' schedule, there is  
7 no way in which we would actually see PFS' responses  
8 to additional information. We'd come back to you and  
9 ask for additional time.

10 So I think the schedule that we put  
11 together allows for a realistic schedule. And there's  
12 no slack in the schedule. I mean, it's not as if  
13 we're going to be resting on our laurels. We'll be  
14 working more than full-time under this schedule as it  
15 is.

16 MR. GAUKLER: The terms that I propose, in  
17 terms of -- to the extent that there's additional  
18 analysis that would extend the time for RAI responses,  
19 then we may be in the situation the Staff and the  
20 State are talking about. If in fact we can get our  
21 RAI responses in by the 29th, or that week, then we'll  
22 not be in that situation.

23 So I think I would, depending on what Mr.  
24 Turk says, have a conference call the week after the  
25 meeting with the NRC; see exactly what the NRC will be

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1 issuing for RAIs; see to what extent we answer  
2 questions at the August 7 meeting; see to what extent  
3 they asked us for analysis, if any, and we'll be in a  
4 lot better position at that point in time to make a  
5 decision whether or not we can have the hearing prior  
6 to Judge Kline taking off, or whether we need to wait  
7 till after he comes back.

8 JUDGE FARRAR: Mister Gaukler, let's work  
9 that through. Suppose the RAIs turn out to be  
10 relatively uncomplicated, or there's just one round.  
11 And you get them in by August 25. Then the State has  
12 a point, well, they'd like to see those before they --  
13 they will have been working on their reports, but then  
14 they want to stop and take a look at those,  
15 incorporate what they learn from that in their  
16 reports.

17 I'm not sure they would need till  
18 September 11 to do that. Suppose we cut that back --  
19 If you got yours in on -- If we're finished with the  
20 RAIs on August 25, and we give them till September 5  
21 for their reports, let's all work -- what would be the  
22 right date for the Staff's evaluation?

23 If you got your reports in on -- If the  
24 Company was finished with the RAIs on August 25, when  
25 would the Staff be able to do its written evaluation?

1 Forgive me, I'm sure this information is in here  
2 somewhere, but we're having trouble with all the  
3 different columns, and proposals, and changes,  
4 tracking it.

5 MR. TURK: In the simplest of all worlds,  
6 where we have only a few RAIs and very little re-  
7 analysis so that we don't have to do too much  
8 additional thinking and review after we get the RAI  
9 responses, roughly three weeks after we get the  
10 responses in we would be able to issue our position.

11 So theoretically, mid-September we could  
12 do a staff evaluation.

13 JUDGE FARRAR: Rather than the October 3  
14 that we have down here from the Staff, we could move  
15 that up to September 15.

16 MR. SILBERG: If you look in the second  
17 column in the PFS proposed hearing schedule, that's  
18 what that shows.

19 JUDGE FARRAR: Okay.

20 MR. SILBERG: One other point that I --  
21 this is Mr. Silberg -- I'd like to make about the  
22 delay the State's report says that they can see the  
23 RAI responses. The State's expert report is not the  
24 last opportunity they have to put information on the  
25 table. Beyond the time that they file their expert

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1 report, they still file testimony several weeks later.  
2 And if there's additional information analysis that  
3 they develop after the submission of their expert  
4 reports, they still have the opportunity to put that  
5 forward and get it in the record.

6 So we don't necessarily have to play  
7 convoys, where the pacing item to the whole hearing  
8 becomes the slowest event, the last event that occurs.

9 JUDGE FARRAR: I understand that, Mr.  
10 Silberg. But I understand the Applicant's point about  
11 the State had some capability of working on their own  
12 reports as things went along. But September 5 is only  
13 six weeks after July 22. I know you'll say they had  
14 some of the reports in hand ahead of time.

15 MR. SILBERG: And to the extent that --

16 JUDGE FARRAR: They could have worked on  
17 things ahead of time.

18 MR. SILBERG: As Ms. Chancellor said,  
19 they're going to do some of both, their response and  
20 independent analysis. Certainly the former part  
21 didn't have to wait till July 22.

22 JUDGE FARRAR: Well, let's for the moment  
23 just follow this train of thought along. If the State  
24 came in on September 5, if the Staff evaluations were  
25 in on September 15, when in all that would you do the

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1 depositions?

2 MR. TURK: Per the schedule that we had  
3 before with the State, we probably would start the  
4 depositions on the 8th and 15th.

5 JUDGE FARRAR: Of September?

6 MR. TURK: Yes.

7 JUDGE FARRAR: Okay, so you'd be finished  
8 -- And that's deposing each other?

9 MR. TURK: Yes.

10 JUDGE FARRAR: Okay. Then -- So you'd  
11 finish depositions. You'd then have the Staff  
12 evaluation.

13 MS. CHANCELLOR: When would we finish  
14 depositions?

15 JUDGE FARRAR: He said the 8th through the  
16 15th.

17 MR. TURK: That's when --

18 MS. CHANCELLOR: No. There's 20 to 25  
19 witnesses. We would start on the 8th or the 15th.  
20 Probably the 15th.

21 MR. TURK: It changes to the 19th or the  
22 26th. So let's say the 8th to the 19th.

23 JUDGE FARRAR: Okay.

24 MS. CHANCELLOR: Well, we have 20 to 25  
25 witnesses, including the Staff. We've got to have at

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1 least a month for depositions.

2 MR. SILBERG: The truth is we don't know  
3 how many witnesses the State and the Staff are going  
4 to have.

5 MS. CHANCELLOR: That's exactly right.  
6 But we talked amongst ourselves, and just as a rough  
7 estimate, we counted up 20 to 25 witnesses. And  
8 they're scattered all over the place.

9 JUDGE FARRAR: When will the State  
10 identify -- Under this scenario, when will the State  
11 identify its witnesses? It would have to be before  
12 the September 4 that they suggest.

13 MR. GAUKLER: Yes. I guess I had  
14 identification of witnesses by everybody relatively  
15 early because I thought that wouldn't necessarily  
16 depend on the reports. We should be able to know that  
17 by mid-August, I would think, if they're working on --  
18 If they have their experts working on reports, they  
19 ought to be able to identify the witnesses. I have  
20 down August 11.

21 MS. CHANCELLOR: We don't have all of our  
22 experts yet. We can't name them yet.

23 MR. GAUKLER: If you think you have them,  
24 you can name them at that point in time.

25 JUDGE FARRAR: Let's hold that question

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1 for a minute. What's our time? We have the call till  
2 3:30, but I understand some people have a 3:00  
3 appointment. That's why we moved it up. Is that  
4 true?

5 MR. GAUKLER: That's correct, Your Honor.  
6 We do.

7 JUDGE FARRAR: Well, let's keep moving  
8 ahead. If we have the Staff evaluations September 15.  
9 We have discovery the 8th to the 19th. Then when  
10 would you pre-file direct testimony?

11 MR. GAUKLER: If you're at that point you  
12 would pick up with my schedule, that has depositions  
13 ending the 19th, okay.

14 JUDGE FARRAR: Then you do the October 6.

15 MR. GAUKLER: October 6.

16 JUDGE FARRAR: The theory there is -- So  
17 now your testimony says, "I'm so and so. I did the  
18 following report. I adopt that as my testimony. And  
19 by the way, I heard some stuff during the depositions  
20 of the other side that I don't agree with."

21 And so, in other words, you would not just  
22 have a -- Mr. Turk referred to a cover letter, or  
23 cover sheet on your report. You would also have some  
24 substance in that testimony to respond to what you  
25 heard in the other side's depositions, or would you

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1 not?

2 MR. GAUKLER: We definitely would, and  
3 also to the extent that that would be our first chance  
4 to put something substantive in the record with  
5 respect to the State's expert report.

6 JUDGE FARRAR: And vice versa. Oh, no.

7 MR. GAUKLER: They would have presumably  
8 had a chance to respond to our reports in their expert  
9 reports.

10 JUDGE FARRAR: Okay, then if we finish  
11 depositions on the 19th, and don't you need two weeks  
12 to do your testimony?

13 MR. GAUKLER: Yes, and the 6th is Tuesday,  
14 okay.

15 JUDGE FARRAR: Okay, so that 6th date is  
16 still all right in your mind.

17 MR. GAUKLER: If you want to move it back,  
18 extend depositions. If you want to be exactly  
19 parallel, like we had before, you can make October 6,  
20 October 10. That would be parallel to the time we had  
21 before between filing of testimony and hearing.

22 But 6th would give us two weeks under the  
23 proposal, with depositions ending the 19th. That is  
24 Yom Kippur, I'm advised.

25 JUDGE FARRAR: Oh. Yes, we can -- I'm

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1 just trying to get a rough idea. We can adjust for  
2 the holidays and things.

3 Now, taking another look at this, I notice  
4 that what I just said, depositions the 8th through the  
5 19th, you all had said the 2nd to the 19th. And I've  
6 inadvertently short-changed you a week on discovery.  
7 And I think Ms. Chancellor was saying that there were  
8 a lot of witnesses to conduct in that time.

9 So we improperly short-changed you there?

10 MS. CHANCELLOR: Absolutely short-changed  
11 us, Your Honor. PFS has at least eight witnesses, so  
12 that's almost eight days of depositions. The State is  
13 likely to have as many. This time we would like to  
14 depose the Staff witness before we pre-file testimony,  
15 and not the day before he testifies.

16 JUDGE FARRAR: Then let's -- suppose we  
17 made depositions the 8th --

18 MS. CHANCELLOR: Well, first of all I'd  
19 like to back up to when our expert report is due. We  
20 think that we need at least till September the 11th to  
21 get our report together. If we are given time to get  
22 our expert report together, we can lose a little time  
23 on pre-filed testimony.

24 Somewhere this schedule's going to have to  
25 give. If you put our report at the September 5, then

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1 we're going to need a lot of additional time to get  
2 pre-filed testimony together because we'll be  
3 essentially adding to our report in the middle of  
4 depositions. So do we get it there, or do we get it  
5 before the hearing?

6 And it just seems very inefficient to try  
7 and depose people, and depose our experts when they  
8 may not have taken a final position on what they're  
9 going to testify to. And then we'll get motions to  
10 strike because PFS didn't have the opportunity to  
11 depose them.

12 So I think that trying to squeeze this  
13 schedule at this date is just very unworkable, and  
14 that our suggestion would be set a deadline for  
15 State's expert report. See what happens with respect  
16 to the RAIs, and when the Staff is going to be able to  
17 take their position, because that's going to influence  
18 the schedule.

19 The Staff's position, after they take a  
20 position, we'll need time to depose their experts, and  
21 we don't want to do that within the two weeks that we  
22 are writing testimony. So in terms of trying to work  
23 through a schedule now, we don't think that that is  
24 something that we're going to really arrive at.

25 MR. GAUKLER: I think that my

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1 understanding of this exercise was to see what a  
2 schedule would be, where we had relatively short RAIs  
3 and relatively short RAI responses that could be done  
4 by August 25.

5 And I think if we have that, then I think  
6 that we can do it. I mean, September 5. There's only  
7 six days left in September other than what they  
8 suggested. If we want to be into depositions September  
9 8th and 26th, and pick up where we were with the other  
10 schedule. We have 10 days from the testimony on the  
11 10th. And then you have hearing start the 20th. So  
12 the 21st and 22nd.

13 JUDGE FARRAR: Well, under the Company's  
14 schedule, after depositions ended you had 17 days for  
15 direct.

16 MR. GAUKLER: Right, and that was trying  
17 to put more time between the pre-filed direct and the  
18 hearing. In the schedule that we had developed before  
19 for September, we had 10 days between filing of  
20 testimony and the hearing. The way far left column,  
21 we had filing of testimony September 5, and hearings  
22 starting September 15.

23 MS. CHANCELLOR: Your Honor, that original  
24 schedule -- information. In developing testimony,  
25 we're going to have to physically send the testimony

1 to our experts. We'll have to have them mark it up,  
2 send it back to us. There's going to be a lot of  
3 additional procedure because of Safeguards, and  
4 because we won't be able to communicate by e-mail.

5 We will be able to do part of it by  
6 telephone, but you can only speak so much in code.  
7 We're still going to have to physically send documents  
8 back and forth to our experts in order to get a final  
9 product put together. So Mr. Gaukler's reference to  
10 the original schedule and the days that are built into  
11 that really doesn't take into account the time  
12 required for dealing with Safeguards procedures.

13 JUDGE FARRAR: Suppose then we finish  
14 depositions on the 26th and go back and have 17 or so  
15 days -- Suppose we did October 15 for testimony. And  
16 now we're not going to do reply. We're going to have  
17 oral --

18 MR. GAUKLER: Oral reply testimony.

19 JUDGE FARRAR: Oral rebuttal.

20 MR. GAUKLER: Yes.

21 JUDGE FARRAR: No pre-filed rebuttal.  
22 Okay. October 15 you could start the hearing... You  
23 could start the hearing on ... Start it on the 21st of  
24 October.

25 MR. TURK: I'm sorry, we file testimony on

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1 the 15th?

2 JUDGE FARRAR: File testimony October 15 -  
3 - I'm sorry. October 15. Yes. And under previous  
4 schedules you had starting -- you were starting the  
5 hearing 10 days after the pre-filed testimony. So  
6 that would get you -- I guess you'd start the hearing  
7 on October 27. And you could get 10 days in before  
8 Judge Kline leaves.

9 Jerry, give it to me again when you're  
10 back?

11 JUDGE KLINE: Returning --

12 JUDGE FARRAR: The 22nd. Right, so we  
13 could resume the hearing on -- can't start the next  
14 week. Resume the hearing on December 2. So you'd  
15 have 10 days in. You'd restart on December 2.

16 MS. CHANCELLOR: All you've gained is a  
17 week from the schedule we proposed.

18 JUDGE FARRAR: No, then you had almost  
19 four weeks of hearing by December 12. Whereas your  
20 proposal has it going from the 2nd to the 19th. So  
21 you've gained a week. You've finished a week earlier,  
22 and you've allowed for an extra week of hearing.

23 So with all this material, you're not  
24 looking at a three-week hearing. You're looking at a  
25 four-week hearing.

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1 MR. TURK: Although I would urge that we  
2 limit the time for hearing, Your Honor. This is  
3 Sherwin Turk. If we allow four weeks, we'll fill four  
4 weeks. There's no end to questioning.

5 JUDGE FARRAR: Well, then I guess I have  
6 to ask some of you to look in the -- I don't have  
7 contempt powers, but there were times where maybe I  
8 didn't make myself clear when I said we were -- we  
9 should move on, and people insisted on their right to  
10 ask questions.

11 Perhaps this time, since we'll be perhaps  
12 more thoroughly versed in the material ahead of time,  
13 maybe we will be able to keep things down. But you  
14 know, Mr. Turk, I think it was you. The Company said  
15 we have an inch or two of material, and we have what  
16 we have. I'm not criticizing them for producing all  
17 that we have in front of us, but this is not a simple  
18 case.

19 MR. TURK: I recognize that, Your Honor.

20 MR. GAUKLER: One thing I would say in  
21 terms of the material. There's a couple of big  
22 references, which probably comprise an inch each. But  
23 I realize it's more material than what we said  
24 initially.

25 MR. TURK: And I don't criticize the

1 Company either, because they attempted to give us a  
2 good product, and I know they were working very hard.  
3 There were many times when I understood that Mr.  
4 Gaukler and his staff were working late nights or  
5 over-nights.

6 So I certainly don't criticize.

7 JUDGE FARRAR: No, and the better the case  
8 is prepared by everybody, the more -- the better our  
9 decision is. But we've got a lot of material here.

10 MR. TURK: Yes, but if we do go to four  
11 weeks of hearings, then I don't see how we can keep  
12 proposed findings on the tight schedule that the State  
13 proposed, of getting proposed findings in to the Board  
14 four weeks after the hearing concludes.

15 JUDGE FARRAR: Let's not worry about the  
16 post hearing. The key thing right now, particularly  
17 given the time we have, let's -- how do we get through  
18 the hearing.

19 MR. TURK: I would point out also, Your  
20 Honor, this is all based on the assumption that the  
21 RAIs and PFS' response will be fairly simple and non-  
22 time consuming. This entire discussion may --

23 JUDGE FARRAR: Well, the person on the  
24 phone, or maybe not yet on the phone who knows the  
25 most about that might be Mr. Delegadi, on whether

1 we're looking at one round of simple questions, or  
2 whether this is an extraordinarily complicated matter  
3 that Staff may need more than one round. Do you want  
4 him to speak, or do you want to speak for him?

5 MR. TURK: While I usually speak for Mr.  
6 Delegadi, he's always ready to chime in. Mark, do you  
7 want to address it?

8 MR. DELEGADI: Well, at this point, Your  
9 Honor -- this is Mark Delegadi speaking -- our  
10 anticipation is that the one round of RAIs that we see  
11 may be rather complex, and may take a good deal of  
12 time to respond to.

13 JUDGE FARRAR: All right. In your  
14 experience, Mr. Delegadi, when you ask -- when you  
15 present RAIs that are that complicated, are you  
16 usually satisfied with the responses, or does it  
17 usually trigger another round?

18 MR. DELGADI: Actually, they generally at  
19 least require some telephone follow-up for  
20 clarification. It's not simply or has not simply been  
21 a question of receiving the document, reading it, and  
22 then evaluating it with no further context.

23 JUDGE FARRAR: All right.

24 MR. DELGADI: I think it's too hard to  
25 predict whether we have a second round. We were

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1 hoping that we wouldn't have a second round. If we  
2 get a good response from PFS we would not need that  
3 Your Honor.

4 JUDGE FARRAR: All right. One thought  
5 comes to mind - this would involve larger than usual  
6 recess between the two sessions.

7 We might hope that we have made enough  
8 progress there that while we are on a break the  
9 lawyers might be able to start forming up their  
10 proposed findings and conclusions and get a head start  
11 on that so maybe we can in fact save some time.

12 We're running out of time here. I don't  
13 think we've reached any -- I'm sure you all have been  
14 taking notes on this proposal. Keep this in front of  
15 you. We won't write it up at this point, but that's  
16 sort of the way we're thinking about it - the best way  
17 to move forward in these changing circumstances.

18 Your meeting is the 7<sup>th</sup>, that's a  
19 Thursday. Perhaps we should set another conference  
20 call on Tuesday the 12<sup>th</sup>. That will give you two work  
21 days to digest what happens on the 7<sup>th</sup> with the  
22 conference call on the 12<sup>th</sup> with the idea of either  
23 forming up the schedule we've suggested here, which  
24 assumes replies by August 25<sup>th</sup>, or amending it.

25 MR. SILBERG: Can we just pencil in the

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1 time for that?

2 JUDGE FARRAR: Yes. Is 1:00 p.m. good for  
3 everybody? 11:00 a.m. Utah time? We can do it  
4 earlier, but --

5 MS. CHANCELLOR: That's fine with the  
6 State Your Honor.

7 MR. TURK: We're checking real quick Your  
8 Honor.

9 JUDGE FARRAR: Okay.

10 MR. TURK: It's all right with the staff.

11 MR. GAUKLER: It's okay with us Your  
12 Honor.

13 JUDGE FARRAR: All right then. We'll have  
14 another conference. We'll be subject to the parties  
15 calling us before then, but failing that we'll do a  
16 conference on Tuesday August 12<sup>th</sup> at 1:00 p.m. Eastern  
17 Time, 11:00 in Mountain Time. There are no other  
18 crucial dates before then.

19 MR. SILBERG: There's one other matter  
20 that I think I would like to put back on the table.  
21 Mr. Soper was talking about the issue of whether  
22 probability or in and out and if that was something  
23 that he was looking at as a motion in limine.

24 I think if the State is looking to raise  
25 that as an issue, my suggestion would be that we set

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1 a schedule and they do that now. I mean, the issue is  
2 out on the table. We have said what our analysis is.

3 If the State believes that analysis is  
4 somehow conflict with decisions of the Board or the  
5 Commission, I would suggest that they put a motion to  
6 that on the table right now and we'll brief them - not  
7 wait down the road.

8 JUDGE FARRAR: I would tend, Mr. Soper, to  
9 agree with Mr. Silberg on that - this kind of goes to  
10 the essence of the applicant's theory. Let's get it  
11 out there and resolved as early as possible rather  
12 than be dealing with it after everyone has gone  
13 through depositions and testimony and reports and so  
14 forth. When can you file such a motion? Either it's  
15 filed on or tell us you're not going to file on.

16 MR. SOPER: I hadn't thought about it. In  
17 any event we're ought to be foreclosed for filing at  
18 some point. I mean, the law is whatever it is and I  
19 don't think we change that whether we file it earlier  
20 or later.

21 MR. TURK: What we don't want is that  
22 coming in under the guise of an in limine motion a  
23 week before the hearing with the other side not having  
24 a chance to reply in writing. I don't think that's  
25 something we'd be comfortable deciding on, you know,

1 a half hour of oral arguments the morning of the  
2 hearing.

3 MR. SILBERG: It seems to me that because  
4 this is so central to our analysis that the sooner  
5 it's briefed and decided the better it is for  
6 everybody and if the State prevails then we don't have  
7 a hearing.

8 I would think we would want to get that  
9 decided early and if you wait until after the State's  
10 expert report comes in -- it's always going to fall in  
11 the middle of something in the schedule. It will fall  
12 in the middle of discovery, it will fall in the middle  
13 of testimony presentation, it will fall in the middle  
14 of finding experts. It's always going to be  
15 something, so we might as well do it early since it is  
16 a central issue.

17 JUDGE FARRAR: Let me mute us here. Are  
18 you all there?

19 MR. SILBERG: Yes, we're here.

20 JUDGE FARRAR: Let's take that up in the  
21 August 12<sup>th</sup> call. Mr. Soper, why don't you let us  
22 know then what you think of this argument and how you  
23 want to present it.

24 I understand your point that the law is  
25 the law, but there's no sense - if you're correct on

1 your theory, there's no sense of everybody going  
2 through two months of what we're going to be going  
3 through in order to have the argument raised after the  
4 hearing.

5 Let us know on August 12<sup>th</sup> whether you  
6 want to press that argument and I'll have an early  
7 time from for how we can brief that in advance.

8 MR. SOPER: Okay. I think that's  
9 important. I'm not sure what the character of the  
10 motion would be, but I guess at some point we need  
11 clarification on what the standard is that we're about  
12 to put on evidence as to --

13 MR. SILBERG: You can file it as a motion  
14 for summary judgment. As a matter of law an argument  
15 fails because of X, Y, and Z.

16 JUDGE FARRAR: I think that's correct Mr.  
17 Silberg if that's -- I think, Mr. Soper, you were  
18 suggesting at the beginning of the call that this was  
19 another run at probability that is in some way  
20 forbidden. If that's the case I think that is a  
21 motion for summary judgment.

22 MS. CHANCELLOR: Or partial summary  
23 judgment.

24 JUDGE FARRAR: Or partial summary  
25 judgment.

1 MR. SOPER: We can contemplate that for a  
2 few days and then we'll take it up on August 12<sup>th</sup>  
3 then, is that correct?

4 JUDGE FARRAR: Yes.

5 MR. SOPER: All right. Thank you so much.

6 JUDGE FARRAR: Okay. Given that it is now  
7 3:05, is there any other pressing business we need to  
8 do today?

9 MR. SILBERG: I don't think so. I asked  
10 my proverbial question of Dr. Lam on Friday, so I  
11 won't ask it again today.

12 (laughter)

13 JUDGE FARRAR: Okay. We hadn't heard from  
14 you, Mr. Silberg, on the temporary smaller site. Have  
15 you all moved -- are you still thinking about that?

16 MR. SILBERG: I think we're still thinking  
17 about that.

18 JUDGE FARRAR: Okay that's fine. All  
19 right then let's -- Again this is a difficult case.  
20 Each of you has a well founded position in terms of  
21 what the schedule is and what the schedule ought to be  
22 to be fair to all sides and again I commend you for  
23 the way you've presented the arguments and we will  
24 move forward after your August 7<sup>th</sup> meeting with a call  
25 on August 12<sup>th</sup>. Thank you.

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(Whereupon the teleconference was  
concluded at 3:07 p.m.)

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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

Independent Spent Fuel

Storage Installation

Docket Number: 72-22-ISFSI

Location: telephone conference

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

*Lauren Willis*

Lauren Willis  
Official Reporter

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