RAS 6715

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

August 13, 2003 (10:08AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: CFC Logistics, Inc.
Pre-Hearing Conference

Docket Number: 03036239

Location: (telephone conference)

Date: Thursday, August 7, 2003

Work Order No.: NRC-1032

Pages 1-85

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

(ASLB)

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PRE-HEARING TELECONFERENCE

IN THE MATTER OF:	
CFC LOGISTICS, INC.	Docket No.
	03036239
(Materials License Application)	

Thursday, August 7, 2003

The above-entitled matter came for hearing, pursuant to notice, at 9:30 a.m.,

BEFORE:

MICHAEL C. FARRAR Administrative Judge

CHARLES N. KELBER Administrative Judge

APPEARANCES:

On Behalf of the Petitioners:

ROBERT SUGARMAN, ESQ

of: Sugarman & Associates

100 N. 17th Street, 7th Floor

Philadelphia, PA 19103

(215) 864-2500

On Behalf of CFC Logistics, Inc.:

ANTHONY J. THOMPSON, ESQ.

CHRISTOPHER S. PUGSLEY, ESQ.

of: Law Offices of Anthony J. Thompson, P.C.

1225 19th Street, N.W.

Second Floor

Washington, D.C. 20036

(202) 496-0783

On Behalf of the Nuclear Regulatory Commission:

STEPHEN H. LEWIS, ESQ.

MARIA SCHWARTZ, ESQ.

of: Office of the General Counsel

U.S. Nuclear Regulatory Commission

Washington, D.C. 20555

(301) 415-1684 (SL)

ALSO PRESENT:

Courtney Bryan

Karl Farrar

Thomas Fredrichs

John Kinneman

Susan Lin

Sapper Lodhi

Karen Valloch

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

Time: 9:37 a.m.

ADMINISTRATIVE JUDGE FARRAR: Good morning. This is Mike Farrar. We are here for a pre-hearing conference by way of a conference call on the CFC Logistics proceeding.

I think everyone is on the call that we need to have. We are here at the Licensing Board headquarters with Judge Kelber. Karen Valloch who is one of our support people is here, as is Susan Lin, our Senior Law Clerk.

Who do we have for the company?

MR. THOMPSON: We have Anthony Thompson and Christopher Pugsley.

ADMINISTRATIVE JUDGE FARRAR: Good morning.

MR. THOMPSON: Good morning.

ADMINISTRATIVE JUDGE FARRAR: And for the Petitioners?

MR. SUGARMAN: Robert Sugarman.

ADMINISTRATIVE JUDGE FARRAR: All right. And for the staff?

MS. LEWIS: Steve Lewis -- Stephen Lewis, S-t-e-p-h-e-n. Judge Farrar, Judge Kelber, I am actually physically up in Region I, and I am going to

let the other people who are here with me attending address -- identify themselves for the benefit of the court reporter.

ADMINISTRATIVE JUDGE FARRAR: All right, go ahead, please.

MR. KINNEMAN: My name is John Kinneman, K-i-n-n-e-m-a-n. I am Chief of the Nuclear Materials Safety Branch in Region I.

MR. LODHI: My name is Sapper Lodhi, and I am in Region I. I am a healthy physicist.

MR. FARRAR: My name is Karl Farrar, K-a-r-l F-a-r-r-a-r, and I am Regional Counsel in Region I. No relation to Judge Michael.

ADMINISTRATIVE JUDGE FARRAR: That saves me the trouble of saying that.

MR. LEWIS: And we also have someone in Headquarters.

MS. SCHWARTZ: This is Maria Schwartz with the Office of General Counsel in Headquarters.

MR. FREDRICHS: And Tom Fredrichs, also in Headquarters.

MR. LEWIS: Tom, why don't you give the spelling of your name?

MR. FREDRICHS: F-r-e-d-r-i-c-h-s. Thanks for asking. Everybody is wrong.

ADMINISTRATIVE JUDGE FARRAR: Has everyone who is on the call identified themselves?

MR. SUGARMAN: One other person, Your Honor. This is Robert Sugarman again. My paralegal/bar clerk, Courtney Bryan has joined us.

ADMINISTRATIVE JUDGE FARRAR: All right, thank you. If anybody else comes in the room with you, let us know.

MR. SUGARMAN: Very good.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, I heard you and staff counsel talking before we got on the air officially. You were in the Limerick proceeding earlier?

MR. SUGARMAN: I was in the Limerick proceeding, yes.

ADMINISTRATIVE JUDGE FARRAR: Okay. Then you are -- Then maybe what I am about to say is unnecessary, but I usually do at the beginning of these proceedings just talk about the role of the Board.

In most cases, the Licensing Board consists of a lawyer Chairman and two technical members, who are actually members of the Board. In these Subpart L informal proceedings the Board is really a single presiding officer with one of the

technical judges as a special assistant or technical advisor, and that is why Dr. Kelber is here.

I also like to always point out that within the Commission there are the five Commissioners who are Presidentially appointed and Senate confirmed who run the Commission. They have a large regulatory staff that works with them, and then they have the Licensing Boards which are set up to be independent, autonomous, whatever word you want. We have no relationship with the NRC staff except we are housed in the same headquarters complex.

Mr. Lewis, I may have met you a long time ago, back when I was on the Appeal Board, but I don't think I have run into you in the two years that I have been back here.

MR. LEWIS: Yes. Well, I am only -- I have only recently rejoined the hearings.

ADMINISTRATIVE JUDGE FARRAR: Okay. Our decisions are reviewed by the Commission, but our performance is not. By that, I mean they can reverse our decisions, but they can't fire us for rendering them. We have no performance reviews, and that is intended to assure independence in our ability to reach a fair judgment.

The Commission, in addition to reviewing

our decisions, enacts the rules that show up in the Federal Register and the Code of Federal Regulations, and we are bound not only by their decisions but also by those rules unless exemption practice. So that is our role.

Mr. Sugarman, have you ever been involved in a Subpart L case before?

MR. SUGARMAN: Not by that name.

ADMINISTRATIVE JUDGE FARRAR: Okay. Neither have I. So that makes us even, starting out. Mr. Thompson, Mr. Pugsley, I know you have been involved in several.

MR. THOMPSON: Yes, that is correct.

MR. PUGSLEY: Yes.

ADMINISTRATIVE JUDGE FARRAR: Not in front of me, but I think Judge Rosenthal has had a number of those.

MR. THOMPSON: Yes.

ADMINISTRATIVE JUDGE FARRAR: And, Mr. Lewis, this is your line of work, as I understand it.

MR. LEWIS: Well, I don't do exclusively Subpart L proceedings, but I have been involved in Subpart L proceedings.

ADMINISTRATIVE JUDGE FARRAR: Okay. In terms of the different parts of the Commission, it

would help us in your briefs, instead of just referring to Commission decisions, to distinguish between the Commission, the Licensing Board, and the late and lamented Appeal Board. The way you do that is by the designation that goes with the decision, CLI and a number for the Commission, LBP and a number for us, and ALAB and a number for the former Appeal Board. Not everyone has been doing that, and that would help us.

We are here today, as we said in our previous order of July 31st, for (quote) "further proceedings that would aid in the resolution -- for planning, planning that would aid in the resolution of this matter."

In that regard, the way the case was launched, the pleadings are somewhat diffuse, became more focused toward the end, but I want to make sure we know what we have and what needs to be developed before we go ahead to talk about whether we need oral argument and whether we want -- and how we go about rendering a decision.

We will be talking -- We will be mentioning touching on the merits of the issues but not -- or touching on the legal issues but not arguing their merits today.

The first thing I want to know is does the Board -- I'll say Board when I should say presiding officer, which is just a habit. I want to make sure we have all the documents that have been filed.

The company has referred to a second request for hearing on July 15th, and I am not sure we have that. We have a July 17th reply of requester that Mr. Sugarman filed, but what is this July 15th document, Mr. Pugsley, that you have been referring to?

MR. PUGSLEY: What's the July 15th document? The July 15th document, Your Honor, was a re-file by -- that came through via Facsimile here.

ADMINISTRATIVE JUDGE FARRAR: Can you get a little closer to the phone. We can't hear you.

MR. PUGSLEY: I apologize. There was a filing that came in July 15th via Facsimile to our office in which I believe Mr. Sugarman re-filed his first hearing request, which was a two-page letter, included some attachments and a list of potential petitioners.

ADMINISTRATIVE JUDGE FARRAR: Okay. Was there a brief with that?

MR. PUGSLEY: Yes. I believe the only part that could be classified a brief was the two-page

letter.

ADMINISTRATIVE JUDGE FARRAR: Okay. It would help us -- I've been looking all around for a document called Second Hearing Request, which you kept referring to. It would help us in the future if you refer to the document by its name, and then if you want to characterize it as something, that's fine. But that would save us some time, so we know what document we are looking for.

MR. PUGSLEY: Yes, sir.

MR. LEWIS: This is Steve Lewis. I want to make sure that we are referring to a document which bore the title "Contingent Motion: A Waiver of Regulation."

ADMINISTRATIVE JUDGE FARRAR: I think that is -- Let me ask the court reporter. Do you know when I'm talking or do you need me to identify myself each time? Okay, Mike Farrar.

I have that, Mr. Lewis, as a separate document, a contingent motion for waiver of regulation, but then, Mr. Sugarman, do I understand correctly, that was filed on July 15th, but there is also re-filed your first hearing request?

MR. SUGARMAN: Yes, that's what we did in order to address -- We addressed Mr. Thompson's motion

to dismiss in several ways. One of them was to re-FAX him a copy of what we had sent to the Commission, I believe, on June 23rd.

ADMINISTRATIVE JUDGE FARRAR: That one involved no new material?

MR. SUGARMAN: That is correct. We just re-FAX'ed it to Mr. Thompson in order to make the service on him.

ADMINISTRATIVE JUDGE FARRAR: Okay. But then there was a separate document, a letter, short letter, July 15th, called the Contingent Motion for Waiver of Regulation?

MR. SUGARMAN: That is correct, and that was filed with the Commission and with copies to everybody, including Mr. Thompson.

ADMINISTRATIVE JUDGE FARRAR: Mr. Lewis, does that answer your question?

MR. LEWIS: Yes.

ADMINISTRATIVE JUDGE FARRAR: Then I think we have all the documents. Mr. Pugsley, I think, in your response on July 28th you referred on page 13 -- If the pages are right, you quoted some material from the second hearing request at page 10, but I think you meant from that to quote from the reply of requester?

MR. PUGSLEY: Yes, sir.

ADMINISTRATIVE JUDGE FARRAR: Okay. I want to urge all of you to make sure that your references and your citations are as accurate as you can make them. I know in the haste of preparing documents sometimes mistakes creep in, but it would be very helpful to us if we are careful about that. And of course, from everyone's perspective, I want you to argue your case as forcefully as you can for your client, but don't saddle us with any misrepresentations of the case.

You can argue what you think it might mean, but please make sure that everything is -- there are no misrepresentations of things that creep in.

Mr. Lewis, let me ask you -- Well, let me ask, are there any further questions about the documents? I know we have had a lot of back and forth here, and maybe two complete rounds of briefs where usually you would have one. But do any of the parties have any questions of the other parties about the status of the documents?

MR. LEWIS: Staff does not.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman?

MR. SUGARMAN: I just want to make sure that Mr. Lewis and the staff have -- that we have the

right people to serve, since the Board ordered them to participate. I am looking that we are serving John Kinneman in Region I and we are serving the Office of the Secretary of the Commission, but I don't see that we have anybody to serve for staff at this point.

So going forward, we would need an address. Mr. Lewis, if you are missing any documents, we will be happy to give them to you.

MR. LEWIS: This is Steve Lewis speaking. Up until now, up until the order of the presiding officer, I did not file a notice of appearance, because we were not intending to be a party to the proceeding. Judge Farrar, I guess this would be a question of clarification to you.

In light of the fact that you have directed us to participate at least at the stage of determining whether or not the pleadings warrant a hearing, I assume at this point you would like me to file a notice of appearance?

ADMINISTRATIVE JUDGE FARRAR: That would probably help things, and until then further notice, Mr. Sugarman, if you would serve Mr. Lewis.

MR. SUGARMAN: Steve, you will give me something with your address so I can serve you?

MR. LEWIS: Yes. I am going to file a

notice of appearance tomorrow.

MR. SUGARMAN: Very good. Thank you.

ADMINISTRATIVE JUDGE FARRAR: All right. I might add, in terms of service, we have developed -- someday it will be formal, but right now it is an informal practice of serving each other electronically. I guess that is still not the official copy, but it sure saves a lot of time, and for us it is MCF@nrc.gov, and Dr. Kelber is CNK.

MR. SUGARMAN: Is that applied to service between parties as well as to the Board?

ADMINISTRATIVE JUDGE FARRAR: Yes. Well, I don't know if it is required by the rules, but we have found that it certainly smooths the way. We have been doing that in the PFS case in which I am involved.

MR. SUGARMAN: But may I ask a question? What do you do about exhibits, you know, where you don't have a scanner or a direct electronic copy of an exhibit, you know, some third party's document or something?

ADMINISTRATIVE JUDGE FARRAR: Right. I think in PFS that hasn't been a problem, but here, if it is, just send electronically what you can, and maybe your cover letter would indicate that there are

exhibits that are only going to be furnished by hard copy or so forth.

MR. SUGARMAN: That's fine. Should we, Your Honor, have that arrangement among counsel in this case by agreement?

ADMINISTRATIVE JUDGE FARRAR: Unless anyone objects, that saves us a lot of time; and, well, we also have the problem here in our mail room. Ever since the anthrax business, mail that comes to us has to be opened and checked in the mail room. If you want us to know what is going on and have us react quickly, this is the way to do it.

MR. SUGARMAN: One more question. Would that include hard copy follow-up or not necessary?

ADMINISTRATIVE JUDGE FARRAR: No. Always do the hard copy follow-up.

MR. SUGARMAN: Okay. Is that agreeable to other counsel, that we would have electronic exchanges of data -- of all filings?

MR. PUGSLEY: Yes, it is.

MR. LEWIS: Yes. Steve Lewis of the staff. Yes.

ADMINISTRATIVE JUDGE FARRAR: That was you saying yes?

MR. PUGSLEY: That's fine with me, Your

Honor. I just have one question. As I am sure Mr. Sugarman is aware, there are requirements, procedural requirements, in the rules about allotting a certain amount of days tacked onto the ten-day response period for regular mail, two days for Express mail.

My question is, if we serve the filing via e-mail, but we send hard copies of attachment, do we allot the five extra days for regular mail because we send the attachments by regular mail?

ADMINISTRATIVE JUDGE FARRAR: I think in PFS we have not, but through scanning or whatever, we have always gotten the documents. Mr. Lewis, how has this been handled in other proceedings? Are you aware?

MR. LEWIS: It has been at the ruling of the Board.

MR. SUGARMAN: I would not be happy with not having the extra time where we don't physically have the exhibits.

ADMINISTRATIVE JUDGE FARRAR: That is certainly a good point. Let's do this. If the entire document -- You know, if the whole package is transmitted by electronic means, then we will just use the ten days. If, in fact, the package includes materials that can only be sent in hard copy, then we

will add the --

MR. SUGARMAN: Five? Two by Express and five by regular?

ADMINISTRATIVE JUDGE FARRAR: Yes.

MR. SUGARMAN: That's fine.

MR. THOMPSON: Your Honor, this is Tony Thompson. In a couple of other Subpart L proceedings, we have -- The presiding officer has requested that the hard copy things like the exhibits and stuff be sent by Express.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, is that okay?

MR. SUGARMAN: If that's agreeable. What do we mean by Express? U.S. Express Mail?

MR. THOMPSON: Well, Express mail, that's fine.

ADMINISTRATIVE JUDGE FARRAR: Fed Ex -- any of the overnight delivery services.

MR. THOMPSON: Right. Any overnight delivery service.

MR. SUGARMAN: But we are allowing two days where we are using Express?

ADMINISTRATIVE JUDGE FARRAR: Let's do that, because over the course of time the extra three or five days does add up, and do this as efficiently

as possible.

MR. SUGARMAN: That's fine. I just want to make sure, because wherever we might be at some point in time, if we can't get our -- we will use U.S. Express mail. So I want to make sure U.S. Express mail is acceptable.

ADMINISTRATIVE JUDGE FARRAR: yes, it is. No, not the -- The Postal Service has an overnight service, and they also have something else which is not overnight, and I forget. Does anyone offhand know the difference?

MR. SUGARMAN: No, I never heard of that before, but we will use the fastest U.S. Post Office or private service.

ADMINISTRATIVE JUDGE FARRAR: Right. They have an overnight, and then they have something that is pretty cheap that they call something else, but you use the overnight one.

MS. SCHWARTZ: They call it Priority.

ADMINISTRATIVE JUDGE FARRAR: Yes. Okay, Priority is the one that there is no guaranty.

MR. SUGARMAN: Oh, yes. To us, priority works out the same as regular.

ADMINISTRATIVE JUDGE FARRAR: Right. Then use the U.S. Express mail.

MR. SUGARMAN: Okay.

ADMINISTRATIVE JUDGE FARRAR: All right. Then thank you for your help on that one.

Mr. Lewis, let me ask you, where does the staff stand on their review of the application, which is independent of what we do?

MR. LEWIS: Do you mind if I -- I don't want to -- This is an important point, and I don't want to misspeak on it. Would you be willing to hear from either Mr. Kinneman or Dr. Lodhi on this, because --

ADMINISTRATIVE JUDGE FARRAR: That's fine.

MR. LEWIS: Thank you.

MR. KINNEMAN: This is John Kinneman. The review is continuing. We are working to bring it to completion as quickly as we can, and I expect that over the next week or two that we will complete the review, but by week or two I don't mean to represent a very specific endpoint.

The reviewer and other resources of the NRC are looking at information we gathered as recently as yesterday to put together the review and document it properly. So we are working toward the end, but we are not quite there.

ADMINISTRATIVE JUDGE FARRAR: All right.

Thank you for that information. The reason I asked the question is I understand under Subpart L, unlike the more formal proceedings, the staff is free -- Even though we may have either this phase of the proceeding or even an actual hearing going on, the rules permit the staff, after the completion of their review, to issue the license, notwithstanding the existence of the proceeding. Is that correct, Mr. Lewis?

MR. LEWIS: That is correct.

ADMINISTRATIVE JUDGE FARRAR: Right. Do the rules -- I guess it's only implicit that they contemplate, if there were an intervention granted, that the regular rules for stay would then come into play and admitted intervenor could then ask for a stay?

MR. LEWIS: Yes. We are searching for our copy of 10 CFR. Maria, do you have yours in front of you?

There are provisions, in fact, of Subpart L that speak specifically to how the stay provisions come in, and they -- I just need it in front of me in order to make a representation about it.

ADMINISTRATIVE JUDGE FARRAR: All right.

MR. LEWIS: All right. Let me see. I am going toward the back of Subpart L, and at the time of

hearing or within 10 days of the action.

MR. KINNEMAN: It's 2.1263.

MR. LEWIS: Yes, 2.1263: Stays of NRC staff licensing actions or of decisions of a presiding officer or the Commission pending hearing review. I'll just go ahead and read what it says for the record.

ADMINISTRATIVE JUDGE FARRAR: Well, we don't need to do that. We can all find it. That's at the very end of Subpart L. Correct?

MR. LEWIS: Correct. It basically refers -- For these purposes, the Subpart L defaults to the Subpart G procedure.

ADMINISTRATIVE JUDGE FARRAR: All right, fine. Then if and when the staff acts -- takes action on this, and I don't suppose -- It's probably not required, given the status of the case now, but we would appreciate it if you would advise the Board and Mr. Sugarman at the time you take any action, so we don't learn about that through any other means.

MR. LEWIS: Well, I think that we would promptly advise all of the parties and the Board of the issuance of the license, and that seems to be particularly important because, although there is a default to the Subpart G provision, there is also an

exception, which puts a very tight time frame on a request for a stay of a staff licensing action.

It provides that such a request for a stay must be filed within 10 days of the staff action. So it is certainly, I would think, obligatory on our part under those circumstances to promptly notify you when we issue the license.

ADMINISTRATIVE JUDGE FARRAR: All right. We will count on that being done.

MR. SUGARMAN: Excuse me, may I interrupt for a second while we are on the subject, and make a request of the staff to provide us with copies of the material that's been received since the staff letter of July -- I think it was July 16 or July 18?

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, that was you speaking?

MR. SUGARMAN: Yes, Your Honor. May I make that request?

MR. LEWIS: Since July --

MR. SUGARMAN: There was a letter issued by the staff on July 16 or July 18, I believe, for additional documentation. I'm asking for the documents that have been received or the information that has been received since that letter.

MR. LEWIS: Okay. My okay is an

acknowledgement of what you just said. Let me just focus on this for a moment.

MR. THOMPSON: Your Honor, this is Tony Thompson. We need to be careful about what we are talking about here, because there were some materials filed with a request for production confidentiality protection for trade secrets.

MR. SUGARMAN: We will enter into a stipulation of confidentiality so we can have that information.

ADMINISTRATIVE JUDGE FARRAR: Why don't we leave it -- We have had good luck with this in the PFS proceeding -- leave it to the three parties after this call to work out how that will be handled.

Now I know in these Subpart L proceedings, it talks about there is no discovery of any kind, but it also talks about preparing a hearing file. As you all discuss what documents you may or may not exchange, let the Board count on all of you to work out how we are going to do that.

MR. LEWIS: I think at the end of the call, if the Board and the court reporter simply drop off, then the three of us -- the staff, Mr. Sugarman and Mr. Pugsley and Mr. Thompson will then be on the line.

ADMINISTRATIVE JUDGE FARRAR: That's a great idea, Mr. Lewis. Why don't we -- We will do that. The court reporter and we will sign off. You can arrange that right now. If you have any problems, we are here to resolve it, but we've found that good lawyers working in good faith can sometimes come up with better, faster, more sensible arrangements than we can by orders. So we will try to give you that chance all the time.

One more question the Board has. There was no Notice of Hearing issued -- or no Notice of Opportunity issued by the staff in advance. Is that correct, Mr. Lewis?

MR. LEWIS: Correct.

ADMINISTRATIVE JUDGE FARRAR: So that means that, if we -- As I understand the rules, if we permit intervention and send this matter toward a hearing, then it is our job at that point to put out a Notice of Hearing --

MR. LEWIS: Correct.

ADMINISTRATIVE JUDGE FARRAR: -- and give people another chance to come in.

MR. LEWIS: Yes, I think that is correct.

ADMINISTRATIVE JUDGE FARRAR: Is this the usual practice of the staff? It seems to me that

leads to a certain amount of inefficiency and delay, if an intervention is granted. Is that the usual practice or was there something unusual about the case?

MR. LEWIS: In materials licensing the practice has been not to notice receipt of applications, because the licensees are in the thousands, many thousands, and it just has not been -- It has not been the practice.

The only exception to that has been that our Division of Waste Management within our Office of Nuclear Material Safety and Safeguard has published, based upon their own analysis of the situation, decommissioning application.

So that is the practice that was -- The practice that was followed in this case is consistent with the practice for materials licenses other than decommissioning action.

ADMINISTRATIVE JUDGE FARRAR: So that doesn't depend on how much material is involved?

MR. LEWIS: Correct.

ADMINISTRATIVE JUDGE FARRAR: Okay. I think that takes care of all of our kind of background questions to make sure everyone is on the same page. I would like to do several more things during the

course of the call: Talk about standing and how we are going to come to resolve that, not to argue the merits of it but how are we going to get our arms properly around that question; talk about so called, quote, "areas of concern," end quote, that the petitioners are supposed to mention in Subpart L proceedings; and talk about whether we need additional briefs on these matters in order to focus the issues better or whether we can go with what we have now, and whether we need oral argument and when and where that should be.

I might say, Mr. Lewis and Schwartz, we are leaning toward asking the staff to brief these standing and areas of concern issues, but we can be -- That is not a given, but our preliminary thoughts are that that would be helpful to have the staff's view on this.

In talking about standing, Mr. Sugarman, who exactly are your petitioners? You filed a list. Your opening document had 22 or 25 people listed. Some of them were grouped together. Your second one that was concerned about the timeliness had 14 included but did not include the three who live on Red Bud Road, which I take it -- Are they the three who are closest to the facility?

MR. SUGARMAN: I can't answer that question definitively without pulling a map and parsing the distances. So I will have to take a minute to answer that question.

ADMINISTRATIVE JUDGE FARRAR: And the reason, of course, I ask is there is in the -- As I read the standing precedents, distance does make a difference, and I am wondering who are your closest petitioners. I think you said they said they lived -- In some document they said -- the three on Red Bud Road said they lived within a half a mile.

MR. SUGARMAN: That is true, but whether there are others within a half a mile or whether they are the closest, I can't answer that off the top of my head. I am looking at a map now of Township area in question. I misspoke. This map does not include Milford Township.

I am trying to get a document to respond, and I am not sure if you want to take the time for me to find one.

ADMINISTRATIVE JUDGE FARRAR: Maybe you said your paralegal was there?

MR. SUGARMAN: She is, yes.

ADMINISTRATIVE JUDGE FARRAR: Whose name escapes me.

MR. SUGARMAN: Courtney Bryan.

ADMINISTRATIVE JUDGE FARRAR: Okay. Maybe the paralegal can do that while we are talking.

MR. SUGARMAN: All right. See if you can find a map that includes Milford Township, upper Bucks County.

ADMINISTRATIVE JUDGE FARRAR: As long as you mentioned Milford Township, I have talked to a number of my acquaintances from Pennsylvania. I'm not sure I have a straight answer. Is every county divided up into a number of townships?

MR. SUGARMAN: Yes.

ADMINISTRATIVE JUDGE FARRAR: And there is no land in the county that is not in a particular township?

MR. SUGARMAN: That's correct. Well, the exception is that the township is the default entity, and townships or portions of townships may become boroughs or cities under certain rules and regulations. But up in upper Bucks County, there are some burroughs, but not -- I don't believe there are any in Milford -- that are carved out of Milford Township.

ADMINISTRATIVE JUDGE FARRAR: While Quakertown is a place, I don't have a governing body

that is relevant to this proceeding?

MR. SUGARMAN: No. I think Quakertown is a borough, but I think it is carved out of Richmond Township and not Milford. But I'm not sure of that, but I believe that is correct. Quakertown is a borough.

ADMINISTRATIVE JUDGE FARRAR: Okay. But the facility is in Milford?

MR. SUGARMAN: Yes.

ADMINISTRATIVE JUDGE FARRAR: And they have -- As we have seen from different papers that have come our way, they have the zoning authority?

MR. SUGARMAN: That is correct.

ADMINISTRATIVE JUDGE FARRAR: Are they a subdivision of the county or do they --

MR. SUGARMAN: Well, yes and no. It is very mixed. The townships have direct authority under the state law. There are certain activities that are allocated to the counties, however, and for example, the counties are responsible for prisons.

The townships have no role with respect to prisons. There are some areas where both the counties and townships have overlapping jurisdiction. Land use and zoning is one of those areas, but the main authority is with the township. The township is the

only one that can adopt -- The county can and does have a zoning ordinance, but it is supplanted wherever a township adopts one.

ADMINISTRATIVE JUDGE FARRAR: Okay, that's helpful. Thank you.

MR. SUGARMAN: All the townships in Bucks County have now adopted zoning ordinances. So the county zoning ordinance has only historical relevance. The county's role in zoning and land use is an advisory one under the statute. The county planning commission is to give advice to the township concerning various zoning activities.

ADMINISTRATIVE JUDGE FARRAR: All right. Thank you, Mr. Sugarman. That's a useful explanation, and I hasten to add that that was mainly just our trying to understand the background and context of the case and, of course, we have nothing to do with the zoning, but we wanted to understand what other governmental entities were involved and how they are involved.

I think we even have a letter from Milford Township asking that we hold up our decision pending their review of the zoning, and someone remind me at the end of -- later in the discussion to ask your views on that.

Mr. Pugsley, while Mr. Sugarman's people are looking up the locations for standing purposes, on this question of service Mr. Sugarman says there was no prejudice from his failure to serve you initially. Is that something, if we had oral argument or a further round of briefs, you would want to address?

MR. PUGSLEY: Judge Farrar, if I could, I would like to ask my colleague, Mr. Thompson, to answer the rest of your questions.

ADMINISTRATIVE JUDGE FARRAR: All right.

MR. THOMPSON: I don't think we want to get into a long argument on what is prejudice, but the intervenors or would-be intervenors are represented by counsel, and they didn't follow the rule. So if the court deems that appropriate -- We have to be held to rules. They should be held to rules, too.

MR. SUGARMAN: I take it, we are arguing the motion now?

ADMINISTRATIVE JUDGE FARRAR: No, we are not. A good point -- You know, I want to know -- We are not arguing. I want to know what is at issue and what isn't and what would be argued, because that will help us define whether we need more argument. So, Mr. Sugarman, you don't need to respond to that at this point.

I can assure you, we will never make any ruling against anyone without giving you a chance to respond.

Let me ask about the geographical test for standing. As I have read the cases that, I think, both sides have cited, we seem to come down to a statement the Commission made and that various licensing boards have applied in other cases talking about a proximity presumption without showing specific facts and pathways of proximity presumption if what is involved is, quote, "a significance source of radioactivity producing obvious potential for off-site consequences."

Does everyone agree that is the test we are dealing with? I'm not saying now what that test means, because there are a number of words in there that --

MR. THOMPSON: Your Honor, I think what our position is, that the per se distance from the source is -- a potential source is no longer in play and that, as you have just described, it's the question of what is the nature of the source and the potential for it to have an adverse impact, and then that requires also a pleading to show injury in fact or potential injury in fact.

ADMINISTRATIVE JUDGE FARRAR: Well, before we get into what this test means, all I want to know -- and we are not going to argue what it means. I just want to know, do we all agree that is the test we are dealing with?

MR. SUGARMAN: I agree, that is the test, but I am getting a little frustrated at having opposing counsel argue each point that you bring up.

ADMINISTRATIVE JUDGE FARRAR: Don't worry about it. I understand your point.

MR. THOMPSON: I thought I was just restating, Your Honor, what you said. I am not intending to argue it. Yes, we agree, Your Honor, that's the test.

ADMINISTRATIVE JUDGE FARRAR: Okay.

MR. SUGARMAN: Let me respond to that, because that's not what you said.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, I understand your point, and I understand it's a little difficult for us to talk about the issues in terms of framing them for the future and not stray into arguing the merits. So I ask everyone to act in good faith.

You know, nothing is going to be done without -- There will be no decisions made based on

anything -- no decisions made on the merits of any of these issues based on what is said on this call. All we are trying to do is --

MR. SUGARMAN: I understand that, Judge, but my problem is that counsel's words are out there, and he is making argument and, even though you are not making a decision, you are hearing his argument. I'm not criticizing you, because you've made it clear twice now that that is not to happen. But opposing counsel is not respecting what you said.

ADMINISTRATIVE JUDGE FARRAR: I count on you to remind me of that every time, and --

MR. SUGARMAN: I don't know that that solves the problem, because the arguments are out there.

ADMINISTRATIVE JUDGE FARRAR: Yes, but we are not a jury here. Let me reassure you again, no decisions on the merits are going to be made here today, and anything that opposing counsel says, you will have a chance to respond to at the appropriate time. I understand your concern, but we've all been around a long time and --

MR. SUGARMAN: That's why it is frustrating, because counsel is not -- Opposing counsel is not stupid and not ignorant, and they know

what they are doing.

ADMINISTRATIVE JUDGE FARRAR: Well, with appropriate immodesty, Mr. Sugarman, so do I.

MR. SUGARMAN: All right.

ADMINISTRATIVE JUDGE FARRAR: Thank you. I understand your point.

If this is the test, then the test has the words in it "significant" as in "significant source of radioactivity" producing an obvious potential -- I pause on both of those words so the transcript will reflect we are talking about the words "significant," "obvious," and "potential" as being embraced in this test, and that makes the test a perhaps not -- It makes the test one in which reasonable minds might differ in particular circumstances.

We agree the facility, if licensed, would have a million curies. Is that correct, Mr. Pugsley?

MR. PUGSLEY: Up to.

ADMINISTRATIVE JUDGE FARRAR: Up to a million curies. But if we are considering standing, I take it, we have to deal with the "up to" unless you are willing to put some limit on it.

MR. THOMPSON: I don't know what to say, Your Honor. I don't want to step over the line.

ADMINISTRATIVE JUDGE FARRAR: Okay. Then

you are right. I may have stepped over there. So hold that answer. We are about to find out from Mr. Sugarman's office what the distance the petitioners say they are is.

MR. SUGARMAN: May I interrupt?

ADMINISTRATIVE JUDGE FARRAR: Yes, go ahead.

MR. SUGARMAN: Ms. Bryan has given me some Yahoo data, and it is indicating that Milford Square Pike where we have a client or clients is 0.7 miles from the facility, and the address on Weiss Road where we also have a client is 0.8 miles, and Red Bud Road where we have a client is 1.0 miles. Those are three examples that are, I won't say within a half a mile, but within that general area.

ADMINISTRATIVE JUDGE FARRAR: All right.

MR. SUGARMAN: Now to answer your direct question, whether the three in question -- What road are they on?

MS. BRYAN: Red Bud Road is one of them.

MR. SUGARMAN: Red Brook?

MS. BRYAN: Red Bud, Red Bud Road.

MR. SUGARMAN: Red Bud Road? Okay.

ADMINISTRATIVE JUDGE FARRAR: The reason I asked about them, Mr. Sugarman, was I thought that

in one of your first pleadings they were ones who provided so called affidavits.

MR. SUGARMAN: Yes. I think the difference here is that Yahoo is giving us the -- Yes, Yahoo is giving us the road mileage, and the curies don't travel by road. So we would need -- To answer your question, we would need a "crow flies" which, I think, is what the clients gave us at the time rather than the roads.

ADMINISTRATIVE JUDGE FARRAR: Why don't we do this. Can you file with us within a week a statement of "crow flies" distance for the three or five or however many people who live the closest, so we know precisely what we are dealing with?

MR. SUGARMAN: We will do that.

ADMINISTRATIVE JUDGE FARRAR: Okay. And I notice that some of your documents are called affidavits, but are not sworn. Mr. Lewis, in your experience in this, do those type of documents have to be sworn?

MR. LEWIS: Well, I think it is preferable to have the documents in that manner. Some degree of latitude, I think, is allowed, if this were a pro se type -- would be allowed if this were a pro se type proceeding.

I think -- I guess my position would be that, because these people are represented by counsel, that there would be an expectation that all supporting documents should be in appropriate legal format, meaning affidavits should be sworn to.

ADMINISTRATIVE JUDGE FARRAR: Mr. Pugsley, let me ask you. In your experience in those cases out west with Judge Rosenthal, do the petitioners, which I think have been members of the Sierra Club and other groups and have made representations about the distance, have they done that by affidavit?

MR. PUGSLEY: Traditionally, they have.

ADMINISTRATIVE JUDGE FARRAR: Okay. Mr. Sugarman, if you need a little more time than the seven days, that would be fine, but given the significance of the distance to the -- or the possible significance of the distance to the standing test we just talked about, can you have those by affidavit?

MR. SUGARMAN: I will do my best and, if not, I will explain why I can't. But let me say, if I may, that the Federal Rules no longer -- In fact, the statute at 28 U.S.C. § 1746 provides for unsworn affidavits. I don't know if it applies to the NRC or not, but Congress has adopted a statute and, therefore, we never use affidavits -- We never use

sworn affidavits. We use affidavits taken under the penalties for perjury pursuant to Section 1746 in all of our filings.

The statute says, whenever under any law of the United States or under any rule, regulation, any matter is required or permitted to be proved or supported by sworn declaration, verification or affidavit in writing of the person making, and so forth, the person may support or establish, if it is subscribed by him as true under penalty of perjury.

So the statute, I think, preempts any practice or rule, and I would just ask that the Board consider whether, because we are -- assuming we are going to have an ongoing proceeding, it is a severe prejudice for us in the city of Philadelphia to be having people out in the country look around for a notary. Notaries are not available, generally, anymore except in real estate offices and the like, because they are the only ones that still use sworn affidavits regularly.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, when was that statute passed?

MR. SUGARMAN: Oh, it was adopted about 10-15 years ago.

ADMINISTRATIVE JUDGE FARRAR: Okay. Well,

it was many more years than that that I was a Federal District Court law clerk. I might have known it if it was in those days, but thank you for bringing it to our attention.

Let me ask other counsel, given the existence and terms of that statute, can we dispense with formal notarized affidavits?

MR. LEWIS: Steve Lewis for the staff. Yes. I would be satisfied equally by a recitation of the penalties of perjury as by a notarized. So that is perfectly acceptable to the staff.

ADMINISTRATIVE JUDGE FARRAR: Mr. Pugsley.

MR. PUGSLEY: Just subject to taking a look at the provisions of the statute. If that is what the statute says, then that's okay with us.

ADMINISTRATIVE JUDGE FARRAR: Then why don't we do that, because it is certainly inefficient. Mr. Sugarman, you don't have an office in Bucks County?

MR. SUGARMAN: I do. I have an office in Doylestown, but it is not a staffed office.

ADMINISTRATIVE JUDGE FARRAR: Okay. Then let's do this and, Mr. Sugarman, if you will be sure to impress on your clients, you know, for these purposes, we are looking for specifics and staying

strictly to the facts, and that this is a serious matter. We will count on you to do that.

MR. SUGARMAN: Yes, sir.

ADMINISTRATIVE JUDGE FARRAR: And we can be sure the information we get is accurate as can be.

MR. LEWIS: Excuse me. This is Steve Lewis. Mr. Sugarman, can you give me -- 28 U.S.C. -- I didn't get the rest of it.

MR. SUGARMAN: Section 1746.

MR. LEWIS: 1746. Thank you.

ADMINISTRATIVE JUDGE FARRAR: All right. Then, Mr. Sugarman, let's stick with the seven days for supplying that geographical distance information.

MR. SUGARMAN: Just so I am clear, I am conceptualizing what you are directing me is that each individual would state their distance from the facility by as the crow flies.

ADMINISTRATIVE JUDGE FARRAR: Exactly.

MR. SUGARMAN: And if I have time, I will have a cover sheet providing a map or a plan that would identify those, you know, in reference like the Yahoo map, but as the crow flies.

ADMINISTRATIVE JUDGE FARRAR: That would be very helpful, as long as -- The Internet is good for some things and not good for others. If you would

get a map from anywhere and mark it yourself, I think we would feel more comfortable with that.

MR. SUGARMAN: Oh, yes, that's the idea. Okay.

MR. LEWIS: This is Steve Lewis. I would just simply make the comment that, if any individual -- If they do not know for certain what the distance from their house to the facility is, they might -- I'm not trying to counsel anybody, believe me, but in my experience people don't always know exactly what the distance between two places is.

MR. SUGARMAN: I'd be amazed if anybody did. They will have to identify their address and tell us that -- you know, what they believe the crow fly distance to be. Then anybody can look at a map and see it.

MR. LEWIS: That's exactly what I was getting at, that I think that people would be making this statement to the best of their knowledge.

MR. SUGARMAN: Right.

ADMINISTRATIVE JUDGE FARRAR: And, of course, if anyone -- Once we have it and have the address, anyone who disagrees with the facts can go check it out.

Let's leave standing for a minute and talk

about the areas of concern that the rules require a petition deal with. Mr. Sugarman, you filed several papers, and we can all go through them and parse them and try to figure out what the different areas of concern are or perhaps it would be -- You are not prepared to state them in bullet fashion right now. It might be helpful to have those restated.

I know you mentioned, you know, problems affecting the neighborhood, problems affecting workers, problems of irradiated food, and perhaps others. As I understand the precedents, some of those may be more germane than others, and some may be clearly germane, and some may be clearly not germane.

So it would help us, when we go forward, knowing precisely what those are, not with a whole lot of argumentation but just so staff counsel and we know exactly what you are dealing with.

MR. SUGARMAN: I can do that to the best of the information that I have at this time. Sure.

ADMINISTRATIVE JUDGE FARRAR: Not anything new that's not in your papers, but it would be nice to have, you know, one, two, three, four, here are the areas of concern; because then as we file future briefs and argue about them, we know exactly what we are talking about.

MR. SUGARMAN: Okay. I'll be glad to do that. Would seven days be agreeable for that?

ADMINISTRATIVE JUDGE FARRAR: Yes, why don't you do that at the same time. Again, you don't have to -- The more we talk here, the more here is what I am thinking about, that in some reasonable length of time we get a staff brief addressing the issues of standing, which can include the issues of service and timeliness if you want to, and addressing the areas of concern, you know, which are german and which the staff thinks are germane and which are not.

We would give the other two litigants the opportunity to respond to that staff brief within a shorter time since it would actually be -- you have already done most of the research you would need. I think that way we might have the arguments more focused than they are now, and I am not blaming anyone for them not being focused, but I know, Mr. Sugarman, you pointed out that you were hired right before the filing date. So you filed something that may or may not have been what you would have filed if you had had more time.

You know, the company responded. You responded. They responded. I am not sure we have had a meeting of the issues. So we are interested both in

the -- We are interested in the staff brief, both in helping us focus and in stating the staff position.

MR. LEWIS: Judge Farrar, this is Steve Lewis. Okay, you spoke in terms of a staff brief. Without being too difficult for the process, I would ask for two weeks to do that.

ADMINISTRATIVE JUDGE FARRAR: That's --

MR. LEWIS: August 21st.

ADMINISTRATIVE JUDGE FARRAR: Okay. Now that assumes you can begin work, in other words, using --

MR. LEWIS: Yes.

ADMINISTRATIVE JUDGE FARRAR: -- using the distance -- Someone said a half-mile. That may be low, but I assume you can start work on the brief and recap it after you get Mr. Sugarman's statement.

MR. LEWIS: Absolutely.

ADMINISTRATIVE JUDGE FARRAR: And the same thing with the areas of concern. You can read his papers and figure out pretty much what those areas are and just get confirmation from him. I know the company has argued that things affecting workers are not germane in a -- Mr. Pugsley, correct me if I am wrong, but I think your papers say things affecting workers are not germane when a petition is filed by

neighbors, and I think you have argued that general question of the wisdom of irradiating food is not germane in a petition filed by neighbors, or maybe it's not ever germane.

MR. PUGSLEY: That's correct.

ADMINISTRATIVE JUDGE FARRAR: In an NRC proceeding. Mr. Lewis, I take it, you can address those areas now, even before you get Mr. Sugarman's statement of precisely what the areas of concern are.

MR. LEWIS: Yes, Judge Farrar. Steve Lewis speaking. That is precisely what I was thinking, that we really do have enough to significantly begin, and the other things that Mr. Sugarman is going to provide will be corroborative.

ADMINISTRATIVE JUDGE FARRAR: All right, fine. Thank you. Well, today is the 7th. Why don't we give you until Friday, the 22nd.

MR. LEWIS: Thank you.

ADMINISTRATIVE JUDGE FARRAR: Although if you want to work summer weekends and Monday the 25th would help you, we'll be happy to give you that, because that's not a whole lot of difference from our point of view. But is Friday the 22nd all right?

MR. LEWIS: That's fine.

ADMINISTRATIVE JUDGE FARRAR: All right.

MR. THOMPSON: Would we have an opportunity to reply to that brief?

ADMINISTRATIVE JUDGE FARRAR: Oh, yes. Let me ask Mr. Sugarman and Mr. Pugsley, assuming you get that electronically -- and Mr. Lewis, I would guess you would not have attachments?

MR. LEWIS: I don't know. We certainly will -- Well, we certainly will use electronic filing and, if there is any need to attach something that we cannot reference to being in our publicly available ADAMS record by the accession number and know that we can make it very clear where they are, then we will use an overnight mail service.

ADMINISTRATIVE JUDGE FARRAR: All right. Mr. Sugarman, you are familiar with the ADAMS system?

MR. SUGARMAN: Yes.

ADMINISTRATIVE JUDGE FARRAR: Okay. Then that is helpful, Mr. Lewis. Assuming then that that comes in the evening of Friday the 22nd, how much time do the other two parties need to file -- I'm thinking of simultaneous replies to save time. How much time do you need, and I know Labor Day weekend is in the middle of any period there.

MR. LEWIS: I think most of the work you will need to do, you know, a lot of it will be a

reframing of work you have already submitted.

MR. SUGARMAN: I would be prepared to -- Let me put it this way. I am interested in expediting a decision on this, and I am assuming that you are leaning toward the possibility of oral argument. So the sooner you can schedule oral argument, the better; and I would suggest that our reply briefs be due, let's say, seven days before the oral argument, assuming that it is going to be very prompt. Otherwise we can set up an independent date for the reply brief.

What I am thinking is, if you could have -- If you are going to have the oral argument or are able to have the oral argument as early as the day after Labor Day, then our briefs -- our reply briefs should be due at least by the previous Wednesday.

If the oral argument, if there is going to be one --

ADMINISTRATIVE JUDGE FARRAR: Wait a minute. Friday the 22nd is only a week -- According to my calendar, Labor Day is the 1st.

MR. SUGARMAN: Right. What I'm saying is I am not trying to hold Mr. Lewis' feet to the fire, because I know staff has obligations, and he is new to the proceeding. But Mr. Thompson and I have had our

briefing already, and as I said, I am interested in expediting, because the staff can issue the license and I can be, you know, put in a prejudiced position. Therefore, I am interested in expediting everything, to the extent possible.

So if you can have oral argument during Labor Day week, then I think we should get our reply briefs to you sometime late or mid-previous week. If you can't have oral argument during Labor Day week, if that is not available to you or you are not going to have it, then I would propose that our reply briefs be due on the 2nd of September, the day after Labor Day.

ADMINISTRATIVE JUDGE FARRAR: Mr. Pugsley, can you meet that date?

MR. PUGSLEY: Well, I don't know what the date is. I mean, we are talking about oral argument. I mean, we haven't even been asked whether we think oral argument is necessary.

MR. SUGARMAN: My question is if -- if. That's all.

ADMINISTRATIVE JUDGE FARRAR: Well, let's jump ahead. Just for purposes of discussion, suppose -- Well --

MR. SUGARMAN: May I throw in another question. Now that I've phrased it, I just realized

something else. If there is an evidentiary dispute over the proximity, I suppose that you would have to potentially at least have a hearing either before or after oral argument or at the same time, and I guess I would say, if there is a dispute over proximity, I would request a hearing the following week in the Philadelphia area, if that's feasible.

ADMINISTRATIVE JUDGE FARRAR: Let's assume for present purposes we won't have a dispute over proximity that is consequential, and I suppose if it is 0.48 miles or 0.52 miles, that is not going to be hugely consequential. If it's a half a mile versus five miles, it should be pretty easy to resolve.

Mr. Pugsley, you think one of the opportunities are to voice a view against having oral argument?

MR. THOMPSON: Yes, this is Tony Thompson, Judge Farrar. We are talking about standing here, first of all, whether there should be a proceeding, an evidentiary proceeding, and traditionally in the Subpart L proceedings, there are not oral arguments on these issues.

There may be phone calls where the court -- On some occasions we have had Judges set up a telephone conference to ask questions to clarify

things as far as they were concerned about things that the various parties had put in their pleadings, but this is just a standing -- at this stage, still a standing set of issue. We are not talking about the merits.

Traditionally, Subpart L proceedings don't have oral arguments per se and oral hearings on standing issues, or at least they haven't. If there are some particularly thorny issue, I suppose it could be and could be done by telephone, if necessary. But I'm not so sure that -- I certainly don't assume that we need an oral hearing.

MR LEWIS: This is Steve Lewis speaking. I would say that to characterize what the Board is considering at this point as standing and just with that term is a little bit of an understatement of what it is, because I think that the germaneness of the areas of concern, which is sort of a preliminary identification of the issues to be heard in a proceeding -- It may be a thorny issue. I don't know.

So I'm just throwing out the possibility -- I think there is no hard and fast practice in Subpart L proceedings, to my -- Certainly, the Subpart L does not prescribe one way or another or proscribe the holding of an oral argument at the stage of

determining whether or not to issue a hearing notice.

MR. SUGARMAN: May I request then that the Board -- that the reply briefs be due during the week of the 25th of August. The staff brief would be received on the 22nd, and that the Board set aside a date during Labor Day week on which all counsel would be reserving the time, so that if the Board decides that either or both an oral argument or evidentiary hearing is necessary, it can be held during that -- some date during that week, at the convenience of the Board.

MR. THOMPSON: We don't have -- This is Tony Thompson, Judge Farrar. We don't have a problem with filing by sometime the next week, the week of the 25th through the 29th. The first week in September is not a good week for me for an oral hearing.

ADMINISTRATIVE JUDGE FARRAR: Okay.

MR. THOMPSON: If there is to be one.

ADMINISTRATIVE JUDGE FARRAR: First off, are you sure, regardless of whether or not there is oral argument and when it is, that you are not giving yourselves too short a time period, having a brief received Friday evening, the 22nd, and having it in five business days later?

It seems like a short time for briefs

which, after all, whichever our decision goes, either they are going to be outcome determinative in terms of the case is over, there is no hearing, case closed, on the one hand, or the other hand which companies usually don't like to hear, we are going to go ahead and we are going to have not a hearing but the written presentations and so forth.

I mean, it seems to me that the briefs that you are going to file in response to the staff brief are highly significant to the outcome and/or direction of the case.

MR. THOMPSON: Well, how about making it Tuesday the 2nd or Wednesday the 3rd?

ADMINISTRATIVE JUDGE FARRAR: All right.

MR. THOMPSON: Probably Wednesday the 3rd would be better, if you are going to do that, because nobody really wants to work on a holiday.

ADMINISTRATIVE JUDGE FARRAR: Hold on one second. Let me -- I'm going to hit the Mute button and ask if anybody can hear me.

All right. You said Wednesday the 3rd. Now I would rather give you more time now than have you tell me later you need more time. You both -- Both Mr. Thompson and Mr. Pugsley and Mr. Sugarman, you think you can get them in the evening of the 3rd?

MR. THOMPSON: Yes.

MR. SUGARMAN: Yes.

ADMINISTRATIVE JUDGE FARRAR: All right. Then let's set that. In terms of -- Mr. Lewis, what was your view on argument?

MR. LEWIS: My view on argument was that it is very Board -- it is very presiding officer-specific, and I would not deign to try to give an opinion as to whether or not, after seeing the pleadings, you would or would not want oral argument.

ADMINISTRATIVE JUDGE FARRAR: And Mr. Thompson, you were basically against argument -- or formal argument for the reasons you stated?

MR. THOMPSON: Yes, Your Honor. We generally haven't had oral arguments on standing issues. I agree with NRC counsel that Your Honor has the flexibility in your judgment to either have a formal oral argument in front of you and live or do something over the telephone or to convene to ask questions. It's really within your purview.

ADMINISTRATIVE JUDGE FARRAR: Okay. Mr. Sugarman, what is your thought or preference?

MR. SUGARMAN: My view would be that Your Honor certainly can dispose of the matter without argument. If there is material dispute fact, I think

a hearing is necessary.

ADMINISTRATIVE JUDGE FARRAR: No, no, let's leave out material disputed fact. Let's talk about intricacy of legal issues.

MR. SUGARMAN: Well, what I was going to say was this. I would like to preserve the opportunity for Your Honor to decide to have oral argument. I think it would be a good idea. I'm not asking Your Honor to decide now to have it.

My view would be -- and this is why I brought up evidentiary hearing. My view would be to set aside a day that Your Honor could cancel or firm up or whatever, depending on your review of the documents of the pleadings, so that if we set up a date for the second week in September to accommodate the unavailability of opposing counsel, then Your Honor can cancel it when you see the papers during the week of September 2nd.

Then that date could serve for whatever purpose would be necessary, the point being that we would not wait until September to decide whether to have a date, and Your Honor would have the flexibility.

ADMINISTRATIVE JUDGE FARRAR: I think I understand your position. Mr. Lewis, you said it was

presiding officer-specific. I have to tell you that my bias ever since my days as a Federal District Court law clerk is that almost every issue, and particularly the more complex ones, is the decision maker is aided by the opportunity to ask questions, and that we never had a motion day or any other time an instance where the Judge didn't find it infinitely easier to resolve the case. So that is my kind of longstanding bias.

I understand that Subpart L is intended to be a less formal proceeding, more efficient, but my view of oral argument is that it adds to the efficiency, because it helps the decision maker. Rather than wrestle with questions that you are not quite sure of, you have an oral argument, and you become much more sure of where you want to head.

Now the question, Mr. Thompson, I think you raised is do we need to trot out to a courtroom somewhere and do this or can it be done by telephone. I know in the PFS case we have had some oral arguments by phone. We have had some in person.

To what extent is the public interest served by having not a phone argument, not an argument in person in our headquarters hearing room, but an oral argument in the vicinity of the site? Anybody have any thoughts on the public interest involved

there?

MR. LEWIS: This is Steve Lewis. I have two things I wanted to say. With regard to the public interest, the staff's clear indication in this proceeding is that there is significant public interest in the matter. So that, if there were to be an oral argument, we think it should be face to face and in as close proximity to Quakertown as possible.

Mr. Kinneman was advising me when I had you briefly on Mute that, in terms of a city of some size, the best location might be Allentown. But there may be -- You know, that is just kind of off the top of our head.

MR. SUGARMAN: Can I speak to that in terms of a location?

ADMINISTRATIVE JUDGE FARRAR: Certainly.

MR. SUGARMAN: Thank you. Quakertown has some facilities, depending on what you need. There is a motel and I believe there are more than one, and there are conference rooms.

I would agree that -- Another option would be Doylestown, which is the County seat of Bucks County and is closer to Quakertown than Allentown, and Doylestown has the courthouse where there might be rooms available and also a number of motel facilities,

not a large number but a number.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, on my map of Pennsylvania it looks like Quakertown is pretty much, if anything, is closer to Allentown than Doylestown, but maybe I'm wrong.

MR. SUGARMAN: I wouldn't argue the point. I know it's 20 minutes from Quakertown to Doylestown, and I would have thought it would be about 30 minutes from Quakertown -- I guess it's about the same, yes.

ADMINISTRATIVE JUDGE FARRAR: Does Quakertown have any courtrooms?

MR. SUGARMAN: Not really. It has what we call a district court, which is a non-record court of first impression, and they would have a courtroom. It would be very small. I would say, if you were going to sit in Quakertown, you would probably want to use an auditorium type of facility, not a courtroom, in order to accommodate enough of the public. In Allentown --

ADMINISTRATIVE JUDGE FARRAR: Let me ask you a question about that. In the D.C. area people tend to go to hearings even if they can't speak. They go to Congressional hearings. They go to the Supreme Court, and they watch the government at work.

My experience in Salt Lake City was that

in the -- I was told by people out there, while they love to come to meetings where they can speak, if they can't speak, they are not interested in watching their government at work.

What is your sentiment about how many of your clients and/or interested people would come to an oral argument at all, and then you may have a different view if we held -- if that were an oral argument in the evening in Quakertown or in Allentown or Doylestown. Can you address that?

MR. SUGARMAN: Let me answer that first directly. In my view, there would be significantly more than 100 people for an evening event in Quakertown. I think that would trail off somewhat if you went to either Allentown or Doylestown, but not entirely.

When I say significantly more than 100, I don't want to predict two or three hundred, but it wouldn't surprise me, because there have been that many people at the township meetings over the last few weeks on this subject, and they have been there -- A few have spoken, but most have been there in the audience.

So it would be greatly surprising to me if an evening event would not allow and attract hundreds

of people. As far as a daytime event is concerned, that's harder to predict. But I just don't have enough of a feel for how flexible people's work hours are. So I don't know how many people would be deterred by having to lose work. There haven't been any daytime events in this matter.

ADMINISTRATIVE JUDGE FARRAR: Mr. Thompson, Mr. Pugsley, do you have any thoughts?

MR. THOMPSON: I'm a little confused. I thought we were talking about oral argument from counsel, and now it seems we are talking about testimony from potential intervenors.

ADMINISTRATIVE JUDGE FARRAR: No, sir. We are talking about oral argument and the public -- how, if at all, the public interest would be served by an oral argument. One of the factors that goes into public interest, I take it, Mr. Lewis and Mr. Sugarman have been saying, is the public's interest in observing an oral argument, since under your view of the case that may be the only thing they would ever get to observe because under your view of the case there would be no hearing.

MR. THOMPSON: Right. I don't --

ADMINISTRATIVE JUDGE FARRAR: No, no, I'm not suggesting anything or no one has suggested, and

I certainly am not, anything about limited appearances or opportunities for the public to speak.

MR. THOMPSON: Okay. I got a little confused.

ADMINISTRATIVE JUDGE FARRAR: I was contrasting in Salt City that people would show up when they could speak, but they would not show up if they couldn't speak. We had one -- You know, for the PFS hearing, we had essentially one member of the public who came, even though there were several hundred who were prepared to lynch me at the limited appearance.

MR. SUGARMAN: Well, we have a tradition in Pennsylvania, Your Honor, but I personally will guaranty your safety.

ADMINISTRATIVE JUDGE FARRAR: Thank you.

MR. LEWIS: Steve Lewis speaking.

ADMINISTRATIVE JUDGE FARRAR: Mr. Thompson was trying to make a point.

MR. LEWIS: I'm sorry.

MR. THOMPSON: Your Honor, you have raised an issue, and I really don't have any opinion on it. As long as we are talking about an oral argument, you know, whatever is most convenient from the perspective of the court or of the Board in terms of where to have

it and when to have it, if there is to be an oral argument, then that's fine with me.

ADMINISTRATIVE JUDGE FARRAR: All right. I think -- You know, it is possible that we will get these pleadings that we have talked about and that the case will be open and shut, one way or the other, that there is no standing and nothing germane or that there is clearly standing and at least one area that is germane. But I tend to doubt it.

One of the reasons for mentioning it is your briefs have taken strongly opposed positions on this. We have not heard from the staff, but I have found these issues sometimes more difficult to decide than the substantive merits of the contentions or areas of concern.

So I think we would do well to plan a date. Let me go on Mute again for a minute or two and talk to Judge Kelber.

MR. LEWIS; Judge Farrar, before you go on Mute -- Steve Lewis -- the point I am going to raise, and I may very well be stating something that the Board is even more familiar with than I, but I know that in today's environment, in particular, there is some preference to have a courthouse facility used, as secure a facility as is available. That's all I was

going to say.

ADMINISTRATIVE JUDGE FARRAR: Thank you for mentioning that. On that count, we do take our direction from the NRC security people. Again, we don't work for them -- you know, for staff people, but the security people have a special interest in all of these proceedings. I know they do prefer courtrooms.

What have you used in Quakertown, the high school auditorium for the public meetings?

MR. SUGARMAN: Yes. Well, I don't believe that the high school has been used in this -- for the township meetings in this case. I haven't been to any of them, because I was away personally, but --

ADMINISTRATIVE JUDGE FARRAR: Let me have Mr. Sugarman address that.

MR. SUGARMAN: This is Bob Sugarman. I was not at the meetings. I believe they were held at the township meeting -- township building, I mean.

MR. LEWIS: This is Steve Lewis. John Kinneman, who was at the meeting, can answer the question, Your Honor.

ADMINISTRATIVE JUDGE FARRAR: Go ahead, John.

MR. KINNEMAN: This is John Kinneman. Yes, the public meeting that we attended on the 16th

of July was held in the auditorium of the high school, and it is a pretty standard auditorium. It has a stage with, I would guess, 400-500 seats. It is a large facility, pretty standard school facility. It is not at all like a courtroom except that it has seats in the back of the stage at the front.

MR. SUGARMAN: Is that the Penn Ridge courtroom, Mr. Kinneman? Penn Ridge High School, I mean.

MR. KINNEMAN: I believe it was called the Quakertown High School. It's on Park Avenue just off of 113, as I recall.

MR. SUGARMAN: Okay.

MR. KINNEMAN: It's at 6th and Park Avenue. Sapper Lodhi is just reminding me. I know how to find it. I just --

MR. SUGARMAN: Yes, I know what you are talking about. Yes, that's not Penn Ridge, but yes, that's a fine facility. As far as security is concerned, I certainly respect the need for security and what you have to do to accommodate that.

I would assume that your staff would be able to be in touch with the Quakertown authorities and determine whether they are satisfied with the high school and whatever arrangements the high school has.

ADMINISTRATIVE JUDGE FARRAR: Right. Our security staff doesn't do the job alone. They contract with the local sheriff or in Salt Lake City the city police force and so forth to work out the arrangements.

MR. SUGARMAN: Quakertown has its own police force. So they would certainly be available to talk to, and I'm sure they would cooperate, and they and you could determine if there is a sufficiently secure facility in Quakertown, be it the high school or something else.

ADMINISTRATIVE JUDGE FARRAR: Where is the township building based? What town is that in?

MR. SUGARMAN: Well, the Milford Township building is west of Quakertown, and it is on -- I believe it's on Spinner's Town Road, and Spinner's Town Road is -- it connects directly to the Turnpike, but it is -- Spinner's Town Road is a two-lane road. It's about a half-mile from the Turnpike on the west side.

Quakertown is four miles from the Turnpike on the east side.

ADMINISTRATIVE JUDGE FARRAR: Right, but how big is the township building?

MR. SUGARMAN: That, I don't -- Do you

know?

MS. BRYAN: No. They have had a meeting at the township building before.

MR. SUGARMAN: Yes, they have had township meetings at the township building, and people have probably overflowed it. I don't know that for sure.

MR. KINNEMAN: Your Honor, if I could -- John Kinneman -- I have not been to the township building either, but in setting up this meeting the township manager mentioned exactly what Mr. Sugarman is saying. One of the problems they have had is the large number of people just overflow their facility and make it difficult to have any sort of organized -- People are crowded, and can't move.

So I conclude from that it's a small facility.

ADMINISTRATIVE JUDGE FARRAR: All right. Then factor these. The Quakertown high school auditorium is certain to hold everybody. If we go to Allentown or Doylestown to a courtroom, which might help security, then fewer people -- Even in the evening, Mr. Sugarman, fewer people would make that trip?

MR. SUGARMAN: There would be some dropoff, but I'm guessing. I mean, you know, people

with young children might not want to go 20 miles away and, you know, not be able to get home. I don't know. I don't know what people would do, but I know that in general you get a dropoff when you go to out of town.

ADMINISTRATIVE JUDGE FARRAR: And Doylestown is closer to your office, I take it?

MR. SUGARMAN: Yes, but that is of no consequence. I'm not asking for any consideration at all. It doesn't matter to me. As a matter of fact, not that it matters, but driving from Philadelphia where my office is, my real office is, it's about -- takes about the same amount of time to get to Doylestown as it does to get to Quakertown, because we have the Turnpike to Quakertown.

ADMINISTRATIVE JUDGE FARRAR: That northeast extension or whatever it is called?

MR. SUGARMAN: Yes.

ADMINISTRATIVE JUDGE FARRAR: I think Mr. Thompson or somebody had mentioned unavailability, whether it's vacation or otherwise, that was when?

MR. THOMPSON: Well, we are talking about -- We said Wednesday the 3rd for the briefs.

ADMINISTRATIVE JUDGE FARRAR: Okay. Now does anyone have conflicts the week of the 8th?

MR. THOMPSON: This is Mr. Thompson. We

are okay the week of the 8th.

MR. LEWIS: This is Mr. Lewis. It appears -- Wait one moment. One calendar is never enough. I think that the week of the 8th is fine.

MR. SUGARMAN; I am generally available that week. Are we talking evening or daytime?

ADMINISTRATIVE JUDGE FARRAR: Evening.

MR. SUGARMAN: I'm available except for Monday.

ADMINISTRATIVE JUDGE FARRAR: All right.

OPERATOR: Your conference is scheduled to end in 15 minutes.

ADMINISTRATIVE JUDGE FARRAR: Okay. So everyone is available that week?

All right, let me go on Mute here for a minute.

This is Mike Farrar again. How about Wednesday evening, the 10th?

ADMINISTRATIVE JUDGE KELBER: Sounds good.

ADMINISTRATIVE JUDGE FARRAR: And we will have discussions. I'll ask the other parties. Mr. Sugarman, we will call on your good offices, if we need any help dealing with local court people.

MR. SUGARMAN: No problem.

ADMINISTRATIVE JUDGE FARRAR: And we will

do that without consulting other parties, and we will guaranty them that all we are talking about is location, not the case. So we will think about either Quakertown or the Doylestown/Allentown alternative, and we will do it Wednesday evening, the 11th -- I'm sorry, Wednesday evening, the 10th, and maybe start at 5:30 and go as late as 8:00, if we have to. I don't anticipate we would need that much time for it.

Let's start at 5:30 and go until 8:00, if we have to. We will reserve that much time. Is that suitable for everybody?

MR. LEWIS: Yes, to the staff.

MR. THOMPSON: Yes,

ADMINISTRATIVE JUDGE FARRAR: We had reserved one question, the township's request that we defer a decision. Mr. Thompson, having been around here long enough on the previous go-round, I'm sure you will tell me that an applicant needs to get many licenses and approvals, and they all go forth in parallel, not in sequence.

MR. THOMPSON: Yes, Your Honor.

ADMINISTRATIVE JUDGE FARRAR: All right, but I don't need to listen to you, with all due respect. Mr. Sugarman, I think that's been the Commission's precedent and approach. Do you want to

speak against that?

MR. SUGARMAN: Well, my prior question would be whether that request of the township is mistakenly directed to the Board rather than to the staff at this point. As I understand it, the township is asking that the license be deferred, and that is within the purview of the staff at this point.

If what they are asking for is a stay, I would just request that the township be given an opportunity to clarify the request they are making as between asking the staff not to issue the license or asking the Board to stay a license.

As I understand what's been said here -- and my limited knowledge with this particular Subpart L licensing -- does the Board have the authority to require the staff in advance to not issue a license?

ADMINISTRATIVE JUDGE FARRAR: I don't think we have that authority.

MR. SUGARMAN: So I would request that the township be advised that they should either make their request of the staff or they should apply to the Board for stay at the proper time.

ADMINISTRATIVE JUDGE FARRAR: Yes, thank you for that clarification. I don't have the township letter in front of me, but I assume that people --

whoever it was addressed to, in the current circumstances it would be the staff and/or the Commissioners who would talk about it. We don't review the --

OPERATOR: Your conference is scheduled to end in ten minutes.

ADMINISTRATIVE JUDGE FARRAR: We don't review the staff's work in that sense other than through the merits of it at the hearing process.

MR LEWIS: This is Steve Lewis. For purposes of as an informational point, the township's letter was addressed to John Kinneman.

ADMINISTRATIVE JUDGE FARRAR: Let me interrupt, Mr. Lewis. I forgot you all were going to want to stay on the line afterwards. Karen, can you go extend it for a half-hour, extend the call.

Go ahead, Mr. Lewis.

MR. LEWIS: Thank you very much. I appreciate that. Where was I?

The township's request for a stay of the licensing action was directed to John Kinneman as the cognizant Branch Chief in Region I.

ADMINISTRATIVE JUDGE FARRAR: I see that. Now that is the July 18th letter?

MR. KINNEMAN: Your Honor, there are two

letters. I didn't bring them with me, but I believe the July 18th and July 21st --

ADMINISTRATIVE JUDGE FARRAR: The July 18th one was very brief. The July 21st was much longer.

MR. KINNEMAN: Yes. I believe that's my memory, sir.

ADMINISTRATIVE JUDGE FARRAR: And you, Mr. Lewis, for present purposes we will conduct ourselves -- Those were directed to the staff, not to the Board, and so I think the better course is to just let the staff deal with those or not deal with them, as it sees fit.

MR. LEWIS: That was precisely my point, and I just wanted to reiterate what I think the Board and parties know, but it is an important point. This is within the staff's purview under the regulation, and whatever is happening regarding the scheduling of various events in this hearing is an independent matter.

The staff will issue the license, if it does, when it has made all of the findings that are necessary to support that issuance, and that's the standard procedure.

ADMINISTRATIVE JUDGE FARRAR: All right.

Thank you, Mr. Lewis. Okay, we have extended the call an hour, so you all will have your time afterwards.

Well, then let's go ahead. The staff has to do its work, and the Board has to do its, and this letter is addressed from the township to the staff. So they will handle that.

Well, then here is what we have decided. We have decided the staff will file a brief by Friday, August 22nd, close of business, addressing the issues of standing and whether the areas of concern are -- or what their view is on those.

They will be aided in that by Mr. Sugarman filing by a week from today, August 14th, more specificity on geography and on his areas of concern. I would ask the staff and the other parties, when they --

OPERATOR: Your conference is scheduled to end in five minutes.

ADMINISTRATIVE JUDGE FARRAR: -- when they do standing, let's focus on those -- What is the meaning -- In that test the Commission has laid down, what is the meaning of "significant," and what is the meaning of "obvious" and "potential" in the context of this case?

I suppose one of the issues is, for

purposes of applying that, do you consider this source in the position it would be if installed in the irradiator or do you consider just a source that happens to be a half-mile from somebody and may or may not be shielded in different fashions? So we would like to have the parties' view on that.

Then the other parties will respond by Wednesday, September 3rd, and let's do this. We had a little confusion in the PFS case. We don't want either one of you to have an opportunity to get a leg up on the other. Let's pick a time of day at which you will send those electronically to us. Can we say 5:00 p.m. and, if either of you cannot make it, call the other one and say we are not going to do it until 7:00 p.m.

There was a concern at one point in another case that somebody had deliberated waited two hours to get a chance to read the other side's brief and then amend theirs. That turned out not to be the case. I'm not surprised it was not the case. We want to avoid that. So let's do 5:00 p.m. If someone can't make it, talk to opposing counsel and do it at some time.

MR. SUGARMAN: One point occurs to me. This is Bob Sugarman. If we are not going to be given

access to some of the specific documents that would have a bearing on significant impact, then our brief is not -- on standing -- or our position on standing is not going to be able to be developed on the right facts.

ADMINISTRATIVE JUDGE FARRAR: Are you talking about that you would not know -- you would not have the proprietary information about the specific design?

MR. SUGARMAN: We don't have it, no. It's been withheld as confidential.

ADMINISTRATIVE JUDGE FARRAR: Yes, but I am assuming that in your discussion after the court reporter and we hang up, that you are going to work that out so you will have those documents.

MR. SUGARMAN: Very good. Very good.

MR. THOMPSON: This is Tony Thompson. I have two questions maybe here. My understanding, is it -- I thought I heard you say that in providing the work on the distances or the information on the distances and to restate their contention with more specificity, but they are not to raise new contentions at this juncture.

ADMINISTRATIVE JUDGE FARRAR: Yes. Here, rather than contentions, we are talking areas of

concern, and no, we are not looking for new ones. We are looking to have some bullets that say, out of all the amalgam of papers that have already been filed, here are three or five or eight areas of concern, just so when we get to arguing about it, we know what we are talking about. But, yes, that is not to be new material.

MR. THOMPSON: And the second question I had is -- and I'm not sure I understood something you said just a second ago. You said something to the effect you are interested in us arguing about whether the source is to be considered sort of like in --

OPERATOR: Your conference is scheduled to end in one minute.

MR. THOMPSON: Whether the source is sort of to be considered in --

ADMINISTRATIVE JUDGE FARRAR: Let me interrupt you. For some reason -- Mr. Lewis, give me your phone number.

MR. LEWIS: Hold on a second here. Have them call 610-337-5248. That is actually a secretary's phone number, and we will have it transferred in here.

ADMINISTRATIVE JUDGE FARRAR: Okay. Mr. Sugarman?

MR. SUGARMAN: 215-864-2500.

ADMINISTRATIVE JUDGE FARRAR: If by chance, this gets cut off --

OPERATOR: Your conference time has now expired. Thank you.

ADMINISTRATIVE JUDGE FARRAR: You still there? Must be, once you push the button, there is no fail safe mechanism.

MR. LEWIS: I'm sorry, your Honor. My experience has been otherwise.

(Whereupon, the foregoing matter went off the record at 11:29 a.m. and went back on the record at 11:46 a.m.)

ADMINISTRATIVE JUDGE FARRAR: Let's go back on he record. We have had an interruption due to the conference service not honoring their commitment to extend the call. I apologize to everyone. It's not our fault, and we will find out what happened so it doesn't happen in a future case.

Mr. Thompson, Mr. Pugsley, you are on?

MR. THOMPSON: Yes, we are on.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman, you are on?

MR. SUGARMAN: Yes, Your Honor.

ADMINISTRATIVE JUDGE FARRAR: Mr. Lewis?

MR. LEWIS: Yes.

ADMINISTRATIVE JUDGE FARRAR: And you are up with your people?

MR. LEWIS: Well, the Region I people are here. Maria, are you on? You are contacting her? Thank you.

ADMINISTRATIVE JUDGE FARRAR: We left her messages, but if we --

MR. LEWIS: We can proceed even if they -- We can proceed.

ADMINISTRATIVE JUDGE FARRAR: All right. We have been going over -- Mr. Thompson, you were -- I thought you were -- Well, tell me what you were saying, Mr. Thompson.

MR. THOMPSON: I had a question. I thought I heard you say you wanted something, some presentation or something to address the question of whether or not we are -- that this is addressing the source sort of in splendid isolation or as part of an irradiator. Is that correct?

ADMINISTRATIVE JUDGE FARRAR: Well, yes. In other words, that test that the Commission laid down and various licensing boards have applied -- a legal issue there, I think -- maybe the answer is clear one way or the other -- is as you describe it:

Is that the source in splendid isolation or is it as part of the irradiator? You know, how is that test meant to be applied?

We will have the staff address that first, and then you each can have your crack at it.

Now the next question I thought you were going to ask is: As part of an irradiator, you have some proprietary information about how that -- and some of it is not proprietary, but some is -- about the way that works.

I take it, you can work out with Mr. Sugarman in this time after this call how you would deal with the documents, but I would like to briefs not to utilize the proprietary information -- not to refer specifically to it, but just to say -- You know, if you want to depend on how the irradiator is set up, if you want to rely on how the irradiator is set up, including the proprietary information, make general reference to it. You don't have to have the specifics. We will get those out of the application.

I don't want to get in the position of having to lock up or not release these briefs. Feel free to amend my suggestion.

MR. THOMPSON; That makes sense to me.

ADMINISTRATIVE JUDGE FARRAR: In other

words, we don't want you having to lay out in these arguments, you know, exactly the proprietary niceties of this. You know, we can get those from the application, but we do think there is a legal issue. When it says "obvious potential," does "potential mean," as you say, in splendid isolation or as part of the irradiator?

Initially, that is a legal question: What does the standard mean?

MR. THOMPSON: Yes.

ADMINISTRATIVE JUDGE FARRAR: Then you can argue it both ways.

Speaking of that, do I understand correctly, the facility and the irradiator is built. All you are missing is the source?

MR. LEWIS: This is Steve Lewis. We were just discussing that. John, why don't you go ahead and state it, which you can better than I can.

MR. KINNEMAN: Well, just from the -- This is John Kinneman. From the point of view of the staff, the components of the irradiator as we have observed them exist at the facility. I guess we would not call it an irradiator until the Cobalt 60 is installed, but in our inspection process we have had staff visit it, and all of the components are present.

and the applicant has put them together and demonstrated how it will operate, once the Cobalt 60 is present.

ADMINISTRATIVE JUDGE FARRAR: All right. Then we have all our dates set. We will decide where that evening hearing will take place. So I think, if everyone adheres to these schedules, we can -- I guess it's possible we could cancel the oral argument, if the case is clearcut, one way or the other, but I am assuming it will not be. So I think we should plan to go ahead.

We will put out an order, but it won't be immediate. Given our time schedule here, it will probably be next week that an order setting this out, including the potential -- you know, the dates, the times, including the potential for oral argument.

Are there any other items any of you think we need to cover here in order to plan how we are going to go forward?

MR. LEWIS: Yes. This is Steve Lewis. Judge Farrar, you had earlier offered me the opportunity, given the summer vacations and things like that, to make my filing, which you now have down for August 22nd -- You know, I don't want to create a big ripple effect here, but I am looking at various

pieces of paper that I need to take into consideration, one of which I didn't look at before I agreed to August 22nd.

It turns out that, for me, August 25th -- doing it on Monday, August 25th is going to be immeasurably preferable.

ADMINISTRATIVE JUDGE FARRAR: All right. Let's do that, close of business, August 25th. Does that affect the other parties' ability to meet the Wednesday, the 3rd 5:00 p.m. deadline?

MR. THOMPSON: No.

ADMINISTRATIVE JUDGE FARRAR: Mr. Sugarman?

MR. SUGARMAN: Fine.

ADMINISTRATIVE JUDGE FARRAR: So it's fine with both of you. All right, that's fine.

MR. LEWIS: Thank you, everyone.

ADMINISTRATIVE JUDGE FARRAR: Any other questions about how we are going to move forward? I want to thank you all. We did have a concern at the beginning, that how do you talk about these issues without talking about their merits, and I think we have -- you have all done very well with that. I appreciate your cooperation on this and your expected cooperation as you talk after this call about -- as

you stay on the line and talk about the protective orders and so forth.

MR. LEWIS: Your Honor, let me just ask one more question. Since we have set specific dates, what is the date that we are going to expect to get -- we and the staff will get Mr. Sugarman's list of areas of concern and the information on the distances?

ADMINISTRATIVE JUDGE FARRAR: That's close of business, a week from today, Thursday, August 14th.

MR. LEWIS: Okay. Thank you.

ADMINISTRATIVE JUDGE FARRAR: Okay. One of the things in the rules in all cases is we are supposed -- this case and others, is we are supposed to talk about settlement. I think the precise provision is 2.1241.

Let's go off the record. We are back at this point. Stay with us, but let's go off the record and talk about settlement.

(Whereupon, the foregoing matter went off the record at 11:55 a.m. and went back on the record at 12:12 p.m.)

ADMINISTRATIVE JUDGE FARRAR: We are back on the record. We had a discussion of the possibility of settlement with the parties. We have learned about some of the facts about the meetings.

We have decided that we should move full speed ahead with the schedule that we set out. The parties are welcome, as they always are, to discuss further among themselves some of the things we mentioned today, but we have offered the good offices of either this presiding officer or a specially appointed settlement judge, if that would help, but at this point the idea is out there, and it is in the parties' hands whether to pursue that.

At this point, if there is no further business, the best thing we can do is get off the call and let the parties discuss the protective order. So is there any further business?

All right. Thank you. We will be talking to each other some more, formally or informally. Thank you all, and look forward to working with you, and we will thank the court reporter, and the court reporter and the Board will sign off. Thank you.

(Whereupon, the foregoing matter went off the record at 12:13 p.m.)

CERTIFICATE

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

Name of Proceeding: CFC Logistics, Inc.
Pre-Hearing Conference

Docket Number: 03036239

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.

Rebecca Silberstein
Official Reporter
Neal R. Gross & Co., Inc.