

RAS 6735

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage
Pre-Hearing Conference

Docket Number: 72-22-ISFSI

DOCKETED
USNRC

August 22, 2003 (9:28AM)

Location: (telephone conference)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Date: Wednesday, August 20, 2003

Work Order No.: NRC-1047

Pages 14144-14210

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

(1:18 p.m.)

1
2
3 CHAIRMAN FARRAR: Okay. Let's go on the
4 record. We're starting what I believe is the third
5 hearing scheduling conference in the last just a
6 little more than three weeks. We had one July 28th,
7 August 12th, and now on August 20th. We're getting
8 started 15, 20 minutes late because of some technical
9 glitches which we will find out the reason for and
10 make sure they don't happen again.

11 Why don't we introduce ourselves. This is
12 Mike Farrar. I've got with me Judge Lam and Susan
13 Lynn, our law clerk, and Judge Kline is on from
14 somewhere else.

15 Mr. Gaukler, you want to introduce
16 yourself.

17 MR. GAUKLER: Paul Gaukler, and I have
18 with me Sean Barnett.

19 CHAIRMAN FARRAR: All right. And Ms.
20 Chancellor.

21 MS. CHANCELLOR: For PFS, Denise
22 Chancellor, Jim Soper, Connie Nakahara and Jean
23 Braxton.

24 CHAIRMAN FARRAR: Okay. Welcome all. And
25 Ms. Marco.

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1 MS. MARCO: This is Catherine Marco. With
2 me is Bernard Stapleton from the Office of Nuclear
3 Security and Incident Response. And I also have
4 Project Manager, Mark Delligatti.

5 CHAIRMAN FARRAR: All right. Welcome. Is
6 there anyone else who hasn't been introduced? All
7 right.

8 Another technical glitch. Apparently,
9 this e-mail in and out is not working too well, so the
10 company has sent us last night an e-mail with the
11 proposed consensus, or not consensus, schedule which
12 they're sending us by fax. Now maybe from now on on
13 things that go out before a conference call, maybe
14 each of us should that's sending them should ask the
15 other parties to acknowledge receipt. We certainly
16 wouldn't mind doing that, so that the company lawyers
17 would have known that we did not get this, so maybe
18 these last minute things -- we can all start doing
19 that, asking each other to respond.

20 Mr. Gaukler, I just heard our fax ring, so
21 I think your two page document is on the way, so why
22 don't we wait. Well, why don't we start with this
23 question. We received a courtesy copy the other day
24 of the final version of the staff request for
25 additional information, the RAIs in a sense that were

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1 sent to the company. Mr. Gaukler, do you have an
2 estimate for us of how long that will take to respond?

3 MR. GAUKLER: We believe that we can
4 respond to them by August 29th.

5 CHAIRMAN FARRAR That was the original
6 date you had hoped, but didn't want to commit to until
7 you had seen them?

8 MR. GAUKLER: Yes.

9 CHAIRMAN FARRAR: Okay. Ms. Marco, is
10 that -- Mr. Delligatti, at this point, that's the
11 complete set. You don't have some others in mind that
12 you're formulating now?

13 MS. MARCO: Your Honor, the RAIs that we
14 sent out on August 16th, they were comprehensive and
15 do consist of our complete set at this time.

16 CHAIRMAN FARRAR: Okay. There's still the
17 possibility though that the answers you get could, for
18 whatever reason, trigger some follow-up?

19 MS. MARCO: Your Honor, that's a very real
20 possibility. Those reports -- those RAIs covered
21 almost all of the accident report, including Dr.
22 Cornell's Probability Assessment. And they are quite
23 comprehensive, quite detailed. We have 31 RAIs, and
24 we anticipate that roughly a dozen of those will
25 require some additional analysis on the part of the

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1 Applicant, and so we do say that there's a substantial
2 amount of work to be done. And we hope to receive a
3 high quality -- a complete response from PFS so that
4 we don't have to issue RAIs. But even if we do
5 receive that kind of response, there's still a
6 possibility that we would have to do that anyway.

7 MR. GAUKLER: Our intent, obviously, is to
8 provide a high quality response. I will say in this
9 respect, the August 7th meeting was very useful
10 because it did give us a chance to get a week's
11 head-start on most of the questions, or all the
12 questions that -- most of the RAIs in the final copy
13 sent out by the NRC were RAIs that we had gleaned from
14 our meeting with the NRC.

15 CHAIRMAN FARRAR: All right. Let me --

16 MS. MARCO: If I could comment, Your
17 Honor. Just looking at PFS' track record on getting
18 reports in on this proceeding, we think that they are
19 being a little optimistic given the scope of the RAIs,
20 and given the history of the reports that they
21 submitted initially.

22 CHAIRMAN FARRAR: Okay. I would -- I
23 suppose that's a real possibility. Again, any time we
24 talk about delay in this case, we're not meaning to
25 assess any blame, but just to point out that it's a

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1 complicated case, and certainly it's in the company's
2 interest to do things as quickly as possible, so we
3 with equal certainty have assumed they've been making
4 their absolute best efforts, and things are just
5 complicated and detailed, and it's comprehensive
6 enough that it takes more time than expected. I would
7 think though we should go ahead and do today's
8 schedule based on the August 29th date. And, Mr.
9 Gaukler, I don't know if we have the -- oh, the fax
10 has been received. We're just making several copies
11 for us. Jerry, you'll have to function a little bit
12 in the dark there. In fact, because of the -- do all
13 the rest of you have it? Ms. Marco, do you have it?

14 MS. MARCO: Yes, Your Honor.

15 CHAIRMAN FARRAR: And Ms. Chancellor?

16 MS. CHANCELLOR: Yes, we do, Your Honor.

17 CHAIRMAN FARRAR: Good. And as you
18 discuss it, even though most of us have it in front of
19 us, or will have it in front of us shortly, make sure
20 for Judge Kline's benefit that you say specifically
21 what you're addressing.

22 MR. GAUKLER: Judge Kline, I did send it
23 to your Verizon.net, as well.

24 JUDGE KLINE: I have the schedule.

25 CHAIRMAN FARRAR: Oh, you do have it.

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1 Okay.

2 JUDGE KLINE: I do.

3 CHAIRMAN FARRAR: Then it's --

4 JUDGE KLINE: Yeah, we're okay on that.

5 CHAIRMAN FARRAR: Mr. Gaukler, do you have
6 any other preliminary matters we could deal with
7 before we talk about the schedule problems?

8 MR. GAUKLER: No. I think I can just
9 briefly summarize what you're going to get.

10 CHAIRMAN FARRAR: Okay. Here we go.
11 We've just been handed it. Go ahead.

12 MR. GAUKLER: You're going to get two
13 schedules, one based on the assumption that we meet
14 the August 29 date, and the other one based on a
15 September 4th filing date for the RAIs, so you're
16 going to have two schedules in front of you.

17 CHAIRMAN FARRAR: All right.

18 MR. GAUKLER: The August 29 one is the one
19 proposed by PFS. It would allow two weeks of hearings
20 before Judge Kline's absence.

21 CHAIRMAN FARRAR: Hold on. Let's follow
22 this down. Okay. So as we go -- so the State and the
23 Staff have a schedule based on their thinking you
24 won't make August 29th.

25 MR. GAUKLER: That's correct.

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1 CHAIRMAN FARRAR: So they start with
2 September --

3 MR. GAUKLER: 4.

4 CHAIRMAN FARRAR: 4.

5 MS. CHANCELLOR: But one thing, Your
6 Honor. Even if PFS makes the August 29 date, because
7 of the Labor Day weekend, we won't receive that
8 response until September 2, so there's not a whole lot
9 of difference in the two schedules.

10 CHAIRMAN FARRAR: Okay. Good point. Now
11 okay, if we go through identification of witnesses,
12 then you're each allowing a week essentially after the
13 RAI responses to identify witnesses.

14 MR. GAUKLER: That's correct.

15 CHAIRMAN FARRAR: The State expert reports
16 would come in a week after that. The Staff gets more
17 time, they get -- no.

18 MS. MARCO: Your Honor, if I can --

19 CHAIRMAN FARRAR: Yeah, go ahead, Ms.
20 Marco.

21 MS. MARCO: -- speak to that. I know that
22 PFS' proposed schedule, like Denise Chancellor just
23 said, we would not receive their responses to the RAIs
24 until Tuesday, September 2nd. And so we had said
25 before, we have said along that we would need at least

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1 three and a half to four weeks from that date to
2 formulate and provide our written evaluation. That
3 time frame ends up to be that Friday, the 26th, being
4 three and a half weeks on the PFS calendar, and
5 roughly the same for either one.

6 CHAIRMAN FARRAR: Okay. All right. So
7 it's no longer seven days difference, but four days
8 difference reflects the Labor Day weekend.

9 MS. MARCO: That's correct, Your Honor.
10 So that is a three and a half week -- we could say
11 three and a half to four though.

12 CHAIRMAN FARRAR: Okay. And we've got --
13 now we start -- now at this point we start to diverge.
14 Go ahead, Mr. Gaukler. Tell us about the depositions.

15 MR. GAUKLER: We have depositions that
16 would allow hearings to begin and retract basically
17 the September -- retract basically the amount of time
18 that was allowed in the schedule for the initial
19 deposition, June 30th, and we basically followed the
20 same format where we start the PFS and State
21 depositions shortly after the State files its expert
22 reports. And we have some time after that's filed for
23 evaluation, and from that time reserved for Staff
24 depositions.

25 MS. CHANCELLOR: If I might add on that

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1 point, Your Honor, the dates just aren't working out
2 well. Friday the 26th of September is the date of the
3 stop evaluation and all these dates are filing dates.
4 We wouldn't receive that until Monday, the 29th. If
5 we wanted to send it to our experts, it would be the
6 30th, the 1st would be a travel day and we'd be
7 deposing the Staff the next day, so we wouldn't have
8 any time to prepare for Staff depositions under PFS'
9 schedule.

10 MR. GAUKLER: I would say, Your Honor,
11 we'll probably try to make arrangements with the Staff
12 to pick it up. We were trying to make arrangements
13 with the Staff to pick up the RAIs assuming that there
14 had been safeguards but there were not, that we could
15 send those by e-mail.

16 CHAIRMAN FARRAR: I'm confused here a
17 minute. Let's stick for a moment with the PFS
18 proposal. If the State expert reports come in on
19 September 11th why, Ms. Chancellor, couldn't you start
20 depositions on the 16th?

21 MR. GAUKLER: She was talking --

22 MS. CHANCELLOR: Your Honor, I was talking
23 to the deposition of the Staff witnesses, not the
24 deposition of PFS' witnesses. And if you look on the
25 depositions, October 2 and 3 is reserved for Staff

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1 depositions, and so the Staff written evaluation would
2 be filed Friday, October the 26th, and the State would
3 receive that Monday, September the 29th.

4 CHAIRMAN FARRAR: You say you have no
5 problem with the PFS depositions.

6 MS. CHANCELLOR: Oh, we have a lot of
7 problems with PFS' deposition, but -- because I don't
8 think it's a realistic schedule, and --

9 CHAIRMAN FARRAR: Before we get into --
10 let's just make sure we understand it, before we get
11 into arguments about why it's too abbreviated, or
12 whatever any of you want to say. The filing -- well,
13 you have this pre-filed direct coming in within two
14 weeks after the last deposition.

15 MR. GAUKLER: Approximately, yes. In
16 terms of the time from the last deposition to the
17 start of hearings is approximately the same amount of
18 time that was -- June 30th, well, approximately three
19 weeks, might be one day difference.

20 MS. CHANCELLOR: I believe it's eight
21 working days from all the depositions to when we
22 pre-file testimony.

23 CHAIRMAN FARRAR: All right. Then we've
24 got motions in limine and then, Mr. Gaukler, it
25 appears you would have no written response.

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1 MR. GAUKLER: Correct. It would be in
2 line with what Your Honors have spoken before about,
3 if somebody wanted to file something, they could file
4 it even before, a day before, if they wanted to file
5 a reply.

6 CHAIRMAN FARRAR: And if you were
7 challenging the State and they're traveling, we would
8 defer their opposition because their witnesses would
9 not be first in line.

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

11 CHAIRMAN FARRAR: Okay. Then you're
12 starting the hearing. That gets us to October 27th
13 hearing date which we said was good because we could
14 get two weeks in before Judge Kline leaves. Mr.
15 Gaukler, when you were a young man you were very
16 optimistic when you're working with the Appeal Panel.
17 I see you still are. You think we can do this hearing
18 in two weeks.

19 MR. GAUKLER: I realize that it would be
20 a challenge to do it in two weeks, but I know PFS is
21 going to try to expedite it as much as possible, like
22 we talked. Basically, two weeks or two weeks plus a
23 day or two, such that the Board would -- probably
24 might convene without Judge Kline. If we go much more
25 on that, then we would go into December.

1 CHAIRMAN FARRAR: Jerry, we said in the
2 last pre-hearing conference, re-emphasizing what had
3 been said in the one before that, that while we're
4 willing to go a day here and there without a board
5 member, we're not willing to go any substantial
6 period, and that's not so much because you couldn't
7 pick up something that had been done, but because we
8 feel we need all three of us asking questions to make
9 sure that the record has all the answers we're going
10 to need for a decision. So we had emphasized it's not
11 that you couldn't pick up and understand what
12 happened, but that what had happened might not be what
13 would have happened had you been here. So we talked
14 about the possibility of a day or two with one of us
15 missing and still going ahead.

16 All right. Mr. Gaukler, under your plan
17 we would be starting October 27th, which I think was
18 six weeks later than our original hope to start on
19 September 15th.

20 MR. GAUKLER: I think that's correct, Your
21 Honor.

22 CHAIRMAN FARRAR: All right. I'm sorry.
23 You do have that in the -- I was looking at my old
24 calendar. You have that in the first column.

25 MR. GAUKLER: I have the old schedule in

1 the first column.

2 CHAIRMAN FARRAR: Right. Okay. So we'd
3 be six weeks, and that schedule, that original
4 schedule has doing the Board decision by year-end. So
5 now, in effect, what we're doing is recognizing that
6 in essence, six weeks had been lost by the extra time
7 you all needed to file the larger number of reports
8 than you had planned, and essentially three weeks lost
9 to the RAI process.

10 MR. GAUKLER: That's correct. We
11 recognize that we won't make the end of the year, Your
12 Honor, even under our schedule. We're talking at
13 least a six weeks difference.

14 CHAIRMAN FARRAR: Okay. All right. Then
15 we understand what you've laid out here. Ms.
16 Chancellor, which of you wants to address the
17 differences you have with column -- just lay out why
18 there are differences, and then we'll talk about what
19 makes sense.

20 MS. CHANCELLOR: First of all, I would
21 like to comment on PFS' proposed schedule. We will
22 receive PFS' responses to RAIs on Tuesday, September
23 the 2nd. Two weeks later, on Tuesday, September the
24 16th, we start depositions, and by my count there - -

25 CHAIRMAN FARRAR: All right, Ms.

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1 Chancellor. Slow down here. You would receive them
2 on September 2nd.

3 MS. CHANCELLOR: Because of Labor Day.

4 CHAIRMAN FARRAR: Right. And then you
5 would start depositions --

6 MS. CHANCELLOR: On Tuesday, the 16th,
7 which is two weeks later.

8 CHAIRMAN FARRAR: And you're going to
9 suggest that that's the time in a case of this
10 magnitude to get ready for depositions?

11 MS. CHANCELLOR: Well, I think a case of
12 this magnitude, and also, safeguards because then when
13 you have to Fed Ex those documents to our experts, and
14 then they've got to Fed Ex responses, or we're going
15 to talk in general terms about responses, so we only
16 have two weeks to get ready for depositions. Then
17 after depositions, it's even worse.

18 CHAIRMAN FARRAR: Ms. Chancellor, let me
19 interrupt you at that point. Before we went on the
20 record here we talked about -- today we talked about
21 the safeguards briefing we had received this morning
22 from Mr. Stapleton, and one of the things that I think
23 impressed all of the Board Members and Staff, and
24 which many of our questions dealt with were just the
25 raw logistics. There's, you know, policy issues of

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1 what to do with -- we came away from that impressed or
2 concerned about the raw logistics, so Mr. Gaukler and
3 Ms. Chancellor, as finishing argument, we'll want you
4 to respond specifically to the logistical problem,
5 because I have to say, we are -- we start out a bit
6 sympathetic to it, but you're certainly welcome to
7 convince us that we're wrong. Go ahead, Ms.
8 Chancellor.

9 MS. CHANCELLOR: So we have two weeks to
10 prepare for depositions. And during the entire
11 deposition period of deposing PFS' witnesses, we won't
12 have the benefit of the Staff evaluation because we
13 won't receive that until the end of September, the
14 date on which we are expected to be through with
15 deposing PFS' witnesses.

16 As for the number of witnesses to depose,
17 two, three, four, five, six, there are at least six
18 panels, or if they go panels or PFS' witnesses, and
19 probably the same for the State, so we're talking
20 about 12 sets of depositions in that two week period.

21 CHAIRMAN FARRAR: Let me interrupt that.
22 Where do you all contemplate those would take place?

23 MR. GAUKLER: We would probably agree upon
24 a common location. It was done in the past. We have
25 flown our people up to Salt Lake City and just had

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1 everything there. Also, they fly their people up to
2 D.C. and have everything here.

3 CHAIRMAN FARRAR: Okay. You don't travel
4 around to where each of the different witnesses are.

5 MR. GAUKLER: No. Either we'll do what
6 we've done in the past, I think consistently in the
7 past, visit to Salt Lake City or D.C.

8 CHAIRMAN FARRAR: All right.

9 MS. CHANCELLOR: Or both.

10 CHAIRMAN FARRAR: Or both.

11 MR. GAUKLER: One or the other.

12 MS. CHANCELLOR: Some in Salt Lake and
13 then a few on the east coast.

14 MR. GAUKLER: We would work that out with
15 the State. We already talked about that last time.
16 With the old schedule we were going to have one week
17 in Salt Lake City and then one week here in D.C.
18 That's the logistics we would work out with the State
19 as we normally have in the past.

20 MS. CHANCELLOR: And then this affirms the
21 availability of witnesses for that, about 15 to 20
22 people in that two week period. And the State knows
23 already that we've got a couple of problems with --
24 we've got problems with a couple of our witnesses on
25 availability on those dates.

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1 Then after we finish depositions on
2 Friday, the 2nd of October, we won't have the
3 deposition transcript given the safeguards, it will
4 probably take more time to transmit because they can't
5 transmit them electronically. We have five working
6 days to pre- file testimony. And this schedule here
7 --

8 CHAIRMAN FARRAR: But, Ms. Chancellor, let
9 me follow that through. So you -- if all goes well
10 and you finish the depositions on the 3rd, then -- but
11 you need those to prepare your testimony.

12 MS. CHANCELLOR: Oh, absolutely.

13 CHAIRMAN FARRAR: And so you have between
14 the time you finish the depositions, you have eight
15 working days to prepare your testimony, but some of
16 those days would be consumed with waiting for the
17 transcript.

18 MR. GAUKLER: All of them.

19 JUDGE LAM: Not all of them because, first
20 of all, you would have our depositions from before.
21 You would have the transcripts well before you start
22 preparing testimony so you encompass some of those at
23 the end.

24 MS. CHANCELLOR: Well, if we're going to
25 be in depositions, we can't leave while we're in

1 there.

2 JUDGE LAM: But you have the transcript
3 though.

4 MS. CHANCELLOR: All right. It's seven
5 working days because Columbus Day falls in the middle
6 of that, so --

7 MR. GAUKLER: How about expand the number
8 of working days to include weekends and holidays if
9 we're going to --

10 MS. CHANCELLOR: Oh, Paul. We'll take Yom
11 Kippur too.

12 CHAIRMAN FARRAR: Let me ask you this. I
13 guess a lot of this depends on how many lawyers each
14 side is willing to throw into this. And I was
15 wondering, is it possible that one person is -- one or
16 two people are taking depositions, and some other
17 people are back home working with the expert reports,
18 getting those deposition transcripts in and doing up
19 drafts of the testimony while the others are out in
20 the field?

21 MS. MARCO: Your Honor, may I speak to
22 that? This is Catherine Marco.

23 CHAIRMAN FARRAR: Yes, go ahead.

24 MS. MARCO: While it may not be a problem
25 with the attorneys, the problem that the Staff has is

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1 during that time, the Staff witnesses are likely going
2 to be trying to finish up the report, and at the same
3 time trying to attend and receive transcripts from
4 depositions to see what other information we might
5 need in our testimony. And then we have to be deposed
6 the following week, so we have a very little bit of
7 time in there to actually pre-file. And Denise is
8 correct again about a Federal holiday in there.

9 CHAIRMAN FARRAR: Okay. Ms. Marco, yeah.
10 I'm taking myself back to the table here.

11 MS. MARCO: Okay.

12 CHAIRMAN FARRAR: So while those
13 depositions are going on, you're still doing that
14 written report or evaluation that's due on the 26th.

15 MS. MARCO: That's correct. We will try
16 and have a Staff member available to attend
17 depositions, as well. It's still going to be quite
18 difficult with the amount of people that we have to
19 review our report during that same time.

20 JUDGE LAM: This is Judge Lam. Ms. Marco,
21 also this schedule has absolutely no margin for
22 anything unexpected. Is that true?

23 MS. MARCO: You are absolutely correct.
24 This schedule has no margin if the reports come in
25 late. It has no margin if there's a need for any

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1 additional information, or any additional depositions.
2 In fact, no margin if we contemplate that there is
3 more witnesses that we need, so you're right. There's
4 no margin at all.

5 JUDGE LAM: Or if any one of your
6 technical people God forbid get sick or whatever
7 unexpectedly.

8 MS. MARCO: Yes.

9 MR. GAUKLER: I would say, Your Honors,
10 that the schedule of durations that we have laid out
11 here basically track those that were in the June 30th
12 schedule that was approved by the parties and the
13 Board generally. And that it's a tight schedule.
14 Obviously, if something happens there would be some
15 slippage back to a December hearing date. But in
16 keeping with the Commission's directive to proceed
17 expeditiously, we believe it's best to do this. We
18 believe it's a schedule that can be accomplished, that
19 we should pursue this schedule, as opposed to delaying
20 it five weeks into December.

21 CHAIRMAN FARRAR: Those are good points,
22 Mr. Gaukler. Let me ask, on that original schedule
23 that was "approved", I do seem to remember that the
24 State had some misgivings about that. Is that
25 correct, Ms. Chancellor?

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1 MS. CHANCELLOR: You've got it right, Your
2 Honor. We certainly did. This was assuming that the
3 information was not going to be safeguarded, that
4 schedule.

5 MR. GAUKLER: We had not necessarily
6 assumed that.

7 MS. CHANCELLOR: When we submitted the
8 joint report, the State made a significant point of if
9 the information is not safeguard, and if there aren't
10 any RAIs, then we could possibly meet this expedited,
11 no room for slippage schedule. But we made a point in
12 that joint report of stressing that if there were
13 safeguards, and if there were RAIs, then it was a
14 different proposition.

15 MR. GAUKLER: That's what I said, that you
16 had assumed no safeguards, yet that --

17 CHAIRMAN FARRAR: All right. I think we
18 understand the different positions. All right. Then,
19 Mr. Gaukler, you would have us start the hearing
20 October 27th, go two week which would get us finished
21 before Judge Kline has to depart, and then we would
22 have seven or eight weeks until the end of the year.
23 Your schedules don't deal with that, but we would have
24 seven or eight weeks until the end of the year, which
25 I guess would be consumed. We can work out some

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1 schedule of simultaneous openings, filings and
2 simultaneous reply filings, which would more or less
3 put the Board on January 1st or thereabouts with
4 whatever time we allot ourselves to write our
5 decision. Is that correct?

6 MR. GAUKLER: That's the goal PFS has been
7 working towards. Yes, Your Honor.

8 CHAIRMAN FARRAR: So if we did -- again,
9 without setting those dates in stone --

10 MS. MARCO: Whoa, hold it.

11 CHAIRMAN FARRAR: I know.

12 MS. CHANCELLOR: If we could change after
13 December 2 and get our findings in by the end of the
14 year?

15 CHAIRMAN FARRAR: No, no, no. This is Mr.
16 Gaukler's proposal to end the hearing November 7th.

17 MS. CHANCELLOR: Oh, okay.

18 CHAIRMAN FARRAR: I'm just thinking ahead
19 on that, that that would put us January 1st. If we
20 gave ourselves 45 days, it would be mid-February. If
21 we gave ourselves 60 days, it would be the end of
22 February. Now I just want to make sure, no one is
23 saying it's possible to go any faster than that. Is
24 that correct?

25 MR. GAUKLER: I think that's correct, Your

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1 Honor. We're not suggesting that. Our goal is to
2 have everything in to the Board by the end of the
3 year, such that the only thing left is for the Board
4 to write its decision.

5 MS. CHANCELLOR: So over Thanksgiving and
6 Christmas we're writing findings and reply findings in
7 about six weeks. Is that what you're proposing under
8 your schedule, Paul?

9 CHAIRMAN FARRAR: No, he hasn't proposed
10 anything, Ms. Chancellor. I just want to put -- I
11 want to know standing back from it, of a hearing that
12 ended November 7th, there's no possibility of the
13 Board starting its time. Now grant it we're going to
14 be working before that time, but our period after the
15 findings come in, at the very best couldn't be until
16 the beginning of January. So under the 60-day Rule,
17 no one is suggesting we're finishing before the end of
18 February, and I think I heard Mr. Gaukler agree. Now
19 what you're saying is you can't do -- that we can't do
20 the two rounds of filings starting November 7th. We
21 can't do those by year end, particularly in view of
22 the Thanksgiving and Christmas period. Anything is
23 possible to do. The question is, how much is everyone
24 willing to be driven.

25 I know you've all worked very hard for a

1 great many years. The question is how is -- what's
2 reasonable or even moderately unreasonable to ask
3 people to do, versus what is, you know, just not
4 possible or not fair to ask people to do. And that's
5 the balance we're trying to strike between making sure
6 each side gets a fair opportunity to prepare and
7 present its case on the one hand, versus bearing in
8 mind the Commission's mandate that even though it's
9 now been agreed by everyone their year-end desire
10 can't be met, that doesn't mean that their desires are
11 not to be factored into this under the new situation.

12 Well, having that in mind, let's back up.
13 We've got a problem with the overlap, Ms. Marco said,
14 about the Staff doing its report or evaluation and
15 doing the depositions, and getting the pre-filed
16 testimony in. That's asking a lot. I think she
17 focused on the experts, but I assume that's asking --
18 how many lawyers do you have on this case, Ms. Marco?

19 MS. MARCO: Currently two.

20 CHAIRMAN FARRAR: You and Mr. Turk.

21 MS. MARCO: That is correct.

22 CHAIRMAN FARRAR: Mr. Gaukler, who will
23 you have on it?

24 MR. GAUKLER: I have Mr. Barnett, myself,
25 and we engage Mr. --

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1 CHAIRMAN FARRAR: And what happened to Mr.
2 Silberg?

3 MR. GAUKLER: He'll be involved, but he
4 won't be doing the depositions, preparation. He'll be
5 in a review function.

6 CHAIRMAN FARRAR: All right. And, Ms.
7 Chancellor?

8 MS. CHANCELLOR: We have three, Mr. Soper,
9 Mr. Nakahara and myself. I'll be out for part of the
10 time because of other commitments.

11 CHAIRMAN FARRAR: What happened to Mr.
12 Egan and Mr. Malsch?

13 MS. CHANCELLOR: We only have a certain
14 amount of money to pay them, and they're doing a very
15 limited scope, and at this time we don't anticipate
16 that they will be involved in depositions or in
17 hearings.

18 CHAIRMAN FARRAR: All right. Hold on.
19 I'll hit the mute button here, and I want to consult
20 with Dr. Lam. Jerry, there's no way I can get you in
21 on it.

22 MR. GAUKLER: Your Honor, I'd like to make
23 several points before you consult, if I could.

24 CHAIRMAN FARRAR: Certainly, go ahead.

25 MR. GAUKLER: First of all, Your Honor,

1 I'd like to make one major point.

2 CHAIRMAN FARRAR: Mr. Gaukler, I was not
3 intending to come up with any ruling.

4 MR. GAUKLER: Oh, okay.

5 CHAIRMAN FARRAR: No. I just wanted to
6 consult with Dr. Lam.

7 MR. GAUKLER: Okay. I have some points I
8 want to make. Okay.

9 CHAIRMAN FARRAR: Yeah. No. We're just,
10 you know, kind of see where -- you know, how we view
11 this on an overview basis, and then we'll get back to
12 the particulars.

13 (Whereupon, the proceedings in the
14 above-entitled matter went off the record at 1:51:08
15 p.m. and went back on the record at 1:53:32 p.m.)

16 CHAIRMAN FARRAR: All right. We're back
17 on the record. Judge Lam and I have talked about this
18 generally. Go ahead, Mr. Gaukler. You wanted to make
19 some points.

20 MR. GAUKLER: Yes. First of all, I want
21 to make several points. This issue is unlike some of
22 the other issues that we've been involved in, because
23 here we have expert reports by PFS, which the Board
24 and the parties have had to look at since July. The
25 State is going to be preparing its expert reports and

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1 file them under our proposed schedules, September
2 11th, which is the date they had proposed in the July
3 28th conference call. And I know Your Honors were
4 concerned about fairness before, and if you look at
5 the amount of time PFS had from the May 29th
6 conference to its filing date, which was approximately
7 seven weeks, the State now with the schedule will be
8 given approximately the same amount of time. And in
9 fact, on some of the various reports, some of the
10 reports they will actually have more than seven weeks,
11 like the structural integrity and the --

12 CHAIRMAN FARRAR: Mr. Gaukler, if I can
13 paraphrase what you're saying then, you're saying the
14 State's time shouldn't be viewed as beginning to run
15 now.

16 MR. GAUKLER: Right.

17 CHAIRMAN FARRAR: That it began to run
18 some time ago in terms of doing preliminary work.

19 MR. GAUKLER: And also another point that
20 I think is very important to make here, because we
21 have expert reports out there by PFS and by the State,
22 it's my understanding they're going to file reports,
23 and the Staff's written evaluation, you're going to
24 have written documents that basically set forth the
25 position of the various parties. And we would receive

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1 those reports being the mainstay of the testimony and,
2 for example, Mr. Turk had said previously that he
3 would proceed just putting several cover pages on the
4 Staff's evaluation, stating that they adopt the
5 evaluation and then go on to address specific points
6 that may have been raised in discovery, et cetera.
7 We, likewise, intend to basically rely upon our
8 experts reports, and would have our testimony focus on
9 responding to points made in the State's expert
10 reports or points that were raised in discovery, so
11 you would see our testimony summarizing what we have
12 in the actual reports, maybe clarifying a few points,
13 but then going on and focusing on the specific points
14 that have been raised by the State in their reports
15 and discovery. So it's unlike other cases where we've
16 had to prepare pre-filed testimony from scratch.
17 We're going to have a substantial portion of our
18 direct case prepared in the form of expert reports.
19 I think that's a very important fact to keep in mind
20 when the Board is reviewing the proposed schedules.

21 In terms of the issue of depositions,
22 we've had a practice in this case of having the State
23 and PFS' depositions and discovery prior to the
24 Staff's deposition and discovery, and also while the
25 Staff's review was ongoing. And I direct Your Honors

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1 to a schedule that was issued on December 23, 1999.
2 And if you look at that schedule, for example, that
3 was issued by the Board December 23, 1999, on that
4 schedule, one of the contentions that PFS and State
5 discovery ran from April 1 to the end of May, 1999.
6 The Staff meanwhile during that period of time was
7 preparing its evaluation, written evaluation, which
8 was issued separate from the State's evaluation
9 report, which they issued two weeks after our
10 discovery had been completed, June 15, 1999. And then
11 there was some separate discovery against the Staff,
12 so we've had this process of having the State and PFS
13 go forward with its discovery, while the Staff was
14 doing its review, with some discovery after that to
15 allow the State a proper chance to question the NRC on
16 its work.

17 CHAIRMAN FARRAR: Mr. Gaukler, let me
18 interrupt, since I wasn't around at that time. I'll
19 refrain from saying anything, know when I was
20 well-off. I think you said there was a two month
21 discovery schedule. Why was that two months versus
22 the one month we're talking about now? Was that more
23 issues?

24 MR. GAUKLER: Well, it's a variety. I
25 forget how many contentions were in the Group I

1 Contentions, about eight or nine contentions.

2 CHAIRMAN FARRAR: Okay. It was not just
3 a single issue deal like we have here.

4 MR. GAUKLER: No. It involved both
5 document production and interrogatories, which we're
6 trying to avoid here.

7 CHAIRMAN FARRAR: Okay. I shouldn't --
8 you were saying that I shouldn't look at the length of
9 that time period as what would govern the
10 corresponding length of the discovery period here.

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

12 CHAIRMAN FARRAR: Okay. And you're just
13 raising it for the point that the Staff was able to
14 file their evaluations with --

15 MR. GAUKLER: Well, I was raising it for
16 the point that this was a process that's been adopted
17 in this case previously, with the idea of trying to
18 expedite the discovery and get a resolution of the
19 case, and we believe it's appropriate to follow that
20 same process here, particularly given the fact that
21 the Commission has recognized, I think as it stated,
22 that everybody has been working assiduously in this
23 case. There's no question about that, but at the same
24 point in time, we've reached the point where this is
25 in the seventh year of licensing, and it's time to

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1 proceed expeditiously to complete the licensing
2 process. Time is money, and we want to proceed as
3 quickly as possible, expeditiously with the licensing
4 process.

5 CHAIRMAN FARRAR: Ms. Marco, I think you
6 said you had two lawyers working on the case.

7 MS. MARCO: That's correct, Your Honor.

8 CHAIRMAN FARRAR: Why can't your superiors
9 throw more resources into this?

10 MS. MARCO: That may be, Your Honor.

11 CHAIRMAN FARRAR: Have you --

12 MS. MARCO: I'm not aware of those
13 discussions, but it wouldn't be unheard of. We had
14 another attorney previously assisting us. In fact,
15 two others at separate times, so that may be something
16 that we do to address this issue.

17 CHAIRMAN FARRAR: You had Mr. Weisman at
18 one point.

19 MS. MARCO: That is correct. And we had
20 Mr. O'Neill at another point.

21 CHAIRMAN FARRAR: The young fellow who
22 bailed out.

23 MR. GAUKLER: Smart guy.

24 MS. CHANCELLOR: When you have a chance,
25 Your Honor, the State would like to state its

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1 position.

2 MS. MARCO: And the Staff would like to,
3 as well.

4 MS. CHANCELLOR: Go ahead, Catherine. I
5 didn't mean to interrupt.

6 CHAIRMAN FARRAR: Mr. Gaukler, those were
7 some well put thoughts you had. Had you finished
8 them, or did you have some more?

9 MR. GAUKLER: I think I basically finished
10 them. I think the other main point was that we're
11 basically following the same time framework we had
12 proposed, and that was at least tentatively adopted in
13 certain respects by the Board and the parties back on
14 June 30th, that in terms of the specific time for
15 filing direct testimony, you know, we could delay that
16 a couple of days, and have less time between the
17 direct testimony of the hearings than we had before.
18 In terms of some difficulties in terms of getting the
19 State's -- the Staff's written evaluation of the
20 State's, I would be glad to pick it up and make sure
21 it's Federal Expressed to the State's experts so they
22 receive it Monday, right after September 26th. I want
23 to pick it up anyway for ourselves, and we'd be able
24 to do that.

25 CHAIRMAN FARRAR: Ms. Marco -- thank you,

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1 Mr. Gaukler. Ms. Marco, you wanted to speak.

2 MS. MARCO: Yes, I did.

3 CHAIRMAN FARRAR: Just for our benefit,
4 where is the dividing line in the Office of General
5 Counsel between those who work on the presentation of
6 your case, and those who advise the Commissioners? In
7 other words, Mr. Chandler is your superior.

8 MS. MARCO: Yes, that's right. Mr.
9 Chandler is the Associate General Counsel dealing with
10 Enforcement and Administration. And he is the
11 dividing line.

12 CHAIRMAN FARRAR: And above him is Ms.
13 Cyr?

14 MS. MARCO: That is correct.

15 CHAIRMAN FARRAR: And she has nothing to
16 do with your part of the case.

17 MS. MARCO: That is absolutely correct.
18 She's the General Counsel.

19 CHAIRMAN FARRAR: So she advises the
20 Commissioners. All right. So if more resources were
21 going to be put in, that would be Mr. Chandler's
22 decision.

23 MS. MARCO: It would be Mr. Chandler and
24 the other managers in-between.

25 CHAIRMAN FARRAR: Okay. Go ahead with

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1 your response to Mr. Gaukler.

2 MS. MARCO: Okay. First of all, with
3 respect to the fact that PFS' report has been out
4 there, I think we've all recognized that it really is
5 the culmination of the last report, the last element
6 to that that drew it all together, that makes it
7 meaningful to start from that time frame, rather than
8 any previous piecemeal report.

9 And regarding the seven weeks from that
10 time, we have not -- we will not have had the RAI
11 responses inside that. And as I mentioned, those RAIs
12 are quite detailed, quite comprehensive, and we are
13 looking for analyses of at least a dozen areas. And
14 so based on that alone, what we're going to have to do
15 a lot of work to review that. Plus, when we do get
16 those RAI responses, it's just not a simple matter of
17 just fast hitting the ground running. We have to get
18 copies made. We have to have them out to the Staff.
19 We have to coordinate this, which a lot of the
20 coordination is being done up front, but to put that
21 into place and get it moving takes some doing.

22 CHAIRMAN FARRAR: Let me interrupt there.
23 Your people are not all here in headquarters. Some of
24 them are out at the lab.

25 MS. MARCO: Your Honor, yes. We are

1 anticipating that we do have help from one of the
2 National Laboratories, and the Center for Nuclear
3 Waste Regulatory --

4 CHAIRMAN FARRAR: Okay. Go ahead.

5 MS. MARCO: Okay. And then also, when we
6 file our testimony, we are going to want to reflect
7 the State's report in it. And we are going to want to
8 address more than just merely our report, so although
9 Mr. Turk did say that we would include a cover letter
10 on our report, he also said that we would be
11 addressing the new material that comes in, and try and
12 prepare some sort of advanced rebuttal to what the
13 State puts out. So that would also be -- the Staff
14 would be working on that during that time.

15 And with respect to the previous schedule
16 that we had, with the Group I issues way back when, I
17 think it's fair to say that yes, the Staff -- yes,
18 some discovery may have gone before the Staff stated
19 its position, but those were position statements, and
20 that was not what we consider to be as extensive as
21 what this would be, if I recall. And the other thing,
22 the more germane point is that there is far less time
23 here to be doing all this. And as you mentioned, two
24 months of discovery, and my guess is there was a whole
25 lot more time between the close of discovery and the

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1 filing of the pre-filed testimony.

2 And then finally with respect to the point
3 that we had a schedule adopted June 30th, and the
4 Commission had an order on May 28th, I believe it was.
5 I don't think that that necessarily took into account
6 the extent of the reports that were received, and the
7 nature of the safeguard treatment.

8 CHAIRMAN FARRAR: Those also, Ms. Marco,
9 are good points. Does your schedule here in the third
10 column that Mr. Gaukler sent us, does the schedule
11 here accommodate all those concerns, you know, the
12 last column, the one that is labeled State and Staff?

13 MS. MARCO: It accommodates -- it does.
14 The only place where I would even hedge a little more
15 on would be when we could get our report out. And it
16 does say September 30th, and that is three and a half
17 weeks, but based on all what I said that goes into
18 that, it may creep into the next week. But we did
19 block out the entire month of October for expert
20 depositions, and I think maybe there would be a little
21 wiggle room in there. But other than that, yes.

22 CHAIRMAN FARRAR: So under that -- so if
23 I can again paraphrase you as I did Mr. Gaukler, the
24 concerns that you have raised could be accommodated
25 with this schedule, which would have us starting the

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1 hearing right after Thanksgiving week essentially, you
2 know, that would add five weeks to the Company's
3 schedule. They would start October 27th. You would
4 start the hearing December 2nd, essentially five weeks
5 the Company would have.

6 MS. MARCO: That's our schedule, right.
7 And I just want to note something that I don't think
8 has been mentioned yet; that I think it's entirely
9 optimistic to suggest that we could have no hearings
10 in December. I just don't see that as something that
11 can be done, even under the two weeks in October and
12 November. I think they're going to run into December.
13 And if you're running into December, then I don't know
14 about the overall time frame from the grander scheme.

15 CHAIRMAN FARRAR: All right. So then
16 you're saying a three week hearing beginning December
17 2nd.

18 MS. MARCO: Right.

19 CHAIRMAN FARRAR: Ends on the 19th. Mr.
20 Gaukler has a two week hearing that ends on November
21 7th, but we've already determined that if that became
22 a three week hearing, it wouldn't end until December
23 5th, because we have Judge Kline's absence. And just
24 to repeat in case someone is reading only this
25 transcript and not the others, we talked about

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1 reconstituting the Board, and no one thought that was
2 a good idea. We've talked about conducting a
3 substantial part of the hearing with Judge Kline
4 absent, and Judge Lam and I feel very strongly that we
5 don't want to do that. And again, the reason is an
6 important one. The reason is not that we don't think
7 Judge Kline could come back and read the transcript
8 and become familiar with the case. The reason is we
9 want him here with us as the record is being
10 developed, so neither of those solutions, doing a
11 substantial part of the hearing without him - that
12 makes no sense to the other Board Members. And
13 reconstituting the Board to bring in a new person was
14 something I believe none of the parties want. In
15 fact, well, let's ask that question again, because
16 we're now at a decision point.

17 Mr. Gaukler, do you all want us to
18 reconstitute the Board?

19 MR. GAUKLER: No, Your Honor.

20 CHAIRMAN FARRAR: Ms. Chancellor?

21 MS. CHANCELLOR: No, Your Honor.

22 CHAIRMAN FARRAR: Ms. Marco?

23 MS. MARCO: No, Your Honor.

24 CHAIRMAN FARRAR: Then part of the issue
25 becomes whether we're facing a two week hearing or a

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1 three week hearing. Because given Judge Kline's
2 situation, a three week hearing ends only two weeks
3 later than a two week hearing would. I'm sorry. I
4 got that wrong. If it's a three week hearing, the
5 schedule the Staff has proposed builds in an
6 additional five weeks for party preparation, ends only
7 two weeks later than if we didn't allow that five
8 weeks.

9 Before you all -- Ms. Chancellor, are you
10 in agreement with Ms. Marco, or do you have another
11 view?

12 MS. CHANCELLOR: You almost forgot me,
13 didn't you, Judge? I think that was the first point
14 I wanted to make, is that there's really only two
15 weeks difference between the two schedules, if we have
16 a three week hearing, and PFS' schedule is at the
17 expense of compressing preparation time. And as you
18 said, the more time we spend in the beginning, the
19 cleaner and more efficient the hearing will be.

20 Also, if we have a break in the schedule,
21 if you'll remember from Seismic, a whole bunch of
22 things happened during the break. People come up wit
23 new ideas, put on new testimony, so that has the
24 potential to drag things out even more.

25 With respect to the expert reports, the

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1 expert reports will put on an affirmative case. They
2 won't necessarily challenge what the other side has
3 done, so there's a lot of preparation for direct
4 testimony, thinking about how to not have to deal with
5 rebuttal on the stand. There's a lot of preparation
6 into developing testimony.

7 If you allowed us the schedule that the
8 Staff has -- the State and the Staff has submitted
9 this time, it's essentially the same as the State
10 suggested back in July. And I think the only
11 difference is there's a one week delay in when we
12 would -- when the State would submit its expert
13 reports. And that's because we want the benefit of
14 reviewing PFS' analysis and response to the RAIs.

15 I don't think it's fair to compare
16 discovery, what we had done in the past, when we're in
17 the very early stages of this case, where we maybe had
18 one or two witnesses for very general contentions.
19 Here by my count, PFS will have about say 10
20 witnesses, the State will have about 7, Staff probably
21 6 or 7, I think from my conversation with Mr. Turk, so
22 we're dealing with about 25 witnesses. And while some
23 of those may be able to be deposed as panels, and may
24 also be able to testify as panels, that's still a
25 sizeable amount of experts that we need to prepare,

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1 that the lawyers need to prepare for, that they need
2 experts with them when they are both deposing
3 witnesses and during the hearing. And PFS' schedule
4 has, as Judge Lam noted, absolutely -- I mean, I think
5 it is an unworkable schedule, not that it doesn't have
6 a margin, I just think it is an absolutely unworkable
7 schedule. It is taking the most optimistic and rosy
8 view of the world.

9 Under the schedule that the State and the
10 Staff propose, it has some room for slippage. It
11 allows us to move forward and concentrate on what we
12 should be doing, getting expert reports together,
13 preparing for depositions. Every time we change the
14 schedule, we have to get in touch with a whole bunch
15 of experts, see what their availability are, so I
16 think that all this talk about an unrealistic schedule
17 is cutting into the time in which - - the short time
18 in which we have to prepare our case.

19 Oh, that's right. The other thing, Mr.
20 Gaukler mentioned that it's different this time
21 because there's all these expert reports. Well, it
22 really isn't any different than the first time around
23 because we had the crash report, which in some
24 respects may be more comprehensive, the crash report
25 on the license application SAR, may be more

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1 comprehensive than the reports that we have now, so I
2 don't think that's a legitimate analogy.

3 MR. GAUKLER: Your Honor, I'd like to
4 respond to that last point. When we're doing the --

5 MS. CHANCELLOR: I haven't finished yet.

6 MR. GAUKLER: I thought you were done.
7 Sorry.

8 CHAIRMAN FARRAR: Go ahead, Ms.
9 Chancellor.

10 MS. CHANCELLOR: And the final point is
11 that we know right now that at least two of our
12 witnesses won't be available for depositions during
13 September. And I'm finished. Thank you.

14 CHAIRMAN FARRAR: Okay.

15 MR. GAUKLER: I just wanted to respond --

16 CHAIRMAN FARRAR: Ms. Chancellor, any
17 particular reason they won't be available?

18 MS. CHANCELLOR: As you may be aware, Your
19 Honor, the people that we engaged have other
20 professions, other lives, and they just can't change
21 the commitments they have during September.

22 CHAIRMAN FARRAR: And are these witnesses
23 -- while no one is irreplaceable, are these --

24 MS. CHANCELLOR: Oh, Your Honor, you have
25 no idea the length and breadth we had to go through to

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1 find some of these witnesses. In fact, that's the
2 reason why some of them are unavailable. It took --
3 it literally took us three months to find these two
4 witnesses that we're having scheduling problems with.
5 They have come on board very recently. I mean, it's
6 such a specialized and limited field, it has been
7 extremely difficult to find experts.

8 CHAIRMAN FARRAR: So if we said to you
9 well, just get somebody else, these are not people who
10 are fungible.

11 MS. CHANCELLOR: I think you would see a
12 motion with us complaining about procedural due
13 process, but we wouldn't defy the Board's order.

14 CHAIRMAN FARRAR: All right. Mr. Gaukler,
15 go ahead with your response.

16 MR. GAUKLER: Several things, Your Honor.
17 First of all, with respect to the Group I contentions,
18 I'm looking at the schedule that was put in place on
19 December 23, I think we had seven or eight different
20 contentions, that we had seven or eight -- some of the
21 witnesses overlap but we still need more than one or
22 two witnesses. There was a fair number of depositions
23 that were involved with that, the scheduling of that.

24 And also, in terms of reports, here we
25 have -- in most cases we have not had expert reports.

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1 We've been going without those. The aircraft crash
2 report actually came up after the discovery had been
3 completed, and the aircraft crash issue, the discovery
4 on that has been basically completed back in April or
5 May of '99, and we had some supplemental depositions
6 with respect to new witnesses, but we didn't go back
7 and have another discovery period, so I don't think
8 that analogy is correct.

9 CHAIRMAN FARRAR: All right. Let me --
10 Jerry, do you have a cell phone?

11 JUDGE KLINE: I do not. No.

12 CHAIRMAN FARRAR: All right. For the
13 parties, let's do this. Judge Lam and I will talk
14 together a minute and then we'll come back on the
15 line. I think, Jerry, what we'll ask you to do is
16 hang up from this call, call me on the office phone.
17 Peter and I will talk to you there, and then we'll
18 come back on the call. Give us -- first, Judge Lam
19 and I will talk here a minute, and then we may have
20 something to say, and then we'll go off and talk to
21 Judge Kline off-line. Hang on. We'll just be right
22 in here.

23 (Whereupon, the proceedings in the
24 above-entitled matter went off the record at 2:18:29
25 p.m. and went back on the record at 2:21:41 p.m.)

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1 CHAIRMAN FARRAR: All right, Jerry. Peter
2 and I have been talking here.

3 JUDGE KLINE: Okay.

4 CHAIRMAN FARRAR: I'm sorry. Maybe I
5 didn't make myself clear. What I want to do is wait
6 until Peter and I had a conversation --

7 JUDGE KLINE: Oh, I see. Okay.

8 CHAIRMAN FARRAR: If you would -- we have
9 had that conversation. If you will sign-off on this
10 call temporarily and call me at my office, the 7467
11 number.

12 JUDGE KLINE: Yes.

13 CHAIRMAN FARRAR: Wait one minute while
14 Peter and I walk down the hall.

15 JUDGE KLINE: Okay, fine.

16 CHAIRMAN FARRAR: And then after we finish
17 our conversation, we will come on and have further
18 discussion with the parties, and then we'll decide
19 where we go.

20 JUDGE KLINE: Okay.

21 CHAIRMAN FARRAR: Before you go, is there
22 anything the parties want us to have in mind before we
23 -- Judge Lam, Judge Kline and I have this
24 get-together?

25 MS. CHANCELLOR: We suggest NRC

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1 (laughing).

2 MR. GAUKLER: Your Honor, we suggest that
3 the Commission's directive in terms of proceeding as
4 expeditiously as possible, recognizing that everybody
5 has proceeded to do so in the past, that we want to
6 proceed just as soon as we can. In terms of
7 unavailability of experts set up for a particular
8 time, we are going to work stuff out with the State
9 that makes sense to accommodate such unavailability.

10 CHAIRMAN FARRAR: All right.

11 MR. GAUKLER: And I'm sure that the Board
12 and the parties will think of some special procedure
13 by which that could be accommodated, keeping in mind
14 the Commission's directive, or authority to the Board
15 to provide such procedures as may be necessary.

16 CHAIRMAN FARRAR: All right. Ms. Marco,
17 did you want to add anything?

18 MS. MARCO: Just that we don't believe
19 that the time savings gained by the PFS schedule
20 really warrant the time that we would be required to
21 proceed under.

22 CHAIRMAN FARRAR: All right. Then let me
23 thank all of you for once again arguing each of your
24 separate client's cases very forcefully, very
25 eloquently, and always with a due regard for the

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1 rights of the other side. One of the joys of this
2 case has been the level of lawyering which has been
3 adamantly to insist on your client's interest, but to
4 be -- to do it eloquently and forcefully, and with due
5 regard for the other side.

6 Jerry, if you would hang up, wait a minute
7 and call me in the office, 7467.

8 JUDGE KLINE: Sure.

9 CHAIRMAN FARRAR: And the rest of you can
10 talk amongst yourselves until we get back. Thanks.

11 JUDGE KLINE: Okay.

12 (Whereupon, the proceedings in the
13 above-entitled matter went off the record at 2:24:03
14 p.m. and went back on the record at 2:33:54 p.m.)

15 CHAIRMAN FARRAR: Judge Lam and I had a
16 long discussion, and then we talked on another line
17 with Judge Kline, and we are ready to discuss how we
18 think this should go, unless -- I think there's
19 nothing else we need to hear from the parties.

20 The bottom line, for a number of reasons
21 I will set out, is that we're going to go with the
22 schedule that the Staff and the State proposed. Let
23 me tell you briefly what our reasons are, and if I
24 forget any, we'll add them in the order we'll put out.

25 Mr. Gaukler, you made some excellent

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1 points in support of your view. They were very
2 persuasive, and I might say from a personal note, I
3 think I mentioned this before, I was in the pulp and
4 paper industry for 15 years, and I fully appreciate
5 your client's view that time is money. And I think
6 the Commission fully had that in mind when they urged
7 that this case be done by year end, and we have borne
8 that admonition strongly in mind.

9 We're also motivated, however, by the fact
10 that while we've said in many decisions that the
11 Staff's view on the merits is not binding on us, the
12 system is built on a thorough Staff review of the
13 Applicant's case. At the end of that review, they may
14 side with the Applicant, they may not. After the case
15 is presented, we may accept their view or we may not,
16 but the system, I think, has always had as a paramount
17 feature that the Staff does its work in the public
18 interest, and takes a position and makes its
19 presentation. And we think what we heard Ms. Marco
20 say today is that in order for the Staff to do that,
21 both from expert and lawyer point of view, is that
22 they need the time that they have set out.

23 Mr. Gaukler, your points about the State
24 could have started, you know, they don't start when
25 the RAIs are done. They don't start necessarily just

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1 on June 30th, but we're influenced by the fact that in
2 this instance the availability of witnesses to the
3 State is an important factor, and we have to accept in
4 good faith their word that they have been looking
5 diligently. It took them a long time, and it's not a
6 matter of just saying well, you know, there's a whole
7 lot of witnesses. You could have come up with them
8 sooner. This is an important case, and with some key
9 ranges of expertise involved, and so we're unwilling
10 to start the clock on their time a long time ago.

11 The schedule that the Company presents,
12 while it might think it's feasible, we think is just
13 too demanding on the experts, and on the lawyers. We
14 think we've heard the State and the Staff say that.
15 And while we could force the issue and say we don't
16 care about that, we run into two risks doing that,
17 three risks. One, that we wear everybody out and they
18 come to the hearing, and we saw what happened a couple
19 of evenings in Salt Lake when we tried to go late,
20 where people are worn out, presentations aren't good,
21 efficiency is lost.

22 On that same -- hold on a second. The
23 second point on that is when you push people that
24 hard, you raise due process objections, fairness
25 problems. And I think we've said in a recent order,

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1 or maybe in the last pre-hearing conference, we liked
2 to know that when this hearing is over and we write a
3 decision, one group of you will like that decision,
4 another group will not like the decision. The
5 Commission may like it or not, the Court of Appeals
6 may like it or not, but we don't want -- no one is
7 served by having a hearing where someone is able to
8 say that their procedural rights were trampled on, and
9 somebody up above us says do it over.

10 If we -- in terms of the efficiency in the
11 hearing, and if that's a decision we think giving you
12 adequate rather than inadequate time to prepare means
13 better presentations, not just for the benefit of your
14 clients, but in the public interest - there's an
15 enormous public interest in this case. Everyone is
16 entitled to know whether there would or would not be
17 consequences from the hypothetical aircraft crash, and
18 so it's not just doing the best for your client, but
19 making sure that the public interest in a good
20 decision is carried out.

21 And finally, given the scheduling, Judge
22 Kline's scheduling conflicts, which none of the
23 solutions for working around manage to work around, by
24 delaying the start of the hearing five weeks we, in
25 essence, lose only two weeks, unless, Mr. Gaukler, you

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1 are correct that this could be a two week hearing,
2 rather than a three week hearing. If you're wrong
3 about that, if it's two weeks and then a break, and
4 then a week later, we only lose a total of two weeks.
5 And Judge Kline, Judge Lam and I talked about that.
6 Our experience in Salt Lake, as we referred to many
7 times, was one day per one witness. I'm sure we'll
8 all do better than that, but we cannot see how we can
9 do 25 witnesses in 10 days. You know, we can increase
10 our efficiency a good bit. I think some of the things
11 each of the parties have volunteered will increase
12 that efficiency, but this is not a two week hearing,
13 and I think the Board has said that from the very
14 beginning. If anything, it appears to be more
15 complicated, more thorough, more comprehensive than we
16 thought at the beginning, and if we do it in two
17 weeks, then everybody can point to us and say we
18 didn't know what we were talking about, but with the
19 greatest efficiencies, we think this is a three week
20 hearing.

21 So for all of those reasons, we want the
22 -- we'll adopt the State and the Staff's proposal, but
23 I cannot imagine a more forceful and eloquent case
24 being made for the PFS schedule than you made, Mr.
25 Gaukler.

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1 Does anyone have any questions about that?
2 And let me go off the record here a minute.

3 (Whereupon, the proceedings in the
4 above-entitled matter went off the record at 2:42:54
5 p.m. and went back on the record at 2:43:49 p.m.)

6 CHAIRMAN FARRAR: I've just spoken to the
7 Court Reporter about delivery times. The reason I
8 asked that is next week, the week before Labor Day is
9 the one week a year my four daughters reassemble here,
10 so I will not be in next week. Let me suggest this,
11 that the parties over the next few days decide on a
12 precise schedule. I know there were some issues about
13 exactly when, given mailing dates and so forth,
14 different things would happen, you know, within a day
15 or two of -- and there were different views on that.
16 If you all would get together, and let me ask the
17 Staff to do that. Why don't you draft up a precise
18 schedule that takes into account some of the little
19 nits that we worried about today, involving weekends
20 and so forth, and put that together. And then as soon
21 as I return, we'll put out a formal order with
22 transcript references and so forth, adopting that
23 schedule. But that schedule will be in effect as of
24 now for those dates that happen, and those things that
25 have to be done before Labor Day.

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1 MS. MARCO: Yes, Your Honor.

2 CHAIRMAN FARRAR: Okay. Thank you, Ms.
3 Marco. While we're all on here, let's --

4 MS. CHANCELLOR: Judge Farrar, did you
5 mean for us to fill in the findings and the reply
6 findings date, and the Board's decision date because
7 they are basically the dates that are put on the
8 schedule.

9 CHAIRMAN FARRAR: No, I meant up until
10 then. In other words, given the tenor of our ruling
11 that we're adopting your schedule in general, make
12 sure that all these things work.

13 MS. CHANCELLOR: Oh, okay. I understand.
14 Thank you.

15 CHAIRMAN FARRAR: I mean, exactly the
16 things that are in the third column and, of course, I
17 don't have a transcript in front of me now, but just
18 make sure that all those dates are workable, and take
19 into account holidays and weekends and so forth.

20 MS. MARCO: Okay. Now our depositions
21 chunk is -- do you want that more particularized?

22 CHAIRMAN FARRAR: Yes. Fill that in where
23 you just have the October, fill that in and then send
24 it to the State and to the Company, and we will go
25 with that. The main thing being we're headed for a

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1 hearing December 2nd to December 19th, so therefore
2 finishing now.

3 Let's talk now about the -- so we have the
4 thing all in one place, let's talk now about the
5 filings, post-hearing filings. At one point, there
6 was a proposal that if the hearing ended on the 19th,
7 which I think this was in an earlier State schedule.
8 If the hearing ended on the 19th, you would get five
9 weeks to January 22nd for simultaneous opening
10 filings, and three weeks for simultaneous reply
11 filings. That took you to February 12th, which led to
12 an April 12th time for the Board's decision. Does
13 that still make sense, five weeks or three weeks? Ms.
14 Chancellor, that was --

15 MS. CHANCELLOR: The problem with that,
16 Your Honor, was that we're finishing up on Friday, the
17 19th. The next week is Christmas week, and so you
18 almost lose a week, and so we're looking at about four
19 weeks for writing findings, so that was the reason
20 that we --

21 CHAIRMAN FARRAR: It was clear the
22 year-end holidays, five weeks is really effectively
23 four.

24 MS. CHANCELLOR: Right.

25 CHAIRMAN FARRAR: And then three weeks for

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1 reply. Staff have any problem with that schedule?

2 MS. MARCO: No.

3 CHAIRMAN FARRAR: Mr. Gaukler.

4 MR. GAUKLER: I had proposed initially
5 three weeks for findings and two weeks for reply
6 findings, and I will propose in view of Christmas,
7 make it four weeks for findings and two weeks for
8 reply findings.

9 CHAIRMAN FARRAR: Four weeks and two
10 weeks?

11 MR. GAUKLER: Yes, Your Honor.

12 CHAIRMAN FARRAR: All right. If those
13 then are your positions, Ms. Marco, when you send in
14 the schedule, don't -- well, put in what your proposal
15 is, but we will leave open for that time the Company's
16 suggestion that we do three weeks and two weeks,
17 instead of -- I'm sorry.

18 MS. MARCO: Four weeks.

19 MR. GAUKLER: Four weeks.

20 CHAIRMAN FARRAR: Yes. Mr. Gaukler is now
21 raising four weeks and two weeks instead of the five
22 weeks and the three weeks, and the Board will decide
23 on that at the end. Ms. Marco, I was building that on
24 the State proposal of the five weeks and the three.
25 Is that consistent with what the Staff's views are?

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1 MS. MARCO: That's fine.

2 CHAIRMAN FARRAR: So I have the State and
3 the Staff wanting five weeks and three weeks,
4 recognizing that the five is effectively four.

5 MS. MARCO: Four.

6 CHAIRMAN FARRAR: Mr. Gaukler, you want
7 four weeks and two weeks.

8 MR. GAUKLER: Correct.

9 CHAIRMAN FARRAR: Recognizing that the
10 four weeks is effectively three.

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

12 CHAIRMAN FARRAR: So we would save two
13 weeks there. All right. We'll decide that when the
14 document comes in.

15 Let's talk about -- we don't have to
16 decide it today, but you'll recall --

17 MS. CHANCELLOR: Your Honor, could I just
18 make one point about the schedule. It looks a little
19 weird. We've got testimony due to be filed on a
20 Saturday, and the reason for that is because we will
21 be -- the State will be Fed Ex'ing its documents to
22 Washington, D.C. And we didn't want to give PFS and
23 the Staff an extra day, so that's why we set the date
24 as a Saturday.

25 CHAIRMAN FARRAR: Well, let me suggest

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1 this. Ms. Marco, in your schedule, you build in all
2 those little things that each party has requested and
3 draw up a couple -- if they're not -- if we don't --
4 if it's not obvious why they're being done a certain
5 way, draft a little footnote that says what that
6 represents.

7 MS. CHANCELLOR: Thank you, Your Honor.

8 CHAIRMAN FARRAR: All right, Ms. Marco?

9 MS. MARCO: Yes, we'll do that.

10 CHAIRMAN FARRAR: Okay. At the Salt Lake
11 hearing we asked that when you pre-file your
12 testimony, you put on it a cover sheet. I forgot what
13 we called it, but in essence --

14 MS. CHANCELLOR: Key determinations.

15 CHAIRMAN FARRAR: There were two things,
16 one with each witness was what were the things you
17 wanted to prove by that witness, and the second thing,
18 Ms. Chancellor, was the key determinations that you
19 wanted us to make in the whole case. We want at least
20 that from you. We found those enormously helpful, and
21 I think all of you, while you might not have agreed it
22 was a bright idea at the time, because obviously it's
23 extra work at a time that's crucial to you. I think
24 at least some of you told us afterwards that, in fact,
25 it helped you organize and think through your case, so

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1 we would like at least that.

2 We will be talking among ourselves about
3 whether we need more, all in an effort that with
4 those, we get better prepared for the hearing. The
5 hearing runs more efficiently, and our decision comes
6 out faster. So be thinking about that, because in our
7 next conference call, whenever that is, we will talk
8 about the details of that.

9 MS. MARCO: Your Honor.

10 CHAIRMAN FARRAR: Yes, ma'am.

11 MS. MARCO: When would you expect to have
12 the draft done?

13 CHAIRMAN FARRAR: Any time next week.

14 MS. MARCO: Okay.

15 CHAIRMAN FARRAR: Yeah, just -- are you
16 here next week?

17 MS. MARCO: Yes, I am.

18 CHAIRMAN FARRAR: Okay. Just, you know,
19 get it in some time, and I'll turn to it as soon as I
20 get back. And by then we'll have the transcript, and
21 so a day or two after Labor Day, we can push out a
22 formal order. But for now, we are proceeding with the
23 PFS shooting to have its RAI responses in by the 29th,
24 and then we'll -- but if they need more time -- right.
25 The new schedule would allow them up to September 4th

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1 for the RAI response, so if they can beat the 4th,
2 that's fine because after everybody has those, the
3 less opportunity anybody has to claim that we had to
4 defer the schedule. Then we'll do the identification
5 of witnesses September 11th, and the State expert
6 reports on September 18th. And by then, we'll have
7 the rest of the schedule in place.

8 MR. GAUKLER: I would have one suggestion,
9 Your Honor. I would suggest there be witness
10 identification September 5th, since the State seems to
11 know its witnesses, and we know our witnesses, and the
12 Staff knows its witnesses. I don't think there's any
13 reason to delay that extra week.

14 CHAIRMAN FARRAR: Then let's do that,
15 because again, the more things that are done faster
16 than the more you build in a little time for delays
17 that might take place. Then let's do that. Any
18 objection to doing the identification of witnesses on
19 September 5th? All right. Hearing none --

20 MS. CHANCELLOR: We may not be able to get
21 all the information that Mr. Gaukler, that we talked
22 about, but we could at least identify them and get
23 CVs.

24 CHAIRMAN FARRAR: Right. Then let's do
25 that on September 5th. And then we'll be, in essence,

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1 after that adopting the third column for the rest of
2 the items. And we will give ourselves a little bit of
3 a head start.

4 Ms. Chancellor, we talked last time about
5 whether you were going to have affirmative reports or
6 mostly reports that were each of the companies. Do
7 you know that yet, or perhaps --

8 MR. SOPER: Affirmative reports, and what
9 was the second part, Your Honor, that you said?

10 CHAIRMAN FARRAR: Mostly whether you were
11 going to have your own case in an affirmative fashion,
12 or mostly critique of the Company's case?

13 MR. SOPER: Well, we intend to file some
14 reports, obviously, on the 18th, and they will be
15 affirmative reports, as well as critiques in some
16 cases.

17 CHAIRMAN FARRAR: All right. Thank you,
18 Mr. Soper. All right. Then is there anything else we
19 need to discuss?

20 MS. CHANCELLOR: Your Honor, unfortunately
21 Mr. Turk is out on a call. I would have preferred to
22 ask this when he was there, but we still don't have
23 the NEI report, and I don't know if Ms. Marco knows
24 the status of that. The Commission directed the Staff
25 to work up something so the State could get a copy, I

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1 believe.

2 CHAIRMAN FARRAR: Ms. Marco, do you know
3 the answer to that?

4 MS. MARCO: Your Honor, I don't know the
5 answer off-hand. I will have to get back to Ms.
6 Chancellor.

7 MR. DELIGATTI: Ms. Chancellor, this is
8 Mark Delligatti. I'm not remembering exactly, but I
9 thought that it turned out there was a couple of
10 available documents. You don't have that either?

11 MS. CHANCELLOR: I think there's an
12 Executive Summary, but we don't have the detailed
13 report.

14 MR. DELIGATTI: I'm not aware of that.
15 The last thing I seem to remember was that -- I
16 thought the resolution had something to do with the
17 fact that the report that -- there was an available
18 report which would have satisfied the interest.

19 MS. CHANCELLOR: My understanding was that
20 the Commission set it with safeguards, that we're
21 dealing with safeguards in this Utah K proceeding, and
22 that the Staff under the rubric of the Utah K
23 proceeding should be able to work out a way in which
24 the State could get a copy of the safeguards report.
25 I'll get you a copy of the order if you want.

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1 CHAIRMAN FARRAR: Mr. Delligatti, let me
2 ask you, does the NEI report have a security
3 classification above safeguards?

4 MR. DELDIGATTI: Frankly, Your Honor, I've
5 never seen it. I understood it to be safeguard.

6 CHAIRMAN FARRAR: Because I would think
7 what Ms. Chancellor says, if it's only safeguards,
8 then it's the same as all the other information we're
9 dealing with here, unless NEI has some proprietary
10 claims.

11 MS. MARCO: Your Honor, I think Mr.
12 Stapleton has something to say.

13 CHAIRMAN FARRAR: Okay. Go ahead, Mr.
14 Stapleton.

15 MR. STAPLETON: NEI has a public version
16 of the report on its website. They did submit to the
17 NRC a safeguards information analysis. Part of the
18 concern from the Commission's standpoint would be it's
19 not our document.

20 CHAIRMAN FARRAR: Well, but if it -- I
21 guess, I -- if it's not -- if it's an NEI document,
22 they may have proprietary claims, which you have to
23 consider. But if they don't have proprietary claims,
24 I assume that once you all classify it as safeguards
25 or higher, that's what it is, and NEI would not be --

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1 you know, NEI isn't in the classification business, so
2 if you say it's safeguards, then I would think it's
3 the same kind of document as the rest of the things
4 we're dealing with, and the State could have it under
5 the same protections. If it's some higher ranking
6 document, secret, top secret, then we're in a
7 different ball game.

8 MR. STAPLETON: The document was submitted
9 to the NRC as a safeguards information document, and
10 is not a classified document.

11 CHAIRMAN FARRAR: All right. Then I would
12 think this is something -- Ms. Marco, can you see that
13 this moves quickly. And, you know, if there's some
14 objection, get us back on the phone.

15 MS. MARCO: Right. I'll have to look into
16 it, Your Honor.

17 CHAIRMAN FARRAR: Yeah. But see if we
18 can't move that along, because we don't want to have
19 a glitch here that leaves someone to say well, the
20 schedule is not possible to meet because some document
21 was not available. That would be the last thing we'd
22 want to have happen, and we've never seen this
23 document. I have no idea what it says, but it seems
24 to me the State should have it at the earliest
25 possible opportunity, unless there's a problem, which

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1 Mr. Stapleton has said there's not, with the
2 classification.

3 All right. Anything else anybody has?

4 MR. GAUKLER: Not at this time, Your
5 Honor.

6 CHAIRMAN FARRAR: All right. Thank you.
7 I think because of the slow down with getting started,
8 we got an extra half hour on this call, so in a moment
9 or two, when we sign off, we will hang up. The Court
10 Reporter will hang up, and the three parties can speak
11 for a moment about whether they want to have anything
12 to talk to each other about over the next half hour.
13 Otherwise, they can hang up themselves.

14 Then on that note, we will sign off. And,
15 Mr. Reporter, if you would sign off, we'll leave this
16 for the parties. Thank you all.

17 (Whereupon, the proceedings in the
18 above-entitled matter went off the record at 3:01:31
19 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: Private Fuel Storage
Pre-Hearing Conference
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.



Eric Hendrixson
Official Reporter
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