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Scheduling Conference

Docket Number: 30-36239-ML

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL
SCHEDULING TELECONFERENCE

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IN THE MATTER OF: :
CFC LOGISTICS, INC. : Docket No.
(MATERIALS LICENSE) : 30-36239-ML
:

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Tuesday, August 26, 2003

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

MICHAEL C. FARRAR, CHAIRMAN

DR. CHARLES N. KELBER, SPECIAL ASSISTANT

1 APPEARANCES:

2 On Behalf of the Applicant, CFC Logistics, Inc.:

3 ANTHONY J. THOMPSON, ESQ.

4 CHRISTOPHER S. PUGSLEY, ESQ.

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

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10 On Behalf of the Proposed Intervenor:

11 ROBERT J. SUGARMAN, ESQ.

12 MIKE GALBRAITH, ESQ.

13 of: Sugarman & Associates, P.C.

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15 Philadelphia, Pennsylvania 19103

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18 On Behalf of the Nuclear Regulatory Commission:

19 STEPHEN H. LEWIS, ESQ.

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1 APPERANACES: (CONT.)

2 On Behalf of the Nuclear Regulatory Commission:

3 (CONT.)

4 KARL L. FARRAR, ESQ.

5 Regional Counsel

6 Region I/ORA

7

8 Also Present:

9 JOHN D. KINNEMAN, Region I, DNMS

10 MARISA HAGAN, Legal Intern

11 SUSAN H. LIN, Law Clerk

12 KAREN VALLOCH, Staff, ASLBP

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

(10:00 a.m.)

CHAIRMAN FARRAR: We are here at 10:00 a.m., on Tuesday, August 26th. This is a conference call on a CFC Logistics proceeding. We have a number of procedural matters to discuss.

This is Mike Farrar, the presiding officer in the case, and I am calling in from my vacation location, and we have at my regular office my technical assistant, Dr. Charles Kelber, and our law clerk, Susan Lin. Would the parties identify themselves. Mr. Sugarman.

MR. SUGARMAN: Yes. Robert Sugarman for the proposed intervenors.

CHAIRMAN FARRAR: All right. The applicant.

MR. THOMPSON: This is Anthony Thompson for CFC Logistics.

CHAIRMAN FARRAR: And you have Mr. Pugsley with you?

MR. THOMPSON: Yes, sir, Chris Pugsley, CFC Logistics.

CHAIRMAN FARRAR: And, Mr. Lewis, who do we have for the staff?

MR. LEWIS: Well, Stephen H. Lewis,

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1 counsel for the NRC staff.

2 MS. HAGAN: And Marisa Hagan, Legal
3 Intern.

4 CHAIRMAN FARRAR: Okay. And you have Mr.
5 Lewis people from Region I?

6 MR. LEWIS: Yes. They are calling in from
7 Region I, and I am not with them.

8 CHAIRMAN FARRAR: Mr. Kinneman.

9 MR. KINNEMAN: Yes, this is John Kinneman,
10 K-I-N-N-E-M-A-N.

11 MR. FARRAR: Karl Farrar, F-A-R-R-A-R, and
12 Karl with a K, regional counsel.

13 CHAIRMAN FARRAR: Anyone else on the line
14 who has not identified themselves?

15 MR. SUGARMAN: Well, I would mention that
16 Mike Galbraith is here with me, Your Honor.

17 CHAIRMAN FARRAR: Mr. Sugarman?

18 MR. SUGARMAN: Yes. He is an attorney in
19 my office.

20 CHAIRMAN FARRAR: All right. Fine. And,
21 Mr. Sugarman, I understand that you took the red-eye
22 back from the West Coast last night?

23 MR. SUGARMAN: Yes, I did, Your Honor.

24 CHAIRMAN FARRAR: And we appreciate you
25 making the effort to be with us.

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1 MR. SUGARMAN: Thank you, sir.

2 CHAIRMAN FARRAR: Let me review at the
3 beginning, there have been a lot of documents filed
4 recently, and phone calls, and let's make sure we know
5 where we are.

6 The current schedule, we are expecting the
7 staff brief on the questions of standing and
8 germaneness tomorrow, Wednesday, August 27th, after a
9 2-day extension. Is that correct, Mr. Lewis?

10 MR. LEWIS: Yes, that is correct, Your
11 Honor.

12 CHAIRMAN FARRAR: All right. And one of
13 the questions -- oh, no, and this, that part of that
14 two day extension was that the reply is to your answer
15 from the company and the petitioners will be due not
16 on Wednesday, September 3rd, but on Friday, September
17 5th, electronically at 5:00 p.m. Is that correct?

18 MR. LEWIS: That is my understanding of
19 our responsibility, yes; assuming that we get the
20 staff brief tomorrow.

21 CHAIRMAN FARRAR: Right. Mr. Thompson.

22 MR. THOMPSON: Yes, Your Honor.

23 CHAIRMAN FARRAR: Mr. Lewis, you don't
24 have to answer this question for any number of
25 reasons, but that might aid our discussion today, and

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1 you do not have to answer this question, but are you
2 going to -- is the staff's brief going to urge that
3 any of the petitioners has standing, and is it going
4 to urge that there are any germane issues, or would
5 you rather not say?

6 MR. LEWIS: Well, I --

7 CHAIRMAN FARRAR: That is a short answer,
8 Mr. Lewis. The answer is a short one; either you
9 don't want to say or there are some petitioners, and
10 there are some issues that are germane. I am not
11 asking for an explanation or reasoning.

12 MR. LEWIS: I cannot give an absolutely
13 clear answer today, and so I will pass.

14 CHAIRMAN FARRAR: Okay. That's fine. We
15 have got another matter, is the stay motion that Mr.
16 Sugarman filed last Friday, August 22nd, with an
17 accompanying affidavit, which the parties did not
18 receive until yesterday, Monday, August 25th.

19 We had initially set this afternoon for
20 replies to that stay, but the affidavit was just
21 received yesterday, and so there have been telephone
22 requests for extensions on that.

23 I guess in ruling, and I think the date is
24 Friday, August 29th, and September 2nd, have been
25 bandied about. I suppose in order to figure out how

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1 to deal with those extension requests that we need to
2 know now rather than later as we had talked about,
3 when the staff intends to issue the license.

4 And that one you do have to answer because we have a
5 stay request pending.

6 MR. LEWIS: So you would like our answer
7 today if we can give it?

8 CHAIRMAN FARRAR: I would like it right
9 now if you can give it.

10 MR. LEWIS: I would like to let Mr.
11 Kinneman address that because the source of my
12 information on that has been directly through him.

13 CHAIRMAN FARRAR: All right. And, Mr.
14 Kinneman, when you answer, I am not interested in --
15 you know, I am not interested in blaming you for
16 taking too long, or blaming you for doing it too soon.
17 All I want to know is because of all of these
18 procedural matters, and this has nothing to do with
19 the merits of your decision.

20 I just want to know when you are going to
21 issue it, because we do have a stay request pending.

22 MR. KINNEMAN: I understand, Your Honor.
23 It is our intent to issue the license either this
24 afternoon or tomorrow, and the difference is simply
25 getting the work done.

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1 CHAIRMAN FARRAR: Okay. Let me ask then
2 the company whenever you receive the license, whether
3 it is when Mr. Kinneman just said, or at some later
4 date, how quickly do you intend to move your source
5 material in?

6 MR. THOMPSON: This is Tony Thompson, Your
7 Honor. I can't give you a firm answer on that. All
8 I can tell you is that we know that we have already
9 lost --

10 CHAIRMAN FARRAR: Mr. Thompson, I am not
11 interested in any explanations of your position.

12 MR. THOMPSON: I can't tell you. I don't
13 know when we will be able to get that material.

14 CHAIRMAN FARRAR: All right. And you have
15 been around long enough on stay motions to know why I
16 am asking. In other words --

17 MR. THOMPSON: Well, I can tell you this.
18 It ain't going to be before next Tuesday.

19 CHAIRMAN FARRAR: Okay. All right. So,
20 all right.

21 MR. SUGARMAN: Excuse me, but can I ask
22 what ain't going to be before next Tuesday, whether it
23 is moving the material, or whether it is just filing
24 it? I would just like to know what ain't going to
25 happen before Tuesday.

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1 MR. THOMPSON: This is Tony Thompson. I
2 don't anticipate that it will be moved or installed,
3 either one, by next Tuesday. Now, if I find out that
4 I am incorrect, I will get back to you. But as far as
5 I know, it is not in the cards in that time frame.

6 CHAIRMAN FARRAR: Well, Mr. Thompson,
7 let's do this. Maybe you can -- either you or Mr.
8 Pugsley while we continue with the phone call, can
9 pursue that matter, because if we don't have a
10 guarantee from you that it will be in, and it will not
11 be moved on to the site before your responses to the
12 stay motion are due, then we may take one course of
13 action.

14 MR. THOMPSON: All right. Well, Chris,
15 why don't you see what you can find out. We will
16 double-check it, but I am pretty confident that
17 nothing will be moved on to the site.

18 MR. SUGARMAN: This is Bob Sugarman.

19 CHAIRMAN FARRAR: Mr. Sugarman, let me
20 handle this for now.

21 MR. SUGARMAN: All right. I am going to
22 step off and make some inquiries.

23 CHAIRMAN FARRAR: And, mr. Pugsley, you
24 will still be on?

25 MR. PUGSLEY: Yes, I am going to stay on

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1 the call, but I am going to put the phone down.

2 CHAIRMAN FARRAR: Okay.

3 MR. PUGSLEY: Okay.

4 CHAIRMAN FARRAR: I didn't understand
5 that. Mr. Pugsley, are you still there? You can
6 still hear us?

7 MR. THOMPSON: He is not going to be
8 talking. He is on the phone, but he is going to try
9 to use another line to contact the client.

10 CHAIRMAN FARRAR: Okay. So, Mr. Thompson,
11 you are there then?

12 MR. THOMPSON: Yeah, I'm at the same
13 location here.

14 CHAIRMAN FARRAR: Okay. So you are still
15 there. All right.

16 MR. THOMPSON: I'm here.

17 CHAIRMAN FARRAR: All right. All right.
18 Let's hold that until we get that information back.
19 Mr. Thompson, you would prefer I think in light of the
20 recent receipt of the affidavit that you would prefer
21 until Tuesday, September 2nd, to reply.

22 MR. THOMPSON: Yes, Your Honor.

23 CHAIRMAN FARRAR: So let's hold that until
24 we hear back from your client. Mr. Thompson, we had
25 put out an order in response to Mr. Sugarman's request

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1 to take a look at the four proprietary pages of the
2 application.

3 MR. THOMPSON: Yes.

4 CHAIRMAN FARRAR: And we had put out an
5 order on August 21st directing you to respond by
6 tomorrow, Wednesday, August 27th, or to solve the
7 problem.

8 MR. THOMPSON: Yes.

9 CHAIRMAN FARRAR: And what are you doing
10 on that?

11 MR. THOMPSON: Basically, Your Honor, here
12 are the circumstances. With respect to the
13 proprietary drawings, the contract between CFC and
14 Graystar, the designer of the unit, said that they
15 cannot be released -- that CFC cannot release them
16 absent legal compulsion.

17 In other words, in this case I presume an
18 order from the presiding officer. Mr. Sugarman has
19 forwarded some potential confidentiality or protective
20 agreement which we have sent to our client, and I
21 presume that they are sending to Graystar, you know,
22 on how it works.

23 I can say this. That we are not going to
24 want anybody but Mr. Sugarman and any people in his
25 office, and possibly his expert, who would have to be

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1 covered by the order and agree to, to have access to
2 that. We don't want it turned over to the citizens of
3 Milford township. That much I can say.

4 With respect to the other materials that
5 are labeled privileged, our point on that is going to
6 be that CFC, pursuant to the affidavit of its
7 president, requested that they be considered security,
8 and CFC and their expert still believe that they ought
9 to be considered security.

10 But the NRC staff has said that they don't
11 believe they are security, but on their own, and
12 without informing anybody at the time, they labeled
13 these documents privileged and confidential, and that
14 is not what CFC asked for.

15 They asked for them to be security
16 documents, and so it is our position that whether they
17 are turned over or under what terms between the NRC
18 staff and Mr. Sugarman. The NRC staff, on its own
19 motion, put them into another category without an
20 affidavit from us requesting that category.

21 CHAIRMAN FARRAR: Okay. And as we
22 continue this discussion, I assume that you all know
23 what is in my mind. My days as a Federal District
24 Court Law Clerk, it has been seldom that I have found
25 judges willing to rule against someone who has not

1 received the documents to which the person is
2 entitled.

3 So I would urge you to solve that problem,
4 because while I am open to be persuaded otherwise,
5 that would seem to be a fundamental element of due
6 process that you don't lose while you are asking for
7 documents that you are entitled to see.

8 So I hope that you all bear that in mind
9 and while I say that, let me say something else that
10 has been on my mind the last 10 days. I have been
11 somewhat disappointed in the unwillingness of counsel
12 to work together, and I have been dealing with the PFS
13 case for 2 years, and counsel don't like the other
14 parties' position.

15 But when it comes time to set schedules,
16 and to work out problems, they sit down together and
17 they work them out, and they come to us with
18 something. And sometimes they have a residual
19 problem, but usually they don't.

20 We have had instances in the last 10 days
21 where someone wanted -- where one party wanted a 2 day
22 stay or a 2 day extension of a non-critical filing
23 date, and couldn't get everyone's agreement.

24 MR. SUGARMAN: I would like to respond to
25 that.

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1 CHAIRMAN FARRAR: No, I don't want anyone
2 to respond. I am not naming names. I am just saying
3 what happened.

4 MR. SUGARMAN: You were misinformed, Your
5 Honor.

6 CHAIRMAN FARRAR: Okay. Let's take --

7 MR. PUGSLEY: I am back, Your Honor.

8 CHAIRMAN FARRAR: Okay. Let's use the
9 example anyhow. The second is on this document
10 production request. We have talked about that on our
11 conference call, and I assumed that everyone would
12 work it out and I am still assuming that it is going
13 to be worked out.

14 And I am assuming that these procedural
15 matters can be better worked out by the parties,
16 whether or not you like each other, and whether or not
17 your clients like each other. It is irrelevant to me.
18 I want these matters resolved in a way that is
19 professional and sensible, without the Board having to
20 be involved.

21 And let's forget that those events
22 happened, and all I want to do is say how we are going
23 to move forward in the future. Mr. Pugsley, that was
24 you saying that you were back?

25 MR. PUGSLEY: Yes, sir.

1 CHAIRMAN FARRAR: What do you have for us?

2 MR. PUGSLEY: I have been told that the
3 cobalt would begin to be shipped from the provider to
4 our client the week of September 22nd.

5 CHAIRMAN FARRAR: Excellent. I say
6 excellent, in terms of thanking you for getting the
7 information so quickly. And I would think that
8 alleviates some of our procedural burden, in terms of
9 the timing.

10 MR. SUGARMAN: Your Honor, is that going
11 to be a commitment?

12 CHAIRMAN FARRAR: I guess let's talk about
13 that. Well, let me ask a question, Mr. Lewis, and you
14 can give a little explanation. Does the staff believe
15 that a presiding officer in a proceeding like this has
16 the authority to stay the issuance of a license before
17 it is issued, assuming that all of the grounds are
18 there, and in an appropriate case do I have the
19 authority to stay the issuance of a license, or only
20 the authority to stay the effectiveness of the license
21 after it is issued?

22 MR. LEWIS: Well, I have not researched
23 that precise question.

24 CHAIRMAN FARRAR: Okay. As long as I have
25 you on the line, let me ask you about the status of

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1 the proprietary pages of the application. At one
2 point in a conference call, and I think it was our
3 unrecorded conference call, there was a suggestion
4 that those might be found not proprietary, and not
5 national security.

6 You then put out a letter saying that they
7 were not national security documents, or safeguards
8 documents, but that they were entitled to proprietary
9 protection. Is that letter foretell the answer to the
10 pending Freedom of Information Act request?

11 In other words, is that going to be denied
12 on the grounds of proprietary?

13 MR. LEWIS: I would like to ask regional
14 counsel, Karl Farrar, to help me out on this, because
15 they were the ones who principally put together The
16 response to the FOIA.

17 CHAIRMAN FARRAR: All right.

18 MR. FARRAR: This is Karl Farrar. Those
19 documents were withheld as proprietary, the three
20 sections, and the other pages of the application. The
21 other FOIA information was already provided.

22 CHAIRMAN FARRAR: So the letter of about
23 10 days ago or so, whenever it was, that didn't give
24 them to Mr. Sugarman, or that -- well, help me there.

25 MR. FARRAR: Well, actually the person who

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1 requested the documents, his name was Albert Wagner.

2 CHAIRMAN FARRAR: Yes, but the letter of
3 10 days ago, who did that go to?

4 MR. FARRAR: That went to --

5 CHAIRMAN FARRAR: The applicant?

6 MR. FARRAR: No, that actually went to the
7 applicant, that's right, and what happened was that
8 the applicant made a subsequent request that two pages
9 be withheld as security information. Those pages were
10 already in the public domain, and the agency decided
11 that they were not going to withdraw those documents
12 for the public domain.

13 CHAIRMAN FARRAR: Okay. So what we had
14 was the -- so you told the applicant that the four
15 pages are proprietary, and so that is the same answer
16 you are going to give in denying a Freedom of
17 Information Act request?

18 MR. FARRAR: It is actually -- Judge
19 Farrar, there is actually two pages and three
20 procedures that were clear to be proprietary.

21 CHAIRMAN FARRAR: Okay. And the reason
22 for asking this question, of course, is that that
23 means that we have a live dispute on the company
24 producing these materials for the petitioners.

25 MR. THOMPSON: Again, Your Honor, it is

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1 our position -- this is Tony Thompson for CFC.

2 CHAIRMAN FARRAR: Right.

3 MR. THOMPSON: That we did not ask that
4 those documents be privileged and confidential. We
5 asked for them to be withheld as security documents
6 and still think that they should be.

7 But the NRC on its own motion, without the
8 affidavit requesting it be deemed privileged and
9 confidential, labeled them privileged and
10 confidential. Therefore, it is our position that it
11 is their decision about working out an arrangement
12 with Mr. Sugarman, because it was not done at our
13 request, and it was done by them for whatever reasons
14 they may have.

15 CHAIRMAN FARRAR: Wait a minute. I
16 thought you said earlier that your supplier --

17 MR. THOMPSON: Well, that is the drawings.
18 Those were going --

19 CHAIRMAN FARRAR: Let's stop here a
20 moment, and give me some background, and tell me what
21 pages Mr. Sugarman does not have, and describe them
22 generally, and tell me the status of them.

23 MR. THOMPSON: Chris, you know the exact
24 pages that are part of the -- or the two pages in the
25 procedures, and why don't you explain it to the Judge.

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1 MR. PUGSLEY: Sure. This is Chris Pugsley
2 for CFC. Basically, we are talking about two distinct
3 sets of documents here.

4 CHAIRMAN FARRAR: All right.

5 MR. PUGSLEY: First we have as Karl Farrar
6 put earlier, two pages and three procedures from the
7 license application dealing with various topics, such
8 as radiation safety and security issues, and things of
9 that nature.

10 Those documents, through an affidavit
11 submitted by our client in February, I believe,
12 requested that those documents be withheld as national
13 security information or safeguards under 1790A(1)(i),
14 and this request was denied as far as I know by NRC
15 staff. However, the NRC staff on their own motion
16 decided to make these documents what is called
17 proprietary under -- and Karl, please correct me if I
18 am wrong, but under 2790A(4).

19 MR. FARRAR: That's right.

20 MR. PUGSLEY: So currently those documents
21 are withheld as "proprietary."

22 CHAIRMAN FARRAR: All right.

23 MR. PUGSLEY: Then there is a second set
24 of documents which are manufacturing drawings that
25 detail the composition and construction of the various

1 components of the irradiator. Those documents through
2 an affidavit by Mr. Russell Stein, who is President of
3 Graystar, an irradiator provider, submitted an
4 affidavit requesting that these documents be withheld
5 as trade secrets under 1790A4.

6 As far as I know, and again, Karl, correct
7 me if I am wrong, those documents or that request was
8 granted and those documents are currently withheld as
9 trade secrets.

10 MR. FARRAR: That's correct.

11 MR. PUGSLEY: So those are the sets of
12 documents we are dealing with. Now, Your Honor, just
13 for clarification, the other -- the two pages that Mr.
14 Farrar referred to earlier that CFC had submitted a
15 request for fairly recently, and to be withheld as
16 security information, that request was submitted by
17 CFC at the behest of the technical reviewer at NRC
18 Region I.

19 NRC Region I's technical reviewer called
20 our client and said that these pages potentially be
21 security or safeguard related, and we think that you
22 might want to have them removed.

23 So we submitted the request, but as Karl
24 said correctly, those documents were publicly
25 available before the request was submitted, and of

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1 course as Karl stated, the NRC staff determined that
2 they are not proprietary, and they are not safeguards
3 documents, and they are publicly available.

4 MR. SUGARMAN: What NRC staff member made
5 the call suggesting that they would be requested, and
6 this is Bob Sugarman.

7 MR. FARRAR: Let me ask John Kinneman.
8 This is Karl Farrar. Let me John Kinneman to answer
9 that, because he knows more about that than I do. Is
10 that all right, Your Honor?

11 CHAIRMAN FARRAR: Yes.

12 MR. KINNEMAN: Okay. The circumstances --
13 I will do just a minute on the circumstances.

14 MR. SUGARMAN: I am just asking who made
15 the call.

16 MR. KINNEMAN: Who actually made the
17 telephone call?

18 MR. SUGARMAN: Yes.

19 MR. KINNEMAN: Oh, that was Satar Lodi.

20 MR. SUGARMAN: And who is that?

21 MR. KINNEMAN: he is the principal
22 reviewer for the application. He works for me.

23 MR. SUGARMAN: Thank you.

24 CHAIRMAN FARRAR: Let me ask this point
25 since we are talking about safeguards, the rule that

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1 we are following in the Private Fuel Storage case is
2 that essentially it is the NRC staff that makes the
3 determination of whether something is entitled to
4 safeguards classification.

5 In other words, they have people who spend
6 their lives doing this, and who know the rules, and we
7 have essentially said in that case that if the NRC
8 staff says something about safeguards, then it is
9 safeguards, and the Board in that case does not see
10 itself in the business of overruling the staff and
11 saying you are wrong about safeguards.

12 MR. SUGARMAN: Your Honor, may I just
13 break in for a second?

14 CHAIRMAN FARRAR: Yes, sure.

15 MR. SUGARMAN: There is no dispute about
16 those two documents that Mr. -- what is his name --
17 Satar, made the call about, because the NRC staff
18 rejected the idea of making those two pages security
19 or anything else.

20 CHAIRMAN FARRAR: Right, I understand
21 that, and the point that I was getting to is while we
22 are not in the PFS case that I am going to tell the
23 staff that they have overclassified something, and we
24 are not in the business of telling them in this case
25 if they have underclassified something.

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1 If they say it is not safeguards, then
2 that is their business, and our business is to make
3 sure that however the documents are classified that
4 the proceeding is enabled to move along just in the
5 normal course if possible, or under protective orders,
6 if not possible.

7 Mr. Sugarman, these two sets of documents
8 that have just been described that you don't have, are
9 those documents that you wish to have?

10 MR. SUGARMAN: Oh, yes.

11 CHAIRMAN FARRAR: All right. Then given
12 where that stands, and we are not talking safeguards,
13 how do we move that ball forward, Mr. Thompson, so
14 that Mr. Sugarman gets these documents in a timely
15 fashion?

16 MR. THOMPSON: Mr. Sugarman has sent us a
17 draft protective type of agreement, and we are looking
18 at it, and we are asking our clients to look at it,
19 and we expect to come back with something to him which
20 would cover Mr. Sugarman, and members of his staff,
21 and perhaps an expert, with respect to those drawings.

22 CHAIRMAN FARRAR: All right.

23 MR. THOMPSON: And it is our view that it
24 is the NRC that has to deal with Mr. Sugarman and the
25 others, because they classified them as privileged for

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1 their own reasons, which we are not privy to.

2 MR. FARRAR: This is Karl Farrar. Can I
3 ask Mr. Kinneman to explain how the process works with
4 regards to why these documents were determined to be
5 proprietary?

6 MR. LEWIS: I will tell you what. This is
7 Steve Lewis. In deference to Judge Farrar's
8 admonition at the beginning of the call, I gather that
9 you don't really want us to engage in an explanation
10 of why we did what we did in this call.

11 CHAIRMAN FARRAR: And guess what I do want
12 you to do?

13 MR. LEWIS: Okay. My guess is that you do
14 want us to give you something in writing.

15 CHAIRMAN FARRAR: I want the three
16 parties, whoever is responsible, I want the three
17 parties to sit down and negotiate an order, a
18 protective order, that, one, gets Mr. Sugarman under
19 the appropriate protections.

20 I think that all of you have been around
21 long enough to know what appropriate protections are,
22 and we are not talking about his client seeing them.
23 We are talking about him, his associates or colleagues
24 in his law firm who will be working with him on a need
25 to know basis, and one or more experts who he might

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1 need to have interpret them.

2 I would like that protective order then to
3 protect the company, and to give Mr. Sugarman what he
4 needs, to have the staff endorsement, and to satisfy
5 the requirement of the company supplier that these
6 materials not be turned over without the right kind of
7 legal process, and I will be happy to sign whatever
8 sensible order you can come up with. Is that
9 agreeable, Mr. Sugarman?

10 MR. SUGARMAN: Yes, Your Honor. I would
11 just say that it is going to be more than one expert.

12 CHAIRMAN FARRAR: Well, then you need to
13 talk to Mr. Thompson, and convince him that the number
14 of experts you are asking to see them is the correct
15 number; and I assume that you two can work that out,
16 and I assume, Mr. Thompson, indeed for Mr. Sugarman to
17 have these, and to have technical advice about them.

18 And, Mr. Sugarman, I assume that you
19 understand the companies, and particular the
20 suppliers, need not to have this information bandied
21 about unless it is essential for your preparation of
22 the case.

23 MR. SUGARMAN: I certainly understand that
24 as to the documents that the company is asserting
25 privilege, and as to the documents that the company is

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1 not asserting a privilege, I would not understand
2 that, and I don't think that you meant to include
3 that.

4 CHAIRMAN FARRAR: No, I will not say that
5 the staff is overly protective on national security
6 measures, but I am prepared to say that they are
7 overly protective on -- if that is the case, overly
8 protective on proprietary matters, and so that is why
9 I included the staff in this negotiation.

10 MR. SUGARMAN: Okay.

11 CHAIRMAN FARRAR: I was not aware that a
12 regulatory concern can say that something is a trade
13 secret or proprietary if the owner of the information
14 is not saying it.

15 But we will let you -- and I think there
16 is enough said on this, and you all understand how
17 these things are done, and you understand my position,
18 and I trust that you have worked that out.

19 And the future scheduling of the case will
20 depend on how fast that is worked out, because as I
21 indicated before, I am not going to hold Mr. Sugarman
22 accountable, or rule against him on the merits of
23 anything if he has not seen the documents.

24 Now, that is my inclination, and if
25 somebody wants to convince me that this is such an

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1 extraordinary situation that he can lose the case
2 without seeing the documents, I am open to hear those
3 arguments, but it seems that anyone making them would
4 have an uphill climb.

5 MR. THOMPSON: I guess I have a question,
6 Your Honor. This is Tony Thompson. It seems to me
7 that -- well, it is one thing to say that about the
8 merits, and it is a whole another matter with respect
9 to standing.

10 CHAIRMAN FARRAR: Right, standing may be
11 different. That depends on what the briefs say the
12 standards are for standing.

13 MR. SUGARMAN: But the knowledge of what
14 is going to happen there is relevant if the other side
15 is challenging our standing on the grounds that we
16 don't have to be worried about it.

17 CHAIRMAN FARRAR: Let's do this.
18 September 10th is in some respects a long way away,
19 and let's get this document thing done, and let's
20 continue. Well, Susan, remind me to come back to the
21 timing of the document production at the end of this.

22 MR. SUGARMAN: May I just point out, Your
23 Honor, on the issue of the timing of document
24 production that the statement that the applicant is
25 now making, namely that they are limited by

1 contractual commitment. They could have said that on
2 day one about 3 weeks ago.

3 CHAIRMAN FARRAR: I understand that, and
4 that's why I use that as an example of the kind of
5 -- that that is not the way that I want to run this
6 proceeding. But let's look forward.

7 Let's talk now about oral argument. I
8 think with all that is going on that we might as well,
9 since the reply briefs will to the staff answer, I
10 think we said they will not be due to Friday,
11 September 5th.

12 I think with everything else going on,
13 let's confirm for now that we will have argument on
14 Wednesday, September 10th, at 5:30 p.m. It will more
15 likely than not be in Allentown, but those
16 arrangements have not been absolutely finalized with
17 the people that we are dealing with.

18 So I don't want to jump the gun and say
19 precisely when that will be until we have all of the
20 formalities in place. Let's confirm that we will have
21 oral arguments starting at 5:30 in Allentown, on
22 Wednesday, September 10th.

23 MR. SUGARMAN: Your Honor, may I ask that
24 the person that handles the public information on this
25 not be the same person that handles public information

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1 for the staff? This is Bob Sugarman.

2 It is compromising the appearance of the
3 independence of the Board. What happened was that the
4 Public Information Officer for the staff acted at a
5 public meeting last week as an advocate for the staff,
6 and also took it upon himself over my objection to
7 make announcements concerning the Board, your Honor's
8 intentions and Your Honor's plans

9 And it makes the public think that he is
10 an advocate or that the board is an advocate for the
11 staff as well. And I know that is not true, but that
12 is the impression that he gave, and he insisted on
13 fulfilling both functions. I don't know if that is
14 normal, but even if it is, it creates a bad
15 impression, and I want my clients to have the
16 confidence that I believe that you would want them to
17 have, and that they would properly have in the Board's
18 independence.

19 CHAIRMAN FARRAR: Mr. Sugarman, that is a
20 valid point.

21 MR. LEWIS: This is Steve Lewis.

22 CHAIRMAN FARRAR: Wait, let me -- who is
23 the person who spoke?

24 MR. SUGARMAN: Chip Corcoran or Cameron.

25 CHAIRMAN FARRAR: Cameron. All right. He

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1 does not work for the part of the NRC staff that is
2 involved in the proceeding, or at least that is my
3 understanding that he confirmed to me. And I had
4 authorized him to mention the fact that we might have
5 oral argument.

6 MR. SUGARMAN: Well, he did work for the
7 staff that is involved in this proceeding at that
8 hearing.

9 CHAIRMAN FARRAR: Wait, wait a minute.

10 MR. SUGARMAN: I will be glad to show you
11 the tape of that hearing. He was speaking up for the
12 staff, and he was filling in where they left off. He
13 was acting as an advocate.

14 CHAIRMAN FARRAR: I don't know. Susan, do
15 we have a transcript?

16 MR. SUGARMAN: I have the tape of it, Your
17 Honor. I don't know that there was a transcript. I
18 didn't see anybody making a transcript.

19 CHAIRMAN FARRAR: Mr. Lewis, was there a
20 transcript?

21 MR. LEWIS: No, there was no transcript
22 made.

23 CHAIRMAN FARRAR: All right. What I
24 understood was that Mr. Cameron was up there as a
25 facilitator for the entire commission.

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1 MR. LEWIS: Correct.

2 CHAIRMAN FARRAR: That he himself is
3 independent of the NRC staff.

4 MR. LEWIS: He is.

5 CHAIRMAN FARRAR: I will not speak for
6 what he said, because I don't know what else he said,
7 because I understood him to be independent of the NRC
8 staff. I authorized him to do simply the following;
9 that when he explained what that public hearing last -
10 - or public meeting last Thursday night was, that he
11 would do the public a service by telling them that
12 when we have oral argument that that is an entirely
13 different type of proceeding.

14 That while people would be speaking at the
15 public meeting last week, they would only be observing
16 the oral argument, and I wanted him to make that clear
17 to the public. That had nothing to do with the merits
18 of the case, and he was not -- I don't work for him,
19 and he doesn't work for me.

20 I understood that he was a facilitator
21 independent of the staff. He works for the
22 Commission, but not for the staff, and that he would
23 just be mentioning our proceeding as a way of
24 informing the public so that they did not get confused
25 about the two different types of sessions.

1 MR. SUGARMAN: Carried out what you
2 authorized him to do. The problem is that he did not
3 -- I don't know whether a facilitator, whether there
4 is any general definition of a facilitator. I know
5 what it means to me.

6 But regardless of what the word
7 facilitator means, he was an advocate for the staff.
8 He intervened to fill in what they left out, and he
9 changed their answers in one particular important case
10 after Mr. Kinneman and Mr. Pangburn had stated their
11 defense of their action, and he then changed their
12 defense of their action.

13 And specifically in regard to whether they
14 would consider the applicant's track record for
15 credibility, and both Mr. Pangburn and Mr. Kinneman
16 stated that they would only consider credibility
17 evidence that related to this license proceeding.

18 And Mr. Cameron said that is not correct,
19 and that they would consider credibility evidence
20 wherever it came in from. That is one particular
21 example, but that is one where he actually changed the
22 staff's answer. But there were other cases where he
23 joined in defending the staff.

24 CHAIRMAN FARRAR: Well, whatever he did or
25 didn't do beyond simply stating what the facts were

1 about the facts of our upcoming oral argument, I can
2 assure you, Mr. Sugarman, that he said that on his
3 own.

4 MR. SUGARMAN: Oh, I know.

5 CHAIRMAN FARRAR: And not on my direction,
6 and I think we do need to be worried about is whether
7 -- the only thing you need to be worried about in this
8 proceeding is my independence, as aided by Dr. Kelber,
9 and I think if you look at other -- at the record of
10 other NRC proceedings going back to my days on the
11 appeal board, and my current work on the Private Fuel
12 Storage case, I hope that you will be reassured.

13 MR. SUGARMAN: I have no concern about
14 your independence. My concern is that --

15 CHAIRMAN FARRAR: I didn't hear the
16 beginning of that sentence.

17 MR. SUGARMAN: Let me repeat. I have no
18 concern about your independence. My concern is that
19 the public will have a confidence problem if a
20 spokesman for the staff is also the spokesman for the
21 Board.

22 CHAIRMAN FARRAR: In the upcoming oral
23 argument, and we will eventually put out a press
24 release about that after we have all the arrangements
25 finalized, we will as we do on all the cases work with

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1 the headquarters Office of Public Affairs.

2 (Brief Interruption.)

3 CHAIRMAN FARRAR: You all heard that. We
4 will work with the Office of Public Affairs and I
5 intend at the beginning of the oral argument to state
6 what our role is as I did on our original phone call,
7 but thank you for bringing that to our attention.

8 Mr. Lewis, you said that that meeting was
9 not transcribed?

10 MR. LEWIS: Yes. It was not transcribed,
11 and certainly the NRC did not have a transcriber
12 there. I saw that it was being videotaped.

13 CHAIRMAN FARRAR: All I want to know is
14 that it was not transcribed.

15 MR. LEWIS: To my knowledge it was not
16 transcribed.

17 CHAIRMAN FARRAR: All right. Fine. Here
18 is what I would like to do that might save some people
19 some emergency work. It would be given the
20 applicant's representation that fuel would not move
21 until September 22, the week of September 22, once we
22 memorialize that, then we may have no reason to have
23 to deal with a stay at this point. It may even be
24 premature.

25 DR. KELBER: This is Charles Kelber.

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1 Section 2.1.263 governs stays in these matters. and it
2 says that any requests for a stay of staff licensing
3 action pending completion of an adjudication must be
4 filed at the time of a request for a hearing or stay,
5 or within 10 days of the staff's action.

6 So they do have 10 days from the date of
7 the issuance of the license to request a stay.

8 CHAIRMAN FARRAR: All right. Let me
9 suggest then to the parties as I was going to that
10 given that provision and given the provisions in I
11 think 2.7.88E, which is the standard four-part test
12 that the courts use for granting stays, would it make
13 sense to wait for the staff to issue the license, and
14 then we have an actual action in front of us.

15 And that we deny this stay petition as
16 premature, without prejudice to its being renewed.
17 That it be renewed with the provisions of the
18 affidavit, and thus pointed to the provisions of the
19 affidavit and the way that they may or may not fit in
20 with the four traditional factors for a stay.

21 That we will pick a date for that, and we
22 will pick a date for the replies, which will be before
23 the oral argument, and we will argue the question of
24 standing and germaneness, and then we will argue right
25 after that the question of the stay pending completion

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1 of the proceeding.

2 MR. SUGARMAN: Your Honor, this is Bob
3 Sugarman. My understanding of the regulation and Dr.
4 Kelber's reading of it confirms my understanding, is
5 that a stay can be requested of the staff's action,
6 and what this procedure you just outlined would
7 preclude a stay of the staff's action.

8 So I would request that the board continue
9 or the board deal with my request for a stay past
10 action.

11 CHAIRMAN FARRAR: What I was anticipating
12 was now we have not heard from the other side, and the
13 staff wants to go ahead, and to me there is not much
14 difference between staying their action and staying
15 the effectiveness of their action.

16 MR. SUGARMAN: I will adopt your language
17 in the alternative, but in either event I am being
18 denied the opportunity to stay that. Their action
19 will be effective, and the material won't move, but in
20 all other respects the staff action will be effective,
21 and I will have been denied through this action by
22 Your Honor.

23 CHAIRMAN FARRAR: Hold on. Susan.

24 MS. LIN: Yes.

25 CHAIRMAN FARRAR: Get us a half-an-hour

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1 extra, please, or an hour.

2 MS. LIN: It has been done.

3 CHAIRMAN FARRAR: Okay. Thanks.

4 MR. SUGARMAN: I just wanted to make it
5 clear, because I feel that there are other things that
6 can happen which I am not aware of. But I need to
7 talk to my experts, and that after the staff issues
8 the license, if I am not given a stay of either the
9 issuance or the effectiveness now, that things can
10 happen, and pursuant to the license that would be
11 prejudicial to me.

12 And this is not the only thing, and that
13 I want to get back to the point that we don't yet have
14 a commitment even if the material won't move until
15 September 22.

16 MR. SUGARMAN: Well, we have an oral
17 commitment and--

18 CHAIRMAN FARRAR: No, sir, I beg your
19 pardon. I don't think we do.

20 CHAIRMAN FARRAR: Well, trust me. The
21 phone conversation will not end and the matter will
22 not be resolved unless we have that commitment.

23 MR. SUGARMAN: Well, that aside, I feel
24 that I should have a stay of the effectiveness of the
25 staff's action, at least until September 10th, so that

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1 nothing can be done pursuant to it.

2 My real request is that the staff not
3 issue the license until September 10th. They have not
4 made the documentation available to me yet, and my
5 request would be that you stay the issuance of the
6 license.

7 But if not, then stay the effectiveness of
8 the license. The staff, Your Honor, was told by Your
9 Honor to give 24 hours notice. Here it is at 10
10 o'clock on Tuesday morning, and they could be issuing
11 the license in 3 hours.

12 CHAIRMAN FARRAR: Well, let me interrupt.
13 How did that happen, Mr. Lewis?

14 MR. LEWIS: It happened because I was told
15 for the first time this morning that it would be
16 issued either today or tomorrow. In fact --

17 CHAIRMAN FARRAR: Does anyone read my
18 orders?

19 MR. SUGARMAN: I do, Your Honor.

20 MR. LEWIS: Yes, I did read your order,
21 and I am simply responding to how fast moving the
22 events have been. If there is a reason for us to
23 withhold this for 24 hours because of your order, we
24 will of course do so. But I am going to say no more.

25 CHAIRMAN FARRAR: Okay.

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1 MR. LEWIS: This is Steve Lewis. I would
2 like to say one other thing that I had been overly
3 cautious about before, which was that I was asked by
4 Judge Farrar whether or not we had any position on
5 whether or not there was a difference between a
6 request for a stay before a staff action had been
7 taken, as opposed to a stay afterwards.

8 I appreciated Judge Kelber reminding us of
9 2.1263, and we had been very much thinking about that,
10 and in our minds I can only say that a stay in NRC
11 practice in our experience has been a stay of an
12 action.

13 Whereas, the current motion is in the
14 nature of a request to the board to prohibit the staff
15 from taking a certain action. And I think that flies
16 very much in the face of what Subpart L of our
17 regulation says. The staff has explicit authority to
18 proceed as it is in this proceeding.

19 CHAIRMAN FARRAR: And that is that
20 provision that says that you -- and I am paraphrasing,
21 that you can do what you want subject to the outcome
22 of the proceeding.

23 MR. LEWIS: Exactly.

24 CHAIRMAN FARRAR: But then there is a stay
25 provision --

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1 MR. LEWIS: Correct.

2 CHAIRMAN FARRAR: -- that sits out there.

3 MR. LEWIS: Correct.

4 CHAIRMAN FARRAR: Let me do this. Let me
5 -- Mr. Sugarman, I understand your position, and --

6 MR. SUGARMAN: May I just go over --

7 CHAIRMAN FARRAR: Yes.

8 MR. SUGARMAN: What action will the
9 applicant --

10 CHAIRMAN FARRAR: I will get to that in a
11 minute.

12 MR. SUGARMAN: All right.

13 CHAIRMAN FARRAR: Mr. Lewis has just made
14 or at least suggested that the staff is prepared to
15 make the argument that I thought that they might make
16 , which is that they can issue a license and then I
17 can stay its effectiveness, rather than I can prohibit
18 them from issuing the license.

19 We could spend a lot of time and a lot of
20 briefing doing that, and arguing whether they are
21 correct on that or not. But as a practical matter,
22 and these are supposed to be informal proceedings and
23 I talked about reaching common sense solutions.

24 It seems to me that is not a big
25 difference between prohibiting information as a

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1 practical matter, and staying its effectiveness once
2 it is issued. Once turning to the stay and its
3 effectiveness once it is issued, once the staff issues
4 the license, I think other than inspections and
5 enforcement, their work is done.

6 And then the applicant, now licensee, has
7 the right under the license to proceed and do the
8 business it wants to do. It seems to me that getting
9 a binding commitment from the applicants that they
10 will not take such action until such and such a date
11 is the same as staying the effectiveness -- as a
12 practical matter, is the same as staying the
13 effectiveness of the license.

14 Here is what I would like to do, and I
15 will hear you all on this. Just as we did at the
16 opening stage, where we had four different briefs that
17 were kind of talking across each other, and now
18 focused, we would ask you to refocus, and we asked the
19 petitioners to state where they lived, and what
20 precisely their areas of concern were.

21 We then asked the staff to file a brief on
22 that, which is due in the next day or two. And then
23 we gave the other side, the petitioners and the
24 applicant, a chance to address that so that we could
25 go to oral argument on Wednesday, September 10th, with

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1 the issues focused and the chance for us to question
2 the parties about possible weaknesses in their case,
3 and reach a decision.

4 Why is the public interest not well served
5 by getting a commitment from the applicant, and not to
6 take any action under the license involving the site
7 that Mr. Sugarman's clients are concerned about.

8 Then dismissing the current stay
9 application as premature, and not precluding the staff
10 from issuing the license, and having Mr. Sugarman
11 refile after it is issued if he chooses to a new stay
12 application, which explains how his position
13 specifically ties in with the 2.788E test, and we will
14 get responses in from the staff and the applicant
15 before September 10th.

16 And we will argue both the standing and
17 the germaneness and the stay motion on September 10th.
18 We would issue -- well, we don't need to issue any
19 kind of stay as long as we have the commitment of the
20 applicant not to do anything before September 10th.

21 They said they don't plan to do anything
22 before the week of September 22nd, and all we need is
23 a commitment not to do anything by September 10th, and
24 on the night of September 10th, we can rule on the
25 stay motion, at least to the extent of whether we

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1 should grant it pending our -- that we should grant it
2 temporarily pending our determination of it on a
3 longer term basis.

4 Let me explain that. I guess that there
5 is three periods to be considered in granting a stay.
6 One is until you can hear the parties on it; and the
7 other is having heard the parties on it, until you can
8 decide whether the stay is granted or denied.

9 And then the third is at the time that you
10 grant or deny that interim stay, you would indicate
11 whether you were granting or denying it for the
12 duration of the proceeding, if there is to be such a
13 proceeding. Now, who wants to object to that way of
14 doing things?

15 MR. LEWIS: This is Steve Lewis. I don't
16 want to object at all. I would, like to have the
17 benefit of Mr. Kinneman. I don't have the draft
18 license in front of me, and so I am not sure if there
19 are some actions that are supposed -- that need to be
20 taken or supposed to be taken promptly upon its
21 issuance.

22 I think not, but he would know better than
23 I, and I think that that would be an important
24 ingredient for Your Honor to know.

25 CHAIRMAN FARRAR: All right. Go ahead,

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1 Mr. Kinneman. Good suggestion, Mr. Lewis.

2 MR. KINNEMAN: Actually, I will answer to
3 the best of my ability, but I think that as a
4 practical matter that the applicant can best answer
5 this question.

6 The license itself permits the applicant,
7 and then the licensee, to begin everything that is
8 necessary. My sense is that the only actions
9 associated with the actual license are the ones that
10 Mr. Thompson alluded to, the scheduling of the receipt
11 of the cobalt and the people that are going to assist
12 them in loading the irradiator.

13 Now, from a business standpoint, they may
14 have other actions that they have held off doing,
15 which they would then begin to do, and they could
16 speak to those since they are not probably required by
17 the license.

18 But my sense is that they would contact
19 the supplier as soon as they had the license in-hand,
20 and provide as they are required to do that license to
21 the supplier as proof that they are authorized to
22 receive the material.

23 And then they would make the logistical
24 plan for shipping it, which include getting or making
25 the shipping arrangements, and making the

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1 notifications that are necessary for the
2 transportation.

3 There is a number of governmental
4 notifications that need to be made, and again making
5 the arrangements to have the people that are going to
6 help them load the sources into the irradiator and on
7 to the facility.

8 So I think it is largely a logistical
9 process until the day that they are shipped, or
10 actually until the day that they arrive at the
11 facility, and that they are still working on
12 logistics.

13 But again the applicant may have other
14 things that as a practical matter that they need to
15 do. As far as we can see, there is nothing specific
16 left to be done at the facility. I think they have
17 met their commitments there. That would certainly be
18 something that we would examine when the material
19 arrives.

20 CHAIRMAN FARRAR: All right. Thank you,
21 Mr. Kinneman. Let me ask Mr. Thompson. There is no
22 question in anybody's mind here that whether or not we
23 grant a stay, so long as the proceeding is pending,
24 any work that you do under the license is at your own
25 risk, subject to the outcome of the proceeding; is

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1 that correct?

2 MR. THOMPSON: Yes.

3 CHAIRMAN FARRAR: Okay. Thank you. That
4 being the case --

5 MR. THOMPSON: Your Honor, may I just say
6 something, please. This is Mr. Thompson.

7 CHAIRMAN FARRAR: Yes.

8 MR. THOMPSON: I think that this is
9 grossly unfair to the applicant. Mr. Sugarman filed,
10 and he didn't file an affidavit with it. He
11 referenced it, and we get it two days later at three
12 o'clock in the afternoon.

13 And now he is going to have a chance to
14 reload again. We have spent plenty of time -- the
15 lawyers -- and a lot of the client's money, getting
16 prepared to address this motion. And now you are
17 giving him an opportunity to go back and do it again.

18 I think it is grossly unfair. Grossly
19 unfair. We were going to address the argument on
20 whether or not you could file a stay prior to a staff
21 action, and now we are going beyond that. I mean,
22 every time we turn around, Mr. Sugarman get's another
23 opportunity to file.

24 And it seems to me that that is grossly
25 unfair to the applicant. It causes a lot of legal

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1 expenses, and it is totally unreasonable.

2 MR. SUGARMAN: Your Honor, this is Bob
3 Sugarman.

4 CHAIRMAN FARRAR: Yes, go ahead.

5 MR. SUGARMAN: If I have ever heard of a
6 case of unreasonableness being turned around the other
7 way, this is it. I go to a meeting on Thursday night,
8 where I am told by the staff in answer to my specific
9 question are you going to come there and announce that
10 you are issuing a license, and they tell me no.

11 And so I don't have a chance to do any
12 preparation, and I get on Thursday night after hours
13 the statement or this revelation by the staff contrary
14 to what they had told me, both Chip and Steve Lewis,
15 that they are going to issue the license.

16 They don't tell us when, and so I am put
17 under the gun to have to file something in order to
18 protect my client's interests immediately.

19 CHAIRMAN FARRAR: You filed that the next
20 day?

21 MR. SUGARMAN: That's right. And I must
22 say that in the haste of it that we knew that we could
23 not e-mail the affidavit, and we didn't think to fax
24 it. That was not the part of the stipulated method of
25 filing as I remember Your Honor's order.

1 We could have done it, but we thought that
2 we had to do what we had agreed to do, which was to --
3 because I had raised the issue before when we
4 discussed scheduling, and Your Honor said that if it
5 is an affidavit, then mail it.

6 If it is not a document that you can e-
7 mail it, and if it is an exhibit specifically, mail
8 it. So that is what we did. But I was happy to have
9 them call me on Monday, and nobody called us on
10 Friday, and we would have been able to fax it to them
11 on Friday.

12 We faxed it to them when Susan in your
13 office I guess it was while I was out of town
14 yesterday, and we faxed it to them, and now they are
15 asking for a week.

16 But the problem here is that we have been
17 dilly-dallied on the things that we need, like those
18 documents, for a month. Nobody ever notified the
19 community that this license was being filed or pending
20 in the first place. We had to take it upon ourselves
21 to do everything.

22 And we are just being met with
23 stonewalling. When I was asked by -- I was not even
24 asked by Mr. Lewis. I was asked by Ms. Lin if I would
25 agree to an extension for Mr. Lewis. At that point I

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1 had not even heard from Mr. Lewis.

2 I said that I would agree to it if he
3 would agree that the license would not be issued while
4 his extension was in place. I didn't know how long an
5 extension he was asking for, and I told him that.

6 And of course he wouldn't agree to that,
7 and so I have been under the gun here every day and
8 every hour of every day, and yet I have been
9 dillydallied about documents, and being told after
10 Your Honor in our first conversation told us to get
11 together and work out the documents.

12 And after we get off the phone, I am told
13 that they have to find out from their client, and they
14 come back and tell me that their client won't do it.
15 We have a long conference call, and then finally
16 yesterday or the day before, I get a statement and a
17 document at my request last week that doesn't even say
18 that it is confidential. It just says that they waive
19 confidentiality.

20 And I have just been -- you know, to have
21 this said is just to me totally strategic ball
22 shifting, and I feel that it is inappropriate, and I
23 hope Your Honor recognizes it, but you never know, and
24 so I have to say it.

25 And the other thing is that to answer Your

1 Honor's question about why Your Honor suggested
2 procedure is -- whether I object to it. Yes, I renew
3 my request that the Board stay the issuance of the
4 license.

5 What is the effect of issuing the license
6 if the applicant agrees not to act on the license,
7 which it has not done? But if it does agree not to
8 act on the license, one effect is that the license is
9 issued and now it is up to somebody to undo it.

10 Whereas, if it is stayed, there is a
11 chance that the staff will come to a different
12 opinion. Once the license is issued, it is out of the
13 staff's hands. They have already announced that they
14 are going to, and so it is not unripe.

15 They have announced what they are going to
16 do, and the Federal precedence aren't very clear that
17 that makes it ripe without waiting for the other shoe
18 to drop.

19 What other consequences will there be if
20 the license issues and the applicant agrees not to act
21 on it? The next consequence will be that if Your
22 Honor does not issue a stay, they will be free to move
23 ahead.

24 Whereas, if the issuance of the license is
25 stayed, then they won't have to. So come September

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1 10th, at eight o'clock in the evening, Your Honor will
2 be presented with reasons, and justifications, and
3 information, and it is true that you could issue a
4 temporary stay I suppose if this time the staff
5 actually or the applicant does more than what the
6 staff has done with respect to your previous order
7 about 24 hours notice.

8 But suppose they don't? Suppose Your
9 Honor issues an order and somebody does something the
10 next day. I don't know. But if a license is not
11 issued, then they can't go to the supplier, and they
12 can't make the commitments that will put them in a
13 place where they can as a practical matter preempt
14 orders that might be issued or requests that might be
15 made.

16 CHAIRMAN FARRAR: Mr. Sugarman, both you
17 and Mr. Thompson have been very eloquent on the
18 unfairness that you each perceive, but let me
19 interrupt you on that very last point.

20 I take it that two things would be true.
21 Number 1, anything that the applicant had done up to
22 that time is at its own risk as Mr. Thompson
23 acknowledged. The outcome of the proceeding, whether
24 they get a license or not, depends on the Subpart L
25 proceeding we are now conducting with your

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1 involvement.

2 And, third, any logistical or commercial
3 dealings that they engage in that don't bring any
4 cobalt near to your vicinity are really not of your
5 client's concerns.

6 Now, I am not minimizing your client's
7 concerns about the case, but their real concern is to
8 hear something that they don't think is appropriate
9 for any number of reasons where they are, but Mr.
10 Thompson has installed an irradiator, or rather Mr.
11 Thompson's client has installed all the mechanical
12 parts of -- non-radioactive parts of the irradiator in
13 his warehouse.

14 That is all at their own risk, and does
15 not affect your client. If he makes negotiations with
16 someone in a distant city to move the cobalt closer or
17 to get it packaged into casks, or whatever you do,
18 that as long as that does not get to Quakertown, and
19 it is at his own risk, why should I as the Subpart L
20 presiding officer be concerned?

21 MR. SUGARMAN: For two reasons. One is
22 that because allowing him to get to the brink and have
23 everything set up, you are eliminating any window of
24 time to get relief down the line.

25 CHAIRMAN FARRAR: But I can deal with that

1 window of time on the evening of September 10th if I
2 think you have made a good showing as to a stay, one
3 of which would be the probability of success on the
4 merits and that in-turn depends on standing and
5 germaneness.

6 And if we think at that point that you
7 have made whatever type case you need to make for a
8 stay, then no matter how close he is to the brink, we
9 can issue a stay that night, and say the effectiveness
10 of the license is stayed pending our formal ruling on
11 all these questions, and it may or may not be
12 continued at the time of our formal written ruling.

13 MR. SUGARMAN: I understand that.

14 CHAIRMAN FARRAR: And I understand the
15 thrust of your arguments, but as a practical matter I
16 don't understand why your clients are hurt by him
17 taking -- by Mr. Thompson's client taking the risk of
18 going to the brink as you put it.

19 MR. LEWIS: Mr. Chairman, this is Steve
20 Lewis. May I have the floor for a moment?

21 CHAIRMAN FARRAR: Yes, with Mr. Sugarman's
22 permission, let's have you -- and I know that he was
23 not finished, but let's see if you can contribute to
24 this discussion.

25 MR. LEWIS: I will try. It strikes me

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1 that this is falling now very nicely into the area
2 that Your Honor suggested at the beginning, which is
3 that the parties have 3-way conversations, and other
4 preparatory 2-way discussions as may lead to the 3-way
5 discussions, and see how many of these issues we can
6 resolve.

7 I think that might view would be that --
8 I am not telling Mr. Sugarman how he should conduct
9 his practice, but all of us have to assess what
10 positions we should press forward as being reasonable,
11 and what positions we should abandon in light of what
12 Your Honor has said today about the representations of
13 counsel for the applicant as to the fuel not arriving
14 before a certain date, which I treat as a commitment,
15 and it was made by counsel on the record, and to me it
16 is a commitment.

17 MR. SUGARMAN: There was nothing made at
18 all, and I certainly am not agreeable to accepting
19 your interpretation when you are the counsel --

20 CHAIRMAN FARRAR: Wait a minute, Mr.
21 Sugarman. Is that you?

22 MR. SUGARMAN: Yes, Your Honor.

23 CHAIRMAN FARRAR: Mr. Thompson or Mr.
24 Pugsley said that the client was not going to move the
25 fuel to the week of September 22nd.

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1 MR. SUGARMAN: That was the statement of
2 intention, Your Honor.

3 CHAIRMAN FARRAR: And I have said three
4 times before we leave this call if that is the way
5 that we go, we will get that as either a formal
6 written commitment from them or a formal part of our
7 written order saying based on the applicant's
8 commitment to do the following.

9 So let's not bring up again whether that
10 is going to be an ironclad commitment, because if we
11 base what we are going to do today on that
12 representation, it will become an ironclad commitment,
13 and so let's not worry about that anymore.

14 MR. SUGARMAN: I was in the process of
15 explaining what my concerns are, and I am a little
16 thrown by Mr. Lewis' suggestion. I am always willing
17 to have three-way conversations. The problem that I
18 have, and I am going to assume now that we have an
19 ironclad commitment.

20 But the problem that I have, Your Honor,
21 and just to give you one example, we are talking about
22 being on the brink. Supposed they moved the fuel as
23 Your Honor more or less implied to the next rail
24 junction down from Quakertown.

25 At that point a stay is issued, and at

1 that point they point out that it is highly unsafe to
2 move the material back to wherever it is coming from,
3 Virginia or otherwise.

4 And the only safe course is to move it the
5 additional 15 or 10 miles to Quakertown, and then we
6 are stuck with what do we do next. And that is one
7 example.

8 And you can say that it is at their risk,
9 and I understand that can be true financially, but in
10 terms of the risk of having the material out there on
11 the rail lines like a Flying Dutchman, I can't think
12 of all of the possible examples, but that is just one
13 example that comes to mind.

14 CHAIRMAN FARRAR: That strikes me as
15 something that you would put in then in asking for a
16 stay that is a public interest factor, and maybe --
17 well, no, I will take that back.

18 I understand the situation that you posit,
19 but in Subpart L proceedings, the presiding officer
20 comes in to hear a petition as you filed from a
21 discreet group of individuals. We don't have any kind
22 of plenary authority, and in the old days the
23 licensing boards had sua sponte authority to look at
24 various matters on their own initiative.

25 Our role is to resolve the complaints that

1 your clients have raised, and that is -- you know, we
2 are limited to that. So I think that it is beyond our
3 jurisdiction to hear complaints that other people
4 might have.

5 MR. SUGARMAN: We are not talking about
6 complaints that other people might have, Your Honor.
7 I am talking about if the stuff is 10 miles or 20
8 miles from Quakertown, and they make the argument that
9 it is not safe to take it back, and it is not safe to
10 leave it there because a rail car is not a good place
11 to have it, then what is Your Honor going to do? You
12 have no choice but to let them move it to the
13 facility.

14 CHAIRMAN FARRAR: Mr. Sugarman, I don't
15 want to give too much of an indication of -- you know,
16 I am always open to be convinced that my thoughts are
17 wrong, but that one does seem that ascribing that as
18 the only thing I would do at that point is not
19 something that I would be willing to say that you are
20 right.

21 MR. SUGARMAN: The other thing that I
22 would raise, Your Honor, is based on your scenario, my
23 interpretation -- and I am putting it as a question to
24 Your Honor, is that I am going to have to have
25 evidence there related to the probability success at

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1 least, and so I am going to have to have a witness who
2 is going to be sworn and testify.

3 CHAIRMAN FARRAR: No, this is like any
4 stay motion. I don't think that the test that is in
5 the Commission's rules and is any different from the
6 test that is applied in the Federal Courts
7 universally.

8 You file papers, and you may file an
9 affidavit with you as you did this time, but we are
10 not talking about having a witness. But in any event
11 --

12 MR. SUGARMAN: I have never gotten a
13 preliminary injunction without a witness, without a
14 hearing.

15 MR. THOMPSON: This is not a Federal Court
16 proceeding, Mr. Sugarman. We are playing by the rules
17 in the Commission's --

18 MR. SUGARMAN: His Honor is analyzing it,
19 and I am just asking the question whether Your Honor
20 would be planning to rule on a stay motion without any
21 evidence. I mean testimonial evidence.

22 CHAIRMAN FARRAR: I am planning to rule on
23 the stay motion based on the four-part test that the
24 Commission's rules establish, which is the same as the
25 rules everywhere else, and which to this point, and I

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1 understand the time pressure that you are under from
2 Thursday night, last Thursday night until Friday, but
3 at this point you have a stay motion pending that is
4 based on a written motion and a written affidavit.

5 And we are prepared to rule on that basis,
6 and I assumed that I was going to get a response back
7 at whatever time we sat from the staff and from the
8 applicant, and they were going to do the same thing.

9 MR. SUGARMAN: So you are going to do it
10 on the affidavits?

11 CHAIRMAN FARRAR: Well, that is what you
12 asked me to do.

13 MR. SUGARMAN: Your Honor, that was on an
14 emergency basis. If we are scheduling it for the
15 10th, I view it in my practice -- and I am asking the
16 question, and so I am just telling you why I am asking
17 you the question.

18 In my practice, unless you are asking for
19 a TRO, which the court will issue almost never, what
20 they do is they set up a hearing, and you can have
21 affidavits. But if the facts are contested, you have
22 witnesses.

23 CHAIRMAN FARRAR: You are right, that at
24 a classic preliminary injunction that you could do it
25 that way in the courts.

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1 MR. SUGARMAN: And the --

2 CHAIRMAN FARRAR: But under Subpart L,
3 however, even the merits of the proceeding can be done
4 written, and as I said at our very first phone call,
5 I have never done a Subpart L proceeding. But one of
6 the things that it does provide is that the entire
7 presentation, even the merits of the case, can be done
8 in writing.

9 Now, the Board does have the option I
10 think to have the parties bring witnesses in and the
11 Board asks them questions. But Mr. Thompson and Mr.
12 Lewis, am I correct that under Subpart L that the
13 merits could be entirely in writing?

14 MR. LEWIS: Absolutely.

15 MR. THOMPSON: Yes, Your Honor. This is
16 Tony Thompson. Every Subpart L hearing that I have
17 been involved with, and I think I have been involved
18 in most of the ones that the NRC has had that are in
19 the reports over the last 4 or 5 years, have all been
20 done by paper in writing, with occasional telephone
21 conferences for the Board to ask questions, and the
22 answers to which are sometimes oral, and sometimes
23 then refiled, or put in writing after that. But
24 normally the Subpart L proceedings are done purely by
25 papers.

1 MR. SUGARMAN: But my question is still a
2 different question. My question, and understanding
3 that the Board has the discretion, and what may be
4 done normally or may not be done normally.

5 But my question is whether it is the
6 Board's intention to act on this stay application that
7 we are talking about filing without an evidentiary
8 hearing.

9 CHAIRMAN FARRAR: Right.

10 MR. SUGARMAN: You have the discretion as
11 I understand everybody is saying.

12 CHAIRMAN FARRAR: It is my firm intention
13 to act on whatever stay -- either the pending stay
14 motion, or if we dismiss this one as premature, the
15 next stay motion it is my intention to rule on those
16 after hearing oral argument, but not oral testimony,
17 on Wednesday evening, September 10th.

18 MR. SUGARMAN: Thank you. I appreciate
19 that clarification. I didn't know whether I needed to
20 bring witnesses. But I do feel that there is a real
21 process issue here and I reserve my rights with
22 respect to raising that outside of the context of the
23 board since this is the Board's handling.

24 I don't mean the Board. Let me strike
25 that. I mean the Commission, and since the Commission

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1 has this Part L procedure, and I don't feel that it
2 gives us due process as utilized, and so I am not
3 making any -- well, I am just noting my objection and
4 reserving my rights.

5 CHAIRMAN FARRAR: All right. You think
6 that the process that I have outlined is unfair, and
7 Mr. Thompson believes that it is unfair, and so I
8 could conclude that it must be unfair?

9 MR. THOMPSON: Wait a minute, Your Honor.

10 CHAIRMAN FARRAR: Or I could conclude that
11 maybe it is right in the middle and right where we
12 ought to be.

13 MR. THOMPSON: Well, I didn't say the
14 process was unfair. The rules are what they are. We
15 are all playing by them, and if Mr. Sugarman does not
16 like the rules, then he can't challenge them in this
17 proceeding. He will have to go somewhere else, and
18 that is certainly a matter up to him.

19 All I am saying is that it seems to me to
20 be unfair that Mr. Sugarman gets to refile constantly
21 because he is either not following the rules, or some
22 other reason.

23 CHAIRMAN FARRAR: Mr. Thompson, I didn't -

24 -

25 MR. SUGARMAN: That is just nonsense.

1 CHAIRMAN FARRAR: Wait, Mr. Sugarman, it
2 is my turn. Mr. Thompson, I did not comment when you
3 made that eloquent argument a few minutes ago, and
4 some of the things that you said had merit.

5 And certainly in other circumstances would
6 have had merit, but what I think overrides those
7 objections in this circumstance is two things. Mr.
8 Sugarman did have to act sometime between Thursday and
9 -- well, what time did that meeting end?

10 MR. SUGARMAN: I walked out at nine
11 o'clock to start writing my motion.

12 CHAIRMAN FARRAR: Okay. So, say nine
13 o'clock, and before the meeting had ended, and the
14 next day that he filed something, having been as he
15 claims surprised by the staff action.

16 MR. SUGARMAN: And knowing, Your Honor,
17 that you --

18 CHAIRMAN FARRAR: Mr. Sugarman, I have the
19 floor.

20 MR. SUGARMAN: Yes.

21 CHAIRMAN FARRAR: And, second, we do have
22 this matter of the documents that he has as of yet
23 does not have in his hands, and I mentioned that in a
24 prehearing conference call a long time ago.

25 So to the extent of your remarks about

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1 unfairness in giving him a second chance would
2 ordinarily -- you know, they are cogently put, but I
3 think they are overridden in this case by the fact
4 that he was surprised and had to file very quickly,
5 and second, to this day does not have the documents
6 that he is entitled to have.

7 So I think that the unfairness that you
8 see in giving him a second chance is overridden by the
9 fact that he through circumstances of your client's
10 doing, and the staff's doing, deprived him of having
11 a fair first chance.

12 So that would be -- and I am not
13 denigrating the force of the argument that you made,
14 but I think that is the appropriate response to it.

15 MR. LEWIS: Your Honor, this is Steve
16 Lewis. I would like to just make sure that I
17 understand. I gather that your honor was going to sum
18 up at the end, but there is one thing that I wanted to
19 make sure that I understood now.

20 It is your ruling that -- or it is going
21 to be your ruling as reflected in an order regarding
22 today's conference call that the present motion for a
23 stay is to be considered premature, and that is
24 without prejudice to Mr. Sugarman filing another
25 motion for a stay as soon as a license has been

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1 issued. Am I correct in that regard?

2 CHAIRMAN FARRAR: That was the first part
3 of it. Susan, feel free to jump in here, because I
4 was not writing it down as I said it. That was the
5 first step if we got that way, that his motion would
6 be dismissed as premature without prejudice to
7 refiling.

8 MR. LEWIS: Right.

9 CHAIRMAN FARRAR: And part of that was
10 that you all would not have to file of course any
11 response.

12 MR. LEWIS: Right. Well, I can only say
13 that from the staff's perspective that as soon as we
14 finish our brief on standing and areas of concern, and
15 file it tomorrow, we will immediately for our part
16 undertake all efforts within our power to try to bring
17 the parties together.

18 I believe that the staff will be able to
19 be quite flexible in the area of documents. Now, that
20 is to say that there are some documents as to which
21 there are contractual obligations which we really
22 don't know anything about. And we would have to let
23 those documents speak for themselves.

24 But that aside, as to those documents that
25 we have taken some action on to withhold, I represent

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1 to you that on the basis of staff discussions that I
2 have had that we will take a very flexible approach.
3 We will try to get at least those documents resolved
4 before the pre-hearing conference or before Your
5 Honor. Excuse me.

6 CHAIRMAN FARRAR: They have got to be well
7 before -- well, the documents, the key thing right now
8 is the documents.

9 MR. SUGARMAN: Your Honor, Mr. Lewis'
10 commitment is no commitment at all. That is nonsense.

11 CHAIRMAN FARRAR: Mr. Sugarman.

12 MR. SUGARMAN: It has been 2 weeks.

13 CHAIRMAN FARRAR: Mr. Sugarman --

14 MR. SUGARMAN: Yes, sir.

15 CHAIRMAN FARRAR: Some day you may have
16 the misfortune to be in my position, but for now let
17 me exercise or let me be the judge, okay? The
18 documents -- well, let's work backwards. We are going
19 to need to have the -- we are going to need to have
20 the applicant's and the staff's replies to the stay
21 motion that has not yet been filed, we are going to
22 have to have their replies by the evening of September
23 8th.

24 MR. SUGARMAN: September 8th?

25 CHAIRMAN FARRAR: Yes, Monday, September

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1 8th. Therefore, Mr. Sugarman has to file his renewed
2 motion by noon on Wednesday, September 3rd.
3 Therefore, he is going to need the documents by noon
4 on Thursday, August 28th, 48 hours from now.

5 I told you all at the beginning that we
6 are not doing anything adverse to Mr. Sugarman's
7 clients until he has those documents. Now, Mr.
8 Sugarman, that gives you a short time to prepare a
9 renewed stay, but you can start working on it now.

10 You filed that document on very short
11 notice and you have Dr. Reznikoff's affidavit. You
12 can be starting now to do that. So the key to this is
13 that Mr. Sugarman's gets the documents by Thursday,
14 August 28th.

15 Mr. Lewis, what you can do to help that
16 process is there is any number of previous protective
17 orders entered in NRC receivings, including the PFS
18 one, and you know what the Board's have authorized,
19 and you can perhaps help the parties reach a quick
20 accommodation.

21 MR. THOMPSON: Excuse me, Your Honor.
22 This is Tony Thompson.

23 CHAIRMAN FARRAR: Yes, go ahead, Mr.
24 Thompson.

25 MR. THOMPSON: With respect to the design

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1 drawings that are the second set of materials, what we
2 need in your order is an order for us to make those
3 available, or for CFC to make them so that they are
4 not in violation of their contractual commitment with
5 Graystar.

6 CHAIRMAN FARRAR: Right.

7 MR. THOMPSON: So with that in-hand, we
8 will get with Mr. Sugarman and come up with a
9 protective order and see that the protective documents
10 are there by Thursday, August 28th, at 12 o'clock or
11 before.

12 CHAIRMAN FARRAR: Okay. Then -- all
13 right. So if you hand him the documents by Thursday,
14 the 28th, and he files his renewed stay by -- I think
15 you said noon on Wednesday, September 3rd, and you
16 file and the staff and the applicant then respond by
17 close of business Monday, September 8th.

18 MR. THOMPSON: And by close of business,
19 do you specifically mean what time?

20 CHAIRMAN FARRAR: Well, 6:00 p.m. is okay.

21 MR. THOMPSON: Okay.

22 CHAIRMAN FARRAR: All right. And I would
23 -- and in PFS, we made it sometimes midnight, but in
24 that one we were going to an oral argument a day-and-
25 a-half later.

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1 MR. THOMPSON: Okay.

2 MR. SUGARMAN: Your Honor, given the
3 complaint about affidavits and exhibits, would Your
4 Honor modify your procedural ruling to make a ruling
5 as to whether exhibits should be faxed?

6 MR. THOMPSON: This is Mr. Thompson. I
7 didn't understand it the same way that you did, Mr.
8 Sugarman. I understood that if we had something, for
9 example, like the entire license application that
10 couldn't be e-mailed or faxed, that that would have to
11 be sent by the fastest delivery that is reasonable.

12 But there was never any statement that I
13 recall that you couldn't fax something, and that is
14 standard practice in Subpart L hearings.

15 CHAIRMAN FARRAR: And regardless of what
16 we had written, or said, my intention was the same as
17 Mr. Thompson just described; that if you have
18 voluminous things, and there is no other way to send
19 them other than hard copy by overnight, then you do
20 it.

21 But anything that can be e-mailed and can
22 be faxed, any decent or reasonably-sized documents
23 that can't be e-mailed, you fax; and it is only the
24 engineering drawings or the huge manuals or something
25 that you send by overnight. And, yes, there was that

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1 misunderstanding and now we are all on the same page.

2 MR. LEWIS: This is Steve Lewis. I am
3 going to ask Your Honor to include in your order one
4 additional provision. Overnight delivery to the NRC
5 staff, even to a named person on the NRC staff, quite
6 often does not get here to the person involved as
7 quickly as it does, let's say, in a private law firm.

8 CHAIRMAN FARRAR: Right.

9 MR. LEWIS: I think that this is going to
10 be a little bit of a request to Region I, but I think
11 that Your Honor should include in the order that for
12 a large volume of documents that are being provided,
13 let's say, by Mr. Sugarman, that he contact Mr. Farrar
14 at the regional counsel in Region I, and see if some
15 arrangement can be made for a delivery, since Region
16 I is very close to his office.

17 And that I think is the only way in my
18 experience that we can be assured that we have the
19 documents in our possession quickly.

20 CHAIRMAN FARRAR: Mr. Sugarman, if you
21 have something that cannot be transmitted
22 electronically or faxed, why don't you deal with
23 either Mr. Lewis or Mr. Farrar; Mr. Lewis at
24 headquarters, and Mr. Farrar at Region I, and see how
25 they want to handle that.

1 MR. SUGARMAN: I would be happy to mail it
2 to whichever address Mr. Lewis wants me to mail it to.

3 MR. LEWIS: I think --

4 CHAIRMAN FARRAR: It is not just mailing.
5 Maybe they are willing to pay for some delivery
6 service or something.

7 MR. LEWIS: Correct.

8 CHAIRMAN FARRAR: Whatever they need given
9 the short timetable, they will bear the expense of
10 extraordinary delivery, but make sure that you get it
11 to them in the way that they want it.

12 MR. THOMPSON: But remember, Your Honor,
13 that everybody else is going by overnight mail, by
14 regular U.S. Mail. Why should they get delivery
15 faster than everybody else?

16 MR. SUGARMAN: It is not a question of
17 getting it faster.

18 CHAIRMAN FARRAR: Mr. Lewis, I will take
19 care of this. Mr. Sugarman, did you hear what I asked
20 you to do?

21 MR. SUGARMAN: Yes, Your Honor. May I
22 have the same reciprocity from the NRC staff?

23 CHAIRMAN FARRAR: No, what they are saying
24 is that they will do overnight, but overnight gets to
25 you whenever the overnight service promises the next

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1 morning.

2 MR. SUGARMAN: Right.

3 CHAIRMAN FARRAR: At NRC headquarters,
4 overnight doesn't get to us when a deliver service
5 promises because the delivery service doesn't give it
6 to us. It goes somewhere else.

7 MR. SUGARMAN: Oh, I understand that, and
8 I am willing to send it to Region I.

9 CHAIRMAN FARRAR: Okay.

10 MR. SUGARMAN: I don't understand that
11 Region I has that problem. I understand that they are
12 in the same position that I am, and that they will
13 receive it the next morning just as I will receive
14 their mail the next morning. And what I am being
15 asked to do is make special accommodations for them.

16 MR. FARRAR: This is Karl Farrar. That is
17 not necessarily true. I received --

18 CHAIRMAN FARRAR: Wait a minute. I am not
19 going to listen to anymore of this. Did you all hear
20 what I said early in the conversation?

21 MR. FARRAR: Yes.

22 MR. THOMPSON: Yes, Your Honor.

23 CHAIRMAN FARRAR: I want professionalism
24 and I want courtesy among each other, and handle it,
25 and don't ask me to do it. Don't ask me to make

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1 rulings that none of you are going to like. Now, I am
2 tired of this.

3 I have been in the most complicated
4 proceeding that I have ever been in, is the PFS
5 proceeding, and I have never had to have one single
6 conversation with those lawyers, and there is a lot at
7 stake in that case, and not to say that there is not
8 a lot at stake here.

9 But they have been going at it for years
10 and years, and I never have to have a single
11 conversation with them like this, and I am not having
12 another one in this case. Does everyone understand?
13 Mr. Thompson, do you understand?

14 MR. THOMPSON: Yes, Your Honor.

15 CHAIRMAN FARRAR: Mr. Lewis, do you
16 understand?

17 MR. LEWIS: Absolutely.

18 CHAIRMAN FARRAR: Mr. Sugarman, do you
19 understand?

20 MR. SUGARMAN: Yes, Your Honor.

21 CHAIRMAN FARRAR: Okay. Now, I don't want
22 to hear any more about that. I want to deal with
23 these dates. The last thing or one thing that we have
24 to deal with is Mr. Sugarman, or I'm sorry, Mr.
25 Thompson, when we issue this issue that memorializes

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1 all of this, we will put in it, unless you tell me not
2 to, that the applicant has committed to the Board that
3 if the license is issued that there will be no
4 shipments of Cobalt 60 irradiation source to the
5 vicinity of the site before the week beginning Monday,
6 September 22nd.

7 Can we record that as a commitment by your
8 client?

9 MR. THOMPSON: As far as I -- well, Chris,
10 you talked to him. That is correct, is it not?

11 MR. PUGSLEY: I have just been told that
12 is when the planned shipment would begin.

13 CHAIRMAN FARRAR: All right.

14 MR. SUGARMAN: Your Honor, that is not an
15 answer to your --

16 MR. THOMPSON: The answer is, yes, Your
17 Honor.

18 CHAIRMAN FARRAR: The answer is that they
19 told me that I can put that in the order. If they
20 want to violate that, then we will deal with that.

21 MR. SUGARMAN: Now I am hearing that they
22 are agreeing.

23 CHAIRMAN FARRAR: They are agreeing.

24 MR. SUGARMAN: That is the first time that
25 I heard that. Before they said that was their --

1 CHAIRMAN FARRAR: Mr. Sugarman.

2 MR. SUGARMAN: Yes, Your Honor.

3 CHAIRMAN FARRAR: I have not been doing
4 this job for a long time, but I have been a lawyer for
5 a long time, and under a lot of difficult
6 circumstances. I heard what they said.

7 MR. SUGARMAN: Your Honor, may I ask a
8 question. Is the court going to abide by your -- I
9 mean, excuse me, but is the staff going to abide by
10 your order to give you 24 hours notice of a permit
11 issuance?

12 CHAIRMAN FARRAR: I assume that they are.
13 When I asked them today when they were going to issue
14 it, and they said perhaps this afternoon, I assume
15 that they had neglected to read or forgotten to
16 remember the order. That order still stands.

17 If they want to do it in less than 24
18 hours after they gave us that notice, then we will
19 deal with that if they do so.

20 MR. THOMPSON: Okay. your Honor< i don't
21 have that order immediately in front of me, but if the
22 license is in fact issued tomorrow rather than today,
23 such that it is 24 hours, will Your Honor consider my
24 statement on today's transcribed conference call to be
25 the 24 hour notice?

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1 CHAIRMAN FARRAR: Right. When I asked you
2 today what time you were -- and which was about --
3 well, it was shortly after 10 o'clock, about what time
4 you were going to issue the license, you said it could
5 be as early as today or tomorrow, and I consider that
6 the notice, and that was sufficient notice under our
7 order of last week.

8 MR. THOMPSON: Okay. Thank you. I
9 appreciate that.

10 CHAIRMAN FARRAR: You have 24 hours from
11 whenever that was said.

12 MR. PUGSLEY: Your Honor, this is Chris
13 Pugsley for CFC. I have one procedural question for
14 you.

15 CHAIRMAN FARRAR: Certainly.

16 MR. PUGSLEY: Given the fact that you are
17 going to issue an order saying that we have to get a
18 protective order together to get these documents to
19 Mr. Sugarman by Thursday, the 28th, does that mean
20 that your ruling in your order of August 21st, saying
21 that we had to respond to Mr. Sugarman's motion for
22 the production of documents on tomorrow afternoon, is
23 that now superseded?

24 CHAIRMAN FARRAR: Right. The responses to
25 his stay motion are superseded. I think we had a

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1 motion to extend those times, and those are moot and
2 superseded.

3 The document response is superseded, and
4 our order memorializing this call will include the
5 Board's directive that the documents in question be
6 made available to Mr. Sherman.

7 MR. THOMPSON: And, Your Honor, may I just
8 -- that with respect to those documents, you had said
9 something and it was along the lines of what I said,
10 but I am assuming that the protective order will give
11 Mr. Sugarman and members of his staff that need to
12 know, and experts that he identifies who will agree to
13 the protective order, and that is all that will be
14 seeing the documents. Is that correct?

15 CHAIRMAN FARRAR: That is correct, only
16 those people, and they have to as we have done in PFS
17 on the safeguards material, they have to sign a non-
18 disclosure affidavit that tracks the -- in other
19 words, you all do a protective order that you all
20 sign, and Exhibit A to that is an affidavit that
21 everyone who gets the documents has to sign.

22 MR. THOMPSON: Thank you, Your Honor.

23 CHAIRMAN FARRAR: And that is the way that
24 we have done things, and instead of working on briefs
25 the next few days, you will be working quickly to get

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1 that document production matter done properly.

2 MR. SUGARMAN: Well, wait a minute. The
3 staff is still working on the brief that is due.

4 CHAIRMAN FARRAR: Right. They still have
5 to do that one, the response to the standing and
6 germaneness questions, and you all still have to do
7 that response. Susan, that was extended until when?

8 MS. LIN: September 5th.

9 CHAIRMAN FARRAR: Okay. That is due
10 September 5th, and that is the applicant and the
11 petitioner; and the applicant and the staff will have
12 responses due to the newly filed stay motion if it is
13 filed by September 8th.

14 That is a quick timetable. If any of you
15 think that you can't meet it, then we should scrub the
16 oral argument and push the oral argument back, but
17 then we would push the -- we would then have to
18 consider a stay beyond which what the applicant has
19 represented today, in terms of the movement of the
20 cobalt.

21 And I would prefer just to move ahead on
22 September 10th if you all can do it. Anyone who can't
23 do it?

24 MR. LEWIS: The staff will abide by and
25 meet all the dates requested.

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1 CHAIRMAN FARRAR: All right.

2 MR. THOMPSON: So will the applicant, Your
3 Honor.

4 CHAIRMAN FARRAR: Mr. Sugarman.

5 MR. SUGARMAN: I expect we will. I may
6 have to request an extension at some point, but I have
7 no plans to do that. I plan to meet the deadlines.

8 CHAIRMAN FARRAR: Okay. I think that up
9 to this point that extensions that were reasonable, my
10 practice would be to grant them. At this point, we
11 are headed and constrained by the timing of an oral
12 argument, and Mr. Sugarman, you, as Mr. Thompson said,
13 or as I said, or as Mr. Thompson's argument said, in
14 effect this is a second chance, and maybe a deserved
15 second chance, but I say a second chance only in the
16 sense of you have already done some work towards a
17 stay motion.

18 So it is not like you are starting from
19 scratch as you were last Thursday night, and so I hope
20 that you will bear that in mind.

21 MR. SUGARMAN: I absolutely will and I
22 would add that it is in my interests. I have not
23 requested any extensions up until now and I don't plan
24 to.

25 CHAIRMAN FARRAR: All right. Fine.

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1 MR. SUGARMAN: One other question. I ask
2 this out of an excess of caution and it may be a silly
3 question, but I want to ask it anyway even at the risk
4 of being silly. Is there any nuclear material already
5 on-site at the facility?

6 MR. THOMPSON: My answer is no. It would
7 be in violation of -- we don't have a license for it.

8 MR. SUGARMAN: I understand that would be
9 a violation, but I don't know whether there has been
10 some leave granted, or some exception made, or some
11 other rule that we don't know about. I am just asking
12 the question categorically is there any material
13 already on-site?

14 MR. THOMPSON: Not to my knowledge.

15 CHAIRMAN FARRAR: Mr. Thompson is saying
16 no, and Mr. Kinneman, I assume that you would say that
17 if Mr. Thompson had said yes that you would have some
18 people interested in that answer.

19 MR. KINNEMAN: Your Honor, the only
20 modification that I would make to that is that since
21 I know that they have survey meters on the site, they
22 may have sources which are exempt from the requirement
23 for a license to check those meters, and I simply --

24 CHAIRMAN FARRAR: That has nothing to do
25 with the cobalt. We are talking about something that

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1 they either already have a license for or is exempt
2 from licensing.

3 MR. SUGARMAN: It may be cobalt.

4 MR. THOMPSON: It would be unusual if it
5 was cobalt.

6 MR. SUGARMAN: Is there any nuclear
7 material on-site?

8 MR. THOMPSON: Not to my knowledge.

9 MR. SUGARMAN: And Mr. Kinneman?

10 MR. THOMPSON: That was Mr. Kinneman who
11 had previously answered that, and not to my knowledge.
12 I was simply exercising excessive caution myself.

13 CHAIRMAN FARRAR: Well, they are entitled
14 like anybody else that has received a license for a
15 gauge, or a meter, or something.

16 MR. THOMPSON: Yes.

17 CHAIRMAN FARRAR: But in terms of the
18 license that they are now asking for materials to run
19 an irradiator, there should be none of that on-site.

20 MR. KINNEMAN: That is correct. Your
21 Honor's previous statement was correct. If I was
22 aware that they had received any such material, first
23 of all, I would have certainly have informed the
24 Board; and second of all, I would be taking action to
25 deal with that.

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1 CHAIRMAN FARRAR: Right. And Mr. Thompson
2 has said to his knowledge that there is nothing there,
3 Mr. Sugarman, and I don't think we have something here
4 that the Board is interested in.

5 MR. SUGARMAN: Thank you, Your Honor.
6 Thank you for indulging me in that excess of caution.

7 CHAIRMAN FARRAR: Thank you. Then I think
8 we have dealt with everything that we need to deal
9 with today. I appreciate --

10 MR. THOMPSON: Your Honor?

11 CHAIRMAN FARRAR: Yes.

12 MR. THOMPSON: This is Tony Thompson. May
13 I just ask a question?

14 CHAIRMAN FARRAR: Yes.

15 MR. THOMPSON: Based on my experience in
16 prior Subpart L proceedings, I wonder if it makes
17 sense for Your Honor and Judge Kelber, and Mr.
18 Sugarman, and any of this experts, that since you are
19 going to be in the area to schedule a visit to look at
20 the facility.

21 That has been done in other proceedings
22 that I have been in, and my client has indicated a
23 willingness to -- that if you are going to be in the
24 area for the oral argument, to have the presiding
25 officer and whomever he deems appropriate from his

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1 staff, and Mr. Kinneman and his experts, or
2 representatives of his client, and of course the NRC
3 staff, visit the site.

4 CHAIRMAN FARRAR: I appreciate that offer,
5 Mr. Thompson. That is private property, and so if we
6 did that, we wouldn't have to admit the public as part
7 of it. Is that correct?

8 MR. THOMPSON: That's correct.

9 CHAIRMAN FARRAR: Mr. Sugarman, would you
10 would be interested in such a visit?

11 MR. SUGARMAN: Your Honor, under the
12 limitations that we are talking about, may I get back
13 to you on that?

14 CHAIRMAN FARRAR: Certainly.

15 MR. SUGARMAN: And I would like to clear
16 it with my clients before I agree to it.

17 CHAIRMAN FARRAR: Okay. If there is a
18 visit on to the property, we would want to arrange
19 that in advance. And, Mr. Thompson, Mr. Sugarman
20 could include a couple of his clients on that?

21 MR. THOMPSON: Oh, sure, absolutely.

22 CHAIRMAN FARRAR: Okay.

23 MR. SUGARMAN: I appreciate that. That
24 sounds like a good idea, but let me check with my
25 clients.

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1 CHAIRMAN FARRAR: Okay. I would be open
2 to do that on the morning of the -- well, mid-morning
3 on the 10th. So, Mr. Sugarman, you let Mr. Thompson
4 know; and Mr. Thompson, if you hear from him, you call
5 us and we will work with you to put that together.

6 MR. THOMPSON: Okay, Your Honor. Thank
7 you.

8 CHAIRMAN FARRAR: I appreciate the offer.
9 We are about out of time.

10 MR. LEWIS: Your Honor, this is Steve
11 Lewis. I just wanted to tie up one loose end.

12 CHAIRMAN FARRAR: All right.

13 MR. LEWIS: In light of the fact that Mr.
14 Sugarman made a point about this extra -- this
15 provision that I had asked for notice of the
16 availability of large volume documents that could not
17 be faxed, and that were going to have to go on an
18 overnight delivery.

19 Let me just simply say that as I thought
20 about it more, really my intention was to say that any
21 party should have the option of making an arrangement
22 for some kind of a private delivery. I think that is
23 probably fairer after I thought about it.

24 CHAIRMAN FARRAR: All right. I appreciate
25 that.

1 MR. LEWIS: I mean, I feel --

2 CHAIRMAN FARRAR: Well, I appreciate that,
3 Mr. Lewis, and I think that responds to Mr. Sugarman's
4 concern that he expressed, and I appreciate you
5 offering that.

6 MR. LEWIS: Okay.

7 CHAIRMAN FARRAR: All right. Then there
8 is a lot to be done in the next 15 days. We will
9 count on you all and most of that can be done much
10 faster by you all calling each other and arranging a
11 sensible, professional way to do things without
12 involving us.

13 And so let's work hard together to
14 accomplish that. We are asking a lot of you over the
15 next 15 days, but it is in the public interest that we
16 do it this way and reach the soundest decisions both
17 on stay requests and the intervention itself, and if
18 it gets to that point on the merits as we can do, and
19 I am looking forward to working with you all of you on
20 that. So does anyone else have anything else that
21 they need to add?

22 MR. SUGARMAN: Your Honor, in response to
23 your question or suggestion of a couple of weeks ago
24 as to whether the parties could talk -- and this is
25 Bob Sugarman -- towards any possible resolution, I did

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1 write Mr. Thompson a letter about -- at that time, and
2 maybe -- a few weeks ago, and offering to meet. I
3 have not heard back from him.

4 CHAIRMAN FARRAR: Well, you all three will
5 be hearing from each other by telephone, or e-mail, or
6 whatever, and make yourselves available to each other,
7 and let's find a way to get this to meet a very
8 aggressively -- well, what didn't appear to be an
9 aggressive target, but which is now an aggressive
10 target, of wrapping all of this up in an oral argument
11 on both the intervention and on the stay motion on
12 Wednesday, September 10th.

13 Anything else for the good of the order?
14 All right. Then we will sign off, and Susan, I will
15 call you in 10 minutes.

16 MR. SUGARMAN: Thank you.

17 CHAIRMAN FARRAR: Thank you all.

18 (Whereupon, the teleconference was
19 concluded at 11:57 a.m.)
20
21
22
23
24
25

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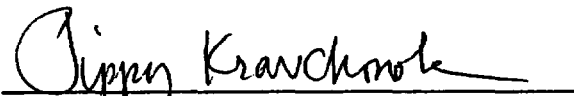
Name of Proceeding: CFC Logistics, Inc.

Materials License Scheduling
Conference

Docket Number: 30-36239-ML

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.


Pippy Kravchonok
Official Reporter
Neal R. Gross & Co., Inc.

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