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

(11:30 a.m.)

1  
2  
3 CHAIRMAN FARRAR: This is a conference  
4 call in the CFC Logistics case. It's Tuesday,  
5 September 2nd, 11:30 a.m.

6 This is Mike Farrar, the presiding officer  
7 in the case. I have with me Susan Lynn, our law  
8 clerk, and Sharon Perini, our administrative person.  
9 Judge Kelber is not available today.

10 Mr. Lewis, would you identify yourself for  
11 the record, please?

12 MR. LEWIS: Stephen, with a P-H, H. Lewis,  
13 NRC Staff Counsel.

14 CHAIRMAN FARRAR: Mr. Sugarman?

15 MR. SUGARMAN: Robert Sugarman. And with  
16 me is Michael Galbraith, who is my associate who is  
17 working for me, for the Intervenors.

18 CHAIRMAN FARRAR: All right. And Mr.  
19 Thompson, or Mr. Pugsley?

20 MR. PUGSLEY: Chris Pugsley, CFC  
21 Logistics. Mr. Thompson should be joining us shortly.

22 CHAIRMAN FARRAR: Okay. Do you want us to  
23 wait for him or --

24 MR. PUGSLEY: Yes, please, Your Honor.

25 CHAIRMAN FARRAR: Okay. Tell me when

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1 he --

2 MR. PUGSLEY: I will call him right now  
3 and make sure he gets on.

4 CHAIRMAN FARRAR: Okay.

5 (Pause.)

6 CHAIRMAN FARRAR: Mr. Thompson, is that  
7 you?

8 MR. THOMPSON: Yes, sir.

9 CHAIRMAN FARRAR: We were at the point of  
10 introducing ourselves for the record, if you would.

11 MR. THOMPSON: Anthony Thompson, counsel  
12 for CFC Logistics.

13 CHAIRMAN FARRAR: All right. I think that  
14 is everybody. I want to thank you all for gathering  
15 on short notice. We had a flurry of phone calls and  
16 filings and activities last week while I was on  
17 vacation.

18 We've got an argument date of  
19 September 10th, just eight days away, and so I thought  
20 we'd do a quick status check here and make sure we're  
21 on target. And I hope we can wrap this up in a half  
22 hour. I know you all are busy on this and other  
23 matters.

24 Are we on track on the documents? We've  
25 got the staff's standing and germaneness, and the

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1 replies to that are due at 5:00 this Friday. How are  
2 we doing on that? Mr. Sugarman, are you going to be  
3 able to meet that date?

4 MR. SUGARMAN: Yes.

5 CHAIRMAN FARRAR: Mr. Pugsley? Mr.  
6 Thompson?

7 MR. SUGARMAN: Yes, Your Honor.

8 CHAIRMAN FARRAR: Okay. In terms of the  
9 staff brief, I had thought we had mentioned page 33 of  
10 the August 7th transcript, the Commission standard  
11 which governs these cases -- that is, whether for  
12 proximity presumptions whether we have -- are dealing  
13 with "a significant source of radioactivity producing  
14 obvious potential for offsite consequences."

15 Mr. Lewis, I didn't see that phrase or  
16 that test appear anywhere in your brief.

17 MR. LEWIS: Your Honor, I had -- I somehow  
18 have lost track of that direction about the -- looking  
19 at 33. We did address the point about the source and  
20 its -- you know, whether or not it had to be assumed  
21 to be in a protected position or in splendid  
22 isolation. But I --

23 CHAIRMAN FARRAR: Well, let me cut you off  
24 there in the interest of time. I think I also came  
25 back to it at transcript page 74, and what I'd like to

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1 do is have you -- what's today? Tuesday. Have you  
2 file by noon tomorrow, and you can do it in letter  
3 form, do it any way you want to, a brief answer,  
4 doesn't have to be more than a page or two, about  
5 whether you think that -- in terms of this source how  
6 that standard applies.

7 MR. LEWIS: All right. So if folks have  
8 a question of whether or not there's an obvious  
9 potential --

10 CHAIRMAN FARRAR: Is this a significant  
11 source of radioactivity, and is it an obvious  
12 potential, and get that in by noon tomorrow. And the  
13 parties can, as they are wrapping up their briefs,  
14 their agreement or disagreement with whatever you say,  
15 in their briefs by this Friday.

16 MR. LEWIS: All right.

17 CHAIRMAN FARRAR: Second, Mr. Sugarman,  
18 when did you get the proprietary documents actually in  
19 your hands?

20 MR. SUGARMAN: 4:30 on Friday afternoon.

21 CHAIRMAN FARRAR: Okay.

22 MR. SUGARMAN: I did not get all of the  
23 proprietary documents.

24 CHAIRMAN FARRAR: The five -- was it five  
25 pages of the --

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1 MR. SUGARMAN: It was two pages of  
2 application-specific text, about eight pages of  
3 Commission standard regulations, and about six pages  
4 of drawings. The drawings, however, refer to a soils  
5 report, and the soils report was not included. I  
6 e-mailed both staff and the applicant on Friday  
7 afternoon to request the soils test.

8 CHAIRMAN FARRAR: All right. Given -- are  
9 you going to be able to file your stay motion by noon  
10 tomorrow?

11 MR. SUGARMAN: We're working on it, but I  
12 think it's going to be very difficult. Over the  
13 holiday weekend, because it came in so late on Friday,  
14 I was unable to dispatch those documents to my expert,  
15 because he was out of pocket. I'm planning to  
16 overnight them to him today. Because they're drawings  
17 I can't transmit them other than by physically.

18 So I'm planning to overnight them to him  
19 today after he signs the agreement. So he should have  
20 them in the morning tomorrow, but I would like to have  
21 until the end of the day on Thursday to -- that's the  
22 day after tomorrow -- in order for him to evaluate  
23 them. And that's assuming that I get the soils test  
24 right away, which is critical to the question of risk  
25 from -- of failure and risk from failure.

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1                   CHAIRMAN FARRAR:     Mr. Pugsley, Mr.  
2 Thompson, and Mr. Lewis, how much time do I need to  
3 give Mr. Sugarman in addition beyond noon tomorrow in  
4 order to be fair to him and let him incorporate this  
5 material, also to be fair to you getting your replies  
6 in by 6:00 p.m. on Monday, the 8th?

7                   And I suppose we could push that 6:00 p.m.  
8 on Monday, the 8th, to noon on Tuesday if -- yes, in  
9 fact, let's move you to noon on Tuesday, the 9th. And  
10 how much time, then, can I give Mr. -- can I give Mr.  
11 Sugarman until close of business Thursday, the 4th?

12                  MR. LEWIS:     Close of business -- Mr.  
13 Sugarman, would you be electronically --

14                  CHAIRMAN FARRAR:   Don't worry about that.  
15 Just tell me when you need the documents.

16                  MR. SUGARMAN:   Yes. I'll get them to you  
17 by electronic 5:00 on Thursday.

18                  CHAIRMAN FARRAR:   That's all right with  
19 you, Mr. Lewis?

20                  MR. LEWIS:     Yes.

21                  CHAIRMAN FARRAR:   Mr. Thompson?

22                  MR. THOMPSON:   Yes.

23                  CHAIRMAN FARRAR:   You said yes?

24                  MR. THOMPSON:   Yes.

25                  CHAIRMAN FARRAR:   Good. Thank you very

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1 much. All right, then.

2 MR. SUGARMAN: Would I be able to get the  
3 soils test today, so I can include that in my  
4 transmission to the experts?

5 MR. LEWIS: Well, for the staff, Your  
6 Honor, the staff does not have the soils tests in  
7 its --

8 CHAIRMAN FARRAR: That's all I need to  
9 know. You don't have them.

10 Mr. Thompson? Mr. Pugsley?

11 MR. THOMPSON: Chris?

12 MR. PUGSLEY: Yes. Your Honor, I have a  
13 copy of the soil test right here. It was not part of  
14 the application. I can get it to Mr. Sugarman as soon  
15 as I draft a letter to him for him to sign which --  
16 saying that it will be subject to the protective order  
17 we agreed to. That shouldn't take very long.

18 CHAIRMAN FARRAR: All right. Then, let's  
19 do that by -- you can do that by fax?

20 MR. PUGSLEY: I will do that by fax if  
21 that's the easiest for Mr. Sugarman, or if he --

22 MR. SUGARMAN: That's fine by me.

23 MR. PUGSLEY: That's fine? Okay. Then,  
24 that's how we'll do it.

25 CHAIRMAN FARRAR: Thank you.

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1                   In terms of these documents, I don't know  
2                   that the copy of the application we have has them.  
3                   Who is in the best position to get a copy of what Mr.  
4                   Sugarman received last week and what he's going to  
5                   receive today? Who is in the best position to get  
6                   that to us?

7                   MR. LEWIS: Your Honor, perhaps I need to  
8                   engage in a discussion about this with the company  
9                   counsel. I don't know -- do -- I mean, we did  
10                  undertake, at the request of CFC Logistics, to provide  
11                  -- we had someone from Region I deliver them to him  
12                  personally.

13                  CHAIRMAN FARRAR: You did that just  
14                  because of the geographic --

15                  MR. LEWIS: Yes.

16                  CHAIRMAN FARRAR: All right. Then, why  
17                  don't you and the company talk, and whoever wants to  
18                  get -- and I don't need them before, you know, the end  
19                  of this week. But just whoever has them, get them to  
20                  us, so that we have in front of us whatever Mr.  
21                  Sugarman has --

22                  MR. LEWIS: Right.

23                  CHAIRMAN FARRAR: -- in addition to the  
24                  public record. So I'll count on one of you getting  
25                  those to us.

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1 MR. LEWIS: Right.

2 CHAIRMAN FARRAR: All right. So we're on  
3 target for our filings, with a little bit of  
4 extension.

5 Oh. Mr. Thompson, would you be sure in  
6 your response to the stay to give us the schedule for  
7 moving sources in. You said nothing would be moved in  
8 before the week of September 22nd, but I know you have  
9 a license for up to a million curies. Could you just  
10 put in a factual note about how much you'd be moving  
11 in how fast?

12 MR. THOMPSON: Yes, Your Honor.

13 CHAIRMAN FARRAR: Okay. Thank you. Just  
14 include that in your response to the stay motion.

15 Oral argument. Okay. Mr. Thompson, Mr.  
16 Pugsley, you filed a motion last week about the  
17 proprietary data, both in terms of future filings and  
18 the oral argument.

19 In terms of the future filings, it's my  
20 impression that it's standard around here that whoever  
21 files anything just marks it up as proprietary, sends  
22 copies only to the presiding officer, to opposing  
23 counsel, and to the Commission secretary, and they --  
24 as long as it's properly marked as proprietary, they  
25 do not disseminate it, do not put it up on the Adams

1 electronic system, and do not make it available to  
2 anybody.

3 So I think as long as we observe that,  
4 there's no need for redacted filings. We may, at a  
5 later time, decide that we want the public record to  
6 reflect much of what went on, and I think then we  
7 would have a negotiation among the three of you where  
8 perhaps the company's counsel would take, for example,  
9 Mr. Sugarman's document and mark it up and send it  
10 back to him and say, "Can you electronically blank out  
11 these portions?"

12 And then you'd have a little negotiation  
13 back and forth. We'd get involved in that. But I  
14 don't think there's any need to do that before  
15 September 10th. You all have enough of a burden to --  
16 to get your papers in, and then I think we leave the  
17 redacted copies for later. Does that solve your  
18 problem on the filings?

19 MR. THOMPSON: Your Honor, this is Tony  
20 Thompson. I'm not sure I understand exactly what you  
21 said. I'm not sure I understand who is doing what.

22 CHAIRMAN FARRAR: Nobody is doing  
23 anything. People are filing their papers --

24 MR. THOMPSON: Okay.

25 CHAIRMAN FARRAR: -- and they have all

1 over it in the appropriate portions -- and perhaps Mr.  
2 Lewis can advise you, since he has probably seen a lot  
3 more of these than I have -- you know, I guess you  
4 just put, you know, "proprietary data" on each page as  
5 a header or a footer on each page.

6 MR. THOMPSON: Oh, I see. So you just put  
7 something like, "These pleadings contain proprietary  
8 data" on every page or something like that, and that's  
9 that.

10 CHAIRMAN FARRAR: Right. And what happens  
11 is when the docket -- the Commission's docketing  
12 office, you know, the official, you know, court clerk  
13 as it were gets them, then they put them in a separate  
14 place and they don't go anywhere. And so the only  
15 people seeing them would see the parts so --

16 Whatever your service list is you cut it  
17 down to make sure it's only opposing counsel and the  
18 Board and the SECY, the Commission docketing place,  
19 and then they don't go anywhere.

20 Then, what I was saying is if we later  
21 want to have a publicly-available redacted copy, we'll  
22 worry about that after September 10th.

23 CHAIRMAN FARRAR: Okay. Now, Steve, is  
24 there some standard format for this?

25 MR. LEWIS: I think I -- I think that

1 there's just the proprietary stamp that we use.  
2 That's all.

3 CHAIRMAN FARRAR: Then, I think you send  
4 your -- your cover letter to SECY says, you know,  
5 "This contains proprietary data. Please do not  
6 release" -- you know, "Please do not release it to the  
7 public."

8 MR. LEWIS: That sounds like the way it's  
9 handled, yes.

10 CHAIRMAN FARRAR: Okay. That was Mr.  
11 Thompson?

12 MR. THOMPSON: Mr. Lewis.

13 CHAIRMAN FARRAR: Mr. Lewis. All right.

14 Mr. Sugarman, are you clear on this, since  
15 you'll be the one filing the first document that has  
16 this -- that might refer to proprietary data?

17 MR. SUGARMAN: Right. It goes to you and  
18 to the counsel, and then they tell us what they want  
19 us to --

20 CHAIRMAN FARRAR: We're not even there  
21 yet. Just make sure the copy you file has marked all  
22 over it "proprietary," and that your cover note to the  
23 docketing clerk at the Commission --

24 MR. SUGARMAN: Gotcha.

25 CHAIRMAN FARRAR: -- says that this is not

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1 to be released to the public.

2 MR. LEWIS: This is Steve Lewis. I think  
3 it would also be advantageous to not only say  
4 proprietary but to just reference 10 CFR 2.790.

5 CHAIRMAN FARRAR: All right. So that  
6 takes care of that. Now, the company's motion also  
7 went to the oral argument and closing the oral  
8 argument. And if you close it, then obviously you --  
9 you don't have to trot up to Pennsylvania and tell the  
10 citizens we're having an argument but they can't come  
11 in. We would do it here, or we might even do it by  
12 telephone.

13 Mr. Sugarman, what are your thoughts?

14 MR. SUGARMAN: Well, I think it's  
15 unnecessary and counterproductive, and I think it  
16 would be terrible precedent having -- having told the  
17 citizens several times that they should expect this  
18 event, my clients. And to exclude my clients, who are  
19 parties to the case, I think is essentially a denial  
20 of due process.

21 My clients, several dozens, the applicants  
22 standing alone are more than 20. But even beyond  
23 that, I feel that the company is estopped and has  
24 waived its right to seek that by not raising it prior  
25 to the delivery of the documents.

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1           It's clear that they prepared this motion  
2 before they delivered the documents to us. The  
3 certification is dated the 28th. It came to us within  
4 an hour of the time that we received the documents,  
5 and within about two hours of the time that we signed  
6 off.

7           We would have had an opportunity to debate  
8 this issue before deciding to receive the documents.  
9 And I certainly would have wanted to receive the  
10 documents, and it would have put us in a terrible  
11 dilemma if we had been given that choice ahead of  
12 time.

13           But by the company's withholding of this  
14 request, we were not even given the choice, and that's  
15 a classic case for estoppel or waiver or both, that  
16 they pollute us, given us this poison pill that we  
17 can't possibly now back off from, and then they try to  
18 take advantage of it. Clearly, they had this in mind,  
19 and they withheld that information.

20           CHAIRMAN FARRAR: Well, let's not get into  
21 what different people's motives are. We are where we  
22 are.

23           MR. SUGARMAN: I'm just getting into the  
24 fact that -- nothing to do with motive. It has to do  
25 with the fact that they withheld the information that

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1 they were going to seek this, obviously intending to  
2 seek it. That's not a question, as I understand it,  
3 of motive. That's a question strictly of objective  
4 facts.

5 CHAIRMAN FARRAR: You did mention there  
6 you think this would be a denial of due process.

7 MR. SUGARMAN: I did.

8 CHAIRMAN FARRAR: Okay. The argument is  
9 going to proceed the same. Whether it's closed or  
10 open, it's going to proceed the same way. I can  
11 understand that they might -- citizens might perceive  
12 it as a denial of something or other, but I can assure  
13 you whether this is open or closed your clients will  
14 get due process.

15 MR. SUGARMAN: Well, I'm saying that due  
16 process includes the right to be present. There's no  
17 precedent for denying a party the ability to be  
18 present at his own hearing.

19 MR. LEWIS: This is Steve Lewis. In NRC  
20 practice, there is, and -- but it --

21 MR. SUGARMAN: Has it ever been challenged  
22 as a denial of due process?

23 MR. LEWIS: Well, let me finish what I was  
24 going to say, which is that the way I see the issue,  
25 having read the motion, is that there quite likely is

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1 a good part of the oral argument that can be conducted  
2 without making any reference to protected material.

3 And then, I think there is some part of  
4 the oral argument that would need to make reference to  
5 protected material. The way that has been usually  
6 handled in my experience is to so state at the  
7 beginning of the oral argument, and when we get to the  
8 part that needs to be closed to clear the courtroom.

9 CHAIRMAN FARRAR: Mr. Thompson, how would  
10 that fit your client's needs?

11 MR. THOMPSON: Judge Farrar, it seems  
12 fairly obvious that if you're going to have a  
13 protective order covering information that is  
14 "privileged" for whatever reason -- trade secrets or  
15 security -- that if you can't talk about it in briefs  
16 that are publicly available, you can't talk about it  
17 in an oral argument where the public is involved.

18 And there is no way that all of his  
19 clients who are -- who wouldn't be experts anyway are  
20 going to sign this agreement. He, in fact, has said  
21 there's no way he's going to do that. So if they're  
22 not going to discuss it at oral argument, they're not  
23 going to discuss protected materials at oral argument,  
24 obviously he's going to need to close it.

25 CHAIRMAN FARRAR: Who is --

1 MR. THOMPSON: I don't know how you can --  
2 I don't know quite how you can divide it up into that  
3 discussion which will not address it and that which  
4 will. But, I mean, if that can be done, obviously  
5 that answers the question.

6 CHAIRMAN FARRAR: Let me draw again on my  
7 experience in this PFS case where we had some  
8 safeguards material, and we had -- the session here  
9 was -- if I recall correctly, it was an oral argument  
10 on one question, and then a prehearing conference on  
11 something else.

12 And instead of closing the courtroom, we  
13 asked the parties to -- we set it up that we would  
14 close it at the -- at an appropriate point in the  
15 argument if we had to. But we asked them when they  
16 were arguing points rather than mention -- rather than  
17 to describe the proprietary or safeguards information  
18 they were talking about, to refer us to their brief.

19 I'd say, "Okay. On page 10, there is some  
20 safeguards information or some -- in this case some  
21 trade secret information, and I want to base my next  
22 argument on the facts cited in my brief," which no one  
23 but us has. And you run the argument that way, so  
24 you're not revealing the material; you're talking  
25 about it or around it.

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1                   And we said, "But, if necessary, we'll  
2 close the -- we'll throw everybody out and close the  
3 courtroom." As it turned out, we didn't need to. The  
4 counsel were adept enough to discuss -- to point us to  
5 the relevant material in writing, and then make  
6 arguments based on us having that in front of us.

7                   Mr. Sugarman, can you conduct an argument  
8 that way?

9                   MR. SUGARMAN: Yes, I can do that.

10                  CHAIRMAN FARRAR: Mr. Lewis?

11                  MR. LEWIS: Yes, I think that's a better  
12 phrasing of what my point was. Yes, I think that  
13 would go well.

14                  CHAIRMAN FARRAR: All right. And Mr.  
15 Thompson, is that something -- now, I will be the  
16 first to say that has perhaps some potential risk in  
17 that one of the counsel acting in good faith might  
18 blurt out something that they shouldn't. But if  
19 everyone goes into this aware of that and is cautious  
20 about it, and if you have the right if you hear them  
21 start to say something, even though you don't have the  
22 floor, just shout out, "Wait a minute."

23                  And, you know, if we have all of those  
24 safeguards, and then if we run into a problem that's  
25 insurmountable, we then do close the courtroom, which

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1 I think people would understand at that point. Why is  
2 that not a good solution?

3 MR. THOMPSON: You answered the question  
4 I was going to have, which is, you know, I don't even  
5 know what sort of the form this oral argument is going  
6 to take at this point. But -- and I guess also going  
7 -- I would assume also Your Honor on his own, on his  
8 toes, to make sure that if he sees something coming,  
9 that he doesn't wait for us to say something.

10 CHAIRMAN FARRAR: Right. I would want to  
11 -- since you're more intimately familiar with this  
12 material than I will be, what I'm saying is you would  
13 have the additional right just, you know, to shout  
14 out, "Hold it," which you ordinarily wouldn't do in a  
15 courtroom, but that would give us further protection.  
16 And I have to be on my toes, and you have -- you know,  
17 you're allowed to jump up and shout at any point you  
18 need to.

19 MR. THOMPSON: Okay, Your Honor.

20 CHAIRMAN FARRAR: Okay. That was Mr.  
21 Thompson?

22 MR. THOMPSON: Yes.

23 CHAIRMAN FARRAR: Okay, fine. Then, I --  
24 and you did mention the form of the argument. What  
25 we're planning to do is we would argue the questions

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1 of standing and germaneness first, and then go into  
2 the stay from that, since one of the issues -- stay is  
3 probability of success on the merits.

4 And if you're not going to -- you have no  
5 probability of even getting into the case, then I  
6 suppose that answers the question on the stay. If you  
7 establish you do have a -- you're likely to get into  
8 the case, then the probability of success on the  
9 merits would go to some of the technical issues.

10 So I think that argues for taking up  
11 standing and germaneness first, and the stay motion  
12 later. And I think rather than have one party do all  
13 three of those we would do -- we would have, in  
14 effect, three arguments.

15 Mr. Sugarman would argue standing,  
16 followed by the staff, and then the company. And Mr.  
17 Sugarman would argue areas of concern and their  
18 germaneness, again followed by the staff and the  
19 company, and then return to the stay and go in the  
20 same order, since Mr. Sugarman is the moving party.  
21 And we would conduct it in that fashion.

22 And after we get all of the briefs we will  
23 put out -- well, we may not get to put it out. We  
24 will try -- after getting the last brief on Tuesday  
25 noon, we will send out an -- it may just be an e-mail,

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1 bang, here's how much time will be allotted to each of  
2 those three issues.

3 We've got two and a half -- 5:30 to 8:00.  
4 We've got two and a half hours -- how much of that two  
5 and a half hours we'll have for each issue, and the  
6 order of proceeding will be the same in each -- the  
7 petitioners, the staff, the company. Does that make  
8 sense?

9 MR. THOMPSON: Sounds good.

10 MR. LEWIS: That's fine.

11 CHAIRMAN FARRAR: Okay. Mr. Thompson, you  
12 had offered the parties and the Board a tour of the  
13 facility.

14 MR. THOMPSON: Yes.

15 CHAIRMAN FARRAR: Mr. Sugarman, is that  
16 still agreeable to you? Mr. Sugarman?

17 MR. SUGARMAN: Yes, I'm sorry if I wasn't  
18 heard. Yes. Yes, that's --

19 CHAIRMAN FARRAR: That's agreeable to you,  
20 to have a tour?

21 MR. SUGARMAN: Yes.

22 CHAIRMAN FARRAR: That would be at -- can  
23 we do that at 1:00 on Wednesday, Mr. Thompson?

24 MR. THOMPSON: I'm sure we can, Your  
25 Honor. If there's any change in that, we'll get back

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1 to you.

2 CHAIRMAN FARRAR: Okay. Then, we should  
3 just show up at the site?

4 MR. THOMPSON: Yes. I think it would be  
5 helpful if we just knew how many are coming from your  
6 -- you know, with Your Honor and how many Mr. Sugarman  
7 would like to bring.

8 CHAIRMAN FARRAR: All right. Why don't we  
9 each get together -- since that doesn't deal with the  
10 merits of the case, we will inform you privately about  
11 that when we're sure.

12 Mr. Sugarman, if you would do that also.

13 MR. SUGARMAN: Yes.

14 CHAIRMAN FARRAR: Mr. Lewis, I take it you  
15 don't need a whole lot of people there, since I assume  
16 they're all familiar with it?

17 MR. LEWIS: No, they've seen the site.  
18 Right.

19 CHAIRMAN FARRAR: Okay. Then, it would be  
20 good for you or if you have co-counsel to be there,  
21 just to -- since there will be no discussion of the  
22 merits there, but it's always good to have each party  
23 represented.

24 MR. LEWIS: Okay. Fine.

25 CHAIRMAN FARRAR: And we'll do that at

1 1:00 on Wednesday. And we'll just show up at the  
2 parking lot, Mr. Thompson?

3 MR. THOMPSON: Yes.

4 CHAIRMAN FARRAR: Okay. Fine.

5 MR. SUGARMAN: Judge, do we have a  
6 location for the argument?

7 CHAIRMAN FARRAR: We --

8 MR. SURGARMAN: The public is clamoring to  
9 know.

10 CHAIRMAN FARRAR: I do, but the letters --  
11 the letters to people who control the space have not  
12 been exchanged, and I don't want to jump the gun  
13 diplomatically and tell you beforehand.

14 MR. SUGARMAN: All right.

15 CHAIRMAN FARRAR: But we may have an  
16 answer for you this afternoon, and we'll just send you  
17 an e-mail.

18 MR. LEWIS: Okay. So exact location will  
19 be provided to us sometime quite soon, perhaps --

20 CHAIRMAN FARRAR: In the next 24 hours, or  
21 certainly by the close of business Wednesday, probably  
22 earlier. The problem is the people we were  
23 communicating with were on vacation. It's essentially  
24 a done deal, but I don't want to -- diplomatically, I  
25 don't want to release the information until we've had

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1. the proper --

2 MR. SUGARMAN: When do you think we might  
3 have that?

4 CHAIRMAN FARRAR: Perhaps as early as  
5 close of business today, no later than close of  
6 business tomorrow.

7 MR. SUGARMAN: Oh, that's fine. Thank  
8 you.

9 CHAIRMAN FARRAR: And we had said, of  
10 course, it would be in Quakertown, Doylestown, or  
11 Allentown.

12 MR. SUGARMAN: Right.

13 CHAIRMAN FARRAR: It seems as far as the  
14 parties were concerned that that was not a huge  
15 difference, but I do understand the public wanting to  
16 know. But we will get to you as quickly as possible  
17 on that.

18 All right. I think that takes care of all  
19 of the pending business, and I appreciate you all  
20 making yourselves available on such short notice to do  
21 this call. But I thought it was important rather than  
22 spend any time writing things and -- that we just get  
23 this all solved quickly with the extensions, and so  
24 forth.

25 Anything that I have neglected or that any

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1 of you wants to bring up?

2 (No response.)

3 CHAIRMAN FARRAR: All right. Then, thank  
4 you very much. We'll look forward to receiving your  
5 briefs. We will -- even though some of them come in  
6 right before we're leaving, or -- I will personally be  
7 leaving the evening of Tuesday, the 9th. We will be  
8 as prepared as we always liked to have judges be when  
9 we were arguing cases.

10 And let's do this. If anybody has any  
11 emergency matters, let's try to set up phone calls to  
12 deal with them rather than any lengthy filings.  
13 You've got a lot on your plates to get done in a very  
14 short time, and I don't want to distract from that.

15 MR. LEWIS: All right. Your Honor, this  
16 is Steve Lewis. When I said -- when I agreed to 12:00  
17 noon tomorrow, I had lost sight of the fact that I am  
18 scheduled on tomorrow to show up for jury duty in  
19 Montgomery County, Maryland.

20 And I don't -- however, I don't -- I'm not  
21 going to ask for anything extensive because of this,  
22 but I think it would be in the interest of all of us  
23 for me to be a little more candid. The noon time is  
24 probably going to be pressing it. I'm hoping that I  
25 -- attorneys very often are not seated at -- on these

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1 occasions, and so I don't know whether or not I'm  
2 going to -- I'm assuming I may not have to be around  
3 all day there.

4 But I'm simply going to ask, in the event  
5 that I am kept around all day, can we make it noon on  
6 the 4th?

7 CHAIRMAN FARRAR: No. This should have  
8 been in in your original brief, and it's unfair to ask  
9 the parties to respond to that which we had said was  
10 a key point in the discussion. I'm not going to make  
11 them file a response --

12 MR. LEWIS: Okay.

13 CHAIRMAN FARRAR: -- on such short notice.  
14 Don't you have co-counsel over there?

15 MR. LEWIS: No, I don't.

16 CHAIRMAN FARRAR: There's no other person  
17 on the staff who can deal with this issue?

18 MR. LEWIS: Well, there may or may not be.  
19 I don't know. But I do not have co-counsel.

20 CHAIRMAN FARRAR: Give me a moment here.

21 (Pause.)

22 CHAIRMAN FARRAR: We're back on. Mr.  
23 Lewis, I try not to put difficult deadlines on people.  
24 The problem here is I think parties mentioned this in  
25 their earlier filings. We picked up on it and

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1 mentioned it in the transcript.

2           There's a Commission standard that governs  
3 all Subpart L proceedings, and it seems to me there  
4 ought to be somebody on the staff somewhere that you  
5 can turn this over to and say, you know, here's the  
6 simple issue. Here's the Commission test. Here's the  
7 cases in which it's cited. Write three pages -- two  
8 pages and say how that affects -- you know, the  
9 question is simple. Is this a significant source  
10 of --

11           MR. LEWIS: No, I understand the question.

12           CHAIRMAN FARRAR: Let me finish. Is this  
13 a significant source of radioactivity? I don't know  
14 what that means in the context of a materials license.  
15 This is the first one I've had. Does it produce  
16 obvious potential -- and I underline those two words  
17 -- for offsite consequences? There ought to be  
18 somebody on the staff -- in the staff over in OGC who  
19 can address that issue in 24 hours in a two-pager.

20           MR. LEWIS: I'm -- you know, I'm not going  
21 to -- certainly would not disagree with Your Honor.  
22 I'm sure there is.

23           CHAIRMAN FARRAR: Well, then instead of  
24 you worrying about how you get it done, hoping that  
25 you don't get selected on the jury, or they don't keep

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1 you cooling your heels like often happens in any  
2 jurisdiction on jury duty, that you spend the next  
3 hour getting somebody to assign somebody else to do  
4 this, and let's get it in by noon tomorrow. If it's  
5 not in by noon tomorrow, then the staff will be silent  
6 on the matter.

7 MR. LEWIS: Fine, Your Honor. I am not  
8 trying to test your patience with me. As an  
9 alternative suggestion, would you consider allowing  
10 the staff until somewhat later on that day?

11 CHAIRMAN FARRAR: Every hour I give you  
12 later is an hour the other parties don't have.

13 MR. LEWIS: I say this with full  
14 understanding, and certainly I take responsibility for  
15 having excluded it. So I don't -- I mean, I'm not  
16 asking it lightly. I just think that I likely will  
17 have to call upon someone not yet assigned to the  
18 matter, and that just creates a little bit of a time  
19 problem for me.

20 I mean, I'll do it. I will start doing it  
21 right away, obviously.

22 CHAIRMAN FARRAR: Why don't you get it  
23 done. This is -- this shouldn't be rocket science.  
24 It's a fairly simple question that I would think  
25 there's a number of people over there who are familiar

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1 with. And if I give you past noon, the other parties  
2 are due in by 5:00 p.m. on Friday, and I would assume  
3 what the staff thinks about this test is something  
4 fairly significant.

5 MR. LEWIS: Yes. I would assume it is an  
6 important matter, yes.

7 CHAIRMAN FARRAR: And one party, if not  
8 both, at least one of them is not going to like what  
9 you say, and they need to have a chance to respond to  
10 what you say. So let's stick with --

11 MR. LEWIS: All right.

12 CHAIRMAN FARRAR: -- the noon --

13 MR. LEWIS: All right. Fine.

14 CHAIRMAN FARRAR: -- deadline. And  
15 whoever else gets assigned it, I'm looking for --  
16 given the timeframe --

17 MR. LEWIS: Focused.

18 CHAIRMAN FARRAR: -- a focused -- you  
19 know, don't give me any background about the Atomic  
20 Energy Act. Answer the question in two pages. What  
21 does this test mean? All right?

22 MR. LEWIS: All right, Your Honor.

23 CHAIRMAN FARRAR: Good. Thank you.

24 Any other questions?

25 (No response.)

1 CHAIRMAN FARRAR: All right. Then, we'll  
2 sign off, and I think this -- the company and the  
3 staff were going to talk about who gets the documents,  
4 the proprietary documents to the Board, but that's not  
5 an urgent matter. If we get them by Thursday or  
6 Friday, that's plenty of time.

7 MR. LEWIS: Well, then, perhaps I guess we  
8 can stay on the line? Is that --

9 CHAIRMAN FARRAR: If you want, yes. The  
10 Court Reporter and -- Court Reporter, after I say  
11 that's it, if you would also get off the line. We'll  
12 leave it to the parties. They can stay on as they see  
13 fit.

14 All right. Then, hearing nothing else, we  
15 will go off the record and terminate the call at this  
16 point.

17 Thank you.

18 (Whereupon, at 12:10 p.m., the  
19 proceedings in the foregoing matter were  
20 adjourned.)

21

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**CERTIFICATE**

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

Name of Proceeding: CFC Logistics  
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.



Erin Lyddane  
Official Reporter  
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