

RAS 6905

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage
Pre-Hearing Conference

Docket Number: 72-22-ISFSI

Location: (telephone conference)

Date: Tuesday, October 7, 2003

DOCKETED
USNRC

October 15, 2003 (9:07AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Work Order No.: NRC-1122

Pages 14211-14269

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 APPEARANCES:

2 On Behalf of the Applicant, Private Fuel Storage:

3 PAUL A. GAUKLER, ESQ.

4 D. SEAN BARNETT, ESQ.

5 of: Shaw Pittman LLP

6 2300 N Street, N.W.

7 Washington, D.C. 20037-1128

8 (202) 663-8063

9

10 On Behalf of the Intervenor, State of Utah:

11 JAMES SOPER, ESQ.

12 CONNIE NAKAHARA, ESQ.

13 DENISE CHANCELLOR, ESQ.

14 Office of the Attorney General

15 160 East 300 South, 5th Floor

16 P. O. Box 140873

17 Salt Lake City, Utah 84114

18 (801) 366-0287

19

20 (CONT.)

21

22

23

24

25

NEAL R. GROSSCOURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES: (CONT.)

On Behalf of the Nuclear Regulatory Commission:

CATHERINE L. MARCO, ESQ.

BERNARD STAPLETON, ESQ.

MARK DELLIGATTI, ESQ.

Office of the General Counsel

Mail Stop - 0-15 B18

U. S. Nuclear Regulatory Commission

Washington, D.C. 20555-0001

(301) 415-3052

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

(1:04 p.m.)

1
2
3 CHAIRMAN FARRAR: Okay. Let's go on the
4 record. It's just after 1:00 on Tuesday, October 7th.
5 We're here for a prehearing conference call in the PFS
6 case from the Licensing Board.

7 This is Mike Farrar. I have with me Dr.
8 Kline and Dr. Lam, and Susan Lin, our law clerk.

9 Mr. Gaukler, who do you have there?

10 MR. GAUKLER: I have Mr. Barnett here with
11 me.

12 CHAIRMAN FARRAR: All right. And Mr.
13 Soper?

14 MR. SOPER: We have Connie Nakahara and
15 Jean Braxton.

16 CHAIRMAN FARRAR: Mr. Reporter, that's
17 with Jim Soper for the State of Utah.

18 And for the Staff?

19 MR. TURK: This is Sherwin Turk. I have
20 with me co-counsel Catherine Marco and Kathleen
21 Kannler. We also have a number of members of the NRC
22 Staff who are here just to listen to part of it. I
23 don't think it's necessary to identify them on the
24 record.

25 CHAIRMAN FARRAR: All right. Fine. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you.

2 I think our last conference call was
3 August 20th, and we put out an order memorializing
4 that on September 9th. We had a schedule that we --
5 the parties managed to complete the first three steps
6 in a timely fashion.

7 And then, as we got to the Staff's
8 evaluation on September 30th, the Staff indicated that
9 instead it planned to send a second set of RAIs,
10 requests for additional information, to the company,
11 and I believe had those issued on October 1st and had
12 a meeting on October 2nd.

13 Mr. Turk, do you want to fill us in on --
14 or elaborate on that?

15 MR. TURK: You're correct, Your Honor. We
16 sent out the RAIs on October 1st. We e-mailed them at
17 the time to parties on the service list, including the
18 State of Utah and PFS, as well as to the Licensing
19 Board members.

20 We met the next morning on Thursday,
21 October 2. We had a meeting that lasted approximately
22 two hours in which PFS was able to get clarification
23 from the Staff, to whatever extent they felt
24 necessary, to be sure they understood the questions
25 the Staff was asking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The State had in attendance Mr. Marty
2 Malsph, M-A-L-S-P-H. He attended the meeting and was
3 able to listen and observe. The meeting concluded
4 before noon, approximately 11:00 or so. And PFS now
5 has our questions in hand, and we expect if they have
6 any questions in the future about the RAIs that the
7 Staff has asked that they will be contacting Mr.
8 Delagotti. By the way, Mr. Delagotti is with me today
9 in this room on the telephone conference call.

10 So we expect to have further discussions
11 if PFS deems it necessary, just to make sure that they
12 understand the questions that the Staff has asked
13 them.

14 CHAIRMAN FARRAR: All right. Mr. Gaukler,
15 you are free to add anything you want on that. But
16 then, if you would get to the question at hand. How
17 long do you think it will take you to respond to
18 those?

19 MR. GAUKLER: We don't have anything to
20 add to Mr. Turk's summary of the RAIs and the meeting.

21 In terms of the time to respond, the Staff
22 has asked us some detailed questions, particularly
23 with respect to the bolts on the lid of the high-store
24 cask. And that's going to require us to revise the
25 analytical computer model that we use to model the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 cask with. The Staff has also asked us to step back
2 and take a look at the big picture, which we are also
3 doing.

4 In terms of revising the model, that by
5 itself will take about a week to do. And then, after
6 that we have a series of analyses that the Staff has
7 asked us to do, which we will undertake at that point
8 in time.

9 We currently believe that it would take us
10 about a month to complete the RAIs, maybe longer
11 depending on how long it takes to do the analyses. We
12 can complete the other RAIs sooner, those that don't
13 depend on the structural issues concerning the cask,
14 particularly those concerning the British Shaw report
15 and the Cornell report, which ties into one of the
16 schedule suggestions I have later.

17 So in terms of actual -- scheduling a
18 completion date for the RAIs, right now we are
19 hesitant to do so. We would much rather that we be
20 further along in preparing our responses, so that
21 we're able to give a better estimate of when we think
22 we would be done with the answers to the RAIs to try
23 to avoid the need to go through this scheduling
24 process again.

25 Also, in terms of what Mr. Turk said, the

1 Staff -- we are going to be contacting the Staff
2 throughout, as we deem necessary, to obtain the
3 necessary clarification to make sure we understand
4 what the Staff is looking for in terms of inputs and
5 outputs to make sure that this is -- hopefully make
6 sure this is the last run of RAIs that we have.

7 So that's our goal. That's where we are
8 right now. I would suggest that it's premature at
9 this time to set a precise schedule until we're
10 further along in our work.

11 CHAIRMAN FARRAR: Then, before we end the
12 conference call, if I forget, somebody remind me how
13 we'll set the next conference call. Maybe Mr. Gaukler
14 will want to wait until you're in a position to give
15 us a relatively firm date for your answers, and maybe
16 you could just send an e-mail to everybody at that
17 time saying, you know, now is the time for the
18 conference call.

19 MR. GAUKLER: Right. The Staff has asked
20 us for a date, too, so we expect to be giving the
21 Staff a date at some point in time as soon as we can.
22 And so once we have a relatively firm date, that might
23 be the course of action to take.

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

1 Mr. Soper, based on any report Mr. Malsph
2 gave you, do you want to add anything to the
3 description of what happened last week at the meeting?

4 MR. SOPER: No. We have nothing to add in
5 that regard, Your Honor.

6 CHAIRMAN FARRAR: Let me ask a couple of
7 questions, and this is not us trying to tell the Staff
8 how to do its business. I think there's a long series
9 of precedents here that the Staff -- you know, we run
10 the hearings, and the Staff runs the regulatory review
11 process. So these are not questions intended to tell
12 the Staff how to do its business, but more to help us
13 get a handle on the schedule.

14 I take it from what Mr. Gaukler said that
15 these are fairly -- these are not additional RAIs
16 where you're just dotting -- trying to dot the I's and
17 cross the T's, that these are serious matters that the
18 Staff believes it needs in order to carry out its
19 function. Is that correct, Mr. Turk?

20 MR. TURK: For the most part that's
21 correct. There are a few of the questions that are
22 more in the nature of dotting the I's and crossing the
23 T's, but for the most part we are looking for
24 additional analyses to be run. And the Staff does
25 consider them to be important in order to let the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Staff reach a sound conclusion.

2 CHAIRMAN FARRAR: And this would mean --
3 based on that answer, where we had your -- the written
4 evaluation of the Staff due September 30th -- and I
5 think you sent out your letter announcing the second
6 round of RAIs on September 25th. That doesn't mean --
7 or you wouldn't -- you probably would not want me to
8 surmise that once you get Mr. Gaukler's answers in,
9 then in five days you'll be done.

10 MR. TURK: I think that would be
11 overestimating the Staff's ability to process the
12 information.

13 CHAIRMAN FARRAR: In other words, it's not
14 like you have your report done and you just have to
15 fill in some blanks. These go to the heart of what
16 your written evaluation will say?

17 MR. TURK: Yes.

18 CHAIRMAN FARRAR: And --

19 MR. TURK: One suggestion I had there,
20 Your Honor, and it ties into one of the questions you
21 had, whether he might be able to do things
22 consecutively as opposed to -- I mean, in parallel as
23 opposed to consecutively. We envision that we should
24 be able to provide responses with respect to the
25 British Shaw report and the Cornell report -- the RAIs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 directed to them -- prior to responding to the
2 structure analyses RAIs.

3 So if that were the case, conceivably the
4 Staff might be able to do its review on those reports
5 and issue a review or an evaluation on those reports
6 separately while its working on the structural issues.
7 And, conceivably, we then might hold depositions with
8 respect to those reports and those areas of the case.
9 That's just one thought I did have in terms of one of
10 the Board's questions that it had in its e-mail.

11 CHAIRMAN FARRAR: All right. Hold that
12 suggestion for a moment. And, again, not trying to
13 step into the Staff's legitimate independent role
14 here, I take it, Mr. Gaukler, from the length of time
15 it will take you to respond to these that you don't
16 view these -- the second round of RAIs as trivial or
17 excessive or nitpicking, but, again, these are serious
18 matters that you correctly believe need to be
19 addressed?

20 MR. GAUKLER: They're not crossing I's or
21 -- dotting I's or crossing T's. These are
22 substantive. For the most part, they are substantive
23 analysis that the Staff has asked for, yes.

24 CHAIRMAN FARRAR: Okay. Then, that
25 eliminates any ability for us to say, well, while

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you're doing this, we can just move full-scale ahead
2 with the schedule.

3 Now, putting aside your notion about some
4 things concurrently, basically we have to all stand
5 back here and reassess where we are is what I think
6 you are all agreeing to.

7 MR. GAUKLER: In terms of schedule, I
8 think that's correct, Your Honor. The schedule as we
9 currently have it is not feasible with respect to --
10 given the RAIs that we have. And I think the best
11 way, as I suggested, is to hold off the actual --
12 setting a specific schedule until further down the
13 road.

14 CHAIRMAN FARRAR: I'm sorry. I hit the
15 phone by mistake here.

16 Mr. Gaukler, you were saying -- were you
17 -- Mr. Reporter, can you read back the last paragraph
18 Mr. Gaukler said?

19 THE COURT REPORTER: I can't, because I'm
20 recording it. I cannot --

21 CHAIRMAN FARRAR: Oh, okay.

22 THE COURT REPORTER: I'm sorry.

23 CHAIRMAN FARRAR: Mr. Gaukler, do you want
24 to -- could you all hear where we got knocked off the
25 line?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. GAUKLER: No, I didn't hear when you
2 got off -- knocked off the line.

3 CHAIRMAN FARRAR: You were starting --
4 hold on a second.

5 Mr. Gaukler?

6 MR. GAUKLER: Yes.

7 CHAIRMAN FARRAR: I think it was where you
8 had said, you know, they weren't frivolous requests,
9 and the schedule was not feasible. Can you pick up
10 there?

11 MR. GAUKLER: Yes. I was saying the
12 schedule -- the current schedule that we have in place
13 is not feasible, given the new RAIs. And that,
14 therefore, we will need to develop a new schedule.
15 And as I suggested before, we believe the best course
16 in order to avoid having to do this again is try to --
17 is to wait until we're further down the road and have
18 a better idea of when we will be done with our
19 responses and set that schedule.

20 CHAIRMAN FARRAR: All right. Then, I take
21 it you all have on your own canceled whatever
22 deposition schedules you had set up for the first part
23 of October.

24 MR. GAUKLER: That's correct, Your Honor.
25 We canceled the depositions with respect to October.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN FARRAR: Okay. What can we do to
2 help move things along now? Or are we at a -- kind of
3 a stop and wait point until we hear back from you, Mr.
4 Gaukler?

5 MR. GAUKLER: Well, the one thing that we
6 can consider with respect to moving things along is my
7 suggestion that we might answer certain of the RAIs
8 sooner than the other ones, which might enable the
9 Staff to do an evaluation on various technical reports
10 -- other technical reports, which then it would make
11 sense to go forward with the depositions on those
12 technical reports and issues.

13 CHAIRMAN FARRAR: So instead of -- let me
14 see if I understand that. Instead of the Staff doing
15 one self-contained written evaluation, you would have
16 them do different chapters as it were. And then, when
17 they get to the last chapter, or last several
18 chapters, then they would do the overall conclusion?

19 MR. GAUKLER: Right. Right.

20 CHAIRMAN FARRAR: Mr. Turk, what do you
21 and your clients have to say about that?

22 MR. TURK: I think it would be useful if
23 we could look at the answers to questions concerning
24 aircraft angles and speeds early. I don't see a need
25 for those to be held up waiting for the structural

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 analyses.

2 With respect to the probability assessment
3 by Dr. Cornell, I think it's probably more appropriate
4 for that to wait until we see the aircraft angles and
5 speeds to make sure that we're on the same page as PFS
6 with respect to probability. But it's up to PFS to
7 decide how they want to do that. If they want to go
8 ahead with the Cornell report beforehand, that's their
9 call.

10 MR. GAUKLER: What I was suggesting was
11 doing the Cornell report at the same time we do the
12 angles and speeds.

13 MR. TURK: Well, it's your call. I think
14 we're more interested right now in seeing angles and
15 speeds --

16 MR. GAUKLER: Okay.

17 MR. TURK: -- wrapped up, and then looking
18 at the overall picture once we have the structural
19 analyses in.

20 MR. GAUKLER: Okay. I understand. Well,
21 I think that we can wrap up the angles and speeds, is
22 my understanding, but --

23 MR. TURK: I think we ought to be able to
24 do that pretty quickly.

25 CHAIRMAN FARRAR: Why don't we, then,

1 leave it to the Applicant and the Staff to come up
2 with a little one-page or one-paragraph plan on how
3 you propose to do that, just so everybody has it. And
4 that will help us on our next call to go ahead.

5 Mr. Gaukler, but you can't -- at this
6 point, you don't know how long the aircraft angles and
7 speeds will take?

8 MR. GAUKLER: I have not focused
9 specifically on that, but I would imagine that's
10 something that's doable by the end of next week.

11 CHAIRMAN FARRAR: All right. Then, let's
12 talk about your -- end of next week meaning like the
13 17th?

14 MR. GAUKLER: Yes.

15 CHAIRMAN FARRAR: Let's talk about Mr.
16 Gaukler's picking up on our concurrent rather than
17 consecutive approach. Okay. Mr. Gaukler, on that,
18 you would turn in aircraft angles and speeds, the
19 Staff would evaluate it, evaluate that issue, and then
20 as soon as you -- they've finished evaluating that
21 issue, then you all would go into depositions of all
22 parties' witnesses on that issue. Is that your plan?

23 MR. GAUKLER: That's what I would suggest,
24 and I would also include in that ordnance impact on
25 speed as well. There were no questions asked by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Staff with respect to that, but I think the two go
2 hand in hand.

3 CHAIRMAN FARRAR: Mr. Turk, how does that
4 -- assuming the Applicant is willing to do these in
5 kind of stagger-step fashion, how does that leave the
6 Staff lawyers and Staff technical people?

7 MR. TURK: The people who are involved in
8 looking at angles and speeds are not with me in the
9 room today, so I can't speak to their schedule or give
10 you a direct answer. But I can say that if it's
11 possible for us to proceed that way, then I like the
12 idea, and we'll try to do it.

13 But I really would need to talk to our
14 experts on angles and speeds before I can make that
15 commitment.

16 CHAIRMAN FARRAR: The thought is you or
17 your associates there or colleagues there on the legal
18 side could be doing depositions on one set of issues
19 while working -- while others of you are working with
20 technical people on another set of -- the evaluation
21 on another set of issues?

22 MR. TURK: Yes. But, again, that's
23 dependent on my angles and speeds people, making sure
24 that they're available to do this early. And if they
25 are, we'll try to do it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN FARRAR: Mr. Soper, at this
2 point, you're not an active part of either the
3 Applicant's RAI responses or the Staff's evaluation.
4 Would you have any objection to taking -- to doing
5 depositions on this kind of stagger-step basis,
6 whenever a subissue is ready you and your experts
7 would make yourselves available for -- to depose other
8 people and for your own depositions?

9 MR. SOPER: Yes, we'll do that, Your
10 Honor. I think at least with respect to the speed and
11 angle of aircraft and bomb impacts that makes some
12 sense. I kind of agree with Mr. Turk that with
13 respect to the Cornell report it's pretty tied in to
14 the structural evaluation. And I'm not sure that that
15 could be done independently in advance. But with
16 speed and angles of impact, yes.

17 CHAIRMAN FARRAR: Okay. Hold on a second.

18 JUDGE LAM: This is Judge Lam. I'd like
19 to caution the parties not to fragment your analysis
20 and depositions too much, because ultimately the
21 hearing schedule -- it needs to wait until the final
22 final analysis is completed.

23 Fragmenting, if it helps, to the extent it
24 helps to expedite this proceeding, is certainly
25 welcome. But be careful not to do too much of that,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because in the end it may delay the hearing because of
2 the fragmentation.

3 MR. GAUKLER: Judge Lam, I think your
4 concern is a good one, and I think that all of the
5 parties agree that angles and speeds are probably in
6 a separate category, that our input for the other
7 analyses and that the fact, for example, that the
8 angles and speed is not -- at least our report was not
9 considered to be safeguards information, and we
10 haven't involved our experts on angles and speeds in
11 the other parts of the analyses.

12 They have been kind of in a category by
13 themselves doing their evaluation of the accident
14 reports, based on summarizing what's in the accident
15 reports, and doing separate analyses in terms of what
16 angles and speeds you would expect.

17 So I think with respect to that, I believe
18 we're -- we would not run into that risk that you're
19 talking about.

20 JUDGE LAM: Okay. Thanks Mr. Gaukler.

21 MR. SOPER: While we're on that subject,
22 it's my understanding that the Staff has determined
23 that the speed and angle report and the speed and
24 angles impact has been determined not to be
25 safeguards, the PFS report. Has that same

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 determination been made with respect to the State's
2 speed and angle report?

3 MR. TURK: Jim, this is Sherwin Turk. I
4 appreciate your question. We have not asked Mr.
5 Stapleton to do a review of that report separately.
6 But I think that's a good idea, and then we can --
7 we'll have more information on whether we can just
8 proceed to depositions on that without safeguards
9 treatment. So I'll make that request of Mr.
10 Stapleton.

11 MR. SOPER: Okay. Great. Thank you.

12 Are there ongoing plans to make that
13 determination for the rest of our reports?

14 MR. TURK: I was assuming that we would
15 just treat them as safeguards. We can have them
16 review all of the reports. I have a feeling I know
17 what the answer is, but we haven't asked him formally.
18 So I can make that request of him.

19 MR. SOPER: All right. Thank you.

20 CHAIRMAN FARRAR: Why don't we do that,
21 Mr. Turk, because anything that can be classified not
22 safeguards has the potential to help everyone move
23 along as they work with the documents.

24 MR. TURK: I'll do that today, Your Honor.

25 CHAIRMAN FARRAR: Is there anything we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fruitfully add to this discussion right now? I wanted
2 to turn to a discussion of the witness lists. But if
3 there's something -- obviously, we'll come back to
4 this and how we move forward from here. But is there
5 anything else anyone wants to contribute on the
6 subject of the RAIs and the responses, and so on?

7 On the Leach Davis witness lists, Mr.
8 Turk, you had 11 witnesses, but they were lumped
9 together under different Roman numerals. Can we read
10 each of those Roman numerals as a panel, or would that
11 be too simple?

12 MR. TURK: Let me take one minute to look
13 at the list.

14 CHAIRMAN FARRAR: For example, on Roman
15 one, aircraft speeds and angles, you have Dr. Camp and
16 Dr. Goshe listed under that heading. And we wondered
17 if that meant you had -- you know, we're trying to get
18 a handle on how many separate people or groups of
19 people we're going to have on the stand.

20 MR. TURK: I think with respect to
21 aircraft angles and speeds those two witnesses would
22 probably appear as a single panel, just as they
23 appeared to the panel before the Licensing Board in
24 the last set of hearings.

25 CHAIRMAN FARRAR: Right. Roman two,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you've got just one witness, Mr. Bajwa.

2 MR. TURK: Boshwa (phonetic).

3 CHAIRMAN FARRAR: Boshwa (phonetic).

4 MR. TURK: B-A-J-W-A, for the Reporter.

5 I don't know that we would have him as a separate
6 witness. I would probably, at this point at least,
7 think of putting him on as part of a panel on
8 structural consequences. But it really depends on how
9 the parties agree to try to the case. Because that
10 issue is severable, he could appear alone, or we might
11 put him on with the other structural witnesses.

12 CHAIRMAN FARRAR: All right. Now, would
13 those five structural witnesses under Roman three be
14 the --

15 MR. TURK: They may appear as a single
16 panel, or we may put them on as two panels. The Staff
17 has been evaluating the PFS analyses. We are also
18 having Sandia do some runs of their own, and we
19 haven't decided yet whether they would appear as a
20 separate panel to discuss their own runs, or whether
21 they would appear as part of the Staff's structural
22 evaluation of the PFS analyses. But we'll know more
23 about that as we proceed. So that's either one or two
24 panels.

25 CHAIRMAN FARRAR: And then, you have one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fellow under probability.

2 MR. TURK: On probability, Dr. Damon may
3 appear on his own, or, again, he may appear as part of
4 the Staff's evaluation of structural consequence. We
5 have not made that determination.

6 CHAIRMAN FARRAR: Okay. And then, you
7 have a possible panel -- two people -- under Roman
8 five on radiation dose consequences.

9 MR. TURK: Yes. And we're not sure yet if
10 we will put on a panel to address those consequences
11 at all. It depends on whether we find it necessary to
12 do that, based on the results of the structural
13 evaluation. In general, we're looking at roughly five
14 panels total, but we haven't made a firm determination
15 yet of how to break them up.

16 CHAIRMAN FARRAR: All right. That's
17 helpful. The State listed McDonald. Would they --
18 and part of the subject matter of their testimony
19 overlaps.

20 Mr. Soper, did you envision them as a
21 single panel?

22 MR. SOPER: We've discussed that and are
23 leaning towards that, yes. Lieutenant Colonel
24 Horseman and McDonald?

25 CHAIRMAN FARRAR: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SOPER: Yes, those two on one panel.
2 That's mostly likely, I would say.

3 CHAIRMAN FARRAR: Okay. Then, you list
4 three people from Purdue I guess or -- are they at
5 Purdue or are they --

6 MR. SOPER: Yes, Your Honor, they're at
7 Purdue.

8 CHAIRMAN FARRAR: And you list the three
9 of them together, so I assume that's a panel?

10 MR. SOPER: They will be a panel.

11 CHAIRMAN FARRAR: And you list Dr. Thorne
12 and Dr. Thompson from England and Cambridge, Mass.
13 They would be a panel?

14 MR. SOPER: Most likely, yes.

15 CHAIRMAN FARRAR: So we've got maybe four
16 panels from you.

17 Mr. Gaukler, you listed everyone
18 separately, but I think you had seven witnesses listed
19 separately, but some of their testimony overlapped.
20 How did -- and, again, this is just to get a rough
21 idea. Did you envision them as seven separate
22 appearances or --

23 MR. GAUKLER: Right now, my sense would be
24 to have the impact angle and speed as one. We would
25 have the fire person as another witness by himself,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 assuming we don't stipulate to fire, which is one of
2 the topics we might want to raise here.

3 We would then have -- right now, my
4 thought is, but we have to see it -- we have
5 structural consequences with respect to Dr. Solder and
6 Mr. Evanston, and I believe Dr. -- we would have Dr.
7 Cornell in on that as well, have all three at one
8 time.

9 So that's the way I would foresee that.
10 And we are also evaluating whether we want to use --
11 have a consequence witness to respond to particular
12 things the State has raised. But we are evaluating
13 that right now.

14 CHAIRMAN FARRAR: Forget how you might
15 have to respond for the State. So your seven
16 different witnesses would form up in how many
17 different or overlapping panels?

18 MR. GAUKLER: Three -- three or four.

19 CHAIRMAN FARRAR: Three or four.

20 MR. GAUKLER: Yes.

21 CHAIRMAN FARRAR: Okay. So we've got four
22 or five -- five from the Staff, four from the State,
23 and three or four -- so we've got 12 or 13 panels that
24 we're dealing with.

25 In looking at a typical hearing day -- and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I know we try to push hearing days fairly long in Salt
2 Lake, because we're trying to meet our time schedules
3 out there, but a lot of people would say with all of
4 the work you all do in preparation, and the work you
5 do in the evening, that it doesn't make too much sense
6 to try to run hearings an extra hour or two, because
7 that deprives you of your review and preparation time.

8 I was just trying to rough out a possible
9 typical day here. If you went from 9:00 to 12:00 in
10 the morning, with a 15-minute break in the middle,
11 that's two and three-quarter hours. We gave you an
12 hour and a half for lunch, again, that you could do
13 some conversations with witnesses. Then, went from
14 1:30 to 4:30, another two and three-quarter hours.
15 That's five and a half hours a day.

16 If anyone wants to say we should go
17 longer, I'll entertain that. But just roughing that
18 out, if it took an hour to get a witness or a panel on
19 the stand, do the direct, introduce the exhibits that
20 the Court Reporter has to log in, and do this new
21 approach that we talked about about that -- not only
22 adopting their written testimony but giving rebuttal
23 to other witnesses' testimony on their subject, so,
24 you know, everything is out there at the beginning.

25 If we use an hour for that, three and a

1 half hours for cross, three-quarter for redirect, and
2 a quarter of an hour for recross, that uses up your
3 five and a half hours. That means in order to do --
4 the point of all of this is to do one panel or one
5 witness per day.

6 You'd be limited to three and a half hours
7 for cross, and I don't think that's something most of
8 you met during the 2002 hearings. And that does not
9 allow time for Board questioning, which is extensive.
10 So based on that, are we still correct to talk about
11 no better than one panel or one witness per day?

12 Well, you know, I just throw all of that
13 out on the table. Anyone is welcome to take issue
14 with any part of it -- the length of the hearing,
15 hours per day, the allocation of times for each of the
16 lawyers -- cross examination, redirect.

17 Anyone want to agree or disagree with
18 that? And I'm not strongly wedded to it. I just
19 started in anticipation of going to hearing -- is this
20 actually going to work. So anyone who has a different
21 idea, you're welcome to suggest it.

22 MR. SOPER: This is Jim Soper from Utah.
23 I think the hours per day that you suggested is about
24 right. And I think it would be optimistic to think
25 that we can do it faster than one witness or a panel

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 per day on the average. My thoughts.

2 CHAIRMAN FARRAR: Mr. Gaukler?

3 MR. GAUKLER: In terms of time, I would
4 foresee, if we need to complete a witness or a panel,
5 going an extra hour or so or hour and a half or so on
6 a particular day. In terms of one panel per day, I
7 think on average that's probably correct, because just
8 looking at some of the panels we would have, I would
9 expect, more than a day on some, and some I would
10 expect less.

11 And it also would depend upon to what
12 extent we might be able to stipulate some issues with
13 respect to the State and the Staff, which would
14 decrease potential witnesses or issues.

15 CHAIRMAN FARRAR: All right. Mr. Turk?

16 MR. TURK: Your Honor, I would hope that
17 we can stipulate to some things. Angles and speeds
18 may be an area where we can actually come to
19 agreement. Maybe other parties will disagree with
20 that, but I would hope that we can do that.

21 Also, I think we could try for six hours
22 per day of actual hearing time.

23 CHAIRMAN FARRAR: So we go -- not leaving
24 at 4:30, break at 5:00.

25 MR. TURK: Yes.

1 CHAIRMAN FARRAR: All right. And do six
2 hours. What about the notion of limiting cross to
3 that three and a half hours? I know we had some
4 times, and it doesn't matter who was responsible.
5 There were times where we thought cross examination
6 was not as crisp as it might have been, and one of the
7 ways to crisper it up is to limit your time.

8 So that way you say, "I only have a
9 certain amount of time. I'd better ask the most
10 pertinent questions, and I'd better go about it in the
11 most direct manner possible." Is that a good
12 approach, or are these issues so not fungible that
13 that would not be a -- that we'd have to have a
14 different time limit for each panel of witnesses?

15 MR. TURK: I think --

16 CHAIRMAN FARRAR: Or do you not want time
17 limits?

18 MR. TURK: I think some of the issues are
19 going to take more cross examination time than others.
20 But I think if we all know going into each panel's
21 cross examination how much time is allotted for us, we
22 can then be crisp as we frame the cross examination we
23 wish to do.

24 I think in the other set of hearings on
25 seismic it was difficult sometimes, without having had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 any prior warning about the limit on cross examination
2 time, to try to restructure which questions could be
3 asked and which could be discarded on the spot. But
4 knowing in advance what our time limits would be would
5 be helpful.

6 But then, for instance, on structural
7 panels I think we should expect that it will take
8 significantly more time than angles and speed perhaps.

9 CHAIRMAN FARRAR: Well, then, do the
10 others of you agree with what Mr. Turk just said?

11 MR. GAUKLER: I think I would agree that
12 there's going to be particular topics that are going
13 to require more time on cross examination than others.
14 And I would suggest that the parties would be in the
15 best position to evaluate the cross examination they
16 might need, subject to some general time limits, after
17 we see the testimony of everybody. And that will give
18 us -- that's when we're going to start preparing
19 detailed cross examination.

20 Maybe it might be a good idea at that
21 point in time to sit down, shortly after we have the
22 testimony, and decide on limits for particular
23 witnesses based on the extent and breadth of their
24 testimony and the nature of the issues.

25 And one possibility is to allow each party

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a certain amount of time for cross examination and
2 allow them to allocate it among different witnesses
3 maybe differently as they see fit.

4 MR. SOPER: Your Honor, this is Jim Soper.
5 I appreciate what Your Honor is trying to accomplish
6 with this. And although I think it's a good idea, the
7 problem we have is that the length of the examination
8 isn't dependent on the questioner. The questions
9 might, in fact, be very crisp, and the answers not.
10 And the drawing out of the examination may not be
11 something that the questioner is trying to do or has
12 any control over.

13 CHAIRMAN FARRAR: That's a good point, as
14 were Mr. Gaukler's. And when we had talked about that
15 here, we had talked about, you know, a time limit
16 subject to being lengthened by us if the witness is
17 recalcitrant or obstreperous or, you know, dodging the
18 questions.

19 Mr. Gaukler had the suggestion, you know,
20 that each party gets a certain amount of time total
21 cross examination and can allocate it among the
22 various -- you know, would I guess let us know ahead
23 of time and say, "I'm going to take one hour for this
24 panel and eight hours for this other one," and so
25 forth.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Or we could leave it to you all -- well,
2 we could set it in our review of the testimony, but I
3 think when you all have been through the depositions
4 you're probably in better shape than we are to set it.
5 Or the three parties could sit down and negotiate it,
6 knowing that if, you know, you're too hard on the
7 other person they're going to turn around and be too
8 hard and too limiting on you.

9 And this is obviously not something we,
10 you know, need to do now, but it struck me this was a
11 way that we -- once we do get the witnesses'
12 testimony, once we do know when we're going to
13 hearing, we could have some targets and recognize how
14 long we expect each panel to take.

15 Is this something we should just all think
16 about for now and defer to a later time?

17 MR. GAUKLER: I think that's right.

18 CHAIRMAN FARRAR: Then, why don't we --
19 you know, we had our suggestion. You all have had
20 some good ones. Talk to each other as time goes by,
21 or while you're out on depositions, and come up with
22 a scheme that you all agree on that would accomplish
23 this purpose.

24 We'd be happy to take a look at it and
25 adopt it if it makes sense, or, if not, go some other

1 way. But we'll leave it to you all in the first
2 instance to begin ruminating about this and finding a
3 way to get it done.

4 Someone had mentioned -- on another
5 subject had mentioned stipulations. Someone had
6 mentioned -- I think, Mr. Turk, you mentioned angles
7 and speeds, and someone else had mentioned fire. Are
8 those -- I remember one time in Salt Lake you
9 stipulated that if the witness had taken the stand he
10 would have testified -- written testimony said that
11 didn't mean you all accepted all its implications for
12 the deferred or past cross examination.

13 Is that what you're talking about, or are
14 you talking about really entering into some factual
15 stipulations that say, "Here's what you all agree to"?

16 MR. TURK: I haven't thought that far
17 along the line myself, Your Honor. I think I would go
18 for that which was most practical, which would have
19 the same practical effect of removing the issue from
20 litigation without requiring the parties necessarily
21 to agree explicitly with respect to the issue.

22 For example, I believe in the instance
23 where we've done it -- I have to get the exact
24 instance where we had done it, but --

25 CHAIRMAN FARRAR: Was it with one of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meteorological people where you agreed that if he took
2 the stand he would say here's what his reports showed,
3 but that left you free to argue what the implications
4 or --

5 MR. GAUKLER: A geological witness I know
6 -- one of the State's geological witnesses, which was
7 a background witness, we basically allowed -- in that
8 case we allowed the testimony to come in. And we
9 stipulated that it wasn't going to be subject to cross
10 examination, and the State was going to use it for
11 background purposes only and not use it for findings
12 of fact.

13 Here I guess, for example, if we agree to
14 something like fire, we like to have some type of
15 resolution that we move that from an issue in the
16 proceeding. And it might be something like an
17 agreement with the State that they are not going to
18 challenge our fire analysis, and for purposes of this
19 proceeding it would then be taken as the basis of the
20 record and factually correct, at least for the
21 purposes of the Board's decision.

22 About the statements -- are you buying
23 into them -- I'm saying we agree with what they've
24 done. They're just not going to challenge it. I
25 don't know if that's -- I just know they haven't filed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 any report on fire. I don't know if they intend to
2 pursue the issue on cross examination or in some other
3 manner, shape, or form.

4 But right now they haven't filed any
5 report on fire, and none of their witnesses have been
6 identified as having expertise in that area. So it
7 would seem to me that would just be one area where we
8 should be able to eliminate it as an issue to be
9 heard.

10 CHAIRMAN FARRAR: And when you talk about
11 stipulations and eliminating things, you're talking
12 about large issues, not small ones. The danger always
13 in eliminating -- in stipulating as to some small or
14 partial issue or fact is that you then sometimes
15 trigger endless debates when some other witness is
16 testifying about whether that testimony is
17 inconsistent with the stipulation.

18 MR. GAUKLER: My sense would be that as we
19 got down into detailed facts you probably could well
20 spend more time trying to arrive at a stipulation than
21 you would save in terms of actual hearing time,
22 particularly if you really are going to be stipulating
23 facts. These are facts that are relevant facts that
24 would be used in the -- by the Board in its decision.

25 So what I was thinking in terms of broad

1 issues, on which there may not be controversy or the
2 State has just chosen not to challenge, that we might
3 be able to eliminate those, and then might be sub-
4 issues as well.

5 For example, angles and speeds -- it would
6 seem to me we might be able to eliminate something in
7 angles and speeds, particularly with respect to
8 ordnance, where I think that the actual impact to
9 angles and speeds that we have developed, whether or
10 not the statements -- those of the State are basically
11 in the same range. And so we might be able to
12 stipulate with respect to that.

13 We assume that if we stipulate the angles,
14 in fact speeds are in some range, okay, which doesn't
15 affect either one of our structural analyses. We
16 still have our structural analyses in terms of how --
17 what -- the consequences of those impact angles and
18 speeds, but we wouldn't be getting into the precise
19 impact angles and speeds maybe.

20 And the same with -- I think as Sherwin
21 was suggesting with respect to the issue of aircraft
22 impact angles and speeds, albeit I see more difference
23 there on that issue than I do in ordnance.

24 CHAIRMAN FARRAR: Mr. Soper, Mr. Turk, do
25 you have anything to add to what Mr. Gaukler said?

1 MR. TURK: No, except that I think as
2 depositions go forward we'll be in a better position
3 to evaluate where we're in close agreement or close
4 enough to reach stipulations. And I think all of us
5 should strive for stipulations where we can reach
6 them, because there are certainly enough issues to
7 litigate without having to reach for minor differences
8 in our positions.

9 MR. SOPER: I think that's right -- this
10 is Jim Soper -- that the depositions will probably
11 point up where we can have an agreement, if there's
12 such a place.

13 CHAIRMAN FARRAR: All right.

14 MR. TURK: One thing I would ask -- I
15 guess I can talk to the State separately -- but
16 whether or not there are some broad areas where they
17 want to take the deposition of all our people -- for
18 example, the fire expert -- or not. So that's
19 something that I can talk about separately with Mr.
20 Soper.

21 CHAIRMAN FARRAR: All right. On another
22 subject, are we all straightened out on the NEI study?
23 Has that gone to the people who want to see it? Or is
24 there any problem left with that?

25 MR. SOPER: We have a copy of the NEI

1 study, although it's heavily redacted, which is
2 disappointing. We still have not gotten other reports
3 that we requested back in June.

4 MR. TURK: This is Sherwin Turk. Let me
5 address that in two parts, if I may, Your Honor. The
6 Staff did a review of the NEI report to determine
7 which portions of that report the State would have a
8 need to know. For instance, I believe that the spent
9 fuel pools impact or impacts on reactor containment
10 was determined not to be the type of matter the State
11 would have a need to know, and they were not provided
12 to the State.

13 The State has never told us that what we
14 provided them was inadequate. What we did give them
15 were the safeguards information pertaining to aircraft
16 impacts on -- as well as portions of the report that
17 were determined not to be safeguards information. We
18 provided that to the State I would say over a month
19 ago. I don't have the exact date. Ms. Marco tells me
20 it was the end of August.

21 We haven't heard from the State that it
22 was an inadequate production. We recently made the
23 same production to PFS, and we haven't heard from them
24 that they need other portions of the report.

25 There are no other requests from the State

1 that I'm aware of that we have not fulfilled. Mr.
2 Soper had written me a letter many months ago
3 requesting three documents, which I responded to and
4 I pointed out to him that the State already had the
5 documents or could get them on its own. Some of those
6 documents, in fact, were relied upon by the State in
7 previous portions of the litigation.

8 So I'm not aware of any requests from Mr.
9 Soper that we have outstanding that we need to respond
10 to.

11 CHAIRMAN FARRAR: All right. Then, Mr.
12 Soper, why don't you review that. And if there's
13 something that you -- that's not consistent with what
14 -- with the representation Mr. Turk just made, why
15 don't you fire off another short request indicating
16 whether it's a new request or a reiteration of an old
17 one that you think was not responded to. And we'll
18 leave it to the two of you to resolve that. Is that
19 all right?

20 MR. SOPER: We can do that. I don't know
21 how I overcome the problem. I ask for something, and
22 then the reply is I already have it. I don't know
23 what to say about that. I simply wouldn't ask for
24 something -- because I have attached a page or
25 referred to a page out of a report, that doesn't mean

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I have it. And I continue to request the full report.

2 So I don't know what to do on that. I'll
3 ask again.

4 CHAIRMAN FARRAR: Why don't you -- if you
5 need it, and whether you had it and can't find it or
6 never had it, just had, you know, an except from it,
7 why don't you renew that request, and we'll count on
8 Mr. Turk to -- and his people to get you what you
9 need.

10 MR. SOPER: Very good. Thank you.

11 MR. TURK: Your Honor, I certainly have no
12 objection to working in a nice, cooperative manner
13 with Mr. Soper. But I really don't think that we
14 should be forced to give him documents that they have.
15 And while he says that he only had a page of a
16 document, his expert cited a report extensively. And
17 then he came back to us and said, "Give us the report,
18 which we've cited page after page after page."

19 CHAIRMAN FARRAR: Why don't we do this.

20 MR. TURK: I think he should ask his
21 expert. If I tell him that expert -- let him ask his
22 expert rather than coming back to us and trying to get
23 us to do his work.

24 CHAIRMAN FARRAR: Let's cut this off, and
25 let me make a suggestion. I have held this case up as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a model for how experienced, competent professional
2 lawyers have worked with each other and managed to get
3 a lot of the procedural brambles out of the way
4 through cooperation.

5 I have another case where I'm not sure
6 that's happening, and I don't want this case to
7 deteriorate into what the other one is.

8 So, Mr. Soper and Mr. Turk, why don't you
9 -- instead of exchanging letters, why don't you have
10 a phone call sometime this week, see where you are,
11 talk to each other, and let's get this resolved with
12 a minimum of effort. Is that all right, Mr. Soper?

13 MR. SOPER: That's excellent. Thank you,
14 Your Honor.

15 CHAIRMAN FARRAR: Mr. Turk?

16 MR. TURK: That's fine, Your Honor. I'll
17 wait for Mr. Soper's phone call.

18 CHAIRMAN FARRAR: Okay. We had mentioned
19 -- and we don't have to resolve this right now --
20 thinking at the 2002 hearings, with each witness'
21 prepared written testimony you gave us a preface,
22 which I think had key points that you were trying to
23 establish through that witness. I think those served
24 us well, and I think some of you agreed at the end of
25 the trial that it helped you organize the witnesses'

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony. So we certainly would like those again.

2 But on the key -- I know some of the
3 complex litigation manuals tell district judges to get
4 proposed findings of fact and conclusions of law in
5 before the hearing, because then the Judge can go down
6 and use that as the trial is going on.

7 We decided not to do that last year, but
8 simply to have something fairly simple, proposed key
9 determinations. And that worked so well we'd like to
10 expand. We don't want to go into the terribly
11 detailed proposed findings and conclusions, but
12 something a little more expansive than what you gave
13 us last year on the key determinations I think would
14 be very helpful in helping you and us get prepared for
15 the hearing, helping us go through the hearing, and
16 helping us, as we said in our recent e-mail, focus and
17 shorten and expedite our eventual decision-writing.

18 So if you would all think about how we
19 might define something a little bit more intensive
20 than our -- than what happened last year, that would
21 help us. There's no need to talk about that now.

22 MR. GAUKLER: Your Honor, this is Paul
23 Gaukler. I do have one quick question or -- I guess
24 it's an inquiry or question. The key determinations,
25 which I understood that we did last year, were like a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 road map of the logic of our case, but we -- we'll
2 describe it that way.

3 And I guess I'm a little bit concerned as
4 we get down to more details of that we are going to be
5 kind of reproducing what's going to be found in the
6 findings of fact.

7 CHAIRMAN FARRAR: Which we certainly do
8 not want.

9 MR. GAUKLER: And if the real goal is to
10 provide a -- you know, there's two goals, obviously,
11 of this type of -- this information. One, to provide
12 information for the Board and parties with respect to
13 the hearing; and, secondly, he referenced the aid in
14 the decision-writing process.

15 To the extent that the focus or goal were
16 the latter, it would seem to me to be that it might be
17 more efficient for the proceeding if the Board/parties
18 focused on their structure of the findings of fact to
19 give the Board the information in the most usable
20 format to the Board.

21 In other words, how would the Board really
22 like the information in terms of the findings of fact,
23 such that it would provide the greatest benefit to the
24 Board?

25 And, for example, I'm thinking what we did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 last year, which I don't think the other parties did,
2 we had kind of like a summary of the -- of our
3 findings, and we had the detailed findings, and they
4 turned out to be kind of duplicative, and our summary
5 turned out to be quite long.

6 In retrospect, it might make -- might have
7 made sense to have something more focused and detailed
8 in terms of the summary up front, which might be what
9 Your Honor is thinking of in terms of the more
10 detailed key determinations. So it might make more
11 sense to have that in the findings maybe. I just
12 throw that out as a thought to consider.

13 CHAIRMAN FARRAR: Okay. So you're saying
14 don't -- you would say don't expand the key
15 determinations, but preface your proposed findings
16 with a --

17 MR. GAUKLER: With some type of summary
18 that would be most useful to the Board in preparing
19 this decision. So I guess I would look to Your Honors
20 in terms of what type of format would you -- what type
21 of things would you want in the summary before it got
22 to the detailed findings where you went through A, B,
23 C, and D specifically?

24 CHAIRMAN FARRAR: Or would we want that
25 detailed summary in advance.

1 MR. GAUKLER: Right.

2 CHAIRMAN FARRAR: In lieu of the key
3 determinations.

4 MR. GAUKLER: In lieu of or in addition to
5 the key determinations. But if you add it up front,
6 I think you are going to be adding some time up front
7 if you want something very detailed.

8 CHAIRMAN FARRAR: Yes.

9 MR. GAUKLER: Very detailed. Okay?

10 CHAIRMAN FARRAR: Let us, then -- well,
11 does anyone else have any thought -- and I think I
12 understand, Mr. Gaukler, what you're saying.

13 MR. GAUKLER: And I just would add, I
14 think the key determinations are very useful in terms
15 of providing a road map of how everything ties
16 together with the various witnesses. We would make
17 point A with witness B, and that -- as part of our
18 case here, and the other points you see in the logic
19 road map will be proved by other witnesses. So I
20 believe that's very useful, and I would keep that the
21 same.

22 CHAIRMAN FARRAR: Okay. Well, let me hear
23 if anybody else has some thoughts along the lines of
24 what Mr. Gaukler said or different thoughts.

25 All right. Then, why don't we do this.

1 We will go back and look at those documents from last
2 year, and maybe find the ones that best fit what we
3 want this year. You know, that one party -- not to
4 denigrate the work of the other parties, but one
5 party's came closer to the mark than another's, and
6 perhaps give some more instructions of our own.

7 All right. Let's get back to the
8 schedule. We've made some progress on a number of
9 fronts here today in terms of planning the steps after
10 the depositions. But I -- we seem to have lost ground
11 in terms of the RAI responses, the Staff's review, and
12 the depositions.

13 Have we lost this ground because the
14 company's presentation at the beginning was
15 inadequate? Or have we lost this ground because this
16 issue is just proving, every time you peel away a
17 layer -- this is a bad analogy -- but peel away a
18 layer of the onion, the onion seems to get bigger.

19 Which is it, Mr. Turk?

20 MR. TURK: I suppose it's a subjective
21 call, Your Honor. My own personal opinion is that the
22 initial schedule was too compressed to allow PFS to do
23 the complete job that we have now found that they
24 should have done. And if we hadn't been driven by a
25 litigation schedule, perhaps we would have come in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with a more complete analysis the first time around,
2 or at least complete to our case.

3 CHAIRMAN FARRAR: Mr. Gaukler?

4 MR. GAUKLER: I would say that there are
5 certain areas where we -- Staff is asking for
6 additional information that they had obviously
7 intended that we provide in the additional -- in the
8 original RAIs. And there's some additional stuff --
9 as you peel the onion, there is -- they want some
10 additional information or evaluation that relates to
11 the issues they asked for before, as you peel the
12 opinion.

13 So I think that we have always tried to
14 proceed as expeditiously as we could and still be as
15 complete as possible and doing what we thought was
16 right.

17 In terms of the time, I guess it reflects
18 that there are certain subsets of complex issues
19 involved that take more time for evaluation.

20 CHAIRMAN FARRAR: Would it be fair to say
21 that as you and your people and experts have studied
22 the case, it has proven more complicated than perhaps
23 you thought at the beginning?

24 MR. GAUKLER: Certainly from -- at the
25 beginning when we originally set the original schedule

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 back in the May/June timeframe. Yes, certainly.

2 CHAIRMAN FARRAR: Mr. Turk, how about your
3 people? Would that be a fair evaluation that this has
4 proven more complex and difficult than they would have
5 said at the outset?

6 MR. TURK: I don't think so, Your Honor,
7 because at the outset we had no preconceived notion of
8 what the analyses should look like. We left it
9 entirely to PFS to come back to us with an analysis
10 showing the structural consequences of -- after steam
11 crack.

12 Again, personally, I did not know whether
13 PFS was going to come back with the type of analysis
14 they did, would essentially take different factors and
15 put them in either an analyzed category or an
16 unanalyzed category. I didn't know what their
17 presentation would look like. It may have, in fact,
18 come in saying, "Here's the overall effect of an F-16
19 crash into a cask" without dividing the probability.

20 So I had no idea of how they would
21 structure their response. So I can't say that they --
22 that the analysis has turned out to be more complex
23 than originally believed to be. But I will say that
24 the analyses do take time to run, and I think perhaps
25 there was a misconception when the schedules were set

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as to how long it would take to run the analyses and
2 how many different variations of analyses or what
3 different inputs of the analyses would have to be
4 considered.

5 You can tell from the RAIs that we sent
6 out, which are not safeguards information, but you can
7 tell if you read them that we're looking for
8 consideration of events or locations of events on
9 casks that were not presented to us by PFS.

10 And that analysis could have been done by
11 PFS initially, or perhaps it's fair to say that these
12 are sensitivity analyses, or variations of the
13 analyses that need to be done in order to give us a
14 good, sound picture of what the consequences are.

15 I think schedule being a driving force is
16 always a mistake, because it cuts short the amount of
17 time you have to think about a problem and to develop
18 a complete and adequate response.

19 CHAIRMAN FARRAR: All right. I appreciate
20 those thoughts.

21 Mr. Soper, did you want to add anything on
22 this subject?

23 MR. SOPER: Only that it's apparent to us,
24 Your Honor, that the longer that we have had to look
25 into this, the complexity of it is revealed, and new

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 issues appear. So I think I generally agree with the
2 assessments that have been made.

3 CHAIRMAN FARRAR: All right. Then, let's
4 move ahead from this point. We have been doing better
5 and better each time at focusing the schedule. But I
6 take it from what you all said at the outset right now
7 all we can do is announce that the previous schedule
8 is no longer operative. I think I heard you suggest
9 not to try to set new dates at this point for
10 particular things.

11 Can we at least do a fairly decent
12 estimate of how much time this latest development is
13 going to cost us in terms of when the Board's ultimate
14 decision will be issued?

15 I've heard that we're talking about a
16 month in terms of possible responses, that the Staff
17 can be doing some work in a stagger-step fashion, that
18 there may be a chance to do some things concurrently
19 rather than consecutively. But how long of an overall
20 delay are we looking at? Mr. Turk?

21 MR. TURK: Your Honor, I would note, first
22 of all, that I didn't hear PFS say it would take them
23 about a month to do their responses. I heard
24 something on the order of one to two months. So I
25 would just note that at the outset we're not sure that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it will -- that they will be in here by the end of
2 October. It may be some time in November or some
3 other date, but I wouldn't rule that out as being --
4 the month of November as being a response date from
5 them.

6 It's hard to give you a prediction. I
7 think it's fair to say, though, that we will not be in
8 hearing this December. My personal projection would
9 be that you'll probably be in hearing I would say
10 roughly February.

11 I could be wrong. But I really want to
12 make that -- an announcement to the public, because
13 it's just a rough conjecture. I don't think that's a
14 reliable estimate. It could turn out to be correct.
15 It could turn out to be grossly incorrect. I just
16 don't know.

17 CHAIRMAN FARRAR: Mr. Gaukler?

18 MR. GAUKLER: I would say that the
19 earliest that we could be in hearing -- earliest --
20 and, again, I would -- this is conjecture. I don't
21 want to speak until we know how long it's going to
22 take us to complete these analyses and evaluations.
23 It would be sometime in January. February may be what
24 it turns out to be. But it will be sometime in that
25 general timeframe.

1 CHAIRMAN FARRAR: Okay. So we're looking
2 at a Board decision end of May, sometime in June.

3 MR. GAUKLER: I would say end of May,
4 maybe into June, yes.

5 CHAIRMAN FARRAR: Mr. Soper, any thoughts
6 on this?

7 MR. SOPER: You know, it really depends on
8 PFS and the Staff at least initially to determine a
9 date from which everything else is kind of pegged. So
10 I think that their assessment is probably better than
11 ours.

12 CHAIRMAN FARRAR: Does this extra -- these
13 extra analyses that the Staff has asked -- is that --
14 that yields work-product that I take it at some point
15 your people need some time to look at. In other
16 words, you had a PFS response. You then filed your
17 expert reports, but now you're going to have
18 additional PFS material, not just the Staff evaluation
19 but additional analyses from PFS. Does that mean at
20 some point you're going to ask us to let you
21 supplement your expert reports?

22 MR. SOPER: That might be, because now I
23 think that the analyses are getting into a similar
24 realm. In other words, what the State has presented
25 I think are partly the kind of analyses that PFS will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 now be generating. And I think it will come down to
2 the specifics of those kind of modeling, and certainly
3 we'll have to evaluate what they do, because I expect
4 it will be far different than what's been done to
5 date.

6 MR. GAUKLER: I wouldn't say it's far
7 different. What we're going to be doing is we're
8 going to be expanding our model to be a full cask and
9 answer some of the questions the NRC staff had.

10 Previously, we had to use -- because of
11 symmetry, we used a half-cask model. Now some of the
12 questions the NRC Staff has asked require some
13 asymmetrical modeling, which requires us to expand the
14 model to a full-size cask, which we need to go in and
15 revise the model to do that.

16 MR. SOPER: Maybe I didn't read them
17 completely. I thought they asked also for modeling of
18 a full aircraft.

19 MR. GAUKLER: They asked us to take into
20 account the fuselage.

21 MR. SOPER: All right.

22 CHAIRMAN FARRAR: What sort of --

23 MR. TURK: May I address your previous
24 question, Your Honor?

25 CHAIRMAN FARRAR: Oh, yes. Go ahead, Mr.

1 Turk.

2 MR. TURK: As I understand the State's
3 previous report, essentially what they do is an
4 independent analysis rather than a critique of what
5 PFS had given us previously. So I don't see a basis
6 for the State to argue that because PFS changed what
7 it has done, the State, therefore, should get a second
8 chance to present its analysis. I don't see that the
9 two are related.

10 So I think if the State wants to
11 supplement its analyses or change its analyses at this
12 time that it should be by a request that -- you should
13 be allowed to do so. I don't see a basis.

14 It was always the -- it was always my
15 understanding that the State would be able to present
16 its views of the PFS analysis through their
17 depositions and testimony, rather than in the
18 independent analyses, which had been the subject of
19 the previous schedule established by the Board.

20 CHAIRMAN FARRAR: Thank you, Mr. Turk,
21 because we had talked about that. That they didn't
22 need to have all of their case in one place like you
23 would have through your written evaluation.

24 MR. TURK: Yes.

25 CHAIRMAN FARRAR: And there's one other

1 point that I just wanted to comment on. Not to
2 quibble about the hearing date, because I know we're
3 not setting anything up yet, but I did hear Mr.
4 Gaukler estimate that perhaps we can go to hearing in
5 January.

6 As I parse out the necessary dates, I
7 don't see that January is a possible date for hearing.
8 I can't see it happening before February.

9 CHAIRMAN FARRAR: The next few weeks will
10 tell. What sort of order should the Board issue
11 following this conference call?

12 MR. TURK: Your Honor, it would be my
13 suggestion that the Board simply issue an order
14 suspending the existing hearing schedule, subject to
15 further discussions with the parties.

16 CHAIRMAN FARRAR: Mr. Gaukler, how does
17 that sound?

18 MR. GAUKLER: May want to schedule an
19 additional conference call. Maybe it would be better
20 if we advised you when we're ready to talk about
21 schedule. Maybe what we should do is adopt Mr. Turk's
22 suggest, and then say the parties should advise the
23 Board when they're ready to talk about schedule and
24 setting a schedule. That would allow us to talk among
25 ourselves, see at what point we think we're at, where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we could properly have a discussion with the Board to
2 set a schedule.

3 And, obviously, we have interest in
4 proceeding as expeditiously as possible. So --

5 CHAIRMAN FARRAR: But at this point, you
6 have no objection to us merely suspending the
7 schedule. I mean, that's -- not only no objection,
8 but that's consistent with what you said at the very
9 beginning.

10 MR. GAUKLER: Right.

11 CHAIRMAN FARRAR: Okay. Did I cut you
12 off, Mr. Gaukler, from --

13 MR. GAUKLER: Oh, no, Judge.

14 CHAIRMAN FARRAR: Mr. Soper, is Mr. Turk's
15 suggestion -- are you amenable to that?

16 MR. SOPER: That would be fine, Your
17 Honor.

18 CHAIRMAN FARRAR: We suspend the existing
19 schedule, subject to further discussions with the
20 parties?

21 MR. SOPER: Yes, that would be fine with
22 the State.

23 CHAIRMAN FARRAR: Mr. Gaukler, will these
24 additional RAIs lead to -- RAI responses lead to
25 additional witnesses? I gather not.

1 MR. GAUKLER: I don't believe so.

2 CHAIRMAN FARRAR: And, Mr. Turk, they
3 would not for you?

4 MR. TURK: I don't believe so, Your Honor.

5 CHAIRMAN FARRAR: Well, we've talked about
6 a lot here today. It's disappointing not to move
7 forward with the schedule, but -- or even with an
8 amended schedule, but I think in the circumstances you
9 all have -- what you've suggested is the only course
10 we can follow.

11 So we will -- again, I know a lot of
12 lawyers and a lot of technical people with all three
13 parties have done a lot of work to get us here. And
14 no one should take from the fact that we have to
15 suspend the schedule that people are not out there
16 working their hardest and putting their best efforts
17 forward as you have throughout this case.

18 So if there is -- is there anything else
19 anyone thinks we should discuss today?

20 MR. TURK: Not with respect to the
21 consequences proceeding, Your Honor. I do have a
22 question in terms of when we can anticipate a decision
23 on --

24 CHAIRMAN FARRAR: Yes.

25 MR. TURK: -- which I'm asking since Mr.

1 Bluberg is not here.

2 CHAIRMAN FARRAR: Yes, that is back on the
3 front burner. We put that aside to do a number of
4 other things, and you will have that -- that will be
5 issued before the end of October.

6 MR. TURK: Okay. Thank you, Your Honor.

7 CHAIRMAN FARRAR: And I appreciate you
8 asking. Anything else? Any other questions about
9 consequences or any other aspect of the proceeding?

10 Let me check with my colleagues here.
11 We'll be off the line for about a minute, and we'll be
12 right back on.

13 (Pause.)

14 My colleagues have nothing else we need to
15 bring up. So on that note, if there's nothing else,
16 we'll sign off. And we'll -- Mr. Gaukler, why don't
17 you take it upon yourself when you're at the stage
18 where we can have a conference call, just send
19 everybody an e-mail and we'll take it from there and
20 set one up at the earliest opportunity.

21 MR. GAUKLER: I will do that, Your Honor.

22 CHAIRMAN FARRAR: Thank you all very much.
23 Appreciate the hard work and diligence that has gone
24 into this on all sides and the good spirit that --
25 this is a very difficult, important case, and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 level of experience and competence and professionalism
2 that the three sets of lawyers bring to it is very
3 much appreciated by the Board.

4 Thank you.

5 (Whereupon, at 2:20 p.m., the proceedings
6 in the foregoing matter were concluded.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

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

Name of Proceeding: Private Fuel Storage
Pre-Hearing Conference
Docket Number: 72-22-ISFSI
Location: telephone conference

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



Alex Patton
Official Reporter
Neal R. Gross & Co., Inc.