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

2:00 p.m.

1
2
3 ADMIN. JUDGE FARRAR: On the record. This
4 is Mike Farrar. I'm the presiding officer. This was
5 set for 2:00 p.m. on Wednesday, November 12. We're
6 having a prehearing conference call as laid out in
7 some emails and in our decision of October 29th.

8 As I said, I'm the presiding officer. I
9 have with me that special assistant assigned to the
10 case, Dr. Charles Calver and Susan Lenz is with me.
11 You'll remember her from the proceeding in Allentown.
12 I also have two other law clerks who are not assigned
13 to the case -- and Brandon Moss. Mr. Sugarman, would
14 you introduce yourself for the reporter please?

15 MR. SUGARMAN: This is Robert Sugarman
16 representing the Intervenors. Judge, at this point,
17 I'm going to switch to a LAN line if that's all right.

18 ADMIN. JUDGE FARRAR: Okay, that's good.
19 You have no one with you, Mr. Sugarman.

20 MR. SUGARMAN: No, no one is with me.

21 ADMIN. JUDGE FARRAR: Mr. Thompson.

22 MR. THOMPSON: Yes, this is Anthony
23 Thompson and Christopher Pugsley representing CSC.

24 ADMIN. JUDGE FARRAR: Do you have K9 with
25 you?

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1 MR. THOMPSON: No.

2 ADMIN. JUDGE FARRAR: Okay. Mr. Lewis.

3 MR. LEWIS: This is Stephen Lewis with a
4 "ph", Counsel for the Staff.

5 ADMIN. JUDGE FARRAR: And you have no one
6 from Region 1.

7 MR. LEWIS: No.

8 ADMIN. JUDGE FARRAR: Then let's get
9 started with our business. I have three categories of
10 items I think we can cover. The first I'll call open
11 items, mostly procedural in nature. Then after we
12 deal with those, we move into the business of having
13 an in-person prehearing conference and depending on
14 what we accomplish today, we may or may not want to
15 start talking about a settlement that would be
16 discussed at that prehearing conference.

17 MR. SUGARMAN: How do I dial out? I want
18 to dial an 800 number. Dial 9?

19 ADMIN. JUDGE FARRAR: Mr. Sugarman, we can
20 still hear you.

21 MR. SUGARMAN: I wasn't saying anything.
22 I'm just trying to get my LAN line set up here. I'll
23 be just a second.

24 ADMIN. JUDGE FARRAR: We'll wait.

25 MR. SUGARMAN: I'm getting a busy signal

1 in trying to dial in. So I'll stay on this phone
2 until I can dial in.

3 ADMIN. JUDGE FARRAR: Do you have the 800-
4 638-8081?

5 MR. SUGARMAN: Yes, but it's not going
6 through. I'll stay on this phone while we try to set
7 up the LAN line.

8 ADMIN. JUDGE FARRAR: Okay. Let's start.
9 One open item, Mr. Lewis, you had filed a motion about
10 wanting to do an electronic resin, a paper -- for the
11 benefit of the other parties had a number of motions
12 to the Staff in other cases. Mr. Thompson, I believe
13 you also had no objection to that in this case. Is
14 that correct?

15 MR. THOMPSON: That's correct, Your Honor.

16 ADMIN. JUDGE FARRAR: Mr. Sugarman, what
17 are your thoughts?

18 MR. SUGARMAN: Yes, we have an objection
19 to that because we're unable to access the documents
20 and we don't know if they are the same documents.
21 I've been in correspondence with the Applicant and the
22 Staff regarding documents that are either supposed to
23 be available to us or not supposed to be available to
24 us. We don't know. They are drawings and other
25 documents. We're unable to access them on ADAMS and

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1 Mr. Pugsley is saying that he's confused as to what we
2 are asking for. It's just too confusing and
3 inefficient to go through this back and forth, back
4 and forth each time we want documents that are
5 supposedly available. So we want the hard copy that
6 the rules entitle us to.

7 ADMIN. JUDGE FARRAR: And obviously the
8 different presiding officers on the various portions
9 of Staff made the motion which we'll be comparing
10 notes on this, but it would help us if you could file
11 in the next couple of days, maybe no later than Monday
12 the 17th at close of business, a very short paper,
13 maybe one or two pages, citing what you just said.

14 MR. SUGARMAN: I'll be happy to do that.

15 ADMIN. JUDGE FARRAR: Just saying why you
16 need this and we'll make a ruling at that point.

17 MR. SUGARMAN: Right.

18 ADMIN. JUDGE FARRAR: Speaking of
19 confusion about documents, Mr. Sugarman, I appreciate
20 that this latest was in the form of a motion but
21 according to your Certificate of Service, it was not
22 sent to the Office of the Secretary. The Office of
23 the Secretary at the Commission is just like the clerk
24 of court would be in a judicial proceeding and the
25 second section of the Subpart L regulations section

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1 2.1203 talks about the Secretary maintaining the
2 documents and that all papers must be filed with the
3 Office of the Secretary.

4 MR. SUGARMAN: We are filing. I believe
5 it is in the mail to the Secretary. However because
6 it's confidential, I didn't know how to send it to the
7 Secretary confidentially. It's not on the Certificate
8 of Service because we don't ever certify service to
9 the filing office. But if you want us to certify
10 service to the filing office, we will do so. But it
11 is in hard copy. The original is on the way to the
12 Secretary's office. Like I said, because it's
13 confidential we didn't want to take any chances of
14 doing it by email and not having it remain
15 confidential.

16 ADMIN. JUDGE FARRAR: Okay. That's good.
17 If you would instruct your people to include - it's
18 customary here - the Office of the Secretary on the
19 Certificate of Service.

20 MR. SUGARMAN: Certainly.

21 ADMIN. JUDGE FARRAR: And if you would
22 check your files and make sure that anything that
23 you've filed in the past has gone to the Secretary,
24 that would be helpful.

25 MR. SUGARMAN: I will do that, but see our

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1 practice outside in the courts and so forth is to send
2 the original to the clerk so they are never on the
3 certificate. We'll be happy to add them to the
4 certificate.

5 ADMIN. JUDGE FARRAR: That would be
6 helpful. It's just for future reference and as long
7 as you're sure that everything you've sent in the past
8 has gone there, nothing need to be done.

9 MR. SUGARMAN: Great.

10 ADMIN. JUDGE FARRAR: You all should be
11 aware that we put a notice of hearing in the Federal
12 Register. It actually appeared on Wednesday, November
13 5. Our press office sent out a press notice on
14 November 10 which the press has but which is also
15 available on the NRC website if any of the citizens
16 want to read it. The 30 days additional intervention
17 expires on December 5. Mr. Sugarman, are you aware of
18 any additional interventions that will be coming?

19 MR. SUGARMAN: I'm aware of people that
20 have asked me to intervene on their behalf. I need to
21 button up what their interest is before I file for
22 them. I don't know.

23 ADMIN. JUDGE FARRAR: Okay. How about the
24 organization?

25 MR. SUGARMAN: I'm not sure whether the

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1 organization will file or not.

2 ADMIN. JUDGE FARRAR: All right. Now, Mr.
3 Sugarman, you had previously filed some informal
4 requests for relief. Some of them dealt with access
5 to confidential documents. Do you now have from one
6 source or another all the documents that you have been
7 seeking?

8 MR. SUGARMAN: I do not. That's what I
9 was addressing earlier.

10 ADMIN. JUDGE FARRAR: What?

11 MR. SUGARMAN: You'll see in the motion.
12 I'm sure you haven't had a chance to look at it yet
13 but in our most recent motion for stay - and this is
14 not to say that this is the extent of it - the
15 examples that I'm aware of it at this time that are in
16 the NRC files we believe and we don't have are set
17 forth in Dr. Resnikoff's affidavit. I believe it's
18 paragraph 5 or 6 of his affidavit. I'm not sure. I'm
19 not in my office, but he sets forth the documents that
20 he was unable to obtain or access. Those are the
21 documents that I've been in communication with the
22 Applicant and the Staff. Applicant says they're
23 confused. I don't know what they are confused about.

24 ADMIN. JUDGE FARRAR: Well, let me ask
25 them. Mr. Thompson, help me out here. Our general

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1 rule is anyone who's involved in the proceeding here
2 checks to see confidential documents of the Company
3 involved.

4 MR. SUGARMAN: This is Bob Sugarman. Just
5 let me interrupt for a minute because they made a
6 statement to me that they're not confidential. I
7 don't know. That's why they are saying they're
8 confused. All I know is that we can't get them.

9 ADMIN. JUDGE FARRAR: Mr. Thompson, we
10 would certainly be willing to listen to arguments in
11 this case. The general practice has been that anyone
12 who's legitimately in a case gets to see everything
13 whether it's Company trade secret, confidential or
14 safeguards, government security by executing the
15 proper affidavit. Do we have a real problem here or
16 is this just a logistical or communication confusion
17 that can be resolved?

18 MR. THOMPSON: I don't have any ideas. I
19 thought that the Staff had all the documents and that
20 they were going in ADAMS. We are confused because we
21 thought Mr. Lewis had sent an email to Mr. Sugarman
22 about it.

23 MR. LEWIS: Yes, I did.

24 ADMIN. JUDGE FARRAR: And the substance of
25 that email was what?

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1 MR. LEWIS: That the drawings in question
2 perhaps with one exception - I'm trying to find the
3 email - were all in ADAMS. I had provided to Mr.
4 Sugarman as an accommodation a first cut draft of what
5 the hearing file list would look like as in ehearing
6 files.

7 ADMIN. JUDGE FARRAR: Let me ask Mr.
8 Sugarman this. Are you able to access everything in
9 ADAMS?

10 MR. SUGARMAN: We're able to access ADAMS
11 and we're able to get some things, but not those
12 things.

13 ADMIN. JUDGE FARRAR: Is your computer
14 kissing up to it?

15 MR. SUGARMAN: No, the computer is up to
16 entirely. They are just not showing up as available.
17 They are not showing up. I don't know the details
18 because Dr. Resnikoff did the search, but he's past
19 master at it.

20 MR. LEWIS: Let me just say, Judge Farrar,
21 that I believe the affidavit of Dr. Resnikoff is dated
22 the 6th of November. It is possible that if there
23 were certain documents that had been submitted
24 relatively recently they may not have been declared
25 publicly available when he did the search simply

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1 because there is a slight period of time, on the order
2 of a few days, between a document being placed into
3 ADAMS and it being made publicly available. That's a
4 possible explanation.

5 ADMIN. JUDGE FARRAR: Mr. Lewis, is
6 another explanation that any of these have trade
7 secret labels on them and will not be available on
8 ADAMS?

9 MR. LEWIS: I have the same response that
10 Mr. Thompson does. I don't know. I think that one
11 thing that would help me to know is for Mr. Sugarman
12 to be much more precise in his filing of this coming
13 Monday.

14 MR. SUGARMAN: This is nonsense. The
15 filing is very precise. If you look at Dr.
16 Resnikoff's affidavit, it lists the documents that
17 he's been able to access.

18 ADMIN. JUDGE FARRAR: Mr. Sugarman.

19 MR. SUGARMAN: Yes?

20 ADMIN. JUDGE FARRAR: What am I going to
21 say to you?

22 MR. SUGARMAN: Say to me that the document
23 will be available as they should have been available
24 months ago if you don't mind.

25 ADMIN. JUDGE FARRAR: I'm going to say

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1 "Don't interrupt someone who's making a point."

2 MR. SUGARMAN: Yeah.

3 ADMIN. JUDGE FARRAR: I'll run this and
4 I'll call on you.

5 MR. SUGARMAN: Sorry.

6 ADMIN. JUDGE FARRAR: I need to know what
7 Mr. Lewis's position is and poor Rebecca needs to have
8 one person talking at a time.

9 MR. SUGARMAN: Sorry.

10 MR. THOMPSON: We've been forgetting to
11 identify ourselves as we speak. I just realized.

12 ADMIN. JUDGE FARRAR: Let's go off the
13 record.

14 (Whereupon, the foregoing matter went off
15 the record at 2:23 p.m. and went back on the record at
16 2:23 p.m.)

17 ADMIN. JUDGE FARRAR: Let's go back on the
18 record. If I ask you a question and use your name
19 then you don't need to introduce yourself. But if
20 it's any other circumstance, please say your name at
21 the beginning. Mr. Lewis, you were saying about the
22 trade secret or business confidential. What was the
23 point that you were making?

24 MR. LEWIS: The point I was making was
25 that we filed an affidavit based upon our best

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1 understanding of what the Petitioners were lacking.
2 A Region 1 did a check of ADAMS and found all except
3 possibly one of the drawings which I will verify after
4 I get off the phone. These are publicly available on
5 ADAMS. I see now in paragraph 11 of Dr. Resnikoff's
6 affidavit of the 6th of November attached to the
7 current Motion for a Stay an identification of
8 drawings by number. Essentially with that one
9 exception I just mentioned, those are all in ADAMS.

10 Let me add that I will be making a filing
11 this week of a list of documents that dates roughly
12 through approximately the 29th of October which we
13 will then update prior to November 28, but it will be
14 a listing of documents chronologically. That will be
15 what we propose to be the initial hearing file list.
16 So I will definitely try to file that before Mr.
17 Sugarman has to file his response. Maybe that will
18 clear up some of the matters.

19 ADMIN. JUDGE FARRAR: Hold on a second.
20 All right. I notice in that paragraph 11 some of it
21 refers to needing better copies of drawings. Then it
22 also goes on and asks for all design drawings
23 correspondence. Mr. Thompson, is that something that
24 you can provide or is that something that you would
25 say is in the nature of discovery of which we have

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1 none in Subpart L proceedings?

2 MR. THOMPSON: This is Tony Thompson.
3 Judge Farrar, I was just going to say that we don't
4 have discovery in proceedings and a staff meeting like
5 this is discovery. There's a hearing file based on
6 what's been filed with NRC upon which the license
7 application was addressed and granted. All of those
8 things are properly in the record and properly subject
9 to review by the interested parties. Commercial
10 discussions between CFC and its designer and -- and
11 CFC if they are not in the NRC file, are required for
12 licensing action seem to me to be not relevant to the
13 proceeding and would indeed constitute discovery.

14 ADMIN. JUDGE FARRAR: So you would say in
15 effect no matter how relevant it was if you didn't
16 need your client's conduct of its business if it
17 didn't have to submit it with the application to get
18 the license, then for Intervenors to want it is in the
19 nature of discovery.

20 MR. THOMPSON: Yes.

21 ADMIN. JUDGE FARRAR: Even though it's
22 tied in to the merits of what you were doing. If you
23 didn't submit it, then it's discovery.

24 MR. THOMPSON: Yes, I would think it's
25 discovery. I'm not sure I understand what you mean if

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1 it's tied into the merits.

2 ADMIN. JUDGE FARRAR: What I mean by that
3 is your client and the manufacturer may have had any
4 number of discussions and correspondence that
5 eventually led to the design of a facility.

6 MR. THOMPSON: Correct.

7 ADMIN. JUDGE FARRAR: But if you chose not
8 to submit those with your application and the Staff
9 issued the license without them, then you're saying
10 that's discovery.

11 MR. THOMPSON: Yes, I am because there are
12 all kinds in any process. There are commercial
13 discussions, commercial issues that aren't really
14 relevant to the licensing action. If it's required by
15 regulation and/or if CFC submitted it to justify the
16 submission, it appears to me to be relevant to the
17 proceeding. If it isn't, then it would be it seems to
18 be in the nature of discovery.

19 ADMIN. JUDGE FARRAR: All right. Let's do
20 this. Mr. Sugarman, I promised you a chance to
21 respond to either Mr. Lewis or now to Mr. Thompson.

22 MR. SUGARMAN: I think it's absurd.
23 Whether or not that discovery is required, and I
24 accept your ruling that discovery is not required,
25 material information is material to the review of this

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1 decision which is before the Board and the only
2 conclusion that you could properly draw from the
3 refusal to release the information is a negative
4 inference with respect to the party that refuses to
5 produce it. That's a well established evidentiary
6 inference which supports our position that this whole
7 thing is prototyped, developmental, not finally
8 designed even, let alone implemented, let alone
9 designed for safety and therefore our motion should be
10 granted and we should win the case because they are
11 not willing to disclose relevant information.

12 ADMIN. JUDGE FARRAR: I'm aware of the
13 evidentiary inference and you're certainly on point
14 with that, but unfortunately for your argument, the
15 regulations 2.12 --

16 MR. SUGARMAN: Well, if the board doesn't
17 have the authority with all respect to Your Honor who
18 shows every sign of wanting to decide the case on the
19 merits, if you don't have authority to get to the
20 merits, then I guess the NRC is going to be subject to
21 judicial review on the subject. We can go to the
22 Commission. I don't think that the regulations limit
23 the remedies available to the Commission where the
24 Commission deems it appropriate to investigate. So I
25 guess I would be in the position of asking Your Honor

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1 to request the Commission or the Appellate Board or
2 both to initiate an investigation to the extent of
3 getting that information. They who adopt the
4 regulation have the authority to investigate. So I
5 would request that the Board refer the matter of the
6 Commission for institution of whatever procedures are
7 necessary be they investigatory or a licensing
8 proceeding or a revocation proceeding in order to get
9 relevant information.

10 ADMIN. JUDGE FARRAR: If that's formal
11 motion, I would deny it at this time.

12 MR. SUGARMAN: Because?

13 ADMIN. JUDGE FARRAR: Let's keep in mind
14 what 2.1231(d) that there's Commission adopted
15 regulation that's discovery. Let's wait and see what
16 happens with Mr. Lewis's index of what's on ADAMS.
17 Let's see what you need.

18 MR. SUGARMAN: So you are denying it
19 without prejudice.

20 ADMIN. JUDGE FARRAR: I'm denying it with
21 prejudice. The Commission adopted it this rule. They
22 obviously meant it when they adopted. You're right
23 that we can always certify something to the Commission
24 when we think the purpose of a rule or applying the
25 rule wouldn't serve the purpose. To do that on oral

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1 motion, that would have to be laid out because the
2 Commission counts on us to handle these things and we
3 don't certify things to them cavalierly. So anything
4 that's just happened here is without prejudice, but we
5 would need a formal motion.

6 I would suggest you wait until we see what
7 Mr. Lewis comes up with. I would urge this that we do
8 want to resolve these on the merits that you all have
9 been practicing all long enough to know what's
10 relevant and what's not. What's good in the scope of
11 the regulations and what's not. So after Mr. Lewis
12 comes up with his list, I would hope that in some two-
13 way or three-way conversations you could resolve most
14 of these documents without anyone else being involved.

15 MR. SUGARMAN: May I respond to that? I
16 am not interested in further discussions with the
17 Applicant regarding release of material. They have
18 delayed, deferred and denied and equivocated all over
19 the place and all it is is a waste of time. They've
20 taken a very clear and unequivocal position here
21 today. So I respectfully request that I be allowed to
22 file my motion as soon as Mr. Lewis files his outline.
23 I don't want to waste time and cause delay in an
24 urgent situation by further discussions where the
25 Applicant has already taken or the Licensee has

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1 already taken an unequivocal position. In response to
2 my past requests, they pronounced themselves confused
3 when they respond at all.

4 MR. THOMPSON: This is Mr. Thompson. I
5 object to Mr. Sugarman's characterization of this.
6 Now the documents that were initially the issue which
7 were confidential for trade secret or otherwise, we
8 sent him a proposed protective order. He was busy in
9 court for three days. He finally got back to us. We
10 agreed to it and the NRC shipped the documents that
11 afternoon.

12 MR. SUGARMAN: That was only after they
13 were ordered for over eight -

14 MR. THOMPSON: Excuse me, Mr. Sugarman.
15 We did not, Your Honor, know because the Staff didn't
16 say in its first filing that some of those documents
17 which were ultimately given to Mr. Sugarman had been
18 put into the trade secret category or the privileged
19 category by the Staff on its own motion. We never
20 knew that. We didn't ask for them to do it and they
21 did it and that came out later. Now that isn't our
22 fault. We have been perfectly willing if we
23 understand what it is you want and it's appropriate we
24 are certainly willing to discuss it, but we have not
25 delayed and deferred. We are simply looking to

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1 protect the confidential information that we have a
2 right to protect. When it was signed and it was
3 cleared up, the NRC had put the other stuff on. It
4 was all given to Mr. Sugarman. I don't know anything
5 about these particular documents. When they show up
6 in Mr. Lewis's list and they are in ADAMS, then Mr.
7 Sugarman has access to them.

8 MR. SUGARMAN: May I just --

9 MR. THOMPSON: Something out there that
10 doesn't have to do with the hearing file and licensing
11 file, we will address it and if we don't think it's
12 relevant and it's not required by rule to be provided,
13 then we make a judgment. We go to our client and ask
14 them.

15 ADMIN. JUDGE FARRAR: At the last, you
16 said "even if it's not required you would go to the
17 client and ask." On that basis, let's do this. Mr.
18 Sugarman, if after you've seen Mr. Lewis's list there
19 are things that either you can't get from that list or
20 you think ought to be on that list and are not, then
21 Mr. Lewis and Mr. Thompson are requested for the
22 documents. Since it's not being filed with us at that
23 point, it can be just an email saying "Here's what you
24 want."

25 MR. SUGARMAN: I already sent it to them

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1 last week. They already said they are not going to
2 produce it.

3 MR. THOMPSON: No, we didn't.

4 ADMIN. JUDGE FARRAR: We're starting
5 today. I don't want to hear on these documents what
6 happened before. Here's what we're going to do for
7 this point on.

8 MR. SUGARMAN: I'm talking about today.
9 They just said today that they're not going to produce
10 it. They just said in this call that they are not
11 going to produce those documents.

12 MR. LEWIS: This is Steve Lewis. I -

13 MR. SUGARMAN: That record will show.

14 MR. LEWIS: It certainly will.

15 ADMIN. JUDGE FARRAR: Starting right now.

16 MR. LEWIS: Yes.

17 ADMIN. JUDGE FARRAR: Don't anyone talk.
18 I'm talking now.

19 MR. LEWIS: Yes, sir.

20 ADMIN. JUDGE FARRAR: Mr. Sugarman, so we
21 can handle this with some degree of rationality, I
22 want you after you see Mr. Lewis's list and there's
23 something that you think ought to be on that list or
24 you can't get something on that list you send an email
25 to Mr. Lewis and Mr. Thompson.

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1 MR. SUGARMAN: Excuse me, sir. The list
2 is not the universe of what we're looking for. What
3 we're looking for is beyond the list. It's things
4 that the Staff never got. They wouldn't be on the
5 list and they shouldn't be on the list because --

6 ADMIN. JUDGE FARRAR: Can I finish, Mr.
7 Sugarman?

8 MR. SUGARMAN: I'm sorry, Your Honor. I
9 thought you were finished.

10 ADMIN. JUDGE FARRAR: I don't think anyone
11 here in the room with me thought I was finished.

12 MR. SUGARMAN: I couldn't see you.

13 ADMIN. JUDGE FARRAR: Mr. Sugarman, I try
14 to run these proceedings with some degree of
15 informality and cordiality and common sense. Watch
16 yourself. Let's move forward. If there is something
17 you need, you send an email to them and they will
18 respond by email so we have it in writing whether they
19 will make that available to you and if not, why not
20 and be specific. Don't just say you want albums of
21 documents that you want. They will respond and they
22 will either say "Yes, we're sending them right now" or
23 "Here's where you can get them" or "We're not sending
24 them for the following reasons." That may be trade
25 secret. It may be that they believe that it's in the

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1 nature of discovery.

2 Then when you get that response, you will
3 be free to file a written motion with us telling us
4 why you think you should have that document. If the
5 answer for not producing the document is that it's in
6 the nature of discovery, then you'll have to tell us
7 that it's not in the nature of discovery, that it's
8 something that should be available to you, or that the
9 document is so important to the conduct of your case,
10 so tied up with the issue involved, that you want to
11 certify to the Commission that the application - and
12 I don't have that provision here in front of me - of
13 this rule, the non-discovery rule in this circumstance
14 works an injustice or whatever that language is and
15 then they'll have a chance to respond to you. That
16 way you'll be specific about what's needed. You'll be
17 specific about the reasons why something is needed,
18 about the reasons why it is not being produced and
19 we'll be able to move forward and we won't be having
20 to listen to what I've warned you all about several
21 months ago. It's more difficult in handling minor
22 matters than is warranted by counsel with the
23 experience of all of you. So that's how we're going
24 to handle that. Anyone have any comments they'd like
25 to make about that?

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1 MR. LEWIS: Yes, Your Honor. This is
2 Steve Lewis. I would respectfully ask that you also
3 direct Mr. Sugarman to do one additional thing in his
4 Monday filing which I think would be essential to the
5 Staff. While you were talking, I did pull up the
6 email that we did forward to Mr. Sugarman. Let me
7 make sure. Mr. Sugarman, you I believe did get an
8 email which was basically forwarding to you something
9 from Dr. Lodhi, L-O-D-H-I, in Region 1 which addressed
10 I believe the various paragraphs of your request. Am
11 I correct that you did get that?

12 MR. SUGARMAN: I haven't seen that.

13 MR. LEWIS: You haven't seen that?

14 MR. SUGARMAN: Correct.

15 MR. LEWIS: Well, I'll send it to you
16 again after this call.

17 MR. SUGARMAN: Okay.

18 MR. LEWIS: Your Honor, my request is that
19 the Staff believes in good faith that all of the
20 drawings that were submitted as part of the
21 application with the exception of those that were
22 submitted on a protected basis or it turns out the
23 Staff determined to protect which we have identified
24 as protected information, all of those are on the
25 ADAMS list. That is a representation that I make

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1 based upon a check of the list by Region 1 staff.
2 That means that if Mr. Sugarman is referring to some
3 drawings that are not on the list and are not ones
4 that have been provided to him under protective order
5 that he should identify them with specificity.
6 Otherwise we don't know as the Staff what they are.

7 MR. SUGARMAN: I did.

8 MR. LEWIS: Well, I'll ask you to do it
9 again because I'm still not clear.

10 ADMIN. JUDGE FARRAR: Mr. Thompson, any
11 comments on my ruling of a few moments ago.

12 MR. THOMPSON: No, Your Honor. We're
13 prepared to address it as you have directed.

14 ADMIN. JUDGE FARRAR: Mr. Sugarman.

15 MR. SUGARMAN: You've ruled and you told
16 me to watch it so I'm watching it.

17 (Long pause.)

18 ADMIN. JUDGE FARRAR: The record probably
19 won't reflect that there was just a long pause while
20 I was deciding what to say, but let's move on. Are
21 there any other matters, Mr. Sugarman, that you had
22 brought to our attention informally after the argument
23 in Allentown that are still live that have not be
24 mooted by events?

25 MR. SUGARMAN: I don't believe so.

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1 ADMIN. JUDGE FARRAR: All right. Then
2 let's move on. I think this takes care of the
3 preliminary -- We have Mr. Sugarman's stay motion that
4 was filed Monday, the 10th and some exhibits came in
5 yesterday. Mr. Lewis, this is the same matter that
6 was the subject of the Staff Board notification of
7 October 16.

8 MR. LEWIS: Just refresh my recollection.
9 I don't have it in front of me at the moment.

10 ADMIN. JUDGE FARRAR: Mr. Sugarman sent me
11 with copies to Judge Kelber and to all the parties
12 what you all call a Board notification where something
13 has happened outside the proceeding itself which may
14 be relevant to the proceeding and it dealt with the
15 modification to the plenum of the irradiator.

16 MR. LEWIS: Yes.

17 ADMIN. JUDGE FARRAR: The proposed
18 modification that is much of the subject of Mr.
19 Sugarman's stay motion. As I understand it, the
20 Company at the suggestion of one of their contractors
21 wants to make a change to the irradiator on the
22 ground. The contractor said there are deficiencies in
23 the way the irradiator is set up now. The Staff has
24 rejected the proposed modification. I guess they feel
25 the documentation is not sufficient. The ball is in

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1 the Company's court to come back and document that
2 modification more specifically. It requires an actual
3 amendment to the license. I think Mr. Sugarman's
4 point is "Well, that's nice but don't we have an
5 irradiator that by everyone's admission is not the way
6 it ought to be." How do we move forward from this or
7 we do just simply ask the Staff and the Applicant to
8 file responses to the stay motion?

9 MR. SUGARMAN: Excuse me, Your Honor. May
10 I be heard on that?

11 ADMIN. JUDGE FARRAR: Yes.

12 MR. SUGARMAN: The actions that were taken
13 are only one small part of this stay motion. They are
14 a major factor in themselves and are sufficient in
15 themselves to warrant the stay, but the fact that they
16 are trying to get the plenum made more safe is only
17 one aspect of it. There are two other major points.

18 One is the contract which sets forth that
19 the irradiator is in the developmental prototypical
20 stage overall. That's the main point of the stay
21 motion. This is an example of that. Secondly, that
22 they went ahead and made the modification and only
23 gave post notice to the Commission. So it shows that
24 they're just experimenting as they go. The fact that
25 it's unsafe now according to Revus or may be unsafe -

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1 Revus may have changed their mind - is only one of the
2 many aspects of the stay motion. The stay motion
3 starts with the recitation of the paragraphs of the
4 contract that make it clear that this is a
5 prototypical developmental product that still is in
6 the process of development.

7 ADMIN. JUDGE FARRAR: Let me follow up
8 that question by asking the Company and the Staff and
9 of course this can be the subject of your responses to
10 the stay moment. Let's go back to old reactor cases
11 where it was a two-step licensing process. You filed
12 for construction permit and if your overall design was
13 generally okay, you got a construction permit. You
14 built the reactor for several years and then you had
15 to come back for an operating license where the
16 precise design, the precise way you built the reactor
17 was the subject of scrutiny.

18 Here we have a one-step process and how,
19 Mr. Thompson and Mr. Lewis, in your experience deal
20 with this situation where an application says one
21 thing and then as you are constructing this facility,
22 you make changes. How has that been dealt with in
23 your experience?

24 MR. THOMPSON: This is Mr. Thompson.
25 First of all, Your Honor, I think I would take issue

1 with that description of it. The facility was built
2 to satisfy the requirements in Part 30 and other
3 regulations and related guidance. If it satisfies
4 that whether it's a little bit different than
5 something that's built before, that's not relevant.
6 Commercial relationships between CFC and Greystar have
7 nothing to do with whether or not it satisfies the
8 regulations. Now there --

9 ADMIN. JUDGE FARRAR: Wait. Let me make
10 sure I understand that. So in other words, you're
11 going to argue in your response to the stay motion
12 that whatever the contract between the two parties
13 said, you submitted an application to the Staff that
14 it met the regulations. So it either met them or it
15 didn't.

16 MR. THOMPSON: Yes.

17 ADMIN. JUDGE FARRAR: And how you all
18 chose to describe it in your contract is not relevant
19 to whether it met the regulations.

20 MR. THOMPSON: That's correct and a
21 license is a living entity. The whole concept for
22 example, Your Honor, of ALARA which I know you're
23 familiar with, as low as reasonably achievable, if you
24 as a licensee are looking at some part of *** and you
25 decide that it would be ALARA to make a certain change

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1 and that it would provide additional health and
2 safety, you're expected I believe as the person, the
3 licensee, who has the primary responsibility for the
4 safe management of nuclear materials to make those
5 kinds of decisions and judgments.

6 Now this was merely a suggestion by Revus.
7 It's not a suggestion that the plenum is not
8 adequately protected as is. Before any material got
9 there, they just looked at what they could do or might
10 want to do and if they needed to submit additional
11 information to NRC, that becomes a subject of a
12 license amendment. To suggest that just because you
13 look at improving something somehow suggests that it's
14 faulty, isn't correct and Revus didn't say it wasn't
15 safe. That's not an accurate reflection as I
16 understand it of what was said between the parties.

17 ADMIN. JUDGE FARRAR: So that will be part
18 of your response then to the stay motion.

19 MR. THOMPSON: That is correct, Your
20 Honor.

21 ADMIN. JUDGE FARRAR: You will make those
22 points. Mr. Lewis, in terms of the Staff's role.

23 MR. LEWIS: Yes.

24 ADMIN. JUDGE FARRAR: I know the Staff
25 elected not to participate at the beginning. It seems

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1 to me and we hinted at it in the opinion of October 29
2 that there are some things that can be left for the
3 intervening citizens and the Company to be the
4 adversaries but there are some other things
5 particularly those involved how the Staff oversight
6 and regulation works where it would be good to have
7 the Staff involved for those insights.

8 MR. LEWIS: Yes.

9 ADMIN. JUDGE FARRAR: How is the Staff
10 intending to express a desire to participate on this
11 stay motion?

12 MR. LEWIS: Well there are points. The
13 answer is yes.

14 ADMIN. JUDGE FARRAR: All right. Then
15 we'll count on the Staff to address this and it's
16 particularly helpful in addressing it for the Staff to
17 explain how the system works with relation to this
18 kind of amendment. Mr. Sugarman has one view of it
19 that the suggested change indicates something that's
20 wrong with the previous design.

21 The Company says the change should be
22 viewed as just making it better and an improvement
23 doesn't necessarily say anything negative about the
24 prior design. It would be helpful if the Staff could
25 address how this type of thing works, what the role of

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1 the Staff is in doing the oversight and then the
2 amendment process.

3 MR. LEWIS: Yes, Your Honor. This is
4 Steve Lewis. We'll be happy to do that. I think the
5 documents to a fairly good extent already identify the
6 fact that the Staff considers definitely to require an
7 amendment.

8 ADMIN. JUDGE FARRAR: All right.

9 MR. LEWIS: So we will express that again
10 in our filing.

11 ADMIN. JUDGE FARRAR: And Mr. Thompson
12 this change that the contractor recommended has not
13 yet been made. Is that correct?

14 MR. THOMPSON: Oh, no. That would be a
15 violation of the license.

16 MR. SUGARMAN: But it was made.

17 MR. THOMPSON: No, it was not made, Mr.
18 Sugarman.

19 MR. SUGARMAN: According to the --

20 MR. THOMPSON: Mr. Sugarman, it was not
21 made.

22 MR. SUGARMAN: According to the emails, it
23 was made back and forth between the Commission. Ms.
24 Turner's first email informed the Staff that the
25 change had been made.

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1 MR. THOMPSON: No. What happened is
2 before any material got to the site they tested a plug
3 on the plenum with an idea of possibly going for
4 license amendment, but the plenum in there with the
5 material in it is exactly as licensed.

6 MR. SUGARMAN: I know it is. It was
7 reverted back to that, but it was altered first.

8 MR. THOMPSON: It wasn't altered. It was
9 tested. It is now in the form which was approved by
10 the NRC Staff.

11 MR. SUGARMAN: You are disputing the fact
12 that it was changed and the email very clearly on its
13 face said it was changed and then it was changed back.

14 ADMIN. JUDGE FARRAR: Is the disagreement
15 here, Mr. Thompson, you are saying it was tested
16 without any source material there.

17 MR. THOMPSON: That's correct, Your Honor.
18 They were just following up with their discussions,
19 with their designer and I assume, Revus and before any
20 source material arrived onsite, they just looked at
21 what kind of a change they might want to make or could
22 make or did they think made any sense to make. It
23 would be like if we were all standing around up there
24 the day we were there and they pulled something up and
25 we're going to see if a plug fits in here. It isn't

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1 relevant because there was no material there. That
2 was just pre-arrival testing of a potential change.

3 ADMIN. JUDGE FARRAR: All right. Would
4 you make that clear with whatever documentation you
5 need to add in your response to the stay motion?

6 MR. THOMPSON: Yes, Your Honor, we will.

7 ADMIN. JUDGE FARRAR: Okay. In terms of
8 timing of response, the motion was filed on the 10th.
9 Would next Thursday, the 20th, be sufficient?

10 MR. THOMPSON: Well, since we didn't get
11 the attachments, I think Friday might be a little more
12 attractive.

13 ADMIN. JUDGE FARRAR: Friday the 21st?

14 MR. THOMPSON: Yes, sir.

15 ADMIN. JUDGE FARRAR: All right. Mr.
16 Lewis.

17 MR. LEWIS: Yes, that would be fine.

18 ADMIN. JUDGE FARRAR: All right. Friday,
19 November 21st by close of business we'll have the
20 Staff and Applicant's responses. Mr. Sugarman, if you
21 would like to file -- The next week is Thanksgiving
22 week. How long do you think you would need to file a
23 brief reply?

24 MR. SUGARMAN: I would appreciate if I
25 could have seven days from the days I get the

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1 material.

2 ADMIN. JUDGE FARRAR: Why don't we make it
3 Monday, December 1st?

4 MR. SUGARMAN: That's right. That's
5 assuming I get everything on Friday, the 21st.

6 ADMIN. JUDGE FARRAR: All right. Then
7 we'd be in position then to rule on the stay motion.
8 That gets to our next issue which is the hearing
9 conference. We had made the unusual suggestion in our
10 October 29th decision about having a further site
11 visit because I remember it was either Mr. Curran -
12 that's C-U-R-R-A-N, Rebecca - or Mr. Sugarman had said
13 our previous site visit how unfortunate it was that
14 Dr. Resnikoff had not been able to attend and seemed
15 to be that everyone's interest would be advanced by
16 letting him see the facility. I know some of his
17 previous filings it seemed to me without remembering
18 the specific dates that he had to turn around his
19 affidavit in very short order just because of the
20 timing of things. It might help him to see the
21 facility. Mr. Sugarman.

22 MR. SUGARMAN: We would appreciate that
23 opportunity, yes.

24 ADMIN. JUDGE FARRAR: Does the Company
25 have any objection to opening its facility again?

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1 MR. THOMPSON: Not as a general
2 proposition. If it is for the purpose of Dr.
3 Resnikoff, I'll have to double check with the client
4 but they seem to be very open to people viewing the
5 facility.

6 ADMIN. JUDGE FARRAR: I think it would
7 help simplify and clarify the issue. If you would
8 pass that thought onto the client, Mr. Thompson, I
9 would appreciate it.

10 MR. THOMPSON: I will, Your Honor.

11 ADMIN. JUDGE FARRAR: Let's assume for the
12 moment that the Company agrees to that. Our thought
13 was again even though it's not a neutral site that if
14 we had the conference onsite that would allow as
15 questions arose during the course of the proceeding
16 that perhaps being there might have some additional at
17 least marginal benefit. If any factual questions
18 arose, an illustration could take place. Mr.
19 Thompson, would you also see, depending on what Mr.
20 Sugarman's answer to my next question is, if the
21 Company would host the prehearing conference? I mean
22 furnish the space obviously. In a sense, I'm the
23 host, but they furnish the space.

24 MR. THOMPSON: Right. I'm sure we can
25 find room in the flash freezer, Your Honor.

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1 ADMIN. JUDGE FARRAR: Mr. Sugarman, would
2 you have any objection to having the conference in
3 Company space?

4 MR. SUGARMAN: No.

5 ADMIN. JUDGE FARRAR: As far as we're
6 concerned, we would treat that space no different than
7 our own courtroom.

8 MR. SUGARMAN: I'm just thinking of the
9 safety, but we all take chances so okay.

10 ADMIN. JUDGE FARRAR: As far as we're
11 concerned, that's base even though the Company owns
12 the property. We would treat it as though it were our
13 hearing room or a hotel space or a courtroom in
14 Allentown.

15 MR. SUGARMAN: Understood.

16 ADMIN. JUDGE FARRAR: So, Mr. Thompson,
17 today is Wednesday. Would you be good enough to let
18 us know by Friday if we can have the site visit as
19 base?

20 MR. THOMPSON: Yes, Your Honor.

21 ADMIN. JUDGE FARRAR: And then most of our
22 hearing conferences - and Mr. Thompson, as we ask the
23 question bear this in mind - they are all transcribed
24 and most of them are open to the public. If that's a
25 problem and I can see that it very well could be, then

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1 maybe we would just arrange to have nearby hotel
2 space. If I recall the geography, there are a number
3 of hotels fairly close, within a couple of miles of
4 the warehouse. So ask about that.

5 MR. THOMPSON: Do you want me to check
6 with CFC and find out what is available in the
7 neighborhood?

8 ADMIN. JUDGE FARRAR: No. In other words,
9 if we have the site visit, that would just be for
10 counsel and their experts and I suppose the three
11 people that are intervention and the experts. I think
12 we indicated in the order that a representative of
13 manufacturer could be there if the Company wants to
14 make them available. That might help move things
15 along.

16 MR. SUGARMAN: Did we ask that Revus be
17 there too?

18 MR. THOMPSON: I believe that His Honor
19 asked -- Well I don't know about Revus but I know you
20 did ask Your Honor that Greystar attend.

21 ADMIN. JUDGE FARRAR: Right.

22 MR. SUGARMAN: I appreciate that. I agree
23 with that. But I'm asking about Revus as well.

24 ADMIN. JUDGE FARRAR: I don't want to run
25 afoul of the anti-discovery rule. Mr. Thompson,

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1 that's a Company that has the relationship with your
2 client so you can ask them what their thoughts are on
3 that.

4 MR. THOMPSON: Yes, Your Honor.

5 ADMIN. JUDGE FARRAR: Ordinarily if there
6 were discovery, we would have different authority, but
7 I do not want to run afoul of the anti-discovery rule.
8 In terms of date, I would like to do this sooner
9 rather than later because it appears that my other
10 major case is going to be later rather than sooner.
11 I'd like to do this. Here's a date for you. How is
12 Thursday, December 11 depending on counsel's
13 availability and most important Dr. Resnikoff or
14 there's no sense having another site visit with Dr.
15 Resnikoff not there.

16 MR. THOMPSON: As far as I know, Thursday,
17 the 11th will be all right. He has not informed me of
18 any unexpected unavailability. I can check with him
19 and get back to you tomorrow.

20 ADMIN. JUDGE FARRAR: Please do that.

21 MR. LEWIS: Your Honor, this is Steve
22 Lewis. I am not available that whole week including
23 the following Monday, the 15th. I do not have co-
24 counsel.

25 ADMIN. JUDGE FARRAR: Okay. At this

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1 point, Mr. Lewis, this would be a good time to discuss
2 BAPS (PH) to review the bidding. You had elected not
3 to participate at the beginning.

4 MR. LEWIS: Correct.

5 ADMIN. JUDGE FARRAR: We had directed you
6 to participate for the early stages. We announced
7 that the early stages were over so your election not
8 to participate was back in force.

9 MR. LEWIS: Correct.

10 ADMIN. JUDGE FARRAR: Now you've said that
11 you do want to participate on the stay motion. We had
12 indicated in our October 29th decision that we will
13 probably direct you to participate on the security
14 issues and the decommissioning bond issues because
15 those again are areas where they are not just
16 technical issues. The Company can address they
17 involve how the Staff does its business. Were you
18 intending to want to be part of this site visit
19 prehearing conference?

20 MR. LEWIS: I would like to be able to do
21 so for the reason that I assume that there may be
22 discussion of those two issues that you just
23 mentioned.

24 ADMIN. JUDGE FARRAR: Hold that thought,
25 Mr. Lewis, and let's come back to it. That's a good

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1 entry into another question. One of the purpose of
2 the prehearing conferences that you're all familiar
3 with is to try to narrow the issues for trial. I'm
4 wondering. We've said which issues are germane and
5 which are not. I'm wondering if we need to narrow the
6 issues or since we have written presentations and it's
7 not a matter of getting your witnesses ready for a
8 live trial whether we want to spend a lot of time at
9 the prehearing conference trying to narrow and clarify
10 the issues or whether we simply say when we get to the
11 written evidentiary presentations we will just have
12 the Intervenors go first and the Company will then
13 respond.

14 If the Intervenors' presentation misses
15 the mark in terms of this irradiator, that's something
16 that the Company can say, so the Intervenors'
17 presentation in effect focuses the issue as long as
18 the Company gets to go in sequence rather than
19 contemporaneously or simultaneously. Mr. Thompson,
20 what do you think of that?

21 MR. THOMPSON: Judge Farrar, I'd have to
22 go back and look again at the way things have been
23 characterized. I think as a general proposition if
24 the Intervenor goes first and lays out the germane
25 issues as the Intervenor sees fit to do so and we then

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1 respond to that, that makes sense. I don't know that
2 there's a great deal unless there's something that's
3 not obvious to me right now. I would say unless going
4 back and looking at the opinion again and looking at
5 the issues as described, unless I see something that
6 doesn't occur to me now, I would say that it's
7 probably all we need to do. That is to have the
8 Intervenors file first and then have us respond.

9 And to the extent that the Staff is going
10 to be responding to some or all of it, then I don't
11 know sometimes in the past the Staff has had an
12 additional few days after the Licensee responds before
13 they respond. I don't know how Your Honor wants to do
14 it or what the Staff's preferences are. Certainly if
15 the Intervenors go first and we follow, we can address
16 the issues they raise.

17 ADMIN. JUDGE FARRAR: All right. Mr.
18 Sugarman, what are your thoughts on this?

19 MR. SUGARMAN: I don't mind doing it that
20 way if we have an opportunity to reply. The reason is
21 because without discovery, we have to make some
22 assumptions that they may contest.

23 ADMIN. JUDGE FARRAR: And we of course may
24 ask questions in advance. We may ask questions after
25 we see the presentation.

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1 MR. SUGARMAN: Right.

2 ADMIN. JUDGE FARRAR: Mr. Sugarman, so
3 you're saying you're missing some information. You'll
4 file a certain written presentation. The Company
5 comes back and says "Oh, you missed the boat. You're
6 unaware of such and such." That would be the reason
7 you would need to reply because that would give you
8 the information you were lacking and you would want to
9 adjust your case.

10 MR. SUGARMAN: Yes, it's hard to scope
11 that out exactly, but something along those lines.
12 Right.

13 MR. THOMPSON: Your Honor, this is Tony
14 Thompson. Their reply would have to be limited in
15 scope to replying to what we have filed.

16 ADMIN. JUDGE FARRAR: Right. It would be
17 a classic reply just to the points.

18 MR. SUGARMAN: Right.

19 ADMIN. JUDGE FARRAR: The points that they
20 could not have anticipated that are included in your
21 presentations. Okay. Then looking at it this way,
22 Mr. Lewis, and since we would not be talking at that
23 conference about the security and the bond issues -
24 those involve some other considerations independent of
25 the specific design of the irradiator - giving the

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1 Staff's inclination to not participate at all, how
2 important is your participation on the 11th?

3 MR. LEWIS: As you have just clarified the
4 scope of the prehearing conference, I think the staff
5 would not need to be in attendance.

6 ADMIN. JUDGE FARRAR: All right. I would
7 think you'd be welcome if you're not there to have
8 some of your Region 1 people either the counsel up
9 there or one of the regulatory people, Mr. Kennaman
10 (PH) or one of his people if they wanted to be there,
11 they would be welcome to participate.

12 MR. LEWIS: Thank you very much. Could I
13 ask you a question that is related to this issue? You
14 went around to Mr. Thompson and then Mr. Sugarman on
15 this question of the structure of the hearing
16 presentation.

17 ADMIN. JUDGE FARRAR: Oh, yes. Go ahead.

18 MR. LEWIS: I did have a thought in that
19 regard. When I read your discussion in the order
20 regarding the decommissioning under number 7 on page
21 27, it appeared to me that you may have been
22 envisioning some briefing of an issue prior to
23 deciding whether or not it actually needed to be
24 addressed in written initial filing by the Intervenors
25 and then responded to because you spoke in terms of

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1 "We believe the resolution where the matter is
2 precluded by Commission regulation may properly be
3 deferred for now." When I read that, I concluded that
4 it was an indication that if the Staff had some
5 definitive point that it could make about this issue
6 of the absence of a decommissioning plan and the
7 sufficiency of the decommissioning bond which are the
8 two things that you expressed there, that perhaps you
9 were asking us to see if we eliminate that issue by
10 pointing to, in this case what I would be pointing to,
11 a final rule published in early October of this year
12 which addresses specifically the issue we're talking
13 about here and specifically addresses itself in part
14 to irradiators and really does answer both of these
15 questions in a way that I think - I'm going to make a
16 very rough analogy to summary disposition - moots the
17 need for written exchanges.

18 ADMIN. JUDGE FARRAR: All right. That's
19 an excellent thought. Why don't we do this? Why
20 doesn't the Staff file a brief? Now as we've said,
21 obviously this concern is germane in the sense that
22 germane is used in these regulations. The question is
23 whether there are other reasons why factual
24 presentations *** Why don't we have the staff file a
25 brief addressing that? In other words, in the middle

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1 of that paragraph of our opinion, the material that
2 you quoted where we say "We believe the resolution
3 where the matter is precluded by Commission regulation
4 may properly be deferred," why don't you file a brief
5 on whether that matter is precluded by Commission
6 regulation?

7 MR. LEWIS: Right. Yes.

8 ADMIN. JUDGE FARRAR: Let's do this. How
9 long do you need to file that brief?

10 MR. LEWIS: Well I think I would ask you
11 until the same day as we are filing the responses to
12 the stay motion, the 21st.

13 ADMIN. JUDGE FARRAR: All right. It will
14 filed by November 21st. Mr. Thompson, are you and Mr.
15 Pugsley in the office Thanksgiving week?

16 MR. THOMPSON: Yes. Or no. Well we'll be
17 available to each other.

18 MS. MURPHY: I'm sorry. This Jen Murphy
19 for Mr. Sugarman.

20 MR. SUGARMAN: Judge, this is Jen Murphy.
21 She is from my office. Would it be all right if she
22 continues this call on my behalf?

23 ADMIN. JUDGE FARRAR: Do you have to
24 leave?

25 MR. SUGARMAN: Yes.

1 ADMIN. JUDGE FARRAR: What I was going to
2 do? Mr. Thompson, could you file by the day before
3 Thanksgiving just a short statement saying whether you
4 agree or disagree with the Staff position?

5 MR. THOMPSON: Is that the 26th?

6 ADMIN. JUDGE FARRAR: Yes. If you can't
7 do it, that's fine. If you have obligations, that's
8 fine. We'll do it later. What I was thinking was
9 this would be a contest more between the Staff and Mr.
10 Sugarman than it would be with you, but if you had
11 some different position than the Staff does.

12 MR. THOMPSON: Right. If we agree with
13 the Staff, then we would simply say "we agree" or "we
14 agree but we also want to point out X." Yes, we can
15 do that by the 26th.

16 ADMIN. JUDGE FARRAR: You don't have to
17 give me the background. Just assume I have the Staff
18 brief in my hand. It's just "What do you think of the
19 Staff position" and just what you just said.

20 MR. THOMPSON: Yes, we can do that, Your
21 Honor.

22 ADMIN. JUDGE FARRAR: By Wednesday, the
23 26th. Mr. Sugarman, could you file a reply to that by
24 Monday, the 8th?

25 MR. SUGARMAN: Certainly.

1 ADMIN. JUDGE FARRAR: That could be at the
2 hearing conference that we're going to move forward
3 with that issue.

4 MR. SUGARMAN: Right.

5 ADMIN. JUDGE FARRAR: With that, Mr.
6 Sugarman, if you need to run, I think that's the last
7 thing that we desperately need you on.

8 MR. SUGARMAN: Okay. Well, I appreciate
9 it very much and I apologize if I got too hot before.
10 Thank you.

11 ADMIN. JUDGE FARRAR: That's all right.
12 Apology accepted or maybe not even needed.

13 MR. SUGARMAN: Thank you very much.

14 ADMIN. JUDGE FARRAR: Thank you.

15 MR. SUGARMAN: Bye.

16 ADMIN. JUDGE FARRAR: Ms. Murphy, you're
17 on.

18 MS. MURPHY: Yes.

19 ADMIN. JUDGE FARRAR: Are you a lawyer?

20 MS. MURPHY: Yes.

21 ADMIN. JUDGE FARRAR: Great. I think that
22 takes care of -- Ms. Murphy, you have not been on the
23 previous calls.

24 MS. MURPHY: No, I have not. I'm sorry.

25 ADMIN. JUDGE FARRAR: That's okay. If I

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1 say something that refers to something we talked about
2 earlier, ask me to explain. I think that takes care
3 of getting us ready for the hearing conference, Ms.
4 Murphy, which we had said we were trying to do
5 Thursday, December 11th, if Dr. Resnikoff is
6 available. The next thing we could talk about would
7 be settlement discussions which I would like us to do
8 at the prehearing conference which I would like to do
9 off the record. Ms. Murphy, how familiar are you with
10 this case?

11 MS. MURPHY: A little familiar. I worked
12 on some of the emergency measures and a little bit
13 more than that, but not much more than that.

14 ADMIN. JUDGE FARRAR: Let's go off the
15 record, Rebecca, and we'll throw out some ideas about
16 settlement. Off the record.

17 (Whereupon, the foregoing matter went off
18 the record at 3:24 p.m. and went back on
19 the record at 3:34 p.m.)

20 ADMIN. JUDGE FARRAR: All right. Thank
21 you, Rebecca. We've been off the record for a few
22 minutes with the presiding officer laying out thoughts
23 as to possible approaches to settlement which the
24 parties have agreed to take back to their clients and
25 report on on our person prehearing conference

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1 hopefully at the site on Thursday, December 11th, but
2 those thoughts about settlement were offered in
3 furtherance of the Commission's instructions and its
4 regulations that settlement is always favored if it
5 can be achieved. But if the thoughts do not meet the
6 clients' needs then the parties should have no
7 compunction in rejecting them outright if they have
8 other suggestions themselves to settlement. Those
9 would be welcome at the conference and perhaps we'll
10 find out in that the case cannot be settled and then
11 we'll go ahead with the written presentations. We
12 stress that in offering settlements suggestions that
13 it embodied no notion of the strength or weakness of
14 either side's case. Any questions about that?

15 MR. LEWIS: Your Honor, this is Steve
16 Lewis. I had a question that I wanted or a suggestion
17 is a better way even if I do not attend. Well I will
18 not be attending the prehearing conference and if
19 someone from the NRC is planning to attend, we will so
20 notify you.

21 ADMIN. JUDGE FARRAR: All right. Good.
22 I would hope that you would have somebody there.
23 Obviously we'll have a transcript, but there's nothing
24 like being there.

25 MR. LEWIS: Right. Now in that regard,

1 this is a very cautious suggestion on my part but I
2 thought it could be thrown on and put on the table.
3 I know that last time at the site visit there was a
4 good deal of concern before the site visit actually
5 took place about who would be able to attend the site
6 visit and who would not. Mr. Thompson and Mr.
7 Pugsley, the Company had a list of the three named
8 individuals who were the only Intervenors of record or
9 at that time, petitioners.

10 I know that the date for filing further
11 intervention is the 5th. I got the impression from
12 Mr. Sugarman's remarks dare me to read too much into
13 it that it was perhaps addition citizens of the same
14 area who know wanted to be named Intervenors under his
15 representation. Ms. Murphy, do you know whether I'm
16 correctly characterizing some additional?

17 MS. MURPHY: At this point in time, I am
18 not aware of anybody that is definitely intervening.

19 MR. LEWIS: Okay. Well, without having to
20 know that one way or the other, my only suggestion was
21 as follows. Your Honor, I hope you will appreciate
22 this that if there were able to be a list of who is
23 properly there and may attend because they are a named
24 intervenor or even if you have not ruled on it yet
25 which you certainly will not since the 5th is the date

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1 of the filing, but at least if they were identified,
2 perhaps the Company could consider putting them on the
3 list and we might just simply avoid some
4 unpleasantries that took place in the past.

5 ADMIN. JUDGE FARRAR: Well, Mr. Lewis,
6 it's certainly a good suggestion to this extent that
7 we want to have settled before that date with us, the
8 Board, being involved in exactly who's there. We
9 don't want to repeat the situation where people who
10 were not on the list feel bad that they weren't let
11 in. At this point, we have only the three Intervenors
12 that we've passed on.

13 MR. LEWIS: Correct.

14 ADMIN. JUDGE FARRAR: If any other
15 individual citizens show petition, we will not rule
16 because Staff and the Company will not have had a
17 chance to respond their position. I guess the issue
18 really revolves around the umbrella organization. Ms.
19 Murphy, is that concerned citizen of Milford or is the
20 word "township" at the end of it also?

21 MS. MURPHY: Township is at the end of it.

22 ADMIN. JUDGE FARRAR: So it's CCMT.

23 MS. MURPHY: CCMT, yes.

24 ADMIN. JUDGE FARRAR: If I recall the
25 jurisprudence at the Commission correctly, it's just

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1 like judicial proceedings an organization can
2 participate can move to intervene because its own
3 interests are affected or it's representing members
4 whose interests are affected. I would think if the
5 organization moves to intervene to represent the
6 members who are already in, Mr. Thompson, if that
7 happens, would you envision yourself objecting to
8 their intervention?

9 MR. THOMPSON: I don't know. I know
10 there's one individual that will not permitted on the
11 grounds because he has been told by the sheriff that
12 if he does he will be arrested.

13 MS. MURPHY: May I ask who that is? I'm
14 sorry.

15 MR. THOMPSON: Mr. Sutton.

16 MS. MURPHY: Okay.

17 MR. THOMPSON: But other than that, I
18 can't answer the question.

19 ADMIN. JUDGE FARRAR: Ms. Murphy,
20 depending upon how the intervention petitions go and
21 depending on what the organization does, why don't you
22 stay in touch with Mr. Thompson after those are filed
23 and see if you can't work it out? Obviously the three
24 people that we've admitted as Intervenors, they can be
25 there if they want to be. Dr. Resnikoff can be there

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1 as your expert. In fact, the whole thing is being
2 done for his benefit.

3 MS. MURPHY: Right.

4 ADMIN. JUDGE FARRAR: Why don't you talk
5 to Mr. Thompson about others who it might make sense
6 to include because of the role they played in the
7 communities involved in this?

8 MS. MURPHY: Definitely.

9 ADMIN. JUDGE FARRAR: And, Mr. Thompson,
10 recognizing what you just said about the one
11 gentleman, will you work with Ms. Murphy or Mr.
12 Sugarman to see if we can come up with a list that
13 everyone's happy with?

14 MR. THOMPSON: We certainly will, Your
15 Honor.

16 MS. MURPHY: And, Ms. Murphy, we're not
17 looking for a crowd. In fact, the more I think of
18 this maybe the better it is that we have the actual
19 prehearing conference offsite because it may not be
20 fair to the Company to say host what might become a
21 town meeting in a facility that's not designed for
22 that. So, Ms. Murphy, if you'll report to Mr.
23 Sugarman that we're going to drop that suggestion.
24 Ms. Murphy, the reason we've done that was thinking we
25 might get part way through the prehearing conference

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1 and realize we wanted to go back and visit the
2 equipment. There are some factual questions that come
3 up, but I think we'll just take that risk and have the
4 prehearing conference itself offsite.

5 So we'll have a site visit and then go
6 down the room to the nearest hotel space or whatever
7 that we can find or maybe some government meeting room
8 and have a prehearing conference that would in fact be
9 open to the public. If something comes up during
10 that, maybe we'd return for a quick site visit if Dr.
11 Resnikoff or somebody wanted to recheck on something.
12 Mr. Thompson, you have no objection to moving the
13 prehearing conference offsite? Or if you want to host
14 what could be a large crowd that would be fine, but I
15 don't want to place that burden on you.

16 MR. THOMPSON: I don't know that we have
17 enough room for a large crowd. I don't know just to
18 be honest why anybody would want to come to a
19 prehearing conference. It may not be the hottest item
20 in town and if we had an indication that it wasn't
21 going to be like the meeting at the courthouse. I
22 know there is a room that could be utilized for a
23 reasonable number of people, 10, 15, 20 people or
24 something like that. If you start getting much more
25 than that, we don't really have the facilities there

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1 except out on the floor and everybody would freeze to
2 death.

3 ADMIN. JUDGE FARRAR: Right. I'm checking
4 here with Susan, our law clerk, who was at the Diablo
5 Canyon oral argument earlier this year and she said 30
6 people or so showed up. Prehearing conference may be
7 less exciting.

8 MR. THOMPSON: Even in distinction to the
9 oral argument that was held in Allentown, there were
10 a series of different issues addressed by
11 representatives for each of the three entities.
12 Prehearing conference it seems to me is probably more
13 administrative type stuff. Maybe not.

14 ADMIN. JUDGE FARRAR: Well, it's possible
15 of course that we would be arguing. We might want to
16 include argument on the stay motion. We will have had
17 the replies in. Some additional information. We
18 might also have argument on the bond matter that Mr.
19 Lewis talked about. So it's feasible we could have a
20 couple of things in oral argument. Just the fact that
21 the community has expressed such concern and has
22 turned out to other events, that they might just show
23 up at this although this would be during the daytime.
24 Maybe we're better off just going offsite.

25 MR. THOMPSON: Fine.

1 ADMIN. JUDGE FARRAR: In fact, let's not
2 put the onus on the Company. Let's go offsite with
3 the prehearing conference. All right. I think I've
4 covered all the matters that we thought were necessary
5 to cover. Do any of the parties have any matters that
6 we did not discuss?

7 MS. MURPHY: Your Honor, do you mind if I
8 go back this offsite issue for a moment?

9 ADMIN. JUDGE FARRAR: Sure. Go ahead.

10 MS. MURPHY: I'm sorry. Obviously I
11 wasn't on the conference earlier, but I'm just
12 wondering if this is going to an effect on Dr.
13 Resnikoff's visit there or Dr. Resnikoff's
14 involvement.

15 ADMIN. JUDGE FARRAR: We would have a site
16 visit.

17 MS. MURPHY: Okay.

18 ADMIN. JUDGE FARRAR: We would have a site
19 visit specifically for his benefit for him to look at
20 the facility, ask questions, do whatever.

21 MS. MURPHY: Then would this be a
22 different day than the prehearing conference?

23 ADMIN. JUDGE FARRAR: No, the same day.
24 We would start with the site visit with Dr. Resnikoff
25 and the three Intervenors if they wanted to come. But

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1 rather than immediately convene a prehearing
2 conference onsite, we would go down the road somewhere
3 and do the prehearing conference just to make it
4 available to the public. The only thing lost by doing
5 that is if something comes during the prehearing
6 conference where we realize "Gee, Dr. Resnikoff forgot
7 to ask a question of the manufacturer or somebody."
8 We would lose that opportunity. That would be minor
9 compared to his chance during the site visit to ask
10 any questions he wants and examine the facility.

11 MS. MURPHY: Okay.

12 ADMIN. JUDGE FARRAR: We will have a site
13 visit and then just go down the road immediately
14 thereafter for the prehearing conference.

15 MS. MURPHY: Okay.

16 ADMIN. JUDGE FARRAR: Anybody else have
17 any issues that needed to be taken up? I hope you all
18 were taking notes on the dates of all these filings.
19 Do you all feel confident that you have them?

20 MR. LEWIS: For the staff, yes. Steve
21 Lewis speaking.

22 ADMIN. JUDGE FARRAR: Mr. Thompson?

23 MR. THOMPSON: Yes, Judge Farrar, we do.

24 ADMIN. JUDGE FARRAR: And Ms. Murphy, I
25 won't quiz you since you weren't here. You have an

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1 excused absence for that.

2 MS. MURPHY: Thank you, Your Honor, but
3 yes, I think I have the ones taken care of that I was
4 present for.

5 ADMIN. JUDGE FARRAR: We don't get these
6 transcripts until two or three days afterwards.
7 That's why our orders summarizing what happens in
8 these calls won't come out until next Monday or
9 Tuesday where we'll recite all those dates. I guess
10 we'd rather do them from our notes. We want to make
11 sure that our order is fully consistent with the
12 transcript so sometime early next week we will put out
13 an order recording everything that happened here.

14 MR. THOMPSON: Judge Farrar, will we be
15 notified when the transcripts are available?

16 ADMIN. JUDGE FARRAR: That's right. You
17 don't get them. In the old days, you ordered them and
18 got them.

19 MR. THOMPSON: Right.

20 ADMIN. JUDGE FARRAR: Now you just get
21 them off ADAMS?

22 MR. THOMPSON: Yes, in fact at one point
23 in one of our discussions you were making some remarks
24 about the transcript and I'm saying "What transcript."

25 ADMIN. JUDGE FARRAR: Let me have Susan

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1 call you all or we'll send an email.

2 MR. THOMPSON: Email is fine.

3 ADMIN. JUDGE FARRAR: Well, they don't get
4 on ADAMS right away. I get a copy and so does SECY I
5 guess. Then it goes --

6 MR. THOMPSON: Well, let us know how we
7 can order them if we don't want to wait and then we
8 can order them if we need them.

9 ADMIN. JUDGE FARRAR: Okay. We will check
10 that with our people.

11 MR. LEWIS: Your Honor, this is Steve
12 Lewis. Just a thought. If SECY could also be asked
13 to simply expedite as much as possible the placement
14 as a public document of the transcripts on the record.
15 That might be making the best use of this new world
16 invention of ADAMS that we have.

17 ADMIN. JUDGE FARRAR: I think we get a
18 copy electronically. Maybe we can just forward that
19 to you. Maybe not. I'll check it. I can't remember
20 under the current system whether we pay a price that
21 covers everybody or whether we pay for one for us and
22 anybody else who wants one has to pay themselves.
23 I'll check on that arrangement. But we will get email
24 word to you, Mr. Thompson and Ms. Murphy, on how you
25 can them most quickly.

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1 MR. THOMPSON: Thank you.

2 MR. LEWIS: Actually the Staff would
3 appreciate that too because even though we do check
4 ADAMS reasonably frequency, it would be helpful.

5 ADMIN. JUDGE FARRAR: All right. We will
6 check on this and see how to make them available.
7 Depending on Dr. Resnikoff's availability, we will see
8 you all in the vicinity of the facility on Thursday,
9 December 11 and do all the things that we talked about
10 for a prehearing conference and perhaps also oral
11 argument in an informal fashion on the stay motion and
12 the Staff's suggestion on the bond.

13 MR. LEWIS: Your Honor, this is Steve
14 Lewis. I had another thought that came to my mind.
15 Given that we're talking about a site visit and then
16 a prehearing conference in the same day, should I
17 assume that the site visit will take place relatively
18 early in the morning?

19 ADMIN. JUDGE FARRAR: Yes. I would think
20 everybody has to be there the night before. We might
21 do the site visit at 9:30 a.m., 10:00 p.m. and maybe
22 allow a couple of hours for that. Grab lunch on the
23 way over to the other facility and maybe start at
24 12:30 p.m., 1:00 p.m. on the prehearing conference.
25 We could do it faster but I want to make sure Dr.

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1 Resnikoff has as much time as he needs on the site for
2 obvious reasons. But I would think that everybody has
3 to plan to be up there. Mr. Thompson, aren't there
4 some hotels within a mile or so of the site?

5 MR. THOMPSON: I believe there are. I'm
6 pretty sure I saw one or two very close by.

7 ADMIN. JUDGE FARRAR: We will look for
8 appropriate space whether it's a government meeting
9 room or a hotel space. I guess that's our theme music
10 to wrap this up unless somebody else has any thoughts.
11 Thank you for your participation, Mr. Lewis, Mr.
12 Thompson and Mr. Pugsley and Ms. Murphy, thank you for
13 sitting in and extend our thanks to Mr. Sugarman.
14 Thank you, Rebecca and we'll sign off at this point.
15 Off the record.

16 (Whereupon, the above-entitled matter was
17 concluded at 3:57 p.m.)

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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, Inc.

Pre-Hearing 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.



Rebecca Silberman
Official Reporter
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