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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

PRE-HEARING CONFERENCE CALL

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IN THE MATTER OF:

PRIVATE FUEL STORAGE, L.L.C

Docket No. 72-22-ISFSI

(Independent Spent Fuel

Storage Installation)

Thursday, May 18, 2004

Teleconference

The above-entitled matter came on for hearing, pursuant to notice, at 1:30 p.m.

BEFORE:

MICHAEL C. FARRAR Chairman

PETER S. LAM Administrative Judge

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OTHER NRC STAFF PRESENT:

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CINDY HARBAUGH

JAMES CAVANAUGH

ANDREW WELKIE

JACK WHETSTINE

SHARON MARKS PERINI

PATRICIA HARICH

SUSAN LIN

JACK GUTTMAN

BOB SHEWMAKER

MEHENDRA SHA

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

1:32 p.m.

JUDGE FARRAR: Well go on the record. This is Mike Farrar at NRC Headquarters. We're having another in our series of three hearing conference calls on PFS matter. Let me introduce the room full of people I have here, most of them for this second item in my email, the safeguards protections which we'll take up first so that they can go about their other business.

With me here is Judge Peter Lam. Not with us is Judge Paul Abramson who is on official travel and will not be able to call in, so Peter and I will be handling things. Also with us is Susan Lin, our law clerk. Several people you may not be familiar with. Kathy Lyons-Burke is from elsewhere in the NRC. She's in the Office of Chief Information Officer and she'll be helping us with the information security issues, safeguards issues. On the phone calling in from vacation which started a day late because of her working here yesterday on this matter is Cindy Harbaugh. Cindy, thanks for calling in.

MS. HARBAUGH: You're welcome.

JUDGE FARRAR: From our office are Jim Cavanaugh who handles the overall Commission contract

with the Neal Gross court reporters and he's familiar with all those procedures and Andrew Welkie who is our Information Technology person working on Yucca Mountain and other matters. Also with us from our administrative side are Jack Whetstine and Sharon Marks Perini and Trich Harich, all of whom will be charged with implementing some of the things we'll talk about today. Who do we have for the State?

MS. CHANCELLOR: Denise Chancellor and Connie Nakahara and with me is Jean Brackson (PH), paralegal, and Scott Murrell, who is the IT manager for the Attorney General's office.

JUDGE FARRAR: Oh, good. Thanks for bringing him in. From the Company?

MR. GAUKLER: Paul Gaukler and Sean Barnett.

JUDGE FARRAR: All right. Welcome again.

MR. GAUKLER: Thank you.

JUDGE FARRAR: And from the Staff?

MR. TURK: Sherwin Turk. With me are Laura Zaccari, Jack Guttman, Bob Shewmaker and Mehendra Sha.

JUDGE FARRAR: All right. We received a week or so ago their reports that were promised on May 11th. We appreciate having those and know that like

with all the other parties, a lot of effort went into those, I know, each time. Any of you who files one of these documents or set of documents know it represents a lot of work, so we appreciate that and we appreciate that we received the State's report on the same day and we appreciate you both meeting that deadline because that allows us to head down with this schedule.

You all got my email of May 13th and let's take up the second item first in the matter of safeguards protections. And there are two aspects of that, the information security which Kathy is our resident expert on and physical security which Cindy is the expert on. We thought as we get into the next phase where you're going to be doing depositions in Salt Lake and then if we head to the hearing, it was timely to talk about things.

The principal issue on the information side are the affidavit connected with our Safeguards Protective Order we issued in this case. It has a clause in it running on pages three to four of the attached affidavit that if any protective information is backed up or stored on a computer hard drive or other device, that drive or device shall be capable of being removed and stored in a special container and so

forth.

As we've been understanding this, that meant if you had a removable hard drive that you save things to, then you had to remove it and store it in an appropriate safe. But as the Agency and everybody has zeroed in on possible areas of concern, they became concerned that even if you save material to a floppy disk, it resides on your hard drive and even if you can't get it, someone with the right technology can recover the material off your hard drive.

So while when we wrote our protective order and we said if it was stored on a computer hard drive, we meant when you save it to your hard drive we're now looking at that in a more sophisticated fashion. The first question I have is your depositions in Salt Lake, who has hired the court reporter?

MS. NAKAHARA: Your Honor, this is Connie. Nakahara. We haven't actually hired the court reporter yet. We're still trying to make sure we can comply with safeguard requirements. The first option is for the court reporter that uses a standalone court reporting machine which they said have a hard drive, but they can save to a disk which sounds like that's not an option right now. We're trying to see if they

can bypass the disk and save to a laptop with an external hard drive that the State will provide and retrieve after the transcripts have been completed.

We will also provide them with a security storage container where they can store the safeguard data while they're preparing the transcript. We will retrieve that and all notes and the electronic copies from the court reporter when they're completed. As a backup if that doesn't work, they are willing to record the depositions and then transcript it with an external hard drive provided by the State.

MS. LYONS-BURKE: This is Kathy Lyons-Burke. Can the hard drive that you provide be the only hard drive accessible to the computer?

MS. NAKAHARA: It could be, yes.

MS. LYONS-BURKE: If you did that and you secured that hard drive, then you would meet the requirements.

MS. NAKAHARA: Okay.

MS. LYONS-BURKE: But there can't be another -

MS. HARBAUGH: Having said that, Kathy, as we've been talking - this is Cindy - would you like to address the notion of, from my layman's terms because I'm not an IT person, the cleanup software.

MS. LYONS-BURKE: Yeah, but let me make sure that they understand that it means that there's not another hard drive running an operating system. That is the only hard drive running on that system at that time. The operating system and everything is on that single hard drive. Is that correct?

MS. NAKAHARA: Yes.

MS. LYONS-BURKE: Okay.

MS. NAKAHARA: I'm looking to Scott Murrell for confirmation, but yes.

MS. LYONS-BURKE: Okay. The other thing that we wanted to --

MS. NAKAHARA: And he did confirm. Sorry.

MS. LYONS-BURKE: The other thing that we wanted to provide as another safety mechanism is the possibility of using something like SecureClean as an example we have provided by AccessData that will clean up a lot of the trail left behind. If you have any other computers that have been used that are not secured because you saved it to another piece of media, SecureClean can clean up all of the trail left behind and that can be used as well.

MR. GAUKLER: How does that work, Kathy?

MS. LYONS-BURKE: The SecureClean looks on your hard drive for temporary files and deleted files

and actually overwrites them, so that that data is not left behind on that disk.

JUDGE FARRAR: So, Kathy, let me see if I understand that. That's if you had a nonremovable hard drive. Save to a floppy. You then run the SecureClean and that would clean up your hard drive.

MS. LYONS-BURKE: Right. It's less desirable than the removable drive, but it's better than nothing.

JUDGE FARRAR: Does everybody follow that?

MS. NAKAHARA: But does that mean the court reporters could use their laptops and not use it for anything else until they ran this SecureClean software?

MS. LYONS-BURKE: We would prefer the removable hard drives.

MS. NAKAHARA: Without a removable hard drive with the understanding that they would lock up the laptop when it was not in their possession.

MS. LYONS-BURKE: We would prefer removable hard drives.

MS. NAKAHARA: That's doable. We'll just go that route.

MS. HARBAUGH: The software that you're referring to, Kathy, I take it is readily available

and what provider again and what kind of cost are we talking about?

JUDGE FARRAR: Yeah, the Internet printout I have here, it's SecureClean. It's $39.95 from AccessData, one word, AccessData.com. Hold on one second here. Off the record.

(Whereupon, the foregoing matter went off the record at 1:43 p.m. and went back on the record at 1:45 p.m.)

JUDGE FARRAR: Let's go back on the record. We've been talking amongst ourselves here to make sure we understand and we have a couple of questions, one about what our Agency people insist on and what's preferable compared to other things. But we had a question about the State's initial description. Andy, do you want to?

MR. WELKIE: Well, the configuration for the court reporter connecting to a PC with a removable hard drive, is the court reporter, whatever machine they're using to record the information connected directly to the PC and that PC has the removable hard drive so that there's nothing between the court reporter's machine and that workstation?

MS. NAKAHARA: Yes, that's correct.

MR. WELKIE: So how does the --

MS. NAKAHARA: The only thing we need to verify -- I shouldn't say the only thing. One of the things we need to verify is whether it can bypass the hard drive on the court reporting machine.

MR. WELKIE: So there is a hard drive on the court reporter machine.

MS. NAKAHARA: Yes, both the court reporting machine and the laptop have the hard drives, but it was the court reporter's understanding that the hard drive could be bypassed and we just need to confirm that.

JUDGE FARRAR: In other words, so that hard drive is not removable.

MS. NAKAHARA: The court reporting machine or the laptop?

MR. WELKIE: The court reporting machine.

MS. NAKAHARA: I don't know the answer to that.

JUDGE FARRAR: And I think our IT people here are saying even if you think it's being bypassed, you and I think it's bypassed because we can't find it, but electronically it's not being bypassed and there are bits and pieces hiding in there which SecureClean can take care of although that's not the way our people prefer that we go. I think we're

caught here between what our protective order now says and what the emerging rules are for the Commission things internally. Whereas, of course, now this is not under Commission contract. This is not our information. This is what you're doing externally, so we have a little bit of leeway there. But we're trying to make sure that we do all the things in as rational and coherent and consistent a fashion as possible.

MS. NAKAHARA: Your Honor, since I don't have the information, I would suggest that I get Scott, our IT person, into looking at the court reporting machine and perhaps he could communicate with Mr. Welkie and Ms. --

JUDGE FARRAR: Lyons-Burke.

MS. NAKAHARA: -- Lyons-Burke.

JUDGE FARRAR: Kathy, what's your phone number?

MS. LYONS-BURKE: 301-415-6595.

JUDGE FARRAR: 6595, Kathy Lyons-Burke. She's with the Office of Chief Information Officer and Andy Welkie is in our office. Andy, you're 415 --

MR. WELKIE: 6541.

JUDGE FARRAR: 6541. Why don't we ignore the ex parte rules. I guess it's not really a

violation of the ex parte, but, Connie, have your person, Scott, talk directly to Kathy and Andy and see how far we get with this.

MS. NAKAHARA: Could you repeat your phone numbers again? I'm sorry.

JUDGE FARRAR: Yes. Kathy's ends in 6595 and Andy's is 6541.

MS. NAKAHARA: Okay. Thank you.

MS. HARBAUGH: Do we have the need to, of course, think about maybe printers as well? I presume that that will be part of this whole package in the discussion.

JUDGE FARRAR: That was Cindy.

MS. NAKAHARA: But the printer will be a standalone printer.

MS. HARBAUGH: Okay.

MS. NAKAHARA: Hooked to the standalone laptop.

JUDGE FARRAR: All right. Now your first depositions, in fact, why don't you give me the entire deposition schedule? You're starting next Monday.

MR. GAUKLER: Next Saturday, actually. The Saturday, May 22nd.

JUDGE FARRAR: Okay.

MR. GAUKLER: We have depositions of

General Jefferson and Colonel Fly (PH) Saturday. Then we pick up back here in D.C. and we've contracted with Neal Gross to do the depositions here in D.C. which they should be able to follow since the contracts with the NRC would follow the same procedures for the depositions as they would for the NRC.

JUDGE FARRAR: Okay.

MR. GAUKLER: We then have depositions Monday through Thursday going into Friday, the following week, the week of the 24th here in D.C. We then go to Salt Lake City with depositions of Allen Soler and the staff structural people June 1st through June 4th.

JUDGE FARRAR: Hold on, Mr. Gaukler, just a second here. So that starts on what day?

MR. GAUKLER: Tuesday, June 1st.

JUDGE FARRAR: Okay.

MR. GAUKLER: And goes through Friday, June 4th.

JUDGE FARRAR: So that's the first time you're in Salt Lake and would have to have the new court reporter ready.

MR. GAUKLER: That's correct.

JUDGE FARRAR: Okay.

MR. GAUKLER: And then we had a difficulty

in scheduling the remaining depositions and it so happens that we can schedule all the remaining depositions that wouldn't be held the first week here in D.C. or the week of June 1st the week of June 21st. So we would have no depositions for two weeks is what we would propose from June 5th through June 21st and then we have that last week of depositions in Salt Lake City starting Monday morning, June 21st going through if need be Saturday albeit we think we'll be done by Friday. That's outside the four week window, but given the fact we don't have depositions for two previous weeks, the parties don't believe that the schedule would need to changed.

JUDGE FARRAR: Okay. Thank you, Mr. Gaukler. So our deadline then for making sure that the Salt Lake court reporters are doing things properly we have to be ready by Tuesday, June 1st which is right after Memorial Day. We really have to get it resolved next week.

MS. HARBAUGH: A couple of other questions with respect to the court reporter. This is Cindy. I gather from your email that this company has recently done some Department of Homeland Security possibly classified depositions or transcripts. I'm presuming that they have a copy of the Security

Authority and probably have a facility plan already in place and that would give me a warm and cozy comfortable feeling if I could get confirmation of that. Therefore, I would like to request if you have a point of contact that I may call at City Court in order to ascertain whether or not they have the facility approval for another government agency. I would appreciate that.

MS. NAKAHARA: Cindy, this is Connie Nakahara. I will email you Lynette Shinderling's phone number who is one of the co-owners and that's who I've been working with.

MS. HARBAUGH: Fantastic. In some of your emails, you've indicated that they are in a controlled access building with additional controlled access into the office and, of course, that's one of the requirements and that you would be providing the appropriate security container for them. So once we resolve some of these IT issues, I believe that we'll probably be in fairly good shape from my perspective, but I will follow up on this other aspect and that'll give us hopefully even a warmer, cozier feeling.

JUDGE FARRAR: All right. So we don't get a scramble of phone calls late next week, let me make sure I understand Kathy. Whatever may be said for

what the rules are for NRC internally, at this point while you wouldn't like it, if we had to have the Salt Lake court reporters on the SecureClean system, you wouldn't say no. You wouldn't give a resounding yes, but you wouldn't say no.

MS. LYONS-BURKE: Correct. My concern is whether or not it would run on a court reporting machine. That is another issue that I don't know.

JUDGE FARRAR: Right. All right. Then I think we have --

MS. NAKAHARA: Your Honor, could I ask a question about the sanitizing software?

JUDGE FARRAR: Yes.

MS. NAKAHARA: Scott Murrell has been familiar with a locally developed software called WipeDrive and it's approved by the Department of Defense which appears to be a similar type software. Could we use that software versus SecureClean?

MS. LYONS-BURKE: Yes.

JUDGE FARRAR: Yeah, none of us own stock in SecureClean and we're just using that as an example. But anything else that would accomplish the same purpose would be fine.

MS. LYONS-BURKE: And certainly if it's DoD approved, it's better. I would consider that a

better solution than one that is not.

JUDGE FARRAR: Excellent.

MR. TURK: This is Sherwin Turk. I wonder if I could make a suggestion.

JUDGE FARRAR: Go ahead.

MR. TURK: If the State provides a laptop to the court reporter to use and then when the court reporter is done, let the State send it in to NRC to use whatever we consider to be appropriate to make sure that there's nothing left on it.

MS. NAKAHARA: But we wouldn't have the use of our laptop to develop deposition and prefile testimony and anything else we need to work on.

MR. TURK: Right. You would need a new laptop, I suppose, but then it could be returned to you and used for other purposes.

MR. GAUKLER: But also it applies to any laptops that we use as well in terms of creating prefile testimony because we would be saving it on disk. That's all standard practice and we will get this SecureClean based on what we understand based on this conversation now.

JUDGE FARRAR: So, Mr. Gaukler, what you're saying is the same problem we're worried about with the court reporter, you've been having a

nonremovable hard drive saving to a disk and you've been assuming you were all right because you didn't save.

MR. GAUKLER: And we'd go in and we'd know that. We've talked about that. I've seen people who have gone in and gotten rid of backup stuff. We've done that in terms of where files were saved, etc. I would assume they told us all those places where they would be so we make it a practice of doing that. But we just get this Secure thing now and we take care of it, but it wouldn't only affect us.

It would also affect our experts who work the same way because we have experts who work preparing reports. Okay, they're preparing reports. Put them on disks from their regular laptop computer. So I mean is this much wider than just the court reporter which would require a major change in the way that we've been operating?

MS. NAKAHARA: But it's not a major impact.

MR. GAUKLER: What?

MS. NAKAHARA: It's major change, but not a major impact.

MR. GAUKLER: Well, we have to get separate hard drives.

MR. BARNETT: We'd have to buy new computers or our experts would have to buy new computers in order to do that.

MS. NAKAHARA: And, Your Honor, at least speaking for the State, Mr. Murrell has been involved with the Attorney General's office in identity theft issues and has been very involved in knowing how to clean hard drives and computers for other purposes and we're very confident in his capability to clean any hard drives that we use with this WipeDrive or SecureClean or any sanitizing software.

JUDGE FARRAR: Okay. Let me interrupt here for a second. Our court reporter does not have the luxury of working with you all for the last three or five or seven years like we have and doesn't pick up on your voices as well as we do. So if you would be sure to introduce yourself, that was Connie Nakahara, but if you all would be sure to mention your names when you start. Kathy, it sounds to me like everybody has been acting in good faith to comply with our protective order and this might be a particularly bad time to try to get them be buying new equipment and so forth. Do we continue the way they said with the cleanup that they, both the Company and the State are doing?

MS. LYONS-BURKE: Yes, again, we would prefer the removable drives, but yes.

JUDGE FARRAR: Okay.

JUDGE LAM: This is Judge Lam. I had a question for Kathy. I thought Ms. Lyons-Burke had raised a third option. One is the removable hard drive. The second one is using this cleanup software. The third option is to use a laptop to be locked up. Am I correct?

MS. LYONS-BURKE: And the laptop has to be controlled as safeguards information.

JUDGE LAM: So there are three options out there. Whichever suits everybody's needs would be fine as Ms. Lyons-Burke is concerned.

MS. LYONS-BURKE: Right. Then the laptop is no longer controlled as safeguards and has to be cleaned in some appropriate way.

JUDGE FARRAR: All right. I think we have an understanding of how to proceed. Kathy, are you here all next week?

MS. LYONS-BURKE: Yes, I'm in class most of next week, but somebody can get me out of class if there's an issue.

JUDGE FARRAR: We'll find you. Andy, are you here?

MR. WELKIE: I'm available.

JUDGE FARRAR: Okay. Good. Then, Ms. Nakahara, have Scott work directly with Kathy and Andy.

MS. NAKAHARA: Yes, sir.

JUDGE FARRAR: And we'll get involved if we have to, but I think whatever you all work out. As we've indicated in these proceedings, we on the Board do not claim any expertise in NRC's security practices, but while we can urge or explain the proceedings to our security people and ask them to impose their restrictions in the most reasonable way, the final call on all these things are theirs. They are the experts. They're the ones charged with the responsibility, so work with them. Kathy, thanks for coming down to join us. Andy.

MS. NAKAHARA: Your Honor, while you still have your experts there, can we ask a few more clarifying questions?

JUDGE FARRAR: Sure.

MS. NAKAHARA: In one of the conference calls on June 25, 2003 when Mr. Stapleton tried to provide us with expertise, he mentioned that NRC was required to portion-mark their documents.

MS. LYONS-BURKE: Yes.

MS. NAKAHARA: And what we were wondering if we could get copies of the portion-marked documents so we would know clearly what we could discuss over the phone with our experts while we're preparing prefile testimony and what we would have to send through a different safeguard channel.

JUDGE FARRAR: Now --

MR. TURK: May I address that, Your Honor?

JUDGE FARRAR: Yes, I think you rather than Kathy would be the person.

MR. TURK: Okay. This is Sherwin Turk. I indicated to the State's lawyers previously by telephone that we do not portion-mark other people's documents.

MS. NAKAHARA: And that's in contradiction to what Mr. Stapleton said earlier.

MR. TURK: Mr. Stapleton, if he said that, was wrong. So I've told you this by telephone. It's still the correct answer. We will not be portion-marking other people's documents. It takes too much of our resources to do that and it's not our policy to do that.

MS. NAKAHARA: Okay. We just wanted to clarify because it's in the transcript.

JUDGE FARRAR: Okay. So what that means

is that anything that's called safeguards, you're forced to treat the whole thing as safeguards. Is that correct, Mr. Turk?

MR. TURK: Yes.

MS. HARBAUGH: I would concur with that. This is Cindy.

JUDGE FARRAR: Okay. So if it's not portion-marked, then anything they want to talk about, for example, cannot be on the telephone.

MS. NAKAHARA: Okay. Then I have another question. This is Connie Nakahara again. Is there any authorization of using encryption software to send email or electronic documents to someone who is allowed to receive safeguard documents, being our experts?

MS. LYONS-BURKE: This is Kathy Lyons-Burke. Yes, the safeguards can be, as long as it's encrypted on a standalone machine and then transferred to the networked machine in an encryption form and that encryption is FIPS 140 compliant, validated actually, as the encryption tool appears on the FIPS 140 validation that's on the NIST website, it can be sent.

MR. TURK: Kathy, I'm sorry. Someone was rustling papers. I didn't hear the beginning of your

comment. Could you say it again?

MS. LYONS-BURKE: Sure. The safeguards information must be encrypted on a standalone machine and then transferred to the network machine. The encryption itself, the tool that's used to perform the encryption, must be a validated tool validated to Federal Information Processing Standard 140 and the list of validated products is on the NIST or National Institute of Standards and Technology website and it must appear on that list to, in fact, be validated regardless of what the vendors say. That product can be used to encrypt safeguards.

That information then transferred to a networked computer can be emailed as an encrypted attachment to somebody who is qualified to receive safeguards. That person would then take that attachment in its encrypted form, put it on some transportable media, move it to a standalone machine to decrypt it.

MS. NAKAHARA: And would the 6140 -- This is Connie Nakahara again. Sorry. Would the 6140 validation or validated encryption software appropriate for encrypting the data on a laptop that you travel with?

MS. LYONS-BURKE: The FIPS 140 encryption,

yes, that is the same encryption technology that's used to encrypt an entire hard drive.

MS. NAKAHARA: And then speaking of traveling - this is Connie Nakahara again - are there any approved procedures in which we can check safeguard documents with our luggage if we have them double-enveloped and follow the packaging process?

MS. HARBAUGH: We would prefer that it you would forwardly advance the approved transmission. This is Cindy Harbaugh. It can be traveled with, but as you indicated, it's certainly not the desirable means for transport.

JUDGE FARRAR: Well, now assume they're all boxed up and wrapped properly, you're saying you'd prefer --

MS. HARBAUGH: That they be transmitted by the approval mail channels.

JUDGE FARRAR: Rather than checked as luggage.

MS. HARBAUGH: Yes.

JUDGE FARRAR: Okay. Is that something that you prefer or is that something required?

MS. HARBAUGH: It would be preferred. There is no provisions against travel. However, there are certain requirements, and again I'm speaking in

terms of our internal procedures and I'm looking at 10 CFR requirements. Again it does not address the notion that you cannot travel with it, however, in route, it cannot be opened and used.

For example, if you're checking it as luggage, there is no prohibition against it. It would have to double wrapped just as if you were mailing it, but again, I would much prefer, and I underline the word "prefer" because there is not a provision against doing this, that it would forwarded in advance by approved mail channel media. Again it flies in the face of having it under control to check it as luggage.

MR. TURK: Cindy, which is preferable, to check it in as luggage or to carry it onboard?

MS. HARBAUGH: Carry it onboard because it would be in your possession.

MR. TURK: And I take it the reason is that luggage has been known to be searched by people looking to steal valuables.

MS. HARBAUGH: And/or just plain searched in general these days.

MR. TURK: Okay.

MS. HARBAUGH: And the fact that even though it is double wrapped, if opened, it causes me

a great deal of grief though like I said, I cannot quote reliable verse of any irregulations that would preclude you from doing that.

JUDGE FARRAR: Cindy, so you're not worried about it being in the belly of a plane, the same as FEDEX would have.

MS. HARBAUGH: Exactly.

JUDGE FARRAR: It's that if it's luggage, it's subject to more possible examination than FEDEX would have it in their airplanes.

MS. HARBAUGH: Exactly.

JUDGE FARRAR: Okay.

MS. NAKAHARA: This is Connie Nakahara again. If I could ask, I think, one more question. I understand Ms. Lyons-Burke's email which we very much appreciate where it says we cannot use pen drives and other portable mass storage devices, but I just want to clarify that we could use them in the same sense that we would use a diskette, not to store the data on but possibly to transfer data between two different lawyers or to transfer the data to different laptops.

MS. LYONS-BURKE: As long as that device is controlled as safeguards, yes, you can.

MS. NAKAHARA: Okay. Thank you.

JUDGE FARRAR: Any more questions? This is the time.

MR. GAUKLER: I have some questions, Your Honor, but a little bit different topic going back to the --

MS. NAKAHARA: Your Honor, I have one quick question. In Ms. Lyons-Burke's email which was very informative, she has an acronym in there, AIS. Could you tell us what that stands for?

JUDGE FARRAR: No, I can't, but she can.

MS. NAKAHARA: Thank you.

MS. LYONS-BURKE: Automated Information System.

MS. NAKAHARA: Okay. Thank you.

MS. HARBAUGH: I would like to also - this is Cindy - address the issue of working with the safeguards information once you're in D.C.

JUDGE FARRAR: Yeah, we're going to do that.

MR. GAUKLER: May I, before we get to that topic?

JUDGE FARRAR: We're going to do that in a minute. We're dealing now with just the AIS stuff.

MS. HARBAUGH: And may I backup for one other issue. If you are, in fact, going to check the

safeguards information, again I would request that you send an advanced notice to the fact that you're going to be doing that rather than transmitting it by approved mail media.

MR. TURK: Cindy, I'm not sure I understood that. This is Sherwin Turk. Could you say it again?

MS. HARBAUGH: If, in fact, you decide to check the safeguards information in a travel mode rather than forwarding it by approved mail channels, we would like written notification that you intend to do that.

JUDGE FARRAR: And is that something that you would then just want in your files or something you would have to approve or disapprove.

MS. HARBAUGH: The director of Security should really approve that, though again there are no 10 CFR regulations that would ask him to levy that requirement upon you all. However, it would be appreciated.

JUDGE FARRAR: Well, there's a difference between notification and seeking permission.

MS. HARBAUGH: That would be true and this would be notification for them. In our case, for internal staff, it would be approval.

JUDGE FARRAR: Right. Okay. Ms. Nakahara, are you finished with your endless series of questions here?

MS. NAKAHARA: Your Honor, thank you very much.

JUDGE FARRAR: No. Thank you for asking them. It's important that we get all this straightened out. Mr. Gaukler, you had some questions in the same area.

MR. GAUKLER: In fact, it refers to some discussion we had previously and that discussion differs from my understanding that we had talked about previously in earlier Board conferences. That was with respect to documents that were marked "safeguards."

I can see what the Staff is saying. We can't take a couple of pages of those and fax them around, etc., but I always thought we could talk about documents that were marked "safeguards" and summarize them without disclosing safeguards information. Yet now they are saying that we even discuss those documents. That is a major change in how we've operated and how we understood we were supposed to operate.

JUDGE FARRAR: Well, the way I thought you

were operating was if you send something, a document, to your expert in the proper fashion, the expert has it in front of them, you can say "Let's all turn to page five and tell me what you think of the fourth sentence. Is that a good sentence or a bad sentence?" And you can talk about it on the phone in that fashion as long as in your phone conversation you don't have the substance of the information being spoken. Cindy, do I have a correct understanding there?

MS. HARBAUGH: You do, but you're living in a risky world that way.

JUDGE FARRAR: Mr. Gaukler, is that --

MS. HARBAUGH: Talk around and talk around is not necessarily an ideal way, but it is a manner by which to accomplish what you have to accomplish.

JUDGE FARRAR: All right. And Mr. Gaukler, with that, is that the way you've been operating?

MR. GAUKLER: In large part, yes. In other parts, in certain information, like, for example, we believe that we understand clearly angles or speeds are safeguards. Discussion of the potential vulnerability of the casks are safeguards, but there are many other things in these documents that are not safeguards that they talk about even in relationship

to the specific documents or totally divorced from the documents.

JUDGE FARRAR: So let me dream up an example. So if you're saying let's look at crash number 10 which happened on landing at Hill Air Force Base, you're saying you can make your own judgment that the fact that that crash happened at Hill is not safeguards and you can talk about it.

MR. GAUKLER: That, basically, yes. But that isn't really applicable here because I think the NRC has said that historical crashes are not safeguards.

MR. TURK: And, Paul, let me add. This is Sherwin Turk again. Angles and speeds are not treated as safeguards except if, in your report, you're using certain angles and speeds.

MR. GAUKLER: Yes, angles and speeds in which you've analyzed or talk about vulnerabilities of the casks in relation to that.

MR. TURK: If they are tied into your crash analyses, your consequence analyses, then we wouldn't be talking about that because that was the SGI.

MR. GAUKLER: That's our understanding, yes.

MR. TURK: Yes. But if you don't tie it to a discussion of aircraft crash consequences or vulnerabilities, there is no problem talking about aircraft crash events that have occurred.

JUDGE FARRAR: All right. Let me ask then --

MR. GAUKLER: And I restate the general point. If general discussion doesn't tie into vulnerability, that we can discuss that information. It's not safeguards. And now to say that because it appears in some safeguards document we can't discuss it does not seem to be correct to me.

MR. TURK: Paul, when you say vulnerability, the problem is that you may have analogy that say there are no vulnerabilities. Does that suddenly become something that can be talked about and only if you find a vulnerability not talk about it? We look at it differently. The approach that we've been following is that either it talks about vulnerabilities or it talks about the methodology used in the analysis to determine vulnerabilities, we would treat all of that as SGI.

MR. BARNETT: Paul, this is Sean Barnett. I understand vulnerability, so the question though whether there is or is not a vulnerability would be

safeguards information if you're talking about some analysis that you've done that shows a result with a respective vulnerability. But with respect to the methodology for conducting analysis that's not tied to any particular evaluation of a vulnerability, we've been considering that not to be safeguards. If you're talking about how to, for example, model an airplane or model a cask or model a jet-fuel fire, we have not considered that to be safeguards based on the previous discussions we've had with the Staff.

MR. TURK: That's not an analysis of crash consequences. That's just a modeling technique which may be totally unrelated to the fact that you're looking now at the consequences of a crash into this facility or into the particular cask. In other words, the modeling of casks goes on all the time. It's only when you link it to an analysis of the consequences at this site that it would become something that we would treat as SGI.

MR. BARNETT: I think --

MR. TURK: I'm not making any kind of a ruling here. I'm forwarding you the information as I understand it that I received in talking with Bern Stapleton and his group.

MR. BARNETT: Well, I think that's a way

we've been -- I think we're both on the same page there. I think that we understand if you're talking about specific evaluation or specific results that it fits in the safeguards. When you are just talking about a modeling technique or a modeling approach, that it does not.

MR. TURK: If anyone has any concerns about a particular kind of discussion, whether it's SGI or not, I think the proper person to contact would be someone in our NFRI group such as Bern Stapleton or his review chain.

MR. BARNETT: Okay.

JUDGE FARRAR: All right. Does that take care of all the questions about information?

(No response.)

JUDGE FARRAR: Good. Then we'll, as we've attempted a few minutes ago, thank Kathy, Andy and Jim for helping us out and ask for their continued help over the next few months. Thanks, folks.

Let's then shift gears only slightly to talk about physical requirements once we get here. What we had in mind is the hearing will be in our hearing room. You're each familiar with the three -- You each had a conference room. We will provide you an approved safe or equip the conference room with a

safe just like it will have a table and everything else.

The question though is after hours where can you work. I notice, Mr. Gaukler, you had once indicated, I think, it was at transcript 14777 whichever day that was, that you might have an office set up outside NRC in a hotel or some other building. I know hotel makes Cindy very nervous because it doesn't fit the definition of secured space or secured building.

So when I heard that from her, I wanted to make sure that we all arrive now or soon on an agreement on what kinds of facilities you all will try to be operating out of here and discuss what services we might need to provide in terms of making your conference room here available after office hours. Mr. Gaukler, why don't you start by saying what you, if you had your druthers, what you would do as a war room or whatever you want to call it? Mr. Gaukler, are you there?

MR. GAUKLER: Yes. As we told you the last time, Your Honor, last time we had a big conference room in the hotel which we would be able to use as a war room where we had all our files and copy machines, etc. That's where we operated from. That

was out in Rockville just down Rockville Pike from the NRC's offices.

JUDGE FARRAR: Same deal you had at the Sheraton.

MR. GAUKLER: Yes, exactly right, Your Honor.

JUDGE FARRAR: In Salt Lake.

MR. GAUKLER: And that's not controlled access, so for storage, I presume we have to get a safe as opposed to a GSA approved file cabinet with a GSA approved lock. Now we have not looked into that. We've bought a safe for Dr. Cornell because he needed to have safeguards documents and he operates out of his home, therefore, it was not controlled access so therefore we needed to have a safe and we got modified the protective order to allow that. But we had a very difficult time to find a safe because it was my understanding since 9/11, they've become very valuable and hard to come by. If we could get a safe at a reasonable price, that's probably what we would do. We would probably get a safe for a hotel conference room.

MS. HARBAUGH: The director -- This is Cindy. The Director of Division of Facilities and Security for NRC, Tom Martin, in a conference

yesterday with him had a great deal of problem with that and would not approve it from our perspective. Again, in looking at the Regulations, it would not meet the criteria for a controlled access building with additional controlled access into the area, the intent of 73-21.

What we would prefer and would approve and feel a comfort factor with is making the necessary arrangements for headquarters. In fact, I will go back, if you recall, the first protective order. It was very specific to three locations; the party, the Private Fuel Storage Offices in D.C., the approval of the Office of the State in Utah and NRC headquarters. Looking at that, again, we would like to make all the necessary arrangements for comfort factor for you and providing necessary space and approved storage at our headquarters facility and would take the necessary measures to provide the access for you to that facility and storage.

JUDGE FARRAR: Cindy, let me ask you a question. Are --

MS. HARBAUGH: A hotel would not meet the criteria of an approved site.

MR. GAUKLER: But it's not a controlled access building. I agree with you. But I thought

that a safe and to store with a GSA approved lock, you need to have a controlled access building. My understanding is if you have a safe as defined in the Regulations that you do not need to have it in a controlled access building. So I'm talking about a safe that would not be limited to a controlled access building.

MS. HARBAUGH: Again, I quote Tom Martin in saying that - and particularly in this situation when we look at the regulations, there are, for temporary storage, approval for such things as a safe even a safety deposit box, et cetera, for temporary storage. I think these proceedings will go beyond what would normally be considered that temporary storage. Again, we would like to proceed with the premise of making accommodations for you at headquarters.

MR. GAUKLER: I guess we made a change in the protective order and an undisclosed affidavit specifically. I was talking with Sherwin Turk. My understanding from Ms. Marco is that the change in the protective order authorized us to use a safe for the storage of safeguards material. We're using that for Dr. Pernell's (PH) home because he is not in a controlled access building.

We're using the safe per the Regulations. I went through the Regulations and satisfied myself that a safe met the NRC's requirements. I talked to Ms. Marco and Mr. Turk. They confirmed to Mr. Stapleton my understanding. Now, this is a different understanding I am getting and it's contrary to what we have been operating under since an undisclosure affidavit, since the protective order was modified specifically last summer.

JUDGE FARRAR: Cindy, before you answer that, let me make sure I understand what we're talking about. Mr. Gaukler, you are talking about the August 20 amendment which amended Paragraph 5A of the affidavit which added an "or" clause.

MR. GAUKLER: I believe that's correct.

JUDGE FARRAR: So it was controlled access building that is either attended around the clock or locked at night or - and here's the additional language - as otherwise specified in 10 CFR 73.2 security storage containers. So you are saying your understanding of what you were trying to accomplish with that amendment was to say a safe is sufficient even if it's not in a controlled access building.

MR. GAUKLER: A controlled access building.

JUDGE FARRAR: Cindy, I just wanted to make sure we were all on the same page here.

MS. HARBAUGH: That's fine. I'm looking. I have a copy of the August 20 order. I'm looking for where you are referring to. Let me advise you on one thing here. Because of the reorganization within the NRC, you have two aspects of security reporting to two different organizations.

Bern Stapleton happens to be in our Office of Nuclear Security, Incident Response Office. I represent the Office of Administration. We primarily have responsibility for physical security. They have the responsibility for policies with respect to these areas. I'm still looking in the protective order.

JUDGE FARRAR: It's Paragraph 5A on page 3 of the affidavit attached to the August 20 order.

MS. HARBAUGH: I see Paragraph A. I had not seen that. I would like to readdress that with the Director of Security so that there is a joint understanding between the two offices within the Staff of NRC and get back with you on that.

JUDGE FARRAR: All right. Let me lay out the State, and the Company can correct this understanding if they have a different one. They have, really I would think in terms of what we've been

talking about here, three options.

They could use the conference room off our hearing room with the NRC as a whole providing escorts and so forth so they could have the ability to use as a war room the conference room off our hearing room. Everything would be there. Then when they go back to the hotel, they have essentially no documents with them. That would be one possibility.

The second and third possibilities is they could have a war room in a nearby office building that would be in your terms, Cindy, controlled access. They could go there whenever they could arrange access to the building. Or I think what I'm hearing from Mr. Gaukler, just the way things happened, the more convenient thing for the non-Staff parties is to have a war room in their hotel because even though a hotel as such is not a controlled access building, if they have a war room in their hotel with an appropriate safe, that's the most convenient way for them to prepare for and do whatever they have to do during the hearings. Let me just ask Mr. Gaukler and Ms. Nakahara if I stated your preferences correctly.

MR. GAUKLER: I believe that's correct, Your Honor, yes.

MR. TURK: Your Honor, this is Sherwin

Turk. We also had a war room in the hotel in Salt Lake City. The nice thing about our room - and PFS had one there and I have seen PFS's room across from our building in Rockville - is it offers a lot more space so that when you are working with many witnesses, there's room for people to sit, move their chairs, get up, put a little coffee machine. I think it offers a lot more space than and conference rooms off of the hearing room would offer. So I can understand why that would be a preferred option both for the State and PFS while they are working here in Rockville.

JUDGE FARRAR: Thank you, Mr. Turk. Let me ask them. It's better for you all if you are in a hotel not because the hotel facility is any better for a war room but because your sleeping room is near the war room and it's just more convenient for you, is that correct?

MR. GAUKLER: That's correct, Your Honor. Just being able to have access at night is the other key factor.

MS. NAKAHARA: Your Honor, this is Connie Nakahara. I would agree with Mr. Gaukler and Mr. Turk's impressions only I'll probably be more difficult. We would prefer option one and in the

hotel room because we found it very useful to have the conference room during the course of the hearing. Mr. Turk is correct that the conference room that you provide, although we felt it was essential and we appreciated it, we could not work very well with multiple experts in that small room. The other question we have is, what type of access would we have after hours? Would it go until midnight or 10:00?

MS. HARBAUGH: This is Cindy. We would make arrangements with the Office of ASLBP to have Staff available to escort you to permit basically 24 hour access though it would have to be under escort at all times.

JUDGE FARRAR: Cindy, you might refer that to our people. But I think what we would do would be, if the service has to be provided - and it may have to be - that we would go to some of the Commission HR people and say to have 24 hour access, it can't be just our Staff. We would have to draw on people throughout the Commission just like you would do in any other kind of crisis situation to pitch in. They wouldn't be volunteers.

MS. HARBAUGH: That's correct.

JUDGE FARRAR: They would be getting paid overtime or comp time to serve as escorts. So that's

something we need to look into.

MS. HARBAUGH: From a logistics perspective.

JUDGE FARRAR: I'll leave that to you and Jack to get that conversation started now. What will the Commission provide? I suppose the answer is, if the Commission will provide nothing and you can't work at night, then we have much shorter hearings during the day and you do your work during the latter part of the day. So I think the Commission as a whole would have a great interest in making sure you have access, if not 24 hours a day, maybe until midnight or after midnight on request or so forth. So we will look into that.

But now the question becomes, if I am hearing correctly, the State and the Company want to have their war room in their hotel. Cindy, can your superiors start looking at the question, what would you need to convert that hotel space into the kind of controlled access? Is that a guard, a watchman? For example, I suppose Mr. Gaukler's office downtown would qualify as controlled access.

MS. HARBAUGH: Yes, it would.

JUDGE FARRAR: But the reason it's controlled access is, if I try to walk in there at

night, there's a guard there who stops me. The building isn't necessarily controlled access. There's someone sitting there who says, "Buddy, what are you doing here?" If I don't have a good reason, I don't get it. So can't we use some kind of analogy in terms of guards at a hotel, not guards that we would hire?

MS. HARBAUGH: Again, both the Staff from NSIR and from Admin.. jointly with our management need to convene and discuss this and come back with a jointed answer to you.

JUDGE FARRAR: All right. I think the two parties would very much appreciate that as would we. As you have those discussions, would you include Jack from our office?

MS. HARBAUGH: Certainly.

MR. TURK: Cindy, in pursuing this matter, could I also ask you to consider that the rooms at the hotel might be accessible only by persons with an actual key rather than a key card? I don't know what the answer to this is, but perhaps that would make that into a secured access.

MS. HARBAUGH: When we have looked at this issue before - and again, Admin. actually has the final say on this issue with input from NSIR - some considerations were taken into account with respect to

cleaning staff, master key of the building, and so forth. We have addressed this in temporary situations and approved such, truly in travel temporary situations.

The circumstances for this hearing are somewhat different. As I said, I consulted with the Director yesterday. He confirmed my opinion as I indicated. But given you have gotten different guidance from NSIR and I had not picked up on the change here and this protective order is dated August 20, we will readdress this and get back with you. And yes, we will take those things into consideration, Mr. Turk.

JUDGE FARRAR: Cindy, we thank you. We certainly appreciate that. Unlike the situation with the court reporters where we only have next week to get it straightened out, this is a longer-term issue. We want it resolved sooner rather than later, but it's not until our hearing starts on the weekend before August 9 that we have to resolve it.

MS. NAKAHARA: Your Honor, this is Connie Nakahara. We actually have to make a decision relatively soon. Jean Braxton has been checking in the availability of safes, Class 5 and 6 safes. We basically have to order them in the next week or so if

we want delivery guaranteed by hearing date.

MS. HARBAUGH: This is Cindy. I recognize that from our own lead time for ordering safes. So we'll promptly address this issue for you.

JUDGE FARRAR: Cindy, I know you are supposed to be on vacation this week. You work very hard when you are here. Is there someone other than you we can deal with?

MS. HARBAUGH: I'll coordinate it within the Staff and get back with you.

JUDGE FARRAR: Okay, great. All right. I think if that doesn't resolve the issue, it gets us on a path to resolution. I'm sorry to have taken an hour and 20 minutes, but I thought both of these issues were important. If we didn't get them resolved now, we were going to run into logistical problems down the road that would threaten to make everyone inefficient and delay the proceeding. So I thank everyone for their input on this. Any further questions on the matter of physical security that we want Cindy and her team to be thinking about?

MR. TURK: I have one question, Your Honor. This is Sherwin Turk. In our planning to travel to Salt Lake City for depositions, if we want to send materials to our hotel to be held for our

arrival, is there any problem with that as long as we're double wrapping everything and sending it to our personal attention at the hotel?

MS. HARBAUGH: Actually, no. There is a however there. Again, if I may get back with you at the Staff level on that, I would appreciate it.

MR. TURK: Okay, I'm sure other people would have the same issue. PFS is going to be traveling to Utah. The State will be traveling here.

MS. HARBAUGH: Yes, there are some changes in internal policy that are pending. I would like to get back with you on that.

MR. TURK: That's in terms of Staff procedures rather than all parties.

MS. HARBAUGH: Staff procedure, not all parties.

MR. TURK: Okay, thank you.

JUDGE FARRAR: All right. Let's move on. Let's take just a minute break here. Off the record.

(Whereupon, the foregoing matter went off the record at 2:40 p.m. and went back on the record at 2:41 p.m.)

JUDGE FARRAR: We're back on the record. Mr. Turk, let me ask you a question. In terms of the reporting contract, are you taking anybody's

deposition? Let me put it this way. Is the Staff the prime mover in taking somebody's deposition, or are you just along for the ride in terms of the State deposes the Applicant's witnesses and you go along with it and the Applicant deposes the State witnesses and you go along with it and they both depose your witnesses? Are there any depositions that you have noticed and are organizing yourself that have to be under the Neal Gross contract?

MR. TURK: We are not noticing any depositions, but we expect to ask questions at each of the depositions that are taken.

JUDGE FARRAR: All right. That's helpful. Give us another minute here. Off the record.

(Whereupon, the foregoing matter went off the record at 2:42 p.m. and went back on the record at 2:44 p.m.)

JUDGE FARRAR: We're back on the record. That took care of the second item in the email. Let's go to the first item which gets into the organization of the issues, number of witnesses, and cross examination time allotments. You all were going to talk after our last call about the organization of issues. Have you all had a chance to do anything about that, Mr. Gaukler?

MR. GAUKLER: Not extensively, no, we have not. We have talked some about potential stipulations. I think the organization of issues is pretty much the same as we talked about before. But we have not talked about that and finalized that in our minds.

JUDGE FARRAR: All right. We talked last time about different ways of organizing the issues. But as I recall, we were going to leave it to you all to come up with a final recommendation. So I take it there would be no purpose today by us trying to make any more progress. Rather, we should let you all work on it, Mr. Gaukler.

MR. GAUKLER: I think we're relatively close. I would feel comfortable talking about organization of issues if the other parties want to talk about it because I think we are relatively closer than before. There's only a couple of issues that I see that we didn't really resolve before.

JUDGE FARRAR: Ms. Nakahara, Mr. Turk, should we then try to make some progress today?

MR. TURK: Your Honor, speaking for the Staff, I think the parties are better off addressing it between themselves.

MS. CHANCELLOR: Your Honor, this is

Denise Chancellor. Whatever is the pleasure of the board. We can do it either way.

MR. TURK: I have two reasons to say let's defer and let the parties talk first, Your Honor. One is, it is a little complex because first it's on the ordinance. Some of the parties are addressing it or their witnesses will be addressing potential consequences. Whereas, it may also be addressed in terms of angles and speeds. So that's one issue that I think we should hammer out among ourselves first to get a common understanding of how to proceed on that.

The CTB is another case where the Staff has combined its discussion of the CTB with its discussion of casks in the report by Byork and Shewmaker. PFS has broken them out separately with different witnesses. The State has not put witnesses on the CTB issue. So we need to address the best way to address CTB whether it's a separate issue or do it as part of casks or with the cask discussion. So I really think the parties should talk first before taking up the board's time on this.

JUDGE FARRAR: All right. Give me a minute here. Off the record.

(Whereupon, the foregoing matter went off the record at 2:47 p.m. and went back on

the record at 2:48 p.m.)

JUDGE FARRAR: We're back on the record. Judge Lam and I have consulted. Let's see if we can't make some progress on this today. Even if we don't come to any decisions, it may help the parties' discussions. Mr. Gaukler, since that's the course you wanted to follow, why don't you see where you can take us with that?

MS. CHANCELLOR: If Mr. Gaukler isn't prepared, I could.

MR. GAUKLER: I'm sorry. I would proceed taking up this speed and angles issue first followed by the ordinance issue such that --

JUDGE FARRAR: Mr. Gaukler, we missed that. We got some static there. Speeds and angles first.

MR. GAUKLER: Followed by ordinance such that I know the State wants to put Horstman and McDonald together. I think by doing that, it allows the State to put Horstman and McDonald together at the end of the speeds and angles. Then we would pick up with Lancaster on the ordinance on our aspect. Staff has Shewmaker which has a separate report on ordinance which I presume he would testify at that point in time.

JUDGE FARRAR: So you are saying we would get the most efficient use of the witnesses by doing those two first.

MR. GAUKLER: Those two first, yes.

JUDGE FARRAR: All right. That seems to make sense. Does anybody have an objection to that?

MS. CHANCELLOR: No, but I think I would combine them all such that PFS put on all of its witnesses and then Staff and then the State so that you do speed, angles, and ordinance as a unit rather than two subunits because otherwise our ordinance person would be testifying before PFS's ordinance witness.

MR. GAUKLER: I don't think I have any problem with that, Your Honor.

JUDGE FARRAR: All right. So this then is about how things fall, if I can lump those two together. That's the common thread.

MR. GAUKLER: Right, so the way we would proceed under what Ms. Chancellor just suggested is we would have Fry (PH) and Jefferson testifying for PFS on speeds and angles. We would have Lancaster covering both speeds and angles and penetration insofar as ordinance was concerned. We then would have our key Staff witnesses on speeds and angles and

ordinance.

MR. TURK: I am okay with the general concept, Your Honor, for the Staff except that the Shewmaker report on the ordinance is different from the approach that PFS and the State took. The Shewmaker report on ordinance looks at consequences. Whereas, PFS's and the State's reports look at the philosophy of the ordinance.

MR. GAUKLER: Our report looks at the consequences as well as philosophy.

MR. TURK: I apologize. It may be that I want to hold Shewmaker until later but if we could just leave that question open.

JUDGE FARRAR: Let me ask the State, as you see it, you would have Mr. Gaukler's people, Fry (PH) and Jefferson and Lancaster. Then you would have, let's assume for a moment, the Staff people. Then you would have whom?

MS. CHANCELLOR: As one panel, Horstman and McDonald.

JUDGE FARRAR: On both planes and ordinance.

MS. CHANCELLOR: Yes, they would testify as a single panel and speed and angle and ordinance.

JUDGE FARRAR: Subject to Mr. Turk's

caveat, that seems like a sensible way to proceed. So we would encourage you to see if you can pursue that and nail that down. So keep talking on that. Would the next issue be the jet fuel fires or the structural?

MR. GAUKLER: Your Honor, because my jet fuel fire person would not be available the second week of those two weeks there, I would suggest we go to jet fuel fire next.

MS. CHANCELLOR: I think jet fuel fire could go anywhere in the proceedings so we wouldn't object.

JUDGE FARRAR: Wait a minute.

MS. CHANCELLOR: We don't think it would take any longer than half a day to get through all the witnesses.

MR. TURK: Our witness for the Staff, Christopher Bajwa, is out of town the week of August 9. So we could not reach jet fuel fire that week. But perhaps we could settle this issue.

JUDGE FARRAR: Mr. Gaukler, I misunderstood something you said. You said your --

MR. GAUKLER: My witness is not available the week of August 16.

JUDGE FARRAR: Okay.

MR. GAUKLER: That's why I was suggesting at the end of the first week.

JUDGE FARRAR: The end of the first week.

MR. GAUKLER: But the Staff's witness is not available.

JUDGE FARRAR: Mr. Turk, besides Mr. Shewmaker, who would you have on speeds and angles?

MR. GAUKLER: Are we talking jet fuel fire, Your Honor?

JUDGE FARRAR: No, I didn't ask Mr. Turk who he had on speeds and angles.

MR. TURK: Mr. Shewmaker is not speeds and angles. Actually, he has two reports. One is ordinance. One is structural consequences. On speeds and angles, we'll have Dr. Gauche and Dr. Campe.

JUDGE FARRAR: Right, now the reason I'm asking that is we now have five panels. Just a minute here. Bear with us a moment. Off the record.

(Whereupon, the foregoing matter went off the record at 2:54 p.m. and went back on the record at 2:55 p.m.)

JUDGE FARRAR: We're back on the record. Do we see doing those five panels in that first week?

MR. GAUKLER: Your Honor, Paul Gaukler here. I would think so. I think those five panels

would be smaller sets of testimony. We have proposed some stipulations to the State on areas we think can be stipulated. Just to give you some examples, I think we can stipulate angles and speeds of ordinance. We're willing to accept the State's angles and speeds which because they are very close to ours, it makes no difference to our calculations. So there's no need, as far as we see it, for angles and speeds of ordinance.

With respect to speeds and angles of aircraft crashes, the State looks to a different body or group of accidents than we do. They claim that the population they look at is less than what PFS and the Staff have looked at. I don't think they take issue with any of the particular speeds that we have calculated and things of that type.

So our goal would be on those issues that there really is no dispute. So get them stipulated beforehand so the parties don't need to spend time preparing their witnesses on those issues. It cuts down cross examination obviously and focus on the areas where there is an actual dispute between the parties. Even if we don't do that, I think we would get through all those five panels the first week because they are going to be relatively smaller than

the panels on structural.

MS. CHANCELLOR: Your Honor, this is Denise Chancellor. We received the stipulations from Mr. Gaukler late last night. We haven't had a chance to look at it in depth. But we believe we would need to wait until after the depositions before we entered into any stipulations.

In any event, I think there would need to be testimony on speeds and angles and ordinance, that we wouldn't be able to stipulate all of the issues. I agree with Mr. Gaukler that speed, angle, ordinance and jet fuel fires could be done in a week.

MR. TURK: Your Honor, let me mention on jet fuel fires, the Staff has two different subpanels of witnesses. We would put them on as a single panel. One is Mr. Bajwa who is not available the first week. Then we also have two people from Sandia National Laboratory. They have prepared their own report which you may have noticed.

They would also be testifying on our behalf on jet fuel fire. They would be available the first week as far as I know. But I wouldn't put them on separately from Mr. Bajwa. They really make up a combined panel.

JUDGE FARRAR: Wait, so they all three

have to be here at once.

MR. TURK: Yes, which we could do if we do it the second week, at least the Staff's testimony. Perhaps we take the Staff's testimony on this issue last.

JUDGE FARRAR: Our goal then would be at least get the Applicant's witness on because he's not available the next week. Mr. Turk, is your position on jet fuel fires supportive of the Company's or of the State?

MR. TURK: It's supportive of the Company. The Staff has gone further. We have looked at an issue that to my knowledge - and perhaps I'm wrong - that PFS did not look at. That's one of the things that the Sandia witnesses would be talking about. But I have no problem in having the PFS witness go first and having the Staff coming the following week.

JUDGE FARRAR: All right. Ms. Chancellor, who are your witnesses on that?

MS. CHANCELLOR: We have no witnesses, Your Honor. We would make our case through cross.

JUDGE FARRAR: Okay, then let's see if we can't get the Applicant in at the end of the week and start the next week with the Staff. So that would get us through, say, six days.

MR. GAUKLER: Your Honor, I would think that that would not take six days total.

MR. TURK: I would agree, Your Honor. I think we can be done with all of those issues in three.

MS. CHANCELLOR: I agree too, Your Honor.

JUDGE LAM: This is Judge Lam. I haven't had optimism. Now, I do. I think we are dealing with five panel witnesses and everybody is thinking about three days only.

MS. CHANCELLOR: Judge Lam, a lot of these issues came up in the previous hearing. So this is not where the main issues lie. The main issues lie in the structural and probability in this part of the hearing.

JUDGE LAM: So this is just the appetizer before the main courses, right?

MS. CHANCELLOR: Absolutely, yes.

JUDGE FARRAR: All right. I'm going to ask the court reporter to put a special mark on this page because I'm going to come back to it and waive it at you on Thursday or Friday if we're still going.

MR. TURK: Your Honor, I think I was misquoted.

(Laughter.)

JUDGE FARRAR: Well, the court reporter has it down. That is certainly good news. So then what you are envisioning is that we would start structural as early as Thursday of the first week.

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

MS. CHANCELLOR: Your Honor, a lot depends on whether there's a motion *in linime* and whether that takes up a good chunk of the day on Monday.

JUDGE FARRAR: Well, that's a good point, Ms. Chancellor.

MR. GAUKLER: Your Honor, based on the actual reports, we have identified one motion *in limine*. We already told the State in that email last night - and they haven't had time to look at it in depth - what that issue is. We'll be discussing it. If we don't reach resolution, which probably would be likely, we will be filing a motion relatively shortly on that issue.

JUDGE FARRAR: Okay, so this is not an entire witness. This is just something that a witness says.

MR. GAUKLER: Yes, it's in the ordinance and in McDonald's testimony.

JUDGE FARRAR: So if you and the State don't agree, then that's something you could bring to

our attention now.

MR. GAUKLER: Yes, we'll bring it to your attention. It will be something I think that we could do so by - right now we are dividing our labor - Mr. Barnett could put that together the first week in June.

JUDGE FARRAR: So we wouldn't have to wait until the testimony is filed.

MR. GAUKLER: It would get resolved right away.

JUDGE FARRAR: It would get resolved right away whether this material in the report is properly the subject of testimony or not.

MR. GAUKLER: Correct.

JUDGE FARRAR: Excellent.

MR. GAUKLER: And that's the only issue that we have identified so far based on the State's report.

JUDGE FARRAR: Excellent. That's good news. The other thing is, Ms. Chancellor, you and perhaps the other parties had once talked about moving in on Saturday or Sunday before the hearing. I think Mr. Turk said that of course would be a problem with access to the building.

Following up on the conversation we had

earlier today, it's our intention to make sure that the building is open for you on Saturday and Sunday so that you can get in here at your leisure. It may not be leisure but at least you will be in old clothes setting up your conference rooms and so forth so that first thing on Monday morning we're starting rather than you all being under extraordinary pressure to get everything organized and then show up and start examining witnesses. So I think we're looking at a smart start on Monday with everyone having come in and set up on Sunday.

MS. CHANCELLOR: Thank you, Your Honor. That would be fine with us.

JUDGE FARRAR: All right. So we're looking at starting structural maybe on Thursday and Friday. With the exception of a little bit of Staff jet fuel fire, say, on Monday, in effect, you have seven days to do structural. I think at one point there was a Company estimate of nine days. Somebody else estimated 11 days for structural. How are those holding up?

MR. GAUKLER: I think that we'll know much better after the depositions. Based on the reports I have seen so far, my estimate would go down. But our experts are still looking at the State's reports and

the Staff's reports. On large part, it would depend on the depositions. Right now, my estimate would be that we could probably get the structural done in seven days. That would be dependent upon depositions.

JUDGE FARRAR: All right. That would be a huge plus because then that would leave us with what you all told us was two and a half days for probability. We could do the two and a half days Labor Day week. We didn't have a full week then for a couple of reasons. But it seems that that would let us finish Labor Day week.

MR. GAUKLER: And get done before the Jewish holidays.

JUDGE FARRAR: And get done before we run into more difficulties the following week. Good. This is progress. I'm glad we went ahead to talk about this. Well, let's see then if by stipulations and by other discussions if we could finish structural by that second week. That would be a tremendous plus in terms of being able to work in what's remaining during one of those short weeks. Anything else on the organization of the issues that we need to talk about?

MR. GAUKLER: Nothing else here, Your Honor.

JUDGE FARRAR: Okay, on structural, let's

talk a little bit about structural. Mr. Gaukler, last time we talked, you had two panels; one on casks and one on CTB.

MR. GAUKLER: Yes, and I'm flexible on how I would do that. I have Mr. Ebbison just on the CTB. My thought would be to try to limit his time in the hearings when he would be there to testify on the CTB,.

JUDGE FARRAR: Staff would do it how?

MR. TURK: We have CTB addressed as part of our report by Byork and Shewmaker. We also have an analysis by Arrow Mail (PH) of Oak Ridge. I'm not sure yet how to break that out. My thought right now is just to have it all combined in a single panel. But I was wondering if CTB might be an issue that we resolve by stipulation.

JUDGE FARRAR: Well, not to pin you down, in your judgement so far, how does the risk at the CTB compare with the risk of the 4,000 casks proportionately, Mr. Gaukler?

MR. GAUKLER: The CTB number that we have is roughly one-third of the total.

JUDGE FARRAR: One-third of the total. So casks are two-thirds.

MR. GAUKLER: Casks and other stuff are

two-thirds. CTB is roughly two times ten to the minus seven. We're roughly at somewhere between six and seven times ten to the minus seven. With respect to the State, I would agree and echo Mr. Turk's statement that this certainly is an area of potential stipulation.

It's one of the areas we identified to the State for future discussion given that the State has used the same number that we used. They have the same number in their UEP analysis that we have in ours with respect to the CTB. So at this point in time, we see no dispute there. And that could be subject to stipulation.

JUDGE FARRAR: So you could stipulate what the level of risk is.

MR. GAUKLER: That's what we're going to recommend to the State.

JUDGE FARRAR: From CTB.

MR. GAUKLER: Ms. Chancellor said they have not had time to look at it closely because they did get it late last night.

JUDGE FARRAR: All right. Well, that would be good. So then we would be focusing just on the casks.

MS. CHANCELLOR: Your Honor, if we didn't

stipulate the testimony, our cross examination of PFS and Staff witnesses would be very short.

JUDGE FARRAR: All right. But what are you going to have witnesses on, Ms. Chancellor?

MS. CHANCELLOR: We have the Purdue panel, the three witnesses, who will give their report on casks. We would make our case on cross for the CTB.

JUDGE FARRAR: Okay.

MS. CHANCELLOR: I don't believe we have any direct witnesses. We would have to wait until after the depositions. But I don't believe we will have any direct witnesses on CTB.

JUDGE FARRAR: All right. Well, there's another avenue to shorten this and keep our focus on the most important aspects.

MR. GAUKLER: And given what Ms. Chancellor just said, then I think it would make sense if we could combine, if the Staff could break out its CTB witnesses separately if we do have hearing on that. So we're going to Mr. Ebbison there just for his testimony and the Staff's testimony. Then he can go home.

JUDGE FARRAR: Yes, let's try to do that. All right. So maybe we do get to everything but probability in those first two weeks. All right.

Good. Has anything changed or are there any major developments on probability? Are you still each looking at one panel of witnesses?

MR. GAUKLER: I believe everything is unchanged. Each of us has one witness on probability.

JUDGE FARRAR: All right. Then let's hold probability. As you get farther along, we'll try to come up when we would schedule that. There are a couple of possibilities. This is good progress. I take it then that it's still too early to talk more about our overall time allotment on cross examination. Is that something to hold for a future meeting?

MR. GAUKLER: I think so, Your Honor. We have not had a chance to talk about that at all. I have started putting out different options for allocating time. But it's something that we need to talk about amongst ourselves first.

JUDGE FARRAR: Okay, let's do that. Now, Mr. Gaukler, you said earlier that you are going to finish the depositions now basically a week later than we had originally planned.

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

JUDGE FARRAR: But because there will be a break in there, the parties will still be doing their pre-file direct on Monday, July 12.

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

JUDGE FARRAR: Excellent. All right. That being the case, remember with your pre-file direct, for each witness or panel of witnesses, we want to have what we called the preface last time which is just a short cover statement of whatever length you want that tells us what you are attempting to prove through that witness.

That's just a reader's guide that helps us as we read through that to make sure we know what we're looking for. The same form we used last time would be fine. So at this point then, it appears as though we are on target with the schedule we adopted last time.

MS. CHANCELLOR: Your Honor, just one thing on this preface.

JUDGE FARRAR: Yes.

MS. CHANCELLOR: This is different from the key determinations, right?

JUDGE FARRAR: Right, the preface says, "Here is this witness. If you believe him, here's what this witness is trying to establish." Whatever you all did last time we found very helpful. That's really for the parties' benefit because that helps us as we read your testimony you worked so hard on.

That tells us, "Here's why you are reading it" and what you are trying to establish. The key determinations are more the theory of your entire case. That's the document that Judge Abramson thought was such a good idea, as did we, last time.

JUDGE LAM: This is Judge Lam. But assuming there will be indexes and cross references to key determinations requested.

JUDGE FARRAR: But not yet.

(Laughter.)

JUDGE FARRAR: Is there anything else we can usefully discuss today? Good. You will be in depositions starting next week. When would it be useful to have another conference call? Mr. Gaukler, you said you would be off the week of the seventh.

MR. GAUKLER: The week of the seventh and the fourteenth we don't have depositions.

JUDGE FARRAR: Should we have a call that week?

MR. GAUKLER: Maybe a call towards the end of that week. That way, we might be able to decide before then whether we have stipulations on the topics that we have covered in depositions at least.

JUDGE FARRAR: Excellent. Then to give you as much time as possible for those discussions,

why don't we shoot for maybe Thursday, June 17.

MR. GAUKLER: Let me take a look at my calendar. I would suggest either at the end of the first week, like the tenth or the eleventh, or the beginning of the next week, fourteenth or fifteenth, because all the parties will be focusing at the end of the week on preparing for depositions that last week.

JUDGE FARRAR: Then why don't we do Tuesday the fifteenth? That will give you a full week to work on all of these things. I would like to give you the maximum amount of time unless you think sometimes maybe giving you a short amount of time makes you work better and faster, either way.

MR. GAUKLER: The fifteenth sounds like a good compromise to me, Your Honor.

JUDGE FARRAR: Okay, does the work for everybody?

MS. CHANCELLOR: Yes, Your Honor, it works for the State.

MR. TURK: That works for us, the Staff.

JUDGE FARRAR: All right. Then we'll have another conference call on Tuesday, June 15. We will take up then any open matters on this physical security thing. We should have all of our arrangements in place by then, make sure everything is

approved. Then we'll go into this matter of the organization of the issue and what can be stipulated. Maybe at that time, depending on how much progress you have made on the stipulations, we would be able to set a time for the wrap up probability hearing so you could start organizing and trying to get your witnesses lined up for whatever partial week we would devote to that. All right. Thank you for all the work you all have put into this and again the cooperative spirit. Anything else we need to take up?

MR. GAUKLER: The time for the Tuesday, June 15.

JUDGE FARRAR: The usual 1:30 p.m.

MR. GAUKLER: Okay.

MR. TURK: Your Honor, this is Sherwin Turk. Just so I'm clear on that first week of hearings, are you looking at doing the CTB during that week?

JUDGE FARRAR: I don't think so. You are thinking if we really do speeds and angles and ordinance in three days.

MR. TURK: Or even four days.

JUDGE FARRAR: And we would have the Applicant's jet fuel fire. Yes, I guess that would be a good time to do CTB if that's not settled.

Otherwise, if it is settled, you would start the casks. But if CTB is not settled, right, you could start CTB on, say, that Thursday.

MR. GAUKLER: Sounds good to me, Your Honor.

JUDGE FARRAR: Good. All right. But again, as long as we keep this order of things, as long as we don't get out of order like we did in Salt Lake with seismic, the way we're talking now, we can accommodate you all.

MR. TURK: Then we would probably put the Staff on jet fuel at the beginning of the following week.

JUDGE FARRAR: Right, in any event, I'm thinking that Staff on jet fuel would be the beginning of the following week.

MR. TURK: Okay.

JUDGE FARRAR: Yes, we'll leave you to juggle those two, how we do the split on the jet fuel and the CTB and/or the casks. All right. Good. Then we will talk to you again in a little less than a month. As usual, if anything comes up that you need us to help resolve, get a hold of us and we'll have an emergency call. Anything else?

MR. GAUKLER: Nothing else here, Your

Honor.

JUDGE FARRAR: Ms. Chancellor.

MS. CHANCELLOR: No, nothing, Your Honor.

JUDGE FARRAR: Mr. Turk.

MR. TURK: No, Your Honor.

JUDGE FARRAR: Okay, thank you all very much. We will adjourn now. Off the record.

(Whereupon, the above-entitled matter concluded at 3:20 p.m.)

CERTIFICATE

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

Name of Proceeding: Private Fuel Storage, LLC

Docket Number: 72-22-ISFSI

Location: telephone conference

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

Eric Mollen
Official Reporter
Neal R. Gross & Co., Inc.