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## NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage

Docket Number: 72-22-ISFSI

Location: (telephone conference)

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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

\* \* \* \* \*



IN THE MATTER OF:

PRIVATE FUEL STORAGE, L.L.C Docket No. 72-22-ISFSI  
(Independent Spent Fuel  
Storage Installation)



Tuesday, June 15, 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 BOARD PERSONNEL PRESENT:

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OTHER NRC SECURITY STAFF PRESENT:

KATHY LYONS-BURKE

CINDY HARBAUGH

BERN STAPLETON

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

1  
2 CHAIRMAN FARRAR: On the record. It's  
3 Tuesday, June 15 at 1:30 p.m. We're having another  
4 one of our series of prehearing conferences in the  
5 Private Fuel Storage case, the last phase of the case.  
6 Would the parties who on the line identify themselves?  
7 Ms. Chancellor.

8 MS. CHANCELLOR: Denise Chancellor and  
9 Connie Nakahara for the State of Utah.

10 CHAIRMAN FARRAR: All right. Ms.  
11 Chancellor, do get a little closer to the microphone  
12 or to the phone next time. The reporter will be able  
13 hear it better. Mr. Gaukler.

14 MR. GAUKLER: Paul Gaukler and Sean  
15 Barnett for PFS.

16 CHAIRMAN FARRAR: Okay. And Mr. Turk.

17 MR. TURK: Sherwin Turk and Laura Zaccari  
18 for the Staff. We have with us Mr. Bern Stapleton  
19 from NSERVE. We also have Dr. Kazimireas Campe and  
20 Mr. Michael Watters.

21 CHAIRMAN FARRAR: All right. Welcome to  
22 all of you. I have with me at Headquarters or in the  
23 Board's office not only the court reporter, but my  
24 colleague, Judge Lam. Judge Abramson is in New Mexico  
25 on, I believe, the LES case and cannot call in. I

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1 also have with me from our office, Tony Etrim, our  
2 counsel and Susan Lin, our law clerk.

3 I'm delighted to introduce you all sitting  
4 in as an observer our newest legal judge who came on  
5 yesterday, Alex Karlin, K-A-R-L-I-N. He has a great  
6 history for this job, two years at EPA Enforcement and  
7 a year at Clean Sites, the organization that brokered  
8 hazardous waste clean-up, a decade at Morgan, Lewis &  
9 Bockius where Susan is anxiously going to head in  
10 September if we let her go and 15 years in industry as  
11 in-house counsel for Shell Oil and British Nuclear  
12 Fuels. We're delighted to have him in here. I told  
13 him this is the best case around with the best lawyers  
14 and will be interesting to observe.

15 I also have for the early part of the call  
16 just like Bern Stapleton is here Cindy Harbaugh from  
17 our physical security area at the Commission and Kathy  
18 Lyons-Burke from the information office security  
19 there. Let me start by asking if there have been, so  
20 that these good people can go along their way, any  
21 safeguards kind of issues that you've struggled with  
22 over the last month or so.

23 MR. GAUKLER: None, Your Honor, that we're  
24 aware of.

25 CHAIRMAN FARRAR: The reporter is here so

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1 if the --

2 MR. GAUKLER: Paul Gaukler from PFS. None  
3 that I'm aware of, Your Honor.

4 CHAIRMAN FARRAR: Okay. If Denise has a  
5 -- Ms. Chancellor, I forget if it's Australia or New  
6 Zealand.

7 MS. CHANCELLOR: Australian, Your Honor.

8 CHAIRMAN FARRAR: Pardon me. Your voice  
9 is distinctive, but if the gentlemen particularly can  
10 be sure to identify themselves. Ms. Chancellor, any  
11 problems you've run into?

12 MS. CHANCELLOR: None, Your Honor.

13 CHAIRMAN FARRAR: Mr. Turk.

14 MR. GAUKLER: I do have one question.  
15 There is no problem if there is no problem with that.

16 CHAIRMAN FARRAR: Go ahead, Mr. Gaukler.

17 MR. GAUKLER: The question is one  
18 alternative that we've been looking at for war room in  
19 Rockville is to try to find a conference room or  
20 offices in a building that would be considered  
21 controlled access which would allow us to use the file  
22 cabinet with DSA lock as opposed to a safe.

23 So far, we haven't had any luck  
24 whatsoever, but the types of buildings that we're  
25 running across, and I had a question with it, I should

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1 continue to pursue this although this does not meet  
2 the NRC requirements. These are buildings that have  
3 controlled card access in the evening, off hours, and  
4 during the days they have receptionists on the various  
5 floors that check people in, etc.

6 MS. HARBAUGH: That would meet our  
7 requirements.

8 MR. GAUKLER: That would meet?

9 MS. HARBAUGH: That would be my initial  
10 inclination. This is Cindy Harbaugh responding. I  
11 would want to confer with my management to see that  
12 they are in agreement with me, but I believe I can  
13 speak to that. I would like a little bit more detail  
14 though, specifically what kind of card access and just  
15 again more detail as far as what they're physical  
16 security would be.

17 MR. GAUKLER: If we came to the point  
18 where we were close to making arrangements with  
19 somebody, we would obviously get that detail. Right  
20 now, we've been talking to some potential places and  
21 we have had availability, but they described generally  
22 their security just as I described it to you in  
23 general terms.

24 MS. HARBAUGH: And that would be 24 hour  
25 access combining card access 24 hour with a

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1 receptionist as well.

2 MR. GAUKLER: The receptionist would be  
3 there during the day, business hours. So during the  
4 business hours, in other words, you go into the  
5 building during business hours without a card, but on  
6 each floor, you would have a receptionist and the  
7 evenings after hours, you would need a card. It's  
8 controlled card access to get into the building.  
9 That's the way it's been described to me.

10 MR. TURK: Paul, would there be card  
11 access required on each floor during the day or they  
12 would simply be screened by the receptionist?

13 MR. GAUKLER: They would simply be  
14 screened by the receptionist is my understanding.

15 MS. HARBAUGH: I think that needs to have  
16 a bit more Staff discussion before I can give you an  
17 absolute answer on that.

18 MR. GAUKLER: Okay.

19 CHAIRMAN FARRAR: Ms. Chancellor, are you  
20 running into the same thing?

21 MS. CHANCELLOR: Not so far, Your Honor.  
22 In terms of Washington, D.C., yes. We're thinking  
23 that we're probably going to have to buy a safe which  
24 is going to be a real pain because what do you do with  
25 a \$1,000 safe after - \$2,000 Connie just said - the

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1 end of the hearing. As Mr. Gaukler is looking at  
2 controlled access, we're sharing information on  
3 availability of safe and availability of controlled  
4 access.

5 MR. GAUKLER: How much you have controlled  
6 access and the safe looking at we're exchanging  
7 information on.

8 CHAIRMAN FARRAR: Let me make this  
9 suggestion then. Why don't you leave the Board out of  
10 this as the middleman. You all communicate directly  
11 with Cindy. She knows that our overall philosophy is  
12 to make things as easy for you as possible, but  
13 certainly adhering to NRC security policy. So if you  
14 all want to deal directly with her, give her the  
15 precise information once you find a place and then she  
16 can talk to her people and get back to you. Cindy,  
17 what's your email address?

18 MS. HARBAUGH: CGH1@nrc.gov.

19 CHAIRMAN FARRAR: That's CGH1. So if you  
20 all just communicate directly with her and include me  
21 as a copy on the email, but we will keep ourselves out  
22 of it. Any other issues you all have run into? All  
23 right. Hearing none, as our email of June 8th  
24 indicated, I did want to take up one question about  
25 the merits of the case and correct me if I'm wrong,

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1 but as I understand it, we all view the historical  
2 accident reports themselves as non-safeguards. Those  
3 have been in the public domain and rightfully so. So  
4 that would say if we're just talking about the  
5 historical reports, why can't --

6 Let me back up. You've submitted some  
7 party reports about those reports and those have been  
8 non-safeguards. So that leads me to raise the  
9 question why wouldn't that part of the hearing be open  
10 to the public which basically means open to reporters  
11 from the newspapers since no one from Salt Lake is  
12 going to come.

13 But then if I follow that down too far, it  
14 seems to me there's a concern. If someone sat in the  
15 hearing room and heard all the evidence about the  
16 various speeds and angles of the crashed planes, they  
17 could form their own conclusion about what the upshot  
18 of that was. You know, what's the typical plane crash  
19 at and if then, they later learned that we approved  
20 the company position or disapproved the company  
21 position, would that give them information?

22 They'd sit there and say, "Well, I sat  
23 there and I'm figuring the average plane comes in at  
24 300 knots and the Court or the Board didn't approve  
25 the application. That means 300 knots with an F-16

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1 will crash through one of these." So am I right that  
2 we don't want to open the hearing? First, what's the  
3 parties' preferences and then I'll ask our security  
4 people to speak to that.

5 MR. GAUKLER: I don't have a preference,  
6 Your Honor. This is Paul Gaukler. I just would point  
7 out one other complicating factor that Your Honor  
8 hasn't mentioned which is that we are doing the  
9 ordinance at the same time we're doing the F-16 speeds  
10 and angles and our ordinance witness does talk about  
11 the capability of ordinance to penetrate or to not  
12 penetrate the casks.

13 The State witness does not directly. He  
14 just talks about the speeds and angles, but I don't  
15 know if you get into anything concerning penetration.  
16 But I believe the Staff's witness reviews our report  
17 so therefore he would be in the same position as our  
18 witness would be.

19 CHAIRMAN FARRAR: Ms. Chancellor, do you  
20 have any thoughts?

21 MS. CHANCELLOR: We want to have as much  
22 of it open as possible, Your Honor. I think there may  
23 be a couple of reporters from Salt Lake who may show  
24 up.

25 CHAIRMAN FARRAR: Mr. Turk, don't speak

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1 for Mr. Stapleton yet. We'll let him speak, but does  
2 the Staff have a position on your preference?

3 MR. TURK: Let me say the general position  
4 and then let me make it more particular to this  
5 proceeding. Our general position is that our  
6 proceedings should be open to the public wherever  
7 possible. Here, there is a limitation on what we  
8 could talk about in the hearing. If any Board has any  
9 questions to ask of a witness, for instance, in terms  
10 of what's the average speed of impact or what's the  
11 probability of impact at a certain speed, those kinds  
12 of questions, or if there's cross examination along  
13 the lines like that, those kinds of questions might  
14 lead the member of the public or reporter to wonder  
15 why you're asking that question, why is that relevant  
16 or what kind of analysis is being done here.

17 So I think because it does get into an  
18 intertwining with the issues that have to be treated  
19 as safeguards and because we're really only talking  
20 about a day or two at most of hearing time that would  
21 be dealing with aircraft crash probability, in fact,  
22 the parties have been talking about how much time  
23 would go into that and it comes out really to about  
24 one day's worth of hearing on the aircraft angles and  
25 speed, if that much. I don't really see the benefit

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1 of throwing open this limited portion of the hearing  
2 only to have reporters wonder "Okay, well, now what's  
3 the rest of this and how does this all tie in?" I  
4 think rather than get into speculation at this point,  
5 it would be more prudent to say because the historic  
6 record here is being assessed with respect to the kind  
7 of analysis that's being done, that might just lead to  
8 more questions than are worth dealing with.

9 CHAIRMAN FARRAR: All right. Thank you,  
10 Mr. Turk. Mr. Stapleton, what's your view independent  
11 of what Mr. Turk just said, but from the point of view  
12 of your job?

13 MR. STAPLETON: Well, Your Honor, all the  
14 historical data as you stated earlier is not  
15 safeguards information and we have no problem with  
16 that being put out there, but I do believe that the  
17 types of questions that will be asked dealing with how  
18 the information was gathered or whether or not it's  
19 reasonable to assume certain speeds or angles would  
20 very quickly get us into the inputs that were used by  
21 the NRC, PFS in its assumptions, and for that reason,  
22 I should think it's something that could get us into  
23 trouble very quickly. So we would probably say we  
24 don't recommend that it be.

25 CHAIRMAN FARRAR: All right. Let me ask

1 Kathy Lyons-Burke from the information office. Do you  
2 have a position on this?

3 MS. LYONS-BURKE: No, Bern speaks to the  
4 topic areas. I can just tell you how to process it.

5 CHAIRMAN FARRAR: Yes. Okay, and Cindy,  
6 you would have no --

7 MS. HARBAUGH: I would defer to Bern on  
8 that.

9 CHAIRMAN FARRAR: Okay. We could argue  
10 this at some length, but I think, Ms. Chancellor, I  
11 appreciate your position and as Mr. Turk said, our  
12 preference is to have these open. But it seems to me  
13 we would go through a lot of effort, a lot of parsing  
14 of our language, for not much return if we're only  
15 talking a day or two. So while we can always revisit  
16 this at a later time if circumstances changed, I think  
17 the Board is in agreement that we would have the  
18 entire hearing closed.

19 MS. HARBAUGH: From an access control  
20 perspective, it would be much easier than saying this  
21 is open, this is closed, etc. I think it would be  
22 beneficial for it to be closed.

23 JUDGE LAM: This is Judge Lam. I  
24 certainly agree with Judge Farrar. I think the  
25 benefit of opening the proceeding for one day does not

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1 balance the risk of accidental disclosure.

2 CHAIRMAN FARRAR: Well said, Peter. Well,  
3 then we'll go that way. Is there any test -- Does  
4 that also mean that all testimony should have the  
5 safeguards label or is there some testimony that  
6 someone would file that's non-safeguards? Mr.  
7 Gaukler.

8 MR. GAUKLER: I haven't thought through  
9 the details of the Fry/Jefferson's testimony. My  
10 guess would be that it's all going to be historical.  
11 It will be a summary of the reports followed by a  
12 response to the particular issues raised by the State  
13 in its report.

14 CHAIRMAN FARRAR: But there again, if they  
15 say "Here's our analysis of the historical data" and  
16 that is out there and say you all win the case, then  
17 someone could read their testimony and say "Well, this  
18 must be what the Board took as the given and so that  
19 tells us that at that speed the cask would not be  
20 breached."

21 MR. GAUKLER: They have the historical  
22 data already in their reports. Okay. They have all  
23 historical data that they've evaluated in the reports.  
24 They do not talk about probability in terms of what  
25 the likelihood of a particular accident happening.

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1 Okay. That's Dr. Purnell who takes that data and he  
2 turns that into probability functions which he then  
3 evaluates with respect to the analyzed speed.

4 We're not saying that -- We haven't quite  
5 envisioned how and when we're going to exactly respond  
6 to the State's issue. The thought being we might not  
7 come close or get into some area might considered a  
8 safeguard, but the bulk of it is going to be the  
9 summary of the historical data and followed by a  
10 response to the particular issues raised by the State.

11 CHAIRMAN FARRAR: Ms. Chancellor, do you  
12 have some thoughts on this?

13 MS. CHANCELLOR: Not really, Your Honor.  
14 In fact, the one amount of testimony that we would  
15 file that may not be safeguards would be the Horstman  
16 & McDonald testimony. The rest of it would be  
17 safeguards because the Staff has already classified  
18 those reports as safeguards. We'll just have to wait  
19 and see after our testimony is written whether we  
20 address safeguards issues.

21 CHAIRMAN FARRAR: I guess I'm still --  
22 Even if you don't think it's safeguards, I guess I'm  
23 still concerned that here's one piece of a puzzle and  
24 even though it's a non-safeguards piece it could be  
25 one of the docs that someone could later connect.

1 Maybe I'm over worried about this, but --

2 MR. TURK: May I state a view, Your Honor?

3 CHAIRMAN FARRAR: Yes.

4 MR. TURK: Sherwin Turk. I think in terms  
5 of the prefiled testimony, it would be a document and  
6 like any other document, it should be assessed on its  
7 own merits as to whether it's safeguards information  
8 or not. The reason why I'm recommending that we not  
9 open the hearing for that one day on angles and speeds  
10 is the risk that we may get into questioning that  
11 could go beyond what the documents state and get into  
12 safeguards information.

13 So my recommendation would be for each  
14 party to determine on its own whether the testimony  
15 they're filing needs to be treated as safeguards or  
16 not and let that determination control whether the  
17 document is handled as SGI or not rather than make a  
18 blanket ruling that we treat non-safeguards  
19 information as if it were safeguards in order to avoid  
20 pieces of the puzzle from getting out. We have  
21 already made public or not restrained anyone from  
22 making public the historic record of aircraft crashes.  
23 So I would not label all aircraft angles and speeds  
24 testimony as safeguards merely because we're doing  
25 this in a closed session of hearing.

1                   CHAIRMAN FARRAR: All right. Let's do  
2 this. Let's leave it to the parties and if they want  
3 to file two pieces of testimony, they could. Maybe  
4 there is part one of General Jefferson's testimony  
5 that's not safeguards and then immediately followed by  
6 part two which is. That would be one way to do it.  
7 So we'll leave that to you. Now, Ms. Chancellor and  
8 Mr. Gaukler, are you all ever in direct connection  
9 with Mr. Stapleton to get his views before you submit  
10 something?

11                   MR. GAUKLER: I have not been. No. The  
12 only time I actually sought his advice was indirectly.  
13 I talked to Staff counsel.

14                   MS. CHANCELLOR: Your Honor, whenever we  
15 file everything, if there's even a hint that it may be  
16 priority or safeguards, we put the label on it may  
17 contain safeguards information but don't make any  
18 representation whether it is a safeguards or not.  
19 Then we wait to hear back from Staff how they actually  
20 view that document. So that's the way that we have  
21 proceeded. And, no, I've never gotten in touch  
22 directly with Mr. Stapleton because it's always a last  
23 minute effort to try to get a document out and I don't  
24 want to reveal what's in the document before I file  
25 it.

1 CHAIRMAN FARRAR: All right. Thank you,  
2 Ms. Chancellor. Then let's proceed as we have been.  
3 We'll leave it to the parties. Feel free to break  
4 your testimony into two parts if that helps you, one  
5 that's just historic and the other that's more  
6 analytical and we'll go from there. If there are no  
7 other security questions, I thank Bern and Cindy and  
8 Kathy for again helping us doing our job properly and  
9 we'll look to see them next time. Thanks very much.

10 MR. TURK: Mr. Bern says thank you and  
11 he's leaving the room. Mr. Stapleton, excuse me.

12 CHAIRMAN FARRAR: Before I change my mind.  
13 Ms. Chancellor, thank you on behalf of everyone for  
14 sending in this order of witnesses last night. That  
15 will certainly help today's discussion. I assume,  
16 though, that you thought if you sent it to me late at  
17 night I wouldn't notice that you all are trying to  
18 sneak in six witnesses in the first two days. So  
19 convince me of why that's going to work.

20 MR. GAUKLER: I guess, Your Honor. This  
21 is Paul Gaukler here.

22 CHAIRMAN FARRAR: Yes.

23 MR. GAUKLER: I guess we are in the  
24 process with respect to the order of witnesses and  
25 working through time for cross examination and I've

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1 just sent to the State based upon their order of  
2 witnesses a time allocation for hearing which they've  
3 proposed and it's based upon some general principle of  
4 just for the purpose of putting this together. But I  
5 have it showing two days based upon Ms. Chancellor's  
6 representations and my belief that we would be able to  
7 do it in two days.

8 The basic issue with respect to speeds and  
9 angles is not the particular speed or angle at which  
10 a particular accident would impact the ground. The  
11 issue that's been raised by the State goes more to  
12 what events should be included in the evaluation. So  
13 I think by just focusing away from the specific speeds  
14 and angles of this accident ought to be this speed as  
15 opposed to speed you hit it was, I mean, that the  
16 issues are relatively focused.

17 CHAIRMAN FARRAR: Mr. Gaukler, let me ask  
18 a question. I dug out last night, I guess, General  
19 Jefferson's report and I'm a little confused as to how  
20 many of these F-16s have like data recorders, the  
21 proverbial black box and how many of those were  
22 recovered or recoverable. There are points in his  
23 report where it sounds a little vague because he talks  
24 about getting a report from the pilot and what the air  
25 speed was when the pilot ejected, getting the imprint

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1 of the dial on the instrument when the plane crashed.  
2 So are we dealing with basically what I would call  
3 "hard data from a flight data recorder" or are we  
4 talking about a farmer who says "Gee, the plane was  
5 going pretty fast when it crashed in my field" or  
6 something in between?

7 MR. GAUKLER: We are dealing with a  
8 combination of information there as I understand it.  
9 First of all, we're dealing with certain cases and Mr.  
10 Barnett really needs to help in terms of the number in  
11 which the impact speed was documented in the report.

12 CHAIRMAN FARRAR: Well, that's a further  
13 issue. It can be documented in the report because the  
14 farmer said it looked like it was going slow and the  
15 report says that probably means 200 knots. So, yeah,  
16 you have a problem that some reports don't document  
17 it, but the other problem is even if they documented  
18 it how hard was the data that they based the  
19 documentation on.

20 MR. BARNETT: Your Honor, I don't recall  
21 all the reports off the top of my head that had the  
22 documented speeds in them, but I don't believe that  
23 they would be relying on something like a lay witness  
24 saying "You know the plane was going fast or the plane  
25 was going slow when it hit," I believe, in terms of an

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1 impact speed. There were certainly several cases  
2 where they did take data off of a flight data recorder  
3 because it's my understanding that the F-16 could have  
4 one or possibly more recorders on it that would record  
5 the speed at various points when an aircraft was  
6 flying and potentially when it impacted.

7 There may also have been other ways in  
8 which the impact speed could have been estimated,  
9 perhaps from the damage to the plane or, in some  
10 cases, the needle sticking to the panels of the  
11 instruments at the time of impact. But, I believe,  
12 that more information on that subject could be  
13 extracted from the crash reports themselves. But, I  
14 think, whenever we've had a speed that's documented in  
15 the report that it's more reliable and more precise  
16 than something like a lay witness.

17 CHAIRMAN FARRAR: Well, you may have  
18 figured where I'm going with all this. In a classic  
19 case if you have 50 or 60 accidents and they all had  
20 flight data recovered, flight data recorders, so we  
21 had perfectly reliable evidence on the speed at impact  
22 and the angle of impact. Then the Board would have no  
23 questions about that and we'd debate other things like  
24 which crashes should be included and what kind of  
25 curve do you draw to fit all this data.

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1           But if to the extent that the  
2 documentation in the reports is based on soft data, I  
3 can see more rather than less cross examination and  
4 more rather than fewer Board questions. So when we  
5 talk about the six witnesses in the two days, this is  
6 the first thing that jumps out at me. Anybody have a  
7 thought on that?

8           MR. TURK: Your Honor, this is Sherwin  
9 Turk, if I could address the specific issue that you  
10 raised.

11           CHAIRMAN FARRAR: Okay.

12           MR. TURK: The Staff's report attempts to  
13 lay out the basis for each of the different assigned  
14 speeds. Now we indicate where the data comes from.  
15 We indicate which ones are estimated, which ones are  
16 reflected in more or less hard data that the Air Force  
17 determined to be correct. I think there is no  
18 disagreement between any of the parties on the speed  
19 for a particular crash incident that have occurred.

20           If you look at the final figure in the  
21 Staff's report, you'll see the almost remarkable  
22 coincidence of the Staff's documented and estimated  
23 data with that of PFS. Also through our depositions,  
24 we learned that the State does not contest the  
25 reasonableness of the speeds that have been assigned

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1 to the different crash events. So the particular  
2 issue that you raise is not one that the parties have  
3 identified as being necessary to explore further.

4 There certainly will be questions that  
5 come up, but what we've discovered in the deposition  
6 process is where are the differences between the  
7 parties' views. As Mr. Gaukler stated early on, the  
8 difference really comes down to which crashes should  
9 be included in the body of data and which ones should  
10 not, i.e. which ones are typical of Skull Valley type  
11 events that should be included in the estimation of  
12 relevant events and which ones are not relevant.

13 CHAIRMAN FARRAR: All right.

14 MR. GAUKLER: Your Honor, I have to add  
15 just one other point in terms of your basic question  
16 which was the documented impact speeds or basis for  
17 impact speeds. There is, in many cases, other  
18 documented information from the accident report such  
19 as ejection speed and ejection altitude. Based upon  
20 those accidents that we have impact speeds, you're  
21 able to develop a regression analysis that enables you  
22 to estimate speeds based on ejection altitude and  
23 ejection speed or one or the other or both. So you  
24 have a variety of documented data from the various  
25 accident reports which in the reports of General

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1 Jefferson and Colonel Fry, they pooled that together  
2 and reviewed it and looked at all the documented data  
3 to develop their estimates.

4 CHAIRMAN FARRAR: All right. Ms.  
5 Chancellor, apparently the parties have gathered  
6 either from their depositions of Colonel Horstman or  
7 from perhaps the absence of your questions of the  
8 people you've deposed that you're not going to make a  
9 big issue of what the angle and speed was at a  
10 particular crash. Is that a --

11 MS. CHANCELLOR: Your Honor, I don't think  
12 you can judge by the questions that came up at the  
13 deposition what the scope of our cross examination  
14 will be. And without getting into the merits, the  
15 reason that the State agreed to this schedule is that  
16 there is some cushion in that the next day jet fuel  
17 fires and CTB, that may not take the entire day so we  
18 could over the two days allocated. So I think that  
19 looking at this based on what we know now that we  
20 should be able to get through speed/angle ordinance,  
21 jet fuel fire and CTB in the time that we have  
22 suggested.

23 CHAIRMAN FARRAR: Let me make sure I  
24 understand what you just said. As I've always thought  
25 to be the case when you depose somebody, that's for

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1 your benefit. If you choose not to ask them then all  
2 the questions you're going to ask them at trial,  
3 that's your business. Right? Is that what you just  
4 said?

5 MS. CHANCELLOR: Absolutely.

6 CHAIRMAN FARRAR: And second -- What you  
7 just said, I agree with. The other thing you said I'm  
8 not sure I agree with. You tell me we're going to  
9 make up time on August 11th because we only have three  
10 sets of witnesses that day. Now again --

11 MS. CHANCELLOR: Well, there's not a whole  
12 lot in jet fuel fires and CTB. I wasn't suggesting  
13 that we should run over, but we made our best estimate  
14 that we could get through speed and angle and  
15 ordinance in two days. But with the possibility that  
16 certainly within the three days, we would be able to  
17 do all of those items listed.

18 CHAIRMAN FARRAR: Well, I guess I am still  
19 leery because of the seismic experience where we  
20 struggled to do one witness a day and now you're  
21 giving us nine in three days. I don't want to be --

22 MS. CHANCELLOR: Your Honor, if I may. I  
23 think the crux of this case is a little different than  
24 Seismic. Seismic we had three or four major areas.  
25 Here there are two. Where the crux of this is is in

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1 the structural analysis and in the probability part of  
2 the hearing.

3 The other is more a prelude and that's  
4 where it's been hard to determine the time allocation  
5 which is on the structural analysis and on the  
6 probability. We're certainly not willing to push more  
7 than what we have to and we feel comfortable with  
8 speed/angle ordinance, jet fuel fire and CTB the first  
9 three days.

10 CHAIRMAN FARRAR: Now remember Judge Lam  
11 pulled out his calculator a couple of sessions ago and  
12 figured a maximum of six hours of hearing a day when  
13 you allow for breaks, morning break, lunch break,  
14 afternoon break and so you're talking nine sets of  
15 witnesses in 18 hours. So I ask that you all in your  
16 further conversations bear that in mind.

17 MR. TURK: Your Honor, this is Sherwin  
18 Turk. May I make another comment on this issue?

19 CHAIRMAN FARRAR: Yes, certainly.

20 MR. TURK: I agree with Ms. Chancellor  
21 that we can't identify what a party's issues may be  
22 based on the questions they ask, but we can identify  
23 where we have agreement when the State's principal  
24 witness agrees with PFS's angles and speeds of being  
25 reasonable. I was not suggesting that because the

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1 State's questioning is going to delve into certain  
2 things that they are in agreement, but I do accept  
3 when their representative, their witness, states that  
4 he's in agreement that we can look at that issue as  
5 one that need not be explored further. That's the  
6 first point I would make and, in fact, that happened.

7 The second point I would make is I think  
8 now that we're going into the last week of depositions  
9 and we're only a short time away from having to file  
10 testimony which identifies the issues for the Board  
11 that it needs to resolve that it's very fair to ask  
12 the State at this time in this conference call to  
13 state whether or not it agrees with the statement that  
14 both Mr. Gaukler and I made which is that there is no  
15 real issue about the angles and speeds of documented  
16 incidents. I think it's time for the State to tell us  
17 if there is any remaining issues so we know what we  
18 have to address in testimony on that issue.

19 CHAIRMAN FARRAR: Hold on a minute, Mr.  
20 Turk. Let's go off the record here for just a second.

21 (Whereupon, the foregoing matter went off  
22 the record at 2:09 p.m. and went back on  
23 the record at 2:10 p.m.)

24 CHAIRMAN FARRAR: All right. We're back  
25 on the record.

1 I guess it's always open to the parties to  
2 enter into stipulations about things, if they want to.  
3 But short of that, Ms. Chancellor, do you choose to  
4 answer Mr. Turk's question?

5 MS. CHANCELLOR: No, I don't, Your Honor.

6 MR. Gaukler: Your Honor, I would like to  
7 say something at this point.

8 CHAIRMAN FARRAR: All right.

9 MR. Gaukler: One thing, we have foregone  
10 motions in summary judgment. It seems to me that  
11 various of these issues, such as the CTB, for which  
12 the State has no witness, jet fuel fire, which the  
13 State has no witness, speeds and angles, for which  
14 they've essentially agreed to us would normally be  
15 ripe for summary disposition, and we would be entitled  
16 to summary disposition wholly apart from whatever  
17 cross examination they may plan.

18 If the State is not going to tell us these  
19 issues, etcetera, I may just make a motion for summary  
20 disposition, particularly on some of the issues I  
21 think that really should not be litigated. And two of  
22 them are -- I really believe are the CTB and jet fuel  
23 fire, which, just to report to you, we're going to  
24 discuss with the State this Thursday whether we can  
25 reach agreement on those issues.

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1 I feel very strongly that those are issues  
2 that do not need to be litigated, that we would save  
3 approximately a day of hearing by that process, which  
4 might make possible a two-week hearing. That's a  
5 whole other matter, totally separate from whether or  
6 not we might be able to stipulate those issues away.

7 I think that with at least respect to  
8 those two, where I would have to bring witnesses in,  
9 etcetera, I would -- if they don't stipulate, I would  
10 ask permission to file a motion for summary  
11 disposition along with my prefiled testimony.

12 CHAIRMAN FARRAR: All right. Let me  
13 partially respond to that before I ask the other  
14 parties to address it. Number one, we certainly  
15 encourage you to enter into stipulations. That would  
16 be the far better approach, to the extent that some of  
17 these so-called minor issues can be stipulated where  
18 there's no real disagreement.

19 That would certainly be beneficial,  
20 because if we could shorten this hearing and get it in  
21 in two weeks, that saves us some scheduling  
22 difficulties. And the Board -- we said a long time  
23 ago the Board had scheduling problems in the next --  
24 the two weeks after the two weeks of hearing, but it  
25 might be possible if you could convince us that this

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1 was a -- no more than a 12-day hearing, that we could  
2 give you two -- two days of the very next week rather  
3 than have to wait two weeks and then juggle around the  
4 different events we were concerned about in September.

5 So anything that would get two issues out  
6 of here, save us some time, and put us on a 10- or 11-  
7 or 12-day track, would certainly be -- it would  
8 certainly be useful.

9 In terms of motions for summary judgment,  
10 well, let me -- let me -- well, let me express the  
11 Board's -- or let me express my personal view, not  
12 speaking for Judge Lam or Judge Abrahamson.

13 The time that we spent denying motions for  
14 summary judgment on aircraft and seismic back in the  
15 spring or early 2002 detracted at least from my  
16 ability to prepare for the case, and maybe that's  
17 what's behind the suggestions the Commissioners have  
18 made on occasion that we forego motions for summary  
19 judgment.

20 Now, I felt compelled back in that era,  
21 since I was new here, to write a long opinion that  
22 explained why summary judgment was being denied. I  
23 suppose as long as you're not granting summary  
24 judgment you can deny summary judgment in a one-word  
25 opinion.

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1           So from that point of view, Mr. Gaukler,  
2 I wouldn't discourage you, if you really think you  
3 have a summary judgment case, from filing one, knowing  
4 you may get just the one-word "denied" back. But  
5 having said that, it may be faster and may burden the  
6 parties and the hearing and the Board less -- if the  
7 case is that clear-cut, just put on your witness. And  
8 if it's clear-cut, that'll come out in the decision.

9           You know, we have a fairly aggressive  
10 schedule here, not as aggressive as the Company wanted  
11 but an aggressive schedule -- once we got the final  
12 staff document, an aggressive schedule to get to  
13 hearing. Filing a motion for summary judgment, even  
14 on a fairly simple issue, takes a lot of time from all  
15 the parties, takes the Board's attention.

16           And before we decide whether to authorize  
17 them or not, Mr. Turk, what's your view?

18           JUDGE LAM: This is Judge Lam. Let me add  
19 to Judge Farrar's remarks. Besides the burden to us  
20 and to everybody else, the standard for granting  
21 summary disposition is very high and should be very  
22 high. So whoever is thinking about filing it should  
23 keep that in mind.

24           MR. Gaukler: If I can just make a  
25 clarification, Your Honors. I was not suggesting I

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1 would be filing any summary disposition where there  
2 was disputed testimony from the other side. You're  
3 exactly right; Your Honors have denied that  
4 previously.

5 And I just was stating that in cases where  
6 there is no testimony whatsoever from the other side  
7 expected, I think in that type of case summary  
8 disposition may be appropriate. But I would say let's  
9 put that off and see whether or not the State and us  
10 can reach stipulation. I think we should be able to  
11 stipulate those issues.

12 Maybe in those discussions the State may  
13 identify an issue that does need to go to hearing,  
14 which I believe goes to hearing. But right now it's  
15 my firm belief that a couple of these issues, where  
16 they don't have any affirmative evidence at this point  
17 in time, as far as I know still plan to put it in, I  
18 don't think we need to go to hearing just with cross  
19 examination on that. I think that, you know, there's  
20 another mechanism that would be available.

21 CHAIRMAN FARRAR: And, Mr. Gaukler, on  
22 that you're saying jet fuel and, what, the CTB?

23 MR. Gaukler: Yes. And on CTB I have --  
24 I am being very specific when I say CTB. I am saying  
25 the analyzed speed, i.e. the subject of Bruce

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1 Evanston's report.

2 CHAIRMAN FARRAR: All right.

3 MR. Gaukler: Not the probabilities of  
4 which action to go in, how that analyzed speed leads  
5 to a probability UEP.

6 CHAIRMAN FARRAR: Well, in light of Mr.  
7 Gaukler's statement, let's just spend another minute  
8 or two on this, because I don't know what the timing  
9 of our next phone call will be.

10 But, Mr. Turk, assuming Mr. Gaukler and  
11 Ms. Chancellor cannot reach a stipulation, what's your  
12 view on the wisdom or appropriateness of opening the  
13 floor to motions for summary disposition?

14 MR. TURK: I share the Board's concern  
15 that it does take people's time, it takes the parties'  
16 time to prepare the motion, to respond to the motion.  
17 It takes the Board's time to evaluate it. And that's  
18 one reason why you might say, "Let's not do it."

19 On the other hand, I'll tell you an  
20 anecdote that I'll probably regret.

21 CHAIRMAN FARRAR: Let's hear it.

22 (Laughter.)

23 MR. TURK: You're inviting me to --

24 CHAIRMAN FARRAR: We like those.

25 (Laughter.)

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1 MR. TURK: Inviting me to my own necktie  
2 party.

3 (Laughter.)

4 The summer after I finished college,  
5 before I went to law school, I took a job as a driver  
6 for the Chicago Transit Authority. And I manipulated  
7 these 40-foot-long, 40-ton buses through the city  
8 traffic throughout Chicago. Some of them didn't have  
9 power steering.

10 But one of the things that I was trained  
11 by the Chicago Transit Authority to recognize is that  
12 if I stop to pick up a passenger, I'm going to have to  
13 stop to let them off.

14 (Laughter.)

15 If I was running behind on schedule, the  
16 clear instruction was, "Don't stop; go."

17 (Laughter.)

18 If we let in unnecessary testimony, where  
19 the parties really have no disagreement, where we can  
20 reach a resolution through Board prompting and  
21 encouragement of the parties to eliminate the issues  
22 that need not take hearing time, if we can get rid of  
23 those issues, we won't have to spend time on it later  
24 dealing with proposed findings, unnecessary  
25 questioning, asking the Board to look at the entire

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1 record and prepare a decision, on issues which needn't  
2 have gone to hearing to start with.

3 And I think the Board has a proper role in  
4 identifying before we get to hearing, where do we a  
5 dispute, and where do we not have a dispute? I would  
6 encourage the Board to even eliminate the need to go  
7 to summary disposition motions by asking the parties,  
8 in a telephone conference call such as this, perhaps  
9 not today if the State is not ready to do it today,  
10 but to have a conference call in which we eliminate  
11 the issues as to which there's no real controversy.  
12 We'll save time. It'll be to all of our benefit.

13 CHAIRMAN FARRAR: That's well stated, Mr.  
14 Turk.

15 Ms. Chancellor, do you want to say  
16 anything at this point?

17 MS. CHANCELLOR: Yes, I do, Your Honor.  
18 As Mr. Gaukler mentioned, we're willing to discuss  
19 reasonable stipulations. However, the State has got  
20 the -- got short-shrift in this hearing from when the  
21 Board decided that we would have phase 2 and phase 3.

22 Now you're saying we can't make our case  
23 through cross examination -- that Mr. Turk suggests  
24 that the Board actually dismiss certain issues. And  
25 I don't see why we have to disclose what our strategy

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1 is in wanting the -- wanting to keep certain issues in  
2 that we can't reach a stipulation on.

3 And with respect to summary disposition,  
4 if the Board allows PFS to move for summary  
5 disposition, we would ask for an extension of the  
6 schedule, because, as you said, it's a fairly  
7 aggressive schedule. In addition to what we usually  
8 do, we've got key determinations, we've got written  
9 rebuttal testimony.

10 And if PFS and Staff don't want to put in  
11 testimony on jet fuel fires and CTB, that's their  
12 option. But if they put it in, we want the  
13 opportunity to cross examine on it.

14 MR. TURK: Your Honor, I would take that  
15 as an agreement that if the Staff and PFS don't put in  
16 testimony, we don't have to address the issue.

17 CHAIRMAN FARRAR: Well, let's -- well,  
18 except the Company has the ultimate burden of proof,  
19 and -- well, let's do this. Ms. Chancellor, other  
20 than the -- you made some good points there, other  
21 than your opening where you said you got short-shrift  
22 by not being able to do issue 3 or -- because I think  
23 you remember when we ruled issue 3 out at this point  
24 we made it clear that we might be ruling it out for  
25 all -- while we weren't making a decision, it might be

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1 ruled out for all time, in that if the Applicant and  
2 the Staff weren't ready to go ahead that -- that they  
3 may have given up their right to come back -- if the  
4 Applicant loses on issue 2, they may have given up  
5 their right to ever hear issue 3. So I'm not sure who  
6 got short-shrift on that.

7 But putting that to one side -- well,  
8 actually, let me recast that statement. I will never  
9 concede that anyone got short-shrift from us. They  
10 may have gotten shrift, but it would have been the  
11 shrift that --

12 (Laughter.)

13 -- that they were -- ample shrift that  
14 they were due in the circumstances. But putting that  
15 aside, let me confer with Judge Lam here.

16 Off the record.

17 (Whereupon, the proceedings in the  
18 foregoing matter went off the record at  
19 2:24 p.m. and went back on the record at  
20 2:26 p.m.)

21 CHAIRMAN FARRAR: All right. Back on the  
22 record.

23 We think that, given the burden on the  
24 parties that summary disposition involves, we are  
25 going to foreclose that option, and let's march

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1 forward to the hearing on the schedule we now have,  
2 rather than risk disrupting the two weeks in August.

3 Having said that, I would encourage you  
4 very strongly to reach stipulations on matters that  
5 don't matter, because if we have 10 or 12 or more days  
6 of hearing, let's focus on the issues that are  
7 outcome-determinative, and that -- so that we don't  
8 spend any resources -- any of us -- on things that  
9 really aren't -- are not going to make a difference.

10 So we would encourage you to move forward  
11 with the stipulations, and, in fact, maybe we -- when  
12 we talk about setting the next call, if we can be  
13 helpful in helping you shape those stipulations, we  
14 would be happy to do so.

15 But, again, I come back to -- and the  
16 other day was -- was an excellent example, when you  
17 all called and I wasn't here, and you had a problem  
18 with witness availability, and you were unable to get  
19 me immediately. You reached a very sound solution on  
20 how to juggle the deposition schedule, and so forth.

21 And there has never been a stage of this  
22 case that the three of you, and particularly the two  
23 of you -- the Company and the State -- notwithstanding  
24 the very different positions you have on the merits,  
25 have not been able to reach sensible accommodations

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1 that help us move the wall forward. So we'll count on  
2 you to -- to do that.

3 MR. Gaukler: We will continue to do that,  
4 Your Honor.

5 CHAIRMAN FARRAR: Thank you, Mr. Gaukler,  
6 and Ms. Chancellor.

7 Then, we will move forward to the  
8 August 9th hearing. Against my better judgment, I'll  
9 accept your representation that we can do nine sets of  
10 witnesses with or without stipulations in three days.  
11 That's -- but I remind you under Judge Lam's calculus  
12 that's two hours per set of witnesses, so bear that in  
13 mind.

14 Let me just ask a question. I see that  
15 we're doing jet fuel fires -- the second part of it --  
16 out of order, because the Staff witnesses -- one of  
17 them is not available until the second week. Does  
18 that argue for moving the Applicant's witness on that  
19 subject from the first week to the second week?

20 And let me tell you why I ask this. There  
21 were some times -- and, again, maybe seismic is a bad  
22 example -- where we were doing part 3 of seismic  
23 without having done the prerequisites -- parts 1 and  
24 2 -- and it got a little confusing.

25 Is jet fuel fires so simple that it will

1 not be difficult to have one witness on Wednesday, the  
2 11th, take up some other subjects, and then have it --  
3 the other witness on Monday, August 16th? Are you  
4 thinking that's not too difficult a thing to -- for us  
5 to do?

6 MR. Gaukler: Your Honor, I think that  
7 would be the case. I will check -- when we put this  
8 schedule together, the reason that Dr. Rampall was the  
9 first week was because he was at that time unavailable  
10 the second week. I will check with him further to see  
11 if he's available that second week. And if he is, it  
12 certainly would make sense to put him there.

13 CHAIRMAN FARRAR: Yes. I would think --  
14 thank you, Mr. Gaukler. I would think, you know, of  
15 all the issues, this is one that wouldn't be hard to  
16 bear in -- you know, carry over in our minds. But to  
17 the extent that we can avoid it if possible, let's do  
18 that.

19 But if -- if the schedule as you have it  
20 makes sense, it seems to me that's the only portion of  
21 the case that doesn't follow in neat sequence. So we  
22 can deal with it if we -- if we need to.

23 MR. Gaukler: I will check with Dr.  
24 Rampall.

25 CHAIRMAN FARRAR: Okay.

1 MS. CHANCELLOR: Your Honor, the reason  
2 the schedule is fairly appealing is that we -- we get  
3 into the Applicant's analysis of structure the end of  
4 the first week. And then we -- the last week is  
5 devoted to the Staff and the State's case and any  
6 carryover by the Applicant.

7 And my understanding of jet fuel fires is  
8 that it won't take very long to hear that issue, and  
9 it shouldn't be too disruptive if we start that first  
10 thing on Monday, and then switch back to structure.

11 CHAIRMAN FARRAR: All right. Then, on the  
12 parties' representation to that effect, let's leave it  
13 that way.

14 Let me ask just a quick question about the  
15 Staff witnesses on jet fuel fires, or Staff witnesses  
16 generally. At one point, there was a witness list  
17 that had a Douglas Ammarman on it, and he has been  
18 replaced by Gustavo Aramayo, is that --

19 MR. TURK: It's not a direct replacement.  
20 One was removed as unnecessary. He was a third author  
21 of the Sandia structural report. We are presenting  
22 two witnesses from Sandia on their structural report.

23 CHAIRMAN FARRAR: Right.

24 MR. TURK: And they have been deposed. We  
25 also introduced two other people. One was Carlos

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1 Lopez from Sandia, who is one of our fuel fire  
2 witnesses --

3 CHAIRMAN FARRAR: Right.

4 MR. TURK: -- from Sandia. He's appearing  
5 with Dr. Kalan, and we'll put them together with Chris  
6 Bajwa from the Staff on fuel fires. We have two  
7 reports, one piece of testimony, for those three  
8 people.

9 Aramayo comes in on two other issues.  
10 He's an LS Dyna expert out of Oak Ridge, and he has  
11 done analyses. One evaluates the State's first report  
12 from September 2003. His other report deals with the  
13 CTB. So he is a new witness, but he's addressing two  
14 matters which Ammarman did not address.

15 CHAIRMAN FARRAR: All right. And am I  
16 correct that at every point in the Staff testimony  
17 there is always a Staff employee on the stand, never  
18 just an outside consultant?

19 MR. TURK: No. Our current contemplation,  
20 based on how the depositions were handled by the  
21 State, is that we'd put Sandia on for its structural  
22 report separately from the Staff, although that could  
23 change. We may put them together with our other three  
24 witnesses on structure. That's the current  
25 contemplation is that Sandia would appear by itself.

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1 CHAIRMAN FARRAR: So that's on the  
2 August 16th, the 20th.

3 MR. TURK: Yes.

4 CHAIRMAN FARRAR: So you would have --  
5 Kalan and Gwinn could be separate from the other  
6 three.

7 MR. TURK: Just in terms of the ease of  
8 questioning.

9 CHAIRMAN FARRAR: Yes, okay.

10 MR. TURK: Actually, the Bjorkman-  
11 Shewmaker report incorporates the conclusions reached  
12 by Sandia as one of the legs of their testimony.

13 CHAIRMAN FARRAR: Right.

14 MR. TURK: So we could have just included  
15 them on the same panel, but our current thought is  
16 that it may be easier for questioning to proceed if  
17 Sandia is on the stand by themselves. But we may just  
18 keep them all together, Your Honor.

19 CHAIRMAN FARRAR: All right. On  
20 August 11th, those three -- just so I'm clear here --  
21 no, I'm sorry. On August 16th, the Utah --  
22 August 16th to 20th, the Utah witnesses. Those, Ms.  
23 Chancellor, are on the CTB and the casks?

24 MS. CHANCELLOR: To the extent that they  
25 have any rebuttal testimony on the CTB, but the prime

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1 focus is on the casks, Your Honor.

2 CHAIRMAN FARRAR: Okay. And you have no  
3 -- then, you have no one on the CTB until they take  
4 the stand?

5 MS. CHANCELLOR: That is correct. We need  
6 to wait and see what PFS and the Staff file. There  
7 may be some criticism of what they file. But in  
8 general, our focus -- there's only so much we can do.  
9 So our focus is on the casks.

10 CHAIRMAN FARRAR: Is on the casks. All  
11 right. Yes, and I'm not criticizing you. I'm just  
12 trying to make sure we understand here what's  
13 happening.

14 You've completed --

15 MR. TURK: Your Honor, may I -- this is  
16 Sherwin Turk. May I address the last comment from the  
17 State?

18 CHAIRMAN FARRAR: Yes.

19 MR. TURK: The way I understood the  
20 testimony to be structured is our initial testimony  
21 will essentially reflect the reports that we've  
22 already filed. And it will address anything that came  
23 out in depositions that was not included in our  
24 initial report.

25 For instance, if the State's witnesses in

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1 their depositions raised new issues that we need to  
2 address, we will do that as part of our direct  
3 testimony. But the State is now describing a  
4 different process. They are suggesting that they  
5 would file rebuttal testimony based on what is in our  
6 initial testimony on the CTB. That's incorrect.

7 If they have anything to address with  
8 respect to what the Staff has done already, or what  
9 PFS has done already on the CTB, that should be in  
10 their direct testimony.

11 MS. CHANCELLOR: Your Honor, we understand  
12 the structure of the procedure, and we will adhere to  
13 that.

14 CHAIRMAN FARRAR: Thank you, Ms.  
15 Chancellor.

16 MR. TURK: Well, I guess I don't know what  
17 that means, Your Honor. I hope we don't have to argue  
18 about it later.

19 CHAIRMAN FARRAR: I think let's assume for  
20 now that we're on target. I think we've gone over in  
21 several of these conferences how what we thought had  
22 to be included in your prefiled direct, which was --  
23 we've said several times was not only your direct but  
24 -- not only your direct about what you thought was  
25 good about your case, but also, to the extent you knew

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1 it, what you thought was bad about the other side's  
2 case. And I think we've said that in several of these  
3 calls so far. So we will continue on that  
4 understanding.

5 As best I can see, you've completed all of  
6 your depositions from the first couple of weeks.  
7 You've arrived at a new schedule, which has you in  
8 Chicago on the 21st and 22nd, and at Purdue from the  
9 23rd to the 26th. There have been no problems at the  
10 depositions so far, is that correct?

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

12 MS. CHANCELLOR: That's correct, Your  
13 Honor.

14 CHAIRMAN FARRAR: Okay. And do you  
15 anticipate being able to finish these in the six days  
16 you've allotted yourself?

17 MR. BARNETT: That is correct, Your Honor.  
18 We probably believe it will take five, but we've  
19 allowed six as extra margin.

20 MS. CHANCELLOR: Your Honor, I wanted to  
21 thank Mr. Gaukler and Mr. Turk for being flexible  
22 under the circumstances of helping the State out with  
23 respect to problems we had with one of our witnesses.  
24 And we believe that they should easily be finished up  
25 in five days.

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1 CHAIRMAN FARRAR: All right. Let's go off  
2 the record here.

3 (Whereupon, the proceedings in the  
4 foregoing matter went off the record at  
5 2:39 p.m. and went back on the record at  
6 2:40 p.m.)

7 CHAIRMAN FARRAR: We're back on the record  
8 after having had a brief discussion about witness --  
9 any problems that would limit witness availability,  
10 and we will just move forward on the basis of that  
11 off-the-record discussion.

12 All right. We've talked about  
13 stipulations. And you'll be working on those later  
14 this week, Mr. Gaukler, and Ms. Chancellor?

15 MR. Gaukler: Yes, we will.

16 CHAIRMAN FARRAR: All right. And none of  
17 those affect the upcoming depositions?

18 MR. Gaukler: No.

19 CHAIRMAN FARRAR: So you'll either arrive  
20 at these stipulations or not. Then you'll have  
21 depositions, and at the end of those depositions, and  
22 after you arrive at stipulations or don't, we'd be in  
23 the last week of June, the first week of July, before  
24 the holiday.

25 And would we have an idea -- would that be

1 a good week, or perhaps right after the holiday, to  
2 talk at some length about cross examination times and  
3 a hearing schedule? I take it we're -- it would be  
4 premature to do that now. Well, is it premature to do  
5 that now?

6 MR. Gaukler: It probably is premature to  
7 do it now, Your Honor. I put together a proposed  
8 allocation of time, which I sent to the State and the  
9 Staff this morning -- a little bit later than I had  
10 planned, because my computer crashed, but it's out  
11 there. And I've gotten some comments back from the  
12 Staff, and the State is looking at it.

13 It might be useful to talk about just some  
14 general principles that we may use in developing cross  
15 examination -- allocation of time and hearing  
16 allocation of time. But the actual dividing it, I  
17 don't think would be useful at this point in time.

18 CHAIRMAN FARRAR: All right. Then why  
19 don't you go ahead and --

20 MR. Gaukler: Why don't I just tell you  
21 the basic principles on which I developed what I sent  
22 to the State and the Staff, and then we can have some  
23 discussion on that. The basic principle upon which I  
24 developed what I sent out to the State and the Staff  
25 today is based -- premised upon six hours of hearing

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1 time a day, recognizing that in order to do that we  
2 probably may end up going from 9:00 to 5:30 on average  
3 days.

4 Just because, you know, if you -- you  
5 know, in a perfect world, you get six hours from 9:00  
6 to 5:00. In an imperfect world you probably wouldn't.  
7 So I just kind of assumed that we would get six by  
8 going from 9:00 to 5:30.

9 Mr. Turk has suggested six and a half. I  
10 think that would -- just on an average basis, that may  
11 be too much. So I premise it on six hours a day.

12 What I've done then is I have gone  
13 through, and my idea was I'd try to go from the bottom  
14 up in terms of kind of an idea what it would take for  
15 each witness, but with an overall allocation of time  
16 among the parties. And the allocation I came to, and  
17 there may be some discussion between us and the State  
18 and the Staff on this, was that minus the time for  
19 Board's questioning, and there's an allocation of time  
20 for that.

21 I put it in there, and I'd like to talk  
22 with Your Honors about what you would think, just  
23 generally. We know you're going to ask the questions  
24 that you need to ask whether it takes five minutes or  
25 an hour. But just in terms of our planning our time,

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1 what you may think would be a reasonable allocation.

2 But putting that to one side, I assigned  
3 the State 45 percent of the time, PFS 30 percent of  
4 the time, and the Staff 25 percent of the time.

5 CHAIRMAN FARRAR: That's total time for  
6 the whole hearing.

7 MR. Gaukler: Total time for the whole  
8 hearing, and my table includes direct. My table  
9 envisions that, you know, when you put your direct  
10 filed testimony on you would have the direct, the  
11 prefiled rebuttal, plus any surrebuttal to the filed  
12 rebuttal.

13 CHAIRMAN FARRAR: Hold on a minute, Mr.  
14 Gaukler. So you had the State 45 percent, PFS 30  
15 percent?

16 MR. Gaukler: And the Staff 25 percent.

17 CHAIRMAN FARRAR: Staff 25 percent. And  
18 the reason the State gets more than you is they have  
19 fewer witnesses, and they have more of your people to  
20 cross examine than you have of theirs?

21 MR. Gaukler: That's correct. That's  
22 correct.

23 CHAIRMAN FARRAR: Okay.

24 MR. Gaukler: That's the basis of the  
25 allocation, and so the -- you know, there's no --

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1 that's the reason for the allocation, yes.

2 CHAIRMAN FARRAR: Right.

3 MR. Gaukler: So their cross examination  
4 time would take more than our direct and redirect  
5 time.

6 MS. CHANCELLOR: As Mr. Gaukler mentioned,  
7 Your Honor, we haven't really started to talk about  
8 this. But there are so many more reports that have  
9 been submitted by the Staff and PFS as compared to  
10 what the State is -- is going to submit that we need  
11 to look seriously at the -- at the split that Mr.  
12 Gaukler has allocated.

13 But what Paul has done is really helpful  
14 in determining whether we can actually get through  
15 certain witnesses in the time that we have allocated.  
16 And by breaking it down into direct, redirect,  
17 etcetera, it really helps you see whether you can, for  
18 example, get through jet fuel fire and speed and angle  
19 in two to three days.

20 CHAIRMAN FARRAR: All right, then. Mr.  
21 Gaukler, are there any more principles that are in  
22 there that you want to --

23 MR. Gaukler: The one I did want to touch  
24 base with Your Honors was the -- kind of the amount of  
25 time that would be reasonable to allocate across the

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1 board, just for timing purposes, for Board questions.  
2 To give Your Honors an idea, my total hearing time, I  
3 have assumed 11 days, based upon 11 days, based on the  
4 principle that to get rid of CTB and jet fuel fire,  
5 that would -- leave us with 10 days and two weeks of  
6 hearings.

7 Based on 11 days of testimony, I have 66  
8 days of hearing time total. And also I had allocated  
9 six hours to Board questions, across the board, which  
10 is roughly about nine percent.

11 CHAIRMAN FARRAR: Has anyone undertaken  
12 the dismal task of reading through the Salt Lake  
13 record and seeing what proportion of time was taken up  
14 with our questions?

15 MR. Gaukler: We haven't done that. We  
16 might be able to do a quick review of that.

17 CHAIRMAN FARRAR: My impression is that's  
18 on the low side.

19 MR. Gaukler: Okay.

20 CHAIRMAN FARRAR: And while Judge Klein  
21 was a very good judge, and very helpful to Peter and  
22 me, both in thinking about the case and writing the  
23 opinion and all manner of ways, he asked relatively  
24 few questions compared to Peter and me.

25 You all don't know Judge Abrahamson as

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1 well as I do, but I would be willing to bet a large  
2 sum of money that he will ask more questions than  
3 Judge Klein did. Now, of course, that may -- his  
4 questions may make it unnecessary for Peter and I to  
5 ask questions. That may not be additional time. It  
6 may be just shifting the same amount of time.

7 But somehow nine percent seems -- and, I  
8 mean, nine percent is five minutes an hour. And I --  
9 I don't remember that we were ever quiet for an hour  
10 and didn't have a lot of questions.

11 Go ahead. Judge Lam has something.

12 JUDGE LAM: My memory tells me roughly on  
13 a six-day trial -- six hour per day trial, the Board  
14 probably spends close to an hour in its questioning.  
15 That would be 16 percent instead of nine percent.

16 MR. Gaukler: Okay. That's useful, Your  
17 Honor. I will doublecheck, just for a reference, so  
18 that we can --

19 CHAIRMAN FARRAR: Now, Mr. Gaukler, before  
20 you do that, I agree with Judge Lam's recollection.  
21 Now, it may be that the Board time would be cut down  
22 by this notion that your prefiled direct has some of  
23 your rebuttal, because a lot of our questions are  
24 challenging people. You know, why do you think that?  
25 Or have you thought about this? And if you've already

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1 got that kind of commentary in your prefiled rebuttal,  
2 that may make it -- you know, that may make us able to  
3 be more restrained, because we know that the kind of  
4 questions we have in mind are going to be addressed.

5 So the new techniques we've adopted here  
6 may have the benefit of reducing Board questions, but  
7 -- maybe I'm like Mr. Turk and I'll wish I hadn't said  
8 this -- but limiting us to five minutes an hour, I  
9 don't see that happening.

10 MR. Gaukler: Okay.

11 MR. TURK: Your Honor, if it's any  
12 consolation, one of the issues I raised with Mr.  
13 Gaukler, is I didn't think he had allotted enough time  
14 for Board questioning. That is correct.

15 (Laughter.)

16 CHAIRMAN FARRAR: We'll take that as a  
17 compliment, I think.

18 (Laughter.)

19 MR. Gaukler: I will doublecheck what  
20 we've done in the past. We think that we can easily  
21 do it. I do think Your Honor is correct that the new  
22 process that we follow -- that we are following here  
23 should help Your Honors in terms of: a) asking a lot  
24 of questions you may have asked previously in terms of  
25 it being addressed in the -- either in the prefiled

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1 rebuttal or maybe even in the surrebuttal that we  
2 would tack on at the end of our -- introducing those  
3 testimonies, where we address anything new that was  
4 raised in the rebuttal directly as opposed to wait  
5 until -- like we did in Salt Lake City, at the very  
6 end of the case.

7 CHAIRMAN FARRAR: Right.

8 MR. Gaukler: At the very end of a topic.

9 CHAIRMAN FARRAR: Well, let's do this.  
10 Let's I think follow Judge Lam's suggestion and give  
11 us, you know, 15 percent of the time instead of nine  
12 percent. And if we don't use it, then that's --  
13 that's fine.

14 MR. Gaukler: Okay.

15 CHAIRMAN FARRAR: Now, you say you've  
16 circulated, Mr. Gaukler, your proposal there to the  
17 State and the Staff, and you all will be talking about  
18 that over the next few days or after depositions.  
19 When will you be doing that?

20 MR. Gaukler: I haven't set that up with  
21 the counsel for the State or the Staff. We could do  
22 it either way. I don't know. We haven't decided that  
23 yet. Do we want -- it would be one or the other, Your  
24 Honor.

25 CHAIRMAN FARRAR: Okay. Let me ask you

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1 this. I take it by the time we get to the hearing,  
2 while the Staff may be -- may have different reasons  
3 for its conclusions than the Applicant does, the Staff  
4 is fully supportive of the Applicant position on all  
5 issues. Is that correct, Mr. Turk?

6 MR. TURK: Yes, it is.

7 CHAIRMAN FARRAR: All right. So, then,  
8 for purposes of fairness to the State, as we've  
9 suggested before, we don't have three parties so much  
10 as we have two sides. So keep -- you know, keep that  
11 in mind, which, Mr. Gaukler, I think your numbers  
12 attempt -- already attempt to do. But keep that in  
13 mind.

14 Hold on a second. We won't go off the  
15 record, but just give me a moment here.

16 (Pause.)

17 All right. Cindy has returned -- Cindy  
18 Harbaugh, the NRC's physical security person. And she  
19 has come up with some information back on the subject  
20 of war rooms and safes that we were discussing at the  
21 beginning of the conference, so I'll turn the floor  
22 over to her.

23 MS. HARBAUGH: As I previously said, the  
24 possibility of a controlled access building possibly  
25 would be permissible. The regulations do not

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1 absolutely preclude that. It would be determined by,  
2 you know, what those physical measures are, etcetera.  
3 I don't think that the regulations -- that it's really  
4 the intent that it would be an offsite situation. But  
5 we could continue to pursue that.

6           However, of course, what also needs to be  
7 taken into consideration is our staff time in  
8 evaluating whether or not those facilities would be  
9 adequate, etcetera. So in the interest of all of  
10 that, we are going to attempt to pursue a different  
11 angle that I think you'll find very much to your  
12 liking, but I need to ask a couple questions along the  
13 lines.

14           The angle that I'd like to pursue -- and  
15 I'm not offering this at the moment, but it's  
16 something that we're trying to address for you -- is  
17 the possibility of the NRC providing for the parties  
18 security containers owned by the NRC -- GSA-approved  
19 containers for your use and offsite for the duration  
20 of the hearing to be held here in Rockville.

21           That would give us a closer fit to the  
22 regulations, in that we have -- the Staff has come to  
23 an agreement, both Bern Stapleton and his management,  
24 and myself and my management, that as we discussed  
25 previously for your war room situation that a GSA-

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1 approved security container and leased space for your  
2 war room would be acceptable storage.

3           Thereby, if we provide you those  
4 containers for your temporary use, as long as all of  
5 the parties have the same rights and privileges, I  
6 doubt that anybody would complain.

7           Again, I've checked our inventory, and I  
8 think this is a possibility. I do have to confirm  
9 with my management that this is an acceptable  
10 approach, if you would like me to pursue that angle.  
11 I guess my questions to you would be: how many safes  
12 does -- do you perceive us to need to be able to  
13 provide? And not knowing what your scheduling here  
14 was, what kind of timeframe would you envision having  
15 to have possession of those safes?

16           And if you're willing to, for the use of  
17 the safes, provide for your own transport, that being  
18 pickup from our warehouse here in Rockville, delivery  
19 to your site, wherever that might be here within the  
20 area during the use -- or for the use during the  
21 hearing, return of that safe back to our warehouse at  
22 your cost, and any repairs to the safe at your cost,  
23 should they be necessary as a result of your use.

24           JUDGE LAM: If you break it, you own it.

25           (Laughter.)

1 MR. Gaukler: That sounds like a very good  
2 idea to me. Paul Gaukler for PFS. But I think that  
3 would enable us to go to a hotel, whatever we find  
4 best, without concern for whether something would be  
5 considered controlled access or not. So I would be in  
6 favor of that, certainly, Cindy.

7 CHAIRMAN FARRAR: Ms. Chancellor?

8 MS. CHANCELLOR: Cindy, I think that's  
9 wonderful. We'd be delighted to do that. I assume  
10 that your warehouse is in the Rockville area, not, you  
11 know, someplace out of state.

12 MS. HARBAUGH: It's two blocks from our  
13 headquarters building.

14 CHAIRMAN FARRAR: All right.

15 MS. CHANCELLOR: Thank you. And I think  
16 that would be a great suggestion to pursue.

17 MS. HARBAUGH: How many safes would be  
18 required for each of your use?

19 MS. CHANCELLOR: This is the State. I  
20 think we would -- if you had a four-drawer safe, we  
21 would need one.

22 MS. HARBAUGH: Well, how about a five-  
23 drawer safe?

24 MS. CHANCELLOR: Yes, that's fine. That  
25 would be even better.

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1 MS. HARBAUGH: Okay. And PFS?

2 MR. Gaukler: I think the same thing for  
3 us. I was going to say four-drawer myself, but five-  
4 drawer will be better.

5 CHAIRMAN FARRAR: And I think Sharon had  
6 made it -- Sharon Marks Perini of our staff had made  
7 it clear that in your three little conference rooms  
8 here off the hearing room we would have the five --  
9 you know, the locking file. And documents could be  
10 left there --

11 MS. HARBAUGH: Yes.

12 CHAIRMAN FARRAR: -- overnight, because  
13 that's the same thing we do here, and those would be  
14 controlled.

15 MS. HARBAUGH: It's controlled, yes.

16 CHAIRMAN FARRAR: So you wouldn't need to  
17 have -- you know, that -- you wouldn't need to have  
18 everything fit in your safe if there were things you  
19 could leave here.

20 MS. HARBAUGH: Does the NRC Staff have  
21 objection to us pursuing this for the other parties?

22 MR. TURK: Not only do I have no  
23 objection, I encourage you to do it. I think it's a  
24 wonderful solution, Cindy.

25 MS. HARBAUGH: Okay. Again, I'll have to

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1 confirm with my management, but I am certain that  
2 they'll back this position. And we -- I'll be back in  
3 touch with you to pursue your signing for them and the  
4 arrangements for pickup, delivery, and so forth.

5 CHAIRMAN FARRAR: Cindy, the timeframe  
6 we're dealing with here is they won't -- you know,  
7 they won't need them until they get here, which will  
8 be the 5th or 6th of August. But if you don't have  
9 them, then they need to know right away, because they  
10 have to then get back and try to find --

11 MS. HARBAUGH: We have the safes. I just  
12 need to get the permission to release them, which I'm  
13 certain I'll be able to obtain.

14 CHAIRMAN FARRAR: Okay. See if you can do  
15 that --

16 MS. HARBAUGH: Post haste.

17 CHAIRMAN FARRAR: -- post haste, and  
18 we'll --

19 MS. HARBAUGH: And for what duration are  
20 we talking about at this point?

21 CHAIRMAN FARRAR: From early August.  
22 Well, certainly for the two weeks of August 9th and  
23 August 16th. But we may go the following week.

24 MR. Gaukler: You'd probably want to start  
25 the previous weekend or Friday.

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1 CHAIRMAN FARRAR: Yes, start on Friday,  
2 the 6th. And if you can get them, go through  
3 September 10th. Although we will know before then  
4 that maybe we'll need them for a shorter time, or that  
5 we could give them back for a while and then reclaim  
6 them. So --

7 MS. HARBAUGH: That kind of temporary  
8 inventory loss for us is permissible, like I can work  
9 around that, I believe.

10 CHAIRMAN FARRAR: Yes.

11 MS. HARBAUGH: In other words, I couldn't  
12 have them not available from inventory for much longer  
13 than that, but that kind of --

14 CHAIRMAN FARRAR: Well, for now, let's  
15 shoot August 6th to September 10th.

16 MS. HARBAUGH: Okay.

17 MR. TURK: Cindy, is it easier for you if  
18 you made it two separate requests, like August 6th to  
19 August 24th, and then start again in September, if  
20 needed?

21 MS. HARBAUGH: No. I'd rather -- plus,  
22 there is a cost incurred by the other parties for  
23 transport as well. And as long as we're talking, you  
24 know, a month, five weeks kind of timeframe, from  
25 delivery to redeposit at the warehouse, I'm certain we

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1 can work with that.

2 MR. TURK: No. But that assumes, however,  
3 that the other parties would be renting whatever space  
4 the container would be stored in throughout this  
5 period of two or three weeks that we're not in  
6 hearing. I would say maybe to be flexible that it  
7 should be set up for two separate sessions during that  
8 perhaps a six-week period of time.

9 CHAIRMAN FARRAR: Why don't we do this.  
10 Let's reserve them for that whole period.

11 MS. HARBAUGH: Yes.

12 CHAIRMAN FARRAR: And then if we need to  
13 do a give back and take back, we'll arrange that  
14 later. But for purposes of your management, they will  
15 be missing for those five weeks.

16 MS. HARBAUGH: Right. And the parties --  
17 the State and PFS recognize that the cost for  
18 transport of those safes both directions will be your  
19 cost to be incurred.

20 MS. CHANCELLOR: Yes. And we understand  
21 there's a hefty charge for transportation. We already  
22 have those costs, and we're prepared to pay those.

23 MS. HARBAUGH: Okay.

24 CHAIRMAN FARRAR: Well, Cindy, thank you.  
25 You were of great help to us in our last call, and we

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1 appreciate your initiative here in getting this done  
2 so quickly and resolving a problem for us. So thank  
3 you again.

4 All right. We were -- I think we had  
5 finished talking about the time allocations and gave  
6 you our thoughts on the principles to include in that.  
7 I'm beginning to think that, well, if you arrive at  
8 your stipulations, that we might be down to the 12  
9 days that would let us do it all at once -- you know,  
10 10 days from the 9th to the 20th of August, and then  
11 maybe two days -- I don't know if that would -- Ms.  
12 Chancellor, if we started again on Tuesday -- suppose  
13 we went to Friday, August 20th, and started again at  
14 Tuesday, noon, the 24th. Would you all go home?

15 MS. CHANCELLOR: Probably not, Your Honor.

16 CHAIRMAN FARRAR: All right.

17 MR. Gaukler: One thing I do need to check  
18 is Dr. Cornell and his availability for that week. So  
19 --

20 CHAIRMAN FARRAR: All right. That's why  
21 we wanted to tell you now. For now, think of Tuesday  
22 noon to Thursday noon as a possibility.

23 MS. CHANCELLOR: Your Honor, we haven't --  
24 we need to check with Dr. Frann also, because I had  
25 previously told him he wouldn't be needed until after

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1 Labor Day. So Tuesday, noon, the 24th, through  
2 Thursday, the 26th?

3 CHAIRMAN FARRAR: Right. Now, if that  
4 doesn't work for your witnesses, fine, and we may not  
5 -- you know, we may realize this is a 15-day hearing,  
6 not a 12-day hearing. And if it is, we'd rather send  
7 you home, not do anything that week, and, you know,  
8 come back after Labor Day and, you know, pursue things  
9 then.

10 So, but we wanted to give you that  
11 additional option, if, in fact, the hearing were to be  
12 as short as 12 days.

13 I will say from my own point of view you  
14 all have been eloquent about how simple these issues  
15 are. And Mr. Gaukler has done his -- you know, doing  
16 his proposal, and so forth. But I am -- I am not yet  
17 convinced we can do, for example, the nine witnesses  
18 in the -- nine sets of witnesses in the three days.  
19 But I admire your efforts in trying to winnow this  
20 case down and get it as manageable as possible.

21 Is there anything else --

22 MR. TURK: I have one suggestion, Your  
23 Honor. This is Sherwin Turk.

24 CHAIRMAN FARRAR: Yes.

25 MR. TURK: You had mentioned at one time

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1 the possibility of having another telephone conference  
2 call.

3 CHAIRMAN FARRAR: Oh, right.

4 MR. TURK: I think it would be a good idea  
5 if we -- if we do that perhaps the week of June 28th,  
6 because we're due to file testimony on July 12th,  
7 which is just two weeks after we conclude depositions.  
8 If there is anything we can do to narrow issues down,  
9 that would be the time to do it, during that last week  
10 of June before we finalize testimony.

11 CHAIRMAN FARRAR: All right. Before we  
12 have that call, you all need to talk about  
13 stipulations, which you're going to do this week.

14 MR. TURK: Right.

15 CHAIRMAN FARRAR: Talk about cross  
16 examination time limitations, which if you don't do  
17 this week you certainly won't do during the week of --  
18 well, maybe -- I don't know. Is there down time when  
19 you all get together during the depositions?

20 MR. Gaukler: There is. There's always a  
21 chance that we can talk some time during the  
22 depositions. I would suggest that we set a conference  
23 call for June 30th.

24 CHAIRMAN FARRAR: How does that -- that  
25 would give you a couple of days to recover from the

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1 depositions and do any last-minute business. Does  
2 that make sense to everybody?

3 MS. CHANCELLOR: Your Honor, we've got a  
4 brief due to the Commission that day on E.

5 MR. TURK: I wouldn't mind making it  
6 either a day earlier or a day later. That was just a  
7 suggested date.

8 CHAIRMAN FARRAR: Let's do it later. Ms.  
9 Chancellor, I take it it would be easier to do later?

10 MS. CHANCELLOR: Yes, it would, Your  
11 Honor.

12 CHAIRMAN FARRAR: Rather than -- then let  
13 -- Mr. Gaukler, is 1:30 -- wait a minute. Let's do --  
14 let's move it up. Let's do 11:30 on Thursday,  
15 July 1st.

16 MR. Gaukler: That sounds good, Your  
17 Honor.

18 CHAIRMAN FARRAR: It's 11:30 here, 9:30  
19 Mountain time, do a conference. And there we'll hear  
20 about -- much more about the cross examination time  
21 limits. We'll see if you were successful on the  
22 stipulations. We will then be able to predict the  
23 hearing length.

24 You'll know your witness availability for  
25 those -- that week right after August -- or right

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1 after the two weeks we have scheduled, and perhaps we  
2 can put a final hearing schedule together. And we  
3 would then have your testimony 11 days after that.

4 All right. That sounds like a plan.

5 MR. TURK: Thank you, Your Honor.

6 CHAIRMAN FARRAR: Thank you, Mr. Turk.

7 Anything else anyone needs to bring up?

8 MS. CHANCELLOR: I have one minor  
9 procedural point, Your Honor. There's no real time  
10 limit set for responding to motions in limine that are  
11 filed FedEx. I'm assuming that it is 10 days from  
12 receipt rather than 10 days from mailing. We filed  
13 one against the Staff yesterday -- I don't know if you  
14 received that yet -- and we expect to file another one  
15 against PFS. And they both would be -- we'd treat  
16 them as safeguards. The parties would get them and  
17 the Board would get them the next day.

18 So the question is: should we assume 10  
19 days for response time when a document is served  
20 FedEx?

21 CHAIRMAN FARRAR: Yes. Before we get to  
22 that, we have the Applicant -- okay. The Applicant  
23 filed -- I'm sorry, I had this on my mental agenda.  
24 I'm glad you mentioned it. We got -- the Applicant  
25 sent us a motion that was not safeguards on June 9th.

1                   And so, Ms. Chancellor, you need to know  
2 when you reply to that.

3                   MS. CHANCELLOR: No. With that one, I'm  
4 treating that the -- because it was not safeguards,  
5 I'm treating that as responding to that 10 days from  
6 when the e-mail came in. And with the weekend, that  
7 makes it June 21st. However, I think our response may  
8 have to be treated as safeguards, so I would send it  
9 out FedEx on the 21st, and you would get that on the  
10 22nd. And that's under our -- that's how our normal  
11 procedures work.

12                   CHAIRMAN FARRAR: Yes, that's fine. But  
13 how -- aren't you supposed to be in depositions on the  
14 21st?

15                   MS. CHANCELLOR: I'll be holding the fort.

16                   CHAIRMAN FARRAR: Oh.

17                   MS. CHANCELLOR: I'll be back here in Salt  
18 Lake. I can file it.

19                   CHAIRMAN FARRAR: Oh, okay. So that will  
20 be -- you'll file that by FedEx Monday, the 21st.

21                   MS. CHANCELLOR: Yes. And the parties --  
22 everyone would receive that on the 22nd.

23                   CHAIRMAN FARRAR: Okay. I guess, then, we  
24 could -- all right. Now --

25                   MS. CHANCELLOR: So my question is: a

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1 document that is -- a motion that's sent out FedEx,  
2 not -- not e-mail --

3 CHAIRMAN FARRAR: Like your -- we got your  
4 motion -- well, all we got today was your cover  
5 letter, and that's all the Applicant got by --

6 MS. CHANCELLOR: You should be getting a  
7 FedEx delivery today with the actual motion in it.

8 CHAIRMAN FARRAR: Right. But this was  
9 sent last -- I see. The letter was yesterday. The e-  
10 mail was today.

11 MS. CHANCELLOR: No, the e-mail was  
12 yesterday. It will be today.

13 MR. TURK: Your Honor, that's a motion  
14 directed to the Staff.

15 MS. CHANCELLOR: Right.

16 MR. TURK: We have not received it yet,  
17 although it could be in our mailroom by this time. I  
18 don't know.

19 MS. CHANCELLOR: It was sent out FedEx  
20 yesterday.

21 MR. TURK: What the State is asking  
22 essentially is: when would the Staff's response to  
23 that motion be due?

24 CHAIRMAN FARRAR: Yes.

25 MR. TURK: We will be in depositions --

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1 there are two of us working on this case right now --  
2 Laura Zaccari and myself. We will both be in  
3 depositions -- we're both conducting depositions next  
4 week, and will be in attendance the full week in  
5 Chicago and Indiana.

6 Our response time normally would be  
7 Monday, the 28th, under a 10-day rule. But we won't  
8 be able to do that because of the depositions. So I  
9 would ask that we be allowed to respond on July 1, at  
10 least by July 2.

11 CHAIRMAN FARRAR: Okay. The only thing I  
12 was thinking of is, could we use that conference call  
13 on the 1st for oral argument on the motions? Or maybe  
14 that's trying to squeeze too much in. We'll hold that  
15 idea, then. If we're not going to do that, Ms.  
16 Chancellor, do you have a problem with the Staff  
17 having 'til Friday, the 2nd? Or would you -- you said  
18 the 1st, Mr. Turk, or --

19 MR. TURK: Right. We would file on the  
20 1st, which would essentially be a three-day extension  
21 of time to allow us to draft our response after we get  
22 back from depositions.

23 CHAIRMAN FARRAR: Ms. Chancellor, is that  
24 all right?

25 MS. CHANCELLOR: Well, their response was

1 really due on the 25th. That's fine, Your Honor,  
2 provided that you -- if you think you can make a  
3 ruling before prefiled testimony is due.

4 CHAIRMAN FARRAR: Oh, right. Right,  
5 right.

6 MS. CHANCELLOR: The 12th.

7 CHAIRMAN FARRAR: Well, let's talk about  
8 these motions. Let's start with the Applicant's. Mr.  
9 Gaukler, you're saying here that the State is trying  
10 to reargue a point that's -- that we already decided.

11 Let me ask you, just so I understand where  
12 we're headed with all these, if the Commander of Hill  
13 Air Force Base says, "All right. My boys and girls  
14 are trained. I don't need to send these F-16s down  
15 there anymore. We're only going to have 1,000 of them  
16 next year," you would be in here with, what, a motion  
17 to reopen? What would you come in with?

18 You're saying that the State can't reargue  
19 something, but there are circumstances where you would  
20 be rearguing things, right? I mean, if Hill Air Force  
21 Base had 1,000 flights next year instead of 7,000, I  
22 take it we would hear from you on that.

23 MR. Gaukler: We believe we would be able  
24 to do that, yes, Your Honor, based on new information  
25 and new circumstances.

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1 CHAIRMAN FARRAR: Okay. So you are saying  
2 here that they are rearguing it without any -- they  
3 may have a new -- a new way of looking at it, but  
4 there's no new information.

5 MR. Gaukler: That's right, Your Honor.  
6 Basically, we're saying that they've -- the issue was  
7 before the Board before. In fact, we've kind of  
8 argued some of the same issues or related issues in  
9 the context of the Board's ruling on the probability  
10 impact.

11 MR. BARNETT: And, Your Honor -- this is  
12 Mr. Barnett. Moreover, a party cannot simply come in  
13 and make a new argument whenever it believes that it  
14 has new information. It's got to go through the  
15 appropriate process for doing that.

16 CHAIRMAN FARRAR: All right. So then it's  
17 incumbent on the State either to point out why what  
18 you just said is wrong or to tell -- or to seek leave  
19 to include this on the basis that it's the kind of new  
20 information that justifies the Board taking a new  
21 look. Is that your --

22 MR. Gaukler: Yes, Your Honor. That's  
23 correct.

24 CHAIRMAN FARRAR: Okay. And I'm not --  
25 I'm just thinking aloud here, because I want to make

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1 sure that as these different motions come in we --  
2 everyone is on the same wavelength in terms of meeting  
3 the issues in their briefs.

4 Ms. Chancellor, you said you were going to  
5 file another one against the Applicant?

6 MS. CHANCELLOR: Yes. It deals with the  
7 -- I can tell you the general subject matter. It's  
8 similar to the motion that PFS filed against us, and  
9 it's a question of res judicata and what are the  
10 characteristics of flights in Skull Valley for  
11 purposes of the database of -- of aircraft -- flight  
12 characteristics in Skull Valley that we should be  
13 looking at at this phase of the hearing.

14 CHAIRMAN FARRAR: I'm glad you said that,  
15 because much earlier in this conference when we talked  
16 about that and someone said, "What are the Skull  
17 Valley flights?" my -- I thought to myself, "Didn't we  
18 already decide? Didn't we spend a lot of time  
19 deciding what are the Skull Valley flights?"

20 MS. CHANCELLOR: Yes. That's our  
21 question. That's the subject of our motion.

22 CHAIRMAN FARRAR: Okay.

23 MS. CHANCELLOR: Or it will be the subject  
24 of our motion.

25 CHAIRMAN FARRAR: All right. Do you know

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1 when you'll be filing that?

2 MS. CHANCELLOR: I will try to get it out  
3 this week, but I may not get it out until the 21st  
4 when we respond to PFS's motion, because there will be  
5 some crossover in terms of discussing res judicata  
6 case law, etcetera. So I imagine that I would have it  
7 out by the 21st.

8 CHAIRMAN FARRAR: Is our life going to be  
9 easy that either you both win or you both lose?

10 MR. Gaukler: We would think not, Your  
11 Honor. We believe that the State has a wrong idea.

12 CHAIRMAN FARRAR: Okay.

13 MR. Gaukler: With respect to UEP, and we  
14 will be responding to the motion, and we will be --  
15 and in response to that motion, we will probably have  
16 the declaration of Dr. Cornell or, alternatively, we  
17 could respond to the motion when we file our testimony  
18 and include an explanation why the motion is  
19 inappropriate in his testimony.

20 CHAIRMAN FARRAR: Well, all right, I'll  
21 leave that to you. I guess it would be nice if we had  
22 all three of these wrapped up before you filed your  
23 prefiled testimony. But I guess if we don't, you'll  
24 just file it and we'll X it out --

25 MS. CHANCELLOR: If we filed on the 21st,

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1 PFS would get the motion on the 22nd, which would make  
2 their response due the 2nd -- Friday, the 2nd, unless  
3 they needed an extension, 2nd of July.

4 CHAIRMAN FARRAR: All right.

5 MR. Gaukler: That would be no problem  
6 here, since given the nature of the motion I know we  
7 are going to be using Dr. Cornell as the declarant.  
8 And Dr. Cornell is out of the country for about --  
9 starting June 25th or June 26th for about 10 days.

10 And both Mr. Barnett and I will be in Salt  
11 Lake City. We will certainly have a chance to work  
12 with Dr. Cornell when we get the motion from the  
13 State, and we have to make arrangements to have it  
14 served on us in Indianapolis or Chicago. But I don't  
15 see how we would be able to finalize it -- our  
16 response when we're outside of the office.

17 CHAIRMAN FARRAR: Let me ask you this. If  
18 we could decide the -- I'm looking at the calendar.  
19 If we were able to decide these by July -- Thursday,  
20 July 8th, that would then give you the opportunity to  
21 electronically, you know, remove it from your prefiled  
22 testimony. Is that important? Or should we just take  
23 more time, make sure we make the right decision, you  
24 file your testimony with the challenged material in  
25 it, and we'll just X it out, or is it non-severable?

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1 MR. Gaukler: I would vote for the latter  
2 where we file the testimony with the material in it.  
3 As it turns out, our response is going to be  
4 integrally intertwined with our testimony. We would  
5 have to maybe redo the testimony or X it out, and we  
6 might think of structuring the testimony so that it  
7 would be easy to X it out if Your Honor were to rule  
8 against us.

9 But given the time constraints that Dr.  
10 Cornell has, I would rather on that motion have Your  
11 Honors wait until you have the testimony on the  
12 record.

13 MR. TURK: May I also respond, Your Honor?  
14 This is Sherwin Turk.

15 CHAIRMAN FARRAR: Yes. Yes, go ahead.

16 MR. TURK: I think that the issue the  
17 State is going to raise in its motion -- first of all,  
18 it's something that the State has alerted both PFS and  
19 the Staff to through the course of depositions.

20 The issue that the State seeks to raise I  
21 don't think you've heard yet. As I understand that  
22 issue, the State contends that only certain flights,  
23 which include ejections above 2,000 feet above ground  
24 level, should be considered in the database. They  
25 seek to exclude consideration of any actual events

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1 that have occurred or ejections that took place below  
2 the recommended 2,000 feet minimum AGL level.

3 That's the essence of the motion that they  
4 will be filing. That theory is certainly different  
5 from anything that PFS or the Staff used in their  
6 assessment of Skull Valley type events. And if the  
7 Board was to agree with the State, that would cause a  
8 need for both the Staff and PFS to rework their  
9 probability assessments, to show the fundamental  
10 change in what we believe to be the proper database.

11 And I think the best way for you to  
12 consider that motion is to not rule on it before  
13 testimony comes in. But, rather, if the State wants  
14 to pursue that theory, consider that along with the  
15 testimony. If you decide to grant that motion, I  
16 think we'll then have to revisit all our testimony.

17 CHAIRMAN FARRAR: Okay. So if we --  
18 you're suggesting -- let me see if I follow this.  
19 That if we grant the State's motion, then that affects  
20 all your calculations, so that would mean you redo  
21 your testimony. But I assume if you redo your  
22 testimony, other than just by X'ing out some  
23 extraneous matter, you redo the substance of your  
24 testimony, then we don't have an August 9th hearing.

25 MR. TURK: You couldn't simply X out. In



1 other words, the motion is so fundamental to the  
2 theory of the case --

3 CHAIRMAN FARRAR: Right.

4 MR. TURK: -- that it would require you to  
5 reset the hearing schedule.

6 CHAIRMAN FARRAR: All right.

7 MR. TURK: There's no way -- if you  
8 granted that motion in the few days before testimony  
9 is filed, there's no way that we could simply file  
10 revised testimony on the current schedule.

11 CHAIRMAN FARRAR: Now, is this both of the  
12 State's motions, or just the one directed -- the one  
13 that we haven't seen?

14 MR. TURK: That's my understanding of the  
15 State's motion directed towards PFS, and I would also  
16 like to address what I understand to be the motion  
17 they are filing against the Staff, which we haven't  
18 seen yet, but which we have discussed in theory. So  
19 that's only the motion that I believe they are filing  
20 against PFS.

21 MR. Gaukler: Before Mr. Turk goes on to  
22 the other motion, I would say that our testimony may  
23 be structured that we could excise it. I don't know.  
24 We haven't done that yet, so --

25 JUDGE LAM: Now, this is Judge Lam. Ms.

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1 Chancellor, did Mr. Turk accurately describe the  
2 pending motion before us?

3 MS. CHANCELLOR: It's not pending, but it  
4 will be. And, yes, it will have a fundamental effect  
5 on the probability analysis. And PFS's motion against  
6 the State with respect to ordinance won't have as great  
7 an impact, but it will have some impact on the State's  
8 probability report. So, yes, Mr. Turk is correct in  
9 terms of -- of not just a simple X'ing out of  
10 testimony.

11 CHAIRMAN FARRAR: All right. Well, then,  
12 given the significance of it, we will -- we will not  
13 attempt to have a ruling before you file your  
14 testimony. You'll file your testimony. We will then  
15 -- maybe we'll have to have another call and have an  
16 oral argument on the telephone about it, if the motion  
17 seems difficult or if we need -- if any of the motions  
18 seem difficult or if we need additional information or  
19 have a few questions.

20 And so we would have to -- we would  
21 probably do that maybe the day after you do your key  
22 determinations. Or maybe -- no, maybe we could -- Mr.  
23 Gaukler, when were you suggesting you would be able to  
24 get your reply to the State motion that you haven't  
25 seen yet? When would you be looking to file that?

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1 MR. Gaukler: Since the testimony of Dr.  
2 Cornell will be an integral part of our reply, I was  
3 basically suggesting that we would -- the best thing  
4 probably would be to reply when we file our testimony.  
5 So then we would have the testimony of Dr. Cornell  
6 that would address the substance of it -- of the  
7 State's claim, and might have a separate paper arguing  
8 the law, etcetera.

9 CHAIRMAN FARRAR: Okay. So that would be  
10 July 12th. Then I guess we might want to try to hold  
11 an oral argument on the 15th.

12 MS. CHANCELLOR: Your Honor, that is a 10-  
13 day extension of time that Mr. Gaukler is asking for  
14 to file the response to what is essentially a legal  
15 issue.

16 MR. Gaukler: It's not a legal issue,  
17 because we -- it's integral, and we will be relying  
18 extensively upon Dr. Cornell to explain why the  
19 State's rationale is incorrect.

20 CHAIRMAN FARRAR: But wait. Ms.  
21 Chancellor, so you're saying if you file that the  
22 21st, his time would ordinarily be --

23 MS. CHANCELLOR: He would have to file by  
24 the 2nd. I mean, if he's going to take all that time,  
25 I may take a little more time to write the motion. I

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1 was trying to accommodate everybody by filing it  
2 early.

3 CHAIRMAN FARRAR: Okay.

4 MR. Gaukler: I guess I would not normally  
5 need that time, Your Honor. But Dr. Cornell is going  
6 to be out of the country, and I don't have his exact  
7 dates in front of me at this point in time.

8 CHAIRMAN FARRAR: Well, then --

9 MR. Gaukler: I need the time.

10 CHAIRMAN FARRAR: Ms. Chancellor, because  
11 of Dr. Cornell's absence and the depositions, then --  
12 and I don't want to be in a position of giving the  
13 Company -- or making it appear that one side is  
14 getting more of an extension than the other. You  
15 might want to take more time in filing the motion.

16 MS. CHANCELLOR: Right, Your Honor. I'll  
17 take that into account.

18 CHAIRMAN FARRAR: Okay. Can't tell you  
19 what to do, but if -- if we don't need a decision  
20 before July 12th, then give yourself, you know, the  
21 time that you need to do it. But let's -- let's  
22 tentatively reserve 1:30 on Thursday, the 15th, for an  
23 oral argument -- telephonic oral argument on the  
24 motions in limine.

25 The reason I say that is maybe we could --

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1 Mr. Gaukler, you said you'd include it on the 12th.  
2 We won't get it until the 13th, though, right?

3 MR. Gaukler: Yes. I may be able to -- I  
4 don't have Dr. Cornell's availability in front of me.  
5 I know I had enough time to do his testimony before he  
6 came back -- you know, to have his testimony in draft,  
7 and then have him look at it and finalize it. I know  
8 I had enough time there.

9 I just don't know if the amount of time I  
10 have between the time he comes back and July 12th --  
11 and so we may be able to get it earlier.

12 CHAIRMAN FARRAR: Let's --

13 MR. Gaukler: I have to check with -- my  
14 scheduling with Dr. Cornell. He'll be in -- I'll be  
15 able to talk to him today or tomorrow.

16 CHAIRMAN FARRAR: Let's do this. Let's  
17 set the argument for 11:30, tentative argument for  
18 11:30 on Thursday, July 15th. Reason being, we could  
19 hear -- that would be 11:30 Eastern, 9:30 Mountain.  
20 We could hear argument, and either decide on the  
21 telephone or Judge Lam, Judge Abrahamson, and I get  
22 word to you that evening without -- you know, without  
23 any opinion.

24 So that as you prepare your key  
25 determinations that are due the next week, you would

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1 have the most possible notice on exactly what you are  
2 -- what was allowable or not in your -- in your key  
3 determinations.

4 So we now are looking at an 11:30 call on  
5 Thursday, July 1st, and an 11:30 on Thursday,  
6 July 15th. And out of both of those, we should know  
7 exactly what our hearing length and format will be.

8 MS. CHANCELLOR: I hate to raise this  
9 possibility, but I believe that the issues are mainly  
10 legal issues. The question is: are we going to have  
11 to talk around safeguards on the oral argument from  
12 the motion in limine -- motions in limine?

13 MR. Gaukler: The information that we  
14 would probably use for Dr. Cornell in terms of the  
15 basic motion, I have to --

16 MR. BARNETT: Your Honor, it would depend  
17 on what the State's motion raised. If it's only the  
18 database that's to be used, the aircraft crash  
19 database that's to be used to conduct further  
20 evaluation, then it might be possible to conduct that  
21 discussion without getting into safeguards. If it  
22 were to go beyond that, then I wouldn't know. It  
23 might get into safeguards issues.

24 CHAIRMAN FARRAR: How did you get back in  
25 the room?

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1 MR. Gaukler: He was always here.

2 (Laughter.)

3 CHAIRMAN FARRAR: Oh, that's Mr. Barnett.

4 MR. Gaukler: Yes, Your Honor.

5 CHAIRMAN FARRAR: Oh, I'm sorry. You  
6 sound like Bern Stapleton.

7 (Laughter.)

8 I'm sorry.

9 MR. BARNETT: That's all right.

10 CHAIRMAN FARRAR: All right. Okay. Thank  
11 you for that, Mr. Barnett.

12 Yes, see if you can structure them that  
13 way, because I don't know about you, but that one call  
14 that we did on the safeguards phone line I seem to  
15 remember was very difficult in terms of talking over  
16 each other or the static, or whatever. But I -- it  
17 seemed to me that it was not an easy system to use,  
18 and I don't know if we'd survive an oral argument  
19 doing that. But if we have to -- where did the State  
20 go for that call?

21 MS. CHANCELLOR: The Governor has a --  
22 basically I guess it's a war room that -- where they  
23 have a secure telephone. And it wasn't easy to get  
24 access to it, and we have -- we couldn't commit right  
25 now to say that we could get that secure phone again,

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1 but we would try.

2 CHAIRMAN FARRAR: Now, do you have any  
3 federal offices near you, FBI or somebody, that  
4 would --

5 MS. CHANCELLOR: That's just a non-  
6 starter, Your Honor. They're not interested in  
7 sharing their secure lines with the State. They need  
8 them themselves, and, you know, we can't exclude them  
9 from the room. That just didn't work out.

10 JUDGE LAM: Well, that was not the only  
11 problem. The other problem was it was very difficult  
12 to hear what anybody else was saying if they are not  
13 in the same room, because the lines were scrambled.

14 MS. CHANCELLOR: Maybe what we should do  
15 is start on a non-secure line. And if we can't make  
16 the arguments, just put it off until the hearing.

17 MR. TURK: Denise, if I may ask a  
18 question. This is Sherwin Turk again. I think it  
19 paraphrases correctly -- or describes the sense of the  
20 motion that you'll be filing against PFS. If I'm  
21 correct, then I don't see a need to get into  
22 safeguards information, because all you're talking  
23 about is which of the historic F-16 crashes should be  
24 included in the database.

25 MS. CHANCELLOR: I have no idea what PFS's



1 response is going to be, so, you know, I didn't want  
2 to speak for them.

3 MR. TURK: No. But if your motion does  
4 not raise matters that get into safeguards, then it's  
5 up to PFS to structure its response in that same  
6 manner, if they can do that. But if I'm correct, it  
7 sounds like we can do this without safeguards  
8 information being involved.

9 CHAIRMAN FARRAR: Yes. Let's try to do it  
10 that way. You know, kind of talk around things if you  
11 can.

12 Is Mr. Soper in the room with you, Ms.  
13 Chancellor?

14 MS. CHANCELLOR: No, he is busy writing --  
15 drafting or working on prefiled testimony.

16 CHAIRMAN FARRAR: Then, if I were you, I'd  
17 buy him a ticket to D.C. for Wednesday night,  
18 July 14th, and we'll do the oral argument here in  
19 person.

20 MS. CHANCELLOR: I'm not sure -- oh, boy.  
21 That's right in our crunch time.

22 CHAIRMAN FARRAR: Yes.

23 MS. CHANCELLOR: Okay. We'll --

24 CHAIRMAN FARRAR: No, that's just under  
25 the old principle if someone is not in the room, you

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1 can elect him to do anything.

2 (Laughter.)

3 MS. CHANCELLOR: I'll pass the message on.

4 CHAIRMAN FARRAR: So buy the ticket in his  
5 name, and too bad for him if we -- if safeguards are  
6 involved, and he'll have to --

7 (Laughter.)

8 -- come here -- come here and argue it.

9 All right. Well, let's see if we can't  
10 handle that in a non-safeguards fashion. That would  
11 certainly simplify life.

12 All right. Then, I think we've got a path  
13 forward, and that we're -- it's been a couple hours I  
14 think very well spent to move the case along. And we  
15 have these two future calls. And, again, we'll likely  
16 put out a short order just like last time, just kind  
17 of summarizing for the record all of these things we  
18 decided on.

19 MR. TURK: Your Honor, one last question.

20 CHAIRMAN FARRAR: Yes.

21 MR. TURK: The Staff's response date to  
22 the motion which I haven't seen yet, but which I  
23 understand is coming in today, may we respond  
24 July 1st?

25 CHAIRMAN FARRAR: Yes.

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1 MR. TURK: Thank you.

2 CHAIRMAN FARRAR: All right. Then, is  
3 there any other business we need to conduct? If not,  
4 again, I commend you. This has been a long and  
5 arduous case, and I think with all the effort that's  
6 going into this final issue everyone is going to be as  
7 prepared and ready as possible, and the hearing is  
8 going to be done as effectively and efficiently as  
9 possible. And the better that's done, the faster and  
10 better our decision can be.

11 So let's all admire all the hard work you  
12 all have put into this, and, again, the cooperative  
13 spirit. So keep it up and --

14 MS. CHANCELLOR: Your Honor, just one  
15 quick question. In terms of the probability, should  
16 we also ask our witnesses to keep available certain  
17 dates in September as well as those August dates?

18 CHAIRMAN FARRAR: Yes. See if they're  
19 available those 48 hours at the end of August. But  
20 then, let's look at -- I guess we could do Tuesday,  
21 noon, the 7th of September, until -- Mr. Turk, does  
22 Friday, noon, on the 10th work for you?

23 MR. TURK: As a stop date?

24 CHAIRMAN FARRAR: Yes.

25 MR. TURK: Yes, Your Honor.

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1 CHAIRMAN FARRAR: All right. Then let's  
2 do -- the fall back would be Tuesday, noon, the 7th of  
3 September until Friday, noon, the 10th of September.

4 MS. CHANCELLOR: Thank you.

5 CHAIRMAN FARRAR: And then -- now, if you  
6 all are wrong on the -- you know, abjectly wrong on  
7 the length of the hearing, we would pick up again on  
8 Monday, the 13th of September, and finish before the  
9 holiday -- Jewish holidays, which I believe we would  
10 -- start Wednesday evening, the 15th. So that's three  
11 days the week of Labor Day and three days the week of  
12 the 13th.

13 All right. Well, again, thank you. And  
14 we are looking forward to moving toward the trial.

15 Thank you very much. Call us if you need  
16 us. And if you -- if there's ever a situation like  
17 last week where you can't get me, don't hesitate to  
18 then call Susan and she'll try to track us down or  
19 figure out what we might have figured out and help you  
20 work through it.

21 Thank you all. We're off -- the  
22 conference is over. Thank you.

23 (Whereupon, at 3:37 p.m., the conference  
24 call was concluded.)

25

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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: Rockville, MD

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.



John Mongover  
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