

RAS 8184

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Private Fuel Storage

Docket Number: 72-22-ISFSI

Location: (telephone conference)

Date: Thursday, July 15, 2004

DOCKETED  
USNRC

July 20, 2004 (3:01PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Work Order No.: NRC-1586 Pages 15074-15198

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL  
PRE-HEARING CONFERENCE CALL

\* \* \* \* \*

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

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Thursday, July 15, 2004  
Teleconference

The above-entitled matter came on for  
hearing, pursuant to notice, at 11:30 a.m.

BEFORE:  
MICHAEL C. FARRAR            Chairman  
PETER S. LAM                 Administrative Judge  
PAUL B. ABRAMSON            Administrative Judge

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10          OTHER BOARD PERSONNEL PRESENT:

11           ANTHONY EITREIM

12           ALEX KARLIN

13           SHARON MARKS-PERINI

14           AMY ROMA

15

16          OTHER NRC SECURITY STAFF PRESENT:

17           CINDY HARBAUGH

18

19

20

21

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

2 11:30 a.m.

3 CHAIRMAN FARRAR: This is another in a  
4 series of pre-hearing conference calls in the TFS  
5 proceeding. It's 11:30 on Thursday July 15<sup>th</sup>. This  
6 is Mike Farrar, the Chairman of the Board.

7 I have with me here at NRC headquarters  
8 not only the court reporter, but my colleagues Judge  
9 Lam and Judge Abramson. Also with me, for parts of  
10 this are Sharon Marks-Perini, who's handling or  
11 overseeing a lot of the administrative aspects, Jim  
12 Cavanaugh, who works with the court reporting service,  
13 Amy Roma, our law clerk, Cindy Harbaugh from security,  
14 and again, Alex Karlin, our newest Judge who is not  
15 involved in this proceeding but is already involved in  
16 an even larger and more complex proceeding. So, we  
17 welcome all of them. From the state?

18 MS. CHANCELLOR: Denise Chancellor, Connie  
19 Nakahara in Utah and Jim Soper is joining us from a  
20 remote location.

21 CHAIRMAN FARRAR: And, Mr. Soper, I  
22 understand you are interrupting a vacation to do this.  
23 We appreciate having you with us. For the Company?

24 MR. GAULKER: Paul Gaulker and Sean  
25 Barnett.

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1 CHAIRMAN FARRAR: All right. And, for the  
2 Staff?

3 MR. TURK: Sherwin Turk and Laura Zaccari.

4 CHAIRMAN FARRAR: All right, Mr. Turk,  
5 will you get a little closer to the microphone when  
6 you talk?

7 MR. TURK: Is this any better?

8 CHAIRMAN FARRAR: Not much.

9 MR. TURK: Is this any better?

10 CHAIRMAN FARRAR: Barely. Let me --

11 MR. TURK: I'm about six inches from the  
12 phone Your Honor.

13 CHAIRMAN FARRAR: Okay. Let me see if I  
14 have a volume button here. Mr. Turk, go ahead and say  
15 something else.

16 MR. TURK: I'm --

17 CHAIRMAN FARRAR: That's much better.  
18 Thank you. There's a number of things to do today.  
19 And, at the State's request, we're going to take the  
20 motions first.

21 But first, as I'm in the habit of doing,  
22 I want to compliment all of you. That was an  
23 extraordinary effort to get that testimony in on time.  
24 And we know the hard work that went into preparing  
25 that, along with the summaries of the witness, the

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1       prefaces.

2                   And so we are, again, expressing our  
3       pleasure in working with you. In fact, I have a  
4       daughter who is completing her residency in ob-gyn.  
5       And I may need her advice on how to avoid a post-  
6       partem depression when this case ends.

7                   Mr. Gaulker, you probably will not need  
8       that advice.

9                   MR. GAULKER: It's like seven years, Your  
10      Honor.

11                  CHAIRMAN FARRAR: Let me just ask a couple  
12      of quick questions before we get into the motions in  
13      limine. Are we going to have any stipulations? Or  
14      were you unsuccessful in that?

15                  MR. GAULKER: I think we will be  
16      successful. But we need to talk more about that.

17                  CHAIRMAN FARRAR: All right. And let's  
18      save any safeguards -- unless, is there a very quick  
19      safeguards question so Cindy would be able to leave?

20                  MR. GAULKER: Fine here Your Honor.

21                  MS. CHANCELLOR: Fine here Your Honor.

22                  CHAIRMAN FARRAR: Mr. Turk?

23                  MR. TURK: We're aware of one issue. I  
24      don't know if it's appropriate to address it in this  
25      conference call. It was -- Mr. Gaulker that the one

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1 document.

2 MR. GAULKER: Yes, we can hold that. All  
3 right then. We will excuse Cindy. Mr. Turk, your  
4 voice keeps fading in and out.

5 MR. TURK: Your Honor, I'm having the same  
6 problem hearing your voice. But I literally am one  
7 hand length away from the telephone.

8 CHAIRMAN FARRAR: All right. Well, we'll  
9 all try to speak a little more slowly. We're not in  
10 our usual office. There's a hearing going on. And so  
11 we're using a different phone than we usually do.

12 Maybe there's something wrong with the  
13 instrument here.

14 MS. CHANCELLOR: Your Honor, would it make  
15 and difference if Mr. Turk called in again? We have  
16 no trouble hearing you, but we're having trouble  
17 hearing Mr. Turk.

18 CHAIRMAN FARRAR: Yes. Mr. Turk, why  
19 don't you do that? Why don't you hang up and dial in  
20 again?

21 (Whereupon, the above-entitled matter went  
22 off the record at 11:37 a.m. and went back on the  
23 record at 11:38 a.m.)

24 MR. TURK: Hello?

25 CHAIRMAN FARRAR: Yes, Mr. Turk.

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1 MR. TURK: Hello?

2 CHAIRMAN FARRAR: Mr. Turk, you're back  
3 on.

4 MR. TURK: Is this any better?

5 CHAIRMAN FARRAR: Much better.

6 MR. TURK: We actually switched phones.

7 CHAIRMAN FARRAR: Okay. Thank you. And  
8 for the court reporter, anything that was said after  
9 Mr. Turk and before he came back, leave that out of  
10 the transcript, as we were having private  
11 conversations here.

12 While we are arguing the motions in  
13 limine, I wanted the counsel to be thinking about  
14 document handling, how many copies a testimony will  
15 need, how many copies of exhibits.

16 We have some thoughts to share with you  
17 later on that. But I don't want to interrupt the  
18 motions in limine. Let's turn right to those. Why  
19 don't we take them in the order in which they were  
20 filed?

21 Unless you all have -- have you agreed on  
22 a different order?

23 MR. GAULKER: No, we have not, Your Honor.

24 CHAIRMAN FARRAR: All right. Then let's  
25 take them in the order in which they were filed, which

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1 would be the Applicant's motion of June 9<sup>th</sup>, directed  
2 at the State, which led the State to file a cross-  
3 motion.

4 I'd advise you that we read all your  
5 papers and the board has discussed it among the  
6 members. So you don't have to give us a lot of  
7 detail, background. Just hit the highlights. Go ahead  
8 Mr. Gaulker.

9 MR. GAULKER: Mr. Barnett will be arguing  
10 that for us.

11 CHAIRMAN FARRAR: All right. Mr. Barnett  
12 go ahead please.

13 MR. BARNETT: Your Honor, as we stated in  
14 our motion of June 9<sup>th</sup>, we think that the State should  
15 be barred from submitting new testimony on the  
16 probability of jettisoned ordinance impact at that  
17 facility, as that is an issue that was fully aired and  
18 decided in the 2002 hearing on tension.

19 The Board made explicit findings on a  
20 probability and made explicit findings on the formula  
21 they used to calculate the probability, findings on  
22 the values of the variables in the formula.

23 And we believe that that forecloses any  
24 further argument as to what the probability ought to  
25 be. And specifically we are referring to Dr. Thorn's

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1 report that he filed in May of 2004, and in particular  
2 page four.

3 He talks about re-calculating an impact  
4 probability for the facility area and the Board's  
5 probability of 2.11 times ten to the minus seventh and  
6 doubling it, reach a new probability of 4.22 times ten  
7 to the minus seventh.

8 Based on an assertion that, F-16  
9 jettisoned more than one piece of ordinance, either  
10 individually or on racks, that fact could lead to a  
11 doubling of the impact probability.

12 And he clearly speaks in terms of impact  
13 probability for the facility area. He's not talking  
14 about individual caps or anything like that. So it's  
15 very clear he's just taking the Board's area and  
16 doubling it.

17 And we believe that that's inappropriate  
18 given what happened in 2002. Moreover --

19 CHAIRMAN FARRAR: Let me ask you this. In  
20 other words, what we found was that there'd be a  
21 certain number of flights would carry ordinance, if he  
22 wants to recalculate and say, you know, that same  
23 number amount of ordinance that we said would be  
24 carried, might be carried in different configurations.

25 I'm not sure I understand how that leads

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1 to a doubling, because, to the extent you increase it  
2 on one flight, you would decrease it on another. So,  
3 I'm not sure I understand what he's done.

4 Maybe the State can tell us. But, is this  
5 really a matter of law of the case or collateral  
6 estoppel, or is it just a different way of looking at  
7 the same amount of ordinance being potentially  
8 dropped?

9 MR. BARNETT: Your Honor, it's looking at  
10 the same ordinance. It's the same number of flights.  
11 But what he argues is that, because there are multiple  
12 pieced of ordinance carried on each F-16, that when  
13 the F-16 jettisons the multiple pieces of ordinance,  
14 that you will have multiple independent probabilities  
15 of impact into the facility area.

16 And that was an argument that the State  
17 actually made in 2002. And it was an argument that  
18 PFS opposed. And the Board made its decision as it  
19 did with the probability that it found.

20 And so, we believe that the State here is  
21 just rearguing a point that it argued in 2002. And it  
22 shouldn't be allowed to do that.

23 JUDGE LAM: Mr. Barnett, this is Judge  
24 Lam.

25 MR. BARNETT: Yes, Your Honor?

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1 JUDGE LAM: Is it possible that the Board  
2 is wrong and he's right?

3 MR. BARNETT: Your Honor, we don't believe  
4 that the Board was wrong because we have testimony in  
5 the record from two years ago saying that these  
6 jettisoned events ought to be treated as single  
7 events.

8 In other words, if the ordinance comes off  
9 the plane at once and it lands at the same spot or at  
10 spots that are very close together, and if you're  
11 treating the facility area as a single area, a large  
12 area, rather than looking at individual caps, then  
13 that's the probability that's appropriate.

14 That was as the Board calculated, that's  
15 the correct calculation.

16 CHAIRMAN FARRAR: And so, in your mind, we  
17 dealt with the issue, we reached the conclusion in  
18 your favor, and he's simply, in effect, seeking to  
19 reargue that conclusion without moving to reopen the  
20 hearing or whatever.

21 In other words, it's a classic law of the  
22 case or collateral -- or law of the case kind of  
23 thing.

24 MR. BARNETT: Yes, Your Honor. I believe  
25 that's right.

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1 CHAIRMAN FARRAR: Why don't we -- we  
2 understand your argument. Does the Staff have  
3 anything to add to that?

4 MR. TURK: Your Honor, we are in agreement  
5 with PFS. We believe the issue was resolved  
6 previously by the Board. And, on page two of our  
7 response to PFS's motion, our response is dated June  
8 18<sup>th</sup>, we inserted a footnote that summarizes some of  
9 the testimony that was admitted on the same point.

10 Footnote two on page two of our response  
11 indicates that there was testimony as to how many  
12 bombs are carried on each F-16. The issue of whether  
13 bombs should be counted separately or in clusters was  
14 addressed in some of the testimony then.

15 The outcome that you reached in your  
16 determination as to what the jettisoned ordinance  
17 impact probably, after considering all that evidence,  
18 reached a conclusion that the total probability for  
19 jettisoned ordinance was 2.11 time ten the minus  
20 seventh.

21 The issue was raised previously. It was  
22 resolved previously. And it is law of the case. And  
23 there has been no attempt by the State to file a  
24 motion for reconsideration or an appeal for that part  
25 of your decision.

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1 CHAIRMAN FARRAR: All right then. Why  
2 don't we hear from the State how you respond to this?  
3 Who's going to do that Ms. Chancellor?

4 MS. CHANCELLOR: Mr. Soper is going to do  
5 this one Your Honor.

6 CHAIRMAN FARRAR: All right. Go ahead Mr.  
7 Soper.

8 MR. SOPER: Thank you Your Honor. Can you  
9 hear me okay?

10 CHAIRMAN FARRAR: Yes, fine.

11 MR. SOPER: I'm not sure if this is  
12 working.

13 Can you hear me okay?

14 CHAIRMAN FARRAR: Yes. We hear you fine.

15 MR. SOPER: Okay. I'm sorry. I think in  
16 response to your question that you asked just a minute  
17 ago Your Honor, let me say this, the probability in  
18 the last hearing was based on the number of flights,  
19 not the number of ordinance carried.

20 I think you were getting at the discrete  
21 number of bombs determined. And how can we change  
22 anything since we have the same number of bombs? But  
23 the probability in the last hearing was based on the  
24 number of flights, regardless of how many bombs were  
25 carried.

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1                   And the issue in this case is different.  
2                   The last case we were concerned with the probability  
3                   of hitting the facility generally, a 99 acre part of  
4                   it, as I recall.

5                   And I don't remember this issue being  
6                   raised specifically. The reason that it would have  
7                   been treated, if it was raised last time, as a single  
8                   event, no matter how many bombs were dropped, was  
9                   because they would hit the same target.

10                  That is the 99 acre site. In the present  
11                  case, the issue is much different. The issue is  
12                  whether it's a probability that a specific CASK would  
13                  be breeched.

14                  Now, the CASK in comparison to the 99 acre  
15                  site are 11 foot diameter objects that are spaced four  
16                  or five feet apart. And there's an array of 4,000  
17                  CASKS at the PASY.

18                  The bombs are spaced 19 feet apart under  
19                  the wings. So, in the event that two bombs are  
20                  released, one under each wing, they will not strike the  
21                  same CASK.

22                  As before they would strike the same 99  
23                  acre site, they will not strike the same CASK. So, if  
24                  you're worried about the probability of a breach,  
25                  which we are, do we care if there is one bomb dropped

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1 from a plane, or two?

2 Obviously we do. And that seems to be a  
3 totally different issue. And that's the basis of Dr.  
4 Thorn's report. And I guess I would submit that  
5 unless I need to respond to something.

6 CHAIRMAN FARRAR: All right. Why don't  
7 you go ahead on the cross-motion that you have. In  
8 other words, your cross-motion was if you lose on this  
9 issue -- I'll tell you what, let's hold the cross-  
10 motion for a minute.

11 Let me ask the company something. When we  
12 talked about jettisoned ordinance in our opinion, my  
13 recollection is, as Mr. Soper said, we talked about  
14 the number of flights.

15 In fact, I think we plugged that into the  
16 formula. And I don't recall us talking about how the  
17 ordinance was distributed, or whether some flights  
18 carried multiple ordinance. Can you refresh us on  
19 that?

20 MR. SOPER: Your Honor, I don't think the  
21 opinion itself spoke to the number of pieces of  
22 ordinance on the F-16. But the State clearly  
23 presented testimony on that issue at the hearing and  
24 argued about the possibility of multiple impacts into  
25 the area based on the number of pieces of ordinance

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1 that the F-16 carried.

2 JUDGE ABRAMSON: Gentlemen, this is Judge  
3 Abramson. I have a question which I will address  
4 first to the applicant. And then I'd like to hear the  
5 staff's view of it also.

6 If one thinks about the way you have  
7 addressed the probability of an impact into the site,  
8 which we are now trying to narrow to the probability  
9 of impact into a cask, when you have multiple  
10 ordinance released from an air craft, which I think  
11 I'm hearing all of you say is a possibility and that  
12 we the Board simply considered it last time on a  
13 global scale if they were released, did they or did  
14 they not hit the site?

15 When one looks at the probability of  
16 hitting a cask, would you not treat the incoming  
17 ordinance with a certain cross section? And if there  
18 are two bombs, is that cross section not larger than  
19 the cross section for one bomb?

20 And does that not, therefore, affect the  
21 probability of breach of the cask? Let's hear from  
22 the Applicant, and then from the Staff.

23 MR. BARNETT: Your Honor, when we treated  
24 the jettisoned ordinance impact probability, we  
25 treated the entire site as one monolithic area, if you

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1 will.

2 It was the total area of the cask storage  
3 area, plus the canister transfer building. And, as  
4 you may recall, the cask storage area made up of the  
5 4,000 casks also consists of a lot of empty space in  
6 there.

7 Nevertheless, that was all lumped into one  
8 area, the building, the casks, plus the empty space.  
9 And so any impact into that area was considered to be  
10 an impact.

11 It didn't go into what would happen if  
12 there was an impact in the area, because that was in  
13 the realm of consequences, what would happen if a bomb  
14 were to hit the area.

15 So, in that case the area of the facility  
16 is much, much larger than the area of a bomb. Now,  
17 hypothetically, one could have looked at the cask as  
18 individual casks, and the building as an individual  
19 building.

20 JUDGE ABRAMSON: Let me cut you off. We  
21 understand all that. There's no reason to repeat  
22 that. My question's really very simple. You've not  
23 got two bombs, which I assume has doubled the cross  
24 section of a single bomb.

25 And therefore, if you're looking at the

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1 impact on a cask, which is what we're now trying to  
2 do, would it not be relevant to look at the idea that  
3 what's incoming has twice the cross section of a  
4 single bomb, and that it somehow is separated from  
5 each other?

6 So there are two separate events if there  
7 are two bombs, or three if there are three. I don't  
8 know how many bombs there are under the wings. I  
9 assume no more than two.

10 MR. BARNETT: Your Honor, I don't believe  
11 that they would be independent events, based on the  
12 testimony that was put in two years ago. And  
13 therefore, I do not believe that they would change the  
14 probability calculation.

15 CHAIRMAN FARRAR: Let me ask if the staff  
16 wants to add any additional response to Judge  
17 Abramson's question.

18 MR. TURK: I'd like to first start with  
19 the actual record, Your Honor. Mr. Barnett is not  
20 correct when he states that we did not litigate  
21 jettisoned ordinance separately from the number of  
22 flights in Skull Valley.

23 Your decision starting at page 225 of NRC  
24 discusses the hazards posed by jettisoned ordinance.  
25 You did consider what is the number of ordinance

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1 carried by F-16 that travel through Skull Valley.

2 That's a separate issue from the issue of  
3 how many flights come through. First there are the  
4 number flights, and then we multiply that times the  
5 percent of flights that carried ordinance.

6 And that's how you arrived at the  
7 potential that a crashing aircraft would hit the  
8 button and jettisoned -- as you provided in your  
9 decision. And that probability of the ordinance of  
10 impact on the facility was considered.

11 And you did considered the argument by the  
12 state that if a plane carries two bombs, which it may  
13 well do, that you have two bombs being jettisoned.  
14 Lieutenant Colonel Horseman testified, as I recall,  
15 that there's a single mechanism in which the pilot  
16 release is called forth.

17 Typically the stores, the ordinance  
18 released together. Is there a possibility that there  
19 might be some lag in time from the time that one  
20 ordinance drops to the time that a second one drops  
21 such that your increase of effective area of the  
22 impact?

23 There is a potential for that to happen.  
24 No party that I recall address the specific physical  
25 record to say how often does that happen? But the

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1 iteration that that is a possibility was raised to  
2 you.

3 CHAIRMAN FARRAR: It may have been raised,  
4 but did we decide anything?

5 MR. TURK: Yes. You decided, after  
6 hearing all the evidence, that the probability impact  
7 number to be used in your calculation, which you  
8 resolved in your previous, was the 2.11 times ten to  
9 the minus seven.

10 Considering all the evidence that  
11 ordinance might be released separately or that  
12 conversely that several ordinance might be contained  
13 in a single rack, and the rack released at one time,  
14 or that there might be one bomb release.

15 CHAIRMAN FARRAR: But, did we make that  
16 finding? Did we make an explicit finding on that  
17 that's useful here? It seems to me the ultimate  
18 finding we made was based on the number flights, you  
19 know.

20 Having heard testimony about a flight  
21 carrying more than one piece of ordinance, as I look  
22 at our decision, we came back and just decided it on  
23 the number of flights.

24 And, as everyone has talked about today,  
25 now we're looking at a somewhat different issue.

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1 We're looking not at just is this site hit, but what  
2 specifically happens on the site.

3 So, even though we might have had  
4 evidence, did we make any kind of ruling in that  
5 context that is -- firstly, did we make any ruling at  
6 all on what we thought how much ordinance there would  
7 be as opposed to how many flights?

8 And, if we did, is that ruling applicable  
9 in the context of the issue now before us?

10 MR. TURK: The answer first, Your Honor,  
11 is yes, you did consider specifically the number of  
12 ordinance.

13 CHAIRMAN FARRAR: Not did we consider it,  
14 did we make a ruling?

15 MR. TURK: You did.

16 CHAIRMAN FARRAR: Where is that?

17 MR. TURK: Paragraph C-97 of your finding.  
18 You addressed the number of sorties at the area  
19 ordinance. You indicated you recited a -- the number  
20 of ordinance varies dramatically. That was from --

21 CHAIRMAN FARRAR: No, that's not the  
22 amount ordinance that varies dramatically. That's the  
23 number of sorties that carry ordinance varying  
24 dramatically. That has nothing to do with how many  
25 bombs are on each of those sorties.

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1 MR. TURK: I'm looking at your decision.  
2 In the following paragraph, C-98, you come out with a  
3 total number of 16.1 percent of all flights carry  
4 ordinance without considering.

5 By the way, these are all different sorts  
6 of ordinance. Some may be heavy MK-84s. Some may be  
7 the 500 pound MK-82.

8 CHAIRMAN FARRAR: I understand that. But  
9 it seems to me, while there might have been evidence  
10 on which we could have made a more detailed finding,  
11 all we found was the number of flights carrying  
12 ordinance.

13 And, while we said from year-to-year that  
14 could vary, it seems to me we never specifically  
15 addressed the issue of multiple ordinance. We just  
16 came back to the number of flights.

17 And, even if we had addressed it  
18 implicitly, that was in a different context than the  
19 issue before us. I mean, it --

20 JUDGE ABRAMSON: Let's see if we can cut  
21 to the quick here, folks. It's clear that one bomb  
22 impacting the site has a certain probability of  
23 reaching a cask.

24 And if you then have a second bomb  
25 impacting this site, it will have its own probability,

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1 depending on the release, etcetera. Are you telling  
2 me that in the prior hearings the Board expressly  
3 considered and determined how many bombs are likely to  
4 hit the site on each type of bomb?

5 Or did they simply determine how many --  
6 whether or not ordinance was likely to hit the site  
7 based on the number of flights that carry ordinance?

8 MR. BARNETT: This is Mr. Barnett. The  
9 Board determined the probability ordinance would  
10 impact the site, based on the calculation in the  
11 formula that the Board used.

12 CHAIRMAN FARRAR: But that calculation is  
13 number of flights. I mean, I don't see in there that  
14 we took the number of flights -- just to pick a  
15 number, 100 -- but we'll really treat it as 150,  
16 because half of them carry two pieces of ordinance,  
17 not one.

18 I don't see anything in the opinion that  
19 talked about that.

20 MR. BARNETT: Your Honor, there's nothing  
21 that specifically spells out the number of pieces of  
22 ordinance carried by each of the aircraft. But there  
23 is a specific finding as to what the probability is  
24 that ordinance would impact the site.

25 CHAIRMAN FARRAR: But that's based on

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1 number of flights.

2 MR. TURK: Number of flights times the  
3 percentage that carry ordinance of some sort.

4 CHAIRMAN FARRAR: Right. But we left it  
5 at that. We didn't get into this issue of is there a  
6 difference from multiple ordinance.

7 JUDGE LAM: Now, Judge Farrar, let me  
8 clarify. What the Board has done in determining the  
9 probability of 2.11 times 10 to the minus seven per  
10 year, it's a number that encompasses all different  
11 number of munitions on the F-16.

12 Therefore, what Dr. Thorn has done, by  
13 doubling it for two bombs, instead of one, appears to  
14 be a mistake, because this number is not reflecting  
15 the probability of a single bomb hitting the site.

16 What the Board had done -- the number of  
17 flights 587 include all the flights carrying from one  
18 to as many as six bombs. Therefore, this number is  
19 not a single bomb hit probability.

20 If the Board were to come up with that  
21 number that the Board should have, if we were aiming  
22 for that number, the Board should have estimate the  
23 number of flights carrying a single bomb.

24 Now, this is not what we had done. What  
25 we had done is, using thee number 587, which is the

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1 number of flights per year going down Skull Valley,  
2 carrying from either one, two, three, four, or five,  
3 or six bombs.

4 Therefore, this probability number should  
5 not be doubled for two bombs, should not be tripled  
6 for three bombs, should not be quadrupled for four  
7 bombs.

8 MR. BARNETT: Yes, Your Honor. I would  
9 agree with that.

10 MR. GAULKER: I do as well Your Honor.

11 MR. SOPER: Well, I guess that leaves me.  
12 Would you like me to attempt to respond, Judge Lam?

13 CHAIRMAN FARRAR: Yes, go ahead Mr. Soper.

14 MR. SOPER: If I follow Judge Lam's  
15 remarks, the number, I think it was 587, is the  
16 percentage of flights that carry ordinance of some  
17 type. Therefore, in the event of a crash, those 587  
18 flights could release ordinance.

19 Whether it's a one piece or six piece, all  
20 of which would hit the site. In this particular case,  
21 Judge Lam, we would say that those 587 aircraft would  
22 have at least two bombs on them.

23 I think the testimony will show that they  
24 are loaded in pairs to equally distribute the weight  
25 under each wing. So each flight would have at least

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1 two bombs.

2 And, while those two bombs would hit the  
3 site as you suggest, they will definitely not hit the  
4 same cask, which is the issue in this proceeding. I  
5 hope I didn't miss your point.

6 CHAIRMAN FARRAR: Okay. Thank you Mr.  
7 Soper. Let us go off the record here for a minute,  
8 have a discussion among the Board. And we will get  
9 back to you. Just hang on.

10 (Whereupon, the above-entitled matter went  
11 off the record at 12:05 p.m. and went back on the  
12 record at 12:06 p.m.)

13 CHAIRMAN FARRAR: We, the Board, discussed  
14 this. And we are prepared to make a decision. We are  
15 going to deny the company's motion on the theory that,  
16 as we read our decision, it's based on the number of  
17 flights.

18 Perhaps we could've done more by taking  
19 those flights, finding out how many had what number of  
20 ordinance and coming up with a different calculation.  
21 But we did not do that.

22 And so we are all in agreement that  
23 whatever we might have found then based on the issue  
24 as it was framed then, when we were just worried about  
25 the site, perhaps we would have said six bombs are the

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1 same as one, because we are just worried about hitting  
2 the site.

3 But we did not make that finding. So we  
4 think there's no law of the case to apply here. And,  
5 while we understand the argument of the Company and  
6 the Staff, we think it's open to discuss now.

7 We're not saying whether the State's  
8 witness is right or wrong on what his new proposal is.  
9 That will be a matter for you all to thrash out at the  
10 trial. So, on that basis we will deny the motion.

11 JUDGE LAM: This is Judge Lam. Does that  
12 -- what Judge Farrar mentioned is an important point.  
13 We are not saying the probability should be doubled or  
14 tripled.

15 We are just saying our earlier decision  
16 was silent --

17 JUDGE ABRAMSON: They did.

18 JUDGE LAM: -- was silent on this issue

19 CHAIRMAN FARRAR: All right. That being  
20 the case --

21 MR. BARNETT: Your Honor, just to  
22 understand this issue, this issue is what Mr. Soper  
23 was describing as quote this potential that even if  
24 you have the same probability of impact with two  
25 bombs, that we can get in the entire site, when you

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1 get down with the individual cask, you have to  
2 consider the potential for bombs hitting the  
3 individual casks.

4 I think that was the issue that has been  
5 presented.

6 CHAIRMAN FARRAR: That is correct. Mr.  
7 Soper, is that correct?

8 MR. SOPER: I think that captures it.

9 JUDGE ABRAMSON: All right. And then,  
10 does that take care of your State's cross motion as we  
11 read it, was dependent on you losing this motion. You  
12 say if you lost this then the same thing would apply  
13 to Dr. Cornell based on what we've said here.

14 It seems to me, by its own terms, the  
15 State's motion is moot. But, Mr. Soper, do you  
16 disagree with that?

17 MR. SOPER: No, I don't Your Honor. I  
18 won't explain, unless you want me to. But you are  
19 correct.

20 CHAIRMAN FARRAR: Go ahead. Give us a  
21 brief explanation.

22 MR. SOPER: Well, it appeared to us that  
23 the issue in this case being what is the probability  
24 of breeching a specific cask, Dr. Cornell excluded  
25 various areas of the site where there wasn't a cask,

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1 considered the tops and the sides of the cask at  
2 various angles of impact, and from various approaches  
3 to the site, and otherwise narrowed down the area of  
4 the site to address that very issue.

5 I believe that that's appropriate. So, if  
6 we're addressing the issue of hitting a cask, and our  
7 motion -- the motion of PFS is denied for that  
8 reasoning, then our motion would also be denied for  
9 that reason.

10 CHAIRMAN FARRAR: All right. Thank you  
11 Mr. Soper. I take it the Company and the Staff do not  
12 have to respond to that?

13 MR. BARNETT: No, Your Honor, we don't.

14 CHAIRMAN FARRAR: All right. Mr. Turk?

15 MR. TURK: No, effectively the motion --  
16 or ruled upon, so nothing further.

17 CHAIRMAN FARRAR: Well, by its own terms  
18 I would say it's moot. And let me just say on behalf  
19 of the Board for such guidance as you need during the  
20 trial, we do view -- I guess the way we view the case  
21 is we took under the screening formula, the regulatory  
22 guide formula, we took a macro look at planes and  
23 ordinance hitting the site generally.

24 And it's now entirely proper to look at  
25 what happens on the site in a micro sense as opposed

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1 to a macro sense. And I think that's the thrust of  
2 what we've arrived at today.

3 So we look forward to hearing your  
4 evidence on that point. The second motion was the  
5 State's motion of June 15<sup>th</sup> directed at the Staff.  
6 And, before we talk about this, let me remind  
7 everybody that we will talk about this in terms of  
8 changes to the cask, not the specific word --

9 JUDGE ABRAMSON: That we're not allowed to  
10 use.

11 CHAIRMAN FARRAR: -- that we're not  
12 allowed to use in a non-safeguards setting. So, we'll  
13 talk about the cask in its original design and its  
14 changed design.

15 And we'll all understand about what we're  
16 talking about. Mr. Soper, are you going to argue this  
17 one?

18 MS. CHANCELLOR: No, I will Your Honor.  
19 My understanding, to start off with, is that we can  
20 use the word that you're saying that we can't use. I  
21 believe it was why it is used that was the safeguards  
22 information.

23 CHAIRMAN FARRAR: Well --

24 MS. CHANCELLOR: It's very awkward. But,  
25 if that's the way you prefer it, that's the way we can

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1 do it.

2 CHAIRMAN FARRAR: Yes. Just talk with the  
3 change and without the change, and we'll sort that out  
4 later and make sure we understand. We can describe  
5 the change, but not its location.

6 We all know what we're talking about here.  
7 So let's just talk about the change.

8 MS. CHANCELLOR: Okay. Do you want me to  
9 go first, Your Honor?

10 CHAIRMAN FARRAR: Yes. It's your motion.  
11 We understand, I think, why you're concerned about the  
12 Staff's approach. But, tell us why that concern isn't  
13 addressed, or couldn't be addressed by us setting  
14 framework for what we're going to decide at the  
15 hearing and what steps the Company would have to go  
16 through if they later decided to use a different cask,  
17 or a cask without the change.

18 You know, is that a -- tell us why that  
19 isn't a solution, rather than what you would have us  
20 do, is exclude the evidence about the pre-change that  
21 situation.

22 MS. CHANCELLOR: Your Honor, looking back  
23 at the first hearing, you excluded testimony from PFS  
24 on consequences because PFS wanted to introduce that  
25 evidence to show it was conservative in what they were

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1 doing.

2 And that's exactly what the staff is  
3 trying to do in this case. The question is not  
4 whether the original cask is safer than the modified  
5 cask. The question is, does the cask that PFS intends  
6 to use, the modified cask, withstand an impact from an  
7 F-16.

8 CHAIRMAN FARRAR: Okay. Now, let's assume  
9 we agree totally with you that that is the issue for  
10 us to decide. As long as we agree with you that  
11 that's all we're going to decide, and we limit  
12 ourselves to that, what does it matter to you if the  
13 Staff says, well here's our calculation, and here's  
14 how we came by it?

15 Rather than look at the finished product,  
16 we looked at the original product. We added in the  
17 improvement from this change, and here is our result.  
18 Why do any of us care that that's the thought process  
19 that they went through?

20 MS. CHANCELLOR: A couple of reasons, Your  
21 Honor. If you're concerned about the length of time  
22 the hearing will take, we'll get into a discussion of  
23 the comparative and so-called comparative analysis of  
24 the original casks versus the modified cask.

25 But, more important, I think it introduces

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1 bias into the proceeding. The report that the State  
2 has introduced does not relate to the modified cask,  
3 except with respect to ordinance.

4 But with respect to ordinance, we have  
5 made an analysis to show that it is applicable to the  
6 modified cask. So that ordinance testimony is  
7 introduced for the purposes of the cask that PFS is  
8 going to use.

9 I think what is particularly offensive,  
10 Your Honor, is the conclusions that the Staff Analysis  
11 makes. There are two independent analysis. It is not  
12 a comparative.

13 You are going to have in the record what  
14 is the affect of an F-16 impact into that original  
15 cask. And, if I could mention the settlement, the  
16 reason that this is of concern to us, as you may know,  
17 we have rarely reached a settlement with PFS on any of  
18 the issues.

19 And this illustrates why. In this case,  
20 the State and PFS worked long and hard to work through  
21 a lot of different issues to come to a settlement of  
22 TT. It is the State's position that now that playing  
23 field has changed, because of the conclusions in the  
24 Staff Sandia Confirmatory analysis.

25 CHAIRMAN FARRAR: Let me interrupt there.

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1 As between you and the company, I could suggest the  
2 playing field has not changed, if the Staff wants to  
3 go ahead.

4 And, remember, we don't control how the  
5 Staff spends its resources. If the Staff wants to go  
6 ahead and analyze something, why aren't they free to  
7 analyze it?

8 And we're equally free to disregard it in  
9 writing an opinion.

10 MS. CHANCELLOR: We think that you have  
11 control over the Staff with respect to the evidence  
12 that is admitted into this proceeding. You have no  
13 control over the Staff as to the analysis that they  
14 may otherwise conduct.

15 And that is what we are asking you to rule  
16 on. In this proceeding, the Staff took five  
17 additional months to write the Sandia -- what they  
18 call -- Confirmatory Analysis.

19 And we have been held to the standard of  
20 if you don't challenge the application state, you are  
21 out of this proceeding. And that is exactly what we  
22 are asking the Staff to do, address what is at issue  
23 in this proceeding.

24 And that is what is the affect of an F-16  
25 into a modified cask?

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1 CHAIRMAN FARRAR: Let me do this, Ms.  
2 Chancellor, I think. And we will come back to you  
3 certainly before ruling. Let me ask the staff to  
4 address Ms. Chancellor's point, which certainly has  
5 some validity, that we usually don't clutter up the  
6 record with analysis that don't have a bearing on the  
7 ultimate decision.

8 So, perhaps the Staff can address that.  
9 And, Ms. Chancellor, we will give you another chance  
10 to be heard certainly before we caucus among  
11 ourselves.

12 MR. GAULKER: We also would like to add on  
13 that as well, Your Honor.

14 CHAIRMAN FARRAR: Let's hear from the  
15 Staff first, Mr. Gaulker. And then -- unless you  
16 think there's something you could usefully add right  
17 now.

18 MR. GAULKER: There are a couple points  
19 which I think I could usefully add right now. I'll  
20 make them very brief. First, the bias question to me  
21 is irrelevant, because whether the Board introduces  
22 the report or doesn't introduce the report, we may or  
23 may not be able to rely upon in the future doesn't  
24 affect our ability to rely upon that report in the  
25 future should we decide at some later time -- and try

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1 to go back to the original design.

2 So, the bias is a non-issue as far as --  
3 because the report exists. It is where it is. And  
4 whether we can or would make use of certain change,  
5 regardless of whether the Board introduces it evidence  
6 or not.

7 CHAIRMAN FARRAR: Let me ask you Mr.  
8 Gaulker, this report exists now, right?

9 MR. GAULKER: Right.

10 CHAIRMAN FARRAR: So if you decided to go  
11 back to the original design, you would go to the staff  
12 and say we'd like to go to the original design, and by  
13 the way, don't bother to do a big analysis of it,  
14 because you already happen to have one on the shelf,  
15 which may even be a public document.

16 So, in other words, that exists. And if  
17 you wanted to rely on it, you would go and rely on it.

18 MR. GAULKER: Right.

19 CHAIRMAN FARRAR: Is that what you're  
20 saying?

21 MR. GAULKER: That's what I'm saying. And  
22 it could only be part of our reliance in any event.

23 CHAIRMAN FARRAR: Okay. Now that leaves  
24 open the question which we will get to shortly about  
25 what other parties have -- what rights other parties

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1 have at that point in the future when you're trying to  
2 rely on it.

3 But go ahead, you were going to make  
4 another point.

5 MR. GAULKER: My second point is that I  
6 think, in terms of relevance, I think it is relevant.  
7 In terms of assessing the effect of the change on the  
8 structural integrity of the cask -- and on that I  
9 guess I would like to point Your Honor to the appendix  
10 we filed with Dr. Fuller's testimony, in particular  
11 the last couple pages of that appendix, where he does  
12 a calculation where he relies upon the strength of the  
13 change to rebut claims made by the State with respect  
14 to impacts on certain parts of the cask.

15 So, the analysis done by the cask,  
16 basically confirms the ability of what Dr. Fuller  
17 basically relies upon in his calculations.

18 So, in that sense, it is entirely relevant  
19 to issues in this case. Those are the two points I  
20 wanted to make, Your Honor.

21 CHAIRMAN FARRAR: All right. Thank you  
22 Mr. Gaulker. With those in front of us, go ahead Mr.  
23 Turk.

24 MR. TURK: Thank you, Your Honor. Your  
25 Honor, I think that your initial comments to the Staff

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1 are entirely correct. Regardless of whether the  
2 information is -- or not, I have one issued item.

3 And that is whether the modified cask --  
4 safety device. Our response to the State's motion --  
5 that we will not ask you for any --

6 CHAIRMAN FARRAR: Mr. Turk, I'm having  
7 real trouble hearing you.

8 MR. TURK: Okay, I'm going to come really  
9 close to the phone. I apologize if I boom.

10 CHAIRMAN FARRAR: That's much better.

11 MR. TURK: All right. Just to recap what  
12 I said, because I'm not sure if you missed it, Your  
13 Honor, you've made some very good observations in your  
14 initial comments to Ms. Chancellor.

15 Regardless of whether the Staff's evidence  
16 concerning the pre-modification is in evidence or not,  
17 the issue that you have to decide is simply whether  
18 the modified cask -- the device.

19 I have full confidence in the Board's  
20 ability to reach that decision without going off into  
21 some extraneous findings that Ms. Chancellor is  
22 concerned about with respect to the pre-modified cask.

23 As we indicate in our response to her  
24 motion, we will not ask you for any substantive  
25 findings as to the adequacy of the pre-modified cask.

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1 That is not an issue before you.

2 And we certainly won't ask you to decide  
3 whether the pre-modified cask is adequate. The  
4 question you asked me about clutter is easily  
5 addressed.

6 The Sandia Analysis that was performed in  
7 May addresses both the cask before the modification as  
8 well as the cask post-modification. It's the same  
9 analysis.

10 Its the same modeling with the exception  
11 that the change has been made to the cask in the  
12 subsequent analysis. Otherwise, the modeling effort  
13 that's described in the Sandia Report is totally  
14 relevant to the issue of whether the modified cask can  
15 be licensed.

16 CHAIRMAN FARRAR: Let me ask you this, if  
17 the Company had come up with this design initially,  
18 and the changed cask was the way they wanted to go,  
19 Sandia would have just analyzed that changed cask, not  
20 that changed cask compared to some other cask that was  
21 never contemplated, is that correct?

22 MR. TURK: That is correct. And let me  
23 explain.

24 CHAIRMAN FARRAR: So they could've done  
25 their analysis just by looking at the final cask?

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1 MR. TURK: Yes.

2 JUDGE ABRAMSON: In that vein --

3 MR. TURK: Wait. Yes, but they could have  
4 except that they timing was such that the analysis was  
5 done -- the months and months of effort modeling was  
6 done already with respect to the pre-modified cask.

7 Everything that they did, however, is  
8 relevant to the modified cask. If PFS, for instance,  
9 had had two different cask proposal and had done an  
10 analysis of one cask, using one method of analysis,  
11 and they had analyzed the modified cask using a  
12 different method of analysis, I would not introduce  
13 any evidence concerning the pre-modified cask.

14 The only reason why we're introducing it  
15 is because the analysis applies to both. The modeling  
16 effort applies to both. The Staff's report of May  
17 applies to both.

18 There's no way that you can logically  
19 segregate out sentences and say well this applies to  
20 cask, and this applies to a different cask.

21 CHAIRMAN FARRAR: We understand that.  
22 Judge Abramson has a question for you.

23 JUDGE ABRAMSON: Mr. Turk, does the  
24 analysis that Sandia did of the pre-modified cask  
25 provide useful information to all the parties

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1 regarding the structural response of the parts of the  
2 cask that are not modified, and would that information  
3 be relevant whether or not the cask had been modified?

4 MR. TURK: I'm not sure I fully understood  
5 your question.

6 JUDGE ABRAMSON: Let me say it again. I'm  
7 not sure I'll change it very much.

8 MR. TURK: Okay.

9 JUDGE ABRAMSON: Sandia did analysis of  
10 the pre-modified cask. What they're looking at is a  
11 structural response of that cask. Part of that cask  
12 was modified to create the modified cask.

13 Would the structural response analysis for  
14 the parts that were not modified be useful in  
15 understanding how the cask, as modified will respond?

16 MR. TURK: Let me ask some of the people  
17 who are listening, I will get back to you in one  
18 second, Your Honor.

19 (Whereupon, the above-entitled matter went  
20 off the record at 12:27 p.m. and went back on the  
21 record at 12:27 p.m.)

22 MR. TURK: It's a difficult question for  
23 me to answer without having Sandia present with me in  
24 the room. I do have some staff members with me, but  
25 they were not intimately involved in writing the

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1 report.

2 CHAIRMAN FARRAR: All right. Well, maybe  
3 even without the answer, we can move forward. Mr.  
4 Turk, Ms. Chancellor is justifiably concerned that the  
5 state and the applicant reach this exquisite and  
6 exemplary agreement on the TT.

7 I recall how the Board felt at that time,  
8 that we had a real problem or there was a real  
9 underlying problem that needed to be addressed. And  
10 we gave those two parties great credit for reaching  
11 the elegant solution that they did.

12 Now she is concerned that that agreement  
13 may go by the boards, that whatever they each brought  
14 to the table and compromised and hammered out now gets  
15 undercut by what you are trying to do here.

16 How do you respond to that?

17 MR. TURK: I really don't see any basis  
18 for that argument, Your Honor. The issue of whether  
19 the staff testimony comes in or not or the report  
20 comes in or not does not affect the goodness between  
21 PFS and the state.

22 Without asking you to approve a license  
23 for the pre-modified cask, the staff has the analysis  
24 in its hand. If PFS should ever subsequently decide  
25 that they want to use the cask without the

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1 modifications, regardless of whether the Board admits  
2 the evidence or doesn't admit the evidence, it is not  
3 going to be something that you rely upon in your  
4 decision for the license.

5 The staff, in contrast, can rely on it,  
6 either now or in the future.

7 CHAIRMAN FARRAR: Let me ask you this.  
8 Let's take a hypothetical. Suppose the company  
9 prevails in this case and gets a license. A year from  
10 now they come in and say, "Well, we have rethought  
11 this business of the cask. This is a lot of hassle.  
12 And we would like to change from the modified cask  
13 back to the old cask."

14 They come to the staff. The staff looks  
15 at it, pulls this Sandia analysis off the shelf, and  
16 says, "Fine. It looks good to us. We analyzed it,  
17 and it passes muster."

18 What hearing rights or opportunities would  
19 the state have at that time?

20 MR. TURK: I can't tell you definitively  
21 whether PFS would have to apply for a license  
22 amendment or not. The first thing they would have to  
23 do is perform a 72.48 assessment to determine whether  
24 or not making the modification to their license task  
25 would require them to submit a license application

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1 because the set of standards set forth in 72.48, that  
2 they would have to assess reaching that determination.

3 CHAIRMAN FARRAR: Well, in assessing that  
4 under the regulation, doesn't the agreement they  
5 voluntarily signed with the state have an impact on  
6 that regulation at that time?

7 MR. TURK: No.

8 CHAIRMAN FARRAR: No?

9 MR. TURK: It does not. The agreement  
10 specifically does not require PFS to use modified  
11 casks. PFS according to the agreement between the  
12 state and --

13 CHAIRMAN FARRAR: I didn't say it requires  
14 them to use a modified cask. I am saying what is  
15 explicit or implicit in it in terms of what procedures  
16 they would have to employ and what rights they would  
17 have to give the state if they decided that they  
18 wanted to go back to the unmodified cask, which I  
19 understand is their right under the agreement. But  
20 what does the agreement talk in terms of the other  
21 party's rights if that were to happen?

22 MR. TURK: Okay. There are two things  
23 that you need to keep in mind. Number one, what the  
24 agreement is says that if PFS should use a modified  
25 cask, in that event, they have to do certain

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1 assessments. The agreement does not say they must use  
2 a modified cask.

3 CHAIRMAN FARRAR: Yes, but Mr. Gaukler  
4 told me one or two conference calls ago that their  
5 application now pending in front of the Commission and  
6 us for this license involves a modified cask.

7 MR. TURK: That's correct. And that's the  
8 decision that you would be rendering, whether the  
9 modified cask could be licensed for use at the PFS  
10 facility. That's another way of saying the facility  
11 should be licensed. That's the only determination  
12 that you and the Commission would make at this -- PFS  
13 after that decision is made would have to decide if  
14 they wanted to use something other than the modified  
15 cask that you would be approving if you did approve.  
16 It would have to define what procedures do we have to  
17 follow if we want to use a different kind of cask?

18 And there is a very important footnote in  
19 the joint motion for the contention. And that  
20 footnote says that either PFS or the state are  
21 foregoing their right to argue at some later time what  
22 procedures should be followed.

23 But there is no requirement that your  
24 decision is not required to say PFS may only use the  
25 modified cask. All you are doing is deciding, can the

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1 modified cask be used? Can we license that? If you  
2 say yes, that cask may be licensed when you prove it  
3 in this decision.

4 That is the only thing you are called upon  
5 to decide. Whatever happens later is the subject of  
6 further developments, which would involve PFS in the  
7 first instance, the staff, and the state as well. But  
8 the only decision you have to decide is, is the  
9 modified cask --

10 CHAIRMAN FARRAR: Okay. We understand  
11 that.

12 MR. TURK: Also there was a point you had  
13 asked initially about cluttering the record.

14 CHAIRMAN FARRAR: Wait a minute. Hold on,  
15 Mr. Turk.

16 (Whereupon, the foregoing matter went off  
17 the record at 12:33 p.m. and went back on  
18 the record at 12:34 p.m.)

19 CHAIRMAN FARRAR: Mr. Turk?

20 MR. TURK: Yes?

21 CHAIRMAN FARRAR: Okay. I think we  
22 understand your position. Mr. Gaukler, had we given  
23 you a sufficient opportunity before -- why don't you  
24 before we call on Ms. Chancelor to respond explain  
25 what you think the future holds under your settlement

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1 with the state and under what Mr. Turk has just said?  
2 How do you see the future in assuring fairness to all  
3 parties given the agreement you have with the state?

4 MR. GAUKLER: Given the agreement we have  
5 with the state, number one, you just ask for  
6 [Changes.] as provided for in our current application.  
7 They have all the rights with respect to that  
8 agreement. They are making license in this case or  
9 this proceeding for a cask without [Changes.] --

10 CHAIRMAN FARRAR: Mr. Gaukler, do we have  
11 to keep using that word?

12 MR. GAUKLER: I apologize, Your Honor.

13 CHAIRMAN FARRAR: We will have the court  
14 reporter substitute the word "[Changes.]" for the word  
15 you used wherever it appears.

16 MR. GAUKLER: Right.

17 CHAIRMAN FARRAR: Mr. Reporter, can we do  
18 that? Okay. That's affirmative.

19 Go ahead, Mr. Gaukler.

20 MR. GAUKLER: As I said, we are not in  
21 this proceeding here asking the Board to license a  
22 cask without those changes. The only way that we may  
23 get a license without those changes as part of this  
24 license application is if the probability part of the  
25 Board's decision were reversed and that we would never

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1 need to get to the consequences issue. That's where  
2 I see the effects on this, which are none.

3 In terms of the future, we are very  
4 specific in terms of what the agreement was limited  
5 to; i.e., these are PFS's obligations if we use casks  
6 with the change. And I was very specific that with  
7 respect to anything other than that, we did not waive  
8 any rights to pursue a cask without the changes and  
9 the state didn't waive any right to challenge our  
10 pursuit of a cask without changes. That was in  
11 footnote 2 of the state motion to dismiss.

12 I think it correctly reflects the future.  
13 The agreement does not, however, require PFS to use  
14 such cask in that PFS does not waive any right, the  
15 ability it may otherwise have under applicable NRC  
16 requirements to pursue the use of casks without the  
17 changes.

18 CHAIRMAN FARRAR: I don't think anybody  
19 has a problem with you pursuing it. The question is,  
20 if you pursue it, what happens? You know, you were  
21 pursuing it here.

22 The state had a contention that was  
23 non-frivolous. You reached a settlement. And it  
24 seems to me that if you come back to the original  
25 setup then why wouldn't the state have the right to

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1 pick up and you would be faced with a hearing on the  
2 original cask?

3 MR. GAUKLER: The state would have any  
4 right to make any such argument, assuming that to be  
5 the case.

6 CHAIRMAN FARRAR: And that argument would  
7 not be made to us? That would be made to the  
8 executive director of operations or somebody?

9 MR. GAUKLER: What the agreement says is  
10 that the state doesn't waive any argument or challenge  
11 it may have to raise under particular NRC requirements  
12 to PFS' technical guys of any such right or ability.

13 CHAIRMAN FARRAR: So we don't spend too  
14 much of our day here, let me ask Ms. Chancellor to  
15 respond to this. And let me ask while she is  
16 responding for the other two of you to figure out a  
17 way that we can take care of the Board's concerns and  
18 move forward on this.

19 MS. CHANCELLOR: I'll be very brief, Your  
20 Honor. Mr. Turk mentioned that regardless of what is  
21 in the record, that the issue before you is whether  
22 the modified cask can withstand the impact.

23 I would note that the Sandia analysis, as  
24 you will see in the attachment to our motion, all we  
25 are asking for is for 4.2 to be deleted, which is the

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1 analysis. What are we calling it? With the original  
2 task. And a couple of items in the introduction and  
3 conclusion.

4 All of the modeling details, what Mr. Turk  
5 is referring to, the effort that went into all of  
6 this; all of those modeling details, all of the  
7 parameters that Sandia used are in the -- we're not  
8 asking for those to be deleted from the report.

9 And it doesn't -- I'm not a technical  
10 person, but there seem to be two stand-alone analyses.  
11 4.2 is the original. 4.3 is the modified. And it  
12 seems to me that you could delete 4.2 without  
13 affecting 4.3.

14 There's a couple of comparative sentences,  
15 such as "now," the use of the word "now" or  
16 "comparative." That I don't think is destroyed by  
17 deleting 4.2.

18 The bias that is in this is that this is  
19 the only current report that is in the record with  
20 respect to the original cask.

21 With respect to settlement of TT, we're  
22 all focused on footnote 2. The state entered into  
23 footnote 2. And maybe in our naivete, we thought that  
24 the NRC process would be fair and that PFS would be  
25 required to get a license amendment and that we would

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1 be able to participate later on in a proceeding  
2 because if PFS wants to go back to the original casks,  
3 there are many things that change, such as what is the  
4 effect of an aircraft impact to the original cask.

5 My question is, would the state have any  
6 right to challenge PFS' assessment under 72.48 if that  
7 assessment showed that it didn't need to modify its  
8 license other than a 2.206 request?

9 And so I think that there is the potential  
10 for the state to be disadvantaged because it made the  
11 extra effort to settle an issue that we think is  
12 extremely important. And that is whether the cask  
13 that PFS is proposing can actually be fabricated and  
14 can be used at the PFS site.

15 CHAIRMAN FARRAR: Ms. Chancellor, Judge  
16 Abramson has a question for you.

17 JUDGE ABRAMSON: Ms. Chancellor, help me  
18 understand what your argument here is. Whether or not  
19 we permit this information regarding analysis of the  
20 unmodified cask, the status of a licensee once it has  
21 a license is unaffected, I think.

22 That is, once PFS gets a license, assuming  
23 it gets one, for this modified cask, the process  
24 through which it must go in order to modify some piece  
25 of its equipment is unaffected by what was in our

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1 record. Am I not correct?

2 MS. CHANCELLOR: It is unaffected by what  
3 is in your record except to the extent that PFS could  
4 point to the Sandia analysis of the original cask. I  
5 don't know if that gives it more of an informata of  
6 authority if it's introduced into the hearing.

7 But what the record in this proceeding  
8 does do, it says that with respect to whether PFS can  
9 install the widgets, for want of a better word,  
10 whether PFS can install these widgets or not, that is  
11 an issue that the state gave up in return for PFS  
12 doing certain things.

13 I think that because we were willing to go  
14 to the extra mile to settle that and later on now we  
15 find out that they are going to rely on this report  
16 that the staff did and that there may not be a license  
17 amendment, that works against us.

18 I would also make a second point that not  
19 only is there bias from this proceeding, but I think  
20 there could be bias on appeal. You know, the whole  
21 record will be certified for appeal. And we don't  
22 want any potential for anybody to point to --

23 CHAIRMAN FARRAR: But can't we take care  
24 of that by writing an opinion that says, "Here's what  
25 we" -- assume we deny your motion and we write an

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1 opinion that says, "This evidence came in. It  
2 happened for historical reasons to be shaped in the  
3 following fashion."

4 We let it stay that way. But our ruling  
5 in no way passes judgment on that. As far as we're  
6 concerned, that document, while it's in evidence, does  
7 not have our imprimatur.

8 It exists. It is on the shelf. And  
9 whether or not we let it into the record. It's still  
10 going to be on the shelf. Can't we take care of that  
11 with a well-drawn commentary?

12 MS. CHANCELLOR: Then, Your Honor, we would  
13 request that we could introduce the 2003 report in its  
14 entirety so that there is a historical -- not  
15 counterpoint but there is at least something  
16 historical in the record from the state's perspective.

17 CHAIRMAN FARRAR: That's your 2003 report?

18 MS. CHANCELLOR: That's right.

19 CHAIRMAN FARRAR: All right.

20 JUDGE ABRAMSON: Your analysis of the  
21 unmodified cask. Is that correct?

22 MS. CHANCELLOR: Yes except that our  
23 analysis was actually of revision 1 of the whole pack  
24 cask and revision 1 is different from revision 0,  
25 which PFS is using, because at that stage from reading

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1 prior testimony, it appeared to us that they were  
2 using the task without the shield shell; whereas, the  
3 revision 0 has both the inner shell of the over pack  
4 plus a shield shell.

5 So it's something. I hope I didn't  
6 confuse you on that.

7 CHAIRMAN FARRAR: Well, whether or not you  
8 introduce the other analysis I think is something we  
9 need to think about, but let me come back to my  
10 question to you because I understand that you're  
11 feeling in some ways disadvantaged by having signed up  
12 an agreement.

13 But what is in front of this Board is a  
14 license for a modified cask. And no matter what is in  
15 front of this Board, if a license is granted, then PFS  
16 becomes a licensee. And the procedures which it must  
17 go through to modify some part of its equipment are  
18 spelled out in the regulations. And I still am having  
19 difficulty understanding why in your view that is  
20 affected by what we consider in this hearing.

21 MS. CHANCELLOR: Because in this hearing,  
22 if you go back to when we filed TT, in this hearing  
23 was at issue whether the modified cask could be used  
24 at all at the PFS site. We gave that up. We gave  
25 that up for the settlement. And it is because we --



1 CHAIRMAN FARRAR: Wait, wait.

2 MS. CHANCELLOR: It could be because we  
3 gave up --

4 CHAIRMAN FARRAR: Wait, wait, Ms.  
5 Chancellor. You gave that up, but you got some  
6 valuable concessions from the company in return for  
7 giving that up.

8 MS. CHANCELLOR: We hadn't gotten any  
9 confessions until the rug was pulled out from under us  
10 by the staff by its conducting a report of a cask that  
11 PFS says that it is no longer going to use but in the  
12 future many bring that issue up.

13 All I'm saying is that the playing field  
14 changed.

15 MR. GAUKLER: Your Honor, no matter how  
16 long I stay in this proceeding, I always find that I  
17 am under attack.

18 CHAIRMAN FARRAR: No, no. No one is under  
19 attack.

20 MR. GAUKLER: May I respond briefly?

21 CHAIRMAN FARRAR: No. We don't need that.

22 MR. GAUKLER: But I would like to go on to  
23 some things that are not in a personal nature but  
24 within responsive respect to the substance of the  
25 argument.

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1 CHAIRMAN FARRAR: We gave you your chance.  
2 Ms. Chancellor is not finished. But had me cut  
3 through something here. What is the chance that if we  
4 were to -- suppose -- and I do not have my colleagues'  
5 agreement to this because I just made it up. What if  
6 we conditioned denial of the state's motion on you all  
7 reaching an agreement on what the procedure would be  
8 to give the state some rights if the applicant were to  
9 try to want to use the unmodified cask? Mr. Gaukler,  
10 is that something you would be willing to talk about  
11 with the state and the staff?

12 MR. GAUKLER: Your Honor, we went back to  
13 use the cask without [Change.], the changes. What we  
14 would use if we decide to go that route may not be the  
15 original cask or it may be a different cask, et  
16 cetera, on the road.

17 I don't think the basic -- you know, the  
18 emphasis of the agreement was to say that, "We are  
19 going to do this, but we can make appropriate changes  
20 per the NRC requirements down the road."

21 And so as changes require license  
22 application, license amendment application, which in  
23 many situations they may, in other situations they may  
24 not, I think it all depends on what the nature of the  
25 change is, whether or not you need --

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1 CHAIRMAN FARRAR: I understand the answer.  
2 Judge Abramson has a question for you.

3 JUDGE ABRAMSON: Yes. I would just like  
4 to say something here about a lot of words we have  
5 heard about what this agreement did. I want to remind  
6 the parties, the state as well as PFS, that at the  
7 time that this Board encouraged the state and PFS to  
8 try to reach an accommodation on contention TT, we did  
9 not say whether it was going to be admitted or not.  
10 We simply said that the determining whether we would  
11 admit the contest on that was a tough call.

12 So nobody gave up any rights they had at  
13 that point other than to make in front of us a  
14 challenge.

15 JUDGE LAM: This is Judge Lam. That is  
16 exactly right.

17 MR. SOPER: I think that -- this is Jim  
18 Soper -- maybe it might be helpful if the ruling on  
19 this motion should it be as it seems to be leaning,  
20 that we could have some kind of affirmative statement  
21 that our failure to address anything in this case  
22 couldn't be raised against us because I think that is  
23 the concern, that this hearing would be held up to the  
24 fact that evidence of the six prior casks was  
25 introduced and that if they didn't meet a challenge to

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1 that and have an opportunity, it could have been  
2 raised in some sort of issue preclusion like that.

3 JUDGE LAM: Well, this is Judge Lam.  
4 There is another scenario I don't think the party has  
5 raised. Like Judge Farrar and Judge Abramson were  
6 talking about, if the license is granted, how would  
7 things develop? Well, how about if the license is  
8 denied? How would that play out in terms of the  
9 state's rights?

10 MS. CHANCELLOR: We would be very happy,  
11 Your Honor. I assume that PFS would either go away or  
12 they would come back with a different talk. And then  
13 because they don't have a license, they would have to  
14 submit another license application. We would have the  
15 opportunity for a hearing.

16 Now what we are hearing is that all of  
17 these hearings that were gone through may be for  
18 naught because PFS could do an assessment that the  
19 staff would sign off on that says the modification  
20 doesn't meet a license amendment.

21 And I agree with Mr. Soper that we want  
22 something in the record that shows that there is no  
23 issue preclusion here.

24 CHAIRMAN FARRAR: All right.

25 MR. TURK: May I comment, Your Honor?

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1 CHAIRMAN FARRAR: Yes. Go ahead, Mr.  
2 Turk.

3 MR. TURK: First of all, I think there is  
4 a misunderstanding or a misstatement of the agreement  
5 that is --

6 CHAIRMAN FARRAR: Yes, but, Mr. Turk, you  
7 weren't party to that agreement, were you?

8 MR. TURK: I was party to the discussions,  
9 Your Honor.

10 MS. CHANCELLOR: Your Honor, Mr. Turk was  
11 party to the agreement to the extent that we had to  
12 renegotiate certain items because it required NRC to  
13 do certain things. And the state entered into the  
14 settlement discussions.

15 CHAIRMAN FARRAR: All right.

16 MR. TURK: I'm fully aware of what the  
17 agreement calls for. And I was a party to many of the  
18 discussions about it, Your Honor. I raised concerns  
19 about what the agreement meant. I was particularly  
20 concerned about what the staff's enforcement  
21 responsibilities would be and what the agreement  
22 actually required PFS to do.

23 CHAIRMAN FARRAR: Okay.

24 MR. TURK: I am very well-aware of the  
25 issues. The state raised concerns that if PFS uses

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1 the modified cask, other problems would arise. The  
2 agreement between them takes care of the problems the  
3 state identified by using the modified cask.

4 The agreement does not state that PFS must  
5 use that cask. Your Honor, the only issue you have to  
6 decide is though the current application for PFS has  
7 now modified the submission, request that the modified  
8 cask be like -- that is the only decision that you  
9 must address.

10 You are very free -- and I would say it is  
11 probably a good idea in order for the state to feel  
12 like they are not giving anything up -- to indicate if  
13 you admit the evidence concerning the pre-modified  
14 cask, it would be appropriate for you to include a  
15 sentence in your decision that states you are making  
16 no finding with respect to the adequacy of the  
17 pre-modified cask.

18 Then the state has no possibility of  
19 arguing that there is somehow bias because the record  
20 is clear that no decision has been made about that  
21 other cask. That takes care of their problem. You  
22 also solve all of the other problems while trying to  
23 dissect reports and trying to figure out what is  
24 relevant and what is not relevant.

25 Any evidence that is in it is not relevant

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1 to the decision that you must make. Disregard it as  
2 you reach your decision.

3 CHAIRMAN FARRAR: Mr. Turk, I think we  
4 have the point.

5 MR. TURK: There is one other point I  
6 would like to make, Your Honor.

7 CHAIRMAN FARRAR: Okay. Make it fast  
8 because we have got to get moving here. We have got  
9 a lot to cover today.

10 MR. TURK: In terms of what happens after  
11 this proceeding is over, that is beyond the scope of  
12 the proceeding that you are sitting in as a judge and  
13 that we are participating in as parties.

14 The Commission at some later time if faced  
15 with a request by PFS or faced with a 72.48 analysis  
16 by PFS receives that and has to decide what is  
17 appropriate to do, the state at that time can  
18 challenge it, either through a license amendment if a  
19 license amendment is deemed to be necessary or if PFS  
20 goes the 72.48 route and says they don't need a  
21 license amendment, they can then file a petition with  
22 the Commission to request a hearing on that.

23 CHAIRMAN FARRAR: All right. You can have

24 --

25 MR. TURK: That is beyond the scope of

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1 what you have to deal with in this proceeding.

2 CHAIRMAN FARRAR: Then if it's beyond the  
3 scope, don't be telling me what is going to happen  
4 later. We have it one way or the other. We will be  
5 in a brief off the record here to discuss among  
6 ourselves our ruling here.

7 (Whereupon, the foregoing matter went off  
8 the record at 12:55 p.m. and went back on  
9 the record at 12:56 p.m.)

10 CHAIRMAN FARRAR: We're back on the  
11 record. Our decision is we will deny the state's  
12 motion but with the following thoughts. Number one,  
13 we will put in the opinion and we will make it very  
14 clear that we are ruling only on the case that's in  
15 front of us. And the other conclusions that may  
16 appear in the staff's evidence we have not passed  
17 upon.

18 Number two, the state will be free to  
19 introduce its similar sort of report on the earlier  
20 case.

21 And the third thing is what Mr. Soper said  
22 about making it -- we endorse what he said. And at  
23 some point, we will commit that to writing that the  
24 state has not waived any rights. They have pursued  
25 all of their rights. And at any future time, it would

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1 certainly be unfair if anyone said, "Well, they are  
2 precluded from doing something because of some waiver  
3 attendant upon this." So we will make those three.  
4 Those three points will be clear.

5 The next motion was the state's motion of  
6 June 28th about the excluding flight data that is not  
7 representative of Skull Valley. Maybe we can shorten  
8 this by me sharing with you some of the Board's  
9 thinking.

10 The so-called Skull Valley -- the accident  
11 reports that came in that we said were reflective of  
12 Skull Valley conditions came in for a particular  
13 purpose last time. It may or may not be the same  
14 purpose this time.

15 We understand that of the 61 reports, the  
16 company has decided that 4 of them are not relevant to  
17 Skull Valley events for the purpose we're now  
18 considering; that is, at what speed and angle might a  
19 plane hit. But the state asks that some other reports  
20 be excluded on a similar basis. And we want to hear  
21 more about that. It seems to me this ought to be an  
22 easy one to agree on what are the Skull Valley events  
23 that are relevant for this purpose.

24 Ms. Chancellor, when you --

25 MS. CHANCELLOR: Mr. Soper will be doing

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1 this one, Your Honor.

2 CHAIRMAN FARRAR: All right. Mr. Soper,  
3 when you address that, I guess we remain confused, as  
4 I expressed one or two conferences ago, I guess one  
5 conference ago, about this notion that flights below  
6 2,000 feet, ejections below 2,000 feet, should be  
7 excluded because if they are seen in my mind and I  
8 think Judge Lam's, who was with me on that part of the  
9 case, if there's one thing we decided that is the law  
10 of the case, it is that ejections take place below  
11 2,000 feet.

12 In fact, I don't think it is an  
13 exaggeration to say we wouldn't be here today if we  
14 had not reached that conclusion, if that were part and  
15 parcel of our rejection of the R factor, the fact that  
16 the Air Force's instructions were not followed.

17 So when you address why we should exclude  
18 flights below 2,000 feet, it seems to me that if there  
19 is anything that is law of the case, it's that. So  
20 why don't you make your argument?

21 MR. SOPER: I thank you, Your Honor.

22 The easiest way to address this is in baby  
23 steps, if you will, two or three just central issues  
24 that by themselves seem to be simple and clear.

25 First of all, I would like to say that

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1 what is at issue here in this motion is the following.  
2 The Board, of course, is going to be determining if an  
3 F-16 will breach a cask. It is obvious I think to all  
4 that that depends on how fast the F-16 is going when  
5 it hits and at what angle but mostly how fast is it  
6 going.

7 We know that there is a correlation  
8 between the ejection altitude; in other words, in an  
9 emergency, the pilot ejects at some point and that is  
10 correlated to how fast the aircraft impacts the  
11 ground. And the correlation is this. The lower the  
12 ejection, the slower the impact speed.

13 So naturally what is at issue, then,  
14 ultimately is if low ejection altitude crashes were  
15 allowed to be used to predict the impact speed, PFS  
16 would naturally want those in there to show that the  
17 impact speed is slower and less damage would be likely  
18 to cause to its cask. That is what this is all about.

19 The next thing is, what are these Skull  
20 Valley-type events? And I think, Judge Farrar, that  
21 our concern is reflected by your remarks. In other  
22 words, you said, "Well, we have the Skull Valley  
23 accident or event or whatever." That is just the  
24 whole point in this case.

25 PFS has named a group of crashes, Skull

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1 Valley-type events, and then uses that over and over,  
2 repeats that phrase to give it some notion as to these  
3 are crashes that could happen in Skull Valley.  
4 They're not. Here's what they are.

5 PFS used this group in the last hearing.  
6 It's a group of 60 million crashes, as you know. They  
7 named it, the group, Skull Valley-type events. And,  
8 as you know, in the last hearing, this group of  
9 crashes was selected based on what sort of mechanical  
10 failure caused the crash.

11 In other words, did the engine just stop  
12 -- that's one kind of mechanical failure -- or was  
13 there a fire and the pilot had to eject or was there  
14 a wing ripped off in an in-flight collision? The  
15 reason these were grouped this way is because some  
16 mechanical events leave the plane flyable,  
17 controllable. Some mechanical events do not. The  
18 pilot has to eject right away.

19 So, as you alluded to, these groups of  
20 flights were used for the proposition of whether or  
21 not the pilot would have time to fly the plane after  
22 the emergency event, which was PFS's theory that where  
23 they could fly the plane, they would be able to point  
24 it away from the site.

25 CHAIRMAN FARRAR: And you're going to say

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1 that these are now being offered for a different  
2 purpose.

3 MR. SOPER: Yes, because this group of  
4 Skull Valley-type events turns out to be the  
5 mechanical failures or engine failures. And while  
6 that part can break in Skull Valley, it can break  
7 anywhere. Thus, we have Skull Valley events that show  
8 crashes where the pilot is taking off or the pilot is  
9 landing, mechanical failures at 2,300 feet.

10 CHAIRMAN FARRAR: Assume we agree with  
11 you. Why isn't the answer that the parties get  
12 together and decide which of these 61 events are now  
13 relevant for purposes of the inquiry we're now  
14 conducting?

15 And if they can't agree on which of the 61  
16 are relevant, then your respective witnesses can tell  
17 us why various ones of them are not relevant in your  
18 mind. And we'll hear their evidence. The other side  
19 will have a chance to respond to it. And we'll know.  
20 And then we will make a decision that the following 52  
21 are relevant.

22 MR. SOPER: Okay. I understand your  
23 point. And that's, at least in concept, a very good  
24 way to go. Let me say that my estimate would be  
25 agreement is not possible and will not be forthcoming.

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1 PFS I don't think with a straight face  
2 could not pull out the four crashes that actually had  
3 landed on a runway. And then they ran off the runway  
4 and crashed. It's obvious that there are no runways  
5 in Skull Valley, and those couldn't happen.

6 CHAIRMAN FARRAR: So you're saying if they  
7 took out the landing ones, why don't they take out the  
8 takeoff ones?

9 MR. SOPER: Well, there are many more  
10 landings. Remember Colonel Crosby (Phonetic.), who  
11 testified at length in the hearing last time, told us  
12 about his crash. He was coming in, trying to land  
13 without an engine, got real close to the runway, and  
14 saw another plane go out on the runway. So he had to  
15 eject at the last moment. He ejected only 50 feet  
16 above ground. The plane crashed and, of course, very  
17 slowly.

18 PFS, of course, has that in there as that  
19 could happen in Skull Valley. That's another landing  
20 that they didn't take out. The only ones they admit  
21 to are the ones where they're actually on the ground.

22 CHAIRMAN FARRAR: Can't I argue that that  
23 could happen in Skull Valley? I lose the engine. I  
24 say, "Ah, there's a nice flat hard desert. I'll just  
25 land there."

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1 MR. SOPER: No. I think that even PFS's  
2 pilots -- and they did testify. You can't land a  
3 plane in Skull Valley. You only land on prepared hard  
4 runway surfaces. There's no emergency landing in the  
5 desert.

6 CHAIRMAN FARRAR: Okay.

7 MR. SOPER: Anyway, there was much  
8 evidence the last time. And the Board's ruling sets  
9 it forth. I mean, this is a group of 7,000 flights  
10 annually that fly through Skull Valley, north to south  
11 invariably. And they fly PFS's own FAR, the crash  
12 report, predominantly 3 to 4 thousand feet above the  
13 ground. There are no runways in Skull Valley.

14 CHAIRMAN FARRAR: Let me --

15 MR. SOPER: They say a pilot will eject at  
16 2,000 feet.

17 CHAIRMAN FARRAR: Let me interrupt you,  
18 Mr. Soper. Assume we agreed with everything you said,  
19 that those are good theories for why certain flights  
20 out of the 61 should be eliminated from consideration.  
21 If I listened to the other side, they would have  
22 equally or unequally valid arguments that those should  
23 be included, why is that not a matter for the experts  
24 to talk about at the hearing?

25 I would think that there's not a law of

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1 the case -- for the reasons you stated, there's no law  
2 of the case at work here because we considered the 61  
3 for the one or two parts of the R factor and what they  
4 showed us.

5 We're now looking at them for a entirely  
6 different purpose; in other words, what is the nature  
7 of the following body, and that that is a different  
8 question.

9 And so these 61 events, which may have  
10 been Skull Valley events for one purpose, may not be  
11 Skull Valley events for another purpose. And why  
12 don't we just deny your motion and reserve that for  
13 the hearing?

14 MR. SOPER: Well, I think that here is how  
15 I would respond. Like I mentioned, the nature of the  
16 flights through Skull Valley is very well-documented  
17 in your findings.

18 The PFS report argues the pilots will  
19 eject at 2,000 feet. That has always been their  
20 theory. We show that there is evidence to the  
21 contrary. They can't be counted on to always follow  
22 that.

23 But they say pilots will eject at 2,000  
24 feet. They're presuming that theory on appeal. They  
25 believe that that theory should have been upheld that

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1 pilots will eject at 2,000 feet, that they will always  
2 be able to steer wherever the pilot intends. And  
3 they're still pursuing that.

4 Now they're going to take another approach  
5 and say, "We can include crashes as low as 50 feet,"  
6 forgetting about what they have already said and will  
7 still maintain on appeal.

8 I think that the Board's ruling has  
9 already addressed this. And there is some law of the  
10 case here. I think that the ruling, Judge Farrar, --

11 CHAIRMAN FARRAR: But the law of the case  
12 --

13 MR. SOPER: -- is a little bit more than  
14 saying the pilots cannot be counted on to eject at  
15 2,000 feet. I think the ruling says that pilots will  
16 not always follow their instruction to eject at 2,000  
17 feet.

18 And, therefore, in a nuclear regulatory  
19 sense, pilots cannot be counted on to obey their  
20 instruction, nor can they be counted on to fail to  
21 obey it because what happens, this is not a question  
22 of averages. This is a question of in that one day  
23 that we would all dread where there is an emergency,  
24 that pilot will be put to whether he is going to eject  
25 above 2,000 feet or below. And there is a very good

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1 reason why he would be ejecting above 2,000 feet  
2 because there is an instruction that says he is  
3 supposed to.

4 All of the testimony from all of the  
5 pilots, including our own, is that pilots would  
6 endeavor to eject above 2,000 feet. So on that one  
7 day when we're called to account on this case, do we  
8 want to have an impact speed that would only be based  
9 on averages showing some fail to obey, some will obey?  
10 Therefore, we are counting on a slow impact speed, and  
11 the pilot follows his instructions on that one day.

12 JUDGE ABRAMSON: Mr. Soper, this is Judge  
13 Abramson. I understand your emotional argument here,  
14 but the fact is we are trying to address something  
15 objectively, technically, with relatively scientific  
16 approach, which would require that we look at some  
17 sort of statistical data.

18 You have done that before. You have made  
19 arguments before that certain crashes should be  
20 considered, certain crashes should not be considered.  
21 You would now like to reverse your arguments on that.

22 As you are accusing or as you are saying  
23 that the applicant wants to use a different argument  
24 on appeal than it wants to use here, the fact is this  
25 body has to determine objectively what are the right

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1 flights to examine. And it's not a question of  
2 emotionally throwing out one case or throwing out  
3 another or considering one and not considering  
4 another.

5 MR. SOPER: I didn't understand my  
6 argument to be emotional at all, Your Honor. I am  
7 looking at the ruling of the Board in the last case  
8 that says that pilots cannot be counted on in either  
9 sense.

10 In other words, we can't rely on the fact  
11 that they are going to ignore their instruction and  
12 treat it like it's not there. We can't rely on the  
13 fact that they're always going to follow it.

14 CHAIRMAN FARRAR: Yes. But we had Air  
15 Force special communications saying, "Hey, you all  
16 aren't following the rules. You keep ejecting below  
17 2,000 feet." That was critical to our decision.

18 Whatever people want to go up and say to  
19 the Commission and take inconsistent positions before  
20 us and the Commission, which is fine, how can we take  
21 an inconsistent position and say, "Well, the whole  
22 earlier case turned on our believing the Air Force's  
23 concern that people go below 2,000 feet" when, in fact  
24 -- and now we're going to say, "Well no"? Now we're  
25 going to say that they do go.

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1                   Let me do this, Mr. Soper. I think we  
2 understand your argument. Let me ask the company and  
3 the staff to address this question of suppose we just  
4 left open for the hearing which of these 61 are Skull  
5 Valley events for purposes of what we're now trying to  
6 decide.

7                   JUDGE LAM: Before the staff and the  
8 company answer, this is Judge Lam. Let me add one  
9 remark perhaps that will help you. To me, excluding  
10 evidence based on the simple label can be extremely  
11 misleading.

12                   I hear Mr. Soper saying, "Well, this is a  
13 landing accident. There's no landing accident in  
14 Skull Valley. This is takeoff accident because there  
15 is no driveway."

16                   Now, to me, it is a simple labeling  
17 process. If the accident occurred when the pilot has  
18 a heart attack, the heart attack does not discriminate  
19 regarding to it was a landing accident of 5,000 feet  
20 above ground level.

21                   So before anybody classifies any event as  
22 a Skull Valley event, a lot more analysis needs to go  
23 in there. Therefore, my thought is perhaps this is  
24 not the right time to exclude evidence.

25                   MR. GAUKLER: Judge Lam, this is Bob

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1 Gaukler. I agree with you 100 percent. This is not  
2 the time to exclude evidence. I do want to make some  
3 just statements for the record in terms of what I  
4 think are completely correct characterizations.

5 Skull Valley-type events -- and we inspect  
6 this work at length in the joint testimony of Cornell,  
7 Jefferson, and Fly (Phonetic.). I would urge the  
8 Board members to look at that in terms of why we  
9 believe these events are relevant in this setting.

10 Just one point to make. Skull Valley-type  
11 events are where the initiating cause could happen in  
12 Skull Valley. And they make the point that they  
13 factor in terms of speed and angle at which you impact  
14 the ground initiating cause is one fact that needs to  
15 be taken into account.

16 You also need to take into account the  
17 population you're looking at and Skull Valley type is  
18 in basically represents the population of events that  
19 would occur in Skull Valley, initiating events that  
20 would occur in Skull Valley if we did not fly in Skull  
21 Valley-type conditions.

22 So that is the population you have got to  
23 look at. But then you have got to go and say, "Well,  
24 what is the proper impact angle to draw from this  
25 population? How do I use that data that I have to

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1 properly draw the impact speed and angle?"

2 They go through at length in their  
3 testimony to say why the accidents are relevant and  
4 not relevant to look at that information and also do  
5 some sensitivity analyses as well with respect to this  
6 claim of Mr. Soper's about landing accidents.

7 CHAIRMAN FARRAR: Let me ask you a simple  
8 question, Mr. Gaukler. Let's take Judge Lam's  
9 hypothetical. A pilot has taken off from any airfield  
10 in the country. And he gets up to 40 knots and has a  
11 heart attack, and the flight aborts and whatever.

12 Now you can say, "Okay. A person can have  
13 a heart attack in flying over Skull Valley." In that  
14 case, what would you use for the speed and angle of  
15 impact of the plane, certainly not the 40 knots that  
16 he is going on the runway or would you?

17 MR. GAUKLER: You would use -- well, first  
18 of all, we looked at all impact speeds and angles in  
19 terms of all the flights that you had. We then looked  
20 at what was appropriate to use in terms of evaluation.

21 And, as pointed out in the testimony of  
22 Cornell, Fly, and Jefferson, the state claims that  
23 while there are too many low accidents used in this  
24 population step, if you look at the higher accidents,  
25 there's more --

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1 CHAIRMAN FARRAR: No. I'm not interested  
2 in what they claim. I want to know what your experts  
3 did with that kind of case where there was a heart  
4 attack at 40 knots taking off on the runway. And you  
5 say, "Okay. That could happen in Skull Valley." What  
6 did they use for speed, angle of impact of a person  
7 having a heart attack flying over Skull Valley or did  
8 they just take, "Well, that was 40 knots. And he was  
9 on the runway. So it was at zero degrees"?

10 MR. GAUKLER: On the runway, we threw out  
11 the runway accident.

12 CHAIRMAN FARRAR: All right. But you get  
13 the point of my question.

14 MR. GAUKLER: Right. We explain all of  
15 that in the testimony: what we looked at and why we  
16 looked at it. And we have a very viable basis why we  
17 think it is appropriate to look at the various  
18 accidents that we have had.

19 CHAIRMAN FARRAR: All right. And then if  
20 the state disagrees with that, that is a matter for  
21 them to point out at the evidence.

22 MR. GAUKLER: Exactly right, Your Honor.

23 CHAIRMAN FARRAR: Okay.

24 MR. BARNETT: The reason you didn't get an  
25 answer, Your Honor, is because they would leave that

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1 in.

2 CHAIRMAN FARRAR: All right. Well, let me  
3 ask, Mr. Turk, do you have anything to add here?

4 MR. TURK: Ms. Zaccari will address this,  
5 Your Honor.

6 CHAIRMAN FARRAR: That's suitable, Ms.  
7 Zaccari, given your notable background before you came  
8 here.

9 MS. ZACCARI: Thank you, Your Honor.

10 Your Honor, just briefly, I think that the  
11 staff pleading stands on its own. I will say that the  
12 staff has undertaken a detailed statistical analysis  
13 based on Skull Valley type events, instead of the 61  
14 minus the 4 accidents that occurred on the runway.  
15 And by "on the runway," I mean physically the airplane  
16 was touching the ground.

17 In essence, what the state is arguing is  
18 that we ignore reality for the purposes of statistical  
19 analysis. And while statistics can be manipulated, I  
20 think that the staff has taken an inclusion position,  
21 rather than an exclusive position, as is argued by the  
22 state.

23 Beyond that, as I said, I think our  
24 pleading on this matter stands on its own. And the  
25 appropriate course is to consider the evidence during

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1 the course of the hearing.

2 CHAIRMAN FARRAR: So the way you did your  
3 analysis, if the state doesn't like it, that's a  
4 matter where your people can be challenged on why it  
5 was appropriate. You said you have taken an inclusive  
6 approach. If they don't like that, they can come at  
7 you. Is that your view?

8 MS. ZACCARI: That's exactly right, Your  
9 Honor. That is why we have hearings.

10 CHAIRMAN FARRAR: All right. Did you have  
11 anything else to add, Ms. Zaccari?

12 MS. ZACCARI: No, Your Honor. Thank you.

13 CHAIRMAN FARRAR: Okay. Thank you. Mr.  
14 Soper?

15 MR. SOPER: I think that probably sizes  
16 things up.

17 CHAIRMAN FARRAR: All right. Then give us  
18 a moment here.

19 (Whereupon, the foregoing matter went off  
20 the record at 1:20 p.m. and went back on  
21 the record at 1:21 p.m.)

22 CHAIRMAN FARRAR: We're back on. As is  
23 probably apparent from the tone of our questions, we  
24 are going to deny the state's motion, but I have a  
25 comment and Judge Abramson has a comment.

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1 First, from my point of view, we will hear  
2 what anybody has to say, but I think you will probably  
3 find us very unreceptive to the notion that ejections  
4 under 2,000 feet should be excluded. In fact, in the  
5 interest of moving the hearing along, I think we view  
6 that, if anything in this case is law of the case,  
7 that is the law of the case.

8 Now, if you want to file a brief on it and  
9 get us to change our mind, but we don't want to spend  
10 a lot of hearing time on that question because I think  
11 we're correct that we would not be here if that wasn't  
12 how we felt. So that's one point, and Judge Abramson  
13 has the other.

14 JUDGE ABRAMSON: This is Judge Abramson.  
15 The other point that all of you need to be aware of is  
16 that this Board intends to take testimony on what  
17 flights should be considered and why as flights that  
18 could lead to a crash into the site that could cause  
19 damage to a cask.

20 And to the degree that we may decide that  
21 neither of the analyses or none of the analyses that  
22 have been submitted to us regarding probabilities of  
23 various speeds and angles are correct because they had  
24 assumed different sets, all parties need to be  
25 prepared to respond to questions and give us new

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1 numbers for probabilities of speeds and angles.

2 CHAIRMAN FARRAR: And the rest of us,  
3 Judge Lam and I, are in total agreement with Judge  
4 Abramson's statement of how we will proceed.

5 All right. Then you have our rulings on  
6 the motions in limine. We have used up close to two  
7 hours. So let's move quickly --

8 MS. CHANCELLOR: If I may, Your Honor, you  
9 mentioned that we may submit a brief on the issue of  
10 ejections below 2,000 with respect to law of the case.  
11 When will that be due?

12 CHAIRMAN FARRAR: Whenever you want to  
13 file it.

14 MS. CHANCELLOR: Okay.

15 CHAIRMAN FARRAR: Sometime before the  
16 hearing. But it is a really uphill battle.

17 MS. CHANCELLOR: We will evaluate that,  
18 Your Honor.

19 CHAIRMAN FARRAR: It's not a matter of not  
20 being fair, but we wrote that decision and we know  
21 what we were thinking. I dare say had we taken a  
22 different view, it might have changed the outcome.

23 The whole point I think of our decision  
24 was there are rules and people don't follow them and  
25 people make mistakes that lead to them not following

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1 them. But you're free to have at it.

2 JUDGE LAM: This is Judge Lam. Ms.  
3 Chancellor, for your information, if ejection below  
4 2,000 feet were to be excluded, it may not necessarily  
5 have an impact on the probability that we rule on  
6 exceeding the Commission's data because if you could  
7 estimate what are the fraction of flights that get  
8 ejection of the pilot below 2,000 feet, if you modify  
9 that probability, then the outcome could be very  
10 different.

11 MS. CHANCELLOR: Fine. Judge Lam, we will  
12 evaluate whether we will file anything or not.

13 CHAIRMAN FARRAR: All right. What we held  
14 speaks for itself. Let's go on from there. Mr.  
15 Gaukler, I think you said at the beginning you need  
16 more time on stipulations?

17 MR. GAUKLER: Yes.

18 CHAIRMAN FARRAR: All right. In terms of  
19 the hearing, we now I see are up to 18 panels, which  
20 may be a new high, maybe not. Does anyone want to  
21 make a representation particularly based on what we  
22 talked about today and how many days, how many  
23 six-hour days we need to do those 18 panels? Have you  
24 all talked about that?

25 MR. GAUKLER: We talked some about that,

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1 Your Honor, but we haven't reached any conclusion on  
2 that.

3 CHAIRMAN FARRAR: You have a new last  
4 conference call. There was some problem about witness  
5 availability. Are you still working on that?

6 MR. GAUKLER: Well, we made some decisions  
7 in that respect, Your Honors, that we will provide you  
8 with now so that you can start planning.

9 CHAIRMAN FARRAR: Okay.

10 MR. GAUKLER: All the parties agree that  
11 we should start with structural. Alan Solar  
12 (Phonetic.) would be the first witness on starting the  
13 hearing on Monday morning, August 9th.

14 CHAIRMAN FARRAR: Okay.

15 MR. GAUKLER: He would have both his F-16  
16 testimony and the testimony of the ordnance at that  
17 time, four structural witnesses. Accordingly, I think  
18 that they --

19 CHAIRMAN FARRAR: Wait a minute, Mr.  
20 Gaukler. I've got to get the right piece of paper  
21 here in front of me.

22 (Pause.)

23 CHAIRMAN FARRAR: Okay. Go ahead. Solar  
24 would be first on?

25 MR. GAUKLER: Monday morning, August 9th.

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1 CHAIRMAN FARRAR: Right. And he would do  
2 his structural on casks?

3 MR. GAUKLER: And do the piece of ordnance  
4 he filed as well.

5 CHAIRMAN FARRAR: Okay.

6 MR. GAUKLER: We'll do them both together.

7 CHAIRMAN FARRAR: Right.

8 MR. GAUKLER: We talked about it. Then we  
9 go from there to the NRC staff and to the state except  
10 the state does have one request, to which I have no  
11 problem, which is that their witness be taken out of  
12 order so that Dr. Hoffman (Phonetic.) might be able to  
13 appear.

14 But the idea is that we would do all of  
15 those structural issues the first seven-eight days.  
16 Recently before the hearing, we talked seven-eight.  
17 The state definitely believes eight. That could be.  
18 We're talking about the first seven-eight days --

19 CHAIRMAN FARRAR: Okay. Wait a minute.

20 MR. GAUKLER: -- but eight days being  
21 structural.

22 CHAIRMAN FARRAR: Right. Be a little more  
23 specific. After Solar, who would we have?

24 MR. GAUKLER: We would have at least one  
25 NRC staff panel.

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1 CHAIRMAN FARRAR: Which would be which  
2 one?

3 MR. GAUKLER: We haven't decided that.

4 CHAIRMAN FARRAR: But it would be the ones  
5 on CTB or the casks?

6 MR. GAUKLER: Yes, the one on the cask.  
7 We hope to get rid of CTB.

8 CHAIRMAN FARRAR: Okay. And that would  
9 be?

10 MR. GAUKLER: It could be either Bjorkman,  
11 Shumaker (Phonetic.), both men together with the  
12 Sandia people.

13 MR. TURK: I apologize. Let me address  
14 that for a second.

15 CHAIRMAN FARRAR: Yes.

16 MR. TURK: The staff testimony on casks is  
17 four people. It's the two house staff people with the  
18 two Sandia people on the panel.

19 CHAIRMAN FARRAR: So that's Bjorkman,  
20 Shumaker, Colin (Phonetic.), and Gwinn (Phonetic.)?

21 MR. TURK: Yes.

22 CHAIRMAN FARRAR: So that would be the  
23 four-person panel. And then whom?

24 MR. TURK: We also have a panel of two  
25 people, Bjorkman and Aramayo (Phonetic.), who

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1 deconstructed the first panel and also now  
2 deconstructed the second panel. The question is,  
3 should we put them on before the state puts on its  
4 testimony or wait for the state? They are essentially  
5 rebuttal to the state's case.

6 CHAIRMAN FARRAR: Right. Okay. And how  
7 about the three-person panel? Oh, that's they're on  
8 the CTB?

9 MR. TURK: Yes.

10 CHAIRMAN FARRAR: Okay.

11 MR. TURK: I guess I don't have an answer  
12 yet in terms of should we put on the staff's rebuttal  
13 piece before the state or not? It makes more sense to  
14 put on the state's case on first.

15 CHAIRMAN FARRAR: Does that help you, Ms.  
16 Chancellor, in terms of your witnesses' availability?

17 MS. CHANCELLOR: Yes, it does, Your Honor.  
18 Dr. Hoffman --

19 CHAIRMAN FARRAR: Right.

20 MS. CHANCELLOR: -- if he's up to it is  
21 only available on the 12th and 13th. He has a small  
22 window between treatments there.

23 CHAIRMAN FARRAR: Well, then let's count  
24 on doing that. So they would come on at that time.

25 MS. CHANCELLOR: Yes. If the state needed



1 to go an additional day, they could carry on without  
2 Dr. Hoffman on the Monday, the 16th.

3 CHAIRMAN FARRAR: All right. And then  
4 after that, we could have the staff two-person kind of  
5 rebuttal panel.

6 MR. BARNETT: That would be correct, Your  
7 Honor.

8 CHAIRMAN FARRAR: Right. Okay. That  
9 works. And you're saying all of that can be done in  
10 eight days?

11 MR. BARNETT: Seven to eight. Right now  
12 we actually expect three days for Solar plus the first  
13 staff panel, three days for the state.

14 CHAIRMAN FARRAR: Wait. You're counting  
15 the three days for Solar and the staff?

16 MR. BARNETT: First staff panel.

17 JUDGE ABRAMSON: First.

18 CHAIRMAN FARRAR: Right. How long for the  
19 state?

20 MR. BARNETT: Say we count three days for  
21 the state, two to three.

22 CHAIRMAN FARRAR: And then two --

23 MR. BARNETT: I think mine will take about  
24 a day based upon my estimate right now.

25 MS. CHANCELLOR: Then you've got to

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1 account, Your Honor, for want of a better word, the  
2 last word by everybody, the surrebuttal or whatever it  
3 is. That should take at least a day.

4 MR. GAUKLER: I would note that there is  
5 new material in the state's testimony as well as in  
6 the staff's testimony. I haven't seen the applicant's  
7 testimony. Those new pieces of information that were  
8 not considered by the parties previously would have to  
9 be addressed in rebuttal.

10 CHAIRMAN FARRAR: Well, now you're going  
11 to file prefiled rebuttal?

12 MR. GAUKLER: Yes.

13 CHAIRMAN FARRAR: But, now, when the  
14 witness takes the stand, aren't we going to do all of  
15 it together?

16 MR. GAUKLER: Yes.

17 CHAIRMAN FARRAR: In other words, when you  
18 put, Mr. Gaukler, Dr. Solar on the stand, you will  
19 say, "Here is your prefiled direct. I adopt it. Here  
20 is your prefiled rebuttal. I adopt it." And now we  
21 have all of this testimony in front of us.

22 MR. GAUKLER: Right. In addition, I would  
23 say, "Have you reviewed the state's rebuttal? Do you  
24 have any response to that?" So essentially instead of  
25 having the state's rebuttal, I would propose that we

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1 put that on orally at that time.

2 CHAIRMAN FARRAR: Excellent.

3 MR. GAUKLER: But, Judge, the only thing  
4 that we would have left at the very end would be if  
5 any new issues arose during the cross-examination or  
6 the questions of the Board that had not been  
7 previously addressed by the parties. That's where you  
8 would have a sort of surrebuttal.

9 CHAIRMAN FARRAR: Does everyone agree with  
10 that?

11 MS. CHANCELLOR: Yes, Your Honor.

12 MR. TURK: I'm not sure I caught it. The  
13 oral response would be to anything that's --

14 CHAIRMAN FARRAR: No. The first step is  
15 when a witness takes a stand, witness adopts the  
16 direct, adopts the prefiled rebuttal, and gives oral  
17 rebuttal to the extent that it is possible at that  
18 time.

19 MR. TURK: In other words, whatever they  
20 have seen in the July 29th filing as well as anything  
21 before?

22 CHAIRMAN FARRAR: Right.

23 MR. TURK: Then the last piece that Mr.  
24 Gaukler said was if something comes out in the oral  
25 presentation. Then there would be an opportunity for

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1 that as well?

2 CHAIRMAN FARRAR: You're right. Just as  
3 usual, if there's anything new that emerges during the  
4 course of the testimony, people can put on a rebuttal  
5 witness.

6 If you recall Salt Lake, those rebuttal  
7 witnesses were sometimes fairly extensive. Our  
8 thought here is they will be far less extensive  
9 because we have done all of these preliminary steps.

10 So everyone is agreed to that? Excellent.  
11 Now, Judge Abramson mentioned to me today the  
12 following thought. We have talked about a six-hour  
13 hearing per day, I guess, if you go from 9:00 to 5:00.  
14 What time do you all want to start, 9:00 or 9:30?

15 MR. GAUKLER: I thought we would start at  
16 9:00.

17 MS. CHANCELLOR: 9:00 is fine with us,  
18 Your Honor, provided that it is easier to get through  
19 security.

20 CHAIRMAN FARRAR: Yes. We're working on  
21 that. Okay. Suppose you went from 9:00 to 5:00.  
22 That is eight hours, an hour and 20 minutes for lunch  
23 and 2 20-minute breaks. It adds up to two hours. So  
24 there's your -- eight minus two gives you six hours a  
25 day.

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1 Judge Abramson suggested this morning to  
2 me that if after a few days we see that we are bogging  
3 down, then why not try to go longer? And I made all  
4 the arguments to him about why. We tried to do that  
5 in Salt Lake and this, that, and the other happened.

6 JUDGE ABRAMSON: And it fell on deaf ears.

7 CHAIRMAN FARRAR: He's a tough character.  
8 It fell on deaf ears. If you went so much as an hour  
9 a day for five days extra, you gained a day. So he --

10 JUDGE ABRAMSON: It can be either by  
11 lengthening your day or by shortening breaks.

12 MS. CHANCELLOR: You could also go a  
13 Saturday.

14 JUDGE ABRAMSON: Yes.

15 CHAIRMAN FARRAR: We could do Saturdays.

16 JUDGE LAM: Judge Abramson is an optimist.

17 JUDGE ABRAMSON: That may be the first  
18 time I've been called that in a long time.

19 CHAIRMAN FARRAR: All right. So since I  
20 like you people but I don't trust you, why don't we  
21 use eight days, Mr. Gaukler, rather than your seven to  
22 eight, just for purposes of carrying on the  
23 discussion? If we did eight days, that's just  
24 unstructural.

25 MR. GAUKLER: At that point, we begin to

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1 have potential witness conflicts. And the parties  
2 have been discussing two possible approaches. Right  
3 now they have kept speeds and angles. We have told  
4 our witnesses because they involve, some of them  
5 involve, state's witnesses particularly, our pilots --  
6 we asked the state witnesses to begin the last couple  
7 of days that week or the two days in the following  
8 week which might be available.

9 CHAIRMAN FARRAR: All right. So we could  
10 do speeds and angles.

11 MR. GAUKLER: Or we could do probability.  
12 Okay? In terms of probability, we have the following  
13 conflicts. Unfortunately, Dr. Cornell is not  
14 available the last week in August.

15 CHAIRMAN FARRAR: Right. Hold on.  
16 Suppose we did speeds and angles on the 19th and 20th  
17 of August and the two days the next week.

18 MS. CHANCELLOR: Your Honor, we talked  
19 about speed, angle, and ordnance. Maybe we could get  
20 them in that time period. The other that Mr. Gaukler  
21 was suggesting would shorten the day. We may have to  
22 take one witness out of order, one or two witnesses  
23 out of order, on ordnance, but we could do PFS's  
24 witnesses on speed and angle and the joint testimony  
25 with Dr. Cornell, Fly, and Jefferson; the state's

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1 witnesses on speed, angle, and ordnance; and the  
2 staff's witness on speed and angle; Lancaster on  
3 ordnance, and fit that into 19, 20, and noon on the  
4 24th, maybe noon on the 26th.

5 CHAIRMAN FARRAR: All right. And that  
6 would leave us?

7 MS. CHANCELLOR: Probability.

8 CHAIRMAN FARRAR: Probability. And what  
9 about jet fuel?

10 MR. GAUKLER: We're prepared to forego  
11 with that as well, Your Honor.

12 CHAIRMAN FARRAR: Stipulate jet fuel and  
13 the CTB?

14 MR. GAUKLER: Yes.

15 CHAIRMAN FARRAR: That would be good.  
16 Then we would have probability left. In other words,  
17 we would be taking a break. How many days do you see  
18 for that?

19 MR. GAUKLER: We see two to three days for  
20 that. Right now, unfortunately, we couldn't get to it  
21 until September 15th because of --

22 CHAIRMAN FARRAR: Because of what?

23 MR. GAUKLER: Because of witness  
24 conflicts.

25 CHAIRMAN FARRAR: So we would adjourn for

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1 a couple of weeks, take the week of Labor Day. We had  
2 talked about making three days available then. But  
3 you're saying the witnesses cannot make it. So  
4 because they can't make it, then obviously we have to  
5 skip that week. And we would reconvene on Monday,  
6 September 13th.

7 MR. GAUKLER: The other --

8 CHAIRMAN FARRAR: Now, you're saying how  
9 long for probability?

10 MR. GAUKLER: Two to three days.

11 CHAIRMAN FARRAR: All right. Let me ask,  
12 we're concerned about the Jewish holidays starting  
13 that Wednesday evening. To what extent -- is that a  
14 must -- forgive the question. I don't mean to be  
15 politically incorrect. Is that a must observe or is  
16 that one of the more optional ones, as opposed to the  
17 more serious ones?

18 MS. CHANCELLOR: Doesn't Rosh Hashanah  
19 start on the 17th, Your Honor?

20 CHAIRMAN FARRAR: My calendar has it as  
21 the 16th, but I think we were told --

22 MS. CHANCELLOR: That's a Thursday. We  
23 were talking about ending on --

24 CHAIRMAN FARRAR: Right, but that it  
25 actually starts on Wednesday evening.

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1 MR. TURK: It starts Wednesday sundown.

2 CHAIRMAN FARRAR: Wednesday sundown.

3 MR. TURK: That is one of the mandatories.

4 CHAIRMAN FARRAR: Okay.

5 MR. TURK: I'm not sure how many of us  
6 celebrate it, but that's --

7 CHAIRMAN FARRAR: Yes. Does the state  
8 have anybody, either witness or lawyers, that would  
9 have a problem who would have to observe it?

10 MS. CHANCELLOR: No, none, Your Honor.

11 MR. TURK: Yes, Your Honor.

12 CHAIRMAN FARRAR: Right. I understand,  
13 Mr. Turk. I suppose if we were close to finishing,  
14 then you would have to make a decision, do you want to  
15 leave it to Ms. Zaccari to finish up? And that would  
16 be not a decision we would want to force on you.

17 MR. TURK: I'll make the decision now,  
18 Your Honor. I think, inasmuch as I have been involved  
19 in this case in the last six years and know all of the  
20 issues, I think the staff would request very strongly  
21 that I be in attendance for the hearing.

22 CHAIRMAN FARRAR: That's fair. I'm glad  
23 you brought that up. Again, I'm certainly not ever  
24 going to push someone to ignore that, but I just  
25 wanted to make sure the record was clear on --

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1 MR. TURK: They also have an unfortunate  
2 recollection of the one time I was not present during  
3 a hearing.

4 CHAIRMAN FARRAR: When is that holiday  
5 over?

6 MR. TURK: It lasts until the weekend. It  
7 lasts through the end of Friday.

8 CHAIRMAN FARRAR: It lasts through Friday.  
9 So we could not, all right. It doesn't exist on  
10 Saturday?

11 MR. TURK: Correct.

12 CHAIRMAN FARRAR: What I am thinking is if  
13 we got three days in and were within a day of  
14 finishing, would we ask the state to stay here and  
15 finish?

16 JUDGE ABRAMSON: Let me interrupt here.  
17 This is Judge Abramson. What we're talking about is  
18 trying to start up re-start-up on Monday at, what,  
19 noon or something like that? And then we would have  
20 to finish on Wednesday in enough advance of sundown to  
21 allow those who observe to be home.

22 So we're really talking about less than  
23 three days. We're really talking about --

24 MS. CHANCELLOR: But, Judge Abramson, this  
25 is Denise Chancellor. We would be flying in the night

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1 before. We would be prepared to start at 9:00 o'clock  
2 in the morning.

3 JUDGE ABRAMSON: Okay. So you could start  
4 Monday morning. So you would get two and a half days  
5 in. Would the group prefer to, instead of starting  
6 the 13th, start on the 20th and go straight through  
7 until we're done? And then we're not facing the  
8 possibility of not finishing

9 MS. CHANCELLOR: We may have a witness  
10 conflict. I need to double check.

11 CHAIRMAN FARRAR: Well, here is another  
12 way to look at it. If you all will get here Sunday  
13 and everyone will have had three weeks of rest, that  
14 would certainly be Monday and Tuesday, we could go  
15 long days.

16 JUDGE ABRAMSON: That's true.

17 CHAIRMAN FARRAR: By then, the case is  
18 almost all over.

19 JUDGE ABRAMSON: If you all are all  
20 relatively confident that this three-day estimate is,  
21 a good number. And I guess that is in your court.

22 MR. GAUKLER: I think we have three  
23 panels, and I think three days is conservative on that  
24 one. I think it may all be done in two days. In  
25 fact, the state didn't have much in terms of

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1 depositions of Damon (Phonetic.). And if the  
2 situation on, like, say, structural, or speeds and  
3 angles, where the staff has done an independent  
4 evaluation, in addition to PFS here, Damon has  
5 reviewed PFS's evaluation. So that reduces the amount  
6 of cross time I would think that they would need.

7 CHAIRMAN FARRAR: So we are talking  
8 Cornell (Phonetic.), Damon, and Thorn (Phonetic.)?

9 MR. GAUKLER: Yes.

10 CHAIRMAN FARRAR: And you all have had  
11 some respite from the hearing. You will be able to be  
12 really well-prepared, reasonably well-rested. And we  
13 will get it done by sundown Wednesday.

14 MR. GAUKLER: To give you an idea, the  
15 depositions of the three basically took no more than  
16 a day.

17 CHAIRMAN FARRAR: In total?

18 MR. GAUKLER: Total for the three of them.

19 JUDGE ABRAMSON: So the only thing that  
20 may turn out to be a small wrinkle here is if as we go  
21 through the testimony on flight data we determine that  
22 the data sets that had been considered need to be  
23 modified, in which case somehow during the hearing on  
24 probability, that will have to be dealt with.

25 CHAIRMAN FARRAR: And that's excellent

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1 because you will have had a break. If it becomes  
2 obviously to everybody the data set is different  
3 during the earlier part of the trial, they could be  
4 prepared to address what if this is the data set and  
5 what if that is the data set. Excellent. This is a  
6 good solution.

7 All right. Then let's plan on going and  
8 restarting at 9:00 o'clock on Monday, September 13th  
9 and having two long days, Monday and Tuesday, and  
10 going to sundown on Wednesday.

11 JUDGE ABRAMSON: You won't go to sundown.  
12 You won't go to sundown.

13 MR. TURK: You wouldn't be able to go to  
14 sundown, Your Honor.

15 JUDGE ABRAMSON: You will have to cut it  
16 a couple of hours in advance because they have to be  
17 home by sundown.

18 CHAIRMAN FARRAR: Okay.

19 MR. TURK: Your Honor, before you set the  
20 schedule in stone --

21 CHAIRMAN FARRAR: Maybe Ms. Zaccari can  
22 loan you her helicopter, Mr. Turk.

23 MR. TURK: That would be very useful.  
24 Maybe I would let her.

25 Before you set the September schedule in

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1 stone, I want to express a reservation about the  
2 optimism that PFS and the state are showing with  
3 respect to how long it will take. PFS started by  
4 saying that they expected all of the staff and  
5 applicant's testimony to be completed in three days.

6 I don't think that is realistic. And  
7 unless Ms. Chancellor tells us that that is all of the  
8 cross-examination that she will have on both panels  
9 and that that allows time for us to do redirect, I  
10 would say that that is an underestimate of the time  
11 that would be required for both panels.

12 CHAIRMAN FARRAR: What number would you  
13 suggest, Mr. Turk?

14 MR. TURK: I think I would have to hear  
15 from Ms. Chancellor how much time she wants to do  
16 cross-examination on because the last estimate I got  
17 from her was very long.

18 CHAIRMAN FARRAR: Ms. Chancellor?

19 MS. CHANCELLOR: About 22 hours, Your  
20 Honor, for our portion of structure for our direct,  
21 cross, rebuttal, and surrebuttal, everything that we  
22 would need to do.

23 MR. TURK: My question is, how much time  
24 would you need for cross-examination of staff and --

25 JUDGE ABRAMSON: You are talking about the

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1 first of staff witnesses.

2 MS. CHANCELLOR: Your Honor, we've made an  
3 estimate of how much we need for the entire time. We  
4 would be prepared to discuss this with staff and PFS  
5 off the record, but I --

6 CHAIRMAN FARRAR: Yes, let's do that. But  
7 did I hear you correctly say 22 hours?

8 MS. CHANCELLOR: That's our best estimate  
9 at the moment, Your Honor.

10 CHAIRMAN FARRAR: Okay. Then you all keep  
11 talking about it. As you talk about  
12 cross-examination, let me say --

13 MR. TURK: Your Honor, I raised it for a  
14 reason, and that is because you are addressing  
15 September's schedule. My point is that, come  
16 September, you will need more than two and a half  
17 days. You will need, I believe, a full week.

18 And for that reason, I would ask you to  
19 consider the week of September 20th to make sure that  
20 we don't have to break for a few days and come back  
21 again.

22 JUDGE LAM: And make sure all of the  
23 witnesses are available.

24 MR. TURK: Yes.

25 CHAIRMAN FARRAR: Hold on. Let's go off

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1 the record here.

2 (Whereupon, the foregoing matter went off  
3 the record at 1:47 p.m. and went back on  
4 the record at 1:48 p.m.)

5 CHAIRMAN FARRAR: We're back on the  
6 record. We think, whatever happens, we have talked  
7 about using those three days, the 13th, 14th, and  
8 15th. Let's use them.

9 If we don't finish, then we will come back  
10 again. But let's not cancel those and say, "Well, we  
11 can do it in four or five days the next week." Let's  
12 keep going.

13 JUDGE ABRAMSON: We probably won't  
14 realistically know what our schedule is until we are  
15 more than halfway through the August portion of the  
16 hearing.

17 So let's be objective about this. We're  
18 picking some dates in September. We've got a  
19 tentative schedule. Let's move on that and bear in  
20 mind that, as usual, things are unpredictable.

21 JUDGE LAM: And make sure the week of  
22 September 20th everybody is available.

23 MS. CHANCELLOR: Your Honor, I believe  
24 that Dr. Fawn (Phonetic.) has a conflict that week.  
25 And we have had problems trying to get all of these

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1 probability experts together. Dr. Fawn is available  
2 many other weeks prior to then, but Dr. Cornell isn't  
3 or Dr. Damon isn't. So I don't think we can count on  
4 probability for the week of the 20th.

5 CHAIRMAN FARRAR: Right. Let's do it.  
6 Wherever we are in the hearing, we will do probability  
7 starting the 13th.

8 JUDGE ABRAMSON: Well, if we're going to  
9 do probability starting the 13th, it behooves to have  
10 dealt with the aircraft crash scenarios before that.

11 CHAIRMAN FARRAR: Remember, you all tried  
12 to tell me some time ago this was a ten-day hearing.  
13 And I wasn't buying it. But, anyway, in terms of time  
14 for cross-examination, let me say this once now. And  
15 I'll say it over and over.

16 Given the length of time it has taken to  
17 get ready for this case, given the excellent testimony  
18 you have presented, given the focus we have all had on  
19 these months, I think everyone is going to be as  
20 well-prepared for this hearing as we will ever be for  
21 any hearing.

22 When you do your cross-examination, you  
23 can assume we are intimately familiar with the  
24 evidence. And let's not start by having the person  
25 repeat what they have said unless there is some real

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1 purpose, some fundamental point.

2 I will come back to Mr. Soper's  
3 examination where it was important to him to have the  
4 witness repeat several times what he believed and then  
5 Mr. Soper pulled out a letter that he allegedly said  
6 the opposite.

7 So there is a time where yes, you do want  
8 the witness to repeat what he said because you are  
9 going to try to trip him up. Most of this trial our  
10 experience is it's not tripping somebody up.

11 So I think the way we would like to see  
12 cross-examination done is you say to the witness, "I  
13 call your attention to your question and answer 39 on  
14 page 43 of your prefiled testimony. Do you have that  
15 in front of you?" "Yes." Then ask him the question.

16 Don't ask him what he said there. Start  
17 challenging him. Let's not spend any time going over  
18 what that answer says. Start your challenge right  
19 off. We will all have it in front of us. We will  
20 turn to that page. Start asking your questions.

21 I think just that simple step will help  
22 save us some time and focus the hearing. So I ask you  
23 as you are planning, all of you, to do that.

24 Is there anything more we can talk about  
25 right now on witness order and time? I think we will

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1 ask you to keep working. We will definitely plan on  
2 the noon Tuesday to noon Thursday, August 24th to  
3 26th. That gives us 12 days in August. And now we  
4 have three days, 13th, 14th, 15th of September. And  
5 we will at the end of August see where we are and see  
6 whether we need to reserve some other time.

7 Let's keep pushing. You have done a great  
8 job so far. Let us know as soon as you can on  
9 stipulations and keep working on your time  
10 allocations.

11 Let's talk quickly about document  
12 handling. Thank you for your exhibits and the lists.  
13 Recognizing, as yesterday's summary order said, you  
14 got filing and handling questions, we're dealing with  
15 safeguards information here. We do not want to have  
16 any extra copies beyond the bare minimum because it is  
17 a problem for everybody storing them, handling them,  
18 protecting them.

19 In terms of the testimony, when you come  
20 at the hearing to introduce the testimony, it may be  
21 that we only need the original. Speaking for the  
22 Board, if the testimony is the same as what we got the  
23 other day, we do not want a courtesy copy. We will  
24 use the copy we have.

25 We will tell the court reporter to bind

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1 the testimony into the record as if read, but I think  
2 we only need one copy of that record. And I think --  
3 I want to run this past you -- you all don't need, I  
4 would think, a one page per page transcript with the  
5 testimony bound in because isn't that a very  
6 voluminous document that it is not helpful to work  
7 with? Wouldn't you all prefer what is called, I  
8 think, the miniscript or mini transcript, where you  
9 have four pages in one? So you would have that. It's  
10 not voluminous. And you already have the prefilled  
11 copy of the testimony.

12 I raise all of this because that tells you  
13 we may have you bring into the courtroom only the one  
14 official copy of the testimony.

15 Does anyone have an objection or a  
16 different idea? Ms. Chancellor?

17 MS. CHANCELLOR: No, that's fine. In  
18 terms of the lawyers working with the transcript, we  
19 usually use the miniscript. The one question I do  
20 have, does Emile Julian (Phonetic.) need a copy of  
21 anything that is introduced into evidence or does he  
22 just get the testimony that is bound into the  
23 transcript? We sent him a copy of what we filed the  
24 12th.

25 CHAIRMAN FARRAR: Right. Oh, you did send

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1 that?

2 MR. GAUKLER: Yes. I would say that the  
3 testimony you bind into the record may be slightly  
4 different in the sense that you may have corrections  
5 to that testimony.

6 MR. TURK: I have another question, Your  
7 Honor, before you get to the correction issue.  
8 Whenever we get the miniscript, you don't need the  
9 testimony bound in. And someone would have to be able  
10 to verify that the testimony has, in fact, been bound  
11 in. Unfortunately, in the past testimony has been  
12 omitted by accident.

13 CHAIRMAN FARRAR: Well, no. That is a  
14 good point. We would take care of that when they  
15 deliver to us the official copy the next day. We  
16 would check that ourselves. In fact, the parties  
17 would have it in the courtroom. The parties could  
18 check it.

19 And that would be the official copy we  
20 would send over to the Commission's Secretary. And I  
21 understand that they only want the one. Usually they  
22 get two, but because it's Safeguards, they also only  
23 want the one. But you're right. We would have to  
24 check that.

25 Now, how about the problem of corrections?

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1 MS. CHANCELLOR: Your Honor, could the  
2 parties file like the day before or in advance an  
3 errata sheet, rather than marking up the testimony?

4 MR. GAUKLER: That is what I was going to  
5 recommend also, Your Honor.

6 CHAIRMAN FARRAR: Yes.

7 MS. CHANCELLOR: In advance would really  
8 speed things up because the last time everybody was  
9 crossing out certain words. And we didn't see it in  
10 advance.

11 CHAIRMAN FARRAR: Right. Let's do the  
12 errata sheet. Then we would all get a copy of the  
13 errata sheet, put it with our original, and the court  
14 reporter -- what would you give the court reporter?

15 MS. CHANCELLOR: The testimony and the  
16 errata sheet.

17 CHAIRMAN FARRAR: Just give them the  
18 testimony and the errata sheet? Fine.

19 MR. TURK: I would recommend a different  
20 course. I would suggest that we take the pages that  
21 are being changed, interlineate the corrections, and  
22 provide that. Then the reporter will have the exact  
23 copy of the page without having to try to figure it  
24 out.

25 MR. GAUKLER: That's what I would

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1 recommend, too.

2 MS. CHANCELLOR: That's fine, Your Honor.

3 MR. TURK: There's also a possibility that  
4 witnesses may not discover an error until later, after  
5 the hearings have started. We have the possibility  
6 that that could happen.

7 CHAIRMAN FARRAR: Well, that we will deal  
8 with. But let me make sure I get this straight. So  
9 we would all get an errata sheet ahead of time.

10 MR. TURK: Not an errata sheet, Your  
11 Honor. A transmittal thing attached to our pages 6,  
12 12, and 14, for example, of whoever's testimony it is.  
13 And that would hopefully show up either in some  
14 redline, strikeout manner or in a by hand  
15 interlineated fashion so people can see what the  
16 change has been to the original testimony.

17 JUDGE ABRAMSON: Mr. Turk, is it possible  
18 that more than one party might want to make a change  
19 on the same page or is it just each party submitting  
20 his own changes for his own testimony?

21 MR. TURK: Parties' own testimony. This  
22 would be changes by the witness that what they are  
23 about to swear to is true and correct.

24 CHAIRMAN FARRAR: All right. So, instead  
25 of an errata sheet, we would get substitute pages?

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1 MR. TURK: I think that's the cleanest way  
2 known as to figure out what to do.

3 CHAIRMAN FARRAR: Okay. And if a page  
4 goes over, you just make it A. If 17 gets longer, you  
5 just have 17 and 17A.

6 MR. TURK: Fine.

7 CHAIRMAN FARRAR: Okay? And then the  
8 court reporter would get an official version with the  
9 right pages in it.

10 MR. TURK: Yes.

11 CHAIRMAN FARRAR: And the rest of us would  
12 just take our old version and make the changes.

13 MS. CHANCELLOR: So let me understand  
14 this. We would be providing corrected pages. We  
15 would serve that on the Board, the parties, and on the  
16 Secretary.

17 CHAIRMAN FARRAR: No. Well, yes, I guess  
18 you have to send it to the Secretary.

19 MR. GAUKLER: The Secretary would get the  
20 transcript where the corrected copy would be in,  
21 correct?

22 CHAIRMAN FARRAR: Yes.

23 MS. CHANCELLOR: But what we submit to the  
24 reporter would not be the interlined copy but would be  
25 a clean copy without those corrections? We have to do

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1 it twice?

2 CHAIRMAN FARRAR: No. The reporter --

3 MR. TURK: I think the best thing to do is  
4 mark up the page and give that to the reporter and the  
5 Board and the parties if everyone has --

6 MS. CHANCELLOR: I think so, too, rather  
7 than just giving the reporter a clean copy.

8 MR. BARNETT: Yes. That's what I thought  
9 the Chairman meant.

10 MR. TURK: That's what I --

11 CHAIRMAN FARRAR: I don't follow. Okay.

12 JUDGE ABRAMSON: Yes, everybody --

13 MR. BARNETT: Cut down the number of  
14 steps. Everyone will have received the original  
15 testimony. They then get any corrected page where the  
16 correction is clearly shown.

17 CHAIRMAN FARRAR: The correction is shown.  
18 It's handwritten in between the lines or you have got  
19 the computer X's out? So you see the old and the new?

20 MR. BARNETT: That's right.

21 CHAIRMAN FARRAR: Okay.

22 MR. BARNETT: We do now see the page that  
23 we all put into our own testimony and the reporter  
24 puts into her bound testimony.

25 CHAIRMAN FARRAR: Right. So --

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1 MR. BARNETT: Anything to try to figure  
2 out what the change is or --

3 CHAIRMAN FARRAR: Okay. So we would  
4 substitute that page in our courtesy copy from before,  
5 and the reporter would get a copy, which has pages in  
6 it that show the difference between the courtesy copy  
7 -- this is the pages would already be replaced in the  
8 reporter's copy?

9 MR. BARNETT: Yes but exactly the way the  
10 other parties are getting it.

11 CHAIRMAN FARRAR: Exactly. Fine.  
12 Excellent. So what that means is on the day of the  
13 hearing, you are only having to walk in with one copy  
14 for the reporter because I think our man Jim  
15 Cavanaugh, who deals with the transcript contract, you  
16 told me this morning, Jim, that the SECY only wants  
17 one.

18 MR. CAVANAUGH: Of Safeguards transcripts,  
19 yes.

20 CHAIRMAN FARRAR: Right. All of these  
21 would be Safeguards. Right. So we're following a  
22 different rule for them. They only get one. And the  
23 rest of us will all then get a mini transcript. And  
24 life is simple. Is that agreeable to everybody?

25 MR. GAUKLER: Yes, Your Honor.

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1 MS. CHANCELLOR: Sure.

2 CHAIRMAN FARRAR: Good. All right. With  
3 the exhibits, we only want two. We used to get three  
4 copies. Okay. We will either file two copies or  
5 three copies.

6 Again, don't give us a -- we already have  
7 an exhibit that you sent us the other day. Don't give  
8 us additional courtesy copies. But we do want  
9 courtesy copies of any old exhibits that you want to  
10 refer to, something that was introduced in the earlier  
11 hearing if there is such a thing.

12 What we are going to do -- and let me ask  
13 you how this works for you. You have your exhibits.  
14 You have to bring two copies to court.

15 Our idea was we would prepare for you a  
16 stamp. That you would pre-stamp all of your exhibits,  
17 rather than stop the proceeding and have the court  
18 reporter do it.

19 And each of you would get a different  
20 stamp. So it would not only have the docket name and  
21 number on it, but it would have the party name. And  
22 so all you would have to do would be stamp your -- you  
23 would have the party name, you know, say, applicant,  
24 exhibit number, and a blank.

25 It would have on it all of the information

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1 that would later be filled out: date, identified,  
2 through a certain witness, whether it was admitted or  
3 rejected, the date, and the transcript page, all of  
4 which we would do later.

5 But all you would have to do in advance  
6 would be to take your two copies, apply this stamp,  
7 and write nothing on it but the exhibit number and the  
8 witness through whom you propose to identify it, which  
9 we could later change.

10 Would that make sense to you? Because  
11 then, instead of stopping every time and saying, "Mr."  
12 or "Madam Reporter, would you mark these exhibits?"  
13 You just hand them in, and they would sit there. The  
14 reporter wouldn't have to stop, wouldn't have to do  
15 anything.

16 Does that make sense to you?

17 MR. GAUKLER: It makes sense to me, Your  
18 Honor. You say we are asked to bring two exhibits?

19 CHAIRMAN FARRAR: Either two or three.  
20 The rule used to be three, but we think because of the  
21 safeguards, that we will only need two. It used to be  
22 you brought six into the courtroom for all the parties  
23 and everything. This would be just two.

24 But we would ask you to pre-stamp them.  
25 And we would give you a rubber stamp that you would do

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1 it. And all you would have to write down would be the  
2 exhibit number, which I think is already on the cover.  
3 You would just have to copy that over and the name of  
4 the witness you were introducing it through, which  
5 could be changed later if you decided to introduce it  
6 through somebody else.

7 Does that work for you?

8 MS. CHANCELLOR: Two things, Your Honor.  
9 Either a stamp or labels, either one, works with us.  
10 And do you want it in a particular location?

11 CHAIRMAN FARRAR: We'll give you the  
12 stamp. And you put it anywhere on the front cover  
13 that you can find.

14 MS. CHANCELLOR: You don't want it like  
15 top right, bottom left, anything like that?

16 CHAIRMAN FARRAR: Well, you know, top  
17 right if you can, but if you can't --

18 MS. CHANCELLOR: If it's easy for you,  
19 we're going to put it --

20 CHAIRMAN FARRAR: Right. And this is  
21 going to be a bigger stamp. I know they have these  
22 little stamps I've seen that are maybe less than two  
23 inches by two inches. This would be a larger one  
24 because we're going to have plenty of room there, what  
25 the action is, what the date is, the transcript pages.

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1 MS. CHANCELLOR: We'll put it top right,  
2 then.

3 CHAIRMAN FARRAR: Well, top right unless  
4 it doesn't fit.

5 MS. CHANCELLOR: Okay.

6 CHAIRMAN FARRAR: And we will provide you  
7 the rubber stamps in advance. And the purpose of that  
8 -- I know we're getting down into details here, but I  
9 think this painful detail saves a lot of time at the  
10 hearing. And that is what we were just talking about.

11 So that's why we are belaboring this a  
12 little bit, because the more of this document handling  
13 we can do in very efficient fashion, the less time  
14 it's taking at the hearing, the more time we have or  
15 the faster we'll get the hearing done.

16 That may be all we need to discuss today.  
17 Mr. Gaukler, you had reported last time on a document  
18 problem. Cindy was here at the beginning, and we  
19 didn't want to keep her.

20 She agreed that this is something we will  
21 deal with not on the transcript of the prehearing  
22 conference but you and she can be in touch later, and  
23 we will figure out how to follow up on your previous  
24 report. Is that all right?

25 MR. GAUKLER: That's fine with me, Your

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1 Honor.

2 CHAIRMAN FARRAR: Okay.

3 MR. BARNETT: Your Honor, we have some  
4 questions about exhibits.

5 CHAIRMAN FARRAR: Okay.

6 MR. BARNETT: The state had asked for a  
7 copy of our figure 17.

8 CHAIRMAN FARRAR: Yes.

9 MR. BARNETT: It looks like there is no  
10 figure 17. What it refers to doesn't exist. So we  
11 would ask to delete that reference.

12 CHAIRMAN FARRAR: Okay.

13 MR. BARNETT: The same for figure 4F. But  
14 Dr. Bjorkman (Phonetic.) out of the office will  
15 double-check this with them, but that's our best  
16 understanding right now, that those are references to  
17 figures that actually were not submitted.

18 CHAIRMAN FARRAR: All right.

19 MR. BARNETT: We have two questions about  
20 the state exhibits. They indicate in their exhibit  
21 list that they are preparing a DVD for state exhibit  
22 number 234. We don't have that yet. I would like to  
23 know when we are supposed to get it and also --

24 MS. CHANCELLOR: That went out yesterday  
25 Federal Express. It should be there today, Sean.

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1 MR. BARNETT: All right. Also we need the  
2 LS input/output files for the revised analysis  
3 included in your testimony. I believe it is page 21  
4 of the Hoffman (Phonetic.).

5 MS. CHANCELLOR: I think that's the disk  
6 that we're sending you. Let's talk about this off the  
7 record.

8 CHAIRMAN FARRAR: Yes, yes. You all work  
9 on that. Give us one second here before we keep  
10 going.

11 (Whereupon, the foregoing matter went off  
12 the record at 2:08 p.m. and went back on  
13 the record at 2:09 p.m.)

14 CHAIRMAN FARRAR: Back on the record. We  
15 got from the state and the staff kind of a cover  
16 letter listing what testimony was being presented.  
17 And they each gave us a list, a table of all the  
18 exhibits with an empty column for making notations  
19 about being offered and admitted.

20 Mr. Gaukler, we didn't get anything like  
21 that from you. Can you have someone prepare --

22 MR. GAUKLER: I have it. I have one  
23 almost prepared.

24 CHAIRMAN FARRAR: Okay. Then so we want  
25 the cover letter describing the testimony and then the

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1 table of all of the exhibits. And we assumed you were  
2 working on that. That is very helpful to us to have  
3 that and again will make the hearing go a lot -- both  
4 our preparation be better and our hearing go faster.

5 Any other questions that you all need to  
6 take up with us, rather than discuss among yourselves?  
7 Do we need to have another -- let's see.

8 The next thing you all have to do is the  
9 key determinations are due next Wednesday and the  
10 rebuttal testimony on Thursday, the 29th. Mr. Turk,  
11 have we sufficiently scared you off from filing the in  
12 limine motions that you mentioned you might file?

13 MR. TURK: I'm well-instructed. I'm not  
14 prepared. I appreciate your comment. I thought it  
15 was a good approach.

16 CHAIRMAN FARRAR: All right. Then after  
17 the 29th, we do not have any official business. Do we  
18 want to have a phone call on Tuesday, the 3rd just to  
19 make sure that everything is in order and it would not  
20 be a close to three-hour phone call, like this one is  
21 turning out to be? It may be just a half-hour to go  
22 over last-minute logistics.

23 When is the state traveling?

24 MS. CHANCELLOR: Some of us will be  
25 traveling Saturday and some on Sunday, 7th and 8th.

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1 CHAIRMAN FARRAR: All right. Then would  
2 it make sense to have a conference call in the  
3 afternoon of the 3rd?

4 MS. CHANCELLOR: We could do that, if you  
5 wish, Your Honor. Would we be able to get access to  
6 the hearing room on the 8th so we can set up?

7 CHAIRMAN FARRAR: Yes. Amy has  
8 volunteered to give up her weekend.

9 MS. CHANCELLOR: We thank you, Amy.

10 MS. ROMA: You're welcome.

11 CHAIRMAN FARRAR: Yes. Again, to make use  
12 of Monday so we hit the ground running on Monday, you  
13 have got to be in there on the weekend.

14 Well, why don't we do a conference call at  
15 3:00 o'clock on Tuesday, the 3rd of August? That's  
16 3:00 o'clock our time, 1:00 o'clock Mountain Time, and  
17 probably devoted just to any logistical problems,  
18 hearing room, war room, safes, anything we have to do.

19 Does anyone have a better idea?

20 MR. GAUKLER: I think it's a good idea,  
21 Your Honor.

22 CHAIRMAN FARRAR: Thank you, Mr. Gaukler.  
23 Mr. Turk, is that all right with you all?

24 MR. TURK: Yes, Your Honor.

25 CHAIRMAN FARRAR: Okay. Then we again

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1 thank you for the time on this. It was time very well  
2 spent in terms of preparing substantively and  
3 logistically for the hearing. You all still have a  
4 lot of work ahead of you. And we encourage you to  
5 keep up the good efforts.

6 I think there has never been a hearing  
7 with people as well-prepared and substances thoroughly  
8 covered. So we look forward to the next step with  
9 you.

10 If, again, there is any problem, don't  
11 hesitate to call us. If you don't get me, call Amy.  
12 We gave you her number. And she will either find me  
13 or get you Judge Abramson and Judge Lam.

14 Judge Abramson, in addition to being a  
15 difficult character, is both legally and technically  
16 trained. So if I am not available, he can certainly  
17 serve as chairman pro tem of the Board. And he and  
18 Judge Lam together form a quorum. And they can make  
19 any rulings in my absence or resolve any of your  
20 problems.

21 JUDGE ABRAMSON: We might get a lot done.

22 CHAIRMAN FARRAR: See, I told you. Let's  
23 keep bussing forward. Anything else we needed to go  
24 over?

25 MS. CHANCELLOR: Nothing from here, Your

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1 Honor.

2 MR. GAUKLER: Nothing further, Your Honor.

3 MR. TURK: Your Honor, just for my own  
4 reassurance, I understand that after the third of the  
5 hearing dates in August, we end the day on the 26th.  
6 We then resume on the 13th.

7 CHAIRMAN FARRAR: We resume September 13th  
8 because we had reserved three days of Labor Day week.  
9 But you all told us there was witness unavailability.

10 MR. TURK: Very well. Thank you.

11 JUDGE ABRAMSON: And we're going to try to  
12 do probabilities during those three days assuming we  
13 have made good headway on the --

14 CHAIRMAN FARRAR: No. We're definitely  
15 going to do -- for witness availability, the 13th,  
16 14th, and 15th, that's no matter greater or lesser  
17 progress than the others. We're going to take  
18 probability if it has to be out of order. We will,  
19 but we would rather not be. So that argues for using  
20 the 12 days in August to maximum efficiency.

21 JUDGE ABRAMSON: Well, I think my point is  
22 that to effectively discuss probability, we must have  
23 previously dealt with which flight scenarios are in.

24 CHAIRMAN FARRAR: Right.

25 JUDGE ABRAMSON: So we need to be sure

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1 that we deal with those in all of this --

2 CHAIRMAN FARRAR: Yes, absolutely, which  
3 is all the more reason -- well, we have made no  
4 allowance in the hearing for CTB and jet fuel. So  
5 those, it looks like they would have to come later.  
6 But Judge Abramson is right. We have got to get the  
7 angles and speeds done in August so that the  
8 probability presentations can be adjusted accordingly.

9 MS. CHANCELLOR: Your Honor, we counted  
10 CTB in with a structural presentation. I think  
11 overall we will save about three hours with CTB and  
12 jet fuel fires overall.

13 CHAIRMAN FARRAR: Okay. Good.

14 MR. BARNETT: I have to note one  
15 scheduling problem for September. If we do  
16 probability the week of September 13th, I note, sir,  
17 that Dr. Camp (Phonetic.) is available. He will be  
18 needed to assist if any questions about speed and  
19 angles come up. He will not be there. And I note,  
20 sir, that Colonel Flag (Phonetic.) also will not be  
21 present that week.

22 MR. GAUKLER: He is available for the  
23 first part of that week, it turns out.

24 MR. BARNETT: All right. I may just have  
25 a problem with Dr. Camp. But I don't have any more

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1 information on it. I believe he's out for a  
2 prearranged trip.

3 CHAIRMAN FARRAR: But those two he just  
4 mentions are not the ones testifying.

5 MR. BARNETT: Not a witness, but the  
6 probability testimony depends upon calculations of  
7 azimuth and effective area and the problems of  
8 information of number of flights, such as Judge  
9 Abramson mentioned, the aircraft angles and speed  
10 testimony will be important.

11 CHAIRMAN FARRAR: Right. But if they're  
12 there for angles and speeds, then presumably between  
13 then and the adjournment, they can confer with the  
14 probability witness, who can carry the ball forward.

15 MR. BARNETT: Hopefully. I just want to  
16 put a pipe holder in there to note that. So we may  
17 have to deal with that problem later. I'm not sure  
18 that it will be a problem or not, but I want you to be  
19 aware that we had that kind of a problem.

20 CHAIRMAN FARRAR: Okay. We're forewarned,  
21 but let's see if we can't deal with it. All right.  
22 Then it's almost 2:20. We will adjourn the conference  
23 call. Thank you.

24 (Whereupon, at 2:18 p.m., the foregoing  
25 matter was adjourned.)

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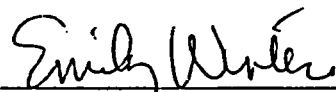
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Name of Proceeding: Private Fuel Storage, LLC

Docket Number: 72-22-ISFSI

Location: Telephone conference

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