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NUCLEAR REGULATORY COMMISSION

Title: CFC Logistics, Inc.

Docket Number: 30-36239-ML; ASLBP No.: 03-814-01-ML

Location: Teleconference

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
+ + + + +
ATOMIC SAFETY AND LICENSING BOARD
(ASLB)
+ + + + +
PRE-HEARING TELECONFERENCE

In the Matter of:

CFC LOGISTICS, INC. Docket No. 30-36239-ML
ASLBP No. 03-814-01-ML
Materials License

Thursday, August 5, 2004

Nuclear Regulatory Commission
T3-C5, Two White Flint North
11545 Rockville Pike
Rockville, Maryland

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

BEFORE ADMINISTRATIVE LAW JUDGE:
MICHAEL C. FARRAR Presiding Officer

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1 APPEARANCES:

2 On Behalf of CFC Logistics:

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11 On Behalf of the Petitioner, certain named citizens of

12 Milford Township:

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Also Present:

Kim Geisler

Kelly Help

Amy Roma

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

10:12 a.m.

JUDGE FARRAR: Let's go on the record.

This is Mike Farrar at NRC Headquarters. I'm the Presiding Officer. I have here with me Amy Roma, our law clerk. Dr. Kelber had a previously scheduled medical appointment and cannot be here. It's Thursday, August 5th.

We were going to have a conference call at 10:00 a.m. and we're getting started a little late because Mr. Sugarman raised the question of whether a couple of the people involved in the case, at least, one of them was his client, could be involved in the call. The other lawyers had no objection so we waited for them to come on. They are now here. Let's have the parties introduce themselves. For the company.

MR. THOMPSON: Tony Thompson for CFC.

MR. PUGSLEY: Christopher Pugsley, CFC
Logistics.

JUDGE FARRAR: All right, and you both have told me that you had no problems with Mr. Sugarman's clients being on even though your client was not.

MR. THOMPSON: That's correct.

JUDGE FARRAR: All right. For the

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1 Petitioners/Intervenors.

2 MR. SUGARMAN: Robert Sugarman.

3 JUDGE FARRAR: All right, and I understand
4 that you have Kelly Help is on. She is an admitted
5 intervenor and Ms. Help, I understand you have been
6 participating in the settlement negotiations.

7 MS. HELP: Yes, I have.

8 JUDGE FARRAR: Okay, and you also have
9 another one, Kim Geisler, who is not an admitted
10 intervenor, but has been active in the case and has
11 also been participating in the settlement
12 negotiations. Is that right, Ms. Geisler?

13 MS. GEISLER: That's correct.

14 JUDGE FARRAR: Okay. Well, welcome both
15 of you to the call and for the NRC Staff.

16 MR. LEWIS: Stephen Lewis.

17 JUDGE FARRAR: All right, and Mr. Lewis,
18 you don't have anyone from Region III.

19 MR. LEWIS: It would be Region I, sir, but
20 no, it's just me.

21 JUDGE FARRAR: Region I with you. All
22 right. For the benefit of the court reporter since we
23 have so many people on, when you speak please
24 introduce yourself or give your name unless I have
25 directed a question to you and used your name in which

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1 case you'll know who you are. We're here in the CFC
2 Logistics proceeding in which for some time,
3 settlement negotiations have been going on conducted
4 by Paul Abramson, my colleague, who's been appointed
5 the settlement judge.

6 In the meantime, we have put the case on
7 hold although some things have been proceeding under
8 the terms of my June 28th memorandum in order. We're
9 here today because I received communication from Mr.
10 Wood, the President of CFC Logistics, not sent by
11 counsel and so I immediately sent that to all counsel.
12 Much of what was in Mr. Wood's letter was then
13 repeated by Mr. Pugsley and Mr. Thompson.

14 I suppose that -- I know Judge Abramson as
15 the settlement judge has been dealing with the
16 clients, the principals rather than the lawyers and so
17 I assume that Mr. Wood believed that since he could
18 deal directly with Judge Abramson in the settlement
19 discussions that it was appropriate for him to write
20 to me directly which, of course, is not correct. But
21 I assume that was inadvertent.

22 So here's how I would like to proceed.
23 Not to have any issues about these earlier
24 communications, I viewed the Counsel's follow-up email
25 to me as no more and no less than a request for a

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1 status conference on the case. Where I come from, any
2 counsel is always entitled to simply ask that there be
3 a status conference and I would grant that freely.

4 The fact that the status conference
5 request made some demands is neither here nor there.
6 All of you have tried from the beginning of this case
7 and all the cases I've been in to make sure that
8 everyone knows that everyone is the same. The
9 Intervenors are not outsiders. They have the same
10 rights and privileges as the NRC Staff and the Company
11 that is applying for the license.

12 So we will take up the request in that
13 letter and this is simply a status conference in which
14 we hope to set out the future course of the
15 proceeding. Anybody have any comments on my laying it
16 out that way?

17 MR. SUGARMAN: Well, I -- This is Bob
18 Sugarman. I mean I didn't understand that this was a
19 routine status conference. The rush which I objected
20 to in my email I felt was not routine at all and also
21 the demand that was made as you characterized it, I
22 think, accurately was, I believe, inappropriate and is
23 inappropriate. I don't know where we're going with
24 this conference, but I definitely feel that it was
25 inappropriate for Mr. Wood to represent the factual

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1 situation concerning confidential settlement
2 discussions and the status thereof to anybody outside
3 of those discussions. I was not aware. It was
4 privileged.

5 My client tells me that his
6 representations were inaccurate and I don't see how
7 you can possibly erase that information from the
8 consciousness of the Board. I also don't think it's
9 -- I think this conference and any future proceeding
10 in this case are unavoidably tainted by Mr. Wood's
11 representation which my clients will tell you is not
12 correct. So I don't see how we can unring the bell.

13 JUDGE FARRAR: All right.

14 MR. SUGARMAN: Certainly not by ignoring
15 it.

16 JUDGE FARRAR: I would agree with you, Mr.
17 Sugarman, if I was a jury, but I think as judge what
18 I'm certainly able to do and what I'm representing
19 that I am doing is I'm taking the two communications
20 both from Mr. Wood and from his counsel.

21 MR. SUGARMAN: Well let me --

22 JUDGE FARRAR: It's no more or no less
23 than a request that we have the status conference and
24 attempt to lay out a future course for the proceeding.

25 MR. SUGARMAN: I understand that, but you

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1 can't lay out a future course out of context.

2 JUDGE FARRAR: No, that's -

3 MR. SUGARMAN: And what is the context of
4 the future course?

5 JUDGE FARRAR: Mr. Sugarman, please don't
6 talk over me.

7 MR. SUGARMAN: I was trying to finish a
8 sentence. What is the context of the future course?

9 JUDGE FARRAR: That's exactly what we're
10 here on this call to do.

11 MR. SUGARMAN: Then we have to talk about
12 Mr. Wood's correspondence because that forms the
13 context of the future course. He represented that
14 there's basically a settlement.

15 JUDGE FARRAR: Mr. Sugarman, I don't care
16 what he represented. I'm here to attempt to talk to
17 counsel about how the best way for this proceeding to
18 proceed.

19 MR. SUGARMAN: I think it has to be
20 cleared up that there is no settlement at this point
21 and nothing close to one. That has to be cleared up
22 on the record or else the course will be taken under
23 a false premise.

24 JUDGE FARRAR: It's very simple. You are
25 right. As far as I'm concerned, there is no

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1 settlement.

2 MR. SUGARMAN: Okay.

3 JUDGE FARRAR: So there's no problem.
4 We're proceeding on that basis that at this point,
5 there is no settlement and we're going to move ahead
6 from that point. What my plan for this call was what
7 do we do if there is a settlement, what do we do if
8 there is not a settlement and do we have any time
9 limits that we should deal with given that starting
10 next Monday both Judge Abramson and I are in a hearing
11 that will go for two and a half weeks in August and
12 then another three days later in September on another
13 case that's going to demand our full attention at
14 least during business hours. We will be available in
15 the evenings, but almost unavailable during the day.

16 So let me tell you what my plans had been
17 before these communications came in. I had been
18 working on an order based on, Mr. Sugarman, I think,
19 the letter you had sent to your clients, the letter we
20 had asked you to send, advising them of the status of
21 the case and including our order.

22 There was some question there about the
23 nature of the issues. I think what we need to do,
24 what I've been working on, was you all filed
25 contentions. We had last October ruled on those

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1 contentions. Some came in. Some came out. And those
2 that came in we had written a paragraph about and then
3 we discussed them at the December 11 prehearing
4 conference.

5 I think it would be good for us to have an
6 order out that says, "Here is what we said about them
7 last October. Here is how we blended some of them
8 together at this December prehearing conference. And
9 here are some questions that with Dr. Kelber's
10 assistance we have come up with that ought to be
11 addressed in connection with each of those issues."

12 Here's what I would propose and this is my
13 suggestion and not the Company's. That we wait until
14 next Friday, August 13th, to hear from Judge Abramson
15 about whether there is or is not a settlement. In the
16 settlement, I know there are different people. Ms.
17 Help is an admitted intervenor and that she's been
18 part of the settlement discussions.

19 Ms. Geisler who is not an admitted
20 intervenor, and I think not a petitioner, has been
21 part of the settlement discussions. As we said in our
22 opinion, that's not to diminish her role because I
23 understand and have understood for some time that she
24 has been one of the driving forces behind the
25 community opposition. And that there are other people

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1 involved. One of two things will happen by next
2 Friday. Either Ms. Help will have joined in the
3 settlement or she will not have joined.

4 MR. SUGARMAN: There is no settlement for
5 her to join in.

6 JUDGE FARRAR: Okay. Either she will have
7 or she won't. You're right. There is no settlement
8 now.

9 MR. SUGARMAN: Right. So why put the onus
10 on her?

11 JUDGE FARRAR: If you would like --

12 MR. SUGARMAN: There's no settlement. How
13 can you ask her to -- How can you put the onus on her
14 to join in settlement that doesn't exist?

15 JUDGE FARRAR: Mr. Sugarman. I would have
16 thought that since last August we've learned something
17 about how --

18 MR. SUGARMAN: Oh --

19 JUDGE FARRAR: If you let me finish my
20 thought, I'm putting no onus on her. I'm stating a
21 factual thing. There is no settlement now. I'm
22 saying I'm putting a deadline --

23 (Cell phone ringing.)

24 JUDGE FARRAR: Is everyone still on? I
25 heard some music on there. Mr. Pugsley, are you on?

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1 Mr. Thompson?

2 MR. THOMPSON: Yes.

3 MR. PUGSLEY: Yes, sir.

4 JUDGE FARRAR: Mr. Lewis?

5 MR. LEWIS: I'm here.

6 JUDGE FARRAR: Mr. Sugarman?

7 MR. SUGARMAN: I'm here.

8 JUDGE FARRAR: All right. Ms. Help? Ms.

9 Geisler?

10 MS. GEISLER: Yes.

11 MS. HELP: Yes.

12 JUDGE FARRAR: I'm not putting any onus on
13 anyone. I'm setting a time limit on us. There is no
14 onus on anyone so please don't mischaracterize what
15 I'm saying and don't act like I'm trying to be unfair
16 to anyone because the one thing I've tried to do
17 throughout this proceeding is to treat everyone the
18 same. I've done that in the other cases I've been on
19 and I've done it my whole life. So please don't
20 accuse me of putting an onus on anyone.

21 There is no -- Let me say it again. There
22 is no settlement now. There either will or will not
23 be a settlement next Friday. The parties may never
24 talk again. So there is no settlement. If some
25 settlement is reached, then Ms. Help will either be a

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1 part of it or not.

2 That's not an onus. That will be her free
3 choice. She is welcome to do it or not do it, but she
4 has a special status in this proceeding. It's not an
5 onus and she has a special status. She is one of
6 three admitted intervenors. I believe, Ms. Help, one
7 of the other intervenors is your husband.

8 MS. HELP: Yes, he is, Your Honor.

9 JUDGE FARRAR: Okay, and the third
10 intervenor is -- What is his name?

11 MR. PUGSLEY: Andrew Ford.

12 JUDGE FARRAR: Is he still a resident?

13 MS. HELP: Could you say that name again?
14 I couldn't hear you.

15 MR. PUGSLEY: I believe it's Andrew Ford.

16 MS. HELP: And I believe that you are
17 correct and Andrew Ford has not lived around here for
18 over a year.

19 JUDGE FARRAR: All right. Then, Mr.
20 Sugarman, the reason I'm singling out Ms. Help is not
21 to put an onus on her, but to recognize she has a
22 special status. She is an admitted intervenor. She
23 has been participating in the settlement negotiations
24 and if she chooses of her own free will to join the
25 settlement, then we have one situation. If she

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1 chooses not to join the settlement which is her free
2 choice, we have another situation and I'd like to deal
3 with those two situations. Am I clear, Mr. Sugarman?

4 MR. SUGARMAN: You're clear and I'm not
5 going to respond to your other comments because you
6 haven't invited me to.

7 JUDGE FARRAR: Right. So let's take this
8 kind of logical construct. If she joins in the
9 settlement -- No, if she does not join in the
10 settlement if one is reached, then the people who do
11 reach a settlement would submit through Judge Abramson
12 that settlement to me and I would be called upon to
13 approve it or not.

14 And if she does not join the settlement,
15 then she's an admitted intervenor. We would say, "All
16 right. You didn't join the settlement. Let's now go
17 ahead with the case." I propose to set a briefing
18 schedule today if that's the eventuality that comes
19 out.

20 In other words, if there is a settlement
21 and she does not join in it, then it's time to move
22 ahead with the case. If there is no settlement, time
23 to move ahead with the case. If there's a settlement
24 in which she joins, then we have a different situation
25 facing us and we would have to then follow up on that

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1 request to you, Mr. Sugarman. Are there other people
2 in the case who have not been admitted as intervenors
3 who do want to proceed with the case in which case we
4 would have to make a ruling on their standing? Those
5 are the three possibilities.

6 There is no settlement in which case the
7 case goes forward with Ms. Help as the admitted
8 intervenor. There is a settlement in which she joins
9 in which case we have to deal with the standing of the
10 other people who had petitioned to intervene. Or
11 there's a settlement in which she does not join in
12 which case we would move ahead with the case.

13 Is that it? Now let me ask you if anyone
14 sees any possibilities other than those three? Mr.
15 Pugsley? Mr. Thompson? You haven't had a chance to
16 talk. Is that how you see the case?

17 MR. THOMPSON: Yes, Your Honor.

18 JUDGE FARRAR: Mr. Lewis? I know the
19 Staff has not been involved in the case other than as
20 I directed you to respond to Judge Abramson if there
21 were technical things being done as part of a possible
22 settlement to see if you could approve or disapprove
23 those quickly. But from what you know of the case,
24 are there any other possibilities?

25 MR. LEWIS: No, I agree with your

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1 descriptions, Your Honor.

2 JUDGE FARRAR: Mr. Sugarman, do you see
3 any other possibilities?

4 MR. SUGARMAN: Uh - No, I can't see any
5 other possibilities. I can't see any other
6 possibilities, no.

7 JUDGE FARRAR: All right. Then those, we
8 have agreement then that come next Friday -- Now
9 Friday is an arbitrary date I've picked because of
10 Judge Abramson's and my being consumed with this other
11 case. It seemed to me that settlement discussions
12 have been going on a long time.

13 I applaud his efforts and all those, both
14 the people from the Company and people from the
15 community who have participated in good faith in those
16 discussions. At some point, we have to say, "Either
17 let's have a settlement or let's not have a
18 settlement." You can say next Friday is arbitrary,
19 but at some point we need to set a deadline.

20 MR. SUGARMAN: Right. May I be heard on
21 the question of the settlement deadline?

22 JUDGE FARRAR: Yes. Certainly.

23 MR. SUGARMAN: Well --

24 JUDGE FARRAR: And this is what I've been
25 thinking before the call comes out. It's just my

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1 head, nobody else's, so you're welcome to comment on
2 that.

3 MR. SUGARMAN: Well, I think it's entirely
4 inappropriate.

5 JUDGE FARRAR: All right. Why?

6 MR. SUGARMAN: Because the latest event
7 was that Mr. Wood submitted a draft which changed the
8 terms totally and Ms. --

9 JUDGE FARRAR: Wait. Don't tell me about
10 the substance of any settlement.

11 MR. SUGARMAN: Right.

12 JUDGE FARRAR: You can talk around it, but
13 I do not want to know. Don't take offense, but I am
14 the merit judge. Judge Abramson is the settlement
15 judge. So I do not want to know the merit of
16 anything.

17 MR. SUGARMAN: Well, as I said to you at
18 the beginning of this call, it's clear that etiology
19 of this deadline is Mr. Wood's letter.

20 JUDGE FARRAR: No, the deadline is in my
21 head.

22 MR. SUGARMAN: I understand that, but you
23 cannot -- With all respect, there is no way that any
24 person in your position could not possibly be affected
25 by what Mr. Wood said, putting a drop-dead date and

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1 demands. That's how this whole thing started. That's
2 why I objected to this conference call.

3 It is absolutely impossible for you to
4 contend that this call did not come about because of
5 Mr. Wood's letter. And the only thing in Mr. Wood's
6 letter that calls for this call was his drop-dead
7 demand. So it is disingenuous for you to think, and
8 I believe you honestly think, that it came out of your
9 head, but it can't be.

10 There would be no call today if Mr. Wood
11 hadn't written that letter. There would be no
12 deadline of next Friday if Mr. Wood hadn't written
13 that letter. What you're doing is giving him exactly
14 the relief that he demanded which is to put the
15 settlement discussions under a drop-dead date at his
16 demand. It's obvious.

17 Being a fair person, you have to see that.
18 There's no other way to interpret what happened. This
19 call did not come about because an idea came out of
20 your head. This call came about because Mr. Wood
21 wrote a letter that was inappropriate demanding a
22 deadline on negotiations.

23 JUDGE FARRAR: I must not have made myself
24 clear, Mr. Sugarman. The call --

25 MR. SUGARMAN: I think you made yourself

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1 very clear.

2 JUDGE FARRAR: The call came about because
3 of the Company's request. It is my view from my days
4 as a law clerk long ago working with the fairest judge
5 that ever took the Federal bench was when parties want
6 a status conference, they can have a status
7 conference.

8 MR. SUGARMAN: Fine.

9 JUDGE FARRAR: Whatever could be said
10 about the merits of their communication some of which
11 was entirely inappropriate, my view was I'm treating
12 it just as a status call.

13 MR. SUGARMAN: Then don't impose a drop-
14 dead date arbitrarily.

15 JUDGE FARRAR: And --

16 MR. SUGARMAN: Don't do that. There's no
17 reason for that. There's no reason for you to sit
18 here and say that next Friday is it.

19 JUDGE FARRAR: No --

20 MR. SUGARMAN: If you're not paying any
21 attention to what Mr. Wood said, then there's no
22 reason for you to impose a date.

23 JUDGE FARRAR: Mr. Sugarman. One reason
24 we're having this call to see what people think of my
25 idea. When I prepare for a call, I think of how we

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1 can proceed. I'm not putting any drop-dead date on
2 the negotiations. Those settlement negotiations can
3 continue --

4 MR. SUGARMAN: Ah --

5 JUDGE FARRAR: -- until the end of the
6 time. But at some point --

7 MR. SUGARMAN: Yeah, but why next Friday?

8 JUDGE FARRAR: I suggest --

9 MR. SUGARMAN: Because that's arbitrary.

10 JUDGE FARRAR: Good. Suggest a different
11 date. In other words, the settlement negotiations can
12 go on forever. The question in front of me is what
13 should I be doing with the case to bring it to an
14 appropriate conclusion if settlement fails. Should --

15 MR. SUGARMAN: My view is to tell Mr. Wood
16 to go back to the bargaining table and not to set a
17 date and say that when you have a recommendation from
18 the settlement judge that it's time to set a date that
19 you do it then and not in response to Mr. Wood's
20 request for a status conference. If all he is doing
21 is requesting a status conference and no party is
22 requesting a briefing schedule or anything else, then
23 there's no reason to set one all of a sudden.

24 If you're going to adopt the fiction that
25 this is merely a request for a status conference as

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1 you said, then there's no reason to set a date. It's
2 just a status conference. The parties are still
3 negotiating. You have no information to the contrary.
4 Why all of a sudden set a date?

5 JUDGE FARRAR: Because I --

6 MR. SUGARMAN: I'll just recommend that we
7 have another status conference in a month.

8 JUDGE FARRAR: I have some obligation here
9 to move the cases along and --

10 MR. SUGARMAN: Ah, but that requires a
11 double fiction, the double fiction being that this is
12 only the status -- This decision to have a date is
13 just all of a sudden it popped up that this would be
14 a good time to do it and that's just fictional.

15 MR. THOMPSON: Your Honor, this is Tony
16 Thompson.

17 JUDGE FARRAR: Go ahead, Mr. Thompson.

18 MR. THOMPSON: Whether or not it pops up
19 or not as far as I'm concerned, the Licensee is
20 entitled to a reasonable proceeding that doesn't drag
21 on forever. The Licensee is entitled to get this
22 thing cleared up one way or another in a reasonable
23 timeframe and right now, since we are on a status
24 conference, we would like to say that we would like to
25 see some schedule that tells our client when the

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1 hearing, if it is going to proceed, is going to
2 proceed and what it's going to proceed on.

3 The time has come. We've been holding
4 off. You're absolutely right. They can continue to
5 settle, to talk settlement and you can set a briefing
6 schedule and you can lay out the issues and you can
7 tell us where we stand on the decommissioning bond
8 issue, all of this in this status conference. Then
9 the settlement and negotiations can go on.

10 We say right now that anybody who wants to
11 who isn't a party to the settlement negotiations but
12 who comes in and sees whatever is agreed to if
13 anything is agreed to is welcome to sign it obviously.
14 So there is no reason not to go forward with the
15 settlement negotiations. There is also no reason not
16 to make this case progress in an orderly fashion and
17 it's starting to lag and drag and it's not fair to the
18 Licensee.

19 MR. SUGARMAN: I want to respond to that.
20 The same reason that motivated you to put this case on
21 hold last -- whenever it was that you entered into the
22 settlement negotiations is the same reason why you
23 should not change that now at the request of the
24 Applicant in order to give the Applicant leverage in
25 the settlement negotiations. That's what this is all

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1 about. That's what that letter explicitly says.

2 JUDGE FARRAR: Mr. Sugarman, let me
3 interrupt you. The comment on the letter from the
4 Company, it would have been -- I'm trying to run this
5 proceeding in a fair fashion. Mr. Sugarman, with some
6 justification, wonders whether I'm being fair or
7 whether I'm responding to the demands in those two
8 communications and responding to them in an unfair
9 fashion.

10 It would have been much better had we
11 gotten not a letter from Mr. Wood even mentioning the
12 settlement, not an argumentative piece from you all,
13 but just a simple request saying, "Could we have a
14 status conference to discuss where this case is going"
15 and then Mr. Sugarman would not have been placed in
16 the position of thinking that anything I do today is
17 done because the Company wants it rather than because
18 I'm trying to manage this proceeding.

19 So I hope in the future you will not favor
20 me or other judges with requests like that. Let's
21 just simply ask for a status conference and at the
22 status conference, you can put forth your request.
23 Having said that, Mr. Sugarman, and regardless of what
24 might be said about the appropriateness of those two
25 communications, I will once again represent to you

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1 that I want to move this proceeding along in a fashion
2 that's fair to everyone.

3 MR. SUGARMAN: And a fairer fashion would
4 be to deny the Company the advantage that it seeks
5 through the improper communication.

6 JUDGE FARRAR: No. Let's forget the
7 improper --

8 MR. SUGARMAN: They're seeking -- No, I
9 can't forget it.

10 JUDGE FARRAR: No, no. We're going to
11 forget the communication --

12 MR. SUGARMAN: The fairer thing to do is
13 not to reward them for doing something inappropriate.

14 JUDGE FARRAR: Mr. Sugarman, let's forget
15 the communication.

16 MR. SUGARMAN: I can't.

17 JUDGE FARRAR: Let's deal with the merits
18 of their suggestion and the merits of your response.
19 I've had enough who struck John last August. I'm not
20 going to do it again. Here's how we're going to
21 conduct the rest of this call. Now you may like it or
22 not, but here's how we're going to conduct it. I have
23 from them a suggestion that we start moving forward.
24 I have a response from you that says, "If you put a
25 deadline, that will disadvantage your client."

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1 Let's talk the rest of this call about the
2 merits of those two positions. They are now in front
3 of me and I have not made up my mind. I made a
4 suggestion, but you had a response. I assume that
5 both sides would welcome a deadline. I dreamed that
6 up. I assumed both sides would welcome a deadline for
7 the proceeding getting started, restarted or not.
8 You're saying you believe that disadvantages the
9 citizens if there is any kind of deadline on the
10 settlement negotiations.

11 MR. SUGARMAN: Or on the case.

12 JUDGE FARRAR: Or a deadline on the case
13 tied to the status of settlement negotiations, you say
14 that's a disadvantage to them. Tell me why.

15 MR. SUGARMAN: The very reason that Mr.
16 Wood wrote the letter.

17 JUDGE FARRAR: No --

18 MR. SUGARMAN: I can restate what he wrote
19 in the letter. He has a position that is his final
20 position and he wants the citizens to be required to
21 accept it. By going forward with the case, he
22 eliminates the obligation to negotiate in good faith
23 because he has his facility in operation and going
24 forward with the case takes the settlement off the
25 table and puts the burden on the citizens to litigate

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1 the case. It's an imposition on them from a resources
2 point of view, whereas Mr. Wood is sitting there
3 drawing in the income from the facility.

4 Furthermore, it becomes a matter of
5 playing poker and it becomes a poker chip that Mr.
6 Wood is playing. Given the back and forth over the
7 months and given the status of the settlement
8 negotiations, what Mr. Wood is asking for at this time
9 is not something that he should be allowed to get
10 leverage to get by going forward with the case.

11 But he perceives it that way and the fact
12 that he perceives it is an advantage to him. To go
13 forward with the case with his resources is sufficient
14 in itself to prove that it is disadvantageous to the
15 citizens to do what Mr. Wood wants.

16 JUDGE FARRAR: That's a powerful argument,
17 Mr. Sugarman. Before I ask the Company to respond to
18 it, let me ask a purely factual question. I don't
19 have in front of me the date that Judge Abramson was
20 appointed or better yet the date the first settlement
21 discussions began. Ms. Help, Ms. Geisler, can you
22 fill me in roughly when that was?

23 MS. GEISLER: Yes. I believe it was April
24 6th that we first met independently with Judge
25 Abramson.

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1 JUDGE FARRAR: Okay, so we're talking the
2 beginning of April.

3 MR. SUGARMAN: But the first joint meeting
4 did not take place until June.

5 MS. GEISLER: That's correct. Joint
6 meeting is very different from the independent
7 meetings so we had no meetings whatsoever in the month
8 of May. There was a long gap between the second
9 independent meeting and the first joint meeting.

10 JUDGE FARRAR: Okay.

11 MS. GEISLER: And that was not because of
12 the citizens' schedule.

13 JUDGE FARRAR: Right. Okay. So you have
14 some meetings separately with Judge Abramson in April
15 and then your first joint meeting with the Company was
16 June.

17 MS. GEISLER: Yes.

18 JUDGE FARRAR: Okay. So we're talking
19 that we've had then in effect say two months of active
20 joint discussion.

21 MS. GEISLER: Well, there were long time
22 lapses because of people's travel schedules and
23 vacations on the judges and the corporate end.

24 JUDGE FARRAR: Right.

25 MS. GEISLER: So we've had long gaps, but

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1 they were not because of the citizens.

2 JUDGE FARRAR: Well, then let me ask you
3 -- Well, Mr. Sugarman, after I hear from the Company,
4 I'm going to ask you to make a suggestion about how
5 long you think it would be appropriate to let the
6 settlement discussions continue without us
7 resurrecting the case. But before I ask you that
8 question, let me ask the Company people how they
9 respond to Mr. Sugarman's suggestion that settlement
10 being a poker game of sorts that the Company gets an
11 advantage if I were to go ahead with my idea that said
12 if there's no settlement, let's move forward with the
13 briefing the case.

14 MR. THOMPSON: Well, as I said, Your
15 Honor, this is Mr. Thompson.

16 JUDGE FARRAR: That's Mr. Thompson.

17 MR. THOMPSON: Yes. I mean Mr. Sugarman
18 turns this thing upside down on its head. CFC
19 Logistics didn't apply for a license and then
20 challenge it. The people who challenged the license
21 made a decision. They are grown-ups. They hired Mr.
22 Sugarman to represent them and they came in and
23 challenged the license. They instituted this
24 proceeding.

25 So to sort of somehow put the onus on the

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1 Company seems to me to be just silly. The Company has
2 engaged in good faith negotiations. The Company could
3 simply say, "Okay, this is it. We're not going to
4 discuss anymore. Take it or leave it." At that
5 point, then you have to go forward with the
6 proceeding.

7 We're not saying that. We're saying that
8 the settlement negotiations can continue. We know
9 that there's going to be a timeframe here until we get
10 your decision with the questions on the basic issues.
11 There's going to be timeframe before all that gets
12 there.

13 Plus I'd like to know where do we stand on
14 the decommissioning bonding issue and have we decided
15 the discovery issue? So those are two questions that
16 I don't know that there may be more time involved
17 before those are determined. So there's a whole lot
18 on the table that needs to be fleshed out and whether
19 or not, Mr. Sugarman wants to say it give the Company
20 leverage is certainly up to him. The Company is
21 saying it will continue to negotiate up to a point and
22 at some point if those negotiations break down, they
23 break down and that's the way it is. That's what
24 happens with settlement negotiations.

25 MR. LEWIS: Your Honor.

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1 JUDGE FARRAR: Yes, Mr. Lewis.

2 MR. LEWIS: If I may despite our limited
3 role in the proceeding, we are, of course, interested
4 because we're involved on two issues, plant security
5 and decommissioning financial assurance depending upon
6 whether or not that remains as an issue of concern in
7 the proceeding. I was simply going to offer two
8 comments. No. 1, I see nothing improper in Your Honor
9 considering at this stage simultaneous activities that
10 involve settlement and proceeding with the steps for
11 litigation. I just have never seen that as an
12 improper.

13 The fact that you chose earlier to delay
14 certain parts of the proceeding to give settlement an
15 opportunity to proceed doesn't mean that you had to
16 leave that as your immutable order. So as far as I am
17 concerned, it is your inherent right as the presiding
18 officer to decide what you want to do with respect to
19 the relationship between the settlement activities and
20 the litigation-related activities.

21 MR. THOMPSON: Your Honor, this is Tony
22 Thompson. Let me just say that I agree with Mr. Lewis
23 and let me just also say that it is common in all
24 litigation, civil litigation, everything else, that
25 there are briefing scheduled and that people who are

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1 trying to settle are working in that context. It's a
2 regular fact of life.

3 And if they are close to a settlement and
4 there is a reason to come to Your Honor or to have
5 Judge Abramson come to Your Honor and say, "Hold off.
6 Move the dates back on the briefing because we're
7 getting close to settlement." That is no problem.
8 That is done all the time.

9 MS. HELP: Your Honor. Gentlemen, this is
10 Kelly Help.

11 JUDGE FARRAR: Yes. Go ahead, Ms. Help.

12 MS. HELP: I personally believe that we do
13 need to sit down at the table again. I want to go
14 forward with this. I want to come to some type of
15 conclusion, some type of ending for my township and
16 the people who live here. I believe that an agreement
17 can be reached and I feel as though to make it turn
18 into a three-ring circus is not what it needs to be.
19 It has already been there. We're past that point at
20 this point in time.

21 Now there's a few things that just need to
22 be hashed out to make everything fit into place. I
23 believe that's what needs to happen at this point so
24 that you, Your Honor, Judge Farrar, can move forward
25 with your case and do what you need to do on your end

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1 of it.

2 I am more than willing to sit down within
3 the next week, within the next two weeks, whenever it
4 needs to be done because I believe that we have spent
5 a lot of time on this and I don't believe that all
6 this work should be flushed down the toilet. I just
7 thought I should express that.

8 JUDGE FARRAR: Well, thank you very much
9 for that, Ms. Help. Let me ask you. So in your mind,
10 you would like to continue to pursue the settlement.

11 MS. HELP: Absolutely.

12 JUDGE FARRAR: And let me ask you, and
13 with your permission, Mr. Sugarman, what time now. We
14 have a problem. Starting Monday, Judge Abramson is in
15 our hearing and it's going to be all day, every day,
16 on some very detailed and technical subjects. We're
17 not going to have time during the day to take phone
18 calls and go off the bench.

19 Given that, Ms. Help, if Judge Abramson
20 were to have a call say some evening next week with
21 assuming everyone could make themselves available, do
22 you think one more phone call discussion would have a
23 chance of either reaching settlement or having you all
24 say, "We're just not going to get there"? Or do you
25 need more than one call? What is your sense of the

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1 discussion?

2 MS. HELP: I'm going to be honest with
3 you, Your Honor. I know it's going to at least take
4 two more, I mean, only because common sense is going
5 to say that if we sit back down and hash out a few
6 little waves and then it's going to have to be looked
7 over and then there's going to have to be another
8 agreement. So I know there's going to be at least two
9 more times that we're going to need to discuss this in
10 order to get everything at least to a point where
11 everybody can either agree or not agree.

12 JUDGE FARRAR: Let me ask you this. Do
13 you all know each other well enough that Judge
14 Abramson could do that on phone calls?

15 MS. HELP: I believe we do, Your Honor.

16 JUDGE FARRAR: Right. My view is after
17 you've sat across the table from somebody enough times
18 you can picture their face. When you're talking to
19 them on the phone, you can picture the facial
20 expressions they're making and you think you all have
21 come close enough together that you could do it by
22 phone in the evening as opposed to having to schedule
23 a trip.

24 MS. HELP: Exactly.

25 MS. GEISLER: This is Kim Hameth (PH)

1 Geisler, Your Honor. How would we accomplish that on
2 the phone in the evenings, through a conference call
3 such as this where we dial in from our homes? There
4 are logistical considerations that have made it
5 difficult which is why Judge Abramson has had to work
6 so hard to come here so many times.

7 We thought we would do a conference call
8 for our last meeting with CFC, but instead he decided
9 to come here because we couldn't get together as a
10 group of citizens and have a speaker phone that would
11 accommodate everyone. So he ended up coming here and
12 we met face to face again with the Company. So I am
13 concerned about the logistics of it.

14 MS. HELP: Could I make a suggestion, Your
15 Honor?

16 JUDGE FARRAR: Yeah, obviously face to
17 face, Ms. Geisler, is better. I'm just thinking of
18 the next two weeks, essentially three weeks. There
19 will be no face to face because our commitments here.
20 I thought perhaps you all had made enough progress
21 that a 90 minute phone call in the evening might
22 suffice. As Ms. Help says, maybe you take two of
23 those calls. But let me ask. Mr. Sugarman, what are
24 your thoughts?

25 MR. SUGARMAN: Well, as I understand it,

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1 Judge Abramson as the more relevant at this moment is
2 out of pocket until what, August 18th?

3 JUDGE FARRAR: No. We're in hearing all
4 week the week of 9th, all week the week of the 16th
5 and from 12:00 noon, Tuesday the 24th until 12:00
6 noon, Thursday the 26th. So in essence, I suppose he
7 might -- And of course the time that we're not in the
8 hearing, we're working hard to chew over what we've
9 heard that day and get ready for the next day. So
10 essentially, you're looking at almost three weeks that
11 he's not going to be available during the day.

12 MR. SUGARMAN: And where are you
13 physically going to be? In what state?

14 JUDGE FARRAR: No. We're going to be
15 here. This is the Private Fuel Storage case which is
16 the case in Utah where the industry wants to have
17 temporary storage above ground of waste nuclear fuel.

18 MR. SUGARMAN: Well, the hearings are in
19 Washington.

20 JUDGE FARRAR: Here in D.C.

21 MR. SUGARMAN: Well, I would suggest an
22 evening meeting. I hate to do this to Judge Abramson
23 whom I don't even know, but I would suggest an evening
24 meeting in person in the Philadelphia/Wilmington area
25 that would be accessible to Judge Abramson at 7:00

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1 p.m. for a couple of hours.

2 JUDGE FARRAR: Well, you'd have him leave
3 here and go to Philadelphia.

4 MR. SUGARMAN: Yeah, I mean I said I hate
5 to impose on him, but I've commuted to Washington for
6 trials and it's very convenient because if you don't
7 try to go past Philadelphia or even Wilmington.

8 JUDGE FARRAR: Wait. Maybe I didn't make
9 myself clear. We're in a hearing that's going to go
10 for three weeks.

11 MR. SUGARMAN: Yeah.

12 JUDGE FARRAR: And just like the lawyers
13 have their war rooms where they prepare at night -

14 MR. SUGARMAN: Yeah.

15 JUDGE FARRAR: -- when we get off the
16 bench, we're preparing.

17 MR. SUGARMAN: Okay.

18 JUDGE FARRAR: I thought you were going to
19 suggest that everyone come down here and have a
20 meeting with him here.

21 MR. SUGARMAN: Well, I was going to
22 suggest that next. That would be a possibility also.

23 MS. HELP: Well, I have a better
24 suggestion.

25 JUDGE FARRAR: Who is that? Is that Kelly

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1 or -

2 MS. HELP: This is Ms. Help. I believe
3 that Judge Abramson would be able to be speaking to us
4 over some type of speaker phone or star phone and I
5 believe that the people who are actually involved
6 could all meet. We can meet somewhere close to here.
7 I believe that he can be on the phone if we're all
8 face to face.

9 MS. GEISLER: Would -- I'm sorry. Kim
10 Hameth Geisler weighing in there, Your Honor. Would
11 we be meeting separately with Judge Abramson or would
12 we be meeting at CFC which also would they be party to
13 this? I guess I'm a little unclear.

14 JUDGE FARRAR: What I was envisioning, Ms.
15 Geisler, was the same kind of call as we're having
16 today that Judge Abramson would be here, that the
17 Company people would be at that facility or at Mr.
18 Wood's home, wherever they want to be and that you all
19 would either call in separately or if you wanted to
20 all be together in the room so you could talk among
21 yourselves during the call, that you all would just
22 have to find a facility with a speaker phone.

23 I don't know if any of you have that at
24 home or somebody might have it at their business or I
25 suppose there are these commercial facilities. I

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1 think Kinko's even has conference phones, speaker
2 phone facilities that you would go to because I
3 understand why you would all want to be in the room.
4 When we do our three Board members, we always try to
5 be in the same room so that we can go off the call,
6 put it on mute and talk to each other and then come
7 back on the call. So that's kind of what I was
8 envisioning.

9 MS. GEISLER: I think it will be difficult
10 to do that frankly with this group because I was
11 hoping to do that to avoid Judge Abramson coming back
12 last week and it just wasn't going to work out. I
13 could not organize it. I believe one of the
14 Petitioner supporter is going to be on vacation next
15 week and therefore that would be Bob Jones, Kelly, so
16 I'm not sure that I can arrange for that.

17 And like it's just Kelly and some of the
18 supporters. I know we're having a problem because
19 it's vacation time now for us. So this has not been
20 cleared with one of the Petitioner supporters who I
21 know is away right now and has not indicated when he
22 would be back. So that's why the rush.

23 I concur with our counsel, Bob Sugarman,
24 that we have been very patient in accommodating all
25 the travel schedules and the vacation schedules of

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1 everyone else. But now here in August, we find
2 ourselves needing time because we had plans and we
3 were presented with a first draft of an agreement just
4 last week. When we took it home to read it word for
5 word, there was, I can't discuss it, but I can tell
6 you it's not what we thought we understood it to be.

7 So therefore there is what I perceive to
8 be a wrench in the system that's going to take some
9 time to work out which I am working on right now with
10 the settlement judge. But I have been working
11 independently of Kelly and some of the other
12 Petitioner supporters because of email access and that
13 sort of thing.

14 So I was trying to hammer out something we
15 could all bring forward to Kelly Help and the other
16 supporters. It is going to take some time in
17 particular if the other supporter is out of town.
18 This is the crucial time for the citizens to not be
19 rushed, whereas we've been very patient since April
20 6th accommodating everyone else's schedules.

21 I was under the understanding that we
22 would have the opportunity to forge an agreement and
23 then it would be presented to the other intervenors to
24 either sign or not sign and then the case would move
25 forward based on whether or not the whole community

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1 agree to sign the agreement that we are crafting. So
2 I am very disturbed by the recent turn of events in
3 which that the case would start to move simultaneously
4 with the agreement and I'm an active part of that
5 case. As a citizen, I have been helping in supporting
6 the Intervenors' attorney on the case. So I find
7 myself negotiating the agreement and possibly working
8 to support the efforts of our attorney because to
9 streamline costs and that sort of thing.

10 JUDGE FARRAR: Let me ask you this, Ms.
11 Geisler. In your judgment then -- Well, let's back up
12 a little. The reason I was advocating a settlement
13 for a long time was in my view that you can go through
14 litigation and one side wins and one side loses and
15 then you find yourself living in the same community
16 and there's animosity and there's acrimony. That if
17 possible it's better that people can agree that here's
18 an outcome that we all can live with.

19 Neither side likes it perfectly, but that
20 the community goes about its business and you don't
21 have continuing adversariness in the community. Is it
22 your sense that given some more time, there is a good
23 possibility of reaching that outcome.

24 In other words, the more of that
25 possibility, the more I would be inclined to say,

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1 "Well, let's keep things on hold." One of the reasons
2 I have not indicated any view on the financial and
3 other issues is I didn't want upset the negotiations.
4 Nobody knows what the outcomes are. The more
5 uncertainty there is, the more inducement there is to
6 settle because you don't know how badly it might come
7 out for you. That has been the major reason not to
8 decide anything.

9 On the other hand, the Company's argument
10 a few minutes ago while they didn't use the phrase,
11 those who practice law know that the greatest
12 percentage of settlements occur on the courthouse
13 steps. That everyone takes a hard position until the
14 morning of the trial and then they are going to the
15 trial and the mention of the uncertainty hits them and
16 they say, "Wow. Maybe our case isn't so great" Either
17 side, "and maybe we better settle."

18 That was what motivated me today that
19 maybe it would drive both parties forward to know that
20 the courthouse steps were coming. Having said all
21 that, Ms. Geisler, how much time, given I think you
22 mentioned Mr. Jones, do you think would be appropriate
23 for everyone to say "Look, we're either going to do
24 this or we're not."

25 If you don't reach a settlement, I won't

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1 consider -- That doesn't offend me. If people in good
2 faith try to reach a settlement and can't do it, then
3 we all tried our best and let's get on with the
4 litigation. If some settle and some don't, then
5 depending on who settles or who doesn't, we have to
6 let other people have their standing be considered and
7 have a chance to move forward.

8 Against all that background, what do you
9 think would be an appropriate time to let you all
10 continue and maybe you need to put a deadline on
11 yourselves. Either we're going to reach a settlement
12 by a certain date or we're not. If I said to you,
13 "What's that date," what would you say?

14 MS. GEISLER: I do believe that we should
15 have the opportunity to have Judge Abramson available
16 to come one more time and we might reach an agreement
17 while before then. But my concern is that the
18 Intervenors and the Intervenor supporters should have
19 the opportunity to meet face to face with him one more
20 time. Our goals might be different from the
21 Intervenor herself and I want to make sure that if she
22 signs an agreement, she understands exactly what she
23 is signing. So with that in mind maybe Judge Abramson
24 might have to return to go in depth and read to her
25 exactly what she is signing so she understands the

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1 implications of that.

2 We are all committed to an agreement,
3 having said that, but I want Kelly to have most
4 burden on it. So I am very concerned that she is left
5 possibly without Bob Jones to downplay any talk up and
6 we don't know where he is right now. So that having
7 been said and with the Judges' schedules, I do want to
8 have him available to us one more time to come to the
9 community whenever that would be later this month.

10 I would prefer it would have been sooner,
11 but because of his own schedule, we can't do better
12 than that. So I just want to make sure that Kelly's
13 rights are protected in her decision making fully and
14 that she's not hurried in any way by the Petitioner
15 supporters' goals or the Opponent's goals. She is the
16 one who I must focus on. Hello?

17 JUDGE FARRAR: Yes. Mr. Sugarman, you
18 represent Ms. Help. Right?

19 MR. SUGARMAN: Right.

20 JUDGE FARRAR: You do not represent Ms.
21 Geisler or do you represent the CCMP?

22 MR. SUGARMAN: I represent the CCMP.

23 MR. LEWIS: Judge Farrar, this is Steve
24 Lewis. May I make a point that I've had on my piece
25 of paper here in front of me for a while if I may.

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1 JUDGE FARRAR: Yes, go ahead, Mr. Lewis.

2 MR. LEWIS: One thing that is causing me
3 some, frankly, disappointed about what's happening
4 today is that in essence what I have understood purely
5 from a great distance because I, as counsel for the
6 Staff, in no way have been involved in the
7 negotiations. So I don't know anything about the
8 details of the negotiations at all. But just
9 listening today to the principals who have been
10 involved in those negotiations which I understand has
11 been done without counsel up to this point, it's just
12 so impressive and I would hate to have them go away
13 from this discussion with a feeling that they have
14 been somehow pressured.

15 I'm also, and this is with no disrespect
16 to any other counsel here, I can say for myself I know
17 nothing about the details of the settlement
18 discussions and I'm a little bit surprised to hear Mr.
19 Sugarman speaking from a perspective that -- Well, let
20 me stop right there and say to be fair, this may also
21 be true of Mr. Pugsley and Mr. Thompson. They may all
22 know more about what is in the settlement option than
23 I do.

24 But the fact that the principals were
25 brought to the table here today has been so useful and

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1 I thank Mr. Sugarman for having them here because I'm
2 assuming that up until this point by choice of the
3 Intervenors, they have not been discussing the details
4 of the settlement with Mr. Sugarman. So I assume that
5 he's not speaking from any knowledge of the details of
6 the settlement, but rather from some other basis which
7 he has and the same would be true for Mr. Pugsley and
8 Mr. Thompson.

9 My overriding concern would be that we
10 don't want to squelch what has apparently been a very
11 productive to-date process and I say this fully
12 recognizing that the Company had an unquestionable
13 right to come to you and ask you for today's call.
14 There is nothing underhanded in my mind in any way
15 about it. So here it is. It's all before you.

16 But I can easily see that many of the
17 types of things that we're beginning to get into are
18 probably things that really Judge Abramson probably is
19 in the best position to discuss with the principals.
20 That's just a statement that I've been wanting to make
21 for some time.

22 MS. HELP: You're good, Mr. Lewis.

23 JUDGE FARRAR: Thank you for that, Mr.
24 Lewis. That, too, is powerful. Would then a possible
25 approach be to have Judge Abramson get on the phone

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1 with his, in effective, constituents among you and
2 have him set a time because he, not I, is familiar
3 with the settlement negotiations and all the
4 interplay? Have him say to all of you with take all
5 your suggestions and say, "I'm going to recommend to
6 Judge Farrar that we don't have this done by a certain
7 time we say we're not going to have it done" and at
8 that point, he should resurrect his proceedings.

9 Should we leave that rather than us
10 discussing it here today? Give him that as his next
11 order of business that you and he set a self-imposed
12 deadline on yourselves that "Look if you don't get it
13 done by a certain time, let's shake hands and nice
14 try, but the case needs to go." Is that what you're
15 suggesting, Mr. Lewis, that he would be better?

16 MR. LEWIS: Yes, indeed, Your Honor. That
17 is precisely what I had in mind. I think that the
18 points that Mr. Sugarman raised at the beginning of
19 the call would be largely addressed by doing it in
20 that manner. I mean whatever Mr. Wood did or did not
21 send forth in his letter, I have no doubt that the
22 parties can sit down again.

23 I mean at least the representatives of the
24 Intervenors are indicating to us today that they very
25 much believe that they can sit down again. So it

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1 seems to me, that of necessity has to count more at
2 this time than Mr. Sugarman's due process concerns
3 that he was raising. At that point, I don't think
4 there is an issue of the presiding officer in this
5 proceeding having in any way been pressured one way or
6 another at all.

7 We can let the settlement discussions
8 proceed. I mean it sounds to me like they're very
9 promising. So it's just disturbing when you hear
10 discussions described in such a promising tone,
11 frankly, by both sides. It's the beginning about
12 other things that may have been said about whether or
13 not he wanted to do anything further regarding any
14 further negotiations.

15 But just as to the negotiations that have
16 taken place, they've been described by both sides to
17 the negotiations with respect to the little that I
18 know about them in such a promising tone. So I would
19 hate to have that undermined by what I think are
20 unnecessary due process arguments at this point and
21 probably the best way to moot those due process
22 concerns would be to put the settlement thing back
23 again where it really is with Judge Abramson and then
24 you know it would be up to Your Honor how you want to
25 set that up in terms of indicating to Judge Abramson

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1 the results of today's call and whatever you want to
2 decide about timing and everything. But that's my
3 view as to what matters most at this point.

4 MR. PUGSLEY: Judge Farrar, this is Chris
5 Pugsley. May I interject for a moment?

6 JUDGE FARRAR: Yes. I was just going to
7 call on you at this point.

8 MR. PUGSLEY: I just wanted to clarify
9 something that hasn't been discussed. Mr. Sugarman
10 submitted a response to your order on the 26th of July
11 with a list of eight names I believe and saying
12 whether or not they were interested in the settlement.

13 JUDGE FARRAR: Right.

14 MR. PUGSLEY: And what I would just be
15 interested or if he would like to know is three of
16 those names have the word no next to them which,
17 correct me if I'm wrong, Mr. Sugarman, but does that
18 mean that they are not interested in settlement.

19 MR. SUGARMAN: That's the second column
20 over.

21 MR. PUGSLEY: Yes.

22 MR. SUGARMAN: The last column, yes,
23 that's right. They said they have no interest.

24 MR. PUGSLEY: Okay.

25 JUDGE FARRAR: Wait. I'm confused. What

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1 I have is eight names, one of them is a couple, and it
2 says yes or no, but it was not clear to me whether
3 some were not residents or some were not interested in
4 pursuing the case.

5 MR. SUGARMAN: I don't have that table in
6 front of me, but the way it was intended to be present
7 was that the first column was whether they're still a
8 resident or second column was whether they were
9 interested.

10 JUDGE FARRAR: I don't have that.

11 MR. SUGARMAN: Are there not two columns,
12 Mr. Pugsley? I don't have it in front of me.

13 MR. PUGSLEY: Mr. Sugarman, the paper I
14 have in front of me from your electronic message on
15 the 26th has simply one column with names and one
16 column with either a yes or a no in front of them.

17 MR. SUGARMAN: Okay, well that's not the
18 way it was intended to set up. Did you get a hard
19 copy?

20 MR. PUGSLEY: I just have the electronic,
21 sir. I'm not aware of the hard copy.

22 MR. SUGARMAN: Ah.

23 JUDGE FARRAR: This is Judge Farrar. We
24 never got a hard copy either.

25 MR. SUGARMAN: All right.

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1 JUDGE FARRAR: Let me make a suggestion.
2 Mr. Pugsley, let me anticipate where you're going. We
3 had asked Mr. Sugarman to get the word out to these
4 people and report back to us which he did, but some of
5 the people when he reported back had not gotten back
6 to him and we did not put a deadline on them.

7 My point in the June order was, of course,
8 to make sure they were all notified as soon as
9 possible so that if we later had to take some action,
10 they were prenotified and we could take that action
11 faster rather than slower. Let me suggest this, Mr.
12 Sugarman, that regardless of how we come out today you
13 would update that report, send us a hard copy in a way
14 that you were just describing where you have all the
15 names. I think there are 25 in the original batch,
16 eight in the second batch, all those names and a yes
17 or a no, the two columns --

18 MR. SUGARMAN: Yes.

19 JUDGE FARRAR: -- for residency and then
20 their interest in pursuing the case.

21 MR. SUGARMAN: Right. In my recollection,
22 didn't the letter say what the numbers were?

23 JUDGE FARRAR: I believe it was 25 in the
24 first batch.

25 MR. SUGARMAN: No, but I mean in my letter

1 of the 26th. Didn't I say -- Here we are. "I have
2 indications from five proposed intervenors that they
3 are interested in the matter. I have indications from
4 three that they are not."

5 JUDGE FARRAR: We never got that.

6 MR. SUGARMAN: Letter? This is a letter
7 to you dated the 26th. It was transmitted
8 electronically.

9 JUDGE FARRAR: Yes, I'm sorry. That's the
10 email message which says that.

11 MR. SUGARMAN: Yeah.

12 JUDGE FARRAR: But the attachment to the
13 email just has one column yes or no.

14 MR. SUGARMAN: I'm looking at that and --

15 JUDGE FARRAR: So let's do this. It
16 doesn't matter what happened before. Just send us
17 what your latest count is.

18 MR. SUGARMAN: Right.

19 JUDGE FARRAR: That you've heard from the
20 following people.

21 MR. SUGARMAN: Right.

22 JUDGE FARRAR: And it's yes or no on
23 residency, yes or no on continuing interest in the
24 case and we will then draw the conclusion that you've
25 not heard from the other batch of people. So if you

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1 would update that list.

2 MR. SUGARMAN: Yes, I will.

3 JUDGE FARRAR: That would let us all know
4 how that stands. I take it, Mr. Pugsley, that's the
5 information you were asking for.

6 MR. THOMPSON: Yes, sir, but it's more
7 than that.

8 JUDGE FARRAR: Go ahead.

9 MR. THOMPSON: This is Mr. Thompson. It's
10 more than that, Your Honor, because as you alluded to
11 earlier, I mean there can be a settlement reached with
12 some of the people and then the next thing you know
13 there are four or five other people out there that
14 don't and then you're saying we're going to go back
15 now and address standing for those people starting the
16 whole thing all over again.

17 JUDGE FARRAR: Well you're not starting --

18 MR. THOMPSON: It seems to me we have a
19 major problem here with orderly litigation, a major
20 problem that is a tremendous disadvantage to the
21 Company and it's really -- I don't know how you're
22 going to deal with it, sir, but it is a major problem.

23 MR. SUGARMAN: Well, that sounds like a
24 lot more than a clarification.

25 JUDGE FARRAR: Wait, Mr. Sugarman. We've

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1 listened to your client. We've listened to Mr. Lewis.
2 The Company people have been quiet. Let me hear from
3 them what they say the tremendous disadvantage of the
4 litigation is.

5 MR. THOMPSON: The disadvantage is that we
6 have that we have 25 names where there was no decision
7 made on whether or not they were to be allowed as
8 intervenors and now you could go to a settlement with
9 the current admitted petitioner and everything could
10 be hunky-dory and the next thing you know we've have
11 five people that we have to go back and address in
12 standing.

13 JUDGE FARRAR: Okay, now any people who
14 were later admitted are limited to the contentions
15 that were originally put forth and that we've let in.
16 The Company has had its license all this time. So I
17 understand you would have preferred this be done
18 sooner rather than later. Let me ask you this.
19 There's been a suggestion I think from Mr. Lewis that
20 we ask Judge Abramson working with you all to put a
21 deadline on the settlement negotiations that you all
22 can live with. It doesn't come from my head. It
23 comes from your head. Would that be an appropriate
24 course of conduct, Mr. Thompson?

25 MR. THOMPSON: I don't have any problem

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1 with that, Your Honor. I don't have any problem with
2 that and I don't have any problems with settlement
3 negotiations proceeding if we get some idea of what a
4 briefing schedule might look like. It doesn't mean
5 it's going to take place right now. It doesn't mean
6 everything has to be done right now. But I would like
7 to have some forward movement.

8 Certainly we have no problem going back to
9 Judge Abramson and having him discuss with CFC
10 Logistics and with the various other individuals
11 participating in the settlement discussions about some
12 timeframe. That's fine. We don't have a problem with
13 that. I just don't see any reason why we can't find
14 out where we are with respect to everything else.

15 MR. SUGARMAN: If I may respond to that.
16 It's like this call hadn't happened and we hadn't had
17 the discussion. What they are doing now is they are
18 using the issue of the outstanding result to intervene
19 which are entirely separate from the merits as a
20 foothold to get back in their original effort here
21 which started out as an effort by Mr. Wood to shorten
22 and to put people under a gun. So they are going
23 right back to that and they're just using this
24 clarification of who's interested in the case as a
25 wedge to reopen up this whole call.

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1 I would point out that if they had a
2 problem with deferring the issue of standing, they
3 have had since December until now to raise that. The
4 Board made the decision to defer everything including
5 that back in, I believe, it was December, if not in
6 December, then in January. The Board reiterated that
7 in May. The Board reiterated it in June.

8 In the June 26th order, the Board, Your
9 Honor, set forth a procedure to deal if and when
10 there's a settlement that the intervenors or proposed
11 intervenors would have a short opportunity, I believe,
12 was the way you described it to comment. Now they are
13 trying to reopen the whole issue of a scheduling order
14 based on not knowing. They say my letter of eight is
15 not clear. Well, it's clear enough that five people
16 want to be involved and three don't.

17 According to Mr. Wood, that's what
18 triggered his letter. But Your Honor had issued that
19 order on June 26th as to what would happen and nobody
20 objected to it. So it seems to me that this is all
21 undoes everything that we just constructively worked
22 out.

23 MR. PUGSLEY: Your Honor, this is Chris
24 Pugsley again. I apologize, Mr. Sugarman. A question
25 that may be relevant here is as Judge Farrar said

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1 before, and am I correct, sir, that you would be
2 asking Mr. Sugarman to further update this list to
3 demonstrate who of the proposed intervenors who have
4 not had their standing ruled upon would be interested
5 in settlement and who would not be.

6 JUDGE FARRAR: No, not interested in
7 settlement. Are still interested in pursuing the
8 litigation. In other words, I just want to make --
9 All that request is is what's our universe of people
10 we're dealing. Some may have moved away. Some may
11 have said, "I don't care anymore." In other words, I
12 want to know who still lives there and who still cares
13 about the case. That's all.

14 MR. PUGSLEY: Okay. Then in the vein of
15 what we were discussing earlier and the way we were
16 discussing it as to possibilities, what would you
17 suggest is a course of action if Mr. Sugarman returned
18 a list that has names on it that are not interested in
19 pursuing settlement?

20 JUDGE FARRAR: All that -- No, we're not
21 talking about settlement. That request to him did not
22 ask whether they were interested in settlement. It
23 asked whether they were still interested in pursuing
24 the case.

25 Let me try to make it clear again. Some

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1 people have moved away so they're out. Some people
2 will say, "Look. I got other things to do with my
3 life. I don't care anymore." So then we know if and
4 when a settlement is reached or not reached. Whenever
5 Judge Abramson reports back and says, "Here's what we
6 have or we're not going to have anything," then we
7 would know that instead of dealing with 33 people
8 maybe we're only dealing with 20 people.

9 MR. SUGARMAN: I can answer you that we're
10 dealing with eight, well with this exception
11 qualification. Three of my letters came back as
12 undeliverable since I wrote the letter of July 26th.
13 I did not receive any indication from anybody else
14 that they wanted to be involved and I had given them
15 a deadline to get to me of July 23rd. So I think it's
16 safe to say that we're dealing with a maximum of five
17 people at this point.

18 MR. PUGSLEY: I appreciate the
19 clarification.

20 MS. HELP: May I speak?

21 JUDGE FARRAR: Yes. Who is that?

22 MS. HELP: This is Kelly Help.

23 JUDGE FARRAR: Go ahead, Ms. Help.

24 MS. HELP: We're actually dealing with
25 four because one of the people who did respond back

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1 that did want to be aware of what the agreement
2 actually was if there was an agreement is my mother.

3 JUDGE FARRAR: Which one is that?

4 MR. THOMPSON: What's her name?

5 MS. HELP: Jennifer Bobbernicki (PH).

6 MR. THOMPSON: I'm looking at her letter
7 right here. Okay.

8 JUDGE FARRAR: Okay. All right. Then
9 this has been -- So, Mr. Sugarman, so you told them,
10 "Get back to me if you're still interested."

11 MR. SUGARMAN: I told them, "Get back to
12 me either way."

13 JUDGE FARRAR: Okay, and they did not.

14 MR. SUGARMAN: I received eight responses.

15 JUDGE FARRAR: Right. Since then, you've
16 gotten three. When you file this next report, the one
17 with the two columns.

18 MR. SUGARMAN: Right.

19 JUDGE FARRAR: Please footnote or indicate
20 somewhere there that three of the letters came back
21 undeliverable or whatever they say on them.

22 MR. SUGARMAN: Right.

23 JUDGE FARRAR: In fact if you'd be good
24 enough to attach to your hard copy report photocopies
25 of those envelopes.

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1 MR. SUGARMAN: Yeah, sure.

2 JUDGE FARRAR: I'm not doubting your word.

3 MR. SUGARMAN: No, I understand. I didn't
4 understand you at first, but yes, I will do that.

5 JUDGE FARRAR: That way we would have that
6 in our files in case anyone says later you didn't
7 notify these people or whatever.

8 MR. SUGARMAN: Right.

9 JUDGE FARRAR: So if you would attach
10 photocopies of those three.

11 MR. SUGARMAN: Right. Okay.

12 JUDGE FARRAR: Then I think let me see if
13 we have some sort of an agreement here. No. 1, Mr.
14 Sugarman will the next few days put together a new
15 version of the report in the way we said, names of who
16 he's heard from, two columns, yes or no, residence,
17 yes or no, still interested plus the three that came
18 back undeliverable.

19 I could put out a three line order to
20 Judge Abramson saying, "Based on results of today's
21 conference call, the parties who were involved in the
22 call have asked me that as a request of you as a next
23 order of business you impose a deadline on yourselves
24 for settlement discussions to either terminate
25 favorably or terminate unfavorably and that the case

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1 remain in abeyance pending that."

2 In the meanwhile, I would continue in such
3 spare time as I'll have over the next few days to put
4 together this order that would say, "Here's what we
5 said about the contentions previously. Here's the
6 upshot of our discussion at the December 11th
7 prehearing conference and here are Judge Kelber's
8 questions." I would be working on that order so that
9 it could go out the minute we have to notify people
10 either to get their approval of a settlement if one is
11 entered or if there is none entered, this would be the
12 first step in launching the briefing schedule.

13 MR. LEWIS: Your Honor, this is Steve
14 Lewis. If I may suggest one point of emphasis that I
15 would suggest for your order.

16 JUDGE FARRAR: Yes.

17 MR. LEWIS: It is that the emphasis upon
18 the establishment of a deadline be framed as much as
19 possible as a deadline worked out with the negotiating
20 party which I think is implicit in what you meant, but
21 I think it's an important thing because otherwise it
22 might sound like your calling upon Judge Abramson
23 independently to simply provide you his best estimate
24 or his date.

25 JUDGE FARRAR: That's a good

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1 clarification, Mr. Lewis. That's what I had meant,
2 but if I didn't say that, I will say it and that would
3 be the tenor of it that he should in terms of
4 reconnecting with the negotiating parties work out in
5 consultation with them a deadline they would all
6 impose on themselves and that I would hold the case in
7 abeyance pending that agreed-upon deadline.

8 Mr. Pugsley, Mr. Thompson, you were in the
9 midst of making some points and we may have
10 interrupted you. Do you want to comment on this
11 approach or add something else to what you had been
12 saying before?

13 MR. PUGSLEY: I don't have any comment.

14 JUDGE FARRAR: Okay. Does this work for
15 you?

16 MR. PUGSLEY: I said that we'll go along
17 with the idea of time to see if they can come up with
18 settlement among any of those who are interested and
19 work further with Judge Abramson. We certainly are
20 supportive of that. Other than that, I have no
21 comment.

22 JUDGE FARRAR: All right and let me add.
23 We had once talked about a six week each briefing
24 schedule. My thought would be that if settlement is
25 not reached or if some of the citizens, say Ms. Help,

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1 does sign the settlement and we have to then look at
2 the standing of others. Anyone who wants to go ahead
3 would then have -- The intervenors, as we would agreed
4 before, would go first and so we would have ready an
5 order summarizing what was said about these
6 contentions before, adding in the questions that Judge
7 Kelber has worked with me on and we'd say, "All right.
8 Now here we go. You have now six weeks to file your
9 written presentation." So we would be prepared to do
10 that once the settlement deadline comes and goes.

11 Mr. Sugarman, does this take care of the
12 concerns you had expressed earlier? In other words,
13 this deadline of Judge Abramson would be worked out in
14 consultation with you all.

15 MR. SUGARMAN: Yes, Your Honor. I think
16 that's a sound approach and I appreciate Your Honor
17 and I appreciate Mr. Lewis's intervening and everybody
18 working that out.

19 JUDGE FARRAR: I think all three counsels
20 have helped shape that suggestion and as I said at the
21 beginning sometimes I have a lot of ideas and
22 sometimes people agree with them and sometimes they
23 don't and my goal is to accommodate everyone's
24 interests as best as possible and when it's time to
25 rule, we will.

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1 Ms. Geisler, Ms. Help, let me speak
2 particularly to you. Mr. Sugarman was concerned at
3 the beginning that there might be undue pressure on
4 you and I singled you out not to put, as I said,
5 pressure on you because you have a unique status. You
6 and your husband are the only people still local there
7 who have actually been admitted in the proceeding.
8 That's why you have this special status.

9 MR. SUGARMAN: That's Ms. Help I think
10 you're talking to, Your Honor.

11 MS. HELP: Yes.

12 JUDGE FARRAR: Yes, Ms. Help.

13 MR. SUGARMAN: I think you said Ms.
14 Geisler, but I know you mean Ms. Help. Right?

15 JUDGE FARRAR: Right, I addressed both of
16 them and said particularly Ms. Help.

17 MR. SUGARMAN: I apologize.

18 JUDGE FARRAR: That's all right. This is
19 for Ms. Help's benefit. You have an important role in
20 the case, but I do not want you to feel pressure from
21 me in any way. In other words, if there's a
22 settlement hammered out, and that may be a big if, if
23 you sign it, that's your decision and if you don't
24 sign it, that's your decision. Whichever you do is
25 fine with me.

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1 Again, I don't favor one side or the
2 other. So I want you to feel free when it comes if
3 someone puts something in front of you, that the
4 decision you make taking into account you and your
5 husband's interest and the interest as you see them of
6 the community at large. That's a decision that you
7 should feel free to make bringing your own best
8 judgment to bear on it.

9 You will not get criticized here for doing
10 it or not doing it. What you do will have an impact
11 on the future course on the proceeding, but that's
12 fine. Whichever way you go will address the rest of
13 the proceeding so I want to thank you for stepping
14 forward as a citizen, for participating in the
15 discussions and assure you that we are putting no
16 pressure on you to do one thing or the other.

17 But I will ask Judge Abramson to put
18 pressure on himself and all of you in whatever the
19 right timeframe is at some point you have to say
20 either we have a deal or we don't have a deal and
21 let's shake hands and move forward. Ms. Help, is that
22 clear to you?

23 MS. HELP: Yes, it is, Your Honor.

24 JUDGE FARRAR: Thank you for
25 participating. Ms. Geisler, thank you for all the

1 work you've done on the case so far and Mr. Lewis, as
2 you said you has not been active in this. Staff has
3 not been a full participant in this and we appreciate
4 the thoughts you've brought to bear here.

5 Mr. Pugsley and Mr. Thompson, I know from
6 my time in industry that people in industry like to
7 have things wrapped up and know what the answer is
8 because they need to move forward with their business
9 so I appreciate that. You and your client have
10 attempted to work out a solution with the community.
11 I hope there is a solution, but that's between you all
12 and Judge Abramson. So I appreciate everyone's
13 contribution on this call.

14 MR. THOMPSON: Your Honor?

15 JUDGE FARRAR: Yes.

16 MR. THOMPSON: Tony Thompson. I'm still
17 confused about something.

18 JUDGE FARRAR: Go ahead.

19 MR. THOMPSON: You noted that you had held
20 back on certain rulings pending the settlement
21 negotiations. How do they fit into the contentions or
22 the schedule? How would those fit in or where do they
23 fit in and what are they?

24 JUDGE FARRAR: That's an excellent
25 question. I see the case in three parts. There are

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1 let's call them the basic contentions and there's the
2 financial and then there's the security. Financial,
3 we're not going to go to hearing on the merits. We
4 will either refer that to the Commission because of
5 the situation with the other irradiator in
6 Pennsylvania. We need to reconcile those or we will
7 not refer it on the grounds that the papers in front
8 of it, in effect, reconcile the regulation with the
9 other situation.

10 So there will be no presentation on the
11 merit. There will either be a referral to the
12 Commission or we'll say that there's no need for a
13 referral to the Commission. So when the settlement
14 discussions end if we need to, we would make that
15 ruling.

16 Security. So there's basic contentions,
17 the financial qualifications contention and there's
18 plant security contention. The plant security
19 contention, there's an argument by the Staff that only
20 a very limited area can be reached, brought into the
21 case or we have jurisdiction only over a very limited
22 area because of the nature of the supplemental order
23 they issued.

24 There is the further concern that in
25 today's climate that would have to be, well, there

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1 always would have been a closed hearing but there
2 would be strict limitations on who can see the
3 information on what the matters are and so we would
4 have to treat that separately in any event. The
5 Commission, another licensing board and the Commission
6 have just ruled in another case on who's qualified to
7 be an expert and what the responsibilities of that
8 expert are and that's something we would have to deal
9 with separately, both the scope of our jurisdiction in
10 light of the Staff's arguments and the matter of how
11 we would run that sort of proceeding so that there is
12 only those with a vital interest and a need to know
13 would be aware.

14 I've heard on the news. I've not gotten
15 on our website. Mr. Lewis, maybe you know something
16 about this, but I heard a news report that the
17 Commissioners or somebody in the Commission yesterday
18 said that there would no longer be an announcement for
19 nuclear power plants of what the results of any
20 security test work, what actions have been taken with
21 respect to the company and whether any changes have
22 been made. All that information would no longer be in
23 any way public. Am I correct about that?

24 MR. LEWIS: I do not know the answer.

25 MR. SUGARMAN: I heard the same news

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1 report.

2 JUDGE FARRAR: Yes, and so that's
3 something we need to look at that in today's
4 heightened security atmosphere that we may be very
5 limited in what the Homeland Security people will
6 allow us to discuss. That's something we'd have to
7 take up with you all. There's no need to get into
8 that effort now if it doesn't provide necessary to do.
9 Did that answer your question, Mr. Thompson?

10 MR. THOMPSON: Yes, Your Honor. Thank you
11 very much. That's very helpful.

12 MS. GEISLER: Your Honor. Kim Hameth
13 Geisler here. I wanted to follow up on Attorney
14 Thompson's question. You say that regardless of the
15 results of a settlement agreement that you will decide
16 the financial assurance whether to refer that or not.
17 So that's a separate decision independent. It will be
18 made regardless of the outcome of the settlement.
19 Assumed a settlement is reached.

20 JUDGE FARRAR: Yes.

21 MS. GEISLER: And everyone signs off on
22 that who is interested in the case. Would there still
23 be a ruling on the financial assurance question or
24 would that question never be addressed if there is a
25 settlement that everyone signs on beyond the scope of

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1 the settlement team?

2 JUDGE FARRAR: My contemplation on that
3 had been that if you gave us the settlement, Judge
4 Abramson submitted it to me for approval, I have some
5 obligation to make sure that the settlement in the
6 public interest and I can't imagine that you all would
7 come up with something that wasn't. But as a matter
8 of formality, I would have to do that. At that time,
9 I would indicate the answer on the financial that in
10 approving it we want to also make this ruling on the
11 financial.

12 MS. GEISLER: Okay. Thank you very much
13 for clarifying.

14 MR. SUGARMAN: Thank you, Judge.

15 JUDGE FARRAR: Okay. Then, Mr. Sugarman,
16 you have a small task of updating that report and
17 sending us an hard copy with all the columns.

18 MR. SUGARMAN: I will.

19 JUDGE FARRAR: And I have a small task of
20 just sending a brief one page request to Judge
21 Abramson to work with you all and set on a deadline on
22 yourselves and that we would hold the case in abeyance
23 pending that response.

24 MR. SUGARMAN: Thank you, Judge.

25 JUDGE FARRAR: Mr. Sugarman, you're in

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1 agreement in that time.

2 MR. SUGARMAN: Yes, Your Honor.

3 JUDGE FARRAR: That's fine. Mr. Pugsley.
4 Mr. Thompson.

5 MR. THOMPSON: Yes, Your Honor.

6 JUDGE FARRAR: Okay. Thank you. And Mr.
7 Lewis.

8 MR. LEWIS: It's fine with me.

9 JUDGE FARRAR: Okay, and Ms. Geisler and
10 Ms. Help, you understand that and that's acceptable to
11 you.

12 MS. HELP: Yes.

13 MS. GEISLER: Yes, Your Honor. Thank you.

14 JUDGE FARRAR: And, Ms. Help, you do not
15 feel under any undue pressure as a result of anything
16 that's transpired in the last week.

17 MS. HELP: Not anymore than I already
18 felt, no.

19 JUDGE FARRAR: Well, anybody who steps
20 forward to try to pick up things in his or her
21 community takes on a burden and we wouldn't be as good
22 a country as we are if people did not take that up.
23 A lot of people just want to get on with their own
24 lives and let somebody else do the hard work. When
25 you took that on, I think everyone benefits from you

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1 doing that. So don't put too much pressure on
2 yourself and be happy that you have taken that
3 approach, taken that on on behalf of the community.

4 MS. HELP: Thank you, Your Honor.

5 JUDGE FARRAR: All right. If there's
6 nothing else, then we will adjourn this phone call.
7 I thank all of you very much.

8 (Chorus of thanks.)

9 JUDGE FARRAR: Off the record.

10 (Whereupon, at 11:50 a.m., the above-
11 entitled matter was concluded.)

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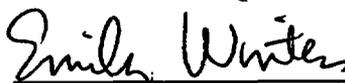
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Docket Number: 30-36239-ML:

ASLBP No. 03-814-01-ML

Location: Teleconference

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



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