

ORIGINAL

DOCKETED
USNRC
OFFICIAL TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA FEB -3 A10:44

NUCLEAR REGULATORY COMMISSION
OFFICE OF SECRETARY
RULEMAKING & ADJUDICATION
ADJUDICATION STAFF

Title: PRIVATE FUEL STORAGE, L.L.C. --
PREHEARING CONFERENCE

Docket No.: 72-22-ISFSI

Work Order No.: ASB-300-117

LOCATION: Salt Lake City, Utah

DATE: Wednesday, January 28, 1998

PAGES: 241 - 499

DOCKETED
USNRC
98 FEB -3 A10:44
OFFICE OF SECRETARY
RULEMAKING & ADJUDICATION
ADJUDICATION STAFF

ANN RILEY & ASSOCIATES, LTD.

1250 I Street, NW, Suite 300
Washington, D.C. 20005
(202) 842-0034

SECY-032

DS03

18783

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - - - X
: In the Matter of : Docket No. 72-22-ISFSI
: ASLBP No. 97-732-02-ISFSI
: PRIVATE FUEL STORAGE, L.L.C. :
: (Independent Spent Fuel :
: Storage Installation) :
- - - - - X

University of Utah
College of Law
Moot Courtroom
332 South Street, 1400 East
Salt Lake City, Utah

Wednesday, January 28, 1998

The above-entitled prehearing conference convenend at
9:00 a.m. pursuant to notice, before:

THE HONORABLE G. PAUL BOLLWERK, III,
Administrative Judge,
Atomic Safety & Licensing Panel Chairman

DR. JERRY R. KLINE,
Atomic Safety & Licensing Panel Board member

DR. PETER S. LAM
Atomic Safety & Licensing Panel Board member

PRESENT FOR THE NRC STAFF:

Sherwin Turk
Catherine Marco

PRESENT FOR THE STATE OF UTAH:

Denise Chancellor
Diane Curran
Fred Nelson
Marvin Resnikoff
Lawrence White
Connie Nakahara

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 PRESENT FOR THE SKULL VALLEY BAND OF GOSHUTE INDIANS:

2 Danny Quintana
3 Scott York

4 PRESENT FOR ONHGO GAUDADEH DEVIA:

5 Jean Belille
6 Robert Halstead

7 PRESENT FOR CASTLE ROCK LAND AND LIVESTOCK, L.C.:

8 Michael Later
9 Bryan Allan

10 PRESENT FOR THE CONFEDERATED TRIBES OF THE GOSHUTE
11 RESERVATION AND DAVID PETE:

12 John Kennedy

13 PRESENT FOR PRIVATE FUEL STORAGE, L.L.C.

14 Jay Silberg
15 Ernest Blake
16 Paul Gaukler

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

[9:00 a.m.]

CHAIRMAN BOLLWERK: Go on the record.

Good morning, everyone. We're here this morning to start the second day of the initial prehearing conference for the Private Fuel Storage proceeding.

Couple of preliminary procedural matters. I passed out, just prior to our going on the record, a copy of a listing that I had made up sort of indicating my ideas about how some of these contentions are related to each other.

When I originally issued an order in this case sort of setting out an agenda for the case, I'd note counsel should be looking at related contentions in terms of subject matter. These are sort of my ideas. I've been using these over the past day to kind of draw attention to things I thought were related, try to discuss the same subject matter only once.

And in that light, I was going over this last night. In preparing it, I did notice that I thought a couple of contentions, OGD D and E, probably had some relationship to the things we talked about yesterday in terms of cask damage and hot cells. So we're going to start with those this morning. And then we'll come back to the operator training and certification, which is Utah F, which will be the next one in line in terms of the safety contentions. And we'll

1 move down the line from there.

2 I mentioned I thought we did all right yesterday. I
3 think we need to do better today in terms of keeping things
4 moving. It is my hope that we will finish all the safety
5 contentions today. That's going to take some work, but I
6 think that's something we can accomplish.

7 And let me let you know up front that my first question
8 to everyone today is going to be what do you have to tell us
9 about this contention that isn't in your written filings.
10 Okay? I don't want to hear this -- we don't -- be aware,
11 the Board has read these. We're going to go back and re-
12 read them before we decide the contentions frankly. So
13 repeating the same thing again which you already put down on
14 paper is not doing us any good.

15 What we need to know is what you haven't put down on
16 paper, what, if anything, you have to say that we haven't
17 heard before or we haven't read before. All right? So let
18 me emphasize that again. That's what's important to us at
19 this point in terms of getting these contentions decided in
20 terms of their admissibility.

21 One thing I want to also go back on a couple of matters
22 we discussed yesterday briefly. There were some instances
23 where the State of Utah, in talking about the contentions
24 that had been redrafted, made I guess another substantive
25 proposal, or a proposal that they would accept the redraft

1 with these changes.

2 And I just want Mr. Silberg to be aware, or Mr. Turk,
3 whoever, if they're suggesting some kind of additional
4 redraft, if you don't have an objection to that, I -- we
5 don't have a problem with adopting it. If you do though,
6 let us know, because, you know, we want to know. If you
7 have a problem with it that arguably gets into late filing,
8 and that's a problem we want to avoid obviously. So --

9 One other thing. I guess there was a question about
10 adoption by the State of the other parties' contentions.
11 There was a, I guess a pleading that was filed originally, I
12 think by PFS, indicating they thought those were late filed.
13 I never heard anything from the staff on that issue, if they
14 have any feelings one way or the other about the State's
15 adoption of the other parties' contentions in terms of late
16 filing one way or the other.

17 MR. TURK: It's a late filing, Your Honor, but it's not
18 so much -- it's not an actual contention. It's simply an
19 indication that they wish to be co-sponsors.

20 CHAIRMAN BOLLWERK: Right. So you don't consider them
21 subject to the late filing requirements, or you do? Or you
22 don't -- you're not objecting to them on that basis anyway.

23 MR. TURK: May we have just a minute?

24 CHAIRMAN BOLLWERK: Sure.

25 The next thing I want to do in terms just, Mr. Silberg,

1 is the filing on the waiver petition. So we're going to
2 need a date there.

3 Okay. Mr. Turk?

4 MR. TURK: As a matter of how the events unfolded, all
5 the parties filed contentions. After the State saw those
6 contentions, they indicated that they wished to adopt them.
7 I suppose they could make a good cause showing that they
8 didn't know what other parties were going to file until they
9 saw. On the other hand, they could have raised the same
10 issues themselves, just as the other intervenors could have.

11 So if you look at it as a contention, it would be late
12 filed without any real good cause because they could have
13 raised those same issues. We don't look at it so much as a
14 filing of a contention, however. We look at it more as just
15 a request to be listed as co-sponsors.

16 CHAIRMAN BOLLWERK: All right. Okay.

17 MR. TURK: But we recognize you could look at it the
18 other way as well.

19 CHAIRMAN BOLLWERK: All right.

20 MR. BLAKE: Can I return just to the rephrasing of
21 contentions for a moment? We are discussing with the other
22 parties the acceptability of wording.

23 CHAIRMAN BOLLWERK: Okay.

24 MR. BLAKE: And I think by the end of the week we'll
25 have a collective proposal --

1 CHAIRMAN BOLLWERK: Okay.

2 MR. BLAKE: -- that will make life easier for us and
3 for you.

4 CHAIRMAN BOLLWERK: All right. That's fine. I just
5 didn't want to leave a procedural gap there that I wasn't --
6 I hadn't filled.

7 I think you look like you want to say something. If
8 you don't want to say something, I'm not -- but if you do,
9 speak up.

10 MS. CHANCELLOR: With respect to adopting other
11 people's contentions, the rules really don't address it.
12 And we tried to address it the best way we could. And our
13 concern is if a party drops out, that their contention
14 should survive.

15 CHAIRMAN BOLLWERK: Okay. All right.

16 The last procedural thing then I think we need to deal
17 with quickly is we have a rule waiver petition that's been
18 filed by Castle Rock. And the question is what kind of
19 response time do you need to reply to that, or file an
20 answer? I'm sure you ran right home and looked at that last
21 night.

22 MR. SILBERG: Absolutely. First priority.

23 I think if we could have 21 days from this hearing to
24 file a response.

25 CHAIRMAN BOLLWERK: All right.

1 MR. SILBERG: Three weeks from that Friday.

2 CHAIRMAN BOLLWERK: Why don't we give you till the
3 18th. How's that?

4 MR. SILBERG: So that's less than the three weeks?

5 CHAIRMAN BOLLWERK: Two days less.

6 MR. SILBERG: Okay.

7 CHAIRMAN BOLLWERK: Is that acceptable?

8 MR. SILBERG: We'll manage.

9 CHAIRMAN BOLLWERK: Okay. And that would be -- does
10 staff plan on filing a response to the rule waiver petition?

11 MR. TURK: Yes, we will, Your Honor.

12 CHAIRMAN BOLLWERK: All right. And anyone else that
13 wants to file any kind of an answer can do it on the same
14 date, the 18th, which is a Wednesday. Let's go ahead and
15 have those come in by e-mail or fax that day, with paper
16 copies to follow. All right.

17 MR. LATER: Your Honor, will we have a reply
18 opportunity on that?

19 CHAIRMAN BOLLWERK: Well, there's no right to reply.
20 You're asking for that opportunity I take it? Make it --

21 MR. LATER: I may get the board --

22 CHAIRMAN BOLLWERK: I should make it clear that the NRC
23 rules say that in terms of motions, there is no right to
24 reply. You can always ask for it, but there's no right.
25 So --

1 MR. LATER: I would anticipate we would like to -- the
2 opportunity to do that. I would suggest, just as a matter
3 of efficiency, if that's something the Court would entertain
4 and schedule now, it may save everyone some time.

5 CHAIRMAN BOLLWERK: All right. Any opposition?

6 MR. TURK: I --

7 CHAIRMAN BOLLWERK: No?

8 MR. TURK: I do oppose it, Your Honor, because already
9 there have been contentions filed. The staff and applicant
10 replied to the contentions. We set forth in there what we
11 believe the rules require. When the 2.758 petition was
12 filed, it was with full knowledge of the staff and
13 applicant's positions on what the rules required. So I
14 don't see that there is a need for reply.

15 CHAIRMAN BOLLWERK: Have any response to that?

16 MR. LATER: Well, at this point, I cannot anticipate
17 the arguments that may be raised by the applicant in
18 response to that. I would expect that there may be some
19 things that we would want to reply to.

20 CHAIRMAN BOLLWERK: All right.

21 MR. LATER: Obviously if there isn't anything that
22 requires reply, if it's all contained in our original brief,
23 we are not going to reply.

24 CHAIRMAN BOLLWERK: Let's do this. Given the
25 objection, why don't you look at the pleading when it comes

1 in. If you think you want to file reply, file a motion and
2 we'll deal with it at that point.

3 MR. LATER: Thank you.

4 CHAIRMAN BOLLWERK: All right. That way you can file
5 whatever opposition. Maybe you won't see at that point the
6 same opposition.

7 MR. LATER: All right.

8 CHAIRMAN BOLLWERK: All right. Any other procedural
9 matters the parties want to bring to the Board's attention
10 before we start?

11 And I appreciate your comments about the contentions.
12 We're hoping you can give us something that will be all
13 nighty -- nicely tied in a nice neat package.

14 All right. Let's go then to A and D, OGD's A and D.
15 And the reason I brought these up, Ms. Belille, it sound, as
16 I read them over again last night, it seemed that they had
17 some relationship to the questions about the hot cell and
18 casks, and -- I'm sorry.

19 DR. KLINE: It's D and E.

20 CHAIRMAN BOLLWERK: What did I say?

21 I'm sorry, D and E. Excuse me. OGD D and E. I'm
22 sorry.

23 And my question to you is what do you want to tell us
24 that isn't in your pleading?

25 MS. BELILLE: Okay. Our contention basically is that

1 the license application is deficient because it does not
2 provide procedures for returning damaged casks to the
3 generating reactor.

4 In Curators of the University of Missouri, NRC -- 41
5 NRC 386, it states that "The Commission is free to consider
6 a licensee's general energy procedures when resolving risk
7 issues."

8 This is exactly what OGD would urge the Board to do.
9 We would ask that the Board require a general description of
10 what those procedures are. Those procedures that are not
11 required are -- in the cases it talks about what is not
12 required and where.

13 And what is not required is specific implementing
14 procedures, which are probably never finalized because they
15 are constantly changing. And we're not asking for those
16 kinds of procedures to be put into the record.

17 What we're asking for is general procedures that would
18 deal with the problem if it should arise. We're asking for
19 a risk evaluation of general procedures in order to assure
20 that public health and safety is protected should this
21 occasion arise.

22 PFS cites a case, Carolina Power Light Company, which
23 says that "Implementability is a characteristic of a good
24 plan." And it goes on to say more, but it also goes on to
25 say that the plan should incorporate the implementing

1 procedures to whatever extent called for in the regulation
2 or guidance.

3 The regulations, 10 C.F.R. § 7232, requires a
4 description of the means of restoring the facility to a safe
5 condition after an accident. This would bring as necessity,
6 require a description of the procedures for when and if a
7 cask needs to be returned to the generating reactor.

8 PFS argues that to gain admission of the contention
9 founded on the premise that the applicant will not follow
10 regulatory requirements, petitioner must make some
11 particularized demonstration that there is reasonable basis
12 to believe that the applicant would act contrary to their
13 explicit terms.

14 We are not talking about them not following the
15 regulations. We are instead talking about the possibility
16 of an accident. It would be wonderful for us to believe
17 that no accident is going to happen, but that's not the
18 case.

19 What we're saying is that the licensee -- we're not
20 saying that the licensee will not follow a requirement. We
21 are saying rather than the applicant itself -- the
22 application itself has not provided adequate information
23 necessary to bring it into compliance with the health and
24 safety standards because it doesn't provide a procedure for
25 returning the damaged casks to the generating reactor.

1 CHAIRMAN BOLLWERK: All right. That was both D and E,
2 or was that just D? I'm sorry.

3 MS. BELILLE: That's just D.

4 CHAIRMAN BOLLWERK: Just D. Okay. Go ahead.

5 MR. BLAKE: Judge Bollwerk, I understand Ms. Belille to
6 have agreed with us now that there's not a need for
7 implementing procedures, is our position. We believe we
8 provided adequate information on what we would do to cope
9 with problem casks, previously set out and again articulated
10 and stressed by Mr. Silberg yesterday in argument.

11 Finally, with regard to whether or not there's a
12 possibility of an argument or of an accident. That simply
13 is not good enough. You can't say there's a possibility of
14 an accident and therefore we want to hear how you're going
15 to cope with it. You've got to provide some basis, credible
16 scenario, expert backup, et cetera, none of which is here in
17 our view. That's my response.

18 CHAIRMAN BOLLWERK: All right.

19 Mr. Quintana, anything you want to say?

20 MR. QUINTANA: No, Your Honor.

21 CHAIRMAN BOLLWERK: All right. Staff?

22 MS. MARCO: Yes. We had written this, our response,
23 based on the fact that we didn't know that they were just
24 strictly talking about an accident. And we understand that
25 you are -- you have done that.

1 But as we described, we do not believe that OGD has set
2 forth anything to say that the SAR is deficient at this
3 time, or the emergency plan.

4 CHAIRMAN BOLLWERK: All right. That's it?

5 MS. MARCO: Yes.

6 CHAIRMAN BOLLWERK: Ms. Belille, anything you want to
7 say further on with respect to your contention D?

8 MS. BELILLE: Only that we believe that we have dealt
9 with the accident, the possibility of an accident happening
10 in contentions A and D, and would like -- or excuse me, A
11 and C.

12 CHAIRMAN BOLLWERK: Okay.

13 All right. Let's move on to E then.

14 MR. BLAKE: Do we collect any credit for less than two
15 minutes on our responses?

16 (Laughter)

17 CHAIRMAN BOLLWERK: Yeah. Maybe we won't go till 9:00
18 tomorrow night or something.

19 All right. Number E.

20 MS. BELILLE: PFS argues that this subcontention must
21 be dismissed because it seeks to litigate a generic
22 determination made by the NRC, because OGD states that casks
23 may leak or become contaminated during accident at the site.

24 Since the cask system proposed to be used by -- used in
25 this system is not yet licensed, there's not sufficient

1 information for -- and there's no base of experience for us
2 to use to make any comments on the use of this cask.

3 PFS argues that this contention must be dismissed for
4 lack of technical basis. OGD argues at this point that
5 where the applicant has failed to give complete information,
6 that it will be sufficient for the intervenor to explain why
7 the application is deficient. In this case, the licensing
8 board should admit the contention subject to later
9 refinement and specification when the additional information
10 about the cask has been furnished.

11 CHAIRMAN BOLLWERK: All right.

12 MR. BLAKE: Judge Bollwerk, the first of Ms. Belille's
13 arguments was that taking on our non-credible accident
14 reaction. That had to do with Part 72 and the statement of
15 consideration accepting it, didn't have to do with whether
16 casks A, B, C, D are in fact the couple that we're talking
17 about.

18 Give me a second on the second argument.

19 As we understood the second argument, it was give us an
20 opportunity later on and we'll tell you what the accident
21 might be. This simply is not the kind of sustainable basis
22 for a contention at this juncture.

23 CHAIRMAN BOLLWERK: All right, sir.

24 Mr. Quintana?

25 MR. QUINTANA: No, Your Honor.

1 CHAIRMAN BOLLWERK: All right. Staff?

2 MR. QUINTANA: No comment.

3 MS. MARCO: The staff just says that there's no support
4 for the underlying premise in this contention.

5 And also, there was a statement in the contention that
6 there's no assurance that storage will be, quote, interim,
7 and we believe that is an attack on the waste confidence
8 decision. We did not put that in our brief, but we'd like
9 to state that now.

10 CHAIRMAN BOLLWERK: All right. You may need to move
11 the microphone slightly closer to you I think, maybe.

12 MS. MARCO: Okay.

13 CHAIRMAN BOLLWERK: Not big -- there we go.

14 MS. MARCO: This better?

15 CHAIRMAN BOLLWERK: Better.

16 MS. MARCO: Okay.

17 CHAIRMAN BOLLWERK: All right.

18 Is the court reporter picking that one up okay?

19 MS. MARCO: Yes?

20 MS. BELILLE: The first point that we want to raise is
21 that as far as the waste confidence rule, we're not
22 attacking the waste confidence rule.

23 The fact is that Yucca Mountain and it's -- that has
24 been raised in petitioner's -- in PFS' application, that
25 there are a lot of procedural things that need to be done

1 yet before Yucca Mountain is ready to accept any kind of
2 fuel storage. And that was just the point that we were
3 making in that part of our contention.

4 And basically we're stating that because of the fact
5 that Yucca Mountain's not going to be available, it can't be
6 considered an area for storage. That was the point that we
7 were trying to make there.

8 As far as casks that are in storage, we are not arguing
9 specifically that accidents will happen, but also that there
10 may be some equipment failure. And that would be what we
11 would like to draw the Board's attention to at this point.

12 CHAIRMAN BOLLWERK: All right. Thank you very much.

13 Any questions?

14 All right. Then let's move on then to Utah F, which
15 deals with operator training and certification. And I see,
16 as I said, as I passed out the list, possibility of related
17 contention, OGD L.

18 Again, what do you have to tell us that isn't in your
19 pleadings?

20 MS. CURRAN: In our -- one issue was in our reply. We
21 had raised the issue of whether mental condition was
22 included in the physical exam that's mentioned in the
23 license application. We stated that if that can be
24 confirmed by the applicant that we would withdraw that part
25 of the contention. I'd like to know if the applicant can

1 make any representation on that point.

2 MR. BLAKE: The applicant can.

3 We responded in our answer and referred to the ANSI
4 standard. It's been kind of a moving target, this
5 contention. State first said "Wait a minute. What about
6 physical testing?" And we responded in our answer we've
7 laid out in our application that we do test, medical testing
8 of the operators. And we referred to an ANSI standard.

9 And it's my understanding that that ANSI standard
10 specifically requires psychological as well as physical
11 testing of operators. And in any event, it's done. It's
12 done on operators at nuclear power plants and we're under
13 the same -- got the same kind of regime here. So it's at
14 least MMPI kind of testing.

15 The answer's yes.

16 MS. CURRAN: We're willing to rely on that
17 representation.

18 But in general, this contention boils down to whether
19 the applicant needs to submit its training program, training
20 and certification program with the license application. In
21 the -- in PFS' license application and in the SAR, PFS
22 generally describes such a program and says that it will be
23 submitted. But the regulation in Section 72.192 is quite
24 clear that the program must, quote, must be submitted to the
25 Commission for approval with the license application, close

1 quote.

2 So it is our position that until that program is
3 submitted, that we have a valid contention here that the
4 company has not met the regulatory requirement. And that a
5 mere description of what that program might contain is not
6 sufficient to meet the regulation.

7 CHAIRMAN BOLLWERK: All right.

8 Response from the applicant?

9 MR. BLAKE: Our answer is just what we've stated
10 before. We believe we've met all the requirements for the
11 license application. We've adequately described the kind of
12 training that will be done.

13 CHAIRMAN BOLLWERK: All right.

14 Mr. Quintana?

15 MR. QUINTANA: No comment.

16 CHAIRMAN BOLLWERK: Staff?

17 MR. TURK: We rest on our written pleading, Your Honor.

18 CHAIRMAN BOLLWERK: All right.

19 Anything else further you want to say, Ms. Curran?

20 MS. CURRAN: Yeah. To the extent that PFS claims that
21 the description in the SAR and the license application is
22 adequate, I think in our basis we lay out the areas in which
23 we feel that description is insufficient. But that only --
24 that's really secondary to the primary fact that the program
25 itself has not been submitted.

1 CHAIRMAN BOLLWERK: All right.

2 Ms. Belille, how's your contention' I believe I said it
3 was L; the same or different from this one? And what do you
4 want to say about it?

5 MS. BELILLE: The license -- what we're arguing
6 basically is that the license application poses undue risk
7 to the public health and safety because it provides that
8 operators will not be trained for the specific job when
9 hired, and that the operators will undergo on-the-job
10 training and classroom training leading to certification.

11 Section 10 of the C.F.R. 72.327 requires that the
12 license application provide a description of the
13 responsibilities of the licensee personnel should an
14 accident occur. And that what OGD is postulating is that
15 this cannot be done without -- with the untrained on-the-job
16 training that the application has set forth.

17 PFS argues that Chapter 7 of the license application
18 does not provide that operators will be untrained for the
19 job when they take over the critical job of handling nuclear
20 fuel at the facility. PFS further argues that the relevant
21 section of the operator's training program makes it clear
22 that the operators will receive their classroom training and
23 on-the-job training prior to certification and prior to
24 handling nuclear fuel at the site.

25 And it's not clear from reading the application to OGD

1 that the same section that PF underscores where --
2 underscores the relevance of the following statement. It's
3 not -- to make it clear that on-the-job training and
4 classroom training will be done prior to certification or
5 prior to the handling of nuclear fuel.

6 This statement says that each person to become
7 certified must have the qualifications, the qualification
8 cards completed prior to being allowed to independently
9 perform the applicable task.

10 There's nothing in the section that says they will not
11 handle nuclear fuel prior to certification. It says that
12 prior to being allowed to independently perform the
13 applicable task, the operator must have a qualification card
14 complete.

15 Simulation, or simulated conditions are never mentioned
16 in any section of the license application. And that's one
17 of the arguments that the applicant makes. This contention
18 consists of a specific statement of facts to be raised or
19 controverted. For factual disputes, the petitioner need not
20 proffer facts or formal affidavits or evidentiary form.

21 The intervenor's burden of alleging a factual basis for
22 contentions is especially light in situations where the
23 essential information is entirely in the hands of the
24 applicant or staff. Because of the factual discrepancies
25 identified by OGD in the language of the license application

1 and the effect that this could have on the health and safety
2 of members of OGD, it gives that -- and given that this
3 places down on the applicant compliance with 10 C.F.R. §
4 72327, this contention should not be rejected.

5 CHAIRMAN BOLLWERK: All right.

6 Staff? I'm sorry, applicant? Getting out of order
7 here.

8 Oh, go ahead. Mr. Blake.

9 MR. BLAKE: With respect to the first point, whether or
10 not there'll be on-the-job training done prior to the
11 receipt of spent fuel and whether or not the operators will
12 have been trained and certified by that point.

13 I would refer Ms. Belille to our SAR Chapter 9 cited in
14 the answer, what it says. There'll be adequate complement
15 of trained and certified personnel prior to the receipt of
16 spent fuel, which I think was her concern. And she may just
17 not have seen that, so I point that out.

18 The -- with respect to the second, whether or not we
19 specifically referred to simulated kind of training. It's
20 widely accepted, not only in this industry but elsewhere,
21 certainly here. It's referred to in reg guide 1.8, which we
22 rely on as a guide for our training of personnel and as
23 other nuclear plants do.

24 I have nothing else to add.

25 CHAIRMAN BOLLWERK: All right.

1 Mr. Quintana, anything you want to say on the subject?

2 MR. QUINTANA: No, Your Honor.

3 CHAIRMAN BOLLWERK: All right.

4 Staff?

5 MR. TURK: Our written pleading addresses the
6 contention for the most part.

7 I would respond further, however, to something said
8 today. The contention, as I understand it, essentially
9 asserts that on-the-job training means that people at the
10 facility will get their training by handling fuel at the
11 facility.

12 That's not a correct statement, as stated in our
13 response and the applicant's argument today. The SAR
14 indicates that they'll receive training prior to receipt of
15 spent fuel.

16 Further, if OGD's assertion is accepted as correct,
17 that would mean that the first ISFSI to be license could
18 never be licensed, because there would have been no
19 practical training using spent fuel at some other facility
20 because no other facility would have existed. And the same
21 for each successive ISFSI.

22 The only way that the people could have received
23 training at an ISFSI prior to being employed at theirs is if
24 there had been some ISFSI beforehand that had been licensed.
25 So the initial ISFSI could never have been licensed, and

1 each successive one would require that they hire people who
2 had been licensed at some prior ISFSI. And that's not a
3 correct understanding.

4 CHAIRMAN BOLLWERK: All right.

5 Ms. Belille, anything you want to say?

6 MS. BELILLE: We would just stress the fact that we are
7 just concerned about having people that are not trained
8 handling nuclear fuel. And when it -- when the requirement
9 talks about them independently, not independently doing it
10 but doing it before they're trained, that was the concern
11 that we had. And we think that OGD can be protected by a
12 statement that maybe says that, exactly what they're saying
13 right now.

14 I mean right now they're saying that each person to
15 become certified must have a qualification card completed
16 prior to being able to independently handle the fuel. And
17 if that's going to be done by simulation or whatever, then
18 that should be laid out in the license application. And
19 that's basically what we're saying at this point.

20 CHAIRMAN BOLLWERK: All right.

21 Any Board questions on these two contentions or
22 anything else?

23 All right. No?

24 All right. The next one I have listed, it'd be Utah G,
25 quality assurance. I didn't see any one that was similar to

1 any of the others. If anyone else sees one, I'm glad to
2 know now. If not, we'll look at that one individually.

3 Again, Ms. Curran, what can you tell us that isn't in
4 your pleadings?

5 MS. CURRAN: Okay.

6 For one, the applicant in its response to our
7 contention refers to 51 pages of QA procedures that are
8 purportedly attached to the QA program. The State did not
9 receive a copy of those procedures when it obtained the QA
10 program, so we're simply unaware of those procedures.

11 But in addition, we think it's important to emphasize
12 that what we're asking for here, a degree of involvement in
13 quality control over the packaging of fuel at the nuclear
14 power plant site is based on the very unique situation that
15 is presented here:

16 That PFS is going to be accepting fuel from at least 19
17 different nuclear power plant licensees. Without having any
18 kind of uniformity or oversight in how that fuel is
19 packaged, but that PFS will be relying on the quality
20 control that is done at those sites for not just the safety
21 of maintaining the fuel at the PFS site for 20 to 40 or
22 perhaps more years, but also maintaining the integrity of
23 the fuel and knowing the condition of the fuel for purposes
24 of ultimately disposing of it in a licensed repository for
25 thousands of casks of nuclear power plant fuel.

1 This has been a concern of the NRC and PFS as stated in
2 the March 24th summary of the March 19, 1997 meeting, that
3 PFS stated that it is going to own the casks. And that's
4 one measure that it considers to be helpful for maintaining
5 quality control over this process. And PFS, in its reply,
6 describes quite a lengthy process.

7 At page 212 of PFS' response to our questions,
8 describes quite a lengthy process and involvement in quality
9 control over the manufacture of the casks, in which PFS
10 would actually go to the site where the casks are being
11 constructed and oversee how that's being done. There's
12 nothing equivalent in this license application for the
13 actual packaging of the casks, which is an extremely
14 important step. It's going to affect both the safety of
15 storage and the integrity of the fuel when its ultimately
16 presented to DOE for disposal.

17 We don't believe this is a challenge to the
18 regulations; that ordinarily a licensee that was responsible
19 for on-site storage of nuclear waste would be responsible
20 for controlling the entire process for which it was going to
21 have ultimate responsibility.

22 But in this case we have something very different,
23 where the whole purpose of this application is to make
24 decommissioning more feasible for licensees; to have PFS
25 take responsibility for the fuel which is -- can be

1 reasonably anticipated to lead to the decommissioning of
2 these nuclear power plant sites, the reduction in force of
3 the licensee's staff. So that ultimately PFS will have a
4 great deal of responsibility for the condition of this fuel
5 at the end, without ever having had the involvement in the
6 oversight of how it's packaged. That's what I have for now.

7 CHAIRMAN BOLLWERK: All right.

8 Applicant?

9 MR. SILBERG: Aside from the fact that everything we've
10 heard from the State now is new information, was not covered
11 by their original contention, was not covered by their
12 response, it certainly seems to be untimely new bases.

13 In terms of the State not having received the 51 pages
14 of QA procedures, they've had that document for a long time.
15 They've had our answers for a month and they simply haven't
16 asked us for it. We were certainly not aware that that was
17 not included in what they received.

18 In terms of the degree of involvement in packaging of
19 fuel at the reactor sites, the apples and oranges comparison
20 that the State has just explained I think demonstrates the
21 weakness of the comparison.

22 When casks are constructed, they're constructed not by
23 NRC licensees but by contractors. So the entity that is
24 purchasing those casks has an obvious reason to have a very
25 extensive presence at the cask construction facility.

1 The fact that the loading of spent fuel at reactor
2 sites is not done by unlicensed individuals, it's done by
3 NRC licensees, who are subject to their own license
4 requirements, subject to their own NRC inspection. There's
5 simply no requirement that there be additional layers of
6 regulatory oversight.

7 In fact, it is certainly contemplated that there will
8 be substantial oversight by PFS, but there is no regulatory
9 requirement that that be done. It is simply not comparable
10 at all to compare that with cask fabrication.

11 The QA procedures that PFS has certainly have the --
12 include the ability to audit and inspect as necessary all
13 sources of material that are being supplied, including the
14 casks, and to audit any facility that is performing services
15 for PFS, including the reactor sites. So that is covered.
16 It is within clearly what is required by the regulations.

17 In terms of the written reply that the State has made,
18 let me make a few points.

19 First of all, they say that we are -- we have
20 unquestioning reliance on reactor licensees, and we have
21 failed to establish measures to verify materials procured.
22 Part 72 requires that one have procedures for nonconforming
23 materials and our QA plan includes such procedures.

24 The fact that we are procuring material from a reactor
25 licensee or anyone else, those, we do have the right in our

1 QA plan, which we will exercise to provide inspections and
2 audits. And our compliance with the QA plan as an NRC
3 licensee is subject to NRC's inspection and oversight.

4 The State points out in its response as justification
5 for this additional level of oversight above and beyond
6 what's required by the regulations that there have been,
7 quote, numerous instances in which casks have been
8 improperly packaged. The State cites three. One in 1980,
9 one in 1981, and one in 1992.

10 There's no indication that those have any commonality,
11 other than random instances which are handled appropriately,
12 and are -- the reason that they're available for the State
13 to know is they have been reported, they have been
14 evaluated.

15 The hot cell discussion on the bottom of page 42 is
16 something that's already been covered. And the State's
17 reference on the bottom of page 41 -- I'm sorry if I said
18 42. I meant 41 before; reference to 72.122(1) is a new
19 basis, not covered by their initial contention and something
20 which is inappropriate at this point.

21 The examples of information which the State claims is
22 missing from the QA program, again, are the State's
23 arguments that we should be including procedures.
24 Commission's decisions that I would cite to, Seabrook, Alab
25 734, clearly demonstrates that QA procedures need not be

1 included in the license application.

2 And at the end of their written response, they say that
3 failure to establish a QA program that even considers the
4 particular characteristics of the ISFSI indicates why our
5 existing QA program is inadequate. However, they fail to
6 identify what these particular characteristics are; and
7 therefore, fails to demonstrate a basis that our program,
8 which they have had in their hands for six months now, is
9 inadequate.

10 So we would suggest that the contention has no basis.

11 CHAIRMAN BOLLWERK: Anything further?

12 Mr. Quintana?

13 MR. QUINTANA: Very briefly.

14 The Skull Valley Band would object to this contention.
15 Does not have any basis in science. It's speculative at
16 best. I think that the application has adequately addressed
17 this issue; and therefore, we would ask this contention not
18 be honored.

19 CHAIRMAN BOLLWERK: All right.

20 Staff?

21 MR. TURK: For the most part, we'll rest on our written
22 pleading.

23 I would respond to one point in the written reply filed
24 by the State. They cite 72.122(1) for the first time in
25 connection with this contention. That is an untimely

1 assertion of a new basis. And it's not part of the
2 contention.

3 As we understand the contention, it really goes to the
4 QA plan, not to the existence of retrievability. And we
5 certainly do not tie the QA plan to the existence of a hot
6 cell, as asserted by the State.

7 CHAIRMAN BOLLWERK: All right, sir.

8 Ms. Curran.

9 MS. CURRAN: With respect to the QA procedures, all we
10 can say is we didn't get them. We made an effort to get the
11 documents the applicants had and they were not there. We've
12 now learned that they exist, but it's -- we don't have them.

13 With respect to the apples and oranges argument.
14 There's no evidence in this application that these licensees
15 are packaging this material using procedures, goals,
16 protocols, that are related to the design of the -- this
17 ISFSI or the ultimate goal of storage 40, 20 to 40 years
18 down the road in a repository.

19 Gets back a little to the issue of connected activities
20 here. There's all these separate things going on and no
21 connection. The licensees have their own program for
22 packaging fuel for transportation, but there's no indication
23 that has any relationship to what PFS' needs are with
24 respect to safety or to maintaining the integrity of the
25 fuel pending long-term storage. And this may be a long time

1 that this fuel is on this site.

2 And not that much is known about what happens to fuel
3 as it sits in these canisters. So that one would assume
4 that you need to have a certain kind of data that you want
5 to have about the fuel when its packaged so that you can
6 maintain some understanding of what's in there that will
7 illuminate what's to happen down the road when it goes to
8 the repository.

9 I mean we all saw the example in Tooele County of what
10 happens when material is shipped somewhere and sits there,
11 and that it becomes unsafe to move. So as a fait accompli,
12 it just stays where it is and has to be disposed of, the 43
13 percent of the U.S. military waste that's now going to sit
14 in the state of Utah until State of Utah can dispose of it.

15 We are not asking for PFS to completely take over the
16 quality assurance and quality control program at these
17 reactor sites. But we are asking for some evidence that
18 there is a program in place to insure uniformity of the work
19 that's done, to insure that PFS' goals and needs and the
20 DOE's goals and needs are met by this quality assurance
21 program. And right now, that -- there's no evidence that
22 that's been considered.

23 With respect to the instances in which casks have been
24 improperly packaged, according to PFS, this has all been
25 taken care of. But in fact, the Palisades, the casket, the

1 Palisades that was discovered to have been improperly
2 packaged four years ago is still sitting on the site without
3 having been dealt with. These are problems that are very
4 difficult to resolve; and therefore, are worth taking care
5 of at the beginning.

6 With respect to 10 C.F.R. § 72.122(1). Yes, we did add
7 this provision. As I stated yesterday, we became aware of
8 it through the staff's response to another contention. We
9 do not think that at this very early stage of the proceeding
10 it is late or improper to add that as a basis to this
11 contention. It goes to the question of what is the follow-
12 up if, when quality assurance and quality control breaks
13 down and some problem needs to be addressed. There is no --
14 PFS has no mechanism for dealing with that problem.

15 As far as PFS' argument that what we're asking for is
16 procedures, that is not the case. It's clear that in
17 many -- with respect to many types of procedures for nuclear
18 facilities, that they come in separately from the license
19 application and that they're not part of the licensing
20 review. But the license application itself needs to meet
21 the requirements, the regulations.

22 If there isn't enough information in the license
23 application to allow the NRC staff or a member of the public
24 to make an evaluation as to whether that requirement is
25 complied with, then that's insufficient to meet the

1 regulations. The applicant's not entitled to put all the
2 information into the procedures and submit that outside the
3 course of the licensing proceeding. It violates the
4 Administrative Procedure Act and our due process rights in
5 this proceeding.

6 CHAIRMAN BOLLWERK: All right.

7 MS. CURRAN: That's it.

8 DR. LAM: So the essence of your argument is that you
9 are not asking the applicant to exceed the requirements of
10 Commission regulation. You are simply asserting they fail
11 to meet the requirements?

12 MS. CURRAN: That's right.

13 CHAIRMAN BOLLWERK: All right. Nothing further?

14 MR. SILBERG: If I could add a couple responses.

15 Again, we're hearing a lot of late file rationale. The
16 Tooele County is certainly not anything that's new to the
17 State.

18 A lot of statements without basis. We don't know what
19 happens to fuel in canisters. We know a lot about what
20 happens to fuel in canisters. There's no evidence that we
21 package -- that the packaging of materials is related to the
22 ISFSI. Again, there's no basis.

23 The discussion of the consumers side, I won't bore the
24 Board with why that is not a safety issue. But there's
25 again, no basis shown and late information.

1 And with respect to the comment that the State isn't
2 asking for procedures. It's curious that they're not asking
3 for procedures but they're complaining that they didn't get
4 the 51 pages of procedures, and that the lack of procedures
5 somehow violates the Administrative Procedures Act. We meet
6 the regulations. That's what's required. The State is
7 asking for more.

8 CHAIRMAN BOLLWERK: Anything further you want to say,
9 Ms. Curran? Go ahead.

10 MS. CURRAN: Well, if the applicant says in its reply
11 that if we read the procedures we'd see information that
12 would satisfy us, then we'd like to see the procedures. I
13 mean that was their answer which we're responding to.

14 We also are concerned with the basic argument here that
15 whenever we respond to an argument by the applicant with
16 some new piece of information, that's a late basis. The way
17 the applicant perceives this whole proceeding is that it
18 starts narrow and it gets even narrower, and that the
19 petitioner is precluded from introducing any new evidence
20 even in response to something that the applicant states;
21 that our hands are basically tied behind our back and that
22 we're limited to whatever was said in the original basis
23 even in -- even when we need to respond to arguments that we
24 made. That makes no sense and it would deprive us of a
25 meaningful opportunity to participate here.

1 CHAIRMAN BOLLWERK: All right. Anything further from
2 the Board?

3 All right. Look then at contention, State contention
4 H, inadequate thermal design.

5 I didn't see on that was related to this, although I
6 was just looking at OGD contention I. But I don't think
7 that one's close enough, Ms. Belille, or not? I sort of see
8 these sometimes. They pop up as I'm looking around. This
9 one's specifically about a thermal design. Yours is more
10 about the design in general.

11 Let's deal with the thermal design first, and I'll come
12 back to you and ask you if you're ready to discuss that
13 one at this point.

14 MS. CURRAN: All right.

15 First, we'd like to correct a typographical error on
16 page 43 of our reply, second line of the second paragraph.
17 The term "100 degrees Fahrenheit" should be changed to "110
18 degrees Fahrenheit." Believe the site design ambient
19 temperature is 110 degrees. Please correct me if I'm wrong,
20 but I think that was a typographical error.

21 CHAIRMAN BOLLWERK: Okay. I'm sorry, can you give it
22 to us one more time? It was --

23 MS. CURRAN: In the second paragraph of -- under --

24 CHAIRMAN BOLLWERK: Okay.

25 MS. CURRAN: -- contention H there on page 43.

1 CHAIRMAN BOLLWERK: Okay.

2 MS. CURRAN: Second line from the bottom, toward the
3 end of the line. "100 degrees" should be changed to "110
4 degrees."

5 CHAIRMAN BOLLWERK: All right. That's in your reply
6 plea?

7 MS. CURRAN: That's in the reply.

8 CHAIRMAN BOLLWERK: Okay.

9 MS. CURRAN: I just have two things to add here. One
10 is that with respect to this contention and other
11 contentions, on numerous occasions the applicant argues that
12 we haven't provided any expert support for the contention.

13 And I just want to clarify that, like many other
14 contentions that the State filed, this one was prepared with
15 the assistance of an expert witness who attests to the
16 accuracy of the factual statements and that the opinions
17 expressed in the contention are based on his professional
18 opinion. So this contention, as many others of ours, are
19 supported by expert opinion in conformity with the pleading
20 requirements of 10 C.F.R. 2.715(b).

21 Second, there's an issue in this contention about the
22 concrete temperature for the Transtore and Holtech cask.
23 And it's our understanding that the staff had written a
24 request for additional information in which it had told the
25 applicant that if it would use a different kind of concrete,

1 then the concern about the temperature of the concrete would
2 be resolved.

3 In the applicant's response, it's very unclear to us
4 whether the applicant has accepted this request from the NRC
5 staff or not. We haven't seen in the technical
6 specifications for the design that this change to the
7 constituents of the concrete has been made. And it might
8 help to resolve this contention, this particular aspect of
9 the contention, if we could get some clarification from the
10 applicant on that point.

11 CHAIRMAN BOLLWERK: Anything further? That's it?

12 MS. CURRAN: That's it for the moment.

13 CHAIRMAN BOLLWERK: Applicant.

14 MR. BLAKE: Judge Bollwerk, again, I'm in a situation
15 here where I not only have to respond to the oral
16 observations, but as well to written replies. And this is
17 our first opportunity.

18 CHAIRMAN BOLLWERK: Uh-huh.

19 MR. BLAKE: The -- one of the State's objections in its
20 reply is that we haven't designed our casks to meet the
21 maximum daily average ambient temperature of 100 degrees
22 Fahrenheit. I think there was some confusion in the initial
23 contention, which hopefully we were helpful to the State on
24 in our answer.

25 So that in their reply, they recognize that the really

1 important design criterion is maximum daily average
2 temperature. And I understand their reply to acknowledge
3 that we in fact, both the Transtore and the Holtech casks
4 are analyzed for a maximum daily average temperature of 100
5 degrees Fahrenheit. They are in fact designed to that, and
6 that contention hopefully has gone away or different.

7 With regard to whether or not that's conservative
8 criterion, the State doesn't believe it is. We believe it
9 is. And we provided some bases for why it is.

10 First, the highest daily average ambient temperature
11 ever recorded in Skull Valley was 95. Our criterion again
12 was 100.

13 In addition, the PFS cask design analysis assumes that
14 the single day maximum average temperature of 100 degree
15 temperature continues unabated for four days. That's
16 physically a tough thing to do with days and nights being
17 what they are. But nevertheless, we've made that
18 conservative assumption.

19 State has argued that the applicant should base its
20 design temperatures on on-site measurements; and more
21 specifically, a distance above the ground that's comparable
22 to the location of the intake vents.

23 We've based our design criteria on recorded
24 temperatures at what we believe to be representative
25 locations near the site, Aseepa being one, with -- and then

1 added an additional 5 percent for conservatism. We think
2 that is adequate; we think it's sufficient; we think it
3 meets NRC guidance and criteria.

4 With regard to actual on-site temperatures, as we've
5 stated, we don't think that necessarily we've had access to
6 or available to us actual on-site temperatures for the exact
7 location for long enough to be conservative about it. And
8 in fact, in the length of time that we've had to be able to
9 take those measurements at the site, the highest temperature
10 we've seen is only 81 degrees. We nevertheless took the
11 higher one that we've seen elsewhere into consideration in
12 establishing our design.

13 The State has argued that we've not taken adequately
14 into account the impact of heat given off by the casks and
15 the pads themselves. We think that the conservatism of
16 assuming the cask is insulated at the floor of the ISFSI,
17 which the State acknowledges we've done, will more than
18 compensate for anything. And we've laid that out.

19 With regard to the concrete temperatures and the effect
20 on the concrete. The State, for the first time in its
21 reply, provides a mechanism of what they regard to be a
22 potential problem from cracking and spawling and
23 deterioration of the concrete, which they've not made before
24 the reply.

25 We think that is a new basis, and a new potential

1 mechanism for problems which they have not laid out before,
2 and they certainly could have. And we -- they provided no
3 late cause showing.

4 In any event, in response to this late one, assuming
5 that the Board doesn't accept the late cause argument, the
6 very nature of the high storm design precludes the type of
7 problems that the State has alleged and is set out in our
8 answer. The concrete overpack is surrounded by inner and
9 outer steel shell, which would preclude the kind of problems
10 they've talked about and holds the concrete in place.

11 Finally, with regard to the concrete mix concern raised
12 by the State. We in fact have committed to use an alternate
13 concrete mix and aggregate that will meet the NRC's
14 temperature specifications. That's cited in our answer at
15 page 117.

16 We made clear that Sierra Nuclear will incorporate the
17 alternate concrete criteria, and the commitment to use that
18 concrete aggregate Transtore analysis safety report is now
19 being reviewed by the NRC, again cited there. We simply
20 don't see the problem. That's the end of my answer.

21 CHAIRMAN BOLLWERK: All right.

22 DR. LAM: Mr. Blake, your argument seems to address
23 some of the merits of the State's contention. Before you do
24 that, what is your view on the fundamental question that the
25 Board must address. Is there a genuine dispute or material

1 issue?

2 MR. BLAKE: Well, what I've done in the answer,
3 Dr. Lam, is hopefully lay out for you how we have addressed
4 the specific concerns which the State now would say ought to
5 be a contention. And the reason that I've done it is, and
6 by reference to the application or to our answer which in
7 turn refers to documents in the record, is to point out to
8 the Board that the State has not followed its obligation
9 which the regulations require to review the application,
10 determine from the application what if any problems it has,
11 and then ask if that might be a contention.

12 I point out to you you can't have these problems
13 because we've addressed them in the application. If that --
14 I understand it goes substantively to some of these points,
15 but that's really why I do it.

16 DR. LAM: Thank you.

17 CHAIRMAN BOLLWERK: All right. Mr. Quintana?

18 MR. QUINTANA: We believe we would object to the
19 State's proposed contention for several reasons. Again,
20 these contentions have absolutely no basis whatsoever in
21 science. Once the Atlantic -- if the Atlantic Legal
22 Foundation is allowed to intervene as a party to these
23 proceedings, I believe these scientists will bring some
24 scientific clarity to some of the concerns that have been
25 raised here.

1 The casks themselves have to be approved by the Nuclear
2 Regulatory Commission. I believe that since the fuel rod
3 assemblies that are proposed to come to Skull Valley will
4 for the most part be older assemblies, some of the science
5 will show that assemblies that are over 10 years old, 90
6 percent of the beta and gamma radiation is gone.

7 So for those reasons and others, because these do not
8 follow the procedures of the NRC, we would object to the
9 contention of the State of Utah.

10 CHAIRMAN BOLLWERK: All right.

11 Staff?

12 MR. TURK: Your Honor, we do not oppose the admission
13 of the contention; again, as stated yesterday, because we
14 looked at it as -- in terms of whether it satisfies 10
15 C.F.R. 2.714.

16 I would only add at this point that I heard Ms. Curran
17 refer to correspondence between the staff and the applicant
18 concerning the concrete temperature. I believe that's a
19 misstatement.

20 I'm informed that the correspondence in question had to
21 do with the cask; and it was with the cask vendor, not with
22 the applicant. And that type of correspondence would be
23 addressed within the rule making proceeding concerning the
24 certification of the cask. That is not a proper subject for
25 -- especially under this proceeding.

1 CHAIRMAN BOLLWERK: All right.

2 Ms. Curran, go ahead.

3 MS. CURRAN: I stand corrected on the letter. But I do
4 think it's relevant to this proceeding because the design
5 temperature of the concrete for the cask is relevant to the
6 amount of heat that's going to be generated on the pad at
7 this particular facility. So it is a relevant issue here.

8 With respect to the commitment to use the alternative
9 form of concrete, the applicant's response does reference a
10 commitment by Transtore to use the alternative form of
11 concrete. We believe that such a commitment, in order to
12 provide assurance that the exact recipe for the concrete is
13 going to be used, should be in the technical specifications
14 with the details of that commitment.

15 Also, we did not see a corresponding commitment for the
16 Holtech cask. And please correct me if I'm wrong, but I
17 still didn't see that.

18 I think that the real issue here is as has been
19 discussed by others, is whether we've raised a material
20 issue of fact. There's clearly a disagreement on the facts
21 here.

22 For instance, Mr. Blake said that the highest
23 temperature in Skull Valley was 95 degrees, but the license
24 application refers to a temperature reading of 107 degrees
25 from July 1960 in Skull Valley.

1 There's a lot of disagreement here about what the
2 ambient temperatures are and where they should be taken, et
3 cetera. But the point is that we have provided an adequate
4 factual basis for challenging the applicant's calculations
5 and the way they went about gathering their data, and it's
6 an admissible contention.

7 Oh, I'm -- excuse me. The 107 degrees was in Salt Lake
8 City. The record high temperatures for Ioseppa ranged from
9 105 degrees to 109 degrees. Well, 105 was Ioseppa South
10 Ranch data; 109 degrees, 1950 and 1992 Dugway data it says,
11 in Skull Valley. So there's some other factual information.

12 CHAIRMAN BOLLWERK: Anything further?

13 MS. CURRAN: No.

14 CHAIRMAN BOLLWERK: You look like you want to say
15 something, Mr. Blake.

16 MR. BLAKE: Very briefly.

17 CHAIRMAN BOLLWERK: All right.

18 MR. BLAKE: We can't do better than the statements that
19 we've made with regard to commitments to aggregate. And
20 with regard to temperatures, there's total agreement on
21 average, maximum daily average temperature being the
22 important criterion. State agrees. They've not challenged
23 our view of that at all.

24 MS. CURRAN: Just one more brief point.

25 CHAIRMAN BOLLWERK: All right.

1 MS. CURRAN: That yes, we're in agreement that the
2 average temperature is an issue. The basic issue which is
3 getting somewhat lost here is that we're concerned about the
4 interaction of the casks with each other and the pad under
5 the climate conditions in this particular site. There's an
6 number of factors that go into this.

7 CHAIRMAN BOLLWERK: All right.

8 Ms. Belille, you want to make a shot at your

9 MS. BELILLE: Yeah. We just have a few comments on
10 contention I.

11 CHAIRMAN BOLLWERK: Right.

12 MS. BELILLE: First of all, we would just stand on our
13 assertions that we made in the contention. We would point
14 out the fact that until the cask is designed and certified,
15 there's no way that Private Fuel Storage can make the
16 necessary description of their ability to operate the
17 facility as planned.

18 PFS asks us to accept their presumption as fact that
19 the casks will perform in accordance with the regulations.
20 We have no basis for analyzing the risk to -- with regard to
21 these casks.

22 CHAIRMAN BOLLWERK: Mr. Blake.

23 MR. BLAKE: They stand, we stand.

24 CHAIRMAN BOLLWERK: All right. Two stands.

25 Mr. Quintana.

1 MR. QUINTANA: Well, we've already killed enough trees.
2 I don't think we need to waste more words.

3 CHAIRMAN BOLLWERK: All right.

4 MS. MARCO: The staff rests on its pleading too.

5 CHAIRMAN BOLLWERK: All right. Very good.

6 The next one I have is, let's see, we dealt with J
7 already. I think we have K, inadequate consideration of
8 credible accident --

9 MS. CURRAN: You missed I this time.

10 CHAIRMAN BOLLWERK: Did I miss -- I'm sorry, I did miss
11 I. Lack of procedure for verifying presence of helium in
12 canisters. Thank you, I appreciate that.

13 All right. Contention I. Checking off the wrong I
14 here.

15 MS. CURRAN: Believe the argument in opposition to this
16 contention is that we're challenging the regulations. But
17 as we pointed out, the important point here is that in this
18 operation, these casks are going to be transported twice.
19 Once from the nuclear plant to the facility, then to the
20 repository; that -- and also that these regulations were
21 anticipated the store -- that storage casks would be used;
22 that the citations that the applicant relies on are for
23 storage casks and these are casks that are going to be
24 transported, shaken, vibrated. And in our view, there's a
25 reasonable basis to require some means of verifying the

1 presence of helium in the containers. And I won't repeat
2 all the other arguments we made.

3 CHAIRMAN BOLLWERK: All right.

4 DR. LAM: Ms. Curran, what difference does it make with
5 or without helium? I mean in terms of real impact after 20
6 years. Any estimates?

7 MS. CURRAN: What difference does it make after 20
8 years?

9 DR. LAM: Right. I'm trying to address the -- how
10 material is this issue. Admittedly, you know, in your
11 pleading you assert that the presence of helium is important
12 to prevent oxidation, cooling, to maintain cooling,
13 et cetera, et cetera.

14 The question is assuming there's no helium in there,
15 what adverse impact does it have? Do you have any estimate?

16 MS. CURRAN: Okay. The first -- there's two reasons.
17 First, helium transmits heat, so that it's needed to
18 insulate the fuel. And from -- it releases heat, to conduct
19 the heat away from the fuel.

20 And a second -- the second is that if there's oxygen in
21 the cask, if the helium is contaminated with oxygen, it will
22 lead to oxidation of the fuel.

23 DR. LAM: Oh, yes. I read your pleading. In your
24 pleading you talk about oxidation, you talk about cooling.

25 The question is, I mean for me at least, to consider if

1 a contention is admissible. The test is do we have a
2 genuine dispute. Do we have an issue that's material. Now
3 to address materiality, I for one need to assess why does it
4 make any difference.

5 All right. If the absence of helium would make a small
6 difference in the outcome, then I would maintain that this
7 may or may not be material. So the question is let's assume
8 there's no helium in there because of your assertion. Let's
9 assume there's no helium. Does it make any difference?

10 MS. CURRAN: Yes, it makes a difference, because A) it
11 would lead to higher temperature of the fuel; and B) it
12 would lead to oxidation of the fuel, which is of course
13 degradation of the fuel, which would affect the safety of
14 storage and also the integrity for purposes of ultimate
15 disposal.

16 DR. LAM: But at this stage, you have no indication of
17 how much a difference it would make?

18 MS. CURRAN: Well, inerting the cask and filling it
19 with helium is required by NRC regulations. It's one of the
20 safety measures that is taken to insure the safety of the
21 cask during transportation. And so in our view, if the
22 integrity of the helium can't be protected, that is
23 presumptively a significant safety problem.

24 DR. LAM: Thank you.

25 CHAIRMAN BOLLWERK: All right. Applicant.

1 MR. SILBERG: Couple points.

2 First, the last statement by the State indicated
3 that -- their belief that helium is required to provide for
4 safety during transportation. That may be true, but it's
5 irrelevant to this procedure and is outside the scope.

6 The fact that there may be stresses during
7 transportation that might cause helium to leak is also
8 irrelevant. And whether the casks are transported once,
9 twice, or three times is relevant, again, because this is
10 not a hearing on the transportation design of the casks.
11 This is a hearing on the ISFSI. Those questions are dealt
12 with under Part 71. We're not dealing with Part 71.

13 The State is incorrect when they say that our
14 references dealt only in the storage, not to transportation.
15 That's on page 48 of their brief. Our references included a
16 reference to the high storm, which is both a storage and
17 transportation. And if you look on page 124 of our answer
18 you'll see that.

19 With respect to their quotes and references to new reg
20 1536, where they said that new reg 1536 allegedly requires
21 that we have a method for testing, leak testing of helium,
22 that simply is incorrect. New reg 1536, at page 7-3, says
23 that those are things that are required for the initial
24 loading of the canisters. We're not dealing with the
25 initial loading of the canisters.

1 Their reference to new reg 1092 on page 48, that a
2 leakage, helium leakage is an accident, considered an EA, is
3 irrelevant. That is an upper bound estimate, and again,
4 does not provide a regulatory basis for a leak detection
5 system.

6 On page 48 they also argue that reg guide 3.48, the
7 requirements in there apply to this facility and not just to
8 MRS facilities. There are portions of reg guide 3.48 which
9 apply to both private and the MRS facilities; however, the
10 requirements in reg guide 3.48 that relate to leak testing
11 are those which apply to facilities that include fuel
12 assembly and disassembly, i.e., an MRS. Our facility does
13 not include those requirements. And therefore, to the
14 extent that there is any requirement in 3.48 for dealing
15 with leak testing, it simply is inapplicable to us.

16 The discussion on the bottom of page, the top of 49 on
17 human error is a new basis for the contention not previously
18 mentioned. As we've talked about before, we think that's
19 inappropriate.

20 The discussion on page 49 with respect to the waste
21 confidence proceeding and the environmental assessment that
22 was done in connection with Part 72, those references are
23 simply outmoded. New reg 1536, which was issued well after
24 new reg 1092, explicitly does not require seal monitoring.
25 And as we have previously cited, there were generic cask

1 certifications which made the same point.

2 And finally, with respect to the quote from new reg
3 1092 on the bottom of page 49. The quote in our answer was
4 not from the new reg, but was from the decision, the
5 Commission's decision itself, which is reported at CLI 8415,
6 20 NRC at 365. And that paragraph, which deals with the
7 absence of high temperature and pressure conditions, clearly
8 applies both to pool storage and to dry storage.

9 The quote is "Water pool storage and alternative long-
10 term storage methods." So State is incorrect when they try
11 to limit that statement only to pool storage.

12 That's all I have.

13 CHAIRMAN BOLLWERK: Mr. Quintana?

14 MR. QUINTANA: Again, very briefly.

15 The Skull Valley Band would object to the State's
16 proposed contention as not having a valid basis in science.
17 The temperature of these casks will decrease over time, not
18 increase, as has been stated by numerous scientific experts
19 elsewhere. The casks are licensed independently. And for
20 those reasons, we would object.

21 CHAIRMAN BOLLWERK: Staff.

22 MS. MARCO: The state rests on its pleading. It
23 addressed many of these points.

24 DR. LAM: I had a question for the staff.

25 MS. MARCO: Yes.

1 DR. LAM: In your pleading, you stated that the testing
2 for helium is not required by Commission regulation. Is
3 that correct?

4 MS. MARCO: Yes, that's correct.

5 DR. LAM: Given that is correct, is it because the
6 staff believe helium would not leak, or even if it leak, it
7 doesn't matter? What's the basis?

8 MS. MARCO: That's right. That helium leakage is not a
9 credible concern with respect to --

10 DR. LAM: So the staff believe helium would not leak?

11 MS. MARCO: Yes, it's not expected to leak with respect
12 to the cask.

13 DR. LAM: Thank you.

14 CHAIRMAN BOLLWERK: All right.

15 MS. MARCO: It's double sealed cask.

16 CHAIRMAN BOLLWERK: All right. Ms. Curran then.

17 MS. CURRAN: I just want to clarify that the presence
18 of helium is required throughout transportation and storage.
19 It's an integral part of the safety mechanism for both
20 transportation and storage.

21 Again, if anything should happen during transportation
22 through the vibration or knocking of casks to loosen those
23 welds, in our view, it would be important at the facility
24 for PFS to be able to verify that those seals had remained
25 intact during transportation so that they could be assured

1 that the helium would remain present to perform its function
2 during storage throughout the life of the facility.

3 And we have provided a reasonable basis for contending
4 that that type of capability should be provided, because
5 it's a circumstance that was not previously anticipated;
6 that this would be transported over some distance in multi-
7 purposes casks and then put at the ISFSI for a long period
8 of time.

9 I'd also like to -- a reference was made to the waste
10 confidence rule making, which I believe relies in part on
11 the accident analysis in new reg 1092. One of the accidents
12 that was analyzed in new reg 1092 was an accident in which
13 the helium leaks from the cask. This is not considered an
14 incredible event. It was analyzed by the NRC in an
15 environmental assessment.

16 And that the way they -- the scenario was handled in
17 new reg 1092 is that the released gas was detected and the
18 leaking canister is removed to a canning facility and the
19 problem is addressed. And this type of an accident is not
20 anticipated, not planned for in any respect in this license
21 application.

22 MR. SILBERG: Can I make one response to that, to that
23 last point?

24 CHAIRMAN BOLLWERK: Let's see. Are you done yet, or do
25 you have something else you want to say?

1 MS. CURRAN: I'm finished.

2 CHAIRMAN BOLLWERK: All right.

3 MR. SILBERG: The accident analyzed in new reg 1092 did
4 not involve a double seal welded cask. So the fact that
5 they looked at it there is irrelevant to this case.

6 MR. TURK: I need to make one clarification, Your
7 Honor, in response to Judge Lam's question about the staff's
8 view of whether helium testing is required.

9 As I heard your question, it was two parts. You asked
10 is it because we don't believe that the leakage would be
11 credible, or is it because we wouldn't be concerned with the
12 consequences?

13 DR. LAM: That's right.

14 MR. TURK: And Ms. Marco correctly answered that it was
15 the former; that because it is a double seal welded
16 canister, the credibility concern has been laid to rest.
17 Therefore, we don't require that testing.

18 DR. LAM: Thank you.

19 CHAIRMAN BOLLWERK: All right. Anything you want to
20 say about either one of those points?

21 MS. CURRAN: Not on that.

22 CHAIRMAN BOLLWERK: Anything further?

23 MS. CURRAN: No.

24 CHAIRMAN BOLLWERK: Okay. At this point, we're ready
25 to start with K. Let me ask the parties, I'd like to finish

1 this contention as well as the three related ones before we
2 break at 11. Does anyone want a brief break, or should we
3 go ahead and press on and get these over with?

4 MS. CHANCELLOR: Could we have a brief break? We need
5 to do some chair shifting and reorganization, so --

6 CHAIRMAN BOLLWERK: Okay. Why don't we take five
7 minutes then.

8 MS. CHANCELLOR: That'd be great.

9 (Break from 10:20 to 10:30 a.m.)

10 CHAIRMAN BOLLWERK: As I have found a relationship at
11 least between a series of contentions dealing with safety,
12 or accident safety analysis: Utah K, Castle Rock 6,
13 Confederated Tribes B, and OGD M. And we have about a half
14 an hour. I'd sure like to get all these done in that time
15 if we can do that. So let's start with Utah K please.

16 MS. NAKAHARA: Good morning, Your Honor. I'm Connie
17 Nakahara and I represent the State, contention K.

18 As you saw on Monday, the ISFSI, the proposed ISFSI is
19 located in a narrow valley with a lot of open spaces.
20 However, as you also saw Monday, it's in a area probably
21 unlike any in the country in respects to the unique and high
22 hazardous activities that occur in the area.

23 For example, many of the activities deal with high
24 explosives, whether it's related to conventional munitions,
25 rocket motors, air-to-air combat, and testing of munitions.

1 Dugway Proving Ground also deals with biological and
2 chemical agents, which may cause concern for evacuation of
3 personnel at the ISFSI. And it's also a high traffic area,
4 air traffic area. For example, it's my understanding
5 Colonel Como indicated that there's over 80 to 100 military
6 fly-overs over the Skull Valley area.

7 Both the State and the applicant cited in our briefs
8 that new reg 1567 requires, or shouldn't say requires;
9 suggests that nuclear industrial transportation in military
10 installations within a five mile radius should be included,
11 as well as other facilities at greater distance as
12 appropriate to their significant. And the State provided
13 various facts within the original contention and in their
14 reply that would suggest that many of the surrounding
15 facilities, because of their high hazard activities and
16 ability to create problems at the facility, should be
17 addressed according to their significance.

18 Specifically within the five mile radius, the applicant
19 made a conclusion that because of the Hickman Knolls
20 elevation, as well as the two and a half mile distance from
21 the proposed facility to the Tekoi rocket test facility,
22 that there would be no impact. However, the applicant does
23 not describe how they reach those conclusions in which the
24 State could respond to specific details.

25 The applicant argues that the State didn't provide

1 sufficient factual basis to raise this contention. We
2 maintain that we provided sufficient additional facts that
3 would cause reasonable minds to reach that a genuine dispute
4 exists.

5 And just quickly in a follow-up, not a follow-up, but
6 quickly. The applicant argues on the other facilities in
7 the area that they briefly addressed. For example, that
8 Dugway Proving Grounds would have no impact because of the
9 elevation of the mountains in between the facility and, the
10 proposed facility and Dugway. However, there are a number
11 of facts that the State provided to suggest that there is a
12 dispute on whether there would be an impact or not.

13 And recently, in the last couple months, some of these
14 known credible accidents have occurred in the area. As we
15 indicated in our reply brief, on December 10th a Cruise
16 missile missed its target, was off-line for two miles. And
17 luckily, it destroyed very expensive equipment, but it did
18 not hit the biological or chemical facilities or the
19 residential areas at Dugway or in the area.

20 And in addition, as unlikely as it seems, in two
21 successive days the Air Force had three F-16 fighter jets
22 that crashed. Two crashed into each other on the first day.
23 One crashed into the Utah Testing Training Range, the other
24 jet managed to make it back to Dugway and land successfully.
25 And on the subsequent day, for whatever reason, that we

1 haven't heard of a determination, but another jet managed to
2 crash.

3 And so another point that you heard on your Dugway tour
4 was the existence of hanging bombs that occasionally get
5 stuck in the open bay of a fighter jet conducting air-to-air
6 or air-to-ground combat training missions and that are
7 forced to land at Dugway. And thus far, as to our
8 understanding, with no significant consequences.

9 And so just briefly in conclusion, we feel that -- and
10 also, Colonel Como briefed you on the X-33 space plan
11 landing, landings that are proposed with the space plan.
12 Plane, excuse me, which will fly -- which will land from the
13 north to south and which will be carrying hydrogen fuel,
14 which whether it's the fuel that's explosive or just the
15 weight of the debris in the event of crash that could impact
16 the facility.

17 And the State feels that we've asserted a number of
18 facts that should demonstrate a genuine dispute exists.
19 Thank you.

20 CHAIRMAN BOLLWERK: All right. Who from the applicant?

21 Mr. Blake. I don't think the armed forces are helping
22 out much recently on this one, are they?

23 MR. BLAKE: I think I'll probably -- let me correct
24 that last one first.

25 CHAIRMAN BOLLWERK: All right.

1 MR. BLAKE: With regard to the armed forces. I guess
2 there's no record to reflect, would be a nice lawyer thing
3 to say, but certainly it's my recollection, it was my
4 understanding and those that I discussed it with, it was
5 common understanding, that the flight path was specifically
6 changed at the request to come in from the south and land
7 from the south to north.

8 I don't think Ms. Nakahara was there; and therefore,
9 she may have been misinformed and may have misunderstood.
10 But it's not an unimportant distinction. She can check with
11 that with her people.

12 Again, I have to respond to their written replies as
13 well as the oral observations this morning.

14 First, let me talk about the nearby facilities and
15 whether or not we've done an adequate job in coping with the
16 potential for concern of those nearby facilities on the PFS
17 facility.

18 The State has argued that there's enough to show a
19 genuine material dispute with our view of the world and
20 theirs for potential risk from neighboring facilities. And
21 they've tried to discuss a number of various hazardous
22 activities that take place.

23 In their initial contention, they never even
24 acknowledge that between the Tekoi test facility and TSFF,
25 that Hickman knows that it existed. It does in fact exist,

1 and it's a physical part of the geography out there which
2 must be taken into account. To the extent that we haven't
3 said how it would take -- how it should be taken into
4 account, we have. In fact, the SAR says that those knolls
5 would substantially deflect and disburse overpressures from
6 the explosion at the Tekoi test facility. It's a physical
7 feature which the Board has now observed and certainly can
8 take notice of.

9 The State has argued that we've not given adequate
10 consideration to off-site military installations more
11 generally. With -- we saw on the tour and we've also
12 referred in our documentation to the north and south Tooele
13 Army depots. And we have stated, and we continue to
14 maintain that those present no credible hazard to our
15 facility in Skull Valley because of the relative distance
16 and the intervening Stansbury Mountains.

17 The tour that we took on Monday was a dramatic
18 representation of how much impact those mountains would have
19 on any attempt to show a problem, that A was a problem to B.
20 Went up the mountains, down the mountains, looked at the
21 facilities on the other side. The State just ignores this
22 determination and the physical features. And they've
23 provided no basis to challenge our opposing view.

24 With regard to Dugway. As we heard on the tour again
25 on Monday, the facilities, their actual test facilities are

1 another 11 miles further than the entrance to the base,
2 which is about where we were. And therefore, some 20 miles
3 or so from the PSF site. The crash of the Cruise missile,
4 which was two miles, as we understood it, off the intended
5 target, would have been some 30 miles from the PSF facility.
6 There's just no credible factual basis to show how that
7 poses a credible threat to PSF.

8 With regard to air flight crashes. The State has
9 referred both to commercial in its reply, and as well to
10 military, and referred to military today. Their point on
11 commercial crashes is that commercial aircraft could fall on
12 the PFS site. We pointed out that there were no commercial
13 flight patterns that went over that site. And in any event,
14 it's a general overflight probability to which every
15 facility in this country is exposed and none of which comes
16 close enough to require consideration in this proceeding.

17 The State then goes in its reply to point out well, you
18 can't tell whether -- which way it's going to go if it's in
19 problem, and maybe it would divert and come down on PFS.
20 Well, I leave that to a logical response. If direct
21 overflights are not sufficient, then the fact that it might
22 divert from a air flight pattern 10 or more miles away
23 clearly cannot result in a higher probability.

24 With regard to the two instances of recent military
25 crashes. The crashes occurred, as we understood it, at the

1 Utah Test and Training Range, which is 100 odd miles west of
2 Hill Air Force Base, which from information, I believe is
3 some 40 miles north of Salt Lake City. I don't know exactly
4 what the distance would be, but it's more than 100 miles.
5 And while those unfortunate incidents occurred, I don't
6 understand the relevance of that to our facility or how it
7 poses a credible problem for our facility.

8 Finally, is the general matter with regard to aircraft
9 crashes. The colonel did refer to some 80, or 80 to 100
10 flights, overflights a month at that facility, which is
11 clearly much, much greater than the statistic which we have
12 used and set out in our application. Namely, it would
13 require some 8,000 flights a year.

14 Not -- we're not talking about general overflights even
15 here. We're talking about approaches to landings operations
16 at Dugway before there would be a probability approaching
17 the kind of accident which NRC regulations would require us
18 to consider.

19 We're not close. There is not a credible aircraft
20 crash scenario here which needs to be considered.

21 I want to make one other reservation in response to an
22 earlier State concern expressed about the fact that if they
23 have an expert, it supports all these contentions.
24 Dr. Resnikof has supported this particular one, which deals
25 with accidents, a variety of things, military operations,

1 aircraft crashes. He's also put in affidavits in support of
2 dose limits and decommissioning and training and quality
3 assurance and cask design and thermal design and need for
4 hot cells and environmental concerns.

5 We've not specifically taken on that. We appreciate
6 that the State has attempted to have an expert. But I need
7 for the Board at least to take into account, to the extent
8 the State complains about not getting enough credit for
9 that, the omniscience of this kind of expert.

10 CHAIRMAN BOLLWERK: All right, sir.

11 Mr. Quintana.

12 MR. QUINTANA: The Skull Valley Band of Goshutes
13 specifically objects to this contention as having absolutely
14 no basis whatsoever in scientific reality.

15 Facilities that are built through this nation and
16 throughout the world are based -- are built on a standard of
17 reasonableness as to reasonable risks which might occur. It
18 is not expected that this facility should plan on a
19 meteorite hitting the facility, or be required to build a
20 surface to air missile battery in the event a plane were to
21 venture near the facility.

22 This contention is truly, truly incredible. It
23 stretches the minds of all credibility. The fact that we
24 have a nerve gas incinerator in Rush Valley, as well as
25 other facilities surrounding where this proposed site would

1 be, which have been licensed and have not yet been hit by a
2 meteorite or a stray plane from Hill Air Force Base, and the
3 fact that we're all still here today I think speaks for
4 itself.

5 But the rocket test facility of which the State
6 mentions, the type of testing that goes on there presently
7 are plug testings. And those rocket engines are tested in a
8 manner where, since 1975, not one rocket engine has ever
9 left its -- where it was supposed to leave. They've been
10 tested properly.

11 I think that if a 747 airliner was to hit into the
12 Eisenhower Tunnel at the same time that a gasoline truck and
13 a spent fuel shipment was to go in that yeah, there would
14 definitely be some problems. But I don't think we're
15 required to plan for those type of events. I think that we
16 need to have intellectual honesty when we have proceedings
17 of this type, and not reach into outer space for every
18 possible scenario that could occur.

19 CHAIRMAN BOLLWERK: All right. Is that -- anything
20 further?

21 MR. QUINTANA: No.

22 CHAIRMAN BOLLWERK: Staff, and I understand what
23 your -- basically was admissible with the exception of any
24 transportation related?

25 MR. TURK: That's partially correct.

1 CHAIRMAN BOLLWERK: Okay. Well --

2 MR. TURK: That's how the State characterizes our
3 position.

4 CHAIRMAN BOLLWERK: Okay.

5 MR. TURK: In fact, we'll rest on our written
6 statement.

7 CHAIRMAN BOLLWERK: All right.

8 MR. TURK: Which does not oppose admission to the -- of
9 the contention except with respect to the ITP and in certain
10 other respects that the State does not summarize. So I will
11 rest on the written pleading rather than the State's
12 representation on it.

13 CHAIRMAN BOLLWERK: All right.

14 MR. TURK: With respect to statements I've heard here
15 today, I specifically noted down in listening to the
16 discussion provided by Colonel Como that because of
17 buildings located near the runway, he specifically requested
18 and obtained a change in flight path for the shuttle, so
19 that it will land from south to north.

20 Also, I heard him discuss the number of overflights, of
21 his facility as I understood it. I understood that there
22 were 80 to 100 overflights of his facility, not the Skull
23 Valley. And his facility extends far to the west of Skull
24 Valley. That's my understanding of his comments.

25 However, that is a question of the merits. I'm not

1 going to address whether or not the contention should be
2 admitted on its merits.

3 With respect to the site tour yesterday. We did see,
4 as the applicant noted, the Stansbury Mountains. The State
5 represented to us that they were approximately 10 to 12
6 miles distant from the Skull Valley Road that we were on.
7 And that is an important feature to consider with respect to
8 hazards posed by facilities lying on the other side of those
9 mountains.

10 CHAIRMAN BOLLWERK: All right. I guess it wasn't clear
11 to me whether you had a problem with this question of the
12 impacts of accidental facility releases that might cause
13 something to happen at the EFC or the Rawley Junction.
14 Well, Rawley Junction I take it you don't --

15 MR. TURK: We oppose consideration of Rawley Junction
16 as part of the ISFSI site, so --

17 CHAIRMAN BOLLWERK: Okay. All right.

18 MR. TURK: We don't look at that as something that has
19 to be protected against under this application.

20 CHAIRMAN BOLLWERK: All right.

21 Ms. Nakahara, anything you want to say further?

22 MS. CHANCELLOR: I just want to interject.

23 We're a little unclear about the status of
24 Mr. Quintana. He's raising issues, making assertions that
25 are not in the record. He has had the -- he would have had

1 the opportunity to reply to many of the contentions. He
2 chose not to.

3 So we're a little uncertain about -- we don't want to
4 keep objecting all the time, but a lot of the information
5 that's coming in is not supported. It's not in the
6 contentions, it's not in the record. So we would just like
7 clarification as to what can come in and what can't.

8 CHAIRMAN BOLLWERK: Well, I mean to the base Mister --
9 he's making statements that have no factual support in the
10 record, we'll take them into account. And same with anybody
11 else who makes those types of statements.

12 DR. LAM: A question for the State of Utah.

13 In your pleading you talk about hazardous material, you
14 talk about -- and in your oral argument today you also talk
15 about nerve agents. Does the State of Utah have any
16 operational data to support that claim that these materials
17 are indeed hazardous?

18 MS. NAKAHARA: That they're hazardous?

19 DR. LAM: Right, right. I mean at least to tell the
20 Board the degree of hazard.

21 MS. NAKAHARA: As far as the hazardous materials that
22 transfer through Rawley Junction or down to Dugway Proving
23 Ground?

24 DR. LAM: Right. Or -- yeah, or I mean let me
25 rephrase. Well, we all know they're hazardous. I mean we

1 all know how toxic they are. But does the State of Utah
2 have any operational experience regarding how often accident
3 would occur? What type of releases, you know, has you
4 experienced; what -- basically I'm asking do you have data
5 on frequency and severity of these accident that you are
6 asserting that would occur.

7 MS. NAKAHARA: We have data on releases of chemical,
8 and I believe biological. I would have to check on the
9 biological. Releases from Dugway Proving Ground and Tooele,
10 well, it's Desert Chemical Depot now, which was formerly
11 Tooele Army Depot South.

12 Whether it's required by regulation to notify the
13 State, the military facilities have also agreed to notify us
14 in areas that they're not required. And so we do have data
15 on that.

16 DR. LAM: So the answer's yes, you do have data?

17 MS. NAKAHARA: Yes.

18 DR. LAM: Okay. The reason I asked the question is in
19 your assertion, the thrust of this contention is dealing on
20 adequacy. The applicant's response had said they had
21 considered. All right. In your contention you say they had
22 considered but they have not considered accurately. I mean
23 adequately. So to me, one way to resolve that would be let
24 us see what the frequency and the severity datas are.

25 MS. NAKAHARA: We also have risk assessments that

1 project accidents on the Desert Chemical Depot. And there
2 may be some risk assessments that the State has on Dugway
3 Proving Ground.

4 But one of the difficulties that we had in assessing
5 the applicant's statement is that they assess that there's
6 no impact but they don't describe how they reached the
7 conclusion without -- I mean they refer to Hickman Knolls.
8 And we agree that Hickman Knolls exists and that it may
9 serve as a buffer. But whether it's an adequate buffer or
10 not, they didn't identify the quantities of explosives that
11 they considered, the type of explosion that they considered,
12 and how the elevation would address that.

13 And so it was difficult to come up with specific, I
14 guess to attack their assessment. I mean we may agree with
15 their assessment, but since we haven't seen it, it's
16 difficult.

17 DR. LAM: Thank you.

18 MS. NAKAHARA: Then in addition, even in regards to
19 their objection to Mr. Quintana. We didn't identify any
20 meteorites that would hit the facility. And we would
21 definitely assert that the scenarios that we project are
22 more likely than a meteorite, but that's not one that we had
23 thought of.

24 And in addressing the fact that he said a rocket motor
25 has not escaped since 1975, the reason that Alliant Tech,

1 which was formerly Hercules, selected the site out at the
2 Skull Valley Reservation was because a rocket motor did
3 escape from the harness in the Salt Lake Valley. And they
4 were concerned with the impacts.

5 In general, as in response to Judge Lam's question, we
6 feel that it's the burden of the applicant to show how it
7 meets the requirements of the regulations, and that it's the
8 burden of the petitioner to show that we have a genuine
9 dispute. And so we feel it's a little unfair to require a
10 petitioner, the State, to demonstrate in a number of ways
11 when we don't understand how they came to their conclusions,
12 how their ISFSI fails to meet the regulations. And we feel
13 that we've provided enough facts that should show a genuine
14 dispute on how they reached their conclusion.

15 We agree that the Cruise missile did not hit the ISFSI
16 site, but it does show that accidents do occur. And it
17 doesn't say where the next one will hit or -- and since it's
18 a Cruise missile, whether the elevation of the mountain
19 range is sufficient to keep it contained within the Dugway
20 Proving Grounds area.

21 In respect to the F-16's, we also agree that they did
22 not hit at the facility site, but it does show that F-16's
23 do indeed crash. As unlikely as it is, they crash on
24 subsequent days. And the area just adjacent to the ISFSI
25 site, it's a huge area in which the Air Force trains.

1 These F-16's did apparently crash. At least one of
2 them did apparently crash in the north area of UTTR, the
3 other one crashed in the south area, which is adjacent to
4 the ISFSI site. And I mean it just goes to show that these
5 things do occur. And that the damaged F-16 that they did
6 not abandon safely landed at Dugway, which on route directly
7 adjacent to the ISFSI site.

8 In respect to expert opinion of Dr. Resnikof, we feel
9 that it's relevant because it's based on Dr. Resnikof's
10 experience and professional judgment, as he's asserted in
11 his affidavit. And that's all. Thank you.

12 CHAIRMAN BOLLWERK: All right.

13 Mr. Blake, you wish to jump into the void.

14 MR. BLAKE: But ever so briefly.

15 CHAIRMAN BOLLWERK: All right.

16 MR. BLAKE: We don't quarrel with the fact that there
17 incidents that occur. Our only quarrel is with the
18 potential or credibility of the impact on this facility at
19 its siting.

20 And specifically with response to your question and the
21 State's answer, Dr. Lam, we note that the State may in fact
22 have some information about what occurs in the --

23 But at least as to one indication about whatever
24 information the State has, or data about the potential
25 impact for those hazards on Skull Valley, as we saw on the

1 tour on Monday, there were warning systems put up in the
2 event of potential risks or problems which you asked about,
3 but they were all on the east side. I'm sure that if the
4 State thought there were a problem for people in Skull
5 Valley, we'd have seen that kind of warning system there as
6 well.

7 CHAIRMAN BOLLWERK: All right. Anything on that,
8 Ms. Nakahara?

9 MS. NAKAHARA: Real quickly, and directly to that.

10 The warning systems were for the Desert Chemical Depot.
11 Some of our more direct concerns are with Dugway Proving
12 Grounds and the military air-to-air combat, air-to-ground
13 combat at ETTR, which are not part of that warning system,
14 which are significantly closer to the facility. Thank you.

15 CHAIRMAN BOLLWERK: All right.

16 We have three others, Castle Rock 7, Confederated
17 Tribes F, and OGD F.

18 Let me ask you, Mr. Later, what do you -- you bring
19 three things to this, as I see it: fires, the Olympics, and
20 impact of other facilities.

21 MR. LATER: Those are the three points I wanted to
22 address, Your Honor.

23 CHAIRMAN BOLLWERK: All right. How long do you think
24 you can do that? How long will it take you to do that?

25 MR. LATER: Well, I'll try and do it in a minute and a

1 half --

2 CHAIRMAN BOLLWERK: That --

3 MR. LATER: -- but I don't think I'm going to make it.

4 I would expect five minutes or less, Your Honor.

5 CHAIRMAN BOLLWERK: How long did we think our responses
6 to what he -- we don't know, you haven't heard it yet
7 obviously. Well, let's give it a shot and see if we can do
8 it. Let's see if we can finish this up in about 10 minutes
9 on this particular contention.

10 MR. LATER: You have identified the three points I
11 wanted to address.

12 Our first issue is that the applicant has not provided
13 sufficient consideration of the impact fires. As we saw on
14 the tour, fires are endemic. They are part of the life
15 cycle out in the Skull Valley. They can be substantial,
16 significant, and they are predictable and expectable.

17 Size and significance of the fires, however, cannot
18 always be predicted. Our concern is first, the applicant is
19 not provided reasonable information regarding the source and
20 supply of water to fight fires.

21 Second, the applicant has not provided reasonable
22 assessment and analysis of the potential for evacuation of
23 the facility in the event of a major fire and the
24 consequences of such an evacuation.

25 And as result of that, finally, the potential for a

1 loss of containment as a result of fire and/or evacuation of
2 the facility.

3 As a final point on that, it is reasonable to expect
4 that if there is a fire that requires fire fighting efforts,
5 that there will be water used. If there is a loss of
6 containment, the water will likely become contaminated.
7 Even if there is not a loss of containment, there will be
8 contamination simply from the byproducts of the fire.

9 We have seen little or no analysis of those factors.
10 And the issue of water contamination is one that will
11 surface in several others of our other contentions. It's a
12 very significant concern to my client. The facility is
13 directly adjacent to their operations. The potential for
14 contaminated water going into the detention basin, into the
15 groundwater, running off on their property, affecting their
16 operations is, we believe, real significant, and unaddressed
17 in the application.

18 Second. Potential for accidents at other facilities.
19 I guess we all drew different lessons from the tour we took
20 of Tooele County. To me, it seemed an incredibly display of
21 the concentration of some of the most horrifying sorts of
22 facilities one could imagine in this country. There may be
23 some other location in this nation that has as great or
24 greater a concentration of different extremely hazardous
25 facilities, but right now I can't think of any.

1 And as the State has argued, and I will not repeat the
2 arguments, the application simply fails to address those. I
3 think the standard has to be if there is credible potential
4 for impact, an accident at another facility affecting this
5 facility, that has to be assessed.

6 And the kind of random observations we've had today
7 about whether the mountains will or will not provide
8 containment for an accident that occurs over in Rush Valley
9 at either the Army Depot, Munitions Depot, the incinerator,
10 chemical weapons there is insufficient. It is a clear issue
11 that requires consideration and resolution in the
12 application that provides a measure of security both to the
13 residents that will live with the facility as well as to the
14 NRC who must license that facility, and believe that we have
15 -- and pointing to those facilities, pointing to the
16 accidents, and pointing to, for example, directly on point:

17 The release of nerve agents from Dugway that killed
18 over 6,000 sheep directly on-site, sheep that are now buried
19 somewhere in the vicinity of the Goshute Reservation. And
20 my understanding is that the Goshutes expressed concern,
21 which they're raising with the United States government,
22 about the continued toxicity of those remains, some of which
23 may or may not have been located, none of which is addressed
24 in the application.

25 Our third point, and this is the point that we

1 understand that both the applicant and we believe the NRC
2 staff object to, which is the absence of planning for the
3 potential of terrorist activities in connection with the
4 2004 Olympics. The responses, we understand, it is simply
5 that until the Commission or the FBI direct that this issue
6 be considered as a significant threat, that the applicant
7 need not address it.

8 Well, at the very least, we would ask of the
9 Commission, through this Board, to direct that that issue be
10 considered. It is manifest that Olympic games have become
11 targets of terrorist opportunities simply because of their
12 extreme visibility around the world. They become showcases
13 for terrorists, they become routine targets for terrorists.
14 And it is obvious that this facility will be an attractive
15 target to attract the kind of attention that terrorists seek
16 through causing damage.

17 It's -- the Commission, as I believe both the staff and
18 applicant acknowledge, the Commission has the power to
19 direct that that be considered. It simply should be
20 directed. It's a clear potential peril for this facility
21 that should be addressed by the application.

22 CHAIRMAN BOLLWERK: All right. Thank you, sir.

23 Mr. Blake, are you the designee?

24 MR. BLAKE: Yes, I am.

25 First, with respect to the potential for fires. We

1 have addressed fires and how we will cope with fires. But
2 we've not addressed if there's a fire, if there's a loss of
3 containment, if there's this, if there's that. We have
4 stuck with what we understand to be credible. You cannot
5 just assume loss of containment and then to worry about what
6 the impact of that will be. You must provide a basis for
7 it. Castle Rock has not.

8 With regard to nearby facilities and the threats that
9 they pose. I won't repeat here what I said in response to
10 the State. But only I'll make an analogous, at least
11 observation. I'm certain that if Castle Rock thought its
12 people were in jeopardy from the facilities there, they
13 would provide and have provided some methods of protecting
14 them which we would have heard about on the tour. I didn't
15 hear about any.

16 And it's not as though our facility being constructed
17 there will somehow augment or increase that risk. It
18 exists. And I believe that the reason that they don't is
19 the same reason that we've said it doesn't pose a credible
20 problem to our facility. These other potential problem
21 areas do not in a credible way our site.

22 Finally, with respect to the Olympics. We cannot again
23 assume terrorist problems and have to cope with it in this
24 facility absent some basis, absent some obligation. It
25 really requiring something beyond what the NRC's

1 requirements would dictate.

2 CHAIRMAN BOLLWERK: All right, sir.

3 Mr. Quintana?

4 MR. QUINTANA: Very briefly, in one minute or less.

5 The nerve gas contaminated sheep burial case is my
6 case. And I've been handling that case and its resolution
7 is proceeding as expected.

8 With regards to the other concerns that have been
9 raised, I think those have already been previously
10 addressed. I would object to this contention and join in
11 the statements by Private Fuel Storage.

12 CHAIRMAN BOLLWERK: All right.

13 Staff?

14 MR. TURK: We really have nothing to add beyond our
15 written statement. We didn't oppose most of the contention.
16 We did oppose certain limited issues, including the risk of
17 terrorism. And we'll rest on those statements as stated in
18 our written plea.

19 CHAIRMAN BOLLWERK: All right.

20 Anything further from Mr. Later?

21 MR. LATER: Only one point.

22 CHAIRMAN BOLLWERK: All right.

23 MR. LATER: Private Fuel Storage, or Castle Rock has a
24 deep concern about the safety of its employees and families.
25 And that's one of the reasons that I'm here today, is that

1 creation of this facility directly adjacent to their
2 property and that potential interaction so close to them,
3 with accidents at other facilities, is one of the reasons
4 that brings us here raising these concerns and asking to
5 have them addressed and answered for the sake of its
6 employees and families.

7 CHAIRMAN BOLLWERK: I just have one question in regard
8 to the Olympics. The Olympics are scheduled for February
9 2002. Is that correct?

10 MR. TURK: That is correct.

11 CHAIRMAN BOLLWERK: And your facility is supposed to
12 become commercially operable in the summer of 2002. Is that
13 correct?

14 MR. TURK: I believe it was 2001.

15 MR. ALLAN: That's correct.

16 CHAIRMAN BOLLWERK: That's correct. So I guess I'm
17 seeing a misconnect here in terms of when the fuel's there
18 and when the Olympics are.

19 MR. TURK: It was our understanding fuel would be there
20 before the Olympics. Obviously the concern is mitigated if
21 there's no fuel there at the time of the Olympics.

22 DR. LAM: If there were no fuel during the Olympics,
23 would that -- would this contention be void, or what?

24 MR. LATER: It would not be a concern if there's no
25 fuel there at the time of the Olympics.

1 CHAIRMAN BOLLWERK: All right.

2 MR. TURK: May I make one more remark though concerning
3 the Olympics?

4 CHAIRMAN BOLLWERK: Sure.

5 MR. TURK: We have had in other proceedings involving
6 reactors assertions that the upcoming Olympic games near
7 those facilities, for instance, at Georgia Tech when the
8 Olympics were due to arrive this past summer, that that was
9 a concern. The regulations for protection, for physical
10 protection of a facility is different for reactors and
11 ISFSIs. And also, the emergency planning regulations
12 differ.

13 With respect to ISFSIs, the Commission has determined
14 that there is no need for an off-site emergency planning
15 component, even considering the fact that there is risk of
16 terrorism at an ISFSI. The fact that the Olympics are
17 coming doesn't change that determination.

18 CHAIRMAN BOLLWERK: All right. Anything further you
19 want to say, Mr. Later?

20 MR. LATER: No. I'll rest on what we've said.

21 CHAIRMAN BOLLWERK: All right.

22 Mr. Kennedy, I tried to get you involved this morning
23 but I didn't quite make it. We'll start with Confederated
24 Tribes F when we readjourn at 1:30. And also, we'll hear
25 about OGD F. I'm sorry, OGD M. Excuse me.

1 All right. We stand adjourned till 1:30 then.

2 (Break from 11:10 a.m. to 1:30 p.m.)

3 CHAIRMAN BOLLWERK: Go on the record, please. Good
4 afternoon. This is our afternoon session.

5 Any procedural matters anyone wants to bring to the
6 Board's attention before we get going? Not. Then we'll
7 turn to Mr. Kennedy for Confederated Tribe's contention D.

8 MR. KENNEDY: Thank you, Your Honor. We would stand in
9 the pleadings that we've already submitted with respect to
10 this contention. We'd only add that we agree with the
11 assertions stated by the State with respect to K and Castle
12 Rock with respect to their 6. We've read what OGD has said
13 in their contention M, and we concur in that.

14 We would point out I think in addition that our basis
15 number 2 -- excuse me -- our basis number 1 under B is
16 similar to that position or that point raised by OGD in
17 their contention E which was discussed earlier today.

18 CHAIRMAN BOLLWERK: All right. Thank you, sir.
19 Anything else?

20 MR. KENNEDY: That's all.

21 CHAIRMAN BOLLWERK: All right. Any response?

22 MR. BLAKE: They stand; we stand.

23 CHAIRMAN BOLLWERK: Mr. Quintana, anything you want to
24 say?

25 MR. QUINTANA: Other than we would object for the

1 reasons previously stated as to the other contentions.
2 Nothing further.

3 CHAIRMAN BOLLWERK: All right. And the staff?

4 MR. TURK: We rest on our pleading, Your Honor.

5 CHAIRMAN BOLLWERK: All right. Thank you, sir.

6 I guess the last one in this at least related set is
7 OGD M.

8 MS. BELILLE: OGD would -- we argue that our contention
9 should be accepted as originally stated. The NRC staff
10 responds on page 93 and 94, and the applicant's response on
11 page 585 mistakenly confuse OGD's contention about a
12 transportation accident involving a spent fuel truck
13 collision with a truckload of explosives with an unrelated
14 storage accident described in the emergency plan 26. OGD
15 does not contest the applicant's assertion that an explosion
16 on the highway two miles from the nearest storage pad would
17 subject a storage cask to one PSF over pressure or less.

18 OGD restates the contention stating that the emergency
19 plan must consider transportation accidents, which because
20 of unique local conditions, A, might exceed the NRC cask
21 performance standards, and B, might occur near the site
22 within two miles, and C, would likely require emergency
23 response by site personnel.

24 CHAIRMAN BOLLWERK: All right. Anything further?

25 MS. BELILLE: No.

1 CHAIRMAN BOLLWERK: Applicant, Mr. Silberg, I see
2 Mr. Blake pointing to you.

3 MR. SILBERG: To the extent they've now limited the
4 contention or at least changed our understanding of the
5 contention on the transportation issue, that it's covered by
6 Part 71. To the extent that they argue there are unique
7 local conditions in the testimony, the information that we
8 gathered on our site tour indicated that a number of
9 shipments of explosives down Skull Valley Road are quite
10 numerous. I think it was 20 per year.

11 There simply aren't unique conditions. If those are
12 thought to be unique, then the appropriate method for
13 challenging the regulations is 2.758. That showing has not
14 been made here.

15 CHAIRMAN BOLLWERK: Anything further? All right,
16 Mr. Quintana.

17 MR. QUINTANA: Again for the reasons stated on
18 transportation, since it's been done worldwide, and there's
19 an extensive scientific and literature base for that, we
20 would object to this contention.

21 CHAIRMAN BOLLWERK: All right. And staff?

22 MR. TURK: We rest on our pleading, Your Honor.

23 CHAIRMAN BOLLWERK: All right. Anything further you
24 want to say?

25 MS. BELILLE: Yeah. I think a key issue is the unique

1 local conditions. The presence of dugway explosive
2 shipments on Skull Valley Road 20 or 95 times, it doesn't
3 matter, is close enough to the site that release of rad
4 material from a transport accident could require a response
5 by the site personnel.

6 OGD has introduced technical exhibits documenting
7 potential for transport accidents involving release of
8 radioactivity. The applicant is presumptuous in asserting
9 the invincibility of transportation casks which may have not
10 yet been certified by NRC, and will not in any case be
11 tested full scale to demonstrate ability to survive
12 accidents involving military explosions.

13 The arguments by the applicant and the NRC staff that
14 ISFSI licensing proceeding need not consider transportation
15 accidents, ignores the fact that this ISFSI is dramatically
16 different from all other ISFSIs in that all of the stored
17 nuclear fuel stored in the site will be transported to the
18 site from far distant reactors.

19 That's all we have to say.

20 CHAIRMAN BOLLWERK: All right.

21 MR. SILBERG: Just to add one responsive point. I
22 believe OGD just said that there were exhibits that
23 showed -- and I didn't quite catch the entire statement, but
24 I thought she said they were exhibits that showed the
25 release of radiation from transportation accidents.

1 If you look at contention M, there are indeed no
2 exhibits that are referenced in that contention. So to the
3 extent they're trying to introduce new basis it's not
4 terribly specific since we don't know what it is, and it's
5 late.

6 CHAIRMAN BOLLWERK: Any response?

7 MS. BELILLE: We would just refer the Board to the
8 exhibits that we have mentioned in contention A and C.

9 CHAIRMAN BOLLWERK: All right. Anything further on any
10 of these contentions?

11 MR. TURK: I would respond just to that last comment,
12 Your Honor.

13 CHAIRMAN BOLLWERK: All right.

14 MR. TURK: There is established case law to the
15 Commission that mere reference to a document as told does
16 not give you a basis to admit a contention. There has to be
17 something specific cited to, and it is not up to the Board
18 to sort through various documents, especially lengthy ones,
19 to try to discern a basis for a contention.

20 CHAIRMAN BOLLWERK: Anything further, Ms. Belille?

21 MS. BELILLE: No.

22 CHAIRMAN BOLLWERK: All right. All right. The next
23 one I have is Utah contention 11, which is a DO technical
24 contention.

25 MS. CHANCELLOR: I believe that's L.

1 CHAIRMAN BOLLWERK: L. What did I say, 11? Oh, L, all
2 right, L.

3 MS. CHANCELLOR: This contention is not opposed by the
4 staff. PFS does not oppose it except as they have rewritten
5 it, and we object to their rewrite. They have boiled down
6 this contention to a number of subsections, and we think
7 that's inappropriate, and we think that the contention
8 should be admitted as we originally wrote it.

9 CHAIRMAN BOLLWERK: All right. Anyone want to say
10 anything about this contention? I don't think there's a
11 question about -- yes, staff.

12 MR. TURK: I just want to note, Your Honor, that the
13 staff didn't oppose the contention for the most part, but we
14 did include a reservation that was with respect to the
15 seismic events that need to be evaluated. So we rest on our
16 written pleading rather than the State's characterization of
17 it.

18 CHAIRMAN BOLLWERK: Go ahead.

19 MS. CHANCELLOR: We agree that we are not going beyond
20 what is required by Appendix A, Part 100.

21 CHAIRMAN BOLLWERK: So it's then limited to Appendix A,
22 Part 100.

23 MS. CHANCELLOR: That's correct. We're not going to --

24 CHAIRMAN BOLLWERK: Which is what? No activity for the
25 last 85,000 years is my understanding?

1 MS. CHANCELLOR: Right. Any other comments on
2 contention L? Mr. Blake, you look -- no? I'm not inviting
3 you to say anything if you don't have anything to say. I
4 just want to make sure I don't --

5 MR. BLAKE: I just didn't want the Board to be
6 discouraged by the fact that we hadn't made A on L. We're
7 working hard on another contention.

8 CHAIRMAN BOLLWERK: All right. That's -- you know --
9 you need to do what you need to do. Okay.

10 Then we'll move on then to M, which again my
11 understanding is that there's no objection to the admission
12 of that contention.

13 MS. CHANCELLOR: Mr. Blake and I have agreed on how to
14 rewrite that to satisfy Mr. Blake. And I can either read
15 that or give you a hard copy of the way in which it has been
16 rewritten.

17 CHAIRMAN BOLLWERK: Why don't you go ahead and read it
18 into the record, and then I'll take your hard copy. How's
19 that?

20 MS. CHANCELLOR: That's fine.

21 Contention M -- in addition to the contention as stated
22 by the State, in addition:

23 "1. The applicant's determination of the PMF
24 drainage area to be 26 square miles is inaccurate
25 because the applicant has failed to account for

1 all drainage sources that may impact the ISFSI
2 site during extraordinary storm events.

3 "2. In addition to design structures important to
4 safety being inadequate to address the PMF, the
5 consequence of an inaccurate PMF drainage area may
6 negate the applicant's assertion that the facility
7 area is quote, flood dry.

8 CHAIRMAN BOLLWERK: And I understand you have no
9 problem with that. All right.

10 MS. CHANCELLOR: And I've also shown that to Mr. Turk.

11 CHAIRMAN BOLLWERK: I take it that Mr. Turk has no
12 problem with it.

13 MR. TURK: If the applicant is satisfied with it I
14 won't even get into an argument.

15 CHAIRMAN BOLLWERK: All right. Anyone else have
16 anything to say on contention M?

17 All right. Let's move onto contention N which is
18 flooding. That's Utah N.

19 MS. CHANCELLOR: This deals with flooding at Rowley
20 Junction. You might have noticed that the railroad tracks
21 at Rowley Junction parallel the Great Salt Lake, and there
22 has been historic evidence of flooding of these tracks by
23 the Great Salt Lake. PFS will have permanent structures at
24 Rowley Junction. And there's evidence in our contention
25 that the high flood in that area was seven feet below the

1 elevation of Rowley Junction. And PFS contends that, "Well,
2 it's seven feet higher, so therefore it's not going to
3 flood."

4 David Cole -- this contention is supported by David
5 Cole whose job includes calculation of PMF for the design of
6 spillways. And in his affidavit and also in our contention
7 what we see is flooding is not a sedate event. It's not
8 like a bathtub filling up with water. There's also wind and
9 wave action, and this wind and wave action that may occur
10 during these flood conditions would swamp Rowley Junction.
11 And that's the basis of our contention.

12 CHAIRMAN BOLLWERK: Anything further?

13 MS. CHANCELLOR: No, Your Honor.

14 CHAIRMAN BOLLWERK: I would like to, by the way, get a
15 copy at some point of the one you read into the record.

16 MS. CHANCELLOR: I've got a couple of copies. Do you
17 want me to hand it up?

18 CHAIRMAN BOLLWERK: If it's too hard to get up there
19 right now you can just give it to me at the first break.
20 That's fine.

21 CHAIRMAN BOLLWERK: All right. Mr. Silberg, go ahead.

22 MR. SILBERG: This issue really goes hand and glove
23 with the discussions we've had on the licensing of
24 intermodal transfer point. If it's not licensed then this
25 contention we believe is excluded.

1 I would also note -- and I'm not going to rehearse that
2 discussion. I think we've covered that more than adequately
3 yesterday.

4 With respect to this last point about seven feet and
5 Rowley Junction might be flooded, transportation casks which
6 is the form in which this spent fuel would be at the time it
7 was in Rowley Junction are required to be tested leak
8 tightness down to well beyond any conceivable flood. Fifty
9 feet is the test I believe under Part 71, even if Part 71
10 were something that this Licensing Board should be involved
11 in.

12 So they still haven't shown a basis for any safety
13 impact.

14 That's all I got.

15 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

16 MR. QUINTANA: I would object to this contention. I
17 believe that there would be more than adequate notice of any
18 flooding and shipments probably would not occur. It's not a
19 realistic contention that would have a basis in scientific
20 reality.

21 CHAIRMAN BOLLWERK: NRC staff.

22 MR. TURK: We will essentially rest on our objection as
23 written. There is a statement by Mr. Silberg that he
24 thought the leak test was 50 feet. I'm told that that is a
25 correct statement with regard to Part 71.

1 CHAIRMAN BOLLWERK: Do you know what it is or is that
2 question --

3 MR. TURK: It is correct.

4 CHAIRMAN BOLLWERK: I'm sorry?

5 MR. TURK: That is correct. We weren't sure if that
6 was meters or feet, but I'm told it is feet.

7 CHAIRMAN BOLLWERK: It's 50 feet as opposed to 50
8 meters, which is some difference, yes. All right.

9 MR. TURK: But Mr. Silberg stated it correctly.

10 CHAIRMAN BOLLWERK: Oh, okay.

11 MR. TURK: -- as usual.

12 CHAIRMAN BOLLWERK: Right. As usual. All right.

13 Any response?

14 MS. CHANCELLOR: Just a very quick one. Given the lack
15 of any sort of safety at Rowley Junction, we believe this is
16 a concern.

17 DR. LAM: Ms. Chancellor, if it turns out that the
18 junction does not need the license hypothetically, if it
19 turns out, would this contention go away?

20 MS. CHANCELLOR: This contention would, but there's a
21 NEPA contention that is similar that I believe incorporates
22 this by reference, and the impacts would need to be
23 considered under NEPA for the environmental effects as
24 opposed to the safety effects. So this contention would go
25 away, but there's another one that incorporates this

1 contention by reference that would not go away.

2 DR. LAM: So it would go away but won't go away. Okay.

3 MS. CHANCELLOR: Partly will go away.

4 CHAIRMAN BOLLWERK: Goes away for one purpose but not
5 for another.

6 MS. CHANCELLOR: That's right.

7 MR. TURK: I need to make a correction on my last
8 statement.

9 CHAIRMAN BOLLWERK: All right.

10 MR. TURK: It's always hazardous to say anything,
11 because you have to be right.

12 CHAIRMAN BOLLWERK: Well, you should have talked to
13 Mr. silberg obviously.

14 MS. CHANCELLOR: That is hazardous.

15 MR. TURK: I am told that the test in question is the
16 test referred to in 10 C.F.R. 71.61, which is a static test
17 that requires the cask to withstand an external water
18 pressure of two NPA or 290 PSI for period of not less than
19 one hour without collapsing, buckling or any leakage of
20 water. And I'm told that that equates to a 200-meter depth.
21 But that is the regulation and that is the test that's
22 required.

23 MR. BLAKE: Mr. Silberg -- I think he was close.

24 CHAIRMAN BOLLWERK: On a factor of what, about --

25 MR. BLAKE: Three.

1 CHAIRMAN BOLLWERK: I think he said 50 feet. We're not
2 talking about 200 meters. Close enough for government work.
3 I'm not sure if that's --

4 All right. Anything further on that one? That's M.

5 Okay, the next one we're at is Utah O, which I think
6 has got a number of -- the basic subject here is hydrology.
7 And as I listed them on the sheet that I gave you this
8 morning, one way to look at this is you could divide this
9 out into a number of different areas. There's groundwater
10 quality. There's retention ponds. There's a question about
11 a septic system, all of which are mentioned and under which
12 come under other individual petitioner's contentions.

13 If nobody has an objection why don't we let you talk
14 about O, and we'll use this sort of break out in terms of
15 groundwater quality, retention ponds and septic system. And
16 if there's something I've missed or something further
17 someone walks to talk about with respect to any of the
18 particular contentions we'll move through it that way. Is
19 that a good way to handle this, or does someone have another
20 suggestion? Hearing none, let's give it a shot and see
21 where we go.

22 Okay, Utah O. Why don't you just go ahead. Are you
23 prepared to talk about the whole contention? Then we can --

24 MS. CHANCELLOR: Yes, I am.

25 CHAIRMAN BOLLWERK: All right.

1 MS. CHANCELLOR: First of all, Mr. Blake and I have got
2 together and agreed on a couple of word changes in the
3 rewording. On our reply page 61 under number one, if you
4 would delete "including those." And under number four, if
5 you would add "potential" to "impact of potential
6 groundwater contamination."

7 CHAIRMAN BOLLWERK: This is page 61 of your reply?

8 MS. CHANCELLOR: That's correct.

9 CHAIRMAN BOLLWERK: Okay.

10 MS. CHANCELLOR: And we rewrote PFS' rewording, and now
11 we're word smithing again.

12 CHAIRMAN BOLLWERK: Okay. Can you give them to me one
13 more time? I'm sorry.

14 MS. CHANCELLOR: Okay, number one, delete "including
15 those."

16 CHAIRMAN BOLLWERK: Okay.

17 MS. CHANCELLOR: And number four add "potential" to
18 "impact of potential groundwater contamination."

19 CHAIRMAN BOLLWERK: Impact. So the word you're adding
20 is "potential"?

21 MS. CHANCELLOR: That's correct.

22 CHAIRMAN BOLLWERK: Okay.

23 MS. CHANCELLOR: I'd like to take a little time to go
24 through this, given that there are a number of other
25 contentions that key off this one.

1 CHAIRMAN BOLLWERK: All right.

2 MS. CHANCELLOR: First of all, I would note -- and it
3 is something that we did not mention in our reply, that
4 buried in the applicant's response on page 183 the applicant
5 states that it does not oppose the aspect of the State's
6 sub-contention that relates to the probable maximum flood
7 and State contention M.

8 And citing our petition at page 105. And out petition
9 at page 106, the State's claim is the application states
10 that urban berms which serve to divert flooding will, quote,
11 have little effect on the natural surface hydrology, quoting
12 a section of the environmental report.

13 However, the applicant fails to justify its conclusion
14 that a concentration of flood waters around the facility
15 will not impact surface groundwater -- surface water or
16 groundwater. And we incorporated out contention M. And I
17 believe that's what the applicant does not oppose. And
18 Mr. Blake will correct me if that is wrong.

19 Going through the contention, basically the applicant
20 asserts either that we don't have a basis for the
21 contentions that we raise, or that the information is
22 contained in the application.

23 With respect to the sewer wastewater system, the
24 applicant claims that there's no basis for the State's
25 claimed transport pathway of contaminants. And as evidence

1 for this, the applicant says that on page 175 of their
2 answer:

3 "There is no connection from the sumps to the
4 septic tank system."

5 These sumps that are used to pump out water in the
6 transfer -- the cask transfer building. And as support for
7 that, on page -- on SAR page 4.7.1, basically all that is
8 said is that water collected in the cask load-unload bay
9 drain sumps is sampled and analyzed to verify that it is not
10 contaminated. And in the event contaminated water is
11 detected, it will be collected in a suitable container and
12 solidified.

13 This is collected -- this is sampled prior to the
14 release of the water. It doesn't say where this release is
15 occurred to. Reading into this, you would assume that the
16 normal sump water would be part of the applicant's
17 wastewater system. That's the only assumption.

18 There's no other system for handling water there.
19 There's no sampling protocol to talk about how often this
20 sampling would occur. And when contamination does occur,
21 exactly what procedures they will take other than to say it
22 will be solidified with this aquasept. But we believe that
23 this creates a direct pathway, contaminant pathway to
24 groundwater.

25 With respect to the retention pond, the applicant

1 answers that on pages 176 and 177 claiming that there is no
2 basis for the State's claim that radiological contaminants
3 will wash off the casks and the pad and then fall into the
4 retention pond which is on the north end of the storage
5 pads. The pond is unlined. It drains directly to
6 groundwater.

7 And what the applicant -- this is actually in their
8 environmental report on page 4.2-4.

9 "The restricted area will be -- the R.A. will be
10 constructed to collect and drain storm water to
11 the retention pond of the north edge of the R.A.
12 The pond is free-draining and sized to accommodate
13 100-year storm event. Water may be collected --
14 water that may be collected here will dissipate by
15 evaporation and percolation into the sub-soils.
16 Operation of the retention pond will have a very
17 local sporadic effect on the sub-surface
18 hydrology. The water will slowly migrate
19 northwards and will likely be transpired by
20 vegetation at the ground surface, or will be
21 brought to the surface by capillary action and
22 evaporated."

23 Well, first of all, the pond is the wrong size.
24 The applicant has not opposed our probable maximum flood
25 contention. So it says that it's sized for 100-year storm

1 event. So this is the wrong size.

2 Also, we believe it's reasonable that contaminants will
3 be picked up on the surface pad as snow and rain melts off
4 the outside of the storage casks and washes down into that
5 retention pond.

6 With respect to groundwater and surface water, the
7 applicant claims on page 180 of their answer that there's
8 information in the application showing no radioactive
9 effluence. And they cite to the environmental report
10 page 6.2-1. And if you go there it's basically talking
11 about air-borne contamination and air monitoring.

12 They also cite to 6.4-2. That seems to be a wrong
13 cite. I think it's in the SAR. There's no such section in
14 the ER. And that talks about a smear survey, and it also
15 talks about how any contaminated canisters will be returned
16 to the originating power plant. We discussed in other
17 contentions how that isn't feasible and how a contaminated
18 canister could have effect on surface and groundwater. So
19 we believe there's a basis for our contention there.

20 The other area is groundwater along the transportation
21 route. The applicant claims that it has addressed the
22 potential for groundwater contamination along the
23 transportation corridor. Cites to the environmental report
24 4.3-6. And here it talks about the effects on hydrology
25 along Skull Valley Road.

1 And the historical data that they used to talk about
2 the amount of water that is in that area is running water or
3 water standing in ditches has not been observed at any
4 location between the PFS and Interstate 80 between June 1996
5 and April 1997. We believe that this is really insufficient
6 to say -- to talk about what sort of groundwater will be
7 affected by the transportation along the transportation
8 corridor.

9 With respect to any sort of potential rail
10 transportation, there on page 4.4-3 of the environmental
11 report, the applicant claims that groundwater is over 100-
12 foot deep along the Skull Valley Road. And we have
13 introduced an exhibit that shows that groundwater in that
14 area is very shallow. I believe it ranges from something
15 like 10 feet in various places along Skull Valley Road.

16 Finally, with respect to water usage, on page 184,
17 there seems to be a disparity as to the amount of water the
18 applicant would use and what the pad usage will be and what
19 the effects of that will be.

20 In the SAR at 2.5.5 they say that the construction
21 water needs will be 5,000 gallons a day, and during
22 operation it will be 1500 gallons. But nowhere in the
23 environmental report is the 5,000 gallons during the
24 construction period discussed. We don't know whether this
25 is an average, a peak.

1 We also don't know where this groundwater will come
2 from other than that the applicant says that it will drill
3 wells to obtain water. And there we refer to contention T
4 which is the State meets the contention dealing with the
5 permits that are requires and the ability to drill for
6 groundwater is controlled by the State engineer, groundwater
7 being a trust responsibility of the State.

8 So we would claim that there is a basis to show that
9 the applicant has not demonstrated water usage and the
10 effect of water usage.

11 And with respect to the down gradient impacts, there's
12 a factual dispute between us and the applicant as to the
13 number of wells in the area.

14 CHAIRMAN BOLLWERK: All right. Anything further?

15 MS. CHANCELLOR: No, nothing further.

16 CHAIRMAN BOLLWERK: Any questions?

17 DR. LAM: How much rainfall a year this region
18 typically get, and what's the seasonal variation?

19 MS. CHANCELLOR: About 14 inches a year.

20 DR. LAM: It's pretty much uniform over the months?

21 MS. CHANCELLOR: No, I don't believe that there would
22 be very much in the summertime.

23 CHAIRMAN BOLLWERK: All right. Applicant then?

24 MR. KENNEDY: On the issue of rainfall, Your Honor, one
25 of the ranchers who was with us at the site installation

1 indicated that he through the rainfall was between eight and
2 nine inches, as I recall. That was Mr. Allen.

3 CHAIRMAN BOLLWERK: Thank you. All right. Mr. Blake.
4 Thank you, sir.

5 MR. BLAKE: This is a substantially different and more
6 comprehensive reaction by the State than we got in their
7 reply. But if I listened carefully enough, almost all of
8 the State's citations were to our application or to our
9 answer or to theirs. And therefore, I don't think a lot was
10 added substantively. I'll try to get those that were I
11 think beyond what we've seen in the paperwork.

12 First, with respect to their references to Utah M, it
13 is true that we've taken the position that we do not oppose
14 Utah M, and maybe to that extent we've given an inch and
15 shouldn't have. But clearly the State would want to take a
16 mile from our position. To have not opposed the contention
17 does not mean that we sign up for it or that we agree with
18 it, or that we accept the position. And therefore, I don't
19 think I need to say more about the use of M or how much you
20 can use from our willingness to accept it as a valid
21 contention.

22 DR. LAM: You're welcome.

23 MR. BLAKE: The new bases which the State cites
24 challenging our SAR descriptions of groundwater and water
25 along the transportation corridor are just that. They're

1 new bases as of today, and new thoughts and new facts which
2 we haven't seen before. To the best of my knowledge, they
3 were in a position to put them in before, and they've not
4 shown good cause for citing them at this point.

5 With respect to use of groundwater, the need for any
6 permitting or State concurrence in using any groundwater,
7 I'm sure the State will cooperate with us as they have at
8 least in the rephrasing of contentions to accomplish any
9 water needs that we have and that we need to get.

10 I also would take note of Dr. Lam's question with
11 regard to materiality. I have nothing more.

12 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

13 MR. QUINTANA: We would object to this contention as
14 not having a proper foundation in science. The spent
15 nuclear fuel is a solid. It is not a liquid, and it is not
16 going to quote, unquote, leak into the groundwater. There
17 are independent spent nuclear fuel storage facilities on
18 other parts of the country, and is therefore literature
19 available on any groundwater impact from those fuel
20 facilities, as well as from the ones which exist overseas.

21 Because this is a purely speculative contention, it
22 should not be allowed. I think that it will just -- it's
23 merely being inserted to delay the proceedings.

24 Furthermore, the State of Utah has no jurisdiction
25 whatsoever on the reservation. Apparently that is not clear

1 to them. But as a matter of federal law they just do not
2 have jurisdiction on the reservation. This is a matter
3 which is a trust responsibility of the federal government.
4 And unless they can make a showing that there would be
5 groundwater affected outside the reservation, which they
6 have not and they cannot because the science does not
7 support them.

8 This contention should not be allowed.

9 CHAIRMAN BOLLWERK: All right. NRC staff.

10 MR. TURK: Your Honor, we'll again rest on our written
11 pleading. But I would note that the State's
12 characterization in its reply of our position is not
13 correct. We did not oppose the contention except in three
14 limited respects. One was the intermodal transfer point,
15 the second was the consideration of impacts of
16 transportation routes, and the third was we saw no basis for
17 their assertions that construction activities would result
18 in adverse impacts.

19 CHAIRMAN BOLLWERK: You're differentiating between
20 construction and operation with respect to contaminants?

21 MR. TURK: Yes.

22 CHAIRMAN BOLLWERK: And on what basis or why are you --

23 MR. TURK: We didn't see anything in the contention
24 that laid out a specific basis to support its assertion that
25 there would be construction impacts. And therefore, that

1 aspect didn't satisfy in our mind 2.74.

2 CHAIRMAN BOLLWERK: All right. Ms. Chancellor, I guess
3 we're back to you. I'm sorry. I think Mr. Turk wants to
4 say one other thing.

5 MR. TURK: I'm going to be out of turn on this. I
6 apologize. A little history was given to me about that 200-
7 meter test which I'd like to bring to your attention.
8 Apparently tests until now have been required to meet the
9 50-foot test that Mr. Silberg referred to. But I'm informed
10 that the International Atomic Energy Agency adopted a new
11 standard for the concern for spent fuel that might be
12 transported across the English Channel. And they adopted a
13 200-meter test which is referred to in our regulation that I
14 cited to, the one that sets forth the PSI standard. And NRC
15 has filed an IEA standard and adopted it in our regulations.

16 CHAIRMAN BOLLWERK: All right.

17 MS. CHANCELLOR: First of all, I take Mr. Blake's point
18 that if he didn't oppose it, it doesn't mean that he agrees,
19 but we will try and convince him otherwise. What we do see
20 is that by not disagreeing with our assertion that the PMF
21 is incorrectly calculated, that leads to a dispute as to
22 whether the retention pond is properly sized. And part of
23 our contention dealing with a retention pond is that it may
24 overflow, and contaminants in the retention pond may be a
25 pathway to contaminants to groundwater. So that's the basis

1 of this contention, and it's nothing new.

2 We haven't raised any new bases. The reason that I
3 wanted to take the time to go through the application in
4 detail was to one time to just step back and look at the
5 applicant's defenses, and to hope to show you how they are
6 defensible. That the information contained in the
7 application has a couple of passing sentences here and there
8 to support the applicant's proposition, but we don't believe
9 that there is enough substance in the application to support
10 those assertions that the applicant makes.

11 With respect to Mr. Quintana's point that other ISFSIs
12 haven't contaminated groundwater, what we are saying is you
13 need to look at the site specific ISFSI. And here we have a
14 septic-tank system with the drain filled. Employees will be
15 washing their hands. Casks will be -- the outside of the
16 cask may have some contamination on them. They will be
17 washed in the transfer building. There is a potential for
18 contamination to groundwater, and that's what we assert in
19 our pleadings, and that's what we rest on.

20 CHAIRMAN BOLLWERK: All right.

21 MR. QUINTANA: May I briefly, just very briefly say
22 something?

23 CHAIRMAN BOLLWERK: Sure.

24 MR. QUINTANA: If we have 50-foot increase in water at
25 Rowley Junction, I would imagine part of Salt Lake City will

1 be under water, and we'll have bigger problems than this
2 storage facility.

3 CHAIRMAN BOLLWERK: Well, let's just move on, unless
4 you want to say something further.

5 MS. CHANCELLOR: Absolutely not.

6 CHAIRMAN BOLLWERK: All right.

7 MR. KENNEDY: Your Honor?

8 CHAIRMAN BOLLWERK: Yes.

9 MR. KENNEDY: I have a comment regarding the State
10 jurisdiction point that Mr. Quintana made. He indicated
11 that in his opinion that the State had no jurisdiction on
12 the reservation. I don't think that's correct.

13 Especially with respect to water issues. The United
14 States Congress has adopted perin amendments which allow
15 adjudication of water issues to be held in state court.

16 Also, with respect to criminal jurisdiction over non-
17 Indians, those are always held in state court, not in tribal
18 court.

19 Finally, and I apologize for the hazy memory on this,
20 but I believe there was a case involving the Navajo Tribe,
21 and my recollection is it was a spill of radioactive
22 material. It was in liquid form, and I don't believe it was
23 high level. But there was litigation down here, and that
24 was held in the federal court. And ordinarily tribes have
25 sovereign immunity. In that case neither the tribe nor the

1 Bureau of Indian Affairs were able to get out on sovereign
2 immunity. So I think there are some bases for jurisdiction
3 that the State would have here.

4 MR. SILBERG: Excuse me, Judge Bollwerk. That is
5 really the subject of Utah contention T, and I think there
6 will probably be a much more elaborate discussion on it at
7 that time.

8 CHAIRMAN BOLLWERK: All right.

9 MS. CHANCELLOR: That's correct. Thank you,
10 Mr. Silberg.

11 CHAIRMAN BOLLWERK: We'll put that in the contention T
12 box and come back to it if we need to.

13 DR. LAM: Ms. Chancellor, in this contention I have not
14 seen any assertion for the State of Utah about the amount of
15 contamination at the surface of the cask. Did I read your
16 pleading right?

17 MS. CHANCELLOR: That is correct. We haven't asserted
18 how much contamination. All we are saying is that the
19 applicant has not addressed its wastewater sewerage handling
20 system. And what we have shown is that there is a
21 deficiency because they have not addressed that issue. I
22 mean this doesn't go into a POTW. It's a septic tank drain
23 fill, and so that's why we thin it's important. But you're
24 right, we haven't shown the absolute amount.

25 CHAIRMAN BOLLWERK: I think there's a question about a

1 POTW.

2 MS. CHANCELLOR: Publicly-owned treatment works. It's
3 where you have a main-line sewer system that goes into a
4 public treatment works. I beg your pardon.

5 CHAIRMAN BOLLWERK: Judge Kline is usually pretty good
6 with acronyms. You got him on that one. You got me, too.

7 DR. KLINE: I was about to ask Mr. Silberg.

8 CHAIRMAN BOLLWERK: WE should have. We missed our
9 chance. All right. We'll come back --

10 MR. SILBERG: Well, 50 feet is the right answer.

11 CHAIRMAN BOLLWERK: Anything further in terms of the
12 State's contention O?

13 DR. KLINE: Let me just ask just as a clarification. I
14 may have missed something. In your earlier discussion you
15 mentioned that you thought that a retention pond sized for a
16 100-year maximum flood was inadequate, as if it were self-
17 evidence that it were inadequate. And I'm just wondering
18 was there a basis for that assertion that that was somehow
19 inadequate?

20 MS. CHANCELLOR: Yes. What we're saying here is that
21 because PFS has used the wrong area to compute what the
22 probable maximum flood would be --

23 DR. KLINE: Oh, I see, okay.

24 MS. CHANCELLOR: -- that we disagree with what a 100-
25 year flood event would be. And if they have sized their

1 retention pond based on their analysis of what the probably
2 maximum flood is, then it's probably too small.

3 DR. KLINE: That basis is all I missed, and that's all
4 I need.

5 MS. CHANCELLOR: Okay.

6 MR BLAKE: As long as we're talking about this, but in
7 fact I'm informed that their retention pond is not sized by
8 the probable maximum flood, this one, that one, any one.

9 DR. KLINE: Okay.

10 CHAIRMAN BOLLWERK: Anything further you want to say?

11 DR. KLINE: Just to kind of put you on notice, you have
12 a number of contentions, including this one, that start out
13 that the applicant's application papers, SAR and whatnot,
14 fail to discuss adequately, and they use that phrase
15 repeatedly. Then what relief do you seek on that basis?
16 Would an order instructing the applicant to redraft his
17 application be the right -- I mean assuming that you prevail
18 that it's not adequate.

19 MS. CHANCELLOR: Right, right.

20 DR. KLINE: Are we just editing the applicant's papers
21 or what?

22 MS. CHANCELLOR: No, we're not editing. We would like
23 something to sink our teeth into. I mean contention L --
24 the geotechnical contention, for example, there we had some
25 soil tests. We had some field data. It was something our

1 experts could get down into and analyze.

2 What the frustration level here is is that there is
3 just this minuscule amount of information. It's not enough
4 for our technical experts to take computations and analyze
5 what should be in the application. So yes, an order
6 requesting the applicant to submit hard, concrete evidence
7 and data so that we can analyze whether they have met the
8 substantive requirements of the rule would be what would be
9 after in many of those contentions.

10 CHAIRMAN BOLLWERK: All right. Anything further on the
11 contention?

12 MS. CHANCELLOR: Just one thing I might add.

13 CHAIRMAN BOLLWERK: Sure.

14 MS. CHANCELLOR: If they don't submit enough
15 information to satisfy the requirements of the regulations,
16 they obviously would not be entitled to get a license.

17 DR. KLINE: Well, just one more discussion. The
18 applicant in some way just takes his risks as to adequacy.
19 Now, you know, since the proceeding is adversarial, I don't
20 object to a person saying this is inadequate, but if you do
21 have experts, then we would want to see some health and
22 safety significant scenario flowing from that inadequacy.

23 You know, simply redrafting papers is -- I'm at least
24 skeptical of that as the kind of relief that the Board
25 should be considering as opposed to resolving health and

1 safety issues. We would like to see some scenarios of why
2 these are health and safety significant, even if they were
3 inadequate.

4 MS. CHANCELLOR: Well, for example, the one that we
5 have just been discussing, hydrology. I hope that we have
6 in our pleadings given you an understanding of why we
7 believe it's significant. I mean we have to try and come up
8 with hypotheticals, because there's no hard data. And so
9 what we're saying is in those areas where technical
10 calculations and a more comprehensive description, other
11 than a passing sentence of, "Well, we'll never have
12 contaminated casks. We basically don't have to deal with
13 contamination." We don't believe that that is something we
14 can analyze.

15 DR. KLINE: This is something we're going to have to
16 come to grips with, but I think you can understand that an
17 assertion of inadequate discussion is a rather open-ended
18 kind of assertion, and --

19 MS. CHANCELLOR: Right, but --

20 DR. KLINE: -- we don't know when we're done on an
21 assertion like that.

22 MS. CHANCELLOR: Right, but our frustration level --
23 and it has occurred before this application was actually
24 docketed. I mean we have made numerous attempts to have NRC
25 not docket the application, because we felt that there were

1 many, many areas that were inadequately addressed. And
2 where there is information and data that we can have our
3 experts analyze, we can write a substantive contention.

4 DR. LAM: Well, I for one understand your frustration.
5 what I'd like to say, I do second Judge Kline's comments.
6 On this proceeding right now he's considering admissibility
7 of contention. The threshold and the rules are very clear.
8 Assuming the contention is admitted, I for one really would
9 need to look at what is the safety significance. If it
10 doesn't matter, then it's difficult for the proponent to
11 prevail. And I for one you understand my concern as well as
12 Judge Kline's concern.

13 MS. CHANCELLOR: Right. Most of -- many of the rules
14 in Part 72 are there because they are safety related. And
15 if the applicant hasn't met the substantive requirement of
16 the rule, by law that is a safety issue. Not by law, but
17 the basis for writing that regulation is safety. So it's
18 material, because they haven't met that part of the
19 regulation.

20 CHAIRMAN BOLLWERK: What you're saying is not complying
21 with the safety rule has a safety impact. That's your
22 point.

23 MS. CHANCELLOR: Yes, that's right.

24 CHAIRMAN BOLLWERK: Anything further on the contention?

25 MR. TURK: One brief response to the procedural point.

1 CHAIRMAN BOLLWERK: All right.

2 MR. TURK: With respect to the State's request that the
3 Board issue an order telling the applicant to supplement its
4 information, that's not something that is really before the
5 Board. As Judge Lam noticed, the issue now is admissibility
6 of contentions. The contention has to state a regulatory or
7 legal problem with the application. And if the contention
8 provides bases for you to believe that there may be a
9 regulatory insufficiency, then on that basis you admit the
10 contention and we move into hearings.

11 But there's no -- actually I think it's beyond the
12 Board's jurisdiction at this point to order the applicant to
13 supplement its documents. You may be at the end of the
14 proceeding find that the documents are insufficient to give
15 you the assurance you need to approve licensing. That's the
16 ultimate determination you would make on the merits with
17 regard to insufficiency of documents.

18 CHAIRMAN BOLLWERK: All right.

19 MS. CHANCELLOR: If I might just make one further
20 comment?

21 CHAIRMAN BOLLWERK: Sure.

22 MS. CHANCELLOR: I believe when the Commission amended
23 the admissibility of contention standard it did not intend
24 to allow the applicant to omit substantive information from
25 its application submittal. That what is required under the

1 admissibility standard is that we have to review the
2 documents that are available. If the information is not
3 available, I don't believe that it requires us to go out and
4 do a survey to see how many trains are coming into Rowley
5 Junction, for example.

6 CHAIRMAN BOLLWERK: All right. Anything further?

7 MR. QUINTANA: Just briefly. There is literature
8 available out there on testing on the radiological effects
9 of these casks and their storage of spent fuel. There is
10 spent fuel stored in casks up at Idaho's National
11 Engineering Laboratory, and in numerous facilities not only
12 throughout the United States but throughout the world, and
13 none are cited in the State's brief. There is no expert
14 testimony referred to.

15 The only thing that's referred to in their pleadings is
16 that the submission is inadequate but without reference to
17 expert studies, without reference to in what way it's
18 inadequate. That leaves us at a loss as to what the problem
19 is.

20 CHAIRMAN BOLLWERK: I'm going to give you the last word
21 if you have anything further to say.

22 MS. CHANCELLOR: I think we've beat this one to death.

23 CHAIRMAN BOLLWERK: All right. Let's move on then. We
24 can talk about Castle Rock number 8 I believe it is, which I
25 think is the groundwater quality contention.

1 MR. LATER: Judge, I would propose that, if it's
2 agreeable to the Board, that we look at Castle Rock
3 contentions number 8, which is groundwater degradation --

4 CHAIRMAN BOLLWERK: Right.

5 MR. LATER: -- number 10 which is retention pond
6 issues, and number 19 which is septic tank. I think those
7 are all issues that have been raised in the preceding
8 contentions, and I believe I can add whatever value or
9 additional comment we have all at once on those. That would
10 save us some time.

11 CHAIRMAN BOLLWERK: That's certainly acceptable to me.
12 That's fine, sir.

13 MR. LATER: Thank you, Your Honor. Let me address
14 first the question two of the panel raised: What are the
15 health and safety significance of these contentions if in
16 fact they raise issues of fact?

17 Now, it is undisputed that gradient groundwater is
18 north. Groundwater flows from the facility out under my
19 client's property. Each of the family residents that this
20 panel drove past on Monday draw their drinking culinary
21 water from wells under that land. The cattle drink during
22 at least part of the year or much of the year from water
23 drawn from wells under that land.

24 If there is in fact a potential of contamination, that
25 contamination would flow under my client's property, and it

1 will potentially affect the inhabitants on that land and the
2 livestock on that land.

3 So these are contentions that do raise serious and
4 appropriate health and safety issues.

5 Now, the State has dealt with much of I believe the
6 substance of the contentions that we have raised with
7 respect to groundwater.

8 As I look at the argument of the applicant, it is my
9 understanding that the applicant simply says, "There is no
10 credible scenario in which there can be any loss of
11 containment in which there can be any kind of contamination
12 at this facility. Therefore, we can ignore any kind of
13 monitoring, remediation or measures to avoid groundwater
14 contamination as a result of any on-site contamination.

15 Now, as we have gone through the sets of contentions
16 that have been presented to the Board, I believe that
17 petitioners have presented this Board a series of credible
18 scenarios in which there can be potentially contamination at
19 this site in which there is a potential for loss and
20 containment, and which as a result of fires there is the
21 potential for water use to fight fires to become
22 contaminated, all of which creates scenarios in which there
23 is the potential for groundwater contamination.

24 And it simply isn't appropriate to say, "Because we've
25 designed the facility so there won't be contamination, we

1 assume that there's no scenario under which there could be
2 contamination, and therefore we don't have to think about
3 what might happen if there were."

4 I think the point of groundwater contamination
5 contentions is the applicant here is required to plan for a
6 scenario in which there may be contamination, even if those
7 scenarios are not regarded as highly likely simply because
8 the consequences would be dramatic and very difficult to
9 remedy.

10 With respect to the retention pond, we adopt the
11 arguments made by the State of Utah as to the adequacy of
12 that pond.

13 And finally, on our contention number 19, I think the
14 essence of that contention is that the applicant simply
15 hasn't provided us enough information regarding the design
16 nature and capacities of the septic-tank system that we can
17 determine whether or not in fact it will protect
18 groundwater, whether in fact the input into that system will
19 be protected from contamination, whether there will be
20 safeguards in place, and whether there will be monitoring of
21 that system.

22 We believe that under the Commission rules, where the
23 applicant has filed incomplete documents or failed to supply
24 necessary information, it's sufficient for the intervenor to
25 explain why the application is deficient. We don't have to

1 try and guess what sort of system they would be planning and
2 then explain why it would be deficient.

3 I think that's the basis of our contention number 19.
4 And on that we'd rest.

5 CHAIRMAN BOLLWERK: All right, sir. Thank you.
6 Mr. Blake.

7 MR. BLAKE: It's a two-part problem that Mr. Later
8 refers to. That is, if you need contamination and then you
9 need a mechanism for getting it into one of these
10 troublesome areas.

11 I agree with them that the water flows north. I don't
12 agree with them that there will be contaminants in it. I
13 agree with him that as a result of firefighting with water,
14 it may well be water flow. If it gets into the ground, and
15 it gets in the groundwater, it's conceivable it would flow
16 north.

17 I do not agree with him that there will be contaminants
18 in it much less radioactive contaminants. I have not seen
19 the vehicle described. I have not seen the basis provided.
20 I have not seen expert support, either documentary or
21 individual, to support that proposition. We don't think it
22 will happen. We designed this facility to avoid it, and I
23 have not seen yet the credible scenario to provide both
24 parties of flow off site and the contaminants in it.

25 CHAIRMAN BOLLWERK: Anything further on the contentions

1 that he's talked about, or is that it? That's it.

2 All right. Mr. Quintana.

3 MR. QUINTANA: Same objection as previously stated to
4 the State's contentions.

5 CHAIRMAN BOLLWERK: All right. Mr. Turk.

6 MR. TURK: We do not object to contentions 8 or 10. We
7 did object to 19, because we do not believe that it set
8 forth sufficient basis. Nineteen is the retention pond --
9 I'm sorry -- is the septic tank issue. We didn't think that
10 Castle Rock had put in enough information to support it, but
11 we didn't oppose the State's assertion of that same issue.
12 So if our position is accepted that will be an issue in the
13 case, but Castle Rock's contention doesn't give you enough
14 information in our view.

15 CHAIRMAN BOLLWERK: All right. You draw the
16 distinction between the two of them on the basis of what you
17 saw in terms of basis then.

18 MR. TURK: That's correct.

19 CHAIRMAN BOLLWERK: All right.

20 MR. TURK: And I would note that in many cases we
21 differ with the applicant in terms of whether we saw a
22 sufficient basis or not. And I would not dispute your
23 determination that one or the other of us is correct. It's
24 just our call on what we saw in the contention.

25 CHAIRMAN BOLLWERK: All right. Mr. Later.

1 MR. LATER: We'll rest on what we've said.

2 CHAIRMAN BOLLWERK: All right then. The other
3 groundwater contention that I thought had some relevance
4 here was OGD N.

5 MS. BELILLE: Yes, Your Honor. We just have a couple
6 of comments. First of all, OGD stands by its original
7 contention that leaks from the site might contaminate water
8 supplies. OGD stands by its contention that PFS' plan to
9 drill water and use groundwater at the facility could reduce
10 the availability of water for other users. PFS' discussion
11 of its potential water use in the ER at 4.2.4 is
12 unacceptably vague and does not provide a basis for
13 assessing potential impact such as draw down of wells.

14 We also have a trust responsibility argument that we
15 are going to go into more detail in contention J, which
16 is -- note that that is a part of our argument.

17 CHAIRMAN BOLLWERK: That's your contention on permits,
18 licenses and approvals.

19 MS. BELILLE: Yes.

20 CHAIRMAN BOLLWERK: Mr. Blake, any response?

21 MR. BLAKE: I don't recall any prior reference to the
22 draw down that I just heard now for the first time. I think
23 that that's a new problem. Maybe it's been referred to
24 before, but I don't have any reaction to -- otherwise to
25 make an oral statement.

1 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

2 MR. QUINTANA: My objections have previously been
3 stated as to the State's position, and I'll stand by those.

4 CHAIRMAN BOLLWERK: All right, sir. Staff.

5 MR. TURK: We rest on our pleading, Your Honor.

6 CHAIRMAN BOLLWERK: All right. Anything further you
7 want to say, Ms. Belille, on this one?

8 MS. BELILLE: The only thing I would like to draw their
9 attention to is in the contention itself it says the
10 application admits that several wells are going to have to
11 be built to meet the demand that would be presented by the
12 facility, and that is where our draw-down argument comes
13 from, Your Honor.

14 MR. BLAKE: I just stand on our prior answers.

15 CHAIRMAN BOLLWERK: All right. I believe the next
16 contention we have is Utah P which deals with inadequate
17 control of occupational public exposure to radiation. And I
18 believe that radiation and monitoring control also seem to
19 be issues in Castle Rock 11 and OGD G.

20 MS. CURRAN: All right.

21 CHAIRMAN BOLLWERK: Ms. Curran.

22 MS. CURRAN: A couple of points and clarifications.
23 I'll try to make this -- I'm sorry. It's contention P.

24 CHAIRMAN BOLLWERK: P, P as in PTOW or what is it,
25 POWT? That will work. As opposed to OGD G is the one I

1 think I referred to.

2 MS. CURRAN: The contention addresses various ways in
3 which the State contends that the applicant doesn't meet the
4 A.L.A.R.A. standard which is in 10 C.F.R. 72.24(e). I'd
5 like to clarify that the references and the basis of the
6 contention to the lowest dose rate are intended to refer to
7 the lowest reasonably achievable dose rate.

8 I'd like to make a couple of general points.

9 We are referred in PFS' and the NRC's response to
10 sections of the SAR that discuss the A.L.A.R.A. Program for
11 this facility. An A.L.A.R.A. Program needs to not only
12 state that an applicant will carry out A.L.A.R.A. measures,
13 but how it's going to carry them out and when it's going to
14 carry them out in relation to the design of the facility.

15 It is our understanding that what we have been given
16 here is a preliminary design for this facility, and that the
17 actual detailed design is now being started right now. We
18 have not received the actual detailed design for this
19 facility. So that everything that's stated in the
20 A.L.A.R.A. Program is in very general terms and in fact many
21 of the A.L.A.R.A. provisions simply restate the regulatory
22 guidance. That is our concern, our principal concern here.

23 One of the arguments is that several of the reg. guides
24 that we cite don't apply. One of the reg. guides is reg.
25 guide 3.62, which is called the standard format and content

1 for the safety analysis report for on-site storage of spent
2 fuel storage casks. According to PFS, that this regulatory
3 guide doesn't apply. It only applies to on-site storage.

4 But in none of the instances in which we have invoked
5 reg. guide 3.62 does the applicant explain any difference
6 between this proposed ISFSI and an on-site ISFSI facility
7 that would make any material difference. In fact, there is
8 no regulatory guide for an off-site ISFSI, and this reg.
9 guide constitutes valuable NRC staff guidance for A.L.A.R.A.
10 programs and should be used.

11 TFS also argues that we can't rely on reg. guide 8.8
12 because it doesn't apply to this ISFSI. In point of fact,
13 the SAR references reg. guide 8.8 as one of the sources for
14 its own A.L.A.R.A. program.

15 With respect to some of the details, on a first-serve
16 basis, it is the State's position that the choice of the
17 cask for this particular operation is a very important
18 element of the design for which there should be some
19 A.L.A.R.A. analysis, some demonstration that this is a cost
20 effective choice for achieving the lowest possible dose.
21 That hasn't been done.

22 With respect to the issue of ventilation -- oh, I
23 skipped one.

24 With respect to the issue of alternative cask handling
25 procedures, the applicant says that is not specified in the

1 regulation itself. Well, the regulation is quite general.
2 It simply says that the applicant has to have a A.L.A.R.A.
3 measures. We rely on the regulatory guidance which would
4 require that -- or recommend that the cask handling
5 procedures be addressed in the A.L.A.R.A. Program.

6 Again, since the design is at this point quite
7 preliminary, the applicant actually has very little basis
8 for providing that information. And therefore, it's not
9 surprising that it isn't provided.

10 With respect to ventilation -- I'm sorry -- rain and
11 snow, which is sub-basis 4 on page 110 of the contentions,
12 the contention asserts that the applicants fail to describe
13 any program for analyzing rain and/or melted snow water. We
14 have in our contention J described a reasonable basis for
15 believing that the casks may be contaminated, and that rain
16 and snow water may also become contaminated through contact
17 with these, and so this constitutes a valid basis for a
18 contention.

19 With respect to sub-basis 5 regarding ventilation,
20 similarly we have also provided a basis in contention J for
21 believing that there is a risk of contamination to workers
22 during the unloading of casks.

23 With respect to basis 6, there are two parts to this
24 contention. It appears that the applicant has provided
25 information addressing the second part of basis 6, which is

1 information on how estimated radiation exposure values to
2 operation personnel were derived. However, PFS has still
3 not addressed how it satisfies the first part of the
4 contention regarding the requirements of reg. guide 3.62.

5 With regard to basis 7, the applicant mischaracterizes
6 that basis as relating to air-borne outlines. The basis is
7 more general, and I'll just refer you to the language of the
8 basis which is not satisfactorily addressed by the
9 applicant.

10 And with respect to some of those sub-issues, one of
11 them is training. And as we have previously argued with
12 respect to contention F, the applicant must submit a
13 training program with its application. This training
14 program should include the A.L.A.R.A. training program.
15 That has not been done. And therefore, there has been no
16 compliance with the regulatory requirement. The applicant
17 says it will do this at page 7.1-1, but it has not been
18 done.

19 With respect to sub-basis 4 regarding the control of
20 access to radiation areas, the applicant refers us to
21 control of access by the public, but this does not deal with
22 the principal concern of this contention which is protection
23 of workers.

24 With respect to --

25 MR. TURK: Can I ask -- I'm sorry. I'm having a little

1 trouble following.

2 MS. CURRAN: Are you lost?

3 MR. TURK: Yes. Is this information beyond that in
4 your written reply?

5 MS. CURRAN: We don't have a written reply on this.
6 I'm replying now.

7 CHAIRMAN BOLLWERK: No, they didn't reply on this one.

8 MS. CURRAN: Right

9 MR. TURK: That's why I'm lost I guess.

10 MS. CURRAN: And I'm in paragraph seven on some of the
11 sub-bases in there.

12 With respect to sub-basis 5 in paragraph seven, we have
13 provided a basis in our other contentions for leaking past
14 accident. And in fact that is one of the design basis
15 accidents considered in new reg. 1092.

16 Same response for sub-basis 6.

17 I think I've already addressed sub-basis 7 in terms of
18 the reg. guide.

19 But with respect to formal audits and reviews on
20 sub-basis 7 in paragraph seven, all the application says on
21 page 7.1-2 is that ongoing reviews will be performed, not
22 how or when they will be performed.

23 I'm going to rest there.

24 CHAIRMAN BOLLWERK: All right. Mr. Blake.

25 MR. BLAKE: I may have been the only one that got it,

1 but I have a reply to P from the State.

2 MR. TURK: I do too.

3 CHAIRMAN BOLLWERK: Hold on one second.

4 MR. BLAKE: And therefore I concur with --

5 MR. TURK: Pages 61 to 65.

6 CHAIRMAN BOLLWERK: Okay. I put down the wrong note on
7 my document then. You're right, there is one here.

8 MR. TURK: But a lot of it was difficult.

9 MS. CURRAN: Oh, my goodness.

10 MR. TURK: Some of it was in the reply and some was
11 not. I don't understand whether --

12 MS. CURRAN: I'm sorry, I really am. I thought that I
13 got this confused with another one.

14 MR. BLAKE: Well, I'm going to respond to the reply
15 that I got unless they want to withdraw it.

16 MS. CURRAN: Just a moment.

17 MR. BLAKE: This may be the best moment of the day.

18 CHAIRMAN BOLLWERK: I apologize as well. I looked at
19 my notes and had the wrong notation down myself.

20 MR. TURK: Maybe it's the time of day, and maybe this
21 happens to me too often, but I want to lodge a regular
22 objection or a general objection. And that is, when the
23 State asks for leave to file a written reply, they said it
24 will help focus the issues. So we come in to oral argument
25 more prepared with what we have to address. But that's not

1 what's happening.

2 We're seeing a written reply, and we're seeing
3 additional comments. We only have to try to discern what is
4 it that we have to respond to. Is this something that we've
5 already noted or not? So it's making the process much more
6 difficult for us.

7 I would say that since the State has already requested
8 leave and been granted leave specifically to file a written
9 reply, then where we have done so we should not hear new
10 argument on oral argument today.

11 MS. CHANCELLOR: If I could just comment?

12 CHAIRMAN BOLLWERK: Sure.

13 MS. CHANCELLOR: There are about a thousand pages, 700
14 to 1,000 pages that was submitted in response to the
15 contentions. And to expect us to address every single issue
16 I think was just unreasonable. To the extent possible we
17 addressed the major issues.

18 And I believe that oral argument on many of the issues
19 help clarify the issues. But I don't think that because we
20 have the opportunity to reply means that we were expected to
21 address every single issue that were contained in the
22 voluminous amount of material that we received from the
23 responses.

24 And I would add we might have been here for four weeks
25 rather than three days if we hadn't had the opportunity to

1 reply.

2 CHAIRMAN BOLLWERK: What are you prepared to address,
3 Mr. Blake? Let me put it that way.

4 MR. BLAKE: I have to -- this is my only opportunity to
5 respond to their written reply. And so I would need to do
6 that unless she is going to withdraw it. And then I have
7 some comments on her oral reply as well, unless the Board
8 says that it was inappropriate.

9 CHAIRMAN BOLLWERK: You're ready to reply to both I
10 take it then?

11 MR. BLAKE: Yes.

12 CHAIRMAN BOLLWERK: Why don't you -- I think Ms. Curran
13 made a mistake. It was an honest one. In fact, I helped
14 out. I have to admit because I had the wrong notes down.
15 We could have stopped her, but under the circumstances why
16 don't you just go ahead and --

17 MS. CURRAN: That wasn't the only one.

18 CHAIRMAN BOLLWERK: It was also partly my problem, and
19 I apologize to you, sir. I put you under a little bit of
20 additional questions.

21 MR. BLAKE: I don't need the apology. I was kind of
22 hoping that she would withdraw it. It would all be a very
23 productive event. Want me to go ahead?

24 CHAIRMAN BOLLWERK: Well, why don't you just go ahead
25 and let's deal with it that way. I understand your

1 objection, Mr. Turk. And you're right, we should -- once
2 the replies come in we should stick to new business if there
3 is any.

4 So in this instance both Ms. Curran and the Board were
5 on the same wrong track. At least I was anyway. So we'll
6 take it as my problem and let Mr. Blake say what he needs
7 to.

8 MR. BLAKE: One of the things that the State addressed
9 in their written reply was that they believe with regard to
10 A.L.A.R.A. that the applicant not in its application or its
11 answer had described how it had chosen the cask system.
12 Particular ones that we are proposing to use rather than one
13 of the lowest doses, and therefore didn't need A.L.A.R.A. in
14 that regard.

15 The State really hasn't indicated or pointed to any
16 regulatory basis that would require the applicant to select
17 the cask system with the lowest dose rate any more than
18 applicants elsewhere in NRC regulatory venues are required
19 to use TWRs or BWRs or particular kinds as a function solely
20 of A.L.A.R.A.

21 The fact is you do need to apply A.L.A.R.A. to what it
22 is you choose to apply. You do need to meet the regulatory
23 requirements, and both of those we're doing here.

24 Under the Commission's regulations the applicant could
25 use any system that meets its requirements. And indeed if

1 we were to follow the State's view with regard to A.L.A.R.A.
2 in this extreme way, that would presumably only be one cask
3 system which would be appropriate. And I don't know what
4 the current number is, but I believe there are six or seven
5 that are currently listed and accepted under Part 72 even if
6 it's based on a generic basis.

7 So I think the State's position, the bottom is
8 inconsistent with the Commission's regulatory approach in
9 this regard, and I think they're trying to misapply
10 A.L.A.R.A.

11 The State complains that we haven't described why the
12 two particular cask vendors were chosen and again we're
13 proposing. And we don't believe there's any requirement or
14 obligation on us to do that. Again when we choose a cask,
15 when we choose a vendor and a cask it must meet the
16 regulatory requirements. We believe ours do and will.

17 The State complains that we haven't demonstrated
18 compliance with off-site dose requirements, because they see
19 a number of deficiencies in applicants individual of that
20 analysis, referring to some of their other contentions, L or
21 M, again which would impose the same view that as before.
22 Not opposing it doesn't mean that we concede or agree with
23 their view of the world.

24 With respect to the oral comments made, I'm going to
25 summarize my remarks.

1 First, with respect to the A.L.A.R.A. Program we
2 believe we have done an adequate job in describing for
3 application purposes that we plan to apply A.L.A.R.A. and
4 how.

5 With regard to the reg. guides and which ones are
6 applicable and which ones are not, we use reg. guide 3.48
7 because it refers to off-site ISFSIs. We didn't use reg.
8 guide 3.62 because, as we quoted on page 195 in our answer,
9 from the reg. guide 3.62, if the ISFSI is co-located with a
10 civilian nuclear power reactor use 3.62. Ours is not.

11 To the extent the State relies for its arguments on its
12 bases or contentions J or F or any of the other contentions,
13 we're arguing all of them and that stand on the comments
14 that we have both in written form and on the hearing
15 transcript that this pre-hearing conference for each of
16 those other contentions. I don't have any other comment.

17 CHAIRMAN BOLLWERK: All right, thank you, sir.

18 MS. Quintana.

19 MR. QUINTANA: Same objections previously stated.

20 MS. MARCO: The staff opposes the admission of this
21 contention on the basis that the State does not provide
22 enough information to show a material dispute exists with
23 the applicant's discussion of A.L.A.R.A. objectives.

24 Many of the State's citations to the reg. guides do not
25 support their claim that the application is deficient. And

1 the State also does not address the application where the
2 applicant does describe aspects of its A.L.A.R.A. program to
3 show that it's deficient.

4 In addition, I would like to address some particular
5 matters that the staff takes issue with in their reply.

6 They say that the State does not show that the
7 applicant must provide dose comparisons of other casks not
8 selected, or provide the detailed cask handling procedures
9 at this time. Reg. guide 8.8 however provides that the
10 procedures used to ensure A.L.A.R.A., quote, will be
11 described. The State has not addressed the applicant's
12 description and discussion of those procedures.

13 Summarily, the State has not shown by regulation or by
14 the reg. guides cited that the applicant is required to
15 provide an analysis of alternative procedures to indicate
16 the proposed cask handling procedure would be A.L.A.R.A.
17 And likewise, the State has not shown that the applicant
18 must describe why the applicant's discussion of the design
19 consideration is insufficient with respect to the OCA
20 boundary.

21 And the staff agrees with the applicant that the
22 Commission has provided by regulation the distance that
23 shall be at least 100 meters from the spent fuel and storage
24 facilities to the boundary.

25 The State has also not shown why the applicant must

1 collect and analyze rain and water. And the State has not
2 addressed the applicant's discussion of ventilation and does
3 not address why the applicant is wrong that there are no
4 special ventilation systems installed in the facilities, and
5 that there be no credible scenarios that would require
6 ventilation systems.

7 And the staff also wants to point out that the State
8 asserts that information on how estimated radiation exposure
9 values to operating personnel were derived is not provided.
10 But the State does not address the applicant's discussion of
11 the estimated on site collected dose assessment which is
12 found in Section 7.4 of the SAR.

13 That is all.

14 DR. LAM: Ms. Marco, so what you're basically saying is
15 that all of the basis the State proffered on this contention
16 are insufficient.

17 MS. MARCO: That is correct.

18 CHAIRMAN BOLLWERK: Anything further? Ms. Curran, any
19 response?

20 MS. CURRAN: I have nothing further.

21 CHAIRMAN BOLLWERK: All right. We have two others I
22 think, Castle Rock 11 and OBGD -- I'm sorry -- G. And if we
23 can dispose of those, and then we'll take a break.

24 MR. LATER: Castle Rock contention number 11. My
25 comments will be very brief. They are directed to the

1 requirement for effluent monitoring and control. I think
2 the issues have become quite clear as between Castle rock
3 and the applicant. In this regard we have maintained to the
4 panel that the petitioner's have presented credible
5 scenarios in which there may be a loss of containment or
6 contamination on the site.

7 The applicant's position is equally clear that they
8 believe there are no credible scenarios in which there can
9 be contamination or loss of confinement on the site. They
10 therefore conclude that since there is no credible scenario
11 in which that can occur, they need not -- provide no
12 consideration of effluent monitoring or control.

13 If we're correct that there are credible scenarios for
14 contamination and loss of control, then I believe we have
15 stated an appropriate contention on number 19 with respect
16 to effluent monitoring control. I think in fact that this
17 is a theme that runs throughout a great many of the
18 contentions presented before the Board in which the
19 applicant has staked out the position that there is no
20 credible scenario for loss of containment or contamination.
21 And therefore, any consideration for detection, control,
22 prevention, anticipation simply can be excluded from the
23 application.

24 And to the extent that that single conclusion is
25 incorrect or presents a valid issue for litigation, each

1 contention based on that is appropriate to be before the
2 Board.

3 CHAIRMAN BOLLWERK: Response, Mr. Blake.

4 MR. BLAKE: This is one where Castle Rock has put in
5 reply none in their written response and now is adding
6 considerably. I think however, it's a fair summary. What
7 Mr. Later said is a pretty clear demarcation line between
8 Castle Rock and ourselves.

9 The one thing which I would articulate possibly a
10 little bit differently is if there is such a credible
11 scenario we've not seen it articulated by the intervenors
12 with a basis in accordance with the Commission's
13 requirements for contention admissibility.

14 CHAIRMAN BOLLWERK: Anything further, Mr. Quintana?

15 MR. QUINTANA: In a different type of facility, for
16 example, if this was the vitro site and it was a permanent
17 disposal facility with cells and not hardened casks on
18 concrete pads, I think that this contention would have
19 validity. But in this case the science just does not
20 support this contention. On that basis we would object.

21 CHAIRMAN BOLLWERK: Staff?

22 MS. MARCO: The staff stands on its brief, Your Honor.

23 CHAIRMAN BOLLWERK: All right. I did have one
24 question. I guess the staff opposes admission of the
25 retention pond portion of this contention but didn't object

1 to Castle Rock 10 which deals with the retention pond, if
2 I'm correct. Tell me.

3 MR. TURK: We did oppose. I'm sorry. Can we get a
4 reference to what the retention pond --

5 CHAIRMAN BOLLWERK: Castle Rock 10.

6 MR. LATER: That was contention number 10, and I don't
7 believe the staff opposed that.

8 MR. TURK: No.

9 CHAIRMAN BOLLWERK: But you did have a problem I guess
10 with a question that was raised here about a retention pond
11 and radiological effluent monitoring system. Which one
12 raises the question, as I understand it, about the
13 possibility of the pond and contaminants into the pond, and
14 the other one raises the question of should you monitor
15 that. But one was for admission and one was not. Maybe
16 there's a distinction here I'm not understanding. That's
17 what I'm trying to get you --

18 MS. MARCO: May we have one minute, Your Honor?

19 CHAIRMAN BOLLWERK: Surely.

20 MR. TURK: I think it really relates to the amount of
21 information that's in the contention and a supporting basis.
22 But I'd have to go back and look at the contentions
23 themselves to describe to you the difference at least
24 between the contentions.

25 MS. MARCO: Also, Castle Rock's reference to

1 Section 424 really does not address the radioactive effluent
2 with respect to this contention.

3 DR. LAM: Well, in that light I wanted to ask
4 Mr. Letter -- is it Mr. Later or Letter?

5 MR. LATER: Later, Your Honor.

6 DR. LAM: Mr. Later. I'm sorry. In contention 11 the
7 reference to 72.22, is that a mis-citation?

8 MR. LATER: I can't tell you off the top of my head,
9 but I would be glad to check on that. And as soon as I'm
10 able to let you know.

11 DR. LAM: Would you please?

12 MR. LATER: I will.

13 MR. TURK: The only thing I can add to the discussion
14 we've already had, Your Honor, is as I understand
15 contention 10, it asserts that the application doesn't have
16 enough information concerning the potential impact of a
17 retention pond on groundwater.

18 In contrast, this potential presumed that there would
19 be radiation seeping in and therefore you need monitoring.
20 And that the assumption that there would be radiation
21 effluence we view is not being supported by the contention.

22 CHAIRMAN BOLLWERK: All right. Mr. Later, anything
23 further you want to say?

24 MR. LATER: A brief comment. I think that I would not
25 agree with the staff's description of the scope of

1 contention number 10. I think it clearly contemplates and
2 describes as a problem with the retention pond a potential
3 for overflow, groundwater contamination resulting from that.
4 And I would submit that the issues of effluent monitoring
5 controls set forth in contention number 11 run directly on
6 from that. I think there probably is an inconsistency in
7 the staff's position in that regard.

8 We're still looking for the correct citation. As I
9 understand it, you're asking about the citation given on the
10 second line of contention number 11?

11 CHAIRMAN BOLLWERK: Yes.

12 MR. LATER: And we're checking on that. I believe
13 there probably is a typographical error there. And as soon
14 as I've got the correct citation, I will give that to the
15 Board.

16 CHAIRMAN BOLLWERK: All right. Why don't we go ahead
17 and deal then with OGD G. Ms. Belille.

18 MS. BELILLE: Yes, Your Honor. Upon review of the NRC
19 staff's and applicant's responses, OGD withdraws its request
20 for monitoring measures A, B, C and D. These measures apply
21 to monitoring on-site radiation and worker exposure. So we
22 will withdraw those.

23 However, because of the possibility that PFS will
24 employ an intermodal transfer facility and heavy-haul
25 transport transportation, the potential for off-site

1 radiation exposures at the intermodal transfer facility,
2 along with the Skull Valley Road corridor requires
3 monitoring measures which are not included in the SAR and
4 the emergency plan.

5 OGD believes that the intermodal transfer facility
6 clearly constitutes an area where monitoring is required
7 under 10 C.F.R. § 72.126. Radiation protection systems must
8 be provided, or all areas and operation workers at the
9 intermodal transfer facility will clearly be exposed to
10 gamma and neutron radiation during cask handling and
11 transport, and these workers may be PFS personnel.

12 Similarly, OGB believes that both PFS workers and
13 members of the general public will be exposed to radiation
14 in the transportation corridor between Rowley Junction and
15 the site. PFS has not proposed a monitoring program for the
16 transportation corridor.

17 OGB would have similar concerns about the potential for
18 radiation exposures at a rail interchange point and along a
19 rail access spur under the all-rail transportation scenario.

20 OGB would stand by its original recommendations for
21 monitoring measures E, F, G and H.

22 CHAIRMAN BOLLWERK: All right. Did you get those that
23 she -- all right. As long as you're clear on all the
24 letters, that's fine.

25 MR. BLAKE: I understood and we appreciate OGD's

1 withdrawing of those four. Our problem with attempting to
2 articulate conditions at this point which we would
3 understand to be requirements they want ultimately on the
4 license in this facility, what they thought was premature
5 and we still do with respect to the remaining contentions.

6 Additionally, the requirements that OGD would place by
7 way of radiation monitoring on the intermodal facility or
8 along the transportation route we think are both outside
9 what this Board and what this proceeding is about from the
10 State's standpoint as previously articulated, and otherwise
11 we'll stand on our answer.

12 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

13 MR. QUINTANA: Same objections previously stated.

14 CHAIRMAN BOLLWERK: All right. Staff?

15 MS. MARCO: The staff stands on its previous pleading.

16 CHAIRMAN BOLLWERK: All right. Ms. Belille, anything
17 further you want to say on the subject?

18 MS. BELILLE: The only point that we would want to
19 make, Your Honor, is that because of the uncertainty of
20 which transportation mode that they're going to use at the
21 intermodal transfer facility, there's a question about who
22 the workers will be and who will be responsible for those
23 workers.

24 MR. BLAKE: I would say that would not change our
25 position. We would take the same position as previously

1 taken.

2 CHAIRMAN BOLLWERK: All right. Anything further,
3 Ms. Belille?

4 MS. BELILLE: No.

5 CHAIRMAN BOLLWERK: All right. It's --

6 MR. LATER: Your Honor, I have an answer to the
7 question Judge Lam raised.

8 CHAIRMAN BOLLWERK: Surely.

9 MR. LATER: If I can take care of that housekeeping
10 matter?

11 CHAIRMAN BOLLWERK: Thank you.

12 MR. LATER: The citation on the second line of our
13 contention number 11 at page 45, it reads 10 C.F.R. 72.22.
14 That is a typographical error. It should read 72.122(b)(4).
15 My more knowledgeable colleague has checked that citation.
16 I appreciate the panel calling that to our attention.

17 CHAIRMAN BOLLWERK: Thank you. All right. Now, it's
18 approximately 3:00. Why don't we go ahead and take a 15-
19 minute break. We'll come back at approximately let's say 20
20 after 3:00. How's that?

21 (Recess from 3:00 p.m. to 3:20 p.m.)

22 CHAIRMAN BOLLWERK: On the record. We'll start after
23 our break. Mr. Later.

24 MR. LATER: I'm sorry. We looked through the list that
25 you gave us earlier today of the order in which you wish to

1 deal with contentions, and note that our contention
2 number 17, which is inadequate consideration of land
3 impacts, doesn't seem to be on that list, and we were hoping
4 that there wasn't some sinister message in that.

5 CHAIRMAN BOLLWERK: No. The list that I gave you is
6 entitled "Related Contentions." And what it is is basically
7 my attempt as I looked at all these -- basically if I saw
8 the same word several times, I thought well, this probably
9 is related to something else. But these only list the ones
10 that are related.

11 There are some that are out there, for instance, like
12 the next one we're going to do in fact, which is Q, adequacy
13 of ISFSI design to prevent accidents, which didn't seem to
14 me to really directly relate to anything else. So that's --
15 and I think yours would fall in that category. Although if
16 you see something else you want to link it to, I don't have
17 a problem with that.

18 MR. LATER: I'll be happy to deal with it there or
19 under the cumulative and other impact category.

20 CHAIRMAN BOLLWERK: I'll put it down and we'll plan on
21 that. That was number 17?

22 MR. LATER: Yes.

23 CHAIRMAN BOLLWERK: Why don't we plan on dealing with
24 it then under that category. That's fine. That's the sort
25 of information I find useful.

1 All right. As I mentioned, I think we're done with all
2 the questions about radiation monitoring control.

3 We're ready to move onto State Q which deals with the
4 adequacy of ISFSI design to prevent accidents.

5 Ms. Chancellor or Ms. Curran?

6 MS. CURRAN: That's mine.

7 CHAIRMAN BOLLWERK: All right.

8 MS. CURRAN: I better check with Mr. Turk to make sure
9 that I didn't write a written answer to this one. But --

10 MR. TURK: You did. It's in your reply. But to be
11 fair, I should say that your reply says the State will
12 address the issue for your economy.

13 MS. CURRAN: Just a few points.

14 In its response the applicant provides more information
15 about what it characterizes as the most vulnerable fuel.
16 However, the application still does not specify whether this
17 fuel that's identified includes fuel with leaks and cladding
18 failures that has been stored on the water for many years
19 and dry for many more years, which we believe makes fuel
20 especially vulnerable.

21 And they also have not described the G-loading that
22 would cause such fuel to fail. So that concern has not been
23 answered.

24 With respect to the second basis, it is our belief that
25 our reference to the demand for information to Sierra

1 Nuclear is an insufficient basis. This is a very serious
2 matter that Sierra Nuclear has been told by the NRC that
3 they have serious problems it has to address with respect to
4 the construction of this VSC(24) cask. We think we've
5 raised a legitimate concern that there may be quality
6 assurance and design problems that need to be addressed by
7 the applicant. So we stand on that basis.

8 With respect to the third basis, again we stand on the
9 basis as stated. We also note that because the casks that
10 are being proposed for use of this ISFSI have not yet been
11 approved. It is not yet been determined what are the
12 maximum lift heights for these casks, as we a result of an
13 NRC review.

14 That's all I have on that.

15 CHAIRMAN BOLLWERK: All right. Applicant, Mr. Blake.

16 MR. BLAKE: I didn't hear anything new. I only would
17 point out that beyond adequate basis we also had a variety
18 of other objections to this contention which I didn't hear
19 addressed, but I would address the reply, written reply
20 today.

21 MS. CURRAN: May I just add one thing that I overlooked
22 in my haste to get through this quickly?

23 CHAIRMAN BOLLWERK: Surely.

24 MS. CURRAN: There was an argument that we had failed
25 to demonstrate that a canister with fabrication deficiencies

1 could fail. And if it contained failed fuel fission
2 products could be released. We submit that it is quite
3 clear that if a canister failed and if it contained failed
4 fuel, that there would be a release to the environment that
5 the storage cask in which that canister sits has vents, is
6 not air tight, and that there would be an avenue for escape
7 of fission products to the environment.

8 CHAIRMAN BOLLWERK: Mr. Blake?

9 MR. BLAKE: I've got to restate so there's no confusion
10 for anybody on the record here. Remember what I believe
11 Mr. Silberg said yesterday. If there's failed fuel, then
12 before there's any shipping done the failed fuel is encased
13 itself, and then it goes into a double-sealed canister, and
14 then it goes into the cask for transportation.

15 I just can't accept if, if, and if and if you wind up
16 with all of these barriers breaking down, I agree we'd have
17 something. There's just no mechanism, no credible
18 mechanism, no basis for credible mechanism that that would
19 occur.

20 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

21 MR. QUINTANA: Once again the science does not support
22 this State's contention, and we stand on the objection as
23 previously noted as to the other contentions.

24 CHAIRMAN BOLLWERK: NRC staff?

25 MR. TURK: We rest on our written submission, Your

1 Honor.

2 CHAIRMAN BOLLWERK: All right. Ms. Curran.

3 MS. CURRAN: Well, once again I'd just like to refer to
4 nureg 1092 which refers to a design basis accident involving
5 a leaking canister and release of gases.

6 CHAIRMAN BOLLWERK: I think there was something said
7 about that this morning; is that correct?

8 MS. CURRAN: Yeah.

9 MR. BLAKE: I believe yesterday. It doesn't apply is
10 the bottom line to our --

11 CHAIRMAN BOLLWERK: I think that was the argument you
12 made this morning in fact; correct?

13 DR. LAM: Mr. Turk, do we have anything on the record
14 here to indicate what the Commission intends to do with the
15 cask design?

16 MR. TURK: The Sierra nuclear cask?

17 DR. LAM: Right.

18 MR. TURK: No, Your Honor. That is the subject of an
19 NRC staff inquiry currently, but that relates to, if
20 anything, to the cask certification process. That's not a
21 part of this proceeding. And as we noted in our responsive
22 pleading, the mere existence of an investigation, even if it
23 was an investigation and it is not, that would not give rise
24 to a contention. And we cited the Waterford Appeal Board
25 decision to support that proposition.

1 DR. LAM: Thank you.

2 CHAIRMAN BOLLWERK: If there's nothing else on this
3 contention --

4 DR. KLINE: Ms. Curran, just to clarify, when you use
5 the term "leaks" and "failed fuel," I presume that you mean
6 "gaseous leaks"; is that correct, as you cited in this --
7 yeah, because just to observe these are dry casks. We're
8 not talking about liquid effluence from these casks or --

9 MS. CURRAN: Yes, we are talking about gaseous leaks.

10 DR. KLINE: You're talking about gases. Okay.

11 CHAIRMAN BOLLWERK: All right. Anything further from
12 the Board?

13 MR. TURK: Actually I misspoke. It was a Commission
14 decision for Waterford, Your Honor. Other than that I have
15 nothing further.

16 CHAIRMAN BOLLWERK: All right. The next contention
17 that would be State S which deals with decommissioning, and
18 questions of financial qualifications. I thought that also
19 Confederated Tribes A and OGD Q -- I'm sorry -- OGD K also
20 had some relation to this. So it's Utah S, Confederated
21 Tribes A and OGD K.

22 MS. CHANCELLOR: Utah S decommissioning has 11
23 different subsections, and NRC staff has accepted some
24 and -- has not opposed some and has rejected others.

25 The staff's response I found was a little bit

1 confusing, because in some instances they didn't give any
2 reason other than to say that they objected to a certain
3 basis. So I think what I'll do is quickly run down this
4 list of 11.

5 The first one dealt with no reasonable assurance that
6 funds will be available. The staff did not oppose that.
7 We've addressed that specifically in contention E.

8 A letter of credit, that's also addressed in our
9 pleadings, and NRC staff does not oppose that.

10 Number 3 is off-site shipment of canisters where we
11 claim there's no assurance that they will be shipped off
12 site, and that we need contingency casks. NRC staff does
13 oppose that. Our reply on pages 70 to 71 address that
14 issue, and we will rest on our pleadings.

15 Number 4, we dispute the applicant's basis for
16 estimated costs, and NRC staff does not oppose that.

17 Number 5, the potential for large accidents, NRC staff
18 does not oppose that.

19 Number 6, we state that the applicant optimistically
20 presumes that no residual contamination will be left on the
21 site. NRC staff opposes that. However, we believe that
22 given the potential for large accidents in the area, that it
23 is essential that some sort of contingency fund be set aside
24 in the case of some sort of residual contamination that may
25 be left at the site.

1 And number 7 and 8, the types of wastes that will be
2 generated we state have not been accounted for. Number 8
3 deals with decontamination of the storage casks. NRC staff
4 says that they oppose this portion. However, they give no
5 reason for their opposition.

6 Our concern with both number 7 and number 8 is that in
7 number 7 the types of wastes that are generated that won't
8 be accounted for, and also with the decontamination of the
9 casks, PFS intends to dismantle the casks, and chop them up,
10 and send them to a low-level waste disposal. Because the
11 application does not address anything about how this
12 disposal will occur, we believe that that doesn't adequately
13 reflect the amount of decommissioning costs that will be
14 needed.

15 It should be noted that Utah is a member of the
16 Northwest Interstate Compact on low-level radioactive waste,
17 and low-level waste generated in Utah may be shipped to
18 Hanford, the compact site in Washington. However, it's
19 questionable whether the Goshute Reservation would also be
20 part of that compact, because it was the State of Utah that
21 signed up to it.

22 The other argument is that Envirocare has by license
23 agreed not to accept any low-level radioactive waste
24 generated in the state of Utah. Now, I know I can't have it
25 both ways. You know, either they're a member of the

1 compact. But in any event, Envirocare only takes very, very
2 low activity waste. So there is a high likelihood that low-
3 level waste generated at the site may have to go to South
4 Carolina, and that certainly would increase the amount of
5 costs for decommissioning.

6 In fact, the applicant realizes the escalating costs of
7 low-level radioactive waste disposal, and in their
8 environmental report, figure 7.2.1, they describe the
9 escalating costs. However, if a shipment has to go from the
10 ISFSI to South Carolina, it certainly will increase the
11 cost.

12 NRC staff opposes the cost of decontaminate, the
13 storage cask liner. They say there's no basis for the State
14 objecting to 20 percent of the typical line of being
15 contaminated, which is what the applicant asserts. However,
16 as we have stated, the extended life of this facility -- the
17 longer the casks sit there the more likely that the casks
18 will have the potential for becoming contaminated. And
19 again this is a funding issue.

20 All of the -- most of the -- all of these issues that
21 we raise go to whether there is going to be sufficient
22 funding at the end of the day to decontaminate the facility,
23 and whether this limited liability company will be able to
24 set aside enough costs to meet those needs.

25 The last one, as you may expect -- oh, number 10 was a

1 survey of \$250,000. The NRC staff did not object to our
2 contention that there's no justification for those numbers,
3 and there's no sampling protocol.

4 The last one, number 11, is that there's no
5 decontamination procedures or cost for redemption. As we
6 discussed at length on the first day of the hearing, Rowley
7 Junction is something that the State feels very strongly
8 should be addressed in this licensing proceeding.

9 The casks will be transferred to the ISFSI at Rowley
10 Junction. They will -- leaking casks will be transported
11 back through Rowley Junction. There will be a fixed
12 facility at Rowley Junction. To say that the applicant
13 doesn't have to even evaluate any sort of decommissioning
14 that may be reburied there we believe is a gross oversight
15 on the part of NRC.

16 I think we described Rowley Junction as trying to
17 squeeze an elephant into a mouse hole. I know NRC says that
18 you don't have to look and see if they've made a mess. We
19 believe that Rowley Junction should be addressed in its
20 entirety, including decommissioning funding.

21 That's all.

22 CHAIRMAN BOLLWERK: Anything further?

23 MS. CHANCELLOR: No, that's all. Thank you.

24 CHAIRMAN BOLLWERK: All right.

25 DR. LAM: So Ms. Chancellor, so part of the relief that

1 you're seeking is for the Commission to modify its
2 regulation.

3 MS. CURRAN: No. What I am seeking is for Rowley
4 Junction to be addressed as part of this proceeding. That
5 we believe that Rowley Junction is an integral part of the
6 ISFSI operation, and that therefore decommissioning costs
7 should be evaluated for Rowley Junction.

8 CHAIRMAN BOLLWERK: All right.

9 MR. SILBERG: As we've said often today and yesterday,
10 we hear a lot of if, if, if and very little supported basis.
11 Interestingly enough, with this contention there is no
12 affidavit that supports it, neither the original contention
13 nor the reply.

14 First let me turn to their reply with a few comments.

15 The State seeks to distinguish the legal standards that
16 the Commission and the Licensing Board adopted in the Yankee
17 Atomic cases which we cite on the grounds that Yankee is a
18 different kind of facility and a different kind of
19 applicant. It's correct, Yankee is a reactor. We're not a
20 reactor. Yankee has been around and we're not. But that's
21 not the issue. The question is what are the legal standards
22 that apply. And there's nothing in those decisions which
23 would turn in any way the kind of distinctions that the
24 State seeks to draw.

25 I would note on page 70 there I think are two typos

1 that the State might want to correct about halfway down in
2 the first paragraph. The citation to Yankee should be pages
3 262 to 267.

4 MS. CURRAN: Excuse me. What page are you on?

5 MR. SILBERG: Page 70.

6 MS. CURRAN: Oh, seven O.

7 MR. SILBERG: And in the bottom paragraph, about five
8 lines from the bottom, the citation to our answer should be
9 page 244 rather than page 224.

10 At the bottom paragraph at page 70 the State goes into
11 an explanation of why it believes that the decommissioning
12 plan must include contingency costs in the event that the
13 ISFSI cannot be decommissioned at the end of the license
14 term due to unavailability of a place to put it. We think
15 that that is a clear challenge to the Commission's waste
16 confidence rule which says one does not have to assume that
17 you will be storing fuel beyond the term of the license.

18 I would also note that the numbers that the State lays
19 out on pages 70 and 71 coming up with some date by which
20 fuel would still be around is totally without basis.

21 In addition, that kind of an analysis, that kind of a
22 contention was rejected in the Yankee 2 decision which the
23 State itself cites at page 78 of 23 NRC.

24 And the State's assumption that Yucca Mountain will
25 begin to accept fuel in 2020, which may or may not be

1 correct, misses the point because Yucca Mountain is not
2 necessarily where DOE will be going to accept spent fuel.
3 MRS is something that is covered in the pending legislation,
4 and one may well have a facility well before 2020, although
5 it may not be a repository.

6 In any event, this whole analysis is new information.
7 It was not in their original pleading. And as we've stated
8 in a variety of cases, it's late and should not be
9 considered.

10 But in any event, the State goes on to argue that this
11 was -- that PFS is proposing somehow will be disadvantaged
12 in terms of shipping fuel to Yucca Mountain because the
13 other interim facilities authorized under the Nuclear Waste
14 Policy Act, and I'm using their language, have a priority.
15 There spent fuel has to be removed by statute no later than
16 three years following fuel acceptance at a permanent
17 repository or MRS. Since we don't have that benefit, our
18 fuel is going to be pushed to the back of the cue.

19 The State misreads the Nuclear Waste Policy Act, since
20 the only facility that that three-year provision applies to
21 is a facility that will never be built because the authority
22 for that expired in 1990.

23 The State also goes on to say that it's probable that
24 fuel will not -- from the ISFSI will not have prior already
25 received at Yucca Mountain. That of course is rank

1 speculation. Priority is set by the standard contract, and
2 indeed the utilities who have fuel at their proper places in
3 the cue are the one who choose which fuel assemblies will be
4 delivered in which order.

5 Most of the rest of what's in the State's written
6 response is a repeat of what's in their initial and we've
7 addressed it. I would like to note one item on page 73
8 where the State is trying to give an example of gross
9 discrepancies in our decommissioning cost estimates. And
10 again we have a situation where there is no basis. The
11 State first notes that the cost which we state in our
12 application for decommissioning a canister is a dollar a
13 square foot, whereas we estimate the cost of decommissioning
14 the canisters' building, canister handling building is five
15 dollars a square foot.

16 The State goes on then to claim that this would
17 represent a 500-percent underestimate of costs. First of
18 all, the State fails to recognize the difference between
19 decontaminating a stainless steel canister, which is
20 estimated at a dollar a square foot, is a very different
21 animal than the cost of decontaminating the inside of a
22 building which we estimate at five dollars a square foot.

23 And other than saying there's a gross disparity between
24 those two costs, State has provided absolutely no basis for
25 any disparity whatsoever with respect to either of those

1 numbers. But even if you accept the State's numbers, the
2 difference turns out to be less than 10 percent, not 500
3 percent. You can derive that from information in the
4 application. The difference is four dollars a square foot
5 times 365 square feet per canister, which is 4-2, Appendix B
6 of the license application. That's about \$1400, and the
7 total cask decontamination estimate is \$17,000. So there's
8 no basis for this aspect of the State's complaint.

9 With respect to Rowley Junction, the State state orally
10 that we have to worry about decontaminating Rowley Junction.
11 Aside from the legal argument which I won't repeat, the
12 State again has provided no basis for there being any source
13 of contamination at Rowley Junction. We don't open the
14 transportation casks there. They simply come up with no
15 mechanism by which you would get contamination leaking
16 through a canister, through a transport cask and out into
17 the environment.

18 With respect to the disposal of low-level waste, I
19 think we're hearing here is a lot more of the kind of
20 speculation without basis that we've had elsewhere in the
21 contention. And I would agree with the State that they
22 can't have it both ways. Either we can send our waste to
23 Envirocare or we'll be able to send it as part of the
24 compact to Hanford.

25 And again the idea that somehow the waste will be too

1 hot to handle for Envirocare is again something which is
2 pure speculation on the State's part with no basis in the
3 documentation or with expert affidavit.

4 CHAIRMAN BOLLWERK: Anything further?

5 MR. SILBERG: No.

6 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

7 MR. QUINTANA: Since the issue of Envirocare has been
8 brought up, the licensing of Envirocare never did involve
9 notice to the Goshutes for comment as required by federal
10 law. Envirocare takes the vitro tailings which have
11 radium 226 which has half lives of approximately 16,000
12 years.

13 MS. CHANCELLOR: Objection, Your Honor. None of this
14 is in the record.

15 CHAIRMAN BOLLWERK: What does this have to do with the
16 question of whether the waste can go to Envirocare? I guess
17 that's my only --

18 MR. QUINTANA: I think that the waste can either go to
19 Envirocare or another licensed facility. There are other
20 licensed low-level sites in the United States, the Hanford
21 facility and the Savannah River facility.

22 CHAIRMAN BOLLWERK: Anything further? Yes.

23 MS. MARCO: The staff wishes to clarify with respect to
24 its pleading. The staff does object to issue 7 and issue 8
25 of the State's contention. The staff does so, because there

1 is insufficient basis to support these contention issue
2 statements, and therefore there's insufficient information
3 to show there's a material dispute with the applicant with
4 respect to these matters.

5 And for the rest we'll stand on our pleadings.

6 CHAIRMAN BOLLWERK: Can you give me a title for 7 and
7 8, a buzz word so I can make sure I've got it? I've got
8 these with letters rather than numbers, so --

9 MS. MARCO: Yeah. Perhaps the applicant rephrased.

10 MS. CHANCELLOR: It's the types of waste that will be
11 generated, and decontamination of the storage casks is
12 number 8.

13 MR. TURK: I think the State was right. The objection
14 to 8 we didn't explain the reason in our written pleading.
15 The reason is as Ms. Marco stated just now.

16 CHAIRMAN BOLLWERK: And I have a note here. What is
17 staff reason? In fact I've had that for both of them.

18 MR. TURK: Lack of basis.

19 CHAIRMAN BOLLWERK: All right.

20 DR. LAM: Does the staff have an opinion as to five-
21 dollar per square foot decontamination costs?

22 MS. MARCO: Yes, we believe that that would be a merits
23 question.

24 MR. TURK: Judge, I apologize. Is your question as to
25 whether or not the five dollars is a reasonable estimate, or

1 that the contention should be admitted with respect to that
2 aspect?

3 DR. LAM: Your first part. The applicant has said it's
4 a dollar. Did they base it on -- is it a dollar? Is it
5 five dollars? I just want to know does the staff have an
6 opinion.

7 MR. TURK: As to the merits whether those are good
8 numbers?

9 DR. LAM: Right.

10 MS. MARCO: The staff has not formulated an opinion
11 about that yet.

12 CHAIRMAN BOLLWERK: I think I'll just clarify for
13 myself. As to number 4 which deals with the detailed
14 consistency and justification of cost estimates. You say
15 that is not admissible; am I correct?

16 MS. MARCO: No, we don't object to it.

17 CHAIRMAN BOLLWERK: They don't object to that.

18 MS. MARCO: We don't object to it, but we do take issue
19 with I think the last paragraph of it. Other than that we
20 don't object to it.

21 CHAIRMAN BOLLWERK: Regarding disposal of non-
22 radioactive hazardous waste.

23 MS. MARCO: Correct.

24 CHAIRMAN BOLLWERK: All right. Ms. Chancellor, go
25 ahead.

1 MS. CHANCELLOR: We seem to be in a Catch 22 situation.
2 Either we don't have any basis to support our argument,
3 according to Mr. Silberg, or if we try to come up with a
4 basis, Mr. Silberg says it's not supportable. That's the
5 case when we try to show why contingency costs should be
6 available in the event that these transportation -- in the
7 event that the casks cannot be removed from the facility
8 whether it relates to decommissioning or ongoing operations.

9 But certainly if the casks are going to be sitting on
10 the pad for a number of years, the potential for
11 contamination exists.

12 With respect to new information, it's new information
13 to us that the five dollars a square foot related to
14 stainless steel casks and the dollar a square foot related
15 to decontamination of the canister building. That is not in
16 the application.

17 MR. SILBERG: I beg your pardon. That is what the
18 application states.

19 MS. CHANCELLOR: But there's -- I stand corrected. But
20 my understanding is that there's no description of why
21 there's a difference in cost. You just have two costs
22 there, and you don't know why they're different.

23 With respect to the Yankee Atomic case, what we are
24 saying is that in Yankee Atomic there was no other relief
25 available other than to go back and rewrite the

1 decommissioning plan. What we're saying in this case is
2 there is alternative relief available. The ISFSI has not
3 been constructed. If the applicant is unable to give
4 reasonable assurance that it can raise decommissioning
5 funds, and that its cost estimates for decommissioning are
6 adequate and substantiated, if they fail to do that this
7 Board can deny the license. So there is certainly that
8 relief that is available that was not available in the
9 Yankee line of cases.

10 That's all I have to say.

11 CHAIRMAN BOLLWERK: All right.

12 MR. SILBERG: Two minor. First, the potential for
13 contamination with extended storage is another one of these
14 unsupported statements.

15 And second, with respect to Yankee, there being no
16 other really for that amenable, the legal standards adopted
17 in that case are the legal standards. There were other
18 mechanisms available in Yankee. The Commission could have
19 imposed any conditions it thought were required for the
20 public health and safety against Yankee.

21 CHAIRMAN BOLLWERK: Ms. Chancellor, anything further?

22 MS. CHANCELLOR: Yankee could not have denied the
23 license because the license was already in existence.

24 CHAIRMAN BOLLWERK: Okay, then nothing further on that
25 contention.

1 Let's look at contentions Confederated Tribes A and the
2 OGD K. Mr. Kennedy.

3 MR. KENNEDY: Thank you. We understand that this
4 process is designed to anticipate problems in advance and
5 make sure that those problems are capable of being resolved,
6 and that whatever steps need to be taken to resolve those
7 problems are in place.

8 And the financial issues here it seems to us present
9 substantial concern not only for the people who live there
10 in the valley and who are resident on the reservation, but
11 really for everybody associated with this matter.

12 The questions that we think are general that need to be
13 asked and answered are, for example: does TFS have the
14 ability to pay for the anticipated costs associated with
15 decommissioning? Implicit in that question is: What are
16 the costs? And implicit in the question of what are the
17 costs is: What will happen when this project is ready to be
18 decommissioned?

19 And so we have raised these issues or attempted to
20 raise these issues in our contention 8. We don't know at
21 this point what the arrangements are with the Skull Valley
22 Band between PFS and the band itself as to how these costs
23 are going to be allocated, and whether PFS will be bearing
24 the burden or whether the tribe will be bearing the burden.

25 We don't know whether the funds which are to be

1 reserved for decommissioning are going to be adequate partly
2 because we don't know at this point what will be required at
3 the time of decommissioning with respect to these canisters.
4 Are they going to go to Yucca Mountain? Are they going to
5 go to Tim Buck Two? We don't know.

6 So how can we possibly sit here today and say, "Well,
7 they have adequate financial capability to handle the
8 decommissioning costs" when we don't know where they're
9 going to go? And there's no plan. There's nothing
10 outlined, not even a suggestion as to how this is going to
11 take place.

12 We don't know what backups there are in the event of
13 short falls in the reserve.

14 Yesterday Mr. Later articulated, "Well, I thought the
15 points regarding the great uncertainty of PFS' financial
16 capacity." And the point in this part of our contentions I
17 think relates to those points that were being discussed
18 yesterday, that regardless of PFS' capacity there's still a
19 gaping lack of information regarding what the costs may be.
20 I mean they may have a trillion-dollar capacity, but we
21 don't know what the costs are going to be. So we can't sit
22 here and say we know that they are going to be capable of
23 handling whatever the costs are.

24 We can't possibly know whether PFS is going to be
25 financially qualified to pay the costs, because we don't

1 know what they're going to be.

2 One of the points that we make is a concern over the
3 removal and disposal of structures if they become
4 contaminated. And this also ties in with I think what
5 Mr. Later was talking about in terms of the disagreement of
6 whether this is a possibility or not. But assuming it is,
7 the staff has suggested that PFS would not be required to
8 remove and dispose of the structures if they become
9 contaminated. I guess that's pursuant to the regulations.

10 We don't know what the agreement is between the tribe
11 and PFS, however, as to whether they in fact would be
12 required to remove contaminated structures or even
13 uncontaminated structures. We don't know what's in that
14 agreement. So how could we say, how can anyone say that PFS
15 is capable of performing when we don't know what they have
16 to perform?

17 The whole lease arrangement, the amount of the lease,
18 the amount is to be paid under the lease. The impacts of
19 decommissioning under the lease are a mystery.

20 And so it is also a mystery as to whether PFS is
21 financially capable of handling it. And again that's true
22 regardless of how much capacity PFS has. And that, of
23 course, as Mr. Later said yesterday or pointed out
24 yesterday, is a matter of great conjecture at this point.

25 That's all I have to say.

1 CHAIRMAN BOLLWERK: All right. Mr. Silberg, I see you
2 reaching for the mike. I'm going to assume that you're
3 going to say something.

4 MR. SILBERG: My turn. A lot of what we've heard --
5 and if you look at the initial contention, indicates to me
6 either a lack of review of the application or a failure to
7 consider what's in the application.

8 The cost numbers are in the application. The method of
9 financing is in the application. There are certain things
10 that are not in the application, and Confederated Tribes
11 seem to have an interest in trying to get copies of those
12 few portions of the lease between PFS and the Skull Valley
13 Band which have been properly withheld but which are frankly
14 irrelevant to this contention or many other contentions.

15 Whether PFS will be obligated to remove uncontaminated
16 structures, which was one of the things I just heard, is
17 irrelevant. It doesn't fall within this Board's
18 Commission's jurisdiction, because it doesn't relate to
19 radiological health and safety. There is no regulation
20 requirement.

21 With respect to what PFS will be required to do in
22 terms of removing contaminated structures, the test is what
23 the regulatory standards are, not what we may have agreed
24 with the Skull Valley Band or with anyone else. The
25 regulatory standards are there. They're there for us to

1 review. They're there for Confederated Tribes to review.
2 They have not done that. There is no recognition in their
3 contention or anything we've heard today that they have made
4 any attempt to provide the kind of basis which that
5 Commission regulations require to initiate an exploration of
6 this issue.

7 And again I repeat what I said yesterday, which is each
8 contention I think needs to be looked at on its own merits
9 notwithstanding the fact that there may be other contentions
10 on related topics from other parties.

11 What are the costs? We have laid out those costs. It
12 may be that the parties disagree with them. With the
13 exception of the one dollar versus five dollar-dispute which
14 we talked about, I simply haven't seen any specificity or
15 basis for that kind of a dispute.

16 With respect to the need to deal with large accidents,
17 again what is the mechanism? Where is some basis that such
18 an accident is at all credible?

19 We have covered those issues.

20 With respect to who will pay for the disposal of the
21 spent fuel on site, I think I heard the Confederated Tribes
22 saying that it would make a big difference as to whether the
23 canisters would be shipped to Yucca Mountain or Tim
24 Buck Two. Well, that's certainly the case, but the question
25 is: What does that have to do with the decommissioning

1 financing of this enterprise?

2 The transportation of spent fuel to DOE is paid for by
3 DOE. If you read the standard contract, that is perfectly
4 clear. So the fact of it's being shipped to Tim Buck Two
5 versus Yucca Mountain, I'm not sure which one would cost
6 more, is irrelevant because it's not going to be paid for by
7 PFS. It's not part of the decommissioning costs, and it's
8 not part of the financial qualifications. It's simply
9 irrelevant.

10 That's all I have.

11 CHAIRMAN BOLLWERK: Mr. Quintana.

12 MR. QUINTANA: Very briefly, title to the spent fuel
13 remains with -- and correct my understanding on this --
14 remains with the utility companies despite the license of
15 this facility. And the utility companies would still be
16 obligated under NRC rules to comply with all federal law.

17 The rest of the matters are not relevant and therefore
18 not admissible, the contention should on those bases be not
19 allowed.

20 CHAIRMAN BOLLWERK: All right. Staff?

21 MS. MARCO: The staff just wants to respond to one of
22 the comments that was just made. The staff never asserted
23 that we will allow contaminated buildings to remain. Rather
24 what we said was that decommissioning activities are not
25 required to include removal and disposal of non-radioactive

1 structures and materials, and that's in the Commission's
2 statement of consideration.

3 CHAIRMAN BOLLWERK: Anything else?

4 MS. MARCO: That's all.

5 CHAIRMAN BOLLWERK: Mr. Kennedy.

6 MR. KENNEDY: If PFS has to spend money the removal of
7 uncontaminated buildings, or has to spend its money on
8 exorbitant lease payments, that means that there is less
9 resources available to handle the health and welfare or
10 health and safety issues. We just don't know how much
11 they're going to have to spend of their resources. And we
12 don't know what their resources are. So how can we say that
13 they are capable of handling this project? I think it's
14 very important to know what obligations they're going to be
15 facing.

16 The mere fact that they may not be covered under the
17 regulation doesn't mean they're not going to have to spend
18 it. And so we would submit that it is very relevant.
19 There's no way to verify these costs, because they've been
20 hidden from public view.

21 With respect to Mr. Silberg's comment about shipping
22 the product to a DOE site, I'd like to know which DOE site
23 he's going to ship it to. Because as far as I know there
24 isn't any right now, and they may have to ship it to a non-
25 DOE site after the lease expires. And have they taken that

1 into account and the costs that are involved in doing that?

2 Certainly they have a reserve. But the question is:
3 Is the reserve adequate? And we cannot know whether the
4 reserve is adequate, because we don't know what the costs
5 are. That's all.

6 MR. SILBERG: Very briefly. The issue here is
7 decommissioning costs and nothing else. Decommissioning
8 costs are collected up front, as we say in our application.
9 The amount that we collect is set forth in the application.
10 They are segregated in a separate fund, as is set forth in
11 the application. All the other speculative concerns of the
12 tribe are simply irrelevant.

13 With respect to the dollars of shipping casks to a non-
14 DOE facility, the issue of whether there will be a DOE
15 facility available or not is one, as we've said several
16 times before, it is dealt with by the NRC's waste confidence
17 rule, and it's inappropriate for consideration in this
18 proceeding.

19 CHAIRMAN BOLLWERK: All right, sir, do you have
20 anything else?

21 MR. KENNEDY: Well, certainly. That was a good dodge.
22 I'm not talking about whether there's a DOE facility. I'm
23 talking about the costs of moving it out. And the fact that
24 there isn't a DOE facility makes that issue undeterminable
25 at this point.

1 And there is a gaping lack of -- or a hole in their
2 plan because of that. I mean it would be nice if there was
3 a DOE facility or any facility, and certainly we all have an
4 interest in that. But putting that aside and saying that
5 that's up for someone else to decide is fine, but we still
6 have to deal with what the costs are going to be here, and
7 we don't know what they are, and that's the problem with
8 their proposal.

9 Decommissioning costs are not the only issue. The
10 issue is what leads up to that point? And how much
11 resources are available to handle whatever the
12 decommissioning costs may be?

13 MR. SILBERG: Can I make one comment in terms of our
14 requirement?

15 CHAIRMAN BOLLWERK: Yes, sir.

16 MR. SILBERG: And this is addressed to Mr. Kennedy's
17 comment about he doesn't know how much money will be spent
18 on the removal of uncontaminated building. I want to make
19 sure that it's understood the NRC does not require non-
20 contaminated buildings or structures to be removed. What we
21 insist upon is that any contamination be removed down to the
22 point where the facility can be released for unrestricted
23 use.

24 So that may mean that there would be some insignificant
25 amount of radioactive contamination left, but it would not

1 present a health concern. However the buildings themselves,
2 as long as they're decontaminated, would not have to be
3 removed.

4 MR. KENNEDY: Well, and my point on that is that may be
5 true under the regulations, but we don't know whether it's
6 true under the arrangement between the tribe and PFS. And
7 the question is: How much resources does PFS have to handle
8 all of the expenses they're going to face at the end of this
9 lease? And if they can't -- if they spend their money on
10 removing buildings because they're obligated to do so under
11 the lease, and there isn't enough money left to handle other
12 costs of decommissioning the site, then we've got a problem.
13 And that's my point.

14 CHAIRMAN BOLLWERK: Anything addition on this?

15 All right. I guess we have one other contention,
16 OGD K. It deals with decommissioning and financial
17 qualification.

18 MS. BELILLE: Your Honor, we have no comments on this
19 other than we'll stand on our original contention as
20 submitted.

21 MR. SILBERG: Ditto.

22 CHAIRMAN BOLLWERK: Ditto?

23 MR. TURK: Ditto.

24 CHAIRMAN BOLLWERK: Everybody stands where they are.
25 All right. We'll close that one out and move on then.

1 Let's see. I think at this point under the State's
2 contentions we are at a point now where we're ready to talk
3 about the proprietary contentions EE through GG. And the
4 Board had already indicated to the parties that because of
5 the proprietary information in terms of the substance of the
6 contention's admissibility that we're not going to deal with
7 that today because we didn't want to hold a closed session.
8 So we provided the State an opportunity to file a written
9 reply.

10 We did, however, indicate that there's questions about
11 whether -- because these contentions were late filed,
12 whether they'll meet the late filing factors of 2.714(a)(1)
13 of the Commission's regulations. And Ms. Nakahara, you're
14 stepping up to the mike.

15 MS. NAKAHARA: Basically the NRC staff and the
16 applicant both oppose the admission of EE and FF for failure
17 to show good cause, which is one of the five criteria. NRC
18 staff specifically argues that in our motion for extension
19 that we requested on October 1st, that you granted in part
20 on October 17th, that that should have addressed the need
21 for additional time.

22 And it's true that one of the bases for our motion
23 requesting an extension of time was to not only review the
24 three-volumes of calculations but in hopes of getting the
25 proprietary volume, which is the fourth volume of

1 calculations.

2 We expected at that time knowing that we would likely
3 have to sign a confidentiality agreement with both the cask
4 vendors to be able to get that information, be able to
5 review it and be able to get it into contention by
6 November 24th. However, we had great difficulties in
7 reaching an agreement in the confidentiality agreement
8 between the two vendors.

9 In particular with Holtec it took us 22 days to reach
10 the agreement. And by the time we signed the agreement,
11 modified it to the satisfaction of both parties and obtained
12 documents, that was November -- I believe it was the 13th.

13 And we would use the same argument that we used in our
14 request for extension, that there was an additional
15 approximately 300 pages that we had to have our experts to
16 review. A number of these pages were calculations which
17 would take additional time versus reading descriptions or
18 narratives.

19 In respect to the Sierra Nuclear proprietary
20 information, that took us over 49 days, and we did not reach
21 an agreement with Sierra Nuclear until December 10th, and we
22 did not get the information until a couple days later which
23 was well after the November 24th date.

24 And for Sierra Nuclear we attached a lot of exhibits to
25 contention FF which describes the history in trying to

1 obtain the agreement and the information. We neglected to
2 attach a similar exhibit to EE -- I'm sorry. We attached it
3 to GG, and we neglected to attach a similar log to EE and FF
4 which we will be glad to provide to the Board at your
5 request.

6 One of the --

7 CHAIRMAN BOLLWERK: You're correct, there is a log with
8 Exhibit 27.

9 MS. NAKAHARA: For GG.

10 CHAIRMAN BOLLWERK: For GG, that's correct.

11 MS. NAKAHARA: And we neglected to attach one for EE
12 and FF, but we have a similar record, and we will provide it
13 with our reply.

14 In respect to the applicant's argument that we did not
15 proprietary information to develop the contention, first,
16 it's ironic that both the applicant and NRC staff had access
17 to the proprietary information to make that kind of a
18 judgment. We were put into a situation in which the non-
19 proprietary version had blank pages of our title motion --
20 equation to motion. Apologize.

21 So we could only speculate that the equation of motion
22 would provide additional information in which we would
23 either satisfy our questions or to develop the contention.
24 And therefore, we decided to proceed with trying to get the
25 proprietary information. And it basically put us in a

1 Catch 22, either to file a contention that the applicant
2 could argue for dismissal based on not addressing relevant
3 material, or to try and get the material hopefully in time,
4 and in this case not, and file a file contention.

5 Based on that alone we feel that we have good cause.
6 However, the proprietary information was necessary to
7 develop our contentions.

8 With contention GG dealing with the Sierra Nuclear
9 proprietary information, there was no non-proprietary
10 information. So it was essential that we received the
11 proprietary information.

12 In respect to the Holtec proprietary information, the
13 applicant maintains that the only difference is to two
14 appendices, one attachment and one figure. Later in the
15 brief they indicate there is one figure, one attachment --
16 excuse me. Later in their brief they counter that with a
17 different number. However, our proprietary information that
18 we got, we got two figures that were proprietary, although
19 they're similar, one attachment and six appendices. One of
20 the appendices is identical to the attachment.

21 But specifically in reference to contention EE which is
22 based on the site stability, the equations of motion with
23 were proprietary were essential in order to evaluate the
24 credibility of the analysis that was provided in both the
25 non-proprietary and the proprietary information and to

1 determine the impact that the parameters would have on the
2 overall analysis.

3 In addition, the proprietary information includes
4 calculations that were -- calculations that for the mass and
5 inertia properties, the pad and calculations of the spring
6 constance for the seismic analysis for the cask. And we
7 found that essential for doing the overall analysis.

8 To address why we couldn't meet the November 24th I did
9 briefly, but basically we received the information on
10 November 13th. And our experts that reviewed this
11 information were also assisting the State's attorneys in
12 preparing and finalizing the contentions that were filed on
13 November 24th.

14 And to briefly address the other four criteria, we
15 submit that these contentions will not broaden these
16 proceedings. They are related contentions. Contention L
17 which addresses geotechnical concerns, and contention C
18 addresses failure to demonstrate compliance with dose
19 limits, and contention P addresses control of occupational
20 and public exposure to radiation, relate to radiation
21 safety. And we feel that these contentions will only help
22 to focus the issues in this proceeding.

23 In any regard, admittance of these contentions will not
24 broaden the scope of the proceeding. Already said that.
25 Sorry.

1 It is likely that admission of these contentions will
2 substantially not delay the proceedings, because you've
3 already set a time and schedule to hear the State's reply.

4 And in any case, the safety evaluation report has been
5 estimated to be issued not until the fall of 2000.

6 And the NRC staff has agreed that the State cannot
7 obtain relief in any other forum. All certification and
8 storage casks do not address that specific seismic issues.

9 And the NRC staff also agree that there's no other
10 party in this proceeding that can represent the State's
11 interest in this issue. To my understanding, no other party
12 has asked for the proprietary information. Thank you.

13 CHAIRMAN BOLLWERK: I may have some questions for you,
14 but let's let the applicant have the word first, and we'll
15 hear from the staff as well.

16 MR. GAUKLER: Your Honor, I'm Paul Gaukler.

17 First of all, we believe that they have not shown good
18 cause for the late filing of the contentions regardless of
19 any difficulty they may have had with obtaining the
20 proprietary viewing with respect to Holtec, because there
21 was sufficient information in the non-proprietary
22 information, none-proprietary documents that were provided
23 to them as part of the calculation packages. These were
24 received by them in September, as they acknowledge.

25 In addition, there was information in the safety

1 analysis report that provided information to these
2 contentions which they received in June, June 25th of this
3 year, of last year.

4 The Commission's decision in Paba makes clear that if
5 the factual predicate for a contention is available from
6 other sources in a timely manner, that the unavailability of
7 information is insufficient to show good cause. In other
8 words, the factual predicate could have been obtained from
9 information that they had.

10 Walking through the three sets of contentions EE
11 concerning the Holtec cask stability analysis, the non-
12 proprietary information that we had shows that everything --
13 that they received everything except three things. The
14 first was an appendix which basically listed -- it was a
15 list of computer programs and computer printouts. Third was
16 an attachment called -- handwritten attachment called
17 "equations of motions." Third (sic) was a diagram, one-page
18 diagram called referring to access of showing how the casks
19 rotate.

20 They did not refer to any of these documents in their
21 contention. In addition, they had the whole technical
22 explanation and description of the report. And they also
23 had, our records show, four of the five appendices.

24 They claim here today that they did not get a couple of
25 the other appendices. I don't know what reason there is for

1 that, if that's correct. But even assuming that is correct,
2 they still had the entire written report of approximately 15
3 pages setting forth the methodology and explaining the
4 process, and they also had the information in the analysis
5 report, much of which we have discussed and set forth in our
6 answer to the substantive provisions, substantive
7 contentions raised in EE.

8 Thus, we believe they had sufficient factual
9 information to form the factual predicate for their
10 contention.

11 With respect to contention FF, this is the Holtec
12 radiation monitoring analysis. In that situation they again
13 received the entire technical report setting forth the
14 methodology for the analysis. They received three of the
15 four appendices setting forth different calculations related
16 to the methodology. The did receive one of the appendices.
17 And I do not understand them to say here today that they
18 received anything less than that.

19 So in other words, I think it's clear that they
20 received everything with respect to FF except one of the
21 appendices. Again they did not refer to that appendix in
22 their contention. As we have set out when you read through
23 the substantive responses to the contention, you will see
24 that the factual predicate for each one of their assertions
25 was available from the non-proprietary information which

1 they had.

2 With respect to GG, the factual situation is slightly
3 different in that they did not receive a proprietary version
4 of the calculation. However, they did have sufficient
5 information to seek the analysis reports to provide the
6 factual predicate for two parts of their contention,
7 subparts A and subparts B as we have set forth in our
8 responses. And we object for lack of good cause with
9 respect to those two subparts.

10 With respect to the claim that they did not know what
11 information was in the proprietary information, they
12 certainly had enough information to set forth the basis of
13 their contention. They could have well have claimed that
14 they would need to amend it after they got a chance to
15 review the proprietary information, but they did not do
16 that, nor did they come in and ask the Board for an
17 extension of time being that they had proprietary
18 information.

19 Therefore, in these circumstances we believe they have
20 not shown good cause for the late filing of EE, FF and
21 subparts A and B of GG.

22 In addition, we do not think they have made a
23 compelling showing as required with respect to the other
24 factors to overcome their lack of good cause. And for that
25 reason we think those portions of contention EE, FF and

1 subparts A and B of GG should be dismissed.

2 CHAIRMAN BOLLWERK: All right. I may have some
3 questions for you, too. I have to see what the staff has to
4 say, and then we'll come back.

5 MS. MARCO: In the balancing test good cause for the
6 lateness is the dominant factor. And with respect to the
7 State's failure to show good cause, the point really is
8 first that if the State was having problems regarding the
9 availability of the documents, it really should have been
10 brought to the Board's attention and preferably as a request
11 for an extension of time. And the time deadline was
12 November 24th, and if they knew they were having problems,
13 they should have gone ahead and asked for more time.

14 Then regarding the information, it's on the State to
15 explain what it needed in order to prepare its contentions,
16 what it needed from the proprietary information that it
17 didn't have previously. And that's really what the NRC
18 considers to be the failure with respect to good cause.

19 Regarding the broadening of the issues, one thing that
20 we should note, the fact that these things -- the
21 contentions contain proprietary information would at least
22 create procedural mechanisms that would not necessarily be
23 in place otherwise.

24 And that's the staff's position.

25 CHAIRMAN BOLLWERK: All right. Ms. Nakahara, you can

1 have a chance to reply to that. And one thing I just want
2 to get clear again is the degree to which you do or don't
3 agree with your need to have your use of the proprietary
4 information in terms of each one of these contentions.

5 MS. NAKAHARA: First we disagree with the applicant
6 that there were 10 items that were labeled proprietary that
7 we received in the proprietary information.

8 And your discretion. I can read these into the record
9 what the items were.

10 MR. TURK: Your Honor, I'd like to raise a concern
11 concerning the disclosure of proprietary information. We
12 had discussed prior to the pre-hearing conference a
13 procedure whereby the State would be able to submit in
14 writing a clear comparison of what the contention has that's
15 proprietary that was not available in a non-proprietary
16 version. So I suggest that's the way to go, and then other
17 parties, that we'd be able to respond as to whether or not
18 those matters are in fact only in the proprietary documents.

19 CHAIRMAN BOLLWERK: All right. I don't have a problem
20 with that. I mean it is important for me to have some feel
21 for what is proprietary and what wasn't, what you felt you
22 needed to rely on, so --

23 MS. NAKAHARA: I can read the titles, which in -- I
24 guess let me back up. In the non-proprietary information
25 there were the sections that were mentioned by the applicant

1 that had titles labeled to them and blank pages. The
2 information was redacted. In fact when we got the
3 proprietary information there was additional sections in
4 there that we felt necessary.

5 And so I assume the ones that had the redacted
6 information with the titles to them I can read into the
7 record. I don't know about the additional attachments.

8 CHAIRMAN BOLLWERK: I'm not -- you want to say
9 something, Mr. Gaukler?

10 MR. GAUKLER: I think what she's referring to as far as
11 that, on the redacted non-proprietary information there
12 would have been a page that was redacted. We had our title
13 on that.

14 CHAIRMAN BOLLWERK: Right.

15 MR. GAUKLER: Now, see that would be non-proprietary
16 since it was in the non-proprietary version. And obviously
17 that can be read into the record.

18 CHAIRMAN BOLLWERK: Right.

19 CHAIRMAN BOLLWERK: Okay. My question is: Is that
20 going to help me? I don't know. Well, I guess the problem
21 that I'm having is there's an assertion by the applicant and
22 I guess with the staff's agreement that there was basically
23 everything that you needed to put this together you had.

24 MS. NAKAHARA: Which we disagree with.

25 CHAIRMAN BOLLWERK: And you disagree with that. One of

1 the concerns I have is you say you disagree with it, but how
2 do I know who's right unless I look at the documents to some
3 degree? I mean is that true or --

4 MS. NAKAHARA: That's what I would submit, that you
5 look at the documents I guess.

6 CHAIRMAN BOLLWERK: Unless you have an expert certify
7 something or another, but I don't know how quite that would
8 work either. So it may well be that's sort of one question.

9 The second question is: You've -- let's assume that
10 there wasn't any proprietary information. In fact it didn't
11 give you anything additional. I understand your argument.
12 Maybe Mr. Gaukler needs to respond to this. But your
13 argument basically is one similar to one we heard in the
14 Yankee case where there was something that came up later
15 that suddenly made a light go off and say, "Ah, there's a
16 problem here."

17 Now, the problem here was you say you were caught in a
18 Catch 22. You didn't know whether you could or couldn't
19 file a sufficient contention without seeing the proprietary
20 information. Why isn't it sort of a Yankee principle that
21 there may be things that come later that would -- you have
22 information that you had beforehand that you might -- one
23 could argue might make you take some action. But there also
24 might be something later that actually is what really is the
25 trigger for you filing a contention.

1 MR. GAUKLER: Is that question directed to me?

2 CHAIRMAN BOLLWERK: Yes.

3 MR. GAUKLER: You look at their contention and look at
4 what they allege and compare it to what's in the non-
5 proprietary information. You can really see that their
6 problem lies, for example, with the methodology that we set
7 forth concerning the radiation monitoring analysis. The
8 methodology is set forth in the non-proprietary version in
9 the body of the report which was provided in its entirety.
10 And if you look at their contention you will see most
11 of their contentions with respect to the radiation
12 monitoring analysis relates to what they claim are
13 inadequacies in the methodology. Therefore, I say that they
14 could tell from reading the report, an unredacted non-
15 proprietary report the bases for their contentions.

16 CHAIRMAN BOLLWERK: And what I hear you saying -- but I
17 don't want to put words in your mouth, Ms. Nakahara. But
18 you're saying that there in fact were proprietary documents
19 or a portion of proprietary documents that you relied on.

20 MS. NAKAHARA: In specific response to that one, the
21 proprietary information included dose calculations in
22 relation to distance which allowed our experts to look at
23 the information and determine whether we thought their
24 methodology was reasonable.

25 MR. GAUKLER: The distances were set forth in the non-

1 proprietary version of the report itself.

2 MS. NAKAHARA: But not with the actual data.

3 DR. LAM: But in your calculation did you use the
4 actual data or did you just use the distance?

5 MS. NAKAHARA: We reviewed the actual data to determine
6 whether we thought the methodology was reasonable.

7 DR. LAM: Because I thought I heard the applicant was
8 saying all you need to do was use the distance which was
9 readily available.

10 MS. NAKAHARA: Well, they needed --

11 DR. LAM: That's what I heard I think. So your
12 response is?

13 MS. NAKAHARA: Is that they gave a dose rate in
14 relation to the distance. So when we made the comparisons
15 of the actual data for the dose rates in relation to those
16 distances, in consideration of the methodology, I mean it
17 was necessary to evaluate the overall methodology.

18 DR. LAM: So you're saying it was necessary for you
19 to --

20 MS. NAKAHARA: Yes.

21 DR. LAM: -- have the whole thing.

22 MS. NAKAHARA: Yes.

23 I guess the other thing I'd like to add is we did
24 review the non-proprietary calculations, and anything that
25 we felt we could rely on at that time we did include in our

1 contentions that we filed on November 24th.

2 MR. LATER: Will the chair allow me to speak briefly on
3 this point?

4 CHAIRMAN BOLLWERK: I just want -- you said you relied
5 on your contentions on November 24th? Which one of those --

6 MS. NAKAHARA: Well, anything we found that we felt
7 that we could support as contentions, we included those into
8 the November 24th. There are three volumes of the
9 calculation package.

10 CHAIRMAN BOLLWERK: All right. Do you have a dog in
11 this fight, Mr. Later?

12 MR. LATER: Well, in a way I think we do.

13 CHAIRMAN BOLLWERK: Excuse the colloquialism. I'm
14 sorry.

15 MR. LATER: I think we do, and I thought rather
16 carefully before I asked to interject myself in it.

17 We have obviously a deep concern about security issues
18 and matters, but we have had to rely on the State of Utah
19 simply as a matter of resources and the difficulty that
20 would be involved in trying to get access to proprietary
21 confidential information. Therefore, we have I believe some
22 interest in seeing that the State of Utah is allowed to go
23 forward and raise those sets of issues.

24 The only sort of -- two points I would like to make
25 very quickly is I believe these proceedings are at an

1 extremely early stage. They've been very fast with very
2 large sets of documents that put burdens of people that we
3 all have worked very, very hard to respond timely to this
4 panel.

5 And it sounds to me like the State of Utah has tried to
6 do that relying on every scrap of information that was
7 available in order to do so responsibly, and that perhaps in
8 the circumstances of the early stage of these hearings and
9 the speed with which we've moved is something that this
10 panel might consider rewarding them for and really trying to
11 deal responsibly in dealing with all of the information in
12 raising contentions when everything was available instead of
13 cutting them off and potentially not hearing a contention
14 that raised a serious factual dispute that ought to be
15 litigated simply on the merits on that procedural point.

16 The second comment I would like to note is I must admit
17 that I am somewhat distressed at the staff's comments that
18 this panel should appropriately consider as one of the
19 factors in evaluating this, the simple fact that it might
20 make proceedings simpler, because then you wouldn't have to
21 deal with hearings of security and maintaining confidence.

22 If there are real issues here and something that should
23 be litigated between the parties this panel ought to adopt
24 the procedures that are appropriate and necessary to do so,
25 and not make those kinds of decisions about the material

1 basis of these hearings on that kind of an issue
2 convenience.

3 CHAIRMAN BOLLWERK: Do you have anything you want to
4 say about that, Mr. Gaukler?

5 MR. TURK: I think we need to respond to that very
6 briefly.

7 CHAIRMAN BOLLWERK: Let's let Mr. Gaukler go first and
8 then I'll have you to keep the same order.

9 MR. GAUKLER: Well, first of all, in terms of talking
10 about the burden in time. It's always open to the State to
11 move for an extension of time with respect to certain
12 portions of the contentions if it claimed it got the
13 proprietary information too late, or that they needed more
14 time to incorporate the proprietary information to its
15 contentions.

16 CHAIRMAN BOLLWERK: Although they can also take the
17 other tack which is simply file a late file contention and
18 have to meet the factors then.

19 MR. GAUKLER: And as I said before, we read their
20 contention and look at the information, the non-proprietary
21 information that they had available. They had plenty of
22 information to file the contention.

23 For example, the entire methodology on radiation
24 monitoring was set forth in the non-proprietary version of
25 the report. So therefore we believe either option was open

1 to them, and they could have done either and they did
2 neither. And for that reason we think that they have not
3 shown good cause.

4 CHAIRMAN BOLLWERK: All right. Mr. Turk.

5 MR. TURK: Two points I wanted to mention in response
6 to Mr. Later.

7 First of all, as indicated in the applicant's filing of
8 January 9, 1998, which is its response on contentions EE and
9 FF, there was a non-proprietary version of that filed so
10 that all parties do have it, and that --

11 MR. GAUKLER: We filed that completely on non-
12 proprietary, an entire version of it.

13 MR. TURK: The entire version?

14 MR. GAUKLER: Yes.

15 MR. TURK: So that all parties have it?

16 MR. GAUKLER: Yes.

17 MR. TURK: The contentions we're talking about right
18 now, as indicated in that filing, are EE and FF. One deals
19 with cask pad stability during seismic events. The other
20 deals with radiation shielding. We're not talking about
21 security contentions now.

22 CHAIRMAN BOLLWERK: Well, he did make the point I think
23 about any kind of proprietary information I think --
24 although you did mention the word "security" which is what
25 Mr. Turk is concerned about, so --

1 MR. TURK: So we're not talking about extending the
2 proceeding to address security. We're talking about
3 technical matters with respect to which the staff and I
4 believe the applicant both state that the publicly available
5 documents contained the information on which the contentions
6 were based, and that reference to the confidential
7 proprietary documents was not necessary.

8 And with respect to what Ms. Marco stated earlier,
9 there are five factors that the Board and parties need to
10 consider when considering whether or not contentions are
11 timely filed. And if they're not timely filed how does the
12 balancing of factors come out. And the one that I think
13 Mr. Later is referring to is the fifth factor about
14 broadening the issues in the proceeding. That is something
15 that has to be considered among the other factors to be
16 weighed in the balance of tests.

17 CHAIRMAN BOLLWERK: Ms. Nakahara, is there anything
18 else you want to say in reply to all that? I sort of cut
19 you off. I didn't want to do that. I want to let yo finish
20 what you're saying.

21 MS. NAKAHARA: Just in the failure to file a motion for
22 extension, even getting the formation at the late date on
23 November 13th, we made a good-faith effort to try and
24 incorporate the contentions into the 24th filing. However,
25 it was impossible for us to work all that in. And in

1 retrospect I guess we should have done both, but we felt we
2 had good cause for a late filing because of the
3 unavailability of the information.

4 And I would just once again submit that you look at the
5 proprietary information yourself with our reply and make a
6 determination based on proprietary information in our
7 contention. Thank you.

8 CHAIRMAN BOLLWERK: It's 4:45. It's about time to take
9 a break. Why don't we take a 15-minute break right now.
10 And I'd like to talk to the Board about this for a second.
11 If there's anything further to be done we'll let you know.

12 MALE VOICE: Can we go off the record?

13 CHAIRMAN BOLLWERK: Oh, surely.

14 (Recess from 4:45 p.m. to 5:05 p.m.)

15 CHAIRMAN BOLLWERK: With respect to the question of the
16 late filing with respect to State's contentions EE through
17 GG, I think the Board would like to do two things.

18 There's now an assertion that there was information
19 that was proprietary that you in fact relied on. And when
20 you file your reply on the 11th would you address that
21 issue?

22 MS. NAKAHARA: Yes.

23 CHAIRMAN BOLLWERK: In terms of late filing, that's the
24 only thing you need to talk about. Let us -- you know --
25 give us whatever arguments you want to make about whatever

1 documents you'd say that were proprietary that you relied
2 on. We'll allow the applicant and the staff an opportunity
3 to respond to that argument.

4 I would also appreciate it, you said you had a
5 chronology for EE and FF. Could you attach that as well,
6 and obviously is there's anything you see in that you will
7 be afforded an opportunity to respond to that as well.

8 And then we'll look at the documents from there. But
9 this again is part of the filing that's due on the 11th.
10 And again you don't have to address anything else in terms
11 of the late filing criteria other than just the question of
12 proprietary information that you assert that you relied on
13 in forming the contingency.

14 MS. NAKAHARA: Okay.

15 CHAIRMAN BOLLWERK: All right. Is that clear?

16 Let's set a response date for the staff and the
17 applicant. How much time would you think you'd need to
18 respond to something like that? Ten days? Enough? A week?
19 What?

20 MS. GAUKLER: They're due -- 10 days should be
21 sufficient.

22 CHAIRMAN BOLLWERK: The 11th is when Ms. Nakahara as
23 part of her reply that's coming into the substantive
24 admissibility of the proprietary information. That's due on
25 the 11th. So that's when she'll make her filing. So the

1 20th would be -- that's a Wednesday. The 20th would be the
2 next Friday.

3 MR. GAUKLER: Will you make it -- we have something to
4 do the 18th.

5 CHAIRMAN BOLLWERK: The 18th, yes, there is a filing
6 due on the waiver petition.

7 MR. GAUKLER: Can we make it the following Monday, the
8 23rd?

9 CHAIRMAN BOLLWERK: The 23rd? All right. Is that
10 helpful, Mr. Turk?

11 MR. TURK: It's a little better.

12 MS. CHANCELLOR: Could I just clarify, Your Honor?

13 CHAIRMAN BOLLWERK: Sure.

14 MS. CHANCELLOR: Is their response specific to the late
15 file argument rather than the substantive merits of our
16 reply?

17 CHAIRMAN BOLLWERK: Yes. All right. Normally we would
18 have a motion, response, reply, and that's the way the
19 substance is headed. We're going to allow an additional
20 filing by you all, an additional filing by you all on the
21 question of the late filing. All right?

22 Any other questions about that? All right.

23 I think we're at the security contentions now, and
24 again this is not something that we're going to go into the
25 substance of these, because we didn't want to have to get

1 into closed sessions.

2 Oh, let me back up. One more thing about the
3 proprietary contentions. In the event that we do decide
4 that these portions of them should come in, we're probably
5 going to at some point want some kind of a showing about the
6 proprietary nature of the information. We have assertions
7 about it, but that doesn't necessarily mean if it is or
8 isn't, but I would at least like some kind of showing.

9 Generally we don't just -- I mean if somebody has put a
10 label on it, I want some assurances that that in fact is
11 what it is. Because people can put all kinds of labels on
12 all kinds of things. And if we're going to go to the
13 trouble of having a closed hearing, I want to make sure it's
14 for a good reason.

15 MR. TURK: Our understanding, Your Honor, is that there
16 was a claim of confidentiality made, and that's under staff
17 review right now.

18 CHAIRMAN BOLLWERK: Okay. Well, that --

19 MR. TURK: Only after the staff determines whether or
20 not this material should be treated confidentially can we
21 get back to you.

22 CHAIRMAN BOLLWERK: Okay. That's the sort of thing I
23 want, that type of assurance that we're dealing with
24 something that someone's just not putting a label on. All
25 right? Because if we're going to go to the trouble of

1 closing the hearing, then that ought to be for a good
2 reason. All right.

3 DR. LAM: And a related question for Mr. Gaukler. If
4 the State of Utah believed they had a need to see the
5 proprietary data, so they spend time waiting and chasing it,
6 and in the end, after examining the data and making decision
7 not to use it in the formulating of the contention. Would
8 you consider that good cause?

9 CHAIRMAN BOLLWERK: I think he's already -- haven't you
10 already addressed that, I think.

11 DR. LAM: Why don't you address that.

12 MR. GAUKLER: I believe that I said that they had
13 sufficient information to make the -- you look at their
14 contention and you look at the non-proprietary information.
15 They had sufficient information to make the basic contention
16 in their original filing.

17 And if there was some reason that they thought they may
18 not have had sufficient information, they could have filed
19 the contention subject to it being amended after proper
20 review of the proprietary information. But the basic --

21 DR. LAM: So make this clear. Your answer?

22 CHAIRMAN BOLLWERK: Right, right. And what the concern
23 now we'll go now to is Ms. Nakahara's assertion that in fact
24 there was proprietary information that they relied on.

25 MR. GAUKLER: Sure.

1 MS. NAKAHARA: We would also just add that if we had
2 submitted the contention without reviewing the proprietary
3 information, that the applicant would probably argue that it
4 should not be admissible because we failed to address
5 relevant material.

6 CHAIRMAN BOLLWERK: Right. It's sort of an either or
7 argument.

8 MS. NAKAHARA: Yeah.

9 CHAIRMAN BOLLWERK: Even if it isn't proprietary, you
10 would have -- nonetheless, you had good cause.

11 MS. NAKAHARA: Yes.

12 CHAIRMAN BOLLWERK: Even if you did not have to rely on
13 proprietary information you still had good cause; right?

14 MS. NAKAHARA: Yes.

15 CHAIRMAN BOLLWERK: All right.

16 In terms of security plan contention, security plan
17 issues, we have basically two to deal with. As I said,
18 we're not going to go into the substance of Utah Security A
19 through I, but we will deal with a question that was raised
20 by the applicant concerning the credentials of Mr. Sinclair
21 to act as a security plan, or to support the security
22 contentions.

23 And we'll also deal at this point with, after we're
24 done with that, with OGD H, which deals with security issues
25 as well. All right.

1 MS. CHANCELLOR: I'd like to address just a couple of
2 procedural questions first about the safeguards information.
3 My understanding is that when a filing is due on a
4 particular date, that it should be sent to the applicant --
5 to the parties on the service list by that date.

6 There was a pleading due from staff and PFS that was
7 due on January the 20th. It was delivered to the Board on
8 January the 20th. It was Federal Expressed to the State on
9 that date, but we did not receive it until January the 21st.

10 CHAIRMAN BOLLWERK: I think what my -- I'm almost sure
11 what my order said was that with respect to security
12 information, again, mailing is normally filing; all right?
13 For purposes, for NRC purposes.

14 And because we cannot e-mail or fax security
15 information, that information was to be sent by overnight
16 mail so it was received by the next business day to comply
17 with that requirement, because we simply couldn't send it
18 same day without having the filing day in fact the day
19 before.

20 MS. CHANCELLOR: Well, in essence, for those of us in
21 Utah, that's going to be one day short for any sort of
22 deadlines that you set, because we can't hand deliver it to
23 you. We'll have to Fed Ex it.

24 CHAIRMAN BOLLWERK: But it can be sent by overnight
25 mail.

1 MS. CHANCELLOR: So if something is due on the 1st, as
2 long as we put it in the Fed Ex, drop it off at Fed Ex on
3 the 1st?

4 CHAIRMAN BOLLWERK: That's correct.

5 MS. CHANCELLOR: Okay.

6 CHAIRMAN BOLLWERK: You have filed it on -- in a proper
7 manner and they will not receive it until the next business
8 day, which is what I'm aiming at.

9 MS. CHANCELLOR: And you wouldn't either?

10 CHAIRMAN BOLLWERK: I'm sorry?

11 MS. CHANCELLOR: And nor would you receive it till the
12 next business day.

13 CHAIRMAN BOLLWERK: No. That -- I understand that and
14 that's --

15 MS. CHANCELLOR: Okay.

16 CHAIRMAN BOLLWERK: -- acceptable to me.

17 MS. CHANCELLOR: Okay. Second procedural point is that
18 the safeguards information was sent to me in the correct
19 manner but it was sent to me at my office address at the
20 Utah Attorney General's office, but the safeguards
21 information, or the repository for the safeguards plan is at
22 the Department of Environmental Quality. So I was faced
23 with receiving this document that I felt that I couldn't
24 open in my office because of my conversations with Mr. Turk
25 and that it contained safeguards information, and I had to

1 go out to where the repository was before I could actually
2 open the mail.

3 CHAIRMAN BOLLWERK: Not important.

4 MS. CHANCELLOR: And this seems to me to be a little
5 silly.

6 CHAIRMAN BOLLWERK: Right.

7 MS. CHANCELLOR: But in order to comply with the
8 absolute letter and spirit of what we have been doing here,
9 I want to know whether the pleadings and the safeguards
10 portion can be kept with the same types of procedural
11 safeguards that we keep the security plan at my office.
12 Because otherwise what I'm going to have to do is drive
13 across town out to where we caught the bus, in order to
14 review pleadings.

15 MR. TURK: I don't understand the difficulty. First of
16 all, let me say that I don't recall telling you you could
17 not read safeguards information in your office.

18 MS. CHANCELLOR: That was my understanding, Sherwin.

19 MR. TURK: Well, let me say two things. Number one,
20 you're officially designated by the governor at this time as
21 a recipient of safeguards information. And you're not
22 required and have not signed the affidavit of nondisclosure.

23 MS. CHANCELLOR: Right.

24 MR. TURK: So you operate under whatever the State's
25 protective provisions are for protecting safeguards

1 information. I don't know if that requires you to go to the
2 DEQ in order to read that or not.

3 As far as we're concerned, because you are permitted to
4 have access to the safeguards information, as long as you
5 hold it in your personal possession I don't see a problem.
6 If you get mail at your office, you can open it, read it,
7 and keep it in your personal possession. You cannot store
8 it in your office unless you have a secure facility. You
9 cannot leave it on your desk unattended without locking it
10 up.

11 I don't leave safeguards information on desk, even
12 though we're a secure building. We have guards patrolling;
13 you have to have a -- you have to be signed into the
14 building in order even to enter. But I do not leave
15 something open on my desk I'm not permitted to.

16 MS. CHANCELLOR: Okay. I think I understand the ground
17 rules now. I just didn't even like to open the envelope.

18 CHAIRMAN BOLLWERK: Okay. That's fine. Does that
19 clear up your procedural questions then?

20 MS. CHANCELLOR: We only have one copy --

21 I guess just one more procedural thing. The order
22 designates the Department of Environmental Quality as a
23 place where the actual safeguards plan is to be kept. So
24 that is where we have been keeping the plan. Would there be
25 a problem if I, as the governor's designee, brought that

1 plan back to my office and kept it with the procedural
2 safeguards that are in place for the Department of
3 Environmental Quality, or does the safeguards plan have to
4 reside at DEQ?

5 I just want to understand the ground rules so I can
6 comply.

7 MR. TURK: Well, again, you are not a signatory to the
8 affidavit of non-disclosure. So you will be bound by the
9 State's requirements for protecting safeguards information.

10 What that means is you probably have to have a secure
11 building into which no one can get access without being
12 signed in, without being escorted. One or the other, I'm
13 not sure what the exact definition is.

14 You would, even in a secure building, have to protect
15 safeguards information when you're not personally using it
16 in a safe or other physically secure container. That could
17 be a locked filing cabinet that is -- that cannot be broken
18 into easily.

19 MS. CHANCELLOR: Right. I understand the actual
20 safeguards that are required. There is one copy of the plan
21 in the state of Utah. The order states that that plan will
22 be available at the, or reside at the Department of
23 Environmental Quality. Is there a problem if I take that
24 plan from the Department of Environmental Quality in my
25 personal possession and safeguard it in accordance with the

1 safeguards requirements such as locking it in a locked safe,
2 having it in a building that has restricted access, those
3 types of things? Because I work under extreme difficulty in
4 trying to develop safeguards contentions.

5 MR. SILBERG: Excuse me, Mr. Bollwerk. I'm wondering
6 if this can't be done off the record --

7 CHAIRMAN BOLLWERK: Right.

8 MR. SILBERG: -- after the hearing. It's a shame to
9 waste --

10 MS. CHANCELLOR: That would be fine.

11 CHAIRMAN BOLLWERK: Yeah. I think what maybe, if you
12 two could talk together. If we need to revise the
13 protective order in some way --

14 MS. CHANCELLOR: Okay.

15 CHAIRMAN BOLLWERK: -- I'm more than willing to do that
16 to give whatever --

17 MR. TURK: I don't think the protective order pertains,
18 because --

19 CHAIRMAN BOLLWERK: Okay. That may -- I mean I hear
20 you saying she falls in a different category, but --

21 MR. TURK: She's in the Utah requirements category.

22 CHAIRMAN BOLLWERK: Right.

23 MR. TURK: You have to look at Utah's requirements.

24 MS. CHANCELLOR: Okay.

25 CHAIRMAN BOLLWERK: And it may well be you -- she needs

1 to be in contact with our security folks maybe to understand
2 what the ramifications of that are. Is that --

3 MR. TURK: That's probably a very good idea.

4 CHAIRMAN BOLLWERK: If you could do that, that'd be --
5 we'd appreciate that.

6 MS. CHANCELLOR: I'm sorry to belabor the point.

7 CHAIRMAN BOLLWERK: No, that's all right.

8 MS. CHANCELLOR: But it was extremely difficult writing
9 these contentions.

10 CHAIRMAN BOLLWERK: Sure. That's no problem.

11 All right. Mr. Sinclair's affidavit then.

12 MS. CHANCELLOR: Mr. Sinclair's affidavit is locked in
13 the safe. I didn't bring it with me.

14 CHAIRMAN BOLLWERK: That's good, because neither did I.

15 MS. CHANCELLOR: Yeah, along with Mr. Sinclair. That's
16 right.

17 CHAIRMAN BOLLWERK: Fact, I'm having trouble getting
18 the safe open these days, so -- Judge Moore jinxed me. I
19 got it open four times, then he told me it was hard to open
20 and I haven't been able to get it open since. So --

21 (Laughter)

22 MS. CHANCELLOR: We felt that given the extraordinary
23 lengths that somebody would have to go to in order to
24 actually get access to this plan, that it was sufficient to
25 have Mr. Sinclair review -- be the -- act as the expert to

1 support the contentions that we raised that required expert
2 opinion and judgment.

3 I'm trying to decide how much -- I assume that I can
4 address things that get into the safeguards realm in a
5 response that I will file in dealing with Mr. Sinclair's
6 qualifications, because my view was that the quality of the
7 safeguards plan did not require the expertise that
8 Mr. Silberg seems to think, and staff seem to think is
9 required to review safeguards information.

10 Mr. Sinclair is the governor's designee for spent fuel
11 shipments. He is notified every time spent fuel shipments
12 come to the state. There is a call-down list of people that
13 are notified. He is aware of the state emergency network
14 system. He has staff under his supervision that are trained
15 in emergency response to radiation incidents.

16 The State also -- let me back up. Mr. Sinclair is the
17 director of the division of radiation control. That is the
18 agreement state program for the state of Utah. Most of the
19 technical people under his direct supervision have had
20 emergency -- they have had training in how to deal with
21 securing areas that are contaminated with radiation,
22 entering into areas that contain radiation levels, suiting
23 up, instrumentation. And it's true that Mr. Sinclair
24 himself has not had that training. He has taken the five
25 week Oakridge course that NRC provides, and he did that a

1 couple of years ago.

2 In addition --

3 CHAIRMAN BOLLWERK: I'm sorry. The Oakridge course
4 covers what?

5 MS. CHANCELLOR: I think it covers the whole gambit of
6 NRC regulations. And I don't know whether it includes
7 safeguards information. But it's a substantive five week
8 training course at Oakridge.

9 DR. LAM: So you're saying the people who work for
10 Mr. Sinclair have the necessary training and education, but
11 not Mr. Sinclair himself?

12 MS. CHANCELLOR: Mr. Sinclair supervises the staff that
13 deal with radiation incidents in the state of Utah. So he
14 is aware of what is required of his staff to meet the needs
15 of the state with respect to radiation incidents.

16 DR. LAM: Yes, Ms. Chancellor. But my question was his
17 -- the people who work for Mr. Sinclair have the necessary
18 training.

19 MS. CHANCELLOR: That's correct.

20 DR. LAM: -- and education, but not Mr. Sinclair
21 himself?

22 MS. CHANCELLOR: That is correct; that is correct.

23 The State has also been coordinating with the
24 Department, with Department of Energy and wood, or potential
25 wood shipments, including the tracking system that will be

1 used for wood shipments. And they have been involved in --
2 military. In mock exercises for disaster response. And
3 there's a full-time person on Mr. Sinclair's staff who is
4 involved in those activities and he reports to Mr. Sinclair.

5 So what I am saying is Mr. Sinclair is aware of various
6 activities that are involved with shipments of spent nuclear
7 fuel, military shipments of radioactive waste, that allow
8 him to assess the -- to be in a position to review the
9 security contentions.

10 Also, the Department -- the Division of Radiation
11 Control also issues a license to Envirocare, which is a low
12 level radioactive waste facility. And that's currently
13 under review.

14 While the security at a low level waste facility is
15 different than that at a high level nuclear waste facility,
16 there are some similarities. For example, there is
17 protection against inadvertent intruders: security cameras,
18 fencing, lighting, adequate guards. Just radiation safety
19 in general. And Mr. Sinclair has been actively involved in
20 the Envirocare licensing proceedings.

21 I believe that given the extraordinary lengths that we
22 would have had to have gone to to have an expert either come
23 to the state of Utah or go to the NRC to review the
24 safeguards information should be taken into account in
25 evaluating whether the State, at this early stage, was

1 required to retain an expert that is a designer of nuclear
2 facilities, or whatever the standard is that the staff and
3 PFS seems to think that we need to meet.

4 From memory, I believe there are a number of
5 contentions in there that do not rely specifically on
6 Mr. Sinclair's credentials; that they stand on references to
7 comparisons of what's in the safeguards information and what
8 is in the license application, for example. And that Mr.
9 Sinclair's credentials and his experience and training,
10 while it was not explicitly spelled out in the affidavit, is
11 sufficient to support the contentions that we filed.

12 I have no further -- I have nothing further.

13 CHAIRMAN BOLLWERK: All right.

14 Mr. Gaukler, are you still on the line, as it were?

15 MR. GAUKLER: Yes.

16 CHAIRMAN BOLLWERK: All right.

17 MR. GAUKLER: The precedent that we cited in our brief
18 is quite clear in terms of the expert qualifications
19 required for a security expert. They require that the
20 security expert himself. And it's clear that Mr. Sinclair
21 does not have that expertise, as acknowledged by the State.
22 And that should end the matter.

23 We'd also point out that the training that counsel
24 referred to in terms of contaminated, areas contaminated by
25 radiation does not involve security safeguards information;

1 does not involve security at all. It just involves clean-up
2 after contamination someplace and has no relationship to
3 security.

4 The same thing is true with respect to the full-time
5 personnel and disaster responses, shipment of nuclear fuel,
6 even assuming that expertise could be transferred to
7 Mr. Sinclair, which it cannot be.

8 Likewise, the same thing holds for the low level waste
9 facility, Envirocare, which is an entirely different type of
10 facility with different requirements, and does not require
11 the NRC safeguards requirements.

12 The cases are quite clear that you need to have a
13 qualified expert to support a security contention. The
14 reason is quite clear; that you do not want to proceed in
15 litigating security issues which involve -- which are
16 sensitive unless it's shown that the party has the
17 capability to litigate those issues. And here, they have
18 not shown that.

19 DR. LAM: So you don't think Mr. Sinclair can learn
20 from people who report to him?

21 MR. GAUKLER: No, they cannot. I think it's quite
22 clear from the cases that we cite in our memorandum that the
23 person requires extensive experience or training to give him
24 the technical competence to evaluate the adequacy of the
25 security plan. And there's no indication that anybody on

1 his staff has that qualification either.

2 MR. TURK: On his staff?

3 MR. GAUKLER: On his staff, yes.

4 (Laughter)

5 MR. GAUKLER: Stand corrected.

6 CHAIRMAN BOLLWERK: You heard the word "staff" and your
7 ears went up, I think. That was the --

8 (Laughter)

9 CHAIRMAN BOLLWERK: Anything further?

10 MR. GAUKLER: Nothing further.

11 CHAIRMAN BOLLWERK: All right.

12 Mr. Turk.

13 MR. TURK: Well, I've done it to myself. I've left
14 something back in Washington. I didn't think I would do
15 that. I've left my security plan matters back there. So
16 I'm going to do this from memory.

17 CHAIRMAN BOLLWERK: All right.

18 MR. TURK: Mr. Sinclair's affidavit contained no
19 indication that he's trained, either formally in education,
20 or that he has any experience in security matters. I
21 understand from the staff with me today that the five week
22 course referred to by the State of Utah is a course in
23 health physics.

24 Now I can't say for sure that that's the course that
25 Mr. Sinclair attended, but based on the State's description

1 of the course, that's what it seems to be to us. It was not
2 a security or physical protection course. If it was,
3 certainly the State would have brought that to your
4 attention. And Mr. Sinclair would have brought it to your
5 attention in his affidavit, which he filed specifically for
6 the purpose of the admission of security plan contentions.

7 Having said that, and having expressed our view that he
8 is not an expert in security plan matters, or at least he
9 has not shown any reason to believe that he is, I don't take
10 the same view as the applicant with respect to whether or
11 not that's an impairment to the contentions being filed
12 before you. And my reason for that is I did not see in the
13 contentions themselves anything that required expert
14 opinion.

15 For the most part, the contentions consisted of
16 assertions that regulations were or were not being complied
17 with. There was nothing in there that made me think that he
18 was making a statement as an expert.

19 Now to the extent that I'm wrong, and to the extent
20 that you would need an expert opinion to support a
21 contention, and there were a few that come to mind where
22 perhaps that is the case with respect to particular elements
23 of the on-site equipment and facility. To that extent, you
24 do not have a security plan expert proffering a contention.
25 And to that extent, those contentions would not be

1 admissible. But contentions which do not rely upon
2 expertise for their assertions should not be barred merely
3 because they did not have a security plan expert proffering
4 the contention.

5 CHAIRMAN BOLLWERK: Now, Mr. Sinclair, as I understand
6 it, is the governor's designed to receive the security plan.
7 Am I -- or one of the people that can do that. Is that --

8 MR. TURK: Yes. Until Ms. Sinclair was --
9 Ms. Chancellor was designated, he was the official, and I
10 believe the only State designee.

11 CHAIRMAN BOLLWERK: Doesn't that give him some aura of
12 having something to do with security plans?

13 MR. TURK: No more than the governor himself would be
14 an expert in security plan matters. He's simply the
15 delegate for the governor.

16 CHAIRMAN BOLLWERK: And there's no requirement that he
17 have any expertise to be given that designation, I take it?

18 MR. TURK: The staff does not require that. The staff
19 approved the governor's designation of Mr. Sinclair as an
20 official representative of the State and we approved the
21 designation of Ms. Chancellor as an official designee. Not
22 because she has shown any expertise in security plan
23 matters, but because it is a matter of the State's
24 prerogative to designate who it will to be the custodian of
25 that kind of information.

1 CHAIRMAN BOLLWERK: All right. Anything further?

2 MR. TURK: NO.

3 CHAIRMAN BOLLWERK: Ms. Chancellor.

4 MS. CHANCELLOR: I was a little worried we were going
5 to get our agreement state status revoked because we didn't
6 have any securities expert.

7 I agree with Mr. Turk that the Oakridge training course
8 did not involve safeguards. Health physics, yes, I will
9 agree that that's primarily the focus of the Oakridge
10 training.

11 I would also like to concur with the NRC staff that the
12 assertions in our contentions that the regulations were not
13 complied with do not need to be propped up by an expert. If
14 and when the applicant submits information that requires a
15 judgment of an expert and safeguards information, we will go
16 through the procedural nightmares of obtaining somebody and
17 having that person either come out to Utah or else go to the
18 NRC office to review the securities plan.

19 But at this early stage in the proceeding, and based on
20 our assertions that the applicant hasn't met the
21 requirements of the regulations, we don't believe that an
22 expert in nuclear safety transportation is required for the
23 admissibility of these contentions.

24 One, just one thing on the radioactive contamination.
25 If a site is contaminated, the first thing that any

1 emergency responder does is secure the site. So the ability
2 to secure a site, I believe, is relevant to safeguards.
3 Similar types of procedures would be in effect for securing
4 a contaminated site as they would for securing casks at
5 Rawley Junction.

6 CHAIRMAN BOLLWERK: Well, I mean it sounded to me like
7 the expertise of the individuals he supervises is really
8 health physics expertise. Am I --

9 MS. CHANCELLOR: That's correct. That's correct.

10 CHAIRMAN BOLLWERK: Not as a physical security plan
11 expertise of someone that knows threat levels and how many
12 people might --

13 MS. CHANCELLOR: Exactly. That is true.

14 CHAIRMAN BOLLWERK: Know all that sort of thing, you
15 know.

16 MS. CHANCELLOR: That is true.

17 CHAIRMAN BOLLWERK: All right.

18 DR. KLINE: As custodian of the -- of other security
19 plans, is he expected to do anything more than hold them in
20 his safe, or to read them?

21 MS. CHANCELLOR: No. He has a call down --

22 DR. KLINE: No, I mean what does he do with the plan.
23 Does he read it himself? And --

24 MS. CHANCELLOR: Well, we never have need for any
25 safeguards plans because we don't have any nuclear

1 facilities in the state of Utah.

2 DR. KLINE: Oh, I see. He's only theoretically a
3 delegee then.

4 MS. CHANCELLOR: He's the governor's designee for
5 notification --

6 DR. KLINE: Okay.

7 MS. CHANCELLOR: -- of spent fuel shipments through the
8 state of Utah.

9 DR. KLINE: Oh.

10 MS. CHANCELLOR: They don't stay here. They keep on
11 going.

12 DR. KLINE: Oh, I see. Okay.

13 So he's not in fact, he's not in fact really custodian
14 of any security plan at the moment. Is that right?

15 MS. CHANCELLOR: Other than the PFS plan.

16 DR. KLINE: Okay.

17 MS. CHANCELLOR: He initially got the PFS --

18 DR. KLINE: Yeah, I see.

19 MS. CHANCELLOR: -- safeguards plan.

20 DR. KLINE: But no other? Nothing that would confer
21 general expertise?

22 MS. CHANCELLOR: No, there's absolutely no need for him
23 to get any other plan.

24 DR. KLINE: Okay. That's -- I'm just trying to see if
25 there's expertise derivative from some other source.

1 MS. CHANCELLOR: No. But I think it is relevant that
2 he knows that the State has in place the list of experts or
3 the list of haz mat and public service officials and
4 comprehensive emergency management personnel that they need
5 to contact and notify when spent fuel shipments are coming
6 through the state.

7 DR. LAM: Are we hearing from you, Ms. Chancellor, that
8 if and when these issues to litigation, the State will be
9 willing and able to provide expertise?

10 MS. CHANCELLOR: Yes.

11 DR. LAM: Or experts in these matters.

12 MS. CHANCELLOR: Yes, we will. Otherwise we will
13 withdraw our contentions, if they are admitted.

14 CHAIRMAN BOLLWERK: All right. Anything further?

15 Mr. Turk?

16 MR. TURK: I probably need to make a limited
17 modification of what I said. Many of the contentions claim
18 that there is failure to meet regulatory requirements. And
19 when I said you don't need an expert to make that statement,
20 what I meant was where there's a statement of fact, for
21 instance, a fact that the security plan omits this
22 information, that you don't need an expert to tell you.
23 That would be a statement of fact that you yourself will be
24 able to discern from reading the plan; that, for instance, a
25 section of the plan is missing. You don't need an expert to

1 tell you that if there's an open hole.

2 CHAIRMAN BOLLWERK: No, but the regulation says you
3 shall have a --

4 MR. TURK: If it says you shall have a --

5 CHAIRMAN BOLLWERK: You shall discuss X and there's no
6 discussion of X.

7 MR. TURK: That's correct.

8 CHAIRMAN BOLLWERK: Whatever that might be, right.

9 MR. TURK: So to that extent, you don't need an expert
10 to say there's no discussion of X there.

11 MS. CHANCELLOR: Or if there's a conflict between what
12 is in the safeguards plan and what is in the publicly
13 available license submittal. If you can show where there's
14 a conflict by reference to the public document and the
15 safeguards document, I don't see why you need an expert to
16 point out that conflict.

17 MR. TURK: Where expertise would be required would be
18 to tell you whether or not something that's provided for is
19 sufficient, whether that will work.

20 CHAIRMAN BOLLWERK: All right. Anything further?

21 MS. CHANCELLOR: No, Your Honor.

22 CHAIRMAN BOLLWERK: All right. Anything -- all right.

23 Let's move then to OGD H, which is also a security plan
24 contention and does not involve any kind of safeguards
25 information or anything that's non-public.

1 MS. BELILLE: Your Honor, OGD believes that the issues
2 presented in contention H are accurate, and they accurately
3 address the risks of intruder attacks on casks stored at the
4 PFS site. However, OGD counsel and technical advisors feel
5 that because of resource considerations and institutionally
6 -- feel institutionally constrained from participating in
7 the closed session discussions of PFS' security plan.

8 OGD therefore withdraws contention H as a licensing
9 contention. OGD plans to revisit this issue during the EIS
10 scoping process. We too could not become involved with this
11 matter because of resources, and would urge that the Board
12 consider the late filed contentions of the State of Utah
13 positively.

14 We are hoping that the State adequately addresses
15 issues that will affect the health and safety of the general
16 public during these proprietary hearings.

17 CHAIRMAN BOLLWERK: All right. Just let me clarify one
18 thing. I think the security contentions were not late
19 filed. They were in fact timely filed. I don't think
20 that's an issue, is it?

21 No, I think that's correct. All right.

22 All right. Nothing further on that matter then. Let's
23 then -- I mentioned this morning we needed to, at a minimum,
24 finish all the safety issues, and we've done that. And I
25 congratulate the parties. I think you moved along

1 expeditiously up to this point.

2 Let's see how much further we can push until
3 approximately 6:30, and then we'll have a discussion about
4 scheduling for tomorrow after we go off the record. All
5 right?

6 MR. BLAKE: Is there no early work release benefit for
7 the --

8 (Laughter)

9 MR. BLAKE: -- the well behaved.

10 CHAIRMAN BOLLWERK: Well, let's see if we can find a
11 natural breaking point; all right? Wherever that might be.

12 I mean the possibility exists that we -- I don't want
13 to over confident here, we might actually be able to get
14 this done tomorrow. And if there's a possibility of that, I
15 suspect you all want to continue on tonight, at least if
16 that's insurance of that happening? So --

17 MR. SILBERG: Acceptable to us.

18 CHAIRMAN BOLLWERK: All right. The first -- and
19 Ms. Chancellor informed me that she may have some problems,
20 we need to switch things around. If that's the case, I'd
21 certainly have no objection to that. We'll certainly
22 accommodate you given the hour and other problems.

23 So let's go ahead and start with Utah T. Now is that a
24 problem for you?

25 MS. CHANCELLOR: No, that's fine.

1 CHAIRMAN BOLLWERK: All right. And I see with that one
2 I've also listed Castle Rock, 12, 20, 21, 22 and 23, and OGD
3 J. And all these have to do with questions about permits
4 and right-of-way.

5 All right. Ms. Chancellor.

6 MS. CHANCELLOR: Mr. Nelson will do it.

7 CHAIRMAN BOLLWERK: Mr. Nelson.

8 MR. NELSON: Utah's contention is that 10 C.F.R. §
9 51.45(d) requires that all permits, licenses and approvals
10 be included in the environmental report and discussed in the
11 environmental report.

12 There are five areas that we would like to make
13 comments on that are additional to the comments that and
14 clarify the comments that have been submitted.

15 If I may for the record make a short comment on the
16 Indian jurisdiction/State jurisdiction issue. The State
17 recognizes Indian sovereignty, but asserts that with respect
18 to certain defined circumstances, the State has
19 jurisdiction. And we have defined in our reply the case law
20 and the specifics that address that issue.

21 The two circumstances where the courts have held that
22 the State has jurisdiction primarily revolve around where a
23 facility is sited primarily to avoid state regulation. And
24 secondly, where there are significant off-reservation
25 effects from the proposed facility.

1 The State would be taking a similar position and has
2 taken a similar position for facilities which have been
3 sited outside the boundaries of the state of Utah in other
4 states but which have affected the air and water resources
5 of the state of Utah.

6 Specifically addressing the five areas:

7 From the tour, you say that the Goshute Reservation is
8 bounded on the east by the mountains and that the geographic
9 boundary is up against the side of that mountain range. All
10 of the water that comes from that federal land, it is all
11 federal land. All of the water that comes from that federal
12 land, all of the water that is underneath the Goshute
13 Reservation is on the surface of the Goshute Reservation.
14 And all of the water that goes from the Goshute Reservation
15 is held in trust by the state of Utah. That is not only a
16 matter of state law, it is a matter of federal law.

17 The Utah statutory scheme is recognized by the McCarran
18 Act, which was cited earlier by Mr. Kennedy, the McCarran
19 Amendment. That water is in trust and is held by the state
20 of Utah. The federal government, the Goshute Tribe and
21 individuals can acquire or may have rights to use that
22 water. The rights to use the water is different from the
23 resource and the trust of the resource itself.

24 The Goshutes have reserved rights, reserved water
25 rights because of their reservation status. The federal

1 government has reserve rights, rights to use the water
2 because of their status. That is not the issue here. The
3 question is what authority does the State of Utah have with
4 respect to that water system.

5 And it's recognized that the state engineer, as the
6 designee of the governor, has responsibility for those
7 resources. And it is only through a state adjudication
8 process that rights are allocated. And the federal
9 government, the Indian tribe, and all private parties must
10 come through that state appropriation process to acquire
11 rights. The Goshute reservation has not had a determination
12 of appropriate -- of what their reserved water rights are.

13 We know they have reserved water rights. The
14 quantification of that has not yet been determined. There
15 is no discussion in the environmental report of that
16 relationship. The environmental report just simply takes
17 the approach that it's an Indian reservation and therefore
18 the State has no business being involved.

19 Similarly with respect to the groundwater, the State
20 has groundwater regulations which govern the placement of
21 facilities in the state of Utah. And the State takes the
22 position that because the retention pond will, because of
23 its location, will have a direct impact on down gradient
24 water which flows north and west; and I don't believe that's
25 been tested; that they are required, through that process,

1 to get a permit from the State of Utah for that facility.
2 And that specific requirement is listed and the cite to the
3 state rule is listed in the State's reply.

4 Second area, air quality. Again, this is an off-
5 reservation effect. The applicant has indicated there will
6 be a cement batch plant, an asphalt plant associated with
7 the construction of this facility. The asphalt plant is
8 specifically subject to new source performance standards
9 under Section 111 of the Clean Air Act.

10 The applicant replies that there is no federal permit
11 required because it is not a Part 70 source. We would refer
12 the panel to 40 C.F.R. 71.3(a)(2), which specifically
13 identifies that NSPS sources are subject to a Part 71 permit
14 because that is administered by the EPA. Because of the
15 jurisdiction issue on EPA delegation of authority, that Part
16 71 permit under that specific section would have to be
17 issued by EPA. That is not mentioned in the applicant's
18 description of what permits and licenses are required.

19 Additionally, the State takes the position that under
20 state law, a notice of intent must be submitted and an
21 approval order issued because that facility will affect air
22 quality issues in the state of Utah. All sources, whether a
23 PSD source or a major source under the federal Clean Air
24 Act, all sources must come, even of any size, must come to
25 the State if they will be affecting air quality in the state

1 of Utah, and there is a best available control technology
2 requirement that applies to them. And no mention has been
3 made of that state requirement.

4 Third. There is no mention of State Department of
5 Transportation requirements. Under Utah Code Annotated, 27-
6 12-133 and 135, any alteration, modification of the state
7 highway system must get appropriate state permits and
8 requirements. And there's criminal penalties if you don't
9 do that. That would be applicable to the Skull Valley Road;
10 that would be applicable in any areas that may affect the
11 interstate around the Rawley Junction area.

12 Fourth area. As you saw from the tour, there are many,
13 many areas out there that are wetlands. You passed the
14 Kennecott facility where they are just completing a process
15 where those areas are wet, and they are required to get 404
16 permits. There are areas that you saw as you went down the
17 highway where there are wetlands. And no mention is made of
18 any 404 permit requirement that may or would likely be
19 required for alterations in the end.

20 Now finally, PFS on page 282 responds to the State's
21 issues with respect to the Goshute lease that specifically
22 Section 1-E of the lease subjects PFS to the Band's
23 environmental regulations.

24 Section 51.45(d) requires that you identify all
25 permits, licenses and approvals and regulations that are

1 environmental. And there is nowhere in the environmental
2 report that lists what the Band's environmental regulations
3 are that they would be subject to, simply a reference that
4 they are subject to them. And we would assert that those
5 requirements must be listed as part of the environmental
6 report in order to meet the requirements of 51.45(d).
7 That's my comments.

8 CHAIRMAN BOLLWERK: All right.

9 DR. LAM: Mr. Nelson, I'm somewhat puzzled by this
10 contention.

11 Assuming you are right and the applicant failed to
12 obtain all the necessary permits, don't you already win the
13 battle? Then the project would never be built.

14 MR. NELSON: The contention is not that they have
15 failed to obtain the permits. The contention is is that
16 they've failed to comply with 51.45(d), which requires that
17 the permits be listed. Whether they have obtained them or
18 not at this point in time is not at issue. It's whether or
19 not the environmental report is adequate.

20 DR. LAM: So would they satisfy you if they come
21 forward and list all the permit they intend to obtain?

22 MR. NELSON: That is the contention, yes.

23 CHAIRMAN BOLLWERK: Of course the implication being if
24 they list them, then they would go get them.

25 MR. NELSON: That's true.

1 DR. KLINE: From the State.

2 CHAIRMAN BOLLWERK: From the State, correct. That
3 raises other questions.

4 All right. What does the applicant have to say?

5 MR. SILBERG: Well, it would have been nice if the
6 State had included a lot of this information in its original
7 contention, or in its response. It might have made our
8 reply a little easier. Not having done that, we'll do the
9 best we can.

10 I think what you're hearing is a position that the
11 State is expressing on its rights with respect to Indian
12 lands, which is, I think, not shared by Skull Valley Band
13 and probably not by the Confederated Tribes either.

14 The cases that they cite in their written reply are
15 really not relevant. None of them deal with environmental
16 permitting. The only one that deals with environmental
17 issues at all is the -- and I'm afraid I'll butcher the
18 pronunciation of it, Pealap case, Puilap case, Supreme Court
19 1977 decision.

20 But that case involved a treaty which created fishing
21 rights in common with non-Indian residents. And in that
22 case, the treaty was interpreted as grant of regulatory
23 powers. So it's simply not relevant that they may have
24 found state regulatory authority in that case.

25 We have cited in our brief the cases which do deal with

1 environmental regulations, and which indicate that in this
2 case the State would not have that jurisdiction.

3 I would also note with respect to the cases, another
4 case that the State cites, the Braccerd case. Believe
5 another supreme court decision cited on page 76, which says
6 "There's no rigid rule to resolve the question of whether
7 state law may be applied to an Indian reservation or tribal
8 member."

9 That case also says that the exercise of state
10 authority is barred if it infringes on the rights of
11 reservation Indians to make their own laws and be ruled by
12 them. Page 142 of 448 United States Reports.

13 The State also cites on page 77 of their response the
14 Washington and Confederated Tribes case, which they refer to
15 as not allowing tribal self-government, not allowing an
16 Indian tribe to deprive a state of jurisdiction where the
17 tribe is marketing an exemption. But that case also says
18 that the tribes retain any aspect of their historical
19 sovereignty, not inconsistent with the overriding interests
20 of the federal government.

21 So it's not the state government we're talking about.
22 That's the federal government. And that was language from
23 the Confederated Tribes case, which was cited in another of
24 the cases which the State's referred to, the New Mexico v.
25 Mescalero case.

1 With respect to the marketing and exemption issue, the
2 Cabazon Band case which was cited is a gaming case, not
3 terribly relevant to environmental regulation. The State on
4 the bottom of 77 lists several things which they argue are
5 important to consider.

6 And one is that legislation again states the rights to
7 adopt programs that exceed federal pollution standards.
8 That may be true, but it doesn't apply on Indian
9 reservations.

10 And indeed while the State on page 78 cites the Clean
11 Air Act, under the Clean Air Act as retaining Utah's
12 authority over air pollution sources, the EPA's delegation
13 of Clean Air Act authority to Utah does not include
14 authority over Indian country. The reference to that is 60
15 Federal Register 30, 30192 at 195, a 1995 EPA determination.

16 So there, I believe while they have an interesting
17 theory, one which undoubtedly they would like to impose on
18 this tribe and presumably other tribes, it simply is not
19 supported by law.

20 I'd also note that under the enabling act, which I
21 believe is the act that granted statehood to Utah, there is
22 a disclaimer of the State's jurisdiction over Indian land.
23 And as I mentioned before, there's also an absence of
24 delegated authority from the EPA over Indian land.

25 I would also note that the Cabazon Band case, which I

1 mentioned before, held that a state could not regulate a
2 bingo operation on private lands, even though it was a new
3 and non-traditional tribal activity, because state
4 regulation would disturb federal and tribal efforts towards
5 tribal economic self-sufficiency, the very issue that we're
6 talking about in this case.

7 And finally, I would note that the Mescalero case,
8 which the State also cites, makes it clear that Indian
9 tribes have pre-eminent authority over their reservation
10 resources. And again, the State has set forth nothing which
11 would undercut that determination.

12 With respect to the issue of water rights. The State
13 has referred to the McCarran Amendment, but that only
14 applies to a comprehensive general stream adjudication to
15 determine water rights. Not as to one user, but for all
16 users, as I understand. And in such a determination, Utah
17 law does not apply. Federal law applies.

18 And there hasn't been any such McCarran Amendment
19 procedure initiated in this case. And I think what I heard
20 the State say is that the Tribe does have reserve water
21 rights. And while there may be some future proceeding at
22 some future time which may have some future result which we
23 don't know about today, one does not have to list permits
24 which are purely hypothetical at this point, even if this
25 were a permit.

1 And there's simply no law which would say that the --
2 that all the water, both surface and groundwater within the
3 reservation, is held in trust by the State of Utah. If
4 there is any trust relationship, my guess is it's a federal
5 trust relationship and not one with the State. And the
6 disclaimer in the enabling act that I mentioned would
7 certainly deprive the State of that authority, even if they
8 might otherwise have it.

9 The State cites in its discussion on water rights on
10 page 80 the Ninth Circuit Anderson decision, which purports
11 to, under the State's interpretation, purports to subject
12 the Goshute Skull Valley Band's reserve rights to the Utah
13 state system. That case is simply inapplicable here.

14 In Anderson, the Spokane Indian Reservation was a
15 reservation that was open to allotment and settlement by
16 non-Indians as well as an area in which Indians resided.
17 And the issue was the appropriation of water on the fee
18 land, the land owned by the non-Indians. Skull Valley
19 Reservation is not open to allotments and settlement, nor
20 have I heard the State indicate that it was. The idea that
21 the State of Utah can trump pre-existing tribal rights to
22 the water is simply unfounded.

23 With respect to the letter that the State attached, the
24 letter from the Utah Water Quality Board to Private Fuel
25 Storage. That letter simply says that Private Fuel Storage,

1 and this is, I believe, Exhibit -- one of the exhibits to
2 the State's -- Exhibit 7. That letter simply says that
3 Private Fuel Storage must obtain a permit for the use of,
4 quote state resources of ground and surface water.

5 It does not say, as the State alleges it does on page
6 81, that the executive secretary of the Water Quality Board
7 has determined that the proposed facilities may interfere
8 with probable future beneficial uses of water and has
9 determined that a permit is necessary. In any event, there
10 are no such State resources here.

11 With respect to their request to get a copy of the
12 unredacted version of the state lease, we think that that's
13 totally irrelevant. In any event, the State has been going
14 through any number of proceedings before the Bureau of
15 Indian Affairs to try to get that information, information
16 which the Bureau of Indian Affairs, as we believe, properly
17 characterized as proprietary.

18 In any event, it's not an issue here. It's discovery,
19 and it's simply not relevant in this case.

20 I would note with respect to the State's comment that
21 the lease agreement states that we are subject to the Band's
22 environmental subjections. And he's, I guess, puzzled by
23 the fact that there's no reference to such regulations in
24 the environmental report.

25 That's because such regulations have not yet been

1 issued. The Band has indeed appointed an environmental
2 officer, and we fully expect that those regulations will in
3 due time be issued. And we will of course be subject to
4 them.

5 With respect to the statement that we haven't addressed
6 a 404 wetlands permit, I would note that we have addressed
7 that in the environmental report at page 9.1-4, where we say
8 that no stream or wetlands impact associated with the
9 development of the facility site will occur; therefore,
10 there would be no requirement for a 404 permit. If that
11 should turn out, because of changes in the design of the
12 facility, to require modification, we would certainly modify
13 it.

14 That's all I have.

15 CHAIRMAN BOLLWERK: All right.

16 Mr. Quintana.

17 MR. QUINTANA: There is no question that the State of
18 Utah is on what is left of Goshute territory. But
19 notwithstanding that, the water that is on the reservation
20 belongs to the Reservation and not to the State.

21 The water use that has been brought into question here
22 is not, at least not from any scientific evidence the Tribe
23 is aware of, going to have any effect on the State.

24 The air quality issue that the State references, the
25 Skull Valley Band is not aware of any scientific evidence

1 that there is going to be an air quality issue affecting the
2 State.

3 The highway permit that the State alleges to. Well, at
4 least from my understanding of the commerce clause, I don't
5 believe that what they're proposing to do in stopping
6 interstate shipment of spent fuel to a different
7 jurisdiction would be legal.

8 To the best of my knowledge, the proposed site is not a
9 wetlands. At least every time I've gone on the reservation
10 that certainly does not appear to me to be a wetland.

11 And as for the Goshutes' lease, economic development
12 takes place on reservations as a matter of necessity.
13 Because unlike states that have large number of taxpayers
14 where you can simply raise taxes to fund your governmental
15 operations, such is not the case with most Indian tribes.
16 Tribes are therefore forced to be into the marketplace, in
17 gaming, in rocket testing, and in other endeavors, in the
18 hopes of generating enough revenue to fund their
19 governmental operations, to increase their land base,
20 preserve their language, provide housing, and do the
21 necessary things which governments are supposed to do.

22 For those reasons, and the other reasons previously
23 stated, we would object to each and every contention that
24 the State has made in reference herein.

25 CHAIRMAN BOLLWERK: All right, sir.

1 MR. SILBERG: Excuse me. Could I make one -- I missed
2 one item on my list.

3 CHAIRMAN BOLLWERK: Well, why don't you go ahead so we
4 make sure we can give Mr. Nelson a --

5 MR. SILBERG: With respect to the State DOT requirement
6 with respect to state highway system modifications. As I
7 understand it, the Transportation Commission has taken the
8 first steps to seizing Skull Valley Road from the County.
9 My understanding is that that requires the approval of the
10 state legislature. And that action has not yet been taken.
11 So I think it is correct that that is not, at least not yet,
12 a state road.

13 MR. NELSON: If it does become a state road and there
14 is no right-of-way with the Tribe, then obviously we will be
15 talking to the State about a right-of-way and possibly a
16 toll booth.

17 CHAIRMAN BOLLWERK: Why don't we -- why don't you have
18 something to say here, Mr. Turk. What are -- what is your
19 position on this? I guess you basically say it's
20 admissible.

21 MR. TURK: Our position was that we did not oppose most
22 of the contention. We saw it as primarily raising legal
23 issues. And it occurred to us that perhaps the best way to
24 dispose of that would be to admit the contention and deal
25 with it by summary disposition later as to precisely which

1 permits are needed.

2 You could go the other way though and decide from the
3 outset that because it fails to state a legal requirement,
4 for instance, if there is no legal requirement that one or
5 another of the permits referred to by the State must be
6 obtained, then you can reject it out of hand at this stage.

7 CHAIRMAN BOLLWERK: Right. Although --

8 MR. TURK: We were not prepared to address that at the
9 contention stage.

10 CHAIRMAN BOLLWERK: I hear --

11 MR. TURK: There were certain --

12 CHAIRMAN BOLLWERK: I hear different arguments about
13 what the statute does or doesn't mean. Doesn't that state a
14 legal contention basically?

15 MR. TURK: Yes, it does.

16 CHAIRMAN BOLLWERK: I mean the standards for a legal
17 contention are not necessarily very clear, but obviously
18 there has to be some dispute of law. And there seems to be
19 one arguably here. I mean is that your position as to the
20 admissibility?

21 MR. TURK: That was how we interpreted the assertions
22 in the contention.

23 CHAIRMAN BOLLWERK: All right.

24 MR. TURK: There were a few parts of the contention
25 though that we saw as being impermissible. We referred to

1 two of them, and I want to add a third that I just noticed
2 in going back through the contention.

3 We mentioned the IAEA.

4 CHAIRMAN BOLLWERK: Correct, Part 75.

5 MR. TURK: Right, Part 75. As well as the supposed
6 need for disclosure of the lease. We did not see how that
7 at all would relate to this contention or be required.

8 There is a third one that I should have mentioned in
9 our response and that was the reference to the intermodal
10 transfer point. It seems that what that contention seeks
11 there is a proof that PFS would be able to get permission to
12 use the Union Pacific right-of-way. That is not a
13 governmental permit. It's not something that needs to be
14 shown under 10 C.F.R. 51.45, which relates to the showing of
15 governmental permits.

16 DR. LAM: Mr. Turk, is it within the Board's authority
17 to examine the lease?

18 MR. TURK: If it's relevant, Your Honor, to a decision
19 that you have to make, it would be within your authority to
20 review it. At this point, you don't have a representation
21 from any party that there's something in the lease that you
22 need to see in order to resolve issues in this case. The
23 State asks that the information be disclosed to them, but
24 they cannot tell you, because they have not seen it, that
25 the lease has information in it that's material to your, or

1 relevant to your determination.

2 DR. LAM: So your opinion now is it's not necessary?

3 MR. TURK: Absent the showing that the lease in fact
4 bears upon a decision you must make, then there's no reason
5 for the Board to assume that it should look at it.

6 CHAIRMAN BOLLWERK: Give you any pause you may be
7 getting into, if we were to accept this contention, into
8 ruling on what state permitting requirements are?

9 MR. TURK: There is case law that says that the NRC
10 should not determine what is required under state law.
11 There's also some case law that says that you can reach
12 that, where it would advance your own decision. And I'd
13 have to go back and get you the cases. There's a -- there
14 is one that, if I'm not mistaken, involved a determination
15 of Kentucky law, but I'd have to go back and research that.

16 CHAIRMAN BOLLWERK: All right, sir.

17 Mr. Nelson.

18 MR. NELSON: Mr. Silberg indicated that, at the outset;
19 that none of the information was included and did not point
20 to anything that was not included. It was all included in
21 the State's reply and I don't know what provisions he's
22 referring to.

23 I will not repeat the arguments on the case law. We
24 believe that it is good law, what we have cited in the
25 reply.

1 Let me make it clear that the State is not attempting
2 to assert jurisdiction over the Indian reservation. What we
3 are trying to do is protect state interests. And there are
4 state interests in air quality and there are state interests
5 in water resources. And that is our focus and that is the
6 reason that we have made the assertions that we have.

7 With respect to the Clean Air Act, it is true that the
8 State of Utah has not been delegated authority over Indian
9 reservations for operation, administration of the Clean Air
10 Act. That is not the issue. The issue is is that the
11 applicant failed to include a requirement that they get a
12 permit from EPA for a Title 71 facility. And that is
13 specifically listed under 40 C.F.R. 71.3(a)(2).

14 The State agrees that federal law determines the
15 quantity of water rights that the Tribe is eligible for.
16 There is a series of cases that identify how those rights
17 are quantified. And it is pursuant to federal law that
18 those rights are determined, the reserved rights to use the
19 water. It is also federal law that that resource is a state
20 administered resource and that the Tribe must come, and it
21 is through the state adjudication process that that happens.

22 Now that process hasn't occurred, but that does not
23 eliminate the requirement to mesh those rights with the
24 downstream owners. And for drilling wells, for applications
25 of change of location of use, for those kinds of decisions,

1 it is important that there be a coordination between federal
2 use of water, Indian use of water, and state use of water.
3 And that process is handled through the state system, and
4 that is clear under federal law.

5 One final -- well, two final comments. With respect to
6 the lease, if someone walks into my office as a lawyer and
7 says will you please determine the liability provisions and
8 the requirements that govern a particular lease agreement,
9 but I'm not going to show you three paragraphs. Would you
10 please give me an opinion. It would be very difficult for
11 me, because it's very easy in one of those missing
12 paragraphs to say notwithstanding the provisions of A, B and
13 C, the following apply.

14 And that issue of requirements, it seems is most
15 appropriate to be considered by the licensing board in
16 considering this. And it should be included as one of the
17 requirements under 51.45 of applicable requirements.

18 Now finally, the State withdraws the portion of the
19 contention that has to do with the IAEA. Is that correct?

20 CHAIRMAN BOLLWERK: Part 75, International Atomic
21 Energy Agency.

22 MR. NELSON: Agency.

23 CHAIRMAN BOLLWERK: Right.

24 MR. TURK: Part B, B-75.

25 MR. NELSON: The applicant has appropriately pointed

1 out, and we agree with them on that and we withdraw that
2 portion of the contention.

3 CHAIRMAN BOLLWERK: All right.

4 MR. NELSON: That's all I have.

5 CHAIRMAN BOLLWERK: Let me put the same question to
6 Mister -- to you as I did to Mr. Turk. Does it bother you
7 that if we go along with this contention, that it's going to
8 get us into looking at the state permitting requirements and
9 making rulings on that? I mean that could be a two-edged
10 sword as far as you're concerned, depending on how we were
11 to rule.

12 MR. NELSON: The question -- it's a difficult issue,
13 because what we have cited to is the requirement that the
14 environmental report include those designations. We have to
15 take the position because we believe that we're correct.
16 They must come to the State for those permits.

17 I guess the applicant could choose not to do that, and
18 just simply not include it in the environmental report. But
19 it is not just those state issues that we rely on for this
20 contention. We rely on the fact that there has been no
21 specification on the DOT transportation requirements, there
22 is no specification on the air quality issues, and there are
23 no specifications on the water rights/water resources
24 issues, which shouldn't be contested in some respects.

25 CHAIRMAN BOLLWERK: All right. But you do understand,

1 of course, that if we do accept most of the parts of the
2 contention that are dealing with state rights, that, and
3 rule on them, that you might lose? We would say there's no
4 permit required. I mean that's a possibility.

5 MR. NELSON: The contention is is that they should be
6 properly included, yes. We recognize that.

7 CHAIRMAN BOLLWERK: All right.

8 MR. TURK: There is an alternative, of course, Your
9 Honor. Rather than having the State ask you to make the
10 determination that a state permit is required, they could go
11 to court. They can go to state court and seek a declaratory
12 judgment. And then you would be able to follow the --

13 CHAIRMAN BOLLWERK: Well --

14 MR. TURK: -- rulings of the state court.

15 CHAIRMAN BOLLWERK: That's true assuming they're going
16 to do that. But if they give us a contention that says, I
17 mean who makes the first move? Do we hold off until they do
18 something? Do we --

19 MR. TURK: Well, they've laid the --

20 CHAIRMAN BOLLWERK: I mean they're -- in the federal
21 courts, there is processes for sending state issues back to
22 state court if need be. They can be -- I would certify I
23 don't know if that's the correct term, but it's basically
24 that process. I don't know that we have a particular -- a
25 similar process. I can't certify a question to state court.

1 MR. TURK: No. They have the option of doing that if
2 they choose to. And if they bring the issue to you to
3 resolve, that would suggest that if it's necessary for your
4 decision in this case to reach that determination, then you
5 should be permitted to go ahead and make a predictive
6 finding as to what state law would require.

7 CHAIRMAN BOLLWERK: Certainly. All right. That's, I'm
8 just under -- make sure Mr. Nelson understands.

9 MR. TURK: And if they have any objection to you making
10 that ruling, they have another outlet they can go to right
11 now.

12 CHAIRMAN BOLLWERK: Right. That's true. All right.

13 MR. NELSON: If I can just make a comment. I'm not
14 sure that a decision by this panel would determine what
15 state law is.

16 (Laughter)

17 MR. NELSON: With respect --

18 CHAIRMAN BOLLWERK: That'd probably give people
19 something to argue over, I suspect though.

20 MR. NELSON: The issue arises under state law when
21 construction begins. The way the state law reads is is that
22 no person shall construct without getting a permit.

23 CHAIRMAN BOLLWERK: Right.

24 MR. NELSON: So until that activity happens, there's no
25 violation of state law on which we can get an agreement. I

1 guess perhaps we could work out some kind of a system to get
2 a declaratory judgment action or that kind of a process.
3 And we'd be more than willing to participate in that process
4 for this purpose.

5 CHAIRMAN BOLLWERK: All right. Thank you. I guess my
6 only point was I know of nothing that's similar for the
7 licensing board, for instance, that -- and maybe I need to
8 do a little research on this, as there are in the federal
9 courts where they in fact can certify questions to a state
10 court and get a ruling. That's something we may need to
11 look into more, but that's my understanding at this point
12 anyway.

13 Mr. Silberg, you have something you want to say.

14 MR. SILBERG: A couple short points.

15 With respect to the water issue and whether the State
16 has to mesh the rights of downstream owners with the federal
17 and tribal rights. There's simply no showing that there is
18 any impact on downstream users. The State has not indicated
19 that there is such. They have not provided any basis for
20 such an impact. And so, you know, we think that that, you
21 know, that part of the contention certainly has no basis.

22 With respect to the discussion that counsel for State
23 had on someone walking into his office and wanting an
24 opinion on liability agreements, it wasn't clear from the
25 discussion whether the person walking in was the lawyer or

1 he was the lawyer. But in any event, I see no relevance to
2 a liability agreement in a tribal lease on the requirement
3 to list permits and approvals in an environmental impact
4 statement.

5 And then the latter -- last discussion, well, one other
6 before we get to that. The issue of a permit under
7 71.3(a)(2) apparently is not mentioned in the contention.
8 So again, we have here a late issue. One of the reasons we
9 didn't address it was it wasn't addressed by the State.

10 And finally, with respect to the conundrum which the
11 panel and the State were discussing. It seems to me that
12 discussion makes it all the more inappropriate to get into
13 this issue at all. Indeed, the greater dispute as to
14 whether a permit applies, particularly whether -- where that
15 dispute is between the entity that claims it has the right
16 to issue the permit and another jurisdiction which claims it
17 isn't subject to that permit.

18 You know, this Commission is probably not the best
19 place to litigate that. As you heard counsel for the State
20 say, they're not going to be bound no matter what this board
21 decides. So why litigate it? To the extent that the State
22 believes that this is a permit that should be listed, you
23 know, it can file a comment to the environmental, draft
24 environmental impact statement. That comment will go along
25 with the rest of the document when it is issued in final

1 form, and thereby provide the public notice that is behind
2 this part of the NEPA requirements.

3 It simply doesn't make sense to get into the kind of
4 detailed litigation on Indian law, state law, federal law,
5 which this contention is asking the board to engage in. We
6 would suggest that this contention is inappropriate for all
7 of those reasons.

8 CHAIRMAN BOLLWERK: All right, sir.

9 Mr. Nelson, I'll give you the last word on this.

10 MR. NELSON: Two comments. We did specifically
11 reference that NSPS sources are required to get a federal
12 permit. We did not list the specific cite, 40 C.F.R. 71.3,
13 but we did state the requirement. We are just providing now
14 the specific cite to that statement. The statement has been
15 in there from the beginning.

16 Secondly, I just, as a final comment, I believe there's
17 some idea here that if they came to the State for a permit
18 for an asphalt plant, for example, that requires BACT, that
19 somehow the State would be not willing to issue that permit.
20 We don't do business that way in the State of Utah. And if
21 you meet state requirements and apply BACT to your asphalt
22 plant sufficient to protect state resources, we will issue
23 that permit. And the issue here is protection of the state
24 resources and compliance with state requirements.

25 MR. SILBERG: I would think that the statements by the

1 governor that he will do everything in his power legally to
2 stop this project would put into question that latter
3 statement.

4 MR. QUINTANA: No, I think his statements were over his
5 dead body. We have never made that part of the negotiations
6 on the part of the Tribe.

7 (Laughter)

8 CHAIRMAN BOLLWERK: I think we're getting a little far
9 afield here.

10 MR. SILBERG: But it's late.

11 MR. KENNEDY: Your Honor?

12 CHAIRMAN BOLLWERK: Yes.

13 MR. KENNEDY: Since Mr. Silberg gratuitously included
14 us in supporting his objections, I just want the record to
15 reflect that we at this time are not joining or opposing the
16 objections that he made.

17 The concern that I would like to put on the record
18 right now of my client I think is that by throwing the
19 gauntlet down to the State, which is being done here by PFS
20 and the Skull Valley Band, is that they are going to force
21 the State to litigate these issues, which may be ultimately
22 extremely detrimental. Not only to Skull Valley, but to
23 every other Indian tribe in the whole country. And that's a
24 real concern that we have, and I'd just like to voice that
25 and put that on the record at this point. Thanks.

1 CHAIRMAN BOLLWERK: That's why you're not -- you have
2 nothing to say, I take it?

3 MR. KENNEDY: That's right.

4 CHAIRMAN BOLLWERK: All right, sir.

5 All right. At this point we have some Castle Rock and
6 OGD contentions. I think it's a little late to start into
7 those. Prefer to do it tomorrow, or you --

8 MR. SILBERG: Might be able to get some of it.

9 CHAIRMAN BOLLWERK: You want to try?

10 MR. LATER: I think we could do one of them. I was
11 going to suggest to the Board that we might break that group
12 of --

13 CHAIRMAN BOLLWERK: You want to try 12. Is that what
14 you're thinking?

15 MR. LATER: -- five contentions down into three bites.

16 CHAIRMAN BOLLWERK: All right.

17 MR. LATER: The first of them I think goes quite well
18 with what we've heard because it deals with the issue of
19 permits, licenses and approvals. And then the other two
20 groups I think are slightly different.

21 CHAIRMAN BOLLWERK: Okay.

22 MR. LATER: The next three deal with rights-of-way and
23 access.

24 CHAIRMAN BOLLWERK: Okay.

25 MR. LATER: And the last one deals with existing land

1 use analysis.

2 CHAIRMAN BOLLWERK: All right.

3 MR. LATER: So if you'd like me to continue, we could
4 go --

5 CHAIRMAN BOLLWERK: Sure.

6 MR. LATER: -- into the first of those, which is
7 contention number 12. And fortunately, I don't have to or
8 feel impelled to repeat much at all of what's been said by
9 the State of Utah. I think it tracks well with the points
10 we've tried to make. And we certainly agree with that.

11 I think there are a couple of things we can indicate
12 that may be useful. The applicant has argued that there is
13 no need to deal with the state water permit because there's
14 been no showing of an impact on downstream users. To the
15 contrary, we have presented to this panel a series of
16 contentions demonstrating our concern and potential impacts
17 on Castle Rock and the groundwater in Castle Rock that
18 creates precisely that kind of impact on a downstream user
19 that the state regulation is designed to protect.

20 Similarly, the air quality standards, we would hope,
21 would be in force to protect the interests of my clients
22 adjacent to this facility.

23 We have pointed out the need for dredge and fill
24 permits with respect to wetlands. Mr. Quintana notes that
25 the facility may not be a wetland and appears pretty dry,

1 but as we drove down the Skull Valley Road, we went past a
2 number of streams, including designated wetlands areas that
3 do raise that concern, especially with the applicant's
4 uncertainty as to the exact location of the access corridor,
5 how much expansion's going to be required, just what that
6 access road is going to be. It clearly requires a serious
7 analysis of the necessity for a dredge and fill permit, and
8 I don't think there could be any argument about Indian
9 sovereignty along that access road. That is private land,
10 public land, and the State's authority does apply there.

11 The last sort of issue about how does the panel does
12 with this. It appears to me quite clear that there is a
13 very important legal and in part perhaps factual issue that
14 has been presented, both by Castle Rock and by the State of
15 Utah as to the necessity of permits. This isn't an issue
16 and a problem that any of us created except the applicant
17 that chose to locate a facility on Indian lands and attempt
18 to invoke as broad a protection as humanly possible to avoid
19 any kind of permitting requirements.

20 It's an issue that has to be dealt with. The
21 regulations clearly require that the applicant designate all
22 permits that are required. The applicant hasn't done that.
23 To some extent, the application has been somewhat coy about
24 what permits may be required. And given the uncertainty and
25 emerging conflict in position as to what permits are

1 required, I think it's particularly important that the
2 application fulfill that requirement, make clear exactly
3 what permits it's determined it needs to secure and which
4 ones it believes it doesn't need to secure.

5 The panel can't escape the obligation of making at
6 least a preliminary determination as to whether the
7 application is reasonably satisfied those requirements,
8 recognizing that the ultimate determination on those issues
9 if it's litigated may be settled in a different forum, and
10 that the panel's decision on that may not be ultimately
11 binding on the parties. But that doesn't relieve it of its
12 obligation to require the applicant to make a rational
13 determination on that point.

14 It's part of the application process. It's required.
15 It's the applicant that's created the kind of conundrum that
16 we face. We simply have to puzzle through that.

17 I think that's all that I have to say that may be
18 beyond what's already been argued by the parties.

19 CHAIRMAN BOLLWERK: All right.

20 Mr. Silberg?

21 MR. SILBERG: A couple comments. First, with respect
22 to the oral remarks, if indeed a route is chosen which
23 requires dredge and fill, and dredge-and-fill permit will be
24 obtained, license application -- the environmental report
25 will be amended appropriately, and BFS will apply for the

1 permit. That's not the case. There's no indication right
2 now as to whether that such a permit is needed.

3 The statement was made that the applicant should make a
4 rational determination as to what permits are required. We
5 have done that. Yes, there may be other jurisdictions that
6 believe that they have rights, but we have made our best cut
7 at what we believe are the appropriate list of permits.

8 You obviously can't without perfect hindsight know that
9 20 years from now some court may determine that some other
10 permit was required. But the applicant in the environmental
11 report is charged with making that determination, and we
12 have done that.

13 I think I've heard, although I may have misheard, that
14 we should list the ones we don't need. That just can't be
15 the right result. There are many permits we don't need, and
16 if we start to list those that we don't need because the
17 State says, you know, that are in dispute with the State
18 versus the ones that we don't need because we're in dispute
19 with someone else, we'll never end.

20 A couple comments with respect to the written response
21 by Castle Rock on page 45. That response totally ignored
22 the information which we presented in the license
23 application. They quote from the environmental report. In
24 the middle of this one paragraph it says, "Environmental
25 report provides that," quote, "several specific

1 environmentally sensitive areas have been identified along
2 the transportation corridor and may require special
3 consideration during construction activities, close quote.

4 That's a quote they brought.

5 And then Castle Rock goes on to state that PFS does not
6 describe these areas. In fact, the sentence that I just
7 read actually states, "Several specific environmentally
8 sensitive areas," comma, "discussed below," comma, "have
9 been identified." And in fact those areas are discussed
10 below at pages 4.3-2 to 4.3-5.

11 We have done exactly what Castle Rock suggested, and
12 that information is included in our environmental report.

13 That's all I have to say.

14 CHAIRMAN BOLLWERK: All right. Mr. Quintana.

15 MR. QUINTANA: The State has not been able to find a
16 scientific basis to oppose this facility. And because they
17 cannot find a scientific basis to oppose it, simply because
18 there is none, they are clutching at straws and trying to
19 grasp at the downstream impact supposedly to State water,
20 which does not exist, nor can it be shown.

21 We need to have contentions which deal with reality,
22 not with speculation. And what the State is asking the
23 Board to do is to speculate on such remote possibilities as
24 to the effect on air quality, as to the effect on water
25 quality, as to the effect on wetlands, that to do that would

1 be stretching the law such that it would break.

2 Indian sovereignty remains despite the best efforts of
3 the State of Utah to at every instance destroy it. And
4 Indian sovereignty will continue to remain.

5 CHAIRMAN BOLLWERK: All right. Staff?

6 MR. SILBERG: The staff did not oppose the admission of
7 this contention. But based on the discussion that I've
8 heard I want to come back to a question raised by Judge Lam
9 who initially asked, "What's the point?" And the response
10 was, "Well, the environmental regulation 51.45 say that
11 permits must be listed. Necessary permits must be listed."

12 It would seem to me that if the applicant voluntarily
13 chose to list in its environmental report various permits,
14 some of which may be short needs and others which may be in
15 question, that would satisfy the regulation and the
16 contention would go away.

17 I wonder if we really need to get in to lengthy
18 litigation, especially where difficult legal issues are
19 involved, where there may be a simple accommodation between
20 the parties as to which permits will be sought, and if
21 they're not required they will not be sought.

22 The modification of the ER would resolve the issue, and
23 they would have been issued for this Board to have it
24 address.

25 CHAIRMAN BOLLWERK: Well, obviously if the parties

1 won't agree on something without listening to the
2 environmental report, and drop the contention, that's not --

3 MR. TURK: And the reason I suggest that, Your Honor,
4 is this Board would not have to find that all permits had
5 been obtained. The license you would issue would find that
6 NRC regulations have been satisfied.

7 DR. LAM: Because I think the record is clear. When I
8 asked that question to Mr. Nelson, would it satisfy the
9 State of Utah to have a list. And if I remember correctly,
10 Mr. Nelson's answer was yes.

11 MR. SILBERG: Well, we certainly would not agree to
12 list permits which we think are required. I'm not sure that
13 we would -- well, no, we would not list those permits
14 because we don't think they're required. I suspect we would
15 not have a problem in listing permits with a caveat that
16 said, "And these are the permits which the State of Utah
17 things are required but we don't."

18 And if that's what the State wants, I mean it seems
19 like a kind of useless exercise. The State does what they
20 want to do. So do we. But if that would satisfy the State,
21 I suspect that would satisfy us.

22 CHAIRMAN BOLLWERK: As I understand the proposal, and
23 that's something I guess you all are going to need to talk
24 about, if Mr. Silberg listed it as he said it is in the
25 environmental report would that satisfy you sufficiently to

1 drop that portion of the contention?

2 MR. NELSON: I'd suggest that rather than turn this
3 into a negotiation session, that we --

4 CHAIRMAN BOLLWERK: I'm certainly not suggesting that.

5 MR. NELSON: -- that we close this and let the parties
6 discuss it.

7 CHAIRMAN BOLLWERK: All right. I think that's a good
8 idea. Let me just raise one -- OGD J raises these same
9 sorts of issues. Is there anything further you want to
10 discuss on that? I don't want to cut you off.

11 MS. BELILLE: There is, Your Honor. We have
12 information of trust responsibility that --

13 CHAIRMAN BOLLWERK: How long do you think it's going to
14 take?

15 MS. BELILLE: Fifteen or twenty minutes.

16 CHAIRMAN BOLLWERK: All right. Then let's not do it
17 tonight. Why don't we come back to that in the morning
18 along with the other -- the right-of-way contentions that
19 you had mentioned. You thought I guess 20, 21, 22 and 23,
20 Mr. Later --

21 MR. LATER: I would like to have one last word on this
22 contention if I might. I'm sorry to keep everyone.

23 CHAIRMAN BOLLWERK: All right. Go ahead, but make it
24 brief if you would.

25 MR. LATER: I will. A couple of clarifications.

1 Mr. Silberg was absolutely correct in the sentence he
2 quoted from our reply brief, and I would like to apologize
3 to the applicant. That was an inadvertent slip up on that,
4 but you are correct in the way you cited that.

5 When I referenced that the applicant ought to list what
6 requirement permits they're going to get and which ones they
7 aren't, that was a product of being late at night trying to
8 hurry. What I was suggesting is where you listed a number
9 of permits that might be applicable. We need to have
10 clarification as to just what is your determination out of
11 that list not what might be but what will be.

12 And as a final matter, as we reflect on this issue of
13 G, if we just list what everybody's disagreements are, does
14 the contention go away. I'm not sure that it does. I think
15 the definition of permits required is part of the license
16 evaluation. I think there has to be some judgment imposed
17 by the Board on that, and that simply there may be a bunch
18 of permits that we have to fight about may not satisfy that
19 requirement. Only a thought. Thank you.

20 CHAIRMAN BOLLWERK: All right. Why don't we stand
21 adjourned for the evening. We'll pick up tomorrow morning
22 with OGD's contention and also with your right-of-way
23 contentions.

24 And I would like to see -- we can go off the record.

25 [Whereupon, at 6:30 p.m., the prehearing

1 conference was recessed to reconvene at 9:00 a.m., Thursday,
2 January 29, 1998.]
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

REPORTER'S CERTIFICATE

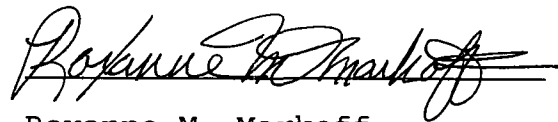
This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission in
the matter of:

NAME OF PROCEEDING: PRIVATE FUEL STORAGE, L.L.C. --
PREHEARING CONFERENCE

DOCKET NUMBER: 72-22-ISFSI

PLACE OF PROCEEDING: Salt Lake City, Utah

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.



Roxanne M. Markoff

Official Reporter

Ann Riley & Associates, Ltd.