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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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: 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

Tuesday, January 27, 1998

The above-entitled prehearing conference convened at 10:00 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

1 PRESENT FOR THE SKULL VALLEY BAND OF GOSHUTE INDIANS:

2 Danny Quintana
3 Richard Wilson
4 Scott York

5 PRESENT FOR ONHGO GAUDADEH DEVIA:

6 Jean Belille
7 Robert Halstead

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

9 Michael Later
10 Bryan Allan

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

13 John Kennedy
14 Genevieve Fields

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

16 Jay Silberg
17 Ernest Blake
18 Paul Gaukler

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P R O C E E D I N G S

[10:00 a.m.]

CHAIRMAN BOLLWERK: Why don't we go on the record please.

Good morning everyone. Today we're here to conduct an initial prehearing conference in the Private Fuel Storage, L.L.C. proceeding. In response to a notice of opportunity for hearing published in the Federal Register on July 31, 1997, found in volume 62 of the Federal Register at pages 41,099 to 41,100, petitioners State of Utah, Ohngo Gaudadeh Devia, the Confederated Tribes of the Goshute Reservation and David Pete, and Castle Rock Land and Livestock, L.C., Skull Valley Co., Ltd., and Ensign Ranches of Utah, L.C., have requested a hearing to challenge the June 20, 1997 application of Private Fuel Storage, L.L.C. for a license under 10 C.F.R., in Code of Federal Regulations, Part 72, to possess and store spent nuclear reactor fuel in an independent spent fuel storage installation, also known as an ISFSI, located in the Skull Valley Goshute Indian Reservation in Skull Valley, Utah.

In addition, the Skull Valley Band of Goshute Indians and, very recently, a group of individuals and the Atlantic Legal Foundation have filed petitions to intervene in this proceeding in support of the application.

We scheduled this prehearing conference to provide the

1 participants with an opportunity to make oral presentations
2 on the issues of the petitioners' standing to intervene and
3 the admissibility of their 90 proffered contentions.

4 Before we begin hearing the parties' presentations on
5 these matters, I would like to introduce the members of the
6 Atomic Safety and Licensing Board.

7 To my right is Dr. Jerry R. Kline. Dr. Kline, an
8 environmental scientist, is a full-time member of the Atomic
9 Safety and Licensing Board Panel.

10 To my left is Dr. Peter Lam. Dr. Lam, who is a nuclear
11 engineer, also is a full-time member of the Panel.

12 My name is Paul Bollwerk. I'm an attorney, and I'm
13 chairman of this Licensing Board.

14 At this point, I'd like to have the representatives or
15 counsel for the parties identify themselves for the record.
16 Let's go ahead and start with the representatives for the
17 various petitioners and then move to counsel for the
18 applicant Private Fuel Storage, and finally to NRC staff
19 counsel.

20 Why don't we just start at this side of the room, if we
21 could.

22 MS. BELILLE: My name's Jean Belille, and I'm
23 representing Ohngo Gaudadeh Devia.

24 MR. LATER: Michael Later, representing the Castle Rock
25 petitioners.

1 MS. CHANCELLOR: Denise Chancellor. Diane Curran on my
2 left, Fred Nelson on my right, representing the State of
3 Utah.

4 CHAIRMAN BOLLWERK: Next we're on this side of the
5 room.

6 DR. WILSON: Richard Wilson representing a group of ad-
7 hoc super scientists.

8 MR. QUINTANA: Danny Quintana for the Skull Valley Band
9 of Goshutes.

10 MR. KENNEDY: John Kennedy on behalf of the
11 Confederated Tribes of the Goshute Reservation.

12 CHAIRMAN BOLLWERK: All right.

13 MR. SILBERG: Jay Silberg. With me, Ernest Blake and
14 Paul Gaukler, representing Private Fuel Storage, L.L.C.
15 Also here today is the chairman of the board of managers of
16 Private Fuel Storage, John Parkin; project manager Scott
17 Northard, and the project director, John Danell.

18 MR. TURK: Good morning, Your Honor. Sherwin Turk for
19 the NRC staff.

20 To my right is Ms. Catherine Marco, also representing
21 the staff. And we have with us today the project manager,
22 Mark Delagati, and other persons from the NRC staff.

23 CHAIRMAN BOLLWERK: Let me just check with our court
24 reporter. Are we getting everything all right in terms of
25 volume?

1 Okay. Make sure you speak into the microphones; all
2 right? If we need to, you may need to point that a little
3 bit your direction.

4 MS. CHANCELLOR: Judge, I forgot to mention to you, and
5 I'm sorry. Dr. Nelson, the head of the Department of
6 Environmental Quality.

7 CHAIRMAN BOLLWERK: All right.

8 MR. QUINTANA: Your Honor?

9 CHAIRMAN BOLLWERK: Yes.

10 MR. QUINTANA: I'd also like to introduce the Honorable
11 Leon Bare, the chairman of the Skull Valley Band of
12 Goshutes, and some of his assistants.

13 CHAIRMAN BOLLWERK: All right.

14 I would note that the presentations to the Board during
15 this prehearing conference will be limited to the
16 participants that have just identified themselves.

17 If any of these petitioners subsequently is found to
18 have standing, and to have submitted one or more litigable
19 contentions, the Board will issue a notice of hearing that,
20 in accordance with 10 Code of Federal Regulations §
21 2.715(a), will afford members of the public an opportunity
22 to provide written, or as appropriate, oral limited
23 appearance statements on the issues. The Board will issue a
24 further notice outlining the times, places, and conditions
25 of participation in the event the Board provides an

1 opportunity for oral limited appearance statements.

2 I would also note that yesterday the Board conducted a
3 visit to various places in the area that the participants
4 have identified as relevant to this proceeding. The Board
5 found the site visit very informative. We would like to
6 express our thanks to the various participant
7 representatives who made presentations explaining the
8 significance of the sites we visited; to Colonel Como and
9 the staff of the Dugway Proving Grounds for providing an
10 informative tour of the English Village; to the State of
11 Utah for arranging transportation for the group; and to the
12 Skull Valley Band of Goshute Indians for providing our group
13 with what was a very tasty luncheon.

14 As to the order of presentation by the participants in
15 this prehearing conference, unless the participants have
16 some other suggestion, in accordance with our January 21,
17 1998 memorandum and order, we propose to begin by discussing
18 the issue of standing, specifically the standing of the
19 petitioners Confederated Tribes and Mr. Pete, which still is
20 being contested.

21 Because the burden wrists -- rests rather with the
22 petitioner on the issue of standing, we first will let the
23 counsel for the Confederated Tribes and Mr. Pete briefly
24 address this issue, followed by counsel for the applicant,
25 counsel for the Skull Valley Band, which, at least according

1 to the last filing we received, still opposes the
2 intervention petition of the Confederated Tribes and
3 Mr. Pete, and finally staff counsel. Counsel for the
4 Confederated Tribes and Mr. Pete will then be afforded a
5 short opportunity for reply. Thereafter, we will discuss
6 briefly some other standing issues.

7 We would then move on to the petitioners' proposed
8 contentions, using the same order of presentation, with
9 initial comments by counsel for the petitioner that
10 sponsored the contention. As the participants are aware,
11 the Board has provided a listing that groups the various
12 contentions into four subject matter areas: safety,
13 environmental, emergency planning, and other.

14 This grouping was not intended to limit the scope of
15 any participants' contention, but rather to try, based on
16 what we perceived as the contention's primary focus, to
17 gather related contentions so that we can deal with the same
18 subject matter at one time and gain a better understanding
19 of the similarities and differences between the petitioners'
20 contentions.

21 As we noted in the January 21st issuance, within each
22 general category we will first go through the State of
23 Utah's contentions in the order they have presented them,
24 with the understanding that counsel for the other
25 petitioners will, following presentations on an individual

1 State contention, be prepared to identify and discuss any
2 related contentions they may have and identify for the Board
3 how their contention is similar to or different from the
4 State's contention.

5 It also should be noted that we will not be discussing
6 the substantive claims of the State of Utah with regard to
7 the admissibility of its contentions EE through GG, and its
8 nine contentions regarding the Private Fuel Storage facility
9 physical security plan, matters that likely would involve
10 the discussion of non-public proprietary or protected
11 safeguards information. Instead, the State will be given
12 the opportunity to file a written reply regarding the
13 substance of the admissibility of those contentions.

14 With respect to those contentions, however, assuming it
15 does not require the discussion of proprietary or safeguards
16 information, we will entertain arguments on two procedural
17 issues that have arisen, the State's compliance with the
18 five late filing factors of 10 Code of Federal Regulations
19 § 2.714(a)(1) relative to its contentions FF through GG, and
20 the credentials of William J. Sinclair to support the
21 State's security plan contentions.

22 Do any of the counsel representatives have any comments
23 on this order of presentation?

24 All right. Hearing none, then we'll use that as our
25 basic framework and work with it as we go along.

1 All right. Let's then begin with the presentation by
2 counsel for the Confederated Tribes and Mr. Pete regarding
3 their standing.

4 MR. KENNEDY: Thank you.

5 Might I just say with respect to the site visit
6 yesterday, we actually did not visit the site. The site was
7 located approximately two to three miles from the highway.
8 We viewed the site from the highway. The visibility was
9 excellent, but we could not actually get to the site. And I
10 think that that's an important distinction.

11 My name is John Kennedy. I'm here on behalf of the
12 Confederated Tribes of the Goshute Reservation and David
13 Pete, who is the chairman of that tribe.

14 We have submitted to all counsel and to the Board and
15 to staff a statement of our belief that we have standing.
16 There have been responses submitted by interested parties
17 and there have been supplementations made to the original
18 filings.

19 My observation, Your Honor, is that all parties are
20 reading and studying these documents thoroughly. In the
21 interest of time, I would be available to answer questions
22 from the panel as well as other counsel, but we would stand
23 on our submissions.

24 CHAIRMAN BOLLWERK: All right, sir.

25 Anyone have any questions of Mr. Kennedy?

1 All right. Perhaps when we come back to the reply we
2 may have some questions given the statements by the other
3 parties. Okay?

4 Let's see, I think, Mr. Silberg, did I mention you
5 next?

6 MR. SILBERG: We don't believe that the Confederated
7 Tribes have made an adequate showing that they have standing
8 in this proceeding. They have a tenuous chain of
9 participation, if you will, through the organization, the
10 tribe.

11 They have a member who states to be the legal guardian
12 of a three year old who occasionally visits the Skull Valley
13 Band. Both the child and the guardian live on the
14 Confederated Tribes Reservation some 70 miles away. We
15 believe that this chain of causation is too tenuous; that
16 the visits are not frequent and regular enough. We
17 understand that the child has not visited the reservation
18 since late October of this year. There is no indication of
19 when the child will next visit the reservation.

20 Under the supreme court cases on standing, the Luhan
21 case which we have cited, the fact that people have visited
22 projects, the area of projects in the past, as the supreme
23 court said, proves nothing.

24 "The affiant's profession of an intent to return to the
25 places they visited before is simply not enough." I'm

1 quoting from page 564, 504 U.S. Reports, Luhan v. Defenders
2 of Wildlife.

3 "A plaintiff claiming injury from an environmental
4 damage must use the area affected by the challenged activity
5 and not an area roughly in the vicinity of it." Also from
6 that same case.

7 We think that the chain of causality, as the supreme
8 court said, has been stretched beyond the breaking point;
9 and we simply don't see that prior occasional visits and
10 none in the last three months, to our knowledge, are
11 adequate for standing in this case.

12 CHAIRMAN BOLLWERK: All right, sir.

13 Mr. Quintana.

14 MR. QUINTANA: Your Honor, we challenge standing in
15 this case for a variety of reasons, all of which have been
16 noted in the pleading, the small pleading that we filed.

17 The reservations that exist under federal law are, in
18 this instance, completely separate and identifiable
19 governments. The Skull Valley Band of Goshutes has a
20 separate federal tax number, ID number rather, than the
21 Confederated Goshutes.

22 And if I could submit this map for part of the record
23 from the map from this exhibit that I would like to submit,
24 the reservations are a substantial distance apart. In
25 addition to three mountain ranges, there is a major desert

1 between them and a federal facility. To travel by highway
2 is at least 180 miles.

3 The reservations, the two governments are independently
4 elected of each other. Members of one reservation do not
5 vote in the internal matters of the other reservation. Both
6 report to separate agencies within the Bureau of Indian
7 Affairs.

8 In addition, previously the Confederated Goshutes
9 acknowledged that the rights of the Skull Valley Goshutes
10 did not apply to rights in the Confederated Goshutes, and
11 cited a Mr. Leon Bare and his brother for a hunting
12 violation on the other reservation. Reciprocity being what
13 it is, if rights do not apply on one reservation, then
14 certainly they do not apply on another one.

15 In this instance, to allow the standing of a tribe that
16 is separate and identifiable as a government from another
17 tribe and is very far away, would create a precedent where
18 challenges to nuclear facilities, to licensing facilities,
19 and challenges to administrative facilities could be brought
20 by the most tenuous of claims.

21 The political motivations for filing for intervention
22 in this instance I think speak for themselves. I think that
23 if the affidavits of the Confederated Goshutes are closely
24 scrutinized, and those individuals are examined, I think
25 this honorable body will find that those affidavits will

1 probably not be held up.

2 There are eight reservations in Utah, and there are --
3 they are all separate and identifiable governments. The Ute
4 tribe, which is in the northeast section, has not applied
5 for intervention herein, nor have the Piutes or the
6 Northwestern Shoshones.

7 For historical reasons, most of the tribes in a
8 geographic area are related somewhat by language and at
9 times by blood, but they are still separate governments
10 nonetheless. And because of the sovereignty of each
11 government and the need for having internal control in the
12 land of each government, I would ask this honorable body to
13 not allow standing to the Confederated Goshutes.

14 CHAIRMAN BOLLWERK: All right. Let me just check. Are
15 there any other intervenors who have anything they want to
16 say? If not, I'm going to go to the stand.

17 MS. CHANCELLOR: The State would, Your Honor.

18 First, a point of procedure. We understood that this
19 was an oral presentation to the Board, and Mr. Quintana has
20 suggested that an exhibit be introduced.

21 CHAIRMAN BOLLWERK: Right.

22 MS. CHANCELLOR: And that has --

23 CHAIRMAN BOLLWERK: I just, I'd speak to that. We have
24 a number of maps in the record already that show the
25 relationship of all the different, the tribes. If it's not

1 really necessary, we'd probably not want to add that. It's
2 up to you, sir. If you insist, we'll take it, but I don't
3 think it's really necessary.

4 MR. QUINTANA: That's fine, Your Honor.

5 CHAIRMAN BOLLWERK: Given the state of the record.
6 Does that take care of that problem?

7 MS. CHANCELLOR: That's fine. We were just concerned
8 with not having it served on us.

9 CHAIRMAN BOLLWERK: Sure.

10 MS. CHANCELLOR: Secondly, we support the petition of
11 the Confederated Tribes of the Goshute Reservation. We
12 believe that they have made their arguments with respect to
13 standing. And in any event, the Board has the discretion to
14 allow the Confederated Band in as intervenors. I think that
15 they would be able to raise issues that would not be raised
16 by the other petitioners. So the State does support their
17 petition.

18 CHAIRMAN BOLLWERK: All right.

19 Anyone else?

20 Mr. Turk, I'm sorry. I kind of slipped one in there,
21 but it's your turn this time.

22 MR. TURK: No, that's fine. Thank you, Your Honor.

23 The staff would like to begin first of all by noting
24 that there has been a succession of pleadings addressing the
25 standing of the Confederated Tribes and Mr. Pete. Let me

1 address one narrow issue before addressing the broader and
2 more difficult issue.

3 Never, in all of the filings by the Confederated Tribes
4 and Mr. Pete, was Mr. Pete's individual standing addressed
5 or established. So we'd like to separate that out as an
6 issue that can be easily addressed and dealt with by the
7 Licensing Board.

8 In the absence of any showing of individual standing by
9 Mr. Pete, and there has been none, he clearly does not have
10 standing to participate on an individual basis, and his
11 petition should be denied without any question.

12 Coming to the question of the Confederated Tribes,
13 initially a petition was filed by the Confederated Tribes,
14 with Mr. Pete also, in August of '97, to which the staff
15 applicant responded. A further filing was made by the
16 Confederated Tribes in October of '97, to which the
17 applicant and staff responded. And then again in December,
18 following the filing of those responses, a further
19 supplemental memorandum was filed by the Confederated
20 Tribes.

21 In the first two filings by the Confederated Tribes,
22 there was no showing whatsoever that the tribes, as
23 organizations, had standing to participate in this
24 proceeding. As Mr. Quintana has stated and as the Board is
25 aware, the tribes are physically separated by a distance of

1 some 60 or 65 miles. They are separately chartered and
2 recognized Indian tribes. The rights of one tribe do not
3 accrue to the other tribe.

4 The Confederated Tribes initially made a claim that
5 there was an aboriginal right which established their
6 standing on the grounds that they had at one time roamed the
7 entire section of Utah which encompasses both the Skull
8 Valley Tribe as well as a much broader area.

9 That we believe is easily dealt with by the recognition
10 that they are now separately recognized tribes by act of the
11 U.S. Congress. Each has its own reservation, and it is on
12 those reservations that their rights are established.

13 The only basis upon which the Confederated Tribes may
14 establish their standing here today is in a representational
15 capacity. And that is they would have to show that there
16 was some member of their organization who has standing and
17 who has authorized them to represent his or her interests in
18 the proceeding.

19 In the last filing of December of '97 they attempted to
20 make that showing. And what they relied upon were the
21 affidavits of two individuals, Cassandra Reid and Genevieve
22 Fields.

23 The Fields affidavit was nonspecific, and did not
24 establish that she has interests which could be affected by
25 the proceeding.

1 The Reid affidavit, on the other hand, established that
2 Ms. Reid is the grandmother of a little girl who stays with
3 relatives on the Skull Valley Reservation from time to time.
4 I'll come back to that issue in a second. And also that
5 Ms. Reid herself drives the little girl to the Confederated
6 -- I'm sorry, to the Skull Valley Reservation, and from time
7 to time herself is present at the Skull Valley Reservation.

8 In addition, Ms. Reid states that she makes the drop-
9 offs of the little girl at a location close to the Rally
10 Junction inter-transfer point, and is present at that
11 location on various occasions.

12 The sole issue that is before you now with respect to
13 standing for Confederated Tribes is whether the contacts
14 which have been established by Ms. Reid and her
15 granddaughter, whom she represents to be her legal ward; she
16 states that she is the legal guardian for the little girl.
17 You have to determine whether those contacts are sufficient
18 to establish standing for either the little girl or the
19 grandmother. And if so, look to see whether there is
20 authorization. And then if there is authorization for the
21 tribe to represent the individuals, you can reach a finding
22 of standing for the tribes on a representational basis.

23 There is not a clear and convincing statement of
24 standing on behalf of either the little girl or Ms. Reid.
25 On balance, however, as we stated in our responses of

1 January 14, 1998, we think the balance has tipped so that
2 you can find standing for both the grandmother and the
3 granddaughter.

4 I would note, however, that as we pointed out in our
5 pleading, the contacts which are described by Ms. Reid in
6 her declaration are contested in the declaration of her
7 cousin, Arleene Wash, who is a member of the Goshute Tribe.
8 So you must look at the evidence presented by both the
9 Confederated Tribes and by the Skull Valley opposition to
10 determine if the contacts are substantial.

11 In sum, what those contacts show is that either
12 approximately 8 to 10 times a year, as stated by the
13 Confederated Tribes, or 3 or 4 or more -- and that's not
14 defined, the "or more" is not defined; either the 8 to 10 or
15 the 3 or 4 or more times is the number of times that the
16 little girl stays at the Skull Valley Reservation.

17 Similarly, you have a conflict of evidence right now in
18 these two conflicting affidavits or declarations as to the
19 number of times that Ms. Reid herself comes to the Skull
20 Reservation. She makes a statement that it's a larger
21 number of instances. That is disputed by the declaration of
22 Ms. Walsh.

23 On balance, if you look at the statements by Ms. Reid
24 and you give them credence, we believe that you can find
25 standing for the Confederated Tribes. But there is that

1 conflict of evidence, and that is something that would have
2 to be resolved by the Court.

3 CHAIRMAN BOLLWERK: All right. Is that it, Mr. Turk?
4 Mr. Kennedy.

5 MR. KENNEDY: Thank you, Your Honor.

6 I think the representations made by counsel seem to me
7 to be generally accurate. There are some things that I
8 think we ought to comment on, however.

9 First of all, with respect to no visits having been
10 made since October. I believe that is true. They happen --
11 the cut-off of the visits was by the folks at Skull Valley
12 following the filing of the initial declaration in this
13 matter.

14 We believe that the fact that, as a litigation tactic,
15 the Skull Valley people may have, or the individual involved
16 may have terminated the visits shouldn't be relevant as far
17 as the -- this proceeding and the petition to intervene.

18 We have sort of glossed over, I think also, the entire
19 history and long-standing interrelationship of these two
20 groups. And we've tried to focus, I think, on some rather
21 specific current events that are taking place. And we would
22 submit that it's important for the Board to consider the
23 long-standing interrelationship of these two groups.

24 And the fact that they have, I think as was said during
25 the site visit yesterday by one of the individuals speaking,

1 common grandmothers in instances. There have been
2 representations about burial grounds on the reservation that
3 are used and visited. There have been representations made
4 in the affidavits regarding religious practices that have
5 taken place on both reservations, participated in by both
6 people.

7 Also, we've pointed out the constitutional provisions
8 that existed with the Confederated Tribes until relatively
9 recently, in the last 10 years or so, where members of the
10 Skull Valley Band were in fact allowed to enroll at Goshute.

11 The aboriginal area, which includes both reservations
12 and the site and significant territory surrounding this --
13 both reservations, according to the Indian Claims
14 Commission, was taken from the Indian people back in the
15 1870 time frame. I might point out, however, that people in
16 both tribes don't recognize the fact that their lands were
17 taken. Legally that may have happened, but I think that
18 people from a day-to-day standpoint do not recognize that.

19 And I have personally had conversations with
20 Mr. Quintana, who is a member, or who is the counsel for the
21 Skull Valley Band, regarding efforts to establish hunting
22 and fishing rights beyond the reservation boundaries.

23 So I think that all of these matters, taking into
24 consideration the long-standing interrelationship, the blood
25 relationships and so forth between these people, support our

1 petition to intervene.

2 Cassandra Reid is a member of the tribal council. She
3 is the person who has been referred to as the grandmother in
4 this instance. She attended the site visit yesterday and
5 has participated in all the discussions and so forth
6 regarding this matter, and has pointed out that when she has
7 taken her grandchild to the reservation, or when the child
8 has been picked up at Rally Junction, that those visits
9 aren't just shorts visits; that they may be for one or two
10 days or longer periods of time, up to a week or longer even.
11 So we would submit that there is significant contact there
12 and that it ought to be sufficient to establish our efforts
13 to intervene.

14 With respect to Mr. Pete, he has asked to intervene as
15 chairman of the tribe. And that is his role, not
16 individually but as chairman in that capacity. And that
17 would be my response. Thank you.

18 CHAIRMAN BOLLWERK: Okay. Does the record indicate
19 this in any way. Has the granddaughter been seeing her
20 mother since October? I don't, I mean I understand she's
21 not been -- what I've heard is that she's not been allowed
22 onto the Skull Valley Reservation. Has --

23 MR. KENNEDY: Your Honor, I don't believe it's her
24 mother. I believe she stays there with another relative.

25 CHAIRMAN BOLLWERK: Another relative, I'm sorry.

1 MR. KENNEDY: That's right.

2 CHAIRMAN BOLLWERK: Has the other relative gone to the
3 Confederated Tribes area to see the young woman, or --

4 MR. KENNEDY: I have no knowledge of that. I would
5 suspect not, Your Honor.

6 CHAIRMAN BOLLWERK: Okay.

7 MR. KENNEDY: But I have no knowledge.

8 MR. SILBERG: Judge Bollwerk?

9 CHAIRMAN BOLLWERK: Yes.

10 MR. SILBERG: Excuse me. I would like to make a few
11 comments on Mr. Kennedy's statement, if I could do it now or
12 at another appropriate time. I don't know what your order
13 of proceeding is at this point.

14 CHAIRMAN BOLLWERK: Can you make it short?

15 MR. SILBERG: Make it very short.

16 First, as to discretionary intervention --

17 CHAIRMAN BOLLWERK: I saw you, Mr. Quintana, by the
18 way, so --

19 MR. SILBERG: Yeah. The Confederated Tribes have made
20 no showing that they comply with the standards of the
21 Pebbles Plains case in their own pleadings, and I don't
22 think that the State of Utah can raise that on their behalf.

23 With respect to the alleged cut-off of visits by the
24 Skull Valley people, my understanding is that is false
25 statement. And we would be prepared to put on, as a witness

1 on this issue right now, a member of the Skull Valley Tribe
2 who previously gave a declaration in this matter to state
3 that for the record.

4 The child has not been brought to the Skull Valley
5 Reservation, but that is not because those visits have been
6 terminated by the Skull Valley Band or any member of the
7 Skull Valley Band.

8 CHAIRMAN BOLLWERK: All right. Anything else?

9 I don't think we need to get a witness.

10 Mr. Quintana.

11 MR. QUINTANA: My client would not use children for
12 political purposes or to gain a advantage in legal
13 positions, and I resent the implication that this child,
14 this very minor child was used for that purpose. It is
15 blatantly not true.

16 CHAIRMAN BOLLWERK: All right. Mr. Kennedy, I'll give
17 you one last word, briefly, sir, if you want to say
18 anything.

19 MR. KENNEDY: No, nothing further, Your Honor.

20 CHAIRMAN BOLLWERK: Okay.

21 All right. We'll take it under advisement and we'll
22 issue a ruling and --

23 MR. TURK: May I make one last comment, Your Honor?

24 CHAIRMAN BOLLWERK: Sure.

25 MR. TURK: I'm sorry to intervene in your order of

1 proceeding.

2 One thing that we didn't address is the question of
3 burden of proof. As the proponent of standing, it is
4 incumbent upon the Confederated Tribes to establish it.
5 Here you do have conflicting information with respect to the
6 number of visits by the little girl to the reservation, as
7 well as with respect to the number of times that Ms. Reid
8 herself comes to the reservation.

9 In your decision on standing, you'll have to consider
10 whether the burden itself has been satisfied by the
11 Confederated Tribes.

12 DR. KLINE: Mr. Silberg, is it your view now that, as
13 to the future, there will be future visits likely by the
14 child to Skull Valley Reservation?

15 MR. SILBERG: On our knowledge and belief, it is our
16 information that the member of the Skull Valley -- of the
17 Confederated Tribes has indicated that the child will not be
18 visiting, but that was a not -- that was not a decision by a
19 member of the Skull Valley Band.

20 CHAIRMAN BOLLWERK: It sounds like we're really outside
21 the record here, so I --

22 Mr. Kennedy, I still want to offer you the last word,
23 if you have anything you want to say in response to
24 Mr. Silberg.

25 MR. KENNEDY: That was not my understanding. My

1 understanding is that the grandmother has taken the child to
2 the reservation whenever the grandmother has been out of
3 town on tribal business. And that would be her intent in
4 the future, as well as in the past.

5 I think the fact that Cassandra Reid from the Skull --
6 from the Goshute Reservation filed the affidavit that she
7 did created some animosity on behalf of the Skull Valley
8 person and they have to resolve that problem. But the
9 intent would be to continue those relationships as they have
10 in the past.

11 CHAIRMAN BOLLWERK: All right. I think we'll take that
12 issue under advisement and we'll, as I say, issue a ruling
13 in due course.

14 The other standing issue that I'm aware of, my
15 understanding is that there was no objection to the standing
16 of any of the other parties. Is that correct?

17 MR. TURK: That's correct.

18 CHAIRMAN BOLLWERK: With the exception, I should say,
19 the objections of Mr. Wilson we'll deal with in a second.
20 We haven't really talked about any. But is that -- am I
21 understanding correct in that regard?

22 MR. TURK: Yes, sir.

23 CHAIRMAN BOLLWERK: Terms of the State and OGD and
24 Castle Rock and the -- all right.

25 Mr. Wilson, the petition that your group filed came in

1 last week, I believe by -- we received a copy by e-mail.
2 That's how I heard. And it came to my office, the secretary
3 didn't received it. It's been officially received and
4 docketed back in Rockville, so you're now -- your petition
5 is officially before the Board.

6 The normal order of proceeding would be allow other
7 parties to file answers to that petition. You've already
8 filed at least one amended version of that petition. Do you
9 have any inkling or intent to amend that petition at any
10 other point before we would have answers filed by the other
11 parties at this point?

12 DR. WILSON: Yes, Your Honor. There are two things I
13 would like to say right now.

14 There was a -- in view of the fact we've only been
15 aware of this particular department, at least I've only been
16 aware of this particular department moderately recently, and
17 the Atlantic Legal Foundation has only been approached
18 recently, although one of the problems with a group of
19 people is finding out whether there was conflict of
20 interest.

21 One of the initial petitions is Mr. Manny Munsey, has
22 found in an obscure part of his law firm there's a
23 possibility of conflict of interest. So he was having to
24 withdraw from that petition. There are one or two other
25 people who have been searching for conflict of interest and

1 have now agreed to be on the petition, and I will provide
2 you with a list of that very shortly.

3 And in particular, there are several people still in
4 the state of Utah. And it's quite obvious that anyone in
5 the state of Utah is quite likely to be -- who is any
6 professional competence, to be involved in some conflict
7 way. And they are searching for that, for that particular
8 matter, and I'll know by the end of the week.

9 And so I've not been able to provide the names of those
10 people. And -- in that matter. But otherwise, we have no
11 particular desire to amend the petition any particular way.
12 The Atlantic Legal Foundation will be the formal legal
13 representation.

14 Atlantic Legal Foundation has been involved for the
15 last six years in the role of making sure that accurate
16 science in the courts has been -- is involved, including six
17 Amicas -- before the supreme court.

18 This will be amended no later than the end of the week.

19 CHAIRMAN BOLLWERK: End of the week. What I'm trying
20 to avoid is having the parties start shooting at a moving
21 target here.

22 DR. WILSON: I understand that, yeah.

23 CHAIRMAN BOLLWERK: So it sounds like by the end of the
24 week, let's say, be generous here and say Monday?

25 DR. WILSON: Monday morning. That will be a proper,

1 accurate list of petitioners. And I will make sure that
2 that's delivered at the executive's office.

3 CHAIRMAN BOLLWERK: Okay. Now do you, sir, are you
4 going to be -- you're going to be filing this from -- you're
5 from Boston. Is that correct?

6 DR. WILSON: Well, I'm not quite sure which would be
7 particularly most avocet for the Board. I will be the
8 person who is the spokesman from the group, but the Atlantic
9 Legal Foundation will be formally legally involved.

10 CHAIRMAN BOLLWERK: Right.

11 DR. WILSON: And whether it is quite proper for the
12 Board for the legal foundation to be involved or myself to
13 be the formal filer, for that I would seek, I would have to
14 seek guidance.

15 CHAIRMAN BOLLWERK: I guess my question is how and when
16 are we going to receive a copy of this petition? I guess
17 that's the bottom line here. You're saying what, by Monday,
18 by at least e-mail, as you did before, we will all receive a
19 copy of that?

20 DR. WILSON: By e-mail, almost certainly by the end of
21 -- by Sunday night by e-mail. If people haven't consulted
22 their conflict of interest by Sunday, they'll obviously no
23 longer add to the petitioners and there's no other change in
24 petitioners as well.

25 CHAIRMAN BOLLWERK: All right. Let's say this then.

1 That by 4:30 Eastern time on Monday you will have in our
2 hands and in the hands of the other parties here, by e-mail,
3 or fax if for some reason e-mail doesn't work, a copy of
4 your amended petition with -- listing whomever your
5 individual petitioners are, as well as the Atlantic Legal
6 Foundation.

7 DR. WILSON: Definitely.

8 CHAIRMAN BOLLWERK: I would also appreciate it if the
9 Atlantic Legal Foundation would enter a notice of appearance
10 in terms of their counsel. It's in the rules and they need
11 to do that so we know what attorney we're dealing with.

12 DR. WILSON: That we can do. That we can do.

13 CHAIRMAN BOLLWERK: All right. And that would be a
14 good idea if that were done Monday as well.

15 DR. WILSON: That will be done at the same time.

16 CHAIRMAN BOLLWERK: All right. And of course still
17 have to comply with the rules in terms of filing a paper
18 copy with the office of the secretary and serving everybody
19 else.

20 DR. WILSON: Yeah. They will be -- I will make sure
21 those are hand delivered to the office of the secretary on
22 Monday morning.

23 CHAIRMAN BOLLWERK: Okay.

24 DR. WILSON: Because one of our petitioners, as you
25 know, is in a Washington law firm.

1 CHAIRMAN BOLLWERK: Okay.

2 MR. QUINTANA: The Skull Valley Band of Goshutes would
3 stipulate to the standing, and encourage the admission and
4 acceptance of the intervention of the Atlantic Legal
5 Foundation and these nobel laureates and prominent
6 scientists.

7 CHAIRMAN BOLLWERK: Okay. Well, there's one yes, but
8 we have a lot of other people we have to hear from.

9 The -- assuming that everybody has a copy of this by
10 COB Monday, what are we looking at in terms of response
11 times?

12 I take it you're basically talking about adding names?

13 DR. WILSON: Adding names. And hopefully I won't
14 subtract anymore.

15 CHAIRMAN BOLLWERK: Okay. One thing I've noticed in
16 the petition is we don't have many addresses. Is that a
17 problem for people in terms of --

18 DR. WILSON: I will make sure the addresses --

19 CHAIRMAN BOLLWERK: Because I think we'll --

20 DR. WILSON: -- will be all on there.

21 CHAIRMAN BOLLWERK: At least in terms of the
22 individuals, I don't want to start arguing your case for you
23 here, but in terms of the individuals, that may have some
24 significance to people. Am I correct in that respect?

25 MR. BLAKE: Yes, Your Honor.

1 CHAIRMAN BOLLWERK: Okay. So why don't you make sure
2 that we get a list, the people that you list, they also have
3 their residence where they -- all right, so we know where
4 they're at. Because you mentioned there's someone from
5 Utah. Now I don't even know who that is. I don't think
6 there's ever been a listing of the address, so -- all right?

7 Then in terms of response time, how much time do anyone
8 else need? Ten days, two weeks? Ten days enough time?

9 MR. SILBERG: More than enough.

10 CHAIRMAN BOLLWERK: If we look at Monday. How about
11 Thursday the 12th? Any problem? Too much time?

12 MR. LATER: Your Honor, we would request two weeks,
13 just for some caution, because we haven't seen the petition.
14 We don't know what's there or that we'll have to respond to,
15 one way or the other.

16 MR. SILBERG: Judge Bollwerk?

17 CHAIRMAN BOLLWERK: Yes.

18 MR. SILBERG: I guess there's an initial question, is
19 who has the right to respond since none of the other
20 petitioners are yet parties.

21 CHAIRMAN BOLLWERK: There, at this point, we've been
22 allowing answers basically for and against any petition
23 that's come in. So why don't we proceed on that. Anyone
24 that wants to file a response to this petition, feel free to
25 do so. We'll be glad to hear from you. Although obviously

1 just, we'll just accept answers from anybody in response to
2 them; all right?

3 MS. CHANCELLOR: I think we would like two weeks too,
4 Your Honor, because we have some other contentions we need
5 to respond to.

6 CHAIRMAN BOLLWERK: You have some time scheduled on the
7 11th; right?

8 MS. CHANCELLOR: That's right.

9 CHAIRMAN BOLLWERK: All right. Why don't we make it
10 the 13th then. Let's also make that a close of business
11 date so that we get e-mail or fax by that, copy whatever
12 responses you have in favor or opposed to the petition
13 Mr. Wilson's going to be providing us on Monday. All right?
14 Any questions about that?

15 Okay. And again, sir, the -- better to get the
16 Atlantic Legal Foundation, I suggest you probably file
17 earlier rather than later.

18 DR. WILSON: Yeah, they'll be formally filed.

19 CHAIRMAN BOLLWERK: Okay.

20 Anyone else have anything they want to raise on the
21 issue of standing?

22 Okay. Why don't we go ahead then and move to the
23 question of contentions. And as I mentioned before, we have
24 90 some contentions, although we're going to be hearing
25 arguments, I think at least in terms of substance of them,

1 only on about 80 of them.

2 MS. CHANCELLOR: Your Honor, if I may interject. Are
3 we going to do admissibility of contentions, in terms of the
4 legal standard? Are we going to address that?

5 CHAIRMAN BOLLWERK: In terms of an overview of the
6 legal standard? I think we can deal with that on a
7 contention by contention basis.

8 MS. CHANCELLOR: Oh, okay. I misunderstood the other.

9 CHAIRMAN BOLLWERK: I think we understand pretty well,
10 you know, the basic background and legal standards to get a
11 contention in, unless somebody has something in particular
12 they want to say on that subject.

13 MS. CHANCELLOR: I guess I'm a little unclear on
14 adoption by reference, and also rewriting the contentions.

15 CHAIRMAN BOLLWERK: Okay. Let's address that question
16 here. Let me just say something up front as well.

17 We mentioned in the order that we issued that we have
18 read all the pleadings here. So it's not necessary to sort
19 of go over the same ground as we go through these. It would
20 be a good idea to try to stick to new matter and emphasize
21 things if we can, because we would like to move this along,
22 as I'm sure all of you would as well.

23 In terms of the redrafting of the contentions, I
24 know -- you usually say it as an example. Some of the
25 redrafts you have seemed to agree to, others you do not. I

1 guess it's our feeling that if there's no objection to
2 having -- to the redraft, that we're willing to accept that.
3 If there's an objection, then we'll simply stand on what was
4 originally filed.

5 Now I think it was with OGD, you all filed some -- I
6 think you redrafted a number of your contentions?

7 MS. BELILLE: Yes, Your Honor.

8 CHAIRMAN BOLLWERK: And again, I would say that if
9 people have redrafted them and you have an objection to
10 that, I suspect we're just going to stick with the original
11 contention at this point, unless they insist on it. But I
12 take it you are willing to stand on your original
13 contention?

14 MS. BELILLE: Yes, we are willing to stand on our
15 original contentions.

16 CHAIRMAN BOLLWERK: Okay.

17 MR. TURK: And we would object to the reformulation
18 because it would require us to go to a comparison of the two
19 documents to try to figure out what the differences are.
20 We'd prefer to rest with their original filing.

21 CHAIRMAN BOLLWERK: Okay. Now the State, for instance,
22 accepted some of Mr. Silberg's redrafts. Do you have a
23 problem with those?

24 MR. TURK: I won't object to that.

25 CHAIRMAN BOLLWERK: Okay.

1 All right. So what we would propose to do then, unless
2 anybody has a problem with it, is if there's been some
3 agreement on a redraft of a contention that's been submitted
4 by Private Fuel Storage, we'll accept that. If there's been
5 any objection to it, we'll simply go with the contention as
6 originally drafted.

7 MS. CHANCELLOR: Your Honor, in terms of acceptance of
8 the redraft, we would want it understood that the contention
9 as a whole stands as submitted.

10 CHAIRMAN BOLLWERK: Okay.

11 MS. CHANCELLOR: That we aren't just relying on
12 Mr. Silberg's redrafts. That for purposes of admissibility,
13 the entire contention and its basis should be reviewed as
14 submitted.

15 CHAIRMAN BOLLWERK: Now you're going back to saying
16 your contention as drafted is what you want. You know, I --

17 MS. CHANCELLOR: Well --

18 CHAIRMAN BOLLWERK: You have to -- you can -- let me
19 just see if Mr. Silberg wants to say something and I'll go
20 back to you.

21 MS. CHANCELLOR: Okay.

22 MR. SILBERG: Yeah. I don't have a problem with
23 certainly accepting any redrafts. The reason we attempted
24 to do that, and it was a very labor intensive process as you
25 know, was because we think that many of the contentions as

1 written are so vague and so general as to be virtually
2 unlitigable. And we have tried honestly to take the bases
3 as stated and reformulate them into an understandable
4 specific contention which we think meets the requirements
5 set forth in the Commission's rules of practice.

6 If the parties are not willing to accept those
7 redrafts, then obviously a lot of our criticisms as to the
8 vagueness and lack of support for the extraordinarily broad
9 statements that the contentions make will have to be
10 considered by the Board. We were trying to make this
11 process a lot more sensible, a lot more easy to --as we
12 proceed down the road. So we know what the issues are and
13 we're not left with a contention that says you haven't
14 considered accidents, when the bases may list three or four
15 specific accidents.

16 If you go to the much broader issue, we can be here
17 forever. And while that may be the aim of some of the
18 parties, I don't think it's the aim of the Commission when
19 it created the rules of practice.

20 CHAIRMAN BOLLWERK: All right.

21 MS. CHANCELLOR: If I may. We understand that the
22 contention is limited by the basis that we present. And
23 Mr. Silberg has, in some instances, merely outlined the
24 basis and suggested that that should be the contention.

25 What we are saying is that the contentions that we have

1 submitted should be viewed in terms of the contention and
2 the bases as a whole.

3 CHAIRMAN BOLLWERK: Well, the bottom line I guess for
4 the Board is we have to have something that is stated as a
5 contention. And the question is do you want us to look at a
6 contention, the word, the language of the contention as you
7 originally filed it as your contention, or do you accept
8 Mr. Silberg's redraft of that language as the contention and
9 which you want to us to consider?

10 MR. SILBERG: We --

11 MS. CHANCELLOR: Go ahead.

12 MR. SILBERG: We also think that the Board has the
13 power to reformulate the contentions to meet the rules of
14 practice consistent with the bases as laid out by the
15 parties in their pleadings.

16 CHAIRMAN BOLLWERK: Right. And we may well do that in
17 some instances. But I'm just trying to get a handle around
18 exactly what she wants us to consider at this point.

19 MS. CHANCELLOR: Well, recently there is factual basis,
20 factual information in the basis that props up and supports
21 the contention. So our concern is whether some of that
22 factual information has been taken out of context and put
23 into the contention. And we make a great effort to set out
24 why we think something doesn't meet the requirements of the
25 rule. And to have that brought up into the contention I

1 think is a little misleading.

2 So I think we could agree that where we have not
3 opposed the rewrite of the contention, we would stand by
4 that, provided that the contention and the basis are treated
5 as a whole.

6 CHAIRMAN BOLLWERK: Well, let me make it clear to you
7 what I'm going to do.

8 MS. CHANCELLOR: Okay.

9 CHAIRMAN BOLLWERK: And then you tell me how you would
10 like that.

11 MS. CHANCELLOR: Okay.

12 (Laughter)

13 MS. CHANCELLOR: Good idea.

14 CHAIRMAN BOLLWERK: When we list these contentions
15 there, we're going to have a thing that says contention and
16 we will talk about the bases. In the instances, at least as
17 I understand it now, where Mr. Silberg has redrafted the
18 contention, and you've not objected to it, I -- when it says
19 the word "contention," what is going to be there is the
20 contention with the subparts to it. That is how your
21 contention will read, and that is what -- the contention
22 that would be admitted if we were to do so.

23 So if you're comfortable with that, that's what we'll
24 stick with. If not, we'll go back to the original language
25 that you submitted as your contention.

1 MR. SILBERG: We will also try to work, during this
2 week and maybe even beyond, to see if we can't agree amongst
3 the parties. I don't know whether that's possible or not.

4 CHAIRMAN BOLLWERK: All right.

5 MR. SILBERG: But we will --

6 CHAIRMAN BOLLWERK: I have to say that this, the point
7 of making these issues as focused as possible, is important
8 to everyone here. We want to know what you want to
9 litigate. And I really encourage you to work on that. It's
10 important that -- I recognize everyone wants to keep their
11 options open here, but we have to know what's important to
12 you all and what you want to litigate.

13 MR. SILBERG: Okay. Well --

14 MS. CURRAN: Maybe I could help a little. My
15 understanding of what Mr. Silberg tried to do was to take
16 out of the basis assertions that, you know, there's a
17 general statement in the contention that X requirement isn't
18 met. And then there are various statements in the bases
19 that detail ways in which the requirement isn't met and then
20 support that subassertion with facts.

21 What I think Mr. Silberg did was took the various
22 subassertions and put them into the contention part of it.
23 I mean every contention has two parts, the contention and
24 the basis. And to me, it didn't seem like a big problem to
25 move those subassertions up. But you can't just read that

1 first part of the contention. You have to also read the
2 factual support for those assertions.

3 So that's why we're saying our contentions are going to
4 have to stand as a whole, even though if it's helpful to you
5 to use those assertions that he drafted as kind of a summary
6 of what the contention is alleging, but one still needs to
7 read the factual basis for those assertions.

8 CHAIRMAN BOLLWERK: So in other words, what you would
9 have us do is take his language and stick it on top of what
10 you listed as the bases, and we consider the --

11 MR. SILBERG: Let me make one more shot at it.

12 CHAIRMAN BOLLWERK: All right.

13 MR. SILBERG: Then perhaps we can do some of this off-
14 line.

15 What we tried to do was take out, from the supporting
16 material, what the specific issues were that the parties
17 wanted to litigate, all of which fell within the very broad
18 language, sometimes extremely broad language of the, quote,
19 contention itself. For some of those subissues there were
20 factual matters. And for the most part at least, we tried
21 not to put those into the contentions.

22 The Commission's rules require that you have a specific
23 contention. It also requires, in addition to that, that
24 that contention be supported by bases, by facts, by
25 opinions. The facts and opinions don't need to be in the

1 contention because those do not define what is the issue
2 which is to be litigated.

3 However, the contention and the subcontentions do
4 define what it is that we will be litigating during the
5 course of this process. And unless we make that
6 distinction, I think we're going to wind up with issues to
7 litigate that we're going to be arguing about forever as to
8 what is their true scope. And our attempt was to define
9 that scope up front, at a time before we've all invested a
10 lot of opportunity in discovery and testimony.

11 CHAIRMAN BOLLWERK: It would be my supposition,
12 wouldn't it, that once discovery starts, and if there are
13 any amended contentions, then one of the first questions is
14 going to be what is the scope of your -- and obviously the
15 Board is going to be very interested in looking at that if
16 it comes to a question later of what was the scope of this
17 contention. So let me put you on notice of that right away.

18 MR. SILBERG: That is exactly why we went through this
19 effort.

20 CHAIRMAN BOLLWERK: Okay. Well, we'll come back to you
21 one last time. I just, you have -- then I take it you have
22 no objection if we consider the contentions that you have
23 not objected to as being the statements that he has provided
24 with the subparts then? Those are what you want us to look
25 at as your contentions, with the understanding that what

1 you've listed then as your bases we should look at as well.
2 Is that --

3 MS. CURRAN: Right. We -- I mean we don't necessarily
4 want you to do it that way. We agreed to that as a
5 reasonable way. It seems to me not to make a whole lot of
6 difference, because the case law says your contentions are
7 limited to what's stated in your bases. So the two parts
8 are very closely related.

9 But if it would make it any easier for the Board to
10 distinguish the issues, it's just very important not to
11 completely divorce the contentions from their bases.

12 CHAIRMAN BOLLWERK: All right. So we'll then take, the
13 ones you've agreed to, we will take those statements are
14 your contention, with the understanding that we need to look
15 as well at the information that you set out in the bases of
16 the original filing. All right?

17 Judge Lam, did you want to say something?

18 DR. LAM: Yeah. I have a remark on redrafting.

19 If everybody agreed to a redraft, the Board certainly
20 doesn't have any problem with that. But if there is an
21 objection, it's my view that that would create an
22 unnecessary controversy that does not advance the case here.

23 CHAIRMAN BOLLWERK: All right.

24 Anyone then have any other comments on at least the
25 language of these contentions? We're clear then on what

1 we're going to do?

2 MR. LATER: Your Honor, I'd like to make one note, that
3 we would join with the State in their position. We have
4 tried to indicate where we thought that the redrafts by
5 Mr. Silberg's office were reasonable, but we've also
6 indicated in some cases where we disagreed with those
7 redrafts. And in those instances, we certainly would expect
8 to stand on our contention as originally presented.

9 CHAIRMAN BOLLWERK: All right. That would be my
10 understanding. If you objected to the contention and you
11 wish to stand on the original language, then that's what we
12 will do --

13 MS. CHANCELLOR: In some --

14 CHAIRMAN BOLLWERK: -- at this point.

15 MS. CHANCELLOR: Excuse me. In some instances, I think
16 we were silent whether we accepted it or not. And I think
17 that we would like silence to say that we oppose the
18 rewrite.

19 CHAIRMAN BOLLWERK: All right. I will not take silence
20 as assent then.

21 MS. CHANCELLOR: Thank you.

22 CHAIRMAN BOLLWERK: All right. Anything else you want
23 to say?

24 All right. In terms of the question of incorporation
25 by reference, let's deal with that when we get down to the

1 contentions under the other issues that we've actually --
2 we'll deal with that in a couple minutes, I think.

3 I guess at this point, why don't we go ahead and start
4 with, I think the first ones I listed here. And we're going
5 to start with other issues, then we'll move on to safety
6 issues, then environmental issues and emergency planning
7 issues.

8 Anybody have a problem with proceeding that way? That
9 seemed reasonable.

10 And again, when we put these as I mentioned earlier,
11 when we put these in a category, we were not necessarily
12 trying to narrow your contention. It was simply to get a
13 primary focus. You know, if you feel your contention has
14 both environmental significance so we need to make that
15 dual. I think most of you have made that fairly clear, in
16 some of the files that we've gotten.

17 In terms of, start with Utah. Contention A, question
18 about the statutory requirements.

19 I guess let me just make a preliminary comment. I have
20 little doubt that you have stated a legal contention for the
21 point. I don't think there's any question about that. I
22 think the question the Board needs answered is when we
23 consider, is this something that's included under the rules.
24 And I guess that's what I would like you to focus on in your
25 presentation.

1 MS. CHANCELLOR: Your Honor, I believe that the Board,
2 this is a fundamental question of whether this proceeding
3 should go forward, whether NRC has the authority to license
4 this facility.

5 If the Board feels that it does not have authority to
6 address this question, we request that the issue be set
7 aside and sent to the Commission for resolution. There's
8 absolutely no sense in proceeding if NRC does not have the
9 statutory authority to license the facility. We believe
10 there's adequate support in our contentions to show that NRC
11 does not have such authority.

12 CHAIRMAN BOLLWERK: Would your argument be the same to
13 us if the notice, the Statement of Considerations, the Part
14 72 when it was revised and adopted, had dealt with this
15 particular issue explicitly? Did it? I don't -- no one's
16 ever said that to us. I don't know that it --

17 So let's have the Commission -- if this comment was
18 made, exactly the point that you're making, had been made by
19 a comment to the rule. Would we -- would you be making the
20 same argument to us in terms of our ability to consider this
21 issue?

22 MS. CHANCELLOR: No. Because I believe that at the
23 time that the rule was adopted in 1980, 1980? Yes, 1980.
24 That this sort of a facility, a private national 4,000 MTU
25 facility was not contemplated.

1 Assuming for argument's sake that such a facility were
2 to be constructed and the Commission did agree that it did
3 have the authority, at that stage, then maybe an argument
4 that the Commission had considered that issue. However,
5 before a real live issue is presented, there's no
6 opportunity for the state affected to have any say in such a
7 decision by the Commission. So we believe that this issue
8 is ripe; that it is something that the Board should
9 consider.

10 CHAIRMAN BOLLWERK: So you're saying we can consider
11 this basically because the record at this point on this
12 particular point is -- has not been addressed by the
13 Commission?

14 MS. CHANCELLOR: That is correct.

15 CHAIRMAN BOLLWERK: Okay. Anything else you want to
16 say on that point?

17 MS. CHANCELLOR: Not on that particular point. I'd
18 just like to go over a couple of other things with respect
19 to the legal issues.

20 CHAIRMAN BOLLWERK: I don't know that that's going to
21 be useful, because as I stated, I think you stated a legal
22 issue. I think the only question is can we consider it.

23 MS. CHANCELLOR: Yes, I believe you can.

24 CHAIRMAN BOLLWERK: Okay.

25 All right. Mr. Silberg, anything you want to say on

1 this subject?

2 MR. SILBERG: With respect to the State's response to
3 our answers, I think there are embedded in there a large
4 number of legal errors in the various factual statements.
5 In light of the fact that I think this Board is looking as
6 to whether the Commission has precluded considering those
7 issues, I think the single issue is that Part 72 says what
8 it says.

9 There is no limit in 10 C.F.R. Part 72 that would
10 prohibit an applicant from licensing, from seeking a license
11 for a 40,000 metric ton facility or a 20,000 metric ton
12 facility, or a 10,000 metric ton facility, or a 2 metric ton
13 facility. Part 72 is open-ended with respect to the size of
14 the facility.

15 There was no indication that the Commission sought to
16 impose any restrictions on the size of the facility in terms
17 of the tonnage of said fuel that could be stored there or
18 how large an area it might cover or which reactors it might
19 cover, or any other limitations of those sort. The State
20 has pointed to nothing in 10 C.F.R. Part 72 which this size
21 facility would violate simply as a matter of size.

22 I think the legal basis that they have laid forth which
23 said -- which attempts to argue that the Nuclear Waste
24 Policy Act somehow revokes the authority that the Commission
25 already had and already had exercised is simply wrong. And

1 their reliance on provisions in the Nuclear Waste Policy Act
2 to say that the NRC no longer had that, excuse me, no longer
3 had that authority is simply in error, and they are
4 misconstruing provisions in the Nuclear Waste Power Act.

5 The Nuclear Waste Policy Act does not limit the
6 authority in the Atomic Energy Act. And the provision that
7 they cite, 42 U.S.C. 10155(h), I believe it is, says that
8 notwithstanding anything in this act, that there shall be no
9 reliance on federal or private interim storage. It's the
10 reliance on this act that I think clearly shows that the
11 Atomic Energy Act's authority which pre-existed the Nuclear
12 Waste Policy Act continues after that.

13 As we pointed out in our brief, repeals by implication
14 are disfavored. And there's clearly no indication that the
15 Commission intended to retract on the authority that they
16 had already exercised when they issued Part 72.

17 CHAIRMAN BOLLWERK: So you're arguing that basically as
18 the plain language says, makes it clear that the
19 Commission's already considered this and therefore this
20 Board cannot?

21 MR. SILBERG: Right. It is clearly a challenge to the
22 regulations. What the State wants, I believe, would be
23 appropriate in a petition for rule making. They could
24 certainly petition the Commission to amend Part 72 to limit
25 its size to 339,999 metric tons or some other number. That

1 is a remedy which is -- which exists for them under the
2 Commission's regulations. But this hearing is not the
3 appropriate place to challenge those regulations or to ask
4 this Board to impose new ones.

5 MR. KENNEDY: Private Fuel Storage, the limitations
6 cited in the contention though didn't refer so much to size
7 as to ownership, i.e. the State contended that the Nuclear
8 Waste Policy Act assigned the ownership in federal ownership
9 as opposed to private. Would you address that?

10 MR. SILBERG: The Nuclear Waste Policy Act certainly
11 creates a program for the Department of Energy to build a
12 permanent repository, a monitored retrievable storage
13 facility, and a federal interim storage facility. There is
14 nothing in the Nuclear Waste Policy Act that suggests that
15 the Commission, which has pre-existing authority, cannot
16 license a private centralized interim storage facility of
17 that size or any other size.

18 In fact, if you look at the purposes clause in, I think
19 it's Section 111 of the Nuclear Waste Policy Act, it
20 specifically provides -- let me get it for you.

21 Section 111(a)(5) says that "The generators and owners
22 of said nuclear fuel have the primary responsibility to
23 provide for and the responsibility to pay for the costs of
24 the interim storage of such waste and spent fuel until such
25 waste and spent fuel is accepted by DOE." It doesn't say

1 interim storage at reactive sites, it says interim storage.

2 So clearly congress, when it passed the Nuclear Waste
3 Policy Act, was not repealing the existing authority that
4 the Nuclear Waste -- that the Nuclear Regulatory Commission
5 already had.

6 CHAIRMAN BOLLWERK: Is there anything that you can
7 point to in the Statement of Consideration of Part 72
8 that -- where the Commission explicitly addressed the
9 argument that Ms. Chancellor is making?

10 MR. SILBERG: Part 72 by definition is aimed at private
11 centralized interim spent fuel storage facilities. That's
12 what it's about. It was not until after Part 72 was enacted
13 that the MRS provisions were added once congress passed the
14 Nuclear Waste Policy Act. From its very start, it was aimed
15 at interim spent fuel storage facilities. Some of those
16 were at reactors, some of those were away from reactors.

17 As we cited in our brief, the Commission had licensed
18 and has amended nine times the license for the G.E. Morris
19 facility, which is an away from reactor spent fuel storage
20 facility which has fuel from a number of different reactors
21 all over the country. That is an existing Part 72 license
22 which the Commission has amended as recently as, I believe,
23 1995, clearly indicating that the Commission believes that
24 it has the jurisdiction to do exactly what we have asked for
25 in this case.

1 CHAIRMAN BOLLWERK: Anything else at this point you
2 want to say?

3 MR. SILBERG: Oh, one other point. With respect to the
4 request that this issue be certified to the Commission, I
5 don't believe that the State has met the tests for
6 certification under 2.718. That is a discretionary step
7 which should only be taken in the most compelling
8 circumstances, as the Appeal Board said in Palo Verde Alab
9 742, and where a party -- and it should only be issued where
10 a party is threatened with immediate and serious irreparable
11 impact which can't be later remedied, or which affects the
12 structure of this proceeding in a pervasive or unusual
13 manner.

14 Certainly any time a contention is excluded, it affects
15 a proceeding. However, excluding this contention at this
16 time in no way affects this proceeding in a pervasive or
17 unusual manner. So I don't believe that they've met --

18 CHAIRMAN BOLLWERK: Unless Ms. Chancellor is right.
19 Then the proceeding is over, isn't it?

20 MR. SILBERG: If it's right?

21 CHAIRMAN BOLLWERK: That's pervasive.

22 MR. SILBERG: The Commission has already made that
23 determination. And this Board, as any licensing board, is
24 not entitled to second-guess the decisions which the
25 Commission has made, both in its regulatory decisions and

1 its adjudicatory decisions. And that's true not only on
2 this issue, but in any other issue.

3 CHAIRMAN BOLLWERK: That's correct, assuming the
4 Commission has addressed it.

5 MR. SILBERG: Correct.

6 Dr. Lam.

7 DR. LAM: I have a question for Mr. Silberg. In his
8 contention, the State has asserted that there are
9 fundamental differences between Part 72 and the Nuclear
10 Waste Policy Act.

11 For example, the State assert that the Nuclear Waste
12 Policy Act require meaningful role ascribed to the safety,
13 but Part 72 is silent on that. And the State will provide
14 another example.

15 What is your response to that, sir?

16 MR. SILBERG: That is a congressional determination.
17 Congress included many provisions in the Nuclear Waste
18 Policy Act. And those were put in for a variety of reasons.
19 Some of them because felt it was the right thing to do, some
20 of them may have been the right political compromises, some
21 of they may have been the moral and correct result. For
22 whatever reason, congress has spoken.

23 And this Board, I don't think, is entitled to say
24 because congress has included these items with respect to
25 Facility A and these other items with respect to Facility B,

1 that a licensing board can second-guess that determination
2 and move those various factors from one column to another.

3 There are many requirements in the Nuclear Waste Policy
4 Act which apply to projects run by the Department of Energy.
5 Whether that's because congress felt the Department of
6 Energy needed more or less limitation than a private
7 applicant, you know, one can speculate. But the fact is
8 that congress has said what congress has said, and this
9 Board and me and the State of Utah are all subject to those
10 statutory determinations.

11 DR. LAM: So are you saying this is the basis of what
12 you just earlier stated, that this -- you consider this
13 assertion a challenge to the rule?

14 MR. SILBERG: Yes. And if the State is saying that the
15 Commission has no authority to issue a Part 72 license to
16 this facility because the Department of Energy has to do
17 Items A, B, C for a monitored retrievable storage facility,
18 then they're clearly seeking to impose new requirements on
19 the Commission which congress did not see fit to impose.
20 And that is a challenge to the regulations as much as
21 anything else.

22 CHAIRMAN BOLLWERK: All right. Anything -- thanks.
23 Anything further from the Board?

24 Mr. Turk?

25 MR. TURK: Ms. Marco will address this.

1 CHAIRMAN BOLLWERK: All right. Ms. Marco.

2 MS. MARCO: It is the staff's position that the
3 Commission's authority to license private away from reactor
4 fuel storage comes from the Atomic Energy Act, and that
5 nothing in the Nuclear Waste Policy Act impinges or limits
6 the Commission's authority.

7 The State has made several assertions in its reply
8 which I would like to address.

9 First, the State takes issue with the applicant's
10 reference to Siegel v. Atomic Energy Commission, a 1968 D.C.
11 Circuit Court decision. The staff agrees with the applicant
12 that Siegel describes the regulatory scheme authorized by
13 the Atomic Energy Act as being virtually unique in the
14 degree of authority the Commission has in achieving its
15 statutory objectives.

16 The State asserts that Siegel applied to the AEC, and
17 that as a result of later events, Siegel no longer aptly
18 describes the NRC's authority. However, courts continue to
19 rely on the language of Siegel as authority for the
20 Commission's board regulatory latitude.

21 For example, as recent as 1992, the D.C. Circuit Court
22 of Appeals, in Nuclear Information Resources Service v. NRC,
23 quoted Siegel, and commented that "The Atomic Energy Act has
24 been consistently read as it was written, to give the
25 Commission broad regulatory latitude."

1 The State additionally asserts that the Nuclear Waste
2 Policy Act does not delegate policy decisions to the NRC.
3 The State's reference to Kelly v. Selin, however, does not
4 stand for the proposition that the Nuclear Waste Policy Act
5 does not delegate policy decisions to the NRC.

6 First, it's the staff's assertion, as we addressed in
7 our brief, that the Nuclear Waste Policy Act does not apply
8 to the Commission's authority to license private away from
9 reactor storage.

10 In addition, in Kelly v. Selin, the court addressed one
11 policy that congress had explicitly decided in the Nuclear
12 Waste Policy Act. And that policy was to allow the NRC to
13 go ahead and approve various dry storage technologies on a
14 generic basis without site-specific hearings. And the court
15 stated that those who wanted those site-specific hearings
16 had to appeal to congress and not the NRC. Kelly v. Selin,
17 therefore, does not support the State's assertions that the
18 NRC is not free to decide issues of policy.

19 The State also makes the assertion that the history of
20 Section 53-A of the Atomic Energy Act does not support its
21 use as authority for the NRC to license private away from
22 reactor storage. The State asserts that the 1967 amendment
23 to Section 53-A was meant to clarify the Commission's
24 authority to license ownership of special nuclear material
25 in addition to its possession and use, because special

1 nuclear material was no longer a scarcity in '68, '67.

2 However, the result of the 1967 amendment was to add to
3 the Commission's licensing authority for special nuclear
4 material. It added ownership as an activity the Commission
5 could license in addition to what already was there for
6 possession and use.

7 This application, as described in the Federal Register
8 notice, is to possess spent fuel and other radioactive
9 materials associated with spent fuel storage in an
10 independent spent fuel storage installation. The Atomic
11 Energy Act, including Section 53-A, authorizes the
12 Commission to license the possession and use of these
13 materials.

14 The State also makes the assertion that the
15 Commission's rationale for issuing Part 72 calls into
16 question that claim that the Atomic Energy Act's byproduct
17 and source material provisions also authorize it to license
18 away from reactor instances. This, they say, is because
19 Part 72 is to provide a more definitive regulation for spent
20 fuel storage in place of Part 70, the special nuclear
21 material regulations.

22 However, the Commission's authority section for Part 72
23 indicates that Part 72 is promulgated pursuant to the Atomic
24 Energy Act, Sections 62, 63 and 65. Those pertain to source
25 materials; Section 81, which pertains to byproduct

1 materials; as well as the provisions pertaining to special
2 nuclear material.

3 The Commission has specified a broader range of
4 authority in further defining the regulations pertaining to
5 spent fuel storage. And the Commission in Part 72 states
6 that spent fuel includes byproduct storage of special
7 nuclear material.

8 The State also in its reply poses the question, and
9 this is their question. They say "NRC already has authority
10 under the AEA to license private storage facilities at the
11 site of a reactor or away from reactor. Why did congress,
12 in the Nuclear Waste Policy Act, authorize private storage
13 of spent fuel only at reactors?"

14 And the answer to that is that under the steam of the
15 Nuclear Waste Policy Act, in order for a utility to enter
16 into a contract to have DOE store its fuel, it must first
17 make a showing of need. And then in addition, the utility
18 must first attempt various methods of on-site reactor
19 storage and as well as trade shipment of fuel to other
20 reactors before it can contract with DOE.

21 Therefore, the provisions of the Nuclear Waste Policy
22 Act addressing storage at reactor sites do so in the context
23 of conditions placed on utilities prior to contracting with
24 DOE for fuel storage.

25 CHAIRMAN BOLLWERK: Let me just -- let me interrupt

1 you. This kind of seems to me to be going to the merits of
2 the contention. I guess our concern, unless you can clarify
3 it for me, is has the Commission said, as I asked
4 Mr. Silberg, where has the Commission said or where can we
5 look to see if the Commission has dealt with this issue that
6 Ms. Chancellor has raised so that there's nothing for this
7 Board to say on the matter?

8 MS. MARCO: It is part of Part 72. The overall scheme
9 of Part 72 provides for this and there's nothing that
10 explicitly prohibits it.

11 CHAIRMAN BOLLWERK: So -- all right. So we basically
12 look at the language of the regulation. I guess your answer
13 is the same as Mr. Silberg's then.

14 MS. MARCO: Yes.

15 CHAIRMAN BOLLWERK: Okay. I don't need to look at the
16 Statement of Consideration to see an argument that's been
17 made and responded to like it's been framed here then.
18 You're basically saying the language of the regulations
19 takes care of it?

20 MS. MARCO: That's right.

21 CHAIRMAN BOLLWERK: Okay. A question. If the
22 Commission, for whatever reason, were to decide to pass a
23 regulation that allowed them to regulate FM radio stations,
24 if someone were to come in to apply for an FM radio station
25 and someone else would come in and say "That's not within

1 the Commission's authority," is that something the Board can
2 consider?

3 MS. MARCO: It would be unclear as to whether the Board
4 could consider it. Something that would probably have to be
5 addressed under 2758(b) where the Board acts as a first
6 hearing and let a commission look at that issue.

7 CHAIRMAN BOLLWERK: All right. Anything else you want
8 to say on this subject?

9 MS. MARCO: Nothing.

10 MR. TURK: We have one cathedral matter that we --

11 CHAIRMAN BOLLWERK: Okay.

12 MS. MARCO: Oh, that's right, yes. We had filed an
13 errata letter as a result of this contention. And when we
14 did so, it looked like the first two lines that we had
15 really wanted to be in were left out. So what I'd like to
16 do is circulate the proper page, if that's all right.

17 CHAIRMAN BOLLWERK: All right. Your -- let's see. You
18 have a --

19 MS. MARCO: Yes. What -- a while ago, after we had
20 filed --

21 CHAIRMAN BOLLWERK: Right. I remember receiving the
22 errata letter.

23 MS. MARCO: Okay. And what happened was that page was
24 not correct, because what happened was a portion of it was
25 deleted and it bumped the whole thing down on the page, on

1 the computer, and the first two lines got dropped. And we
2 meant to have them there and we'd like just to correct the
3 record.

4 CHAIRMAN BOLLWERK: So the errata letter was then
5 not --

6 MS. MARCO: Yeah.

7 CHAIRMAN BOLLWERK: I just want to make sure I
8 understand. I'm not giving you a hard time.

9 MS. MARCO: No, you're right. That's -- you're right.

10 CHAIRMAN BOLLWERK: Okay. You want to distribute that
11 to the parties? Is that what you --

12 MS. MARCO: Yes, I'd like to --

13 CHAIRMAN BOLLWERK: Okay.

14 MS. MARCO: -- add the new page to the record.

15 CHAIRMAN BOLLWERK: Have you sent a copy to the office
16 of the secretary?

17 MS. MARCO: We will.

18 CHAIRMAN BOLLWERK: I appreciate it.

19 Or if that's acceptable, you can simply serve it that
20 way, in the normal course of business. I don't know if
21 there's --

22 MR. TURK: May I suggest that we bind it into the
23 record, Your Honor?

24 CHAIRMAN BOLLWERK: If you think it's important. I,
25 you know, I'm not necessarily in favor of binding things

1 into the record.

2 MR. TURK: We'll see the letter after they --

3 CHAIRMAN BOLLWERK: Okay. Why don't we do that.

4 Why don't we consider this service on everybody; is
5 that all right? And then we'll disallow it and file it with
6 the office of the secretary.

7 MS. CHANCELLOR: Can I ask for clarification? Is this
8 the -- does this change the substance of the errata?

9 MS. MARCO: No, it doesn't.

10 MS. CHANCELLOR: So what you're saying is that you're
11 not --

12 MS. MARCO: This merely, the two original lines that
13 had nothing to do with why we're trying to -- and so this is
14 just to correct it.

15 CHAIRMAN BOLLWERK: All right. Ms. Chancellor.

16 MS. CHANCELLOR: I believe what this errata letter says
17 is that the NRC is retracting that this is a challenge to
18 the regulations. What it is is a challenge to the
19 Commission's statutory authority to make the rules. It is
20 not a challenge to the rules.

21 Clearly the Commission has authority to license an MRS
22 under Part 72, that it's listed underneath the Nuclear Waste
23 Policy Act. Also, explicit in the Nuclear Waste Policy Act
24 are that there are impact costs associated, that are costs
25 to state and local governments, that are associated with

1 licensing MRS's. I think it's clear that when congress made
2 a policy choice when there were large centralized national
3 facilities that they would pass through certain costs to the
4 state.

5 In addressing Siegel, that was a technological choice.
6 In that case, the argument was whether something could be
7 decided -- whether technology issues could be decided
8 generically. Here we're dealing with policy choices. This
9 is indeed pervasive on the proceedings if the Board does not
10 certify, in terms of the Board certifying it for the
11 Commission.

12 The State has spent enormous resources up to this point
13 to get basically its foot in the door. And to continue on
14 when this Board may not have authority to issue the license,
15 I believe is a fruitless exercise. And either the Board
16 should address this issue or certify it to the Commission.
17 Thank you.

18 CHAIRMAN BOLLWERK: All right.

19 MR. SILBERG: Can I make one responsive comment to
20 that?

21 CHAIRMAN BOLLWERK: Recognize every time you say
22 something --

23 MR. SILBERG: Right.

24 CHAIRMAN BOLLWERK: -- she's probably going to get
25 another chance. So --

1 MR. SILBERG: Right. Just two points.

2 First, I'm not sure whether I heard right. The State
3 is saying that this is not a challenge to Part 72 but it is
4 a challenge to the Commission's statutory authorization, in
5 which case it's still not within the scope of this Board;
6 the Commission has spoken.

7 With respect to the Siegel case, Siegel case did not
8 involve a policy choice. The Siegel case involved whether
9 the Commission should consider attacks from Cuba on the
10 Turkey Point Nuclear Power Station. The Commission made a
11 decision not on technology, but rather that that was an item
12 which was outside their authority. And as the staff noted,
13 Siegel has been cited multiple times, most recently in 1996
14 in a case that Ms. Curran and I were both involved in.

15 The question of authority I think is clearly one that
16 this Board is bound by the statements of the Commission, by
17 the regulations of the Commission. And like any other
18 contention, you know, if it's out, it's out. And it may
19 have ramifications down the line, but one doesn't stop the
20 proceedings midpoint.

21 CHAIRMAN BOLLWERK: Anything you want to say?

22 MS. CHANCELLOR: I think I've said it all.

23 CHAIRMAN BOLLWERK: All right. Very good.

24 Now, Castle Rock, 1, 2 and 3. Let's talk about those.

25 MR. LATER: I think number 1 is pretty similar, Your

1 Honor. I think 2 and 3 we've tried to phrase in a way that
2 addresses the question of whether or not the task of the
3 Commission has authority and regulations.

4 Let me talk about number 1 a little bit. I think
5 number one is the closest to the State contention. I think
6 we get some arguments that perhaps have not been phrased
7 directly by the State, although I think they are probably
8 inclusive in the State's argument.

9 As I understand the parameters of what the panel has
10 asked for us, it is to deal with the first of two questions.
11 The first question being: Is this something that you folks
12 can address at all, or are you prohibited from dealing with
13 it? The second question being: is the contention in fact
14 well founded?

15 As we have argued, I think there are two ways in which
16 this panel can successfully get at this question, which is
17 indeed fundamental. The first of them we would argue is
18 that this is a proceeding that was not raised within the
19 scope of Part 72 regulations. And therefore, our objection
20 and contention is timely. And I think that issue comes down
21 to the question that although the bare language of the
22 regulations would not of itself preclude such an
23 application, it is manifest that those regulations were not
24 prepared in contemplation in such facility, nor has any such
25 facility been presented to the Commission previously.

1 But in fact Part 72 is the regulations contemplated
2 small facilities tied directly to particular power plants,
3 not the facility intended as a substitute or make way
4 permanent national repository. And that such a proposal
5 could not have been considered or fairly used when those
6 regulations were adopted and hence challenged on that basis.
7 It could not have been presented at that time, and therefore
8 our challenge is at this time timely.

9 I think the second method by which this panel can get
10 at this fundamental and all important issue is simply
11 exercising the authority to either deal with it as
12 appropriate, or to certify that question through the
13 Commission. Present a petition to that effect to this
14 panel. We think it's very clear that we need standards for
15 such a certification.

16 There is nothing more pervasive in the nature of these
17 proceedings than whether or not the Nuclear Regulatory
18 Commission has authority to license such a facility. And if
19 it has not such authority, everything that happens here from
20 this point on will be a waste of time. It is the most
21 fundamental question that this panel can either address or
22 get guidance from the NRC.

23 So we would suggest to you on those first questions we
24 think that there are two routes by which this panel can
25 reasonably raise and resolve. That fundamental question,

1 and --

2 CHAIRMAN BOLLWERK: Why can't you use a certification
3 and -- those interrelated. We think the Commission has
4 already dealt with this question and we can't look at it.
5 Why should we send a question up that we've already dealt
6 with?

7 MR. LATER: I guess you can raise that question and
8 truly make a conclusion that yes in fact the Commission has
9 addressed this. We know their answer. You're probably
10 right. There's no since sending it up to the Commission if
11 you're going to get the same answer. I don't think you've
12 got a record that suggests that in fact the Commission ever
13 contemplated those regulations as encompassing such a
14 facility and including and in comparing this facility with
15 those regulations, with the provisions of the Nuclear Waste
16 Policy Act, and seeing if in fact there is a harmonious way
17 for which this facility can be licensed in view of the
18 Nuclear Waste Policy Act. I simply don't believe that there
19 is such a record. I don't think I've seen an argument that
20 demonstrates that either from the applicant or from the
21 staff.

22 But I would have to agree with you. If you reach that
23 conclusion that you know what the Commission's answer is
24 already going to be, and you're comfortable that they've
25 already addressed that question, I would agree with you.

1 It's probably pointless to certify the question.

2 CHAIRMAN BOLLWERK: Briefly let's look at 2 and 3 and
3 tell us how they're different. We don't need to deal with
4 them separately.

5 MR. LATER: Number 2 we tried to raise hopefully with a
6 little bit of craft. Some of the same sets of questions of
7 what we had suggested there is we have tried to frame the
8 issue as saying what is involved as an appropriate
9 construction of the regulations, and try and phrase those
10 issues. This is a facility, an application that has never
11 been seen before.

12 How should the regulations be construed to
13 appropriately apply, if at all to such a facility, and
14 particularly in light of the Nuclear Waste Policy Act? I
15 think it's the obligation of the Commission and this panel
16 to apply the regulations before it in a manner that is
17 harmonious not simply with the Atomic Energy Act, but with
18 all of the congressional mandates under which the Nuclear
19 Regulatory Commission operates. And we have tried to argue
20 in our second contention that this panel can appropriately
21 utilized its authority in construing Part 70 to regulations
22 in a way that tries to harmonize the statutory authority it
23 operates under in viewing this application.

24 Our conclusion on that, of course, is that when you try
25 and do that, this application can't be fit under a

1 reasonable and fair interpretation of those regulations
2 viewed in the light of the appropriate statutory authority.
3 That's the nature of the second contention, Your Honor.

4 CHAIRMAN BOLLWERK: I think it's interesting your first
5 word should not be coming -- your first argument is -- your
6 first contention basically says the statute doesn't
7 authorize us no matter what the regulation says.

8 MR. LATER: Correct.

9 CHAIRMAN BOLLWERK: The second argument is in fact the
10 regulations were consistent with your interpretation of the
11 statute and regulations.

12 MR. LATER: That the regulations must be construed and
13 consistent with the statute, can be construed consistent
14 with the statute and that that has --

15 CHAIRMAN BOLLWERK: By accepting the application.

16 MR. LATER: That is correct.

17 CHAIRMAN BOLLWERK: Number 3 then in terms of how the
18 DOE views as problems, how is that determined? How is
19 that -- to 2?

20 MR. LATER: I think that number 3 probably embodies
21 parts of number 1 and number 2, that there are portions of
22 it I think that probably you can only reach if you address
23 the question of the Nuclear Waste Policy Act. And I think
24 it raises some of the same sorts of challenges of standing
25 as you get in the first contention.

1 CHAIRMAN BOLLWERK: When you deal with the issue in 5,
2 and in fact the Commission -- the staff and the Commission
3 have dealt with this application consistently the way -- the
4 Licensing Commission could issue, then number 3 would go by
5 the wayside.

6 MR. LATER: I think that's a fair reading of it, Your
7 Honor.

8 CHAIRMAN BOLLWERK: All right. Mr. Silberg.

9 MR. QUINTANA: Well, briefly it appears to be a motion
10 for summary judgment on the part of the State of Utah and
11 Castle Rock, which at this point is probably premature in
12 this proceeding based on the summary judgment.

13 CHAIRMAN BOLLWERK: Well, I would say that this issue
14 came in --

15 MR. QUINTANA: Current management. And if their
16 contention is correct that there is no authority to issue a
17 license, then I suppose then that no license would be
18 required, and I guess we could dispense with these
19 proceedings and we could proceed with construction.

20 But since the Atomic Energy Act required a license in
21 this instance, I think that federal law would in this
22 instance govern and that these proceedings should go
23 forward.

24 CHAIRMAN BOLLWERK: All right. Mr. Silberg, do you
25 have anything you want to say on that?

1 MR. SILBERG: Yes. First, with respect to their
2 impermissible challenge number one, the cases that they cite
3 on the timeliness of the review are all cases that go to the
4 issue of when reviews are timely in the judicial arena and
5 not in this arena. In this arena challenges to rules are
6 governed by 2.758. Castle Rock has submitted such a
7 petition. One of the things I think we need to do before
8 the end of this pre-hearing conference is establish a
9 schedule responding to that. I'm not right now prepared to
10 offer a date, but we ought to make it -- review that in
11 court.

12 CHAIRMAN BOLLWERK: Repeat that again.

13 MR. SILBERG: Castle Rock has filed a petition under
14 2.758. One of the things we ought to do is establish a
15 schedule. And I think that is the appropriate mechanism,
16 but I think they have correctly recognized that it is a
17 challenge to the regulations.

18 Their argument is that it's not an impermissible
19 challenge. And I'm not sure I understand why their cases on
20 the timeliness of judicial review are at all relevant to a
21 challenge in this particular forum.

22 They said that Part 72 ought to be interpreted as
23 license -- providing for licensing only of small facilities
24 tied to nuclear power plants. I think that reading is flat
25 out inconsistent with the clear, unambiguous words of

1 Part 72. Part 72 clearly includes provisions for licensing
2 away from reactor interim storage facilities, not just ones
3 at nuclear power reactors.

4 The argument that Part 72 doesn't count when it's a
5 large facility I think I addressed before. Part 72 simply
6 has no provisions. And if one would argue that it doesn't
7 provide for a 40,000 metric ton facility, it also doesn't
8 provide for a 1,000 metric ton facility or neither one
9 metric ton facility.

10 Castle Rock also refers to provisions in the Nuclear
11 Waste Policy Act which it believes prohibit the NRC from
12 licensing this facility under Part 72. Unfortunately, they
13 have misquoted the statute when they say that establishing
14 the federal responsibility and a definite federal policy for
15 the disposal of such waste and spent fuel is the law of the
16 Nuclear Waste Policy Act.

17 What the statute actually says is -- that quote is
18 actually a correct quote, but it didn't talk about a
19 definite federal policy for the storage of spent fuel. It
20 said for the disposal of spent fuel. "Spent fuel disposal"
21 is specifically defined in the Nuclear Waste Policy Act as
22 something other than storage.

23 Furthermore, when they talk about the provision in the
24 Nuclear Waste Policy Act on not authorizing the private use
25 of storage facilities, 42 U.S.C. 101557, they ignore the

1 fact that the wording that they quote it says, "Nothing in
2 this chapter shall be construed to authorize." The word
3 "chapter" refers not to the Atomic Energy Act or to all
4 federal statutes, but only to the Nuclear Waste Policy Act.
5 So that the authority which the Commission has under the
6 Atomic Energy Act is in no way cut back by the subsequent
7 provisions in the Nuclear Waste Policy Act.

8 Congress did in fact restrict what DOE could provide in
9 the way of interim storage, and the 1900 metric ton capacity
10 which they talk about is clearly restricted to a DOE
11 program. There is nothing in the act which says that that
12 program was meant to supersede all other private efforts
13 which the State -- which this applicant or other applicants
14 may proceed with.

15 With respect to contention 2, there simply is no --
16 again no basis for needing to construe Part 72 in a way
17 which restricts the Atomic Energy Act and the NRC's
18 authority. Because to make it harmonious with the Nuclear
19 Waste Policy Act, the Commission has already done that when
20 it amended Part 72 to add the monitored retrievable storage
21 provisions which it did in 1983. There is nothing
22 inharmonious with Part 72 and the Commission providing for
23 the licensing of a private facility when the Nuclear Waste
24 Policy Act provides for federal facilities and does not
25 contain any language which prohibits a private facility

1 licensed under other provisions of law.

2 There's one other point which I'd like at least to note
3 for the record, and it didn't occur to me when I read the
4 Castle Rock's petition initially.

5 The first five contentions of Castle Rock are the only
6 contentions which the third member of the Castle Rock
7 trilogy supports. There are three parties to the Castle
8 Rock petition: Castle Rock, Skull Valley and Ensign. And
9 it was interesting when I noted that Ensign only supports
10 the first five contentions.

11 I would note that all those entities are essentially
12 owned by the same group. They are represented by the same
13 party. I think the attempt is to provide for an early run
14 to the court of appeals and the Commission if this Board
15 were to deny those contentions and thereby deprive Ensign of
16 its standing. And I think it's just something the Board
17 ought to be aware of, because it isn't obviously flagged in
18 the pleadings that Castle Rock has submitted.

19 CHAIRMAN BOLLWERK: All right. I noticed that. It's
20 an interesting observation. I noticed it myself, and you
21 know, what follows follows. That's -- okay.

22 Anything else?

23 All right. Ms. Marco? Do you have anything,
24 Ms. Marco, that the Commission passed a regulation in
25 licensing? Is that something this Board could consider, has

1 authority?

2 MR. SILBERG: I think this Board could not consider it
3 other than to treat it under the provisions which the
4 Commission has created for such regulatory challenges, i.e.
5 10 C.F.R. 2.758.

6 CHAIRMAN BOLLWERK: Ms. Marco.

7 MS. MARCO: The staff believes that Castle Rock's
8 contentions 1, 2 and 3 are a direct challenge to the
9 regulations. Castle Rock would read into Part 72 an
10 exclusion of off-site facilities. This exclusion does not
11 exist in Part 72.

12 In addition, Castle Rock with contentions 2 and 3 would
13 read into Part 72 requirements on an off-site applicant that
14 are simply not there. Castle Rock reasserts that the
15 regulations must harmonize with the implementing statute,
16 and we address this in our response that Part 72 does
17 harmonize with the AEA and with the Nuclear Waste Policy Act
18 where that act applies.

19 That also -- Part 72 also addresses MRS facilities as
20 well.

21 With respect to Castle Rock's reply with its first
22 contention, Castle Rock makes the assertion that the Nuclear
23 Waste Policy Act is comprehensive and exclusive program for
24 the storage of spent nuclear fuel. There's no support for
25 this statement. In fact, as the Ninth Circuit stated in

1 State of Ohio v. DOE, the interim storage provisions of the
2 Nuclear Waste Policy Act are not comprehensive and
3 exclusive.

4 And therefore, Castle Rock is incorrect in its
5 assertion that the Nuclear Waste Policy Act is Congress'
6 comprehensive and exclusive program for the storage of spent
7 nuclear fuel.

8 Castle Rock claims that the NRC's reliance on the State
9 of -- I'm sorry -- Idaho is misplaced because it concerns
10 the effectiveness of a pre-existing DOE contract. However,
11 like here the State of Idaho case addressed the storage of
12 waste. That was not the subject of a contract for interim
13 storage entered into pursuant to the Nuclear Waste Policy
14 Act. And like Castle Rock, the State of Idaho intended that
15 the interim storage provisions of the Nuclear Waste Policy
16 Act would be violated if the wastes were stored.

17 The court's analysis of the Nuclear Waste Policy Act is
18 applicable here because the private storage proposed by the
19 applicant is an alternative to the storage under the scheme
20 of the Nuclear Waste Policy Act. The court stated:

21 "Each of the act's various requirements concerning
22 interim storage are specifically limited to
23 contracts entered into pursuant to
24 Section 101.5A(1)(a)."

25 And the court further stated that:

1 "The act's restrictive language limits the
2 requirements to the specific step of remedial
3 storage agreements authorized by the act itself."

4 And the act does not preclude -- therefore does not preclude
5 private storage options.

6 CHAIRMAN BOLLWERK: Sir, it's your turn. Just let me
7 ask one question before you go in to your response.

8 The act has raised a question about contention 4 as
9 well. How has that -- what you have in here as well?

10 MR. LATER: The contention 4 I think raises an entirely
11 different question. And what we have suggested is we
12 believe the evidence supports a finding that DOE either
13 explicitly or tacitly is offering with the applicant to --
14 the statutory and regulatory scheme in a manner that's not
15 intended, and that this Commission should in no fashion
16 whether or not the application would otherwise be
17 appropriate, assist such an activity.

18 CHAIRMAN BOLLWERK: I guess my question goes back to
19 one that I asked you earlier with respect to number 3 --
20 would return that the Commission had been -- with number 4
21 as well?

22 MR. LATER: I don't think so. I think, Your Honor,
23 that even if the application was otherwise well taken, if it
24 was a result of an improper agreement between the Department
25 of Energy and the applicant, that the NRC would be

1 appropriate, in fact should reject the application simply on
2 that basis.

3 CHAIRMAN BOLLWERK: You think the DOE has the authority
4 to do what it's doing? What then is our authority to look
5 into whatever basis they decided to move forward or the
6 applicant decided to move forward?

7 MR. LATER: We suggest that the basis of that finding
8 would be that DOE did not have the authority in fact to
9 enter into any such tacit or explicit agreement with the
10 applicant. And that kind of a fundamental of that
11 contention is finding that the Department of Energy has
12 violated or failed to carry out its obligations under the
13 Nuclear Waste Policy Act, and that this application was a
14 result of an agreement between the Department of Energy,
15 either tacit or explicit, and this applicant to allow DOE to
16 escape from the consequences of that failure.

17 I think that's a different argument, a different basis
18 than the first three contentions, and it does not confront
19 or attack any of the regulatory basis of the NRC.

20 Let me go on, if that addresses your question, and
21 respond to some of the things that have been said.

22 CHAIRMAN BOLLWERK: Let me ask Mr. Silberg here: Do
23 you have anything you want to say on the point that he's
24 made on number 4?

25 MR. SILBERG: Well, 4 I found to be almost humorous.

1 To argue that the utilities -- which I personally have spent
2 the last decade -- the Department of Energy to meet its
3 obligations under the Nuclear Waste Policy Act are somehow
4 in the league with DOE to help it avoid its obligations is
5 really frankly ludicrous. There's no shred of evidence
6 other than some very creative legal libel to support that.
7 I think it's totally baseless.

8 CHAIRMAN BOLLWERK: All right. Anything staff wants to
9 say on that point? Mr. Quintana, we want some answers.

10 MR. QUINTANA: Very briefly, the Skull Valley Goshutes
11 went through the federal process under the Nuclear Waste
12 Policy Act to build a monitored retrievable storage
13 facility. They signed and negotiated an agreement with
14 Washington to build a facility, and the next day the entire
15 federal program was cancelled.

16 Prior to entering into an agreement with Washington to
17 try to build this facility, the Skull Valley Goshutes
18 briefed at length the State of Utah and the surrounding
19 communities on all aspects of what was proposed, which is
20 virtually quite similar to what is being proposed now.

21 At that time there were no technical objections, no
22 engineering, no scientific objections made by the State of
23 Utah and by other surrounding communities.

24 MS. CHANCELLOR: Objection, Your Honor.

25 CHAIRMAN BOLLWERK: What's the objection?

1 MS. CHANCELLOR: He's making expressions as to what we
2 cited were for purposes of the MRS. We didn't object to
3 that. I don't think there's anything in the record that
4 establishes that. On the Goshutes we're proposing an MRS on
5 the reservation. He made a distinction that the State
6 didn't raise any objections to that.

7 CHAIRMAN BOLLWERK: Right. Mr. Quintana, let's do one
8 thing. Let's keep this to the question of whether these
9 contentions should come in. Some of what you're saying
10 sounds to me is going a little bit to the merits.

11 MR. QUINTANA: In terms of whether his contention
12 should come in, the position of Skull Valley is it should
13 not come in.

14 CHAIRMAN BOLLWERK: Staff want to say anything on
15 contention 4?

16 MS. MARCO: The staff believes it should not come in
17 because there's no support for it, and it really wouldn't
18 entitle Castle Rock to any relief in this proceeding.

19 CHAIRMAN BOLLWERK: Anything else? Mr. Later, I added
20 one there, but I'll let you have all four now.

21 MR. LATER: Okay, thank you, Your Honor. I think that
22 there is in the responses that we have received what seems
23 to me to be a curious mixture of a procedural argument which
24 lapses into an argument on the merits of the contention. It
25 makes it very difficult in some ways to respond to and to

1 sort out those arguments.

2 I would suggest that some of the confusion is
3 engendered simply because the point that it is so important
4 for this panel to reach this contention is simply
5 undeniable, and that there are procedures by which this
6 panel can either itself reach that question or certify it to
7 the Nuclear Regulatory Commission. That principle seems to
8 me to be virtually unchallengeable. You cannot argue the
9 contention is not absolutely fundamental to these
10 proceedings. It is clear that it is a contested issue. And
11 we can have all kinds of interesting discussions about what
12 is the scope of the Nuclear Waste Policy Act.

13 At this stage in the proceeding it ought to at least be
14 a point of agreement that that is a question that should be
15 resolved before the parties proceed before the rest of the
16 effort is potentially wasted, before the parties incur
17 enormous expenses proceeding down the row. Certainly for
18 the Ensign Ranches' petitioner, if this elects to dismiss
19 those first five contentions, that constitutes an
20 irreparable injury to that petitioner who would no longer
21 have standing before this body. And that alone would
22 justify a certification of this issue to the Nuclear
23 Regulatory Commission.

24 Now, let me make hopefully three and potentially four
25 questions, the forth leading to the fourth one of those

1 contentions, four responses to what I have heard.

2 The first is the set of cases that we have raised and
3 cited to this panel that stand for the proposition that
4 where a facility or an application such as this is not
5 fairly within the scope of the original regulation. It is
6 appropriate for a petitioner to raise a challenge as to the
7 applicability of those regulations and that such a challenge
8 is timely.

9 Mr. Silberg has pointed out that those cases involve
10 judicial challenges. I think perhaps one of them or more
11 may deal with the timeliness and challenge to the agency. I
12 would suggest in any event that the rationale is appropriate
13 in either case. And in either case this panel as a court
14 must consider whether the challenge is timely and
15 appropriate. And under the standard we've set forth from
16 those cases it is clear that this challenge is both timely
17 and appropriate.

18 The second point I'd like to make in response deals
19 with the scope of the Part 72 regulations. And the
20 discussion I think that has gone on between the parties is
21 that the applicant has taken the position that whatever is
22 permissible within the language, whatever you can drive a
23 truck through in the regulations is allowed.

24 And we have suggested to this panel that interpreting
25 those regulations, as any regulatory body, that the

1 interpretation must be one of rationality and fairness of
2 the regulations for their intended purposes rather than a
3 simple blind and mechanical application of those regulations
4 when their scope and intent is unclear.

5 And we would suggest that under a standard that a fair
6 and rational reading, that the application presented here is
7 being put under set of regulations for which it was never
8 intended, the regulations were never contemplated to apply
9 to a facility of this scope, size and potential duration.
10 And that it is entirely appropriate for this body to look at
11 the application and its regulations in a rational and fair
12 light to make that judgment, and that to apply those
13 regulations mechanically are neither warranted nor
14 appropriate.

15 A third point I'd like to make, since I have very -- in
16 all that I had said before dealing with the merits of
17 whether or not the Nuclear Waste Policy Act does in fact
18 govern and limit the application that's before this body is
19 simply to take a moment and direct this panel's attention to
20 Section M-151 of the act dealing with interim storage.

21 "The congressional findings first, the act recites that
22 "The persons owning and operating civilian nuclear power
23 reactors have the primary responsibility for providing
24 interim storage of spent nuclear fuel from such reactors."
25 That language has been cited to this panel earlier today.

1 And it goes on to say as part of that congressional
2 finding, "by maximizing to the extent practical the
3 effective use of existing storage facilities at the cite of
4 each civilian nuclear power reactor, and by adding new on-
5 site storage capacity in a timely matter where practical."

6 The second congressional finding recites that the
7 federal government has the responsibility to encourage and
8 expedite effective use of existing storage facilities and
9 the addition of needed new storage capacity at the cite of
10 each civilian nuclear power reactor.

11 And finally provides a congressional finding it's a
12 federal responsibility to provide a facility to provide
13 allowing for not more than 1900 metric tons of capacity for
14 interim storage.

15 These are provisions, congressional findings with
16 respect to interim storage as part of that comprehensive
17 statute. I would suggest that these are provisions that
18 apply as much to this panel, to this application as to any
19 actions of the Department of Energy.

20 And finally my last comment. The fourth of the
21 contentions that we have submitted, if in fact this
22 application is a result of an agreement, tacit or explicit
23 whereby the Department of Energy attempts to escape and
24 subvert its responsibilities, it would be inappropriate for
25 the Nuclear Regulatory Commission to approve the

1 application, even if it were otherwise and on its own
2 appropriate, and we would therefore be entitled to the
3 relief we seek.

4 And as far as evidence goes, I would suggest that
5 Mr. Quintana's comments provide an initial basis of evidence
6 where the Department of Energy in fact sought this site,
7 sought it for a non-retrievable storage facility, was denied
8 that and the program was closed down, and finds itself now
9 in the position to recover it through a back door.

10 The contention is appropriate for discovery. We've
11 outlined the bases which provide a factual basis sufficient
12 for the conduct of discovery, and we would be entitled to
13 relief under that contention. Thank you.

14 CHAIRMAN BOLLWERK: Mr. Lam, discussion?

15 DR. LAM: Yeah, I listened to Castle Rock. Are you
16 saying in contention number four that the Department of
17 Energy is intending to evade its statutory mandates?

18 MR. LATER: Yes.

19 DR. LAM: That's --

20 MR. LATER: Yes. In fact it's already failed its
21 statutory mandates. That question is no longer even
22 debatable.

23 DR. LAM: I was talking about intentions.

24 MR. LATER: Yes.

25 MR. KENNEDY: Mr. Hearing Officer.

1 CHAIRMAN BOLLWERK: Sir?

2 MR. KENNEDY: I tried to make a comment earlier, and
3 because I'm over on the side I think I'm beyond the
4 peripheral vision.

5 CHAIRMAN BOLLWERK: I apologize. You are over on the
6 side, and it takes a while. If I'm missing you let me know,
7 but lease holler or something.

8 MR. KENNEDY: Thank you. I just wanted to speak to the
9 condition of the tribes with respect to both the State's
10 contentions and Castle Rock's contentions on these items
11 that we've been discussing here over the last hour or so.

12 MR. SILBERG: Excuse me. Mr. Chairman, if I may? I
13 think the Board's order indicated that only the parties that
14 were proffered contentions were going to be addressed in
15 this.

16 CHAIRMAN BOLLWERK: That's right, and that's my
17 intentions. Do you intend to address the merits?

18 MR. KENNEDY: In terms of -- we have adopted by
19 reference these contentions. And as I understand it, the
20 panel has not yet ruled on that aspect of the proceeding.

21 CHAIRMAN BOLLWERK: Well, maybe they'll finance us and
22 we'll get out right now -- has moved it there right now. My
23 feeling is that -- let me put it this way. We're not going
24 to -- I don't think we're prepared at this point to rule
25 necessarily on that. We're dealing with the question of the

1 procedure in which we'll conduct this. I think that we are
2 satisfied to learn -- well, we'll hear what we need to hear
3 about the contention from the person that actually put the
4 contention forth. I don't think we feel it's going to add
5 anything to have all the parties here incorporated by
6 references -- incorporated by reference, you know, probably
7 the cases you need to litigate. I want you to also add that
8 we -- the intervenors. We're not going to have every
9 intervenor here litigating every issue. Even if incorporate
10 by reference there will be a direction that certain
11 intervenors take the lead on intervention. To some degree
12 that's what we're doing now. We're saying that the party
13 that adopted -- not adopted, but proposed the contention or
14 put it forth, that's the party we want to hear from.

15 MR. KENNEDY: My understanding is that Skull Valley has
16 been heard from. Did they put forth this contention?

17 CHAIRMAN BOLLWERK: Skull Valley, they are opposing the
18 contention. Mr. Quintana does not want this to happen; is
19 that correct, sir?

20 MR. QUINTANA: That's correct.

21 CHAIRMAN BOLLWERK: He's in the same position as the --

22 MR. KENNEDY: Well, we would like the Court -- then in
23 that regard.

24 CHAIRMAN BOLLWERK: If you said that you wanted it
25 admitted -- all I'm saying is that my assumption is that you

1 want it adopted by incorporated by reference you certainly
2 can support that. All we're saying is that for purposes of
3 procedure here we can argue that we're going to hear from
4 the party that posed the contention, put forth the
5 contention in their pleading and put forth the basis.

6 MR. KENNEDY: We submit for the record that that's what
7 we've done by adopting it by --

8 CHAIRMAN BOLLWERK: I understand your position on that.
9 What I'm simply saying is for the present purposes all we're
10 going to hear from is the party that actually put the
11 contention --

12 MR. KENNEDY: Thank you.

13 CHAIRMAN BOLLWERK: Any questions about that? Did I
14 make myself clear?

15 MS. CHANCELLOR: Are we addressing the entire
16 incorporation by reference?

17 CHAIRMAN BOLLWERK: If you have something you want to
18 say, go ahead.

19 MS. CHANCELLOR: Okay. Our concern is if any of the
20 parties drop out what is the ability of those remaining in
21 to adopt the contentions of the parties that drop out. So
22 that's our primary concern of incorporation by reference.

23 CHAIRMAN BOLLWERK: Frankly one could say I don't want
24 to get too much into the merits here. The main advantage of
25 incorporation by reference is that if the party does drop

1 out that the contention is still there. You know, if the
2 incorporation by reference are not permitted, then it can
3 become a real bomb in there. I mean that would be the main
4 thing.

5 Because even if the Board does allow incorporation by
6 reference, we will be working toward an intervenor situation
7 with the contentions. So that, you know, other parties have
8 an opportunity for input, but we're looking for one party
9 specifically -- contention which we would, you know, advise
10 you all and get you copies.

11 MR. LATER: Your Honor, if I may add one point on that.
12 We also have a concern I think, and it's appropriate to
13 allow incorporation by reference. I think as we go in to
14 discovery there may be instances where although an original
15 proponent of a contention would certainly take the lead that
16 other parties may have additional viewpoints. They may be
17 able to contribute to discovery, and really contribute
18 usefully to the process. And we would suggest an
19 appropriate way for the panel to handle the concerns about
20 duplication of effort is really to address the coordination
21 of discovery and having another party take the lead, but not
22 barring others from contributing to that discovery process.

23 CHAIRMAN BOLLWERK: I would understand and, you know,
24 assuming they would agree with that, you would have to work
25 that out obviously. But I would accept the intervenor --

1 incorporated and to see what they want to ask. If there's
2 something the two of them can work out, then maybe --
3 contention. But that's something they can work out. But
4 I'm giving you a little preview of what we have in mind.

5 Did anyone -- incorporation by reference? I think it's
6 been addressed in the pleadings. My understanding of the
7 staff position, if you could help me, Mr. Turk.

8 MR. TURK: Our understanding of the case law, Your
9 Honor, is that when a party seeks to incorporate by
10 reference someone else's contentions, in effect they become
11 a co-sponsor of the contention, and that has been permitted
12 in other proceedings.

13 What we opposed here was the setting forth of a
14 separate contention that says, "I hereby incorporate by
15 reference other contentions." That does not by itself
16 constitute a litigable issue.

17 So, for instance, I believe it was OGD -- I'm sorry --
18 Confederated Tribes GFH that tried to incorporate by
19 reference. We oppose the contention itself, but we don't
20 oppose the adoption as --

21 CHAIRMAN BOLLWERK: -- if they wish to.

22 MR. TURK: There is something else to be considered.
23 Where a party has filed a contention, they may not wish to
24 have a co-sponsor. They may wish to litigate it
25 independently. And I think that's something that I think

1 the party that filed the contention must be heard on.

2 CHAIRMAN BOLLWERK: All right. I haven't heard any
3 objections in that respect, but Mr. Turk has a point.

4 Anybody that doesn't want help? Can I say to you --

5 MR. TURK: Well, it might be a problem for one of the
6 parties.

7 CHAIRMAN BOLLWERK: I don't hear anything at this
8 point. If that becomes a problem, and we do adopt
9 incorporation by reference, you -- immediately.

10 MR. TURK: And there is something further, Your Honor,
11 in terms of the procedure to follow. You do have a rule on
12 contentions. Your statement to the parties I believe is
13 consistent with all the cases I have seen. That when there
14 is a multitude of parties and a multitude of issues it is
15 appropriate to establish lead parties for various
16 contentions. And where there is a lead party, that party is
17 expected to coordinate its efforts with any other party
18 which has a share or a role in putting that contention
19 forward. So the burden will be upon the lead party to
20 assure that he coordinates -- he or she coordinates with the
21 other parties about the contention.

22 CHAIRMAN BOLLWERK: That's what the Board --

23 Mr. Blake, do you want to say anything on this issue?

24 MR. BLAKE: I would point out that when the --

25 incorporation by reference in our answer to the contentions

1 that no one took on the (indiscernible) that were made.
2 There simply is no answer to what we're saying.

3 We do, however, point out alternatively that the Board
4 itself is recognized has authority to combine
5 (indiscernible). No one seems to object to that. So this
6 one may not be a problem.

7 CHAIRMAN BOLLWERK: Let me just say one thing while
8 we're on incorporation by reference. If it's something that
9 you think is really important for us to know, we'll listen
10 to it on the contention. But if all you want to say is you
11 support it, I understand that you support it. It's not
12 necessary for you to say that. If it's something different,
13 radically different from what we heard, not -- we can't
14 simply have every party repeating that they agree with what
15 is said. That's what I'm trying to avoid.

16 Let me just ask one procedural question here, and then
17 we're going to break for lunch.

18 If the Board were to set this major issue down, summary
19 disposition, would you all --

20 MR. LATER: We would do whatever you would prefer on
21 that. I'll tell you frankly I think it probably takes
22 longer to write a joint brief than it does to write two
23 separate briefs. And if it's a question of page
24 limitations, you might set appropriate page limitations. It
25 might be easier for us to divide up --

1 CHAIRMAN BOLLWERK: That's all basically I mean almost
2 identical at least on the main issues.

3 MS. CHANCELLOR: I guess Castle Rock and the State have
4 filed a couple of contentions, and I think we may have a
5 different stand on some issues, especially the way in which
6 the State is effective. And while we would be willing to
7 coordinate, I think I agree with Mr. Later that it would be
8 easier to write separate briefs rather than to try to inter-
9 mesh the two arguments. But we'll do whatever you want of
10 course.

11 CHAIRMAN BOLLWERK: All right. How much time --
12 you're talking about cross-motions, what are we looking at?

13 MR. SILBERG: Before we move to that assumption, if
14 we're talking about these issues, I think that which has
15 been set forth in the pleadings already is more than
16 adequate. I think the Board is in a position to decide on
17 the admissibility of the contentions on the papers as they
18 stand, and I don't know that we need yet another round of
19 briefs of these.

20 CHAIRMAN BOLLWERK: I think if I understand what
21 Mr. Silberg is saying, he feels that if he simply moves some
22 of his -- contentions without any further thought and simply
23 take those -- that he feels I guess it addresses the merits
24 adequately to decide the issue.

25 MR. SILBERG: I think that's right. You know, our

1 first position I think is that the contentions shouldn't be
2 admitted.

3 CHAIRMAN BOLLWERK: I understand.

4 MR. SILBERG: They are clearly legal issues, and I
5 think legal issues are decided on the briefs. I think the
6 parties have filed the briefs, and I think we're prepared to
7 rest with what's on the briefs.

8 MS. CHANCELLOR: Yes, definitely a response. We want
9 the contention for purposes of admissibility of the
10 contentions along with other contentions. In terms of
11 summary disposition, we believe that we should have the
12 opportunity to present additional information to brief this
13 issue in its entirety. I think there's a difference between
14 summary disposition and admissibility of the contention. I
15 think that the Board would be assisted by additional briefs
16 in this case.

17 CHAIRMAN BOLLWERK: All right. Anything else?

18 MR. TURK: One thing on this point, Your Honor. Where
19 the Board finds that a contention does constitute a
20 challenge to the regulations, or that the contention even if
21 found in favor of the proponent, are not entitled to relief.
22 There's no reason to go any further. The contention should
23 be denied at the outset.

24 But if it's unclear whether there's a challenge to a
25 regulation, or if you find that the contention does not

1 challenge the regulation or might be entitle the petitioner
2 to relief, then it would be appropriate to admit it and move
3 for summary disposition on briefs.

4 To the extent that other parties feel the need to
5 brief, we're going to oppose the need for further briefing
6 once you find the contention is admissible.

7 CHAIRMAN BOLLWERK: If the Board were to allow
8 briefing, would you prepare a cross-motion or be the party
9 to go first?

10 MR. SILBERG: I believe since the contention in this
11 case is one that is supported by State counsel I think they
12 ought to go first.

13 CHAIRMAN BOLLWERK: All right. Would you have any
14 objection to that?

15 MR. LATER: We would have no objection.

16 CHAIRMAN BOLLWERK: All right. Would staff then I take
17 it respond the same time?

18 MR. TURK: Either the same time or afterwards, at your
19 pleasure.

20 CHAIRMAN BOLLWERK: I'm not saying we're going to admit
21 the contention. I just wanted to make that clear.

22 How much time would you need to prepare your brief?
23 Twenty days adequate?

24 MS. CHANCELLOR: Twenty days you mean from today?

25 CHAIRMAN BOLLWERK: No, no, no, no. We're trying to

1 prevent another set of phone calls --

2 MR. LATER: Your Honor, I assume you're talking about
3 what is essentially the first contention of both Castle Rock
4 and the State.

5 CHAIRMAN BOLLWERK: Your indication to me is that 2 and
6 3 are very likely going to go the same way. If we were to
7 go one way or the other, then you'd answer that as yes, with
8 that understanding.

9 MR. LATER: I think my position would be different on
10 number 4 as far as discovery goes on that.

11 CHAIRMAN BOLLWERK: You make that clear.

12 Twenty days?

13 MS. CHANCELLOR: Why not. You haven't given us
14 anything else to do.

15 CHAIRMAN BOLLWERK: Will that be enough time for you?
16 I guess you figure you already filed everything you want to
17 say anyway. Taken an opportunity to review them.

18 Again -- future schedules. All right. We have 10
19 after 12:00. Why don't we take our lunch break at this
20 point. Let's try to get back by 1:30. That is about an
21 hour and 20 minutes.

22 MR. SILBERG: Can we leave things in the --

23 CHAIRMAN BOLLWERK: Yeah, we can leave things in the
24 room.

25 And when we get back let me switch the presentation a

1 little bit. Let's deal with Castle Rock number 5, because
2 it's dealing with the same sort of questions. Then we'll go
3 to the --

4 (Recess from 12:10 p.m. to 1:30))

5 CHAIRMAN BOLLWERK: All right. We're back for our
6 afternoon session.

7 Just for planning purposes, I think we went about two
8 hours today, which is a long time without a break. I'll try
9 not to go quite that long this afternoon. We'll probably
10 take two brief breaks, one around 3:00, one maybe around
11 4:30. Don't hold me to that precisely, but we'll work them
12 in there so everybody gets a chance. It is our -- to use
13 the restroom or whatever they need to do.

14 It is our intention to go till 6:00 tonight. And maybe
15 toward the end of the day we can talk about the schedule for
16 further into the week. I know there's been at least one
17 alternative proposal which I'm glad to talk with people
18 about. Our point is that, you know, we want to press
19 forward here and get -- be as efficient as possible while
20 we're here, because we do want to get done this week. I
21 don't think it's in anybody's interest to have to extend
22 this any further than this week. So --

23 I don't see Mr. Wilson here. And I'm going to go ahead
24 and --

25 MR. QUINTANA: We can proceed without him.

1 CHAIRMAN BOLLWERK: Without him. I'm going to go ahead
2 and proceed without him with the understanding that I -- he
3 hasn't said anything about how often he is or isn't going to
4 be here, so --

5 MR. QUINTANA: Just today. After today he's got some
6 business at Harvard he has to take care of.

7 CHAIRMAN BOLLWERK: All right.

8 I also want to make clear to Mr. Kennedy that, again,
9 if you have something to say on a contention you didn't
10 sponsor, and you think it's very important and nobody else
11 has said it, I'm more than happy to hear from you, sir. But
12 if it's -- if you can't fall within those confines, and I
13 understand you support their contentions, then that's where
14 we'll let off. All right.

15 MR. KENNEDY: Thank you, Your Honor. I just wanted to
16 say that it seems to me that when people talk about
17 authority, they're talking about jurisdiction. And it seems
18 to me that the panel has the ability; it's, I think it's
19 black letter law to raise the issue of jurisdiction by
20 itself or consider the issue raised by a party at any time
21 during the course of the proceeding. And we think that it
22 certainly is a fundamental point going to the very heart of
23 this proceeding. So that's all I wanted to say.

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

25 All right. This afternoon I'm going to switch the

1 order slightly. Why don't we deal with Castle Rock 5, if
2 you don't mind first. It deals with the application for a
3 current repository, which sort of is in the same subject
4 matter that we were talking about. And then we'll go back
5 over and talk about Utah's B, which deals with the licensing
6 due for the intermodal transfer point. All right? So we're
7 talking about sort of high level waste matters and that sort
8 of thing.

9 MR. LATER: Thank you, Your Honor.

10 Let me begin. I think that this breaks down again into
11 two issues the panel needs to consider. One is, and the
12 contention is, that the application is in fact an
13 application for what will be a de facto permanent
14 repository; and therefore, is inappropriately brought under
15 the NCR Part 72 regulations and more appropriately
16 considered under the set of regulations provisions governing
17 the Nuclear Waste Policy Act.

18 I think the two issues raised by that is, again, one is
19 this an issue that this panel appropriately can consider.
20 And in that regard, this contention runs into the face of
21 the Commission's waste confidence decision.

22 I think as I looked at that and analyzed it, although
23 there are perhaps some ingenuous sorts of arguments by which
24 one might attempt to argue that this is not -- our
25 contention does not conflict with the waste confidence

1 decision, reality is that we are challenging that waste
2 confidence decision. We are calling upon this panel to
3 either revisit that issue or decertify the question to the
4 NRC.

5 We think that's particularly appropriate given the
6 nature of that Commission regulation, which is as the
7 Commission has noted. By way of a prediction, the
8 Commission has made a point of stressing that it is a
9 decision that the Commission is ready to revisit in the
10 light of changing circumstances. And it is a decision that
11 I think was fundamentally adopted for purposes very
12 different than this panel faces in this hearing.

13 I am sure that the NRC considers on a regular basis
14 extensions, changes, amendments to interim waste storage
15 facilities that are appropriately licensed under 10 C.F.R.
16 Part 72. And the burdensomeness of reconsidering the entire
17 panoply of policy behind the Nuclear Waste Policy Act in
18 every one of those was clearly something that it was not
19 sensible to do. But in none of those cases has the
20 Commission been faced with a facility that was in reality, a
21 replacement for or a significant portion of the nation's
22 nuclear waste disposal program and policy.

23 That by itself constitutes, we submit, a sufficient
24 changed condition to justify the Nuclear Regulatory
25 Commission and/or this panel in reconsidering the waste

1 confidence decision.

2 There are in addition, we believe, a host of changed
3 events of a significant nature that impact the rationality
4 and basis of that decision that have occurred since the
5 adoption of the waste confidence decision. And let me
6 briefly enumerate what is, at best, a partial list, and by
7 no means exhaustive.

8 You have an applicant before you that has quite
9 candidly acknowledged the failure of the Nuclear Waste
10 Policy Act in responding to our contentions and acknowledged
11 that they have brought this application before this panel
12 because of the failure of the Nuclear Waste Policy Act. And
13 that admission is at page 342 of the applicant's responses
14 to the contentions.

15 You have before you an application that dramatically
16 affects the structure of the Nuclear Waste Disposal Program.
17 You have before you years more of continuation of DOE
18 failure to implement the programs that are mandated under
19 the Nuclear Waste Policy Act. And simply the passage of
20 those years without visible progress being made in the
21 location and construction of a permanent repository calls
22 into question the rationality of the waste confidence
23 decision.

24 You have before you the spectacle of the Department of
25 Energy acknowledging the failure of its implementation of

1 that program before the D.C. Circuit Court of Appeals, and
2 the Department of Energy being sufficiently uncertain of its
3 ability to implement that program that it has refused in
4 that litigation to commit to any time frame in which it will
5 be able to accept waste. Now that certainly is change in
6 circumstances from the time when the waste confidence
7 decision was adopted.

8 And you have in response to that the D.C. Circuit Court
9 of Appeals finding the Department of Energy to be in default
10 of its obligations under the Nuclear Waste Policy Act. You
11 have in addition continuing and mounting series of technical
12 questions regarding the suitability of the Yucca Mountain
13 site: distance of earthquakes, some evidence of groundwater
14 flows through the location of the site, that calls into
15 question the suitability of the only site under
16 consideration for a high level waste repository. And you
17 have the continuing political obstacles to location of a
18 permanent repository.

19 All of those together, we submit, justifies the Nuclear
20 Regulatory Commission in revisiting, as it has expressly
21 indicated it would, if there are significant changed
22 circumstances. And in light of the program, an application
23 that comes before you as a significant variation from the
24 Nuclear Waste Policy Program, we submit that it is
25 appropriate for this panel to either revisit that waste

1 confidence decision or decertify it to the Commission as
2 appropriate.

3 CHAIRMAN BOLLWERK: I take it this relates to your
4 application, or your rule making petition that you filed?

5 MR. LATER: It does. That is included as well within
6 our petition. We believe that circumstances simply exist on
7 their face in the contentions to justify this panel in
8 taking up that issue and resolving it without even reaching
9 the petition. Finally --

10 CHAIRMAN BOLLWERK: This is a rule waiver petition
11 actually. It's not a rule making petition.

12 MR. LATER: That's correct, Your Honor.

13 Finally, if you look at kind of the face of the
14 application, and look at the schedules that are in place, it
15 is -- it's pretty clear that even if a permanent repository
16 was up and running by the end of the first quarter of the
17 next century, it would not be capable of receiving the
18 proposed waste to be stored at this facility by the end of
19 its license period.

20 On the face of the application, we believe you can
21 determine that this facility cannot be retired, either
22 within its original application term or within a 20 year
23 extension of that term. And therefore on its face, the
24 waste confidence decision can't be satisfied here.

25 CHAIRMAN BOLLWERK: Is there anything that precludes

1 the Commission from extending the license for another 20
2 years beyond that?

3 MR. LATER: I'm unaware of anything that would, Your
4 Honor. But I think when you get out to a time frame of a 60
5 year interim repository, that this panel should then be
6 looking at whether or not you were dealing with something
7 that truly fits the criteria of being interim; and whether
8 this panel needs to visit whether this is something that's
9 appropriately licensed under 10 C.F.R. Part 72, whether you
10 need to be looking at a much broader range of safety,
11 environmental, economic concerns given the time frame that
12 that facility would exist.

13 So that I think is the first issue that the panel faces
14 here. I will be candid with you. I think we do conflict
15 with the waste confidence decision. I think that there is
16 compelling case for revisiting that decision.

17 Second piece of it is our contention is is when you
18 look at this creature and you remove all labels from it,
19 look at it in reality, in light of the politics and the
20 condition of the Nuclear Waste Repository Program, you
21 cannot help but conclude that this is, for the foreseeable
22 future, the only waste repository this nation will have.
23 And that if you do that, it is no longer appropriate to
24 consider it as an interim facility, but as what in reality
25 it will become, which is a permanent repository. And as

1 such, it has to be evaluated as a permanent repository.

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

3 Mr. Silberg.

4 MR. SILBERG: I would agree that this contention is a
5 clear challenge to the rule. And therefore, I think for the
6 reasons that we've talked about before, it would be wholly
7 inappropriate for the Board to admit it. The proper process
8 is to treat it under 2.758. And to the extent that Castle
9 Rock's petition covers that, you know, that's something that
10 will be dealt with when we brief that issue.

11 The other alternate for Castle Rock if they want to
12 challenge a rule is to file a rule making petition under
13 2.802, I think it is. So I think everyone agrees that this
14 is an inappropriate contention in this proceeding.

15 With respect to the specifics of Castle Rock's
16 argument, to say that Part 72 was adopted for purposes very
17 different from this facility, I think is reading into
18 Part 72 something that isn't there. Part 72 was adopted for
19 interim spent fuel storage facilities, both at reactors and
20 away from reactors. It does have in it license terms of 20
21 years except for the MRS, which for reasons unknown to me
22 was granted a 40 year license. But for the 20 year
23 licenses, those are subject to renewal. As the chairman
24 indicated, not necessarily only once.

25 With respect to whether there are -- have been

1 significant changed events since the waste confidence
2 decision, I think Castle Rock has misread the reference that
3 they cited. Page 342 of our brief did not say that there
4 was a failure of the Nuclear Waste Policy Act. Or if it
5 did, I don't see it on those pages.

6 What it does say is that subpart -- subtitle B of the
7 Nuclear Waste Policy Act is now defunct. And that is a very
8 small portion of the provisions of the Nuclear Waste Policy
9 Act. Those are the provisions providing for interim spent
10 fuel storage by the government, limited to 1900 metric tons,
11 limited to utilities who entered into contracts by 1990.
12 That is not the entire program; that is not the entire
13 interim storage program for all parties. That was one
14 subpart, if you will, of the Nuclear Waste Policy Act.

15 Has DOE acknowledged a failure in implementing Nuclear
16 Waste Policy Act? Certainly DOE has acknowledged that
17 they're not going to make the 1998 deadline. I don't
18 consider that to be a failure in implementation of the
19 Nuclear Waste Policy Act. It is simply a failure of one
20 portion, one very important deadline.

21 As the Board I'm sure knows, DOE remains on track in
22 terms of doing its site viability study for the Yucca
23 Mountain site. They have promised that that will be
24 released in September of 1998. They have said publicly that
25 there are no show-stoppers. The repository is a long way,

1 we will all admit, from being licensed or built. But there
2 is no failure in implementation of the Nuclear Waste Policy
3 Act as a whole.

4 With respect to DOE's refusing to commit to any time
5 frame, DOE has never committed to a time frame. Congress
6 committed to a time frame on DOE's behalf and we have sued
7 to enforce that time frame, but DOE has never committed to a
8 time frame, now or at any other point in the process. So
9 there is no change in DOE's position from the time the rule
10 was adopted.

11 The Commission certainly was aware of the fact that we
12 would not likely have a repository in 1998. And indeed,
13 that's why the waste confidence rule states the Commission's
14 confidence that there would be a repository up and running
15 sometime in the first quarter in the 21st century. And
16 there is no -- nothing that has been put forward by Castle
17 Rock or anyone else that that date will not be met.

18 As to whether the technical questions on feasibility
19 are sufficient changed circumstances to warrant the
20 Commission let alone this Board from reopening the waste
21 confidence proceeding, certainly there's no new information.
22 And there's even a question as to whether this kind of bases
23 is appropriate at these -- at this time. These were not
24 issues that were raised initially, I believe, by Castle
25 Rock, and one cannot add late bases without good cause.

1 But put that aside for the moment. Earthquakes,
2 groundwater motion are things that have been known for many
3 years at Yucca Mountain. Those are things which are being
4 studied. That is not new information to the Commission. It
5 is not new information, I suspect, to this Board. It is not
6 new information to Private Fuel Storage.

7 Whether continuing political obstacles somehow is a
8 brand new event that requires the Commission to reconsider
9 the waste confidence rule. Certainly political obstacles
10 have been with us since the beginning of the program. The
11 Nuclear Waste Policy Act is structured in light of
12 everyone's awareness that there were those political
13 obstacles. There's simply no new information there.

14 Do any of these justify the NRC in revisiting this
15 rule? We think not. Do they justify certifying the
16 question to the Commission under 2.718? We think not for
17 the reasons that I expressed before.

18 Castle Rock then went on to argue that even if a
19 repository were running by 2025, that it wouldn't be capable
20 of receiving waste by the end of the license. I think
21 Castle Rock's calculations on page 28 of their response
22 filing are simply wrong. When they multiply out a waste
23 acceptance rate of 900 metric tons per year times 44 years,
24 they're simply making up numbers.

25 The only place that that 900 metric ton number comes

1 from is from the capacity report, which is Exhibit 1 to
2 their filing. And if they will read at the bottom of page
3 three and page four, top of page four of their filing,
4 they'll note that that 900 metric ton rate is based on a MRS
5 receivable rate prior to repository operations. And it says
6 it's a nominal rate that's based on legal constrictions that
7 apply now and are unrelated to the repository.

8 The acceptance rate that they talk about also totally
9 ignores the role that the MRS would play. So their
10 hypothetical that somehow on its face a interim storage
11 license for this facility can't be justified because of the
12 receiving rate simply has no basis in law, fact or anywhere
13 else.

14 With respect to the timing, whether 60 years is the
15 right number or 40 years is the right number. The fact is
16 that the back -- the Statement of Consideration supporting
17 the waste confidence rule clearly demonstrates the
18 Commission's belief that, from a safety standpoint, interim
19 storage for a period of 100 years or more is safe and
20 adequate.

21 So again, we're getting into speculation on
22 speculation, none of which justifies the acceptance of this
23 contention, the certification of this contention, or the
24 revisiting of it by the Commission.

25 With respect to their final point that this facility is

1 really a permanent repository because there will be waste
2 there for the foreseeable future. If this facility is not
3 built, the waste -- and if the hypotheticals which Castle
4 Rock has spun out come to pass, the fuel will remain where
5 it now is at reactor sites. And if their speculation and
6 their legal theories are correct, then each reactor will
7 become a repository.

8 I think that analysis shows the frailty of that
9 hypothetical that they have created and why it's not a basis
10 for accepting this contention or certifying it to the
11 Commission, or for the Commission revisiting the waste
12 confidence rule.

13 DR. LAM: Mr. Silberg, hypothetical. At the end of the
14 facility's license, what are the disincentive for the
15 applicant to walk away from the facility?

16 MR. SILBERG: I'm sorry, what are the disincentives?

17 DR. LAM: Disincentive.

18 MR. SILBERG: Aside from the operation of law and the
19 fact that you would be violating a license, you would be in
20 civil enforcement space and criminal enforcement space;
21 aside from the contractual obligations; aside from our
22 obligations to the Goshute Skull Valley Band; and aside from
23 the fact that DOE has the ultimate responsibility set by
24 contract, set by statute, and interpreted by the U.S. Court
25 of Appeals in the D.C. Circuit, I guess I can't think of

1 any.

2 DR. LAM: So you are saying if they want to walk away,
3 there are many obstacles the applicant must overcome?

4 MR. SILBERG: Absolutely. This Commission has not
5 looked kindly on the one case that I can recall where an
6 applicant tried to walk away from a licensed facility.

7 CHAIRMAN BOLLWERK: All right.

8 I'll need you, Mr. Quintana, unless I see some motion
9 from you, I'll then move to the back, if you don't have
10 anything to say.

11 MR. QUINTANA: Very briefly.

12 What will occur in technology over the next two decades
13 is something that is totally unforeseeable, not only by this
14 licensing board but by any court. I think this Court can
15 take -- this hearing panel can take judicial notice that
16 decisions cannot be made based upon speculation. And it's
17 sheer speculation, at its very, very highest, to presume
18 that the fuel is going to be there in a permanent repository
19 mode.

20 This contention is objected to by the Skull Valley Band
21 of Goshutes. There is no intent whatsoever for this
22 facility to be a permanent facility. That is absolutely
23 crystal clear not only between the utility companies and the
24 lessor, Skull Valley Band of Goshute, but under federal law
25 the Goshutes cannot own the spent fuel nor can it remain

1 there.

2 I think that at the end of 20 years, given the changes
3 and the research that's occurring internationally on
4 solutions to what to do with the spent fuel, both with
5 transportation technology and otherwise; and if this country
6 decides to reprocess its spent fuel, those assemblies cost
7 about a million dollars apiece, and you can recover about 40
8 percent of the energy if you reprocess it.

9 Given the changes that will occur over the next few
10 centuries as the Internet becomes more predominant in terms
11 of the sharing of scientific information, I would object to
12 the characterization of this facility as a permanent
13 facility.

14 CHAIRMAN BOLLWERK: All right, sir. You raise your
15 hand before I go to the staff.

16 MR. KENNEDY: In response to the Court's question
17 regarding whether there's any reason why it could not be a
18 60 year facility. My understanding of the regulations is
19 that there is a 20 year limitation with the option to renew
20 for an additional 20 year period on Indian trust land. I
21 think that's found in 25 C.F.R., I believe it's Part 151.
22 Don't hold me to that part number, but it's the section that
23 deals with leasing on Indian trust land.

24 So they have, as I understand it anyway from
25 representations that have made, they've got a lease for 20

1 years and an option for an additional 20 years, which would
2 be the maximum amount allowable by law.

3 There is a provision under 25 U.S.C. which identifies
4 specific reservations that are permitted to have leases of
5 longer duration, but the Skull Valley Band is not included
6 in that list.

7 MR. SILBERG: If I can make one correction. I think
8 it's 25 years plus 25 years, Mr. Kennedy.

9 MR. KENNEDY: I think it's 20 plus 20.

10 CHAIRMAN BOLLWERK: All right. Well, we'll haul out
11 the regulations sometime. How's that?

12 MR. KENNEDY: Yeah.

13 CHAIRMAN BOLLWERK: It's in there. It should be
14 anyway.

15 All right. Staff.

16 MS. MARCO: Staff believes that Castle Rock's
17 contention 5 is an impermissible attack on the Commission's
18 waste confidence decision, and as such, is barred as a
19 matter of law from this proceeding unless there's a 2758(b)
20 petition.

21 Your Honor, the staff also wants to inform the parties
22 and Board that the Commission does periodically review its
23 waste confidence decision. It -- I'm not sure when the next
24 review is, but it is done on a periodic basis, so it's not
25 set in stone.

1 CHAIRMAN BOLLWERK: All right. Let's hook back to you,
2 sir. And just so you know, I'm probably going to ask you
3 about Utah Alliance, to see if they have some related
4 information.

5 MR. LATER: Sorry, Your Honor, I didn't --

6 CHAIRMAN BOLLWERK: I'm just telling Mr. Quintana I'm
7 probably going to ask about Utah Alliance.

8 MR. LATER: Let me start by something that really
9 doesn't tie into the regulations that I think is important
10 pertaining to this panel.

11 And that is one of the reasons that this panel, I
12 presume, is out here, has been through this process, is to
13 provide confidence in people whose lives will be affected if
14 this facility is built; that they have appropriate
15 protections, assurances; that their questions have been
16 answered. And as I've listened to the news reports and
17 watched Private Fuel Storage's spokesmen, they have asked
18 the people of Utah through the media to wait, don't judge
19 this facility, let your questions be answered in these
20 hearings.

21 I have to tell this panel, probably one of the primary
22 questions people in this state, certainly this corner of the
23 state are going to be asking by this, is this in fact a
24 temporary facility? Is it a 20 year facility, is it a 40
25 year, is it a 60 year, is it a 100 year facility? How long

1 will the people of this state live with that. And it will
2 be a real tragedy if this panel does not find a way to
3 address that. And I think there is clearly questions.

4 If we run up and down the table here, everybody's got a
5 guess about how long they think this might last. And not
6 very many of them are within the period described by the
7 waste confidence decision.

8 CHAIRMAN BOLLWERK: All right.

9 MR. LATER: And today we would celebrate --

10 CHAIRMAN BOLLWERK: I'm sorry.

11 MR. LATER: Today we would celebrate, or this year, the
12 opening by law, under the Nuclear Waste Policy Act, of the
13 first permanent repository. We don't have an approved site
14 for a permanent repository. I'm told that DOE's current
15 projections are sometime around 2010. The Government
16 Accounting Office more realistically says 2023 now. Reality
17 is probably no one knows whether or when a repository will
18 be built.

19 The Nuclear Waste Policy Act describes the disposal of
20 nuclear waste as a national problem requiring a national
21 solution, in which all parties of this nation join in. To
22 create an ad-hoc facility without the participation of
23 people who will be burdened by it would be a travesty of
24 that national commitment.

25 Let me cite to you Private Fuel's language that

1 Mr. Solberg and I disagree as to just what they said and let
2 the panel decide. Page 342 of their responses, Private
3 Fuel's:

4 "Applicant agrees that DOE has failed to execute
5 its responsibilities in a number of respects under
6 the NWPA. Applicant agrees that the PFSN will
7 relieve some of the consequences of DOE's failure.
8 Indeed, that is the intent of the PFSN."

9 That language alone, I submit, justifies this panel in
10 revisiting the waste confidence decision and making a
11 rational decision about just what kind of commitment the
12 people of Utah are being asked to undertake with respect to
13 this facility.

14 Because the reality is whatever the license term of
15 this facility, once the waste is removed from where it is at
16 and put in Utah, if there is not another facility that will
17 be a permanent repository, it will be there, because no one
18 else will step up and volunteer to take this.

19 The reason we're here today is because of the enormous
20 political resistance to acceptance of the waste, even for a
21 permanent repository. The reason this application is made
22 is because people in the states where the waste is now
23 stored want it out of there. They're not going to take it
24 back.

25 This panel needs to make a rational, realistic

1 determination of just what it is they are licensing and just
2 what it is they're asking the people of Utah undertake. And
3 there is sufficient evidence of the failure of the NWPA
4 program that this panel needs to revisit the reality of the
5 assumptions that are set forth in the waste confidence
6 decision. Thank you.

7 CHAIRMAN BOLLWERK: All right, sir.

8 Let's change the proceeding's direction here and deal
9 with the only other petition. How long do you need to
10 respond to that? I'm sorry, there's only one other
11 petition.

12 MR. SILBERG: I frankly haven't had a chance to look at
13 it yet. I would think, you know, depending on what other
14 things we find ourselves obligated to, you know, three weeks
15 after the close of the hearing. It might be sooner, I just,
16 without having had a chance to look at it, I don't want to
17 hazard a guess. We could probably send it over one of the
18 night freights, take a quick look at it and make some
19 judgment.

20 CHAIRMAN BOLLWERK: All right. Staff have any idea how
21 long they need?

22 MR. SILBERG: Why don't we get back to you tomorrow.

23 CHAIRMAN BOLLWERK: What's that?

24 MR. SILBERG: If I could get back to you tomorrow with
25 an estimate.

1 CHAIRMAN BOLLWERK: All right. Well, we can do that.
2 Let's make sure we bring this up again though so we can set
3 a date; all right?

4 Yes.

5 MR. SILBERG: If I could just address a few of the
6 points. And I know this is never-ending, but hopefully
7 the --

8 The point that counsel for Castle Rock has made are
9 certainly politically interesting points. There is a
10 national problem that deserves a national solution. The two
11 leaders involved in Private Fuel Storage have been battling
12 for 10 years to make sure that DOE meets its obligations.
13 Oddly enough, the State of Utah has not seen fit to
14 participate in that process to make the DOE program meet the
15 schedule that it's supposed to.

16 But putting that aside, the issue here is under the
17 rules that this Board is obligated to function under, is
18 this Board the proper forum to have a national hearing on
19 the state of the DOE program? I think that it isn't.

20 The Commission by rule has gone through, I think it's
21 twice, or maybe three times, the waste confidence rule
22 making. It's just done in response to a decision by the
23 U.S. Court of Appeals for the D.C. Circuit. Case's name is
24 Minnesota v. NRC. And in that case, the question was raised
25 about how long will these sort of facilities, how long will

1 spent fuel stay at individual power reactions.

2 The Commission responded to that court decision by
3 overly generic rule making, in which many parties
4 participated. Many of the environmental groups were
5 parties. DOE was a party; NRC was a party; utilities were a
6 party. That rule making, extraordinarily detailed record,
7 has been reopened on, I believe two occasions. And that is
8 the right forum for these kinds of questions to be
9 addressed, not before -- not for an application on a single
10 facility.

11 I think it's also interesting to note that while Castle
12 Rock says that Private Fuel Storage is going to send -- will
13 store spent fuel indefinitely into the future, at the same
14 time, arguing that we don't need the facility because of
15 pending government sponsored storage sites. That's on page
16 37 of their response.

17 Seems to me that Castle Rock can't have it both ways.
18 Either they can say we need the facility or they can say
19 there are no alternatives. Then in which case we are once
20 again bound by Commission rules. But they can't in one
21 breath say that the fuel will be there forever and in the
22 next breath say that we don't need the facility because we
23 have all these pending government sponsored sites.

24 CHAIRMAN BOLLWERK: Thank you, sir.

25 You get the last word, so don't breathe.

1 MR. LATER: I just want to see if I can say it in one
2 breath.

3 This is obviously an unpleasant process. When the heat
4 is on and there has to be a solution, then the nation will
5 find a solution. It will be one that will be political. If
6 this facility is licensed, that removes the incentive from
7 the nation to do the difficult task of finding an
8 appropriate facility that's done with the kind of input and
9 participation that the Nuclear Waste Policy Act
10 contemplates. That's why it's of deep concern.

11 CHAIRMAN BOLLWERK: All right, sir.

12 Let's talk then about Utah --

13 MR. NELSON: Can you just let us --

14 CHAIRMAN BOLLWERK: Sure. You want a discussion? I
15 don't know, are we going to consider all of Utah right now,
16 or just as it relates to this --

17 MR. NELSON: Is everything --

18 CHAIRMAN BOLLWERK: Would you agree with me that I
19 guess a portion of it is related to the technical -- would
20 you have a problem with discussing the technical claims?
21 Anybody else have an objection to that?

22 All right. Why don't we do that then.

23 (Pause)

24 CHAIRMAN BOLLWERK: Everybody on the same page?

25 Go ahead, Mr. Nelson.

1 MR. NELSON: This contention is related in that under
2 the National Environmental Policy Act, the law that requires
3 that there be prepared for the decision maker an
4 environmental impact statement. The question arises as to
5 the scope of that environmental impact statement as it
6 relates to any connected actions.

7 The State's contention is is that the environmental
8 report that was prepared in conjunction with the initial
9 phase of beginning the process of preparing the
10 environmental impact statement is deficient because of the
11 very limited scope in dealing with connected actions.

12 The issue that has been just described of the
13 relationship with the Nuclear Waste Policy Act and the scope
14 of that act can be considered in two respects. The first
15 being that one could say, under NEPA rules, that a
16 programmatic or revisit of the overall program should be
17 appropriate here because of the effect that this site could
18 have, and probably will have if it is licensed, on the
19 overall disposal of waste.

20 Even if you don't go to that extent of saying the EIS
21 must be a programmatic statement, you at a minimum must
22 consider the effect and environmental effects of the
23 specific action on that national program. And that is the
24 basis for this contention.

25 If I could digress just a minute to discuss an

1 important point with respect to the rules that apply in this
2 circumstance.

3 The NRC staff have commented and used the term
4 "guidelines" consistently with respect to the Council on
5 Environmental Quality Regulations. When NEPA was passed,
6 congress set up the Counsel on Environmental Quality as the
7 supervisory agency. And they did initially promulgate
8 guidelines. President Carter, in an executive order,
9 specifically mandated that those be established as rules.

10 So when we talk about CEQ guidelines and the
11 relationship to these proceedings, that is an incorrect
12 statement. Those are CEQ regulations. And while they are
13 advisory to this Board, they are more important and more
14 significant than simply a guideline in that if there is
15 inconsistencies with those established regulations, it is
16 something that this Board would have to deal with, in our
17 opinion.

18 Now the CEQ regulations are very specific in
19 Section 1502.4 in stating that "Any proposal or parts of
20 proposals which are related to each other closely enough to
21 be and in effect a single course of action, shall be
22 considered and evaluated in a single impact statement."

23 At a minimum, the effects of this proposal on the
24 federally established Nuclear Waste Policy Act program must
25 be considered. The applicant has attempted to limit the

1 scope to a very narrow consideration of the environmental
2 effects and consequences in the region, in the Skull Valley
3 area.

4 The staff, the nature -- the NRC staff respond to our
5 argument by saying that the Nuclear Waste Policy Act and
6 specific provisions are inconsistent with the State's
7 position. And say therefore, that the CEQ regs don't need
8 to be followed.

9 If you look at the Nuclear Waste Policy Act, there are
10 three separate provisions that govern the development of an
11 environmental impact statement. The first is the provision
12 that affects a federal interim facility. And there are
13 certain exemptions provided under the act for interim
14 facilities and the preparation of an impact statement.

15 The second provision is a provision dealing with
16 permanent repository. And again, there are some specific
17 exemptions from the EIS process.

18 Thirdly, there are specific provisions that deal with
19 an MRS facility. And likewise, there is a set process
20 outlined for the EIS preparation. There is nowhere in the
21 Nuclear Waste Policy Act a specific section that deals with
22 the preparation of an impact statement for a national
23 private storage site.

24 It's our contention therefore, that in preparation of
25 the environmental report, it is necessary for the applicant,

1 and appropriately, in follow-up to that, necessary for the
2 Nuclear Regulatory Commission to prepare an environmental
3 impact statement that considers connected actions. And
4 those connected actions, as has just been discussed, is
5 directly related to the national program, and specifically
6 referring to the provisions that Mr. Later has just cited
7 and quoted from the applicant.

8 If I can mention just one particular case that was
9 cited by the applicant, the Savannah River case, as support
10 for the fact that connected actions may not need to be
11 considered here. They cite the Savannah River case at page
12 333 of their brief.

13 I would point out to this panel that that case involved
14 a very small number of caps. And there were already a
15 location for those caps that had been -- that was available.
16 There were 409 -- I'm sorry, not caps. 409 spent fuel rods
17 was at issue there. We are not talking here about 409 spent
18 fuel rods.

19 And that case is not support for the argument that
20 we're making, and that is that a carefully prepared
21 environmental report that considers impacts on the program
22 as it relates to the national program is necessary in order
23 to comply with NEPA.

24 CHAIRMAN BOLLWERK: Mr. Silberg.

25 MR. SILBERG: The question is what is a connected

1 action, and is this the connected action? We think it's
2 not. CEQ guidelines, regulations are not regulations that
3 are binding on this Board in any event. Even if they were,
4 this is not a connected action.

5 The analysis on defining that concept that is the
6 Savannah River case that the State was referring to lays out
7 four factors. None of them are met in this case. Our
8 proposal does not automatically trigger any DOE actions.
9 It's not dependent on any DOE actions taking place
10 beforehand. And it's not a dependent part of the DOE
11 program. I'm sorry if I said four criteria. I meant three.

12 Are we part of the DOE program? No. Is there anything
13 in Nuclear Waste Policy Act that governs how an EIS or an
14 environmental report for our facility should be working?
15 No. Is that surprising? No. Because the Nuclear Waste
16 Policy Act simply does not govern our facility, so it's not
17 at all surprising that it shouldn't identify how to write an
18 environmental impact statement for this project.

19 Is there an impact that this facility will have on the
20 DOE program? Will the storing of spent fuel here reduce the
21 need for a repository? There's no evidence to that effect.
22 As a legal matter, it's clearly incorrect.

23 Will it reduce DOE's legal obligation to take our fuel
24 starting on Saturday of this week? That legal obligation
25 remains. What our remedies will be have yet to be

1 determined.

2 CHAIRMAN BOLLWERK: Is the bill in the mail, is that
3 the question?

4 MR. SILBERG: As the panel asked DOE's counsel when we
5 argued the first case, and as you'll need to compare their
6 position with a Yiddish proverb that the judge's mother had
7 told him, "Give us air. Now give me money."

8 We fought that battle, and we're continuing to fight
9 it, but the DOE program is not on the schedule that we would
10 like; that is, it's not defunct as some of the people here
11 today would say.

12 But in any event, what we are doing will not change one
13 iota DOE's legal obligation or the nature of its program.
14 There's no evidence, there's no indication that DOE's budget
15 has changed because we have a project out there. There's no
16 indication, there's no evidence that DOE is changing its
17 program plan because of this facility.

18 The argument is one that's being made up out of whole
19 cloth and simply isn't there. And whether the CEQ
20 provisions, guidelines, regulations, call them what they
21 will, require a consideration of connected actions, this
22 ain't one.

23 CHAIRMAN BOLLWERK: Let me ask you a question, and I'll
24 ask the same question to staff. You've mentioned several
25 times about the law. Why isn't it a legal issue for some of

1 these positions in terms of whether this is a connected
2 action?

3 MR. SILBERG: Because I don't think they've met the
4 burden for showing contentions.

5 CHAIRMAN BOLLWERK: Okay.

6 MR. SILBERG: If this is a challenge to the
7 regulations, then I think it should be treated as such. If
8 it comes in, it is clearly a legal issue, but I don't
9 frankly know how it comes in given the rules that the
10 Commission has set forth.

11 CHAIRMAN BOLLWERK: All right.

12 Mr. Turk.

13 MR. TURK: By the way, Your Honor, just for your
14 information, we've divided up the contentions in responding
15 in writing.

16 CHAIRMAN BOLLWERK: Okay.

17 MR. TURK: And we're going to be dividing them as well
18 in our oral arguments.

19 CHAIRMAN BOLLWERK: All right.

20 MS. MARCO: Staff opposes this contention because it
21 asserts that the staff needs to consider this proposal and
22 other high level waste proposals together in a single
23 statement.

24 This proposal does not need to be considered with the
25 other high level waste programs. The Nuclear Waste Policy

1 Act provides that the environmental impact statement for the
2 high level waste repository does not need to consider
3 alternatives. Therefore, the proposed facility and the high
4 level facilities do not need to be considered together.

5 And the Nuclear Waste Policy Act provides the same for
6 the MRS too. Therefore, these disposal options do not need
7 to be considered in a single comprehensive impact statement.

8 Also, the staff notices that the CEQ regulations are
9 not binding on the commission, although they are entitled to
10 substantial deference.

11 And finally, the staff notices -- the staff wishes to
12 state that the, if the State has independent utility, then
13 would not foreclose the Commission's ability to withhold
14 approval of other waste disposal and storage options that
15 come before it in the future.

16 And for these reasons, this contention should not be
17 admitted.

18 CHAIRMAN BOLLWERK: All right.

19 DR. LAM: Ms. Marco, I had a question for you on your
20 pleading.

21 Just exactly what does expressively doubt mean? When
22 you say "Commission," it is not an expressly, and not the
23 CEQ regulation. What does that mean?

24 MS. MARCO: It means that the -- it's not -- it is not
25 binding in proceedings.

1 DR. LAM: Right, right. I understand your argument.
2 If it's not expressly, then it's not binding. So do you
3 mean the Committee does not expressively, explicitly
4 incorporate the CEQ in the regulations?

5 MS. MARCO: Right. That's correct.

6 DR. LAM: That's what you meant?

7 MS. MARCO: Yes.

8 DR. LAM: All right.

9 CHAIRMAN BOLLWERK: Mr. Nelson, any last word?

10 MR. NELSON: NEPA requires that a decision maker for
11 any major federal action be given the necessary facts in
12 order to make an informed substantive decision. To argue
13 that one need not consider the effect of this licensing
14 action on related programs does not give the decision maker
15 the necessary information. And therefore, is in violation
16 of NEPA.

17 We could argue as to what the effective rules are here.
18 The Commission has not specifically adopted the CEQ rules.
19 However, they do specifically note, in Section 10 C.F.R.
20 5110, that the Commission's announced policy takes into
21 account the regulations of the Council on Environmental
22 Quality, voluntarily subject to certain conditions.

23 I know of no condition that the Commission has
24 established that would preclude or argue for or eliminate
25 the need to consider the effect, the environmental effect of

1 this action on the related programs on the federal level.
2 The -- Mr. Silberg's commented there is no relationship, and
3 yet on the same hand says that there is a reason for doing
4 this facility because of those restrictions and processes
5 that have happened on the federal program.

6 It is the same basis that are involved in both
7 programs. It is part of the same program. It is a
8 connected action. The underlying reason for NEPA is to make
9 sure that a decision maker understands fully the impact of
10 different alternatives and what those impacts are on related
11 federal actions. And this is clearly a connected action in
12 that something that, it is the State's position, that has to
13 be considered as part of the impact statement.

14 CHAIRMAN BOLLWERK: All right, sir.

15 Last word. Second to last word.

16 MR. SILBERG: The cases clearly say that if two actions
17 cannot proceed with each other, they're connected. But that
18 if one action has utility independent of the other, then for
19 NEPA purposes, they're not connected. I would cite Western
20 Radio v. Dickman, 123 F.3rd 1189.

21 The point here is not that we are ignorant of what DOE
22 is doing, or that we aren't interested in what DOE is doing,
23 or that our reasons for proceeding with this project are
24 totally apart from what has happened in the past with the
25 DOE program. But this project will go ahead independent of

1 where the DOE project is, and that makes them unconnected
2 for NEPA purposes.

3 CHAIRMAN BOLLWERK: All right. Anything further,
4 Mr. Nelson?

5 Let's move back then to Utah E, to the question about
6 licensing. That comes from another category, I think.

7 MS. CHANCELLOR: I think Mr. Silberg --

8 MR. SILBERG: Yeah.

9 CHAIRMAN BOLLWERK: I would add that, you know, I have
10 lists up to my knees of my policies. If someone doesn't
11 read something, doesn't say something -- I thought this
12 seemed to be something that needed to be discussed together.

13 And I would also say that if someone had something, if
14 I don't raise something you think that needs to be raised,
15 please feel free to chime in and we'll have go ahead and
16 discuss it now.

17 Got any ideas regarding subject matters, talking about
18 the same thing at the same time. So --

19 MS. CHANCELLOR: I'm just waiting for Mr. Silberg.

20 MR. SILBERG: It's all yours.

21 MS. CHANCELLOR: Okay. Right now, think Rally
22 Junction. It's a stone's throw from I-80, even closer to
23 the Alpine. The cask store at Rally Junction will certainly
24 present a security risk. Now the danger's theory.

25 For example, trucks exiting I-80, coming off the off-

1 ramp north may not make that corner in icy conditions and
2 could go crashing through.

3 More seriously, people traveling on the highway could
4 create terrorist problems and launch themselves on a moving
5 vehicle.

6 There's no buffer zone between the -- between where PFS
7 wants to locate its facility and the freeway. In fact,
8 there's no -- it's not even certain whether there's room to
9 put such a facility at that location.

10 If you look at Figure, in the FAR, 4.5.3, there's a
11 diagram of the intermodal transport. There is shown that
12 the width of this one thing is 80 feet. The distance from
13 the center of the main line tracks that Union Pacific owns,
14 their right-of-way goes from center of the main line tracks
15 100 feet to the south of the main line. There are already
16 two rail sidings there. So I am not sure, I don't see how
17 PFS can actually locate this facility there.

18 And with respect to movement of casks into and through
19 Rally Junction. It may not be smooth at all. Casks will
20 arrive in a very staggered and bunched up way. The pier --
21 the Union Pacific railroad program is a mess. One of the
22 exhibits to our petition to intervene, Exhibit 3, shows the
23 problems with Union Pacific: rail accidents, people being
24 killed, military tanks abandoned. To say that this is all
25 going to be a smooth flow of casks into Rally Junction is

1 not credible.

2 NRC's response to how casks will be coming into Rally
3 Junction is that the Part 70, Part 51 licensee will
4 coordinate these activities. Well, generally the casks are
5 coming in from a multitude of facilities.

6 In addition, 73.26, the safeguards regulations,
7 requires that casks should -- that, for security purposes,
8 that you should avoid storing casks in excess of 24 hours.
9 How that will occur is indeed a mystery.

10 PFS intends to transfer the casks to a heavy haul truck
11 and then drive down Skull Valley Road and off-load them at
12 their facility. In the SAR, at Table 5.1.2, are the
13 procedures for unloading these casks.

14 The total time, at a 48 hour testing period, is 21
15 hours, from the time of receipt till the connected cask
16 temperature installation. Basically until they've taken the
17 cask, inspected them, taken from the truck, put them with
18 the -- take them, hooked up the shipping cask. With all
19 those procedures it's going to take 21 hours. So the actual
20 operation of casks coming in to Rally Junction, being slowed
21 down, a 21 hour period to get the casks inside the facility
22 gate and out onto the pad, will certainly mean that casks
23 are going to back up and be stored at Rally Junction.

24 CHAIRMAN BOLLWERK: if I could anticipate what
25 Mr. Silberg's going to say. He's going to basically say

1 this has been subject to the rule. This could happen at any
2 number of transfer points anywhere in the country. What is
3 your response to that?

4 MS. CHANCELLOR: My response is well, why bother
5 unloading the casks. There is a difference between a
6 transportation regulation, and I recognize that there is in-
7 transit storage for the transportation regulations. But
8 there is some point at which in-transit does meet up with
9 the security and protections that are required for the Rally
10 Junction facility.

11 If the casks are stored at Rally Junction there is no
12 buffer zone; there is no boundary. There are no -- the
13 emergency response regulations don't have the same effect as
14 if they are stored at --

15 CHAIRMAN BOLLWERK: Well, but how do we know this is
16 different than any other transport point in the country,
17 whether it's from barge to rail or however? Wouldn't that
18 be a problem anywhere? I guess I'm again offering the
19 question what the rule covers.

20 MS. CHANCELLOR: I think the difference is in the
21 scope. We have 200 casks that we have coming into this
22 point from all over the nation. The casks are going to back
23 up and be stored there. The sure shipments that Mr. Silberg
24 referred to, that lists 33 large shipments over an eight
25 month period from one reactor to another reactor, or from

1 one site to another site, two points only. This would drop
2 down into a national network of casks being shipped to Rally
3 Junction.

4 NRC recognizes that additional measures other than
5 those -- other than NRC and DOE regulations may apply to the
6 operation of Rally Junction. On page 19, footnote 9 in
7 their response, they clearly state that these additional
8 measures need to be considered.

9 Moreover, this is not the first time that NRC has
10 raised this issue. When the applicant came to NRC prior to
11 submitting its license, in an open public meeting on
12 March 19, 1997, the NRC staff said that the plans for
13 transferring casks from the railway to a truck gave them
14 particular concern. So this is something that NRC staff is
15 concerned about, even though they object to our contention.

16 I think that footnote 29 states their concern of how
17 Rally Junction fits into the regulatory scheme and how the
18 transportation regulations and the safeguards under Part 73
19 are not satisfied by the proposed facility at Rally
20 Junction.

21 You've seen Rally Junction. It's accessible to I-80.
22 I mean how can we fence -- how can we have any buffer zone
23 or fence around that facility?

24 DR. LAM: Why not, Ms. Chancellor? You say the
25 applicant could not possibly build a fence?

1 MS. CHANCELLOR: The -- if you remember, you have the
2 Union Pacific tracks and then there's a 100 foot right-of-
3 way, and that abuts directly against a 100 foot right-of-way
4 that the Utah Department of Transportation holds, which is
5 contiguous with the Union Pacific right-of-way and the
6 freeway and the access road. So -- and we're trying to
7 squeeze an 80 foot facility into -- provided we don't even
8 know whether Union Pacific will allow PFS to use their
9 right-of-way.

10 Assuming for argument purposes that they can use that
11 right-of-way, you've got the main line track, you've got two
12 sidings, and then you've got an 80 foot facility. Where are
13 you going to put a fence within a 100 foot right-of-way with
14 any sort of buffer zone? There's just no room.

15 The casks will have to -- more than one cask will be
16 there. We don't know whether there's more than one truck
17 that will be there. There is moving. In order to be able
18 to place these and manipulate these casks and have position,
19 turning radius for the casks, there does not appear to be
20 room within that existing right-of-way.

21 Moreover, if PFS is going to hurry to get the casks out
22 of there, that creates additional safety concerns.

23 CHAIRMAN BOLLWERK: What I hear you saying is does the
24 need for a license depend on the safety concerns that are
25 involved. I mean I guess --

1 MS. CHANCELLOR: No.

2 CHAIRMAN BOLLWERK: If the facility didn't have this
3 list, laundry list that you've given us, would you need a
4 license then?

5 MS. CHANCELLOR: We believe that Rally Junction is a
6 different animal than a siding in the middle of the
7 Lingueras, where you might transport one track to another
8 track from one locomotive to another. This is an integral
9 part of the existing operation. Those casks would not be
10 coming into Rally Junction and being stored at Rally
11 Junction unless the ISFSI were there. And the amount of
12 time that the casks will be located at Rally Junction is a
13 function of how the ISFSI operates, how much time it takes
14 to unload the casks, a cask, so that they can come around
15 with the truck and get another cask. So it is an integral
16 part of the Part 72 licensing operation.

17 DR. KLINE: If it is an integral part, why isn't the
18 potential to be fences? Can't they consider the facility
19 license application?

20 MS. CHANCELLOR: What we are saying is there has to be
21 some sort of regulation of Rally Junction. If you wish to
22 do it under Part 72, then we would not object to doing it
23 under -- as part of the Part 72 process. But there are not
24 any license conditions that put in place the same type of
25 safeguards, procedures, fencing, Dolcinells, those types of

1 things.

2 DR. KLINE: That changes the contention. I mean the
3 contention says you need a separate license. And it isn't
4 clear why this is so, even from the argument, and why one
5 couldn't consider any potential defenses under the principal
6 application, facility application.

7 MS. CHANCELLOR: Our contention states that PFS'
8 application should be rejected because it does not seek
9 approval for receipt, transfer and possession of spent fuel
10 at Rally Junction, in violation of 72.51. We would not
11 object to including this as part of this Part 72 license
12 application or having -- or requiring PFS to get an
13 additional license.

14 DR. KLINE: Then perhaps the other parties would, and
15 particularly the staff, would comment on the staff's
16 authority, say under at least NEPA authority, to consider
17 auxiliary construction facilities that aren't underway at
18 site, but nevertheless connected to the principal
19 application.

20 Because I have in mind, in the licensing of reactors,
21 for example, by analogy, the staff has asserted jurisdiction
22 over transmission core --

23 MS. CHANCELLOR: Right.

24 DR. KLINE: -- off-site. And I just wonder why
25 construction, or environmental attacks at least of this sort

1 wouldn't be included, at least and reach an analysis of the
2 application before us.

3 MS. CHANCELLOR: I believe that the staff should --
4 does have jurisdiction, or the NRC does have jurisdiction to
5 look at the NEPA issues. But I think the whole Rally
6 Junction facility is symptomatic of NRC not having authority
7 to license such a national facility. And Rally Junction is
8 symptomatic of that problem.

9 I mean the transportation regulations, Part 72
10 regulations, even Part 73 regulations do not contemplate an
11 intermodal transport facility. It's just not, it's not like
12 moving fuel from one reactor to another reactor.

13 DR. LAM: But in your contention it is specifically
14 stated this application is a violation of 10 C.F.R. 72.6(c),
15 Part 1. Now I don't know what is intended in there. I
16 don't know what --

17 How does this application violate 7261?

18 MS. CHANCELLOR: Well, our argument is that here there
19 is in possession and receipt of spent fuel when it arrives
20 at Rolley Junction. PFS would like to have receipt of the
21 fuel and possession of the fuel when it gets to their front
22 gate at the reservation. What we are saying is possession
23 and receipt occur, and storage for purposes of -- for more
24 than purposes of in transit occurs at Rolley Junction; and
25 therefore, need a specific license.

1 DR. LAM: But C-1 doesn't read the way you are saying.
2 It reads -- C-1 reads "Except as authorized in a specific
3 license, and in a general license, and this is Bob Cahill,
4 his partner. If you violate" --

5 So how does the licensee application arrive at this
6 point?

7 MS. CHANCELLOR: Because they are receiving spent fuel
8 for the purposes of storage at Rolley Junction, not as the
9 assistant. I mean the Part 72 license, if issued, would
10 allow them to receive possession of spent fuel at the ISFSI.
11 But the license, unless it addresses Rolley Junction, does
12 not allow them to acquire, receive and possess spent fuel at
13 Rolley Junction, which we are saying needs to be addressed
14 other than through existing regs, Part 71 or Department of
15 Transportation regulations.

16 DR. LAM: I see. So --

17 MS. CHANCELLOR: NRC -- the staff and PFS argued that
18 they do not need any additional licenses, other than Part
19 71, their Part 72 license that is issued here, and then on
20 the DOT regulations. That's all that they believe is
21 required for Rolley Junction.

22 What we are saying is that is not enough. And that the
23 7261 does not authorize them to possess and receive spent
24 fuel at Rolley Junction, which we assert is what they will
25 be doing.

1 DR. LAM: So that's why you turn the page to 7261?

2 MS. CHANCELLOR: That's correct.

3 CHAIRMAN BOLLWERK: Possession begins at Rolley
4 Junction?

5 MS. CHANCELLOR: Exactly.

6 CHAIRMAN BOLLWERK: Okay.

7 MS. CHANCELLOR: And whether the applicant says that it
8 is going to possess fuel when it gets to the gate, we
9 believe that that in reality is not the case; and that they
10 should not be able to throw that off onto a common carrier
11 and say that they aren't going to receive and possess the
12 fuel at Rolley Junction, because it's integral to their
13 operation.

14 It is absolutely a certainty that the casks are going
15 to back up and that they are -- there is always going to be
16 a cask there. Not just occasionally, but for the 20 year
17 term of the license. They expect shipments of fuel to come
18 in every year for the entire license term and then hopefully
19 they're going to turn around and send that fuel back out.

20 CHAIRMAN BOLLWERK: You're saying possession depends on
21 how long they have it, whether they have it for a second or
22 20 minutes or 20 hours. Is that --

23 MS. CHANCELLOR: I think it's constructive. I think
24 there comes a point --

25 CHAIRMAN BOLLWERK: I mean put it right on the truck

1 and away it goes. It's just there for five minutes. Then
2 that's possession, or I mean --

3 MS. CHANCELLOR: No, I don't think that is, but I think
4 there's a spectrum. At some point, I mean if you park a car
5 in a parking lot and let it sit there for six months, that's
6 not in-transit storage. And the same thing here. There
7 comes a point at which the activities at Rolley Junction are
8 no longer covered by the DOT regulations.

9 And from the little information that is contained in
10 the application, from what we can glean, it is apparent that
11 they have -- that spectrum certainly gets closer to storage
12 than it does to in transit.

13 CHAIRMAN BOLLWERK: Okay. Mr. Silberg. And in
14 answering or addressing this, I'd like to know who's then
15 exactly going to run what parts. I recognize the railroad
16 track coming in is obviously common carrier. In terms of
17 the off-load, who's responsible for that? I take it Union
18 Pacific is not, or whoever the railroad is. That's actually
19 you haul -- taking it up off the rail truck, put it onto the
20 rail car, and putting it onto the truck. Is that it?

21 MR. SILBERG: First let me just make sure we understand
22 that the intermodal transfer is one of the two options
23 that's identified in the application.

24 Second, the personnel who would be doing the off-load
25 might be PFS personnel, might be other -- might be another

1 entity that's doing the transportation. I don't know that I
2 can answer that right now, and I don't know whether that
3 decision has been made yet.

4 CHAIRMAN BOLLWERK: The question is where do common
5 carriers start and end.

6 MR. SILBERG: Yeah. I think it's common and contract
7 carriers.

8 CHAIRMAN BOLLWERK: All right.

9 MR. SILBERG: So I think it's both. And, you know, it
10 depends how it's been structured, and I don't know that that
11 decision has yet been made.

12 I would note that the NRC regulations specifically
13 provide for a general license for storage incident to
14 transportation. That's in Part 70, 74.20(a). And I think
15 the position that the State is expressing is directly
16 contrary to that regulation.

17 What the State is saying is that by off-loading the
18 casks, the shipping casks at Rolley Junction from rail car
19 onto heavy haul truck, some shipping casks, not storage
20 casks; that now we are in the storage mode because the
21 provision that their contention says we're in violation of
22 deals with storage. C-1 says --

23 And I can't find it, but it talks about storage of
24 spent fuel. And we're not in the storage mode at Rolley
25 Junction. You are allowed, and regulations contemplate that

1 this transfer need not be in a scintilla universe. You
2 don't have to move it, you know, the first second it arrives
3 there. And DOT regulations specifically allow for storage
4 of up to 48 hours.

5 To the extent that 10 C.F.R. 73.26 refers not a
6 prohibition against storing for more than 24 hours, but it
7 says you should plan to avoid storage in excess of 24 hours.
8 There's certainly nothing in the record that would indicate
9 that we will not meet that requirement. We are indeed
10 obligated to meet all the regulations.

11 However, I would note that that regulation doesn't
12 apply to spent fuel, because 73.6(b) has an exemption for
13 the kind of radioactive material that is spent fuel from
14 that particular regulation. 73.6(b) exempts from 73.26 such
15 limited material which is not readily separatable from other
16 radioactive material which has a total external radiation
17 density in excess of 100 rem per hour at a distance of 3
18 feet from any accessible surface without intervening shield.
19 And I think you take notice that spent fuel is falling in
20 that description.

21 So even if the 24 hours in 73.26 was the regulatory
22 standard, which it isn't, it wouldn't apply. But we do have
23 other regulations which we have to meet, the DOT regulations
24 that we cite in our brief. And I don't think this Board is
25 entitled to assume, nor is the State entitled to assume that

1 we will operate in violation of our regulations.

2 I would also note that a lot of the discussion which
3 the State has just put on the record is really a different
4 contention. When they argue that we don't have enough room
5 in the existing right-of-way, we don't have a buffer zone,
6 we don't have a fence, it's only 80 foot list. Those may be
7 interesting contentions, but they're not the contention that
8 we're talking about here.

9 The contention that we're talking about here is a legal
10 issue essentially, and that is whether or one must have a
11 license for an intermodal facility of the type we're having
12 at Rolley Junction. And the answer, we think, is clearly
13 that no license is required.

14 Conditions precedent reflects that. The Shore and
15 Limerick Shipping, which is reflected in both the director's
16 decision, and the admission decision which recognize the
17 intermodal transfer, and the lack of any licensing
18 requirement for that intermodal transfer is clearly on
19 point.

20 The fact that there were 33 shipments in the period of
21 a year versus 200 shipments in a period of a year is a
22 factual issue. It doesn't go to the question, the legal
23 question as to what the NRC regulations require. And to
24 comment that Part 71, 72 and 73 do not contemplate
25 intermodal transfer, I think that's clearly incorrect. The

1 Commission has approved intermodal transfer, has rejected
2 challenges that would enable transfer based on those very
3 regulations. And we have cited to those regulations and
4 those decisions in our brief.

5 To the extent that the State argues that Rolley
6 Junction is not temporary storage incident to
7 transportation, but rather an integral part of the PFS
8 complex, that logic would mean that the entire
9 transportation system is also an integral part of the PFS 50
10 complex.

11 It is certainly part of the operations of this entire
12 project, but it is not fully in the license. And I don't
13 believe that the State has put forth any basis to show that
14 the existing NRC regulations require or contemplate that.

15 CHAIRMAN BOLLWERK: All right, sir.

16 DR. KLINE: Mr. Silberg, the State doesn't appear to be
17 arguing that Rolley Junction is just any kind of intermodal
18 transfer point. Rather, they're asserting that it's
19 something in the nature of a choke kind of, the fuel
20 arriving from several different places all funneling into
21 one place. Does that in any way change the situation in
22 your mind?

23 MR. SILBERG: I think so. Rules speak for themselves.

24 DR. KLINE: Well, that's what I'm asking you in
25 reference to.

1 MR. SILBERG: Yeah. And to the extent that it's not --
2 that whether or not this is a choke point, and I think we've
3 heard some interesting speculation, but certainly not enough
4 to justify a factual basis for a contention. There's no
5 reason why scheduling cannot accomplish the absence of a
6 choke point.

7 And there's no reason why it takes 21 hours to move a
8 cask assuming, as it seems to do, that there's only one
9 truck in the world that will move this cask and you have to
10 wait for that truck to go and come back before you can load
11 the next one. There's just no basis for these kinds of
12 speculations. They're interesting, but they're not factual.

13 The one point I did want to make, since you got me off
14 to address the question you made, and that is NEPA. We do
15 address the NEPA consequences of transportation, including
16 intermodal. That's not the issue here.

17 DR. LAM: Now I do see the State, that if the cask is
18 there for an extended period of time, somewhat of a storage
19 choke point that happens. Now what is the range estimate
20 that you can have on how long could the cask sit there?

21 MR. SILBERG: Well, we are obligated to operate within
22 the existing regulations and the DOT regulations. As I
23 understand them, it would require a maximum of 40, or would
24 prohibit storage at that location beyond 48 hours.

25 You could have the same, you know, delay at lots of

1 points in a transportation network, but that doesn't make it
2 a licensing action. I don't -- I can check. I don't know
3 off the top of my head whether our transportation planning
4 has reached the point yet where we can tell you what is an
5 average turnaround point, turnaround time and the specific
6 day-to-day operational details.

7 Frankly, I don't think our planning is yet at that
8 point. But we do have to operate within the existing
9 regulations, and those regulations contemplate, if any
10 storage, if there's any delay at that point, that it will
11 not exceed 48 hours.

12 CHAIRMAN BOLLWERK: Your assurances there's not
13 ambivalence here to show there is a choke point, because
14 those are in fact foundationally, then the contention comes
15 in?

16 MR. SILBERG: No. I think we still have the legal
17 issue, which is I think what the State has presented, which
18 is whether intermodal transfer, you know, requires
19 licensing.

20 CHAIRMAN BOLLWERK: And that's a legal issue?

21 MR. SILBERG: I believe it is.

22 MR. QUINTANA: Skull Valley would object to the
23 contention that's been proposed by the State of Utah.
24 Transportation has its problems with spent fuel, but we
25 don't believe that the intermodal mode that's been proposed

1 here by Private Fuel Storage would present numerous attacks
2 such that it would require a separate licensing procedure.

3 Transport of spent nuclear fuel has been done
4 worldwide, and the Skull Valley Band of Goshutes have gone
5 to great lengths to study the transportation problem. So
6 they deal with it fine just in Sweden, Japan, Great Britain,
7 France, as well as throughout the United States and looked
8 at numerous transportation studies.

9 It's important that be part of the record because the
10 decision made by the Skull Valley Goshute government was a
11 well informed decision. And --

12 MS. CHANCELLOR: Objection.

13 MR. QUINTANA: -- in terms of the transportation and
14 the contention that's being proposed here by the State. For
15 those reasons, we'd object.

16 CHAIRMAN BOLLWERK: All right. I think there was an
17 objection.

18 MS. CHANCELLOR: Okay.

19 CHAIRMAN BOLLWERK: Staff.

20 MR. TURK: Thank, Your Honor. Let me focus first of
21 all on what the contention itself intends to do, because
22 that really goes to the heart of your decision.

23 I believe the judges are correct in understanding the
24 contention to be an assertion that the ITP, the intermodal
25 transfer point must be licensed as a facility. In fact

1 appears explicitly in explaining the contention on page 14,
2 after going through a number of reasons why they believe a
3 license has to be issued for this facility, they say:

4 "As a result, the ITP will constitute a defecto
5 interim central facility as defined in 10 C.F.R.
6 § 72.3."

7 And they go on to say:

8 "TFS should not be granted a license unless it
9 improves possession of spent fuel at the ITP."

10 And they go on after that at the bottom of page 14 and into
11 page 15 to argue that all of the Commission's various
12 regulations relating to ISFSI such as the security plan, the
13 emergency plan, the dose analysis, the design, that all of
14 those requirements, all of those criteria that are
15 established for ISFSI must also apply to intermodal transfer
16 point. That's the heart of the contention, and we oppose
17 that because it's not correct.

18 The essence of the Commission's regulatory scheme is
19 that the site at which this installation will exist must
20 meet the Part 72 criteria.

21 On the other hand, inter transfer modal point, transfer
22 station interchange point, all of the other points in
23 transit are coming under a different regulatory scheme, and
24 that is under Part 71 and DOT regulations under
25 transportation.

1 So on that basis the contention must be rejected.

2 There are a number of sub-issues that have been raised
3 both in the pleadings as well as the before Your Honor
4 today. Judge Kline asked whether or not the NRC's analysis
5 must consider all the transportation impact, and in fact we
6 do. The impact of licensing will be considered in an
7 environmental impact statement with respect to environmental
8 matters.

9 That's different from saying that the safety criteria
10 set forth in Part 72 have to be satisfied at various points
11 in transit.

12 I believe Judge Lam's question about 72.6C1 is very
13 telling. The contention does specifically assert that that
14 regulation is not satisfied, because as the State says
15 today, possession begins at Rally Junction. And we believe
16 it's clear that the fight that has brought the license here
17 is the fight 24 miles distance from Rally Junction transfer
18 point. It is that 24-mile distance site which will be the
19 subject of licensing here today.

20 CHAIRMAN BOLLWERK: What is the -- the reservation --
21 all you're doing is taking the casks, putting them on the
22 truck and driving down the road to the reservation between
23 two rocks. Does that make any difference? The whole --
24 within the -- transfer. Is it 24 miles --

25 MR. TURK: It's a separate site. It's a separate

1 location.

2 CHAIRMAN BOLLWERK: When a truck has to take
3 possession, the question is where does that happen? If you
4 said 24 miles --

5 MR. TURK: My understanding of their application is
6 that the point at which they will take possession is at
7 their site. Now, a different question is raised as to
8 whether they themselves operate the crane at Rally Junction,
9 does that constitute construction possession?

10 CHAIRMAN BOLLWERK: Well, it's a question about who's
11 the common carrier here.

12 MR. TURK: There is no requirement that transportation
13 be done by a common carrier. It could be a contract
14 carrier. I don't know frankly what their plans are.

15 CHAIRMAN BOLLWERK: Let's say they decide to -- does it
16 make any difference to you?

17 MR. TURK: I can't answer that question. I'd have to
18 understand what the legal -- to enforce that point.

19 MR. SILBERG: What 72.6C1 states is that no one may
20 receive or transfer spent fuel unless they have a license
21 under Part 72. That would apply -- this applicant would not
22 be allowed to receive or transfer spent fuel as an entity
23 unless it first had an ISFSI license, but that license would
24 govern the ISFSI. It would not govern what happens at the
25 intermodal transfer point.

1 MR. TURK: Your Honor, there was reference made by
2 Mr. Silberg to DOT regulations which contain a 48-hour
3 limitation on storage. My understanding in consultation
4 with the transportation expert who is with us today, is that
5 the 48-hour limitation would not apply here. That would
6 apply where there would be scheduled service from one
7 carrier delivering to another carrier. Here because it
8 would be delivered to a contract carrier, we do not see that
9 that regulation applies.

10 So I'm not aware of any specific time limitation in DOT
11 regulations which would govern how long the spent fuel could
12 remain at Rally Junction.

13 There are more general statements in DOT regulations,
14 however, which require that radioactive materials be
15 forwarded promptly or without delay, but I'm not aware that
16 there's a time limitation in those regulations.

17 The State in its written reply to the staff's response,
18 there is a footnote that appears in the staff's written
19 pleading. In our written pleading we lay out what we
20 believe to be the regulatory scheme, that is the fight
21 that's controlling the -- intermodal transfer points a part
22 of the transportation of the regulatory scheme.

23 The footnote said that if we determine that something
24 more is required beyond what is in NRC regulations, we would
25 advise the Board and parties by way of --. What we meant by

1 that is not that we're troubled by the central regulations
2 are unsatisfactory. We're not. We believe the regulatory
3 scheme clear, at least to the reduction of this contention.

4 However, what we're leaving open is that if during the
5 course of our review we determine that there may be a need
6 for additional requirements beyond what the regulatory
7 scheme requires today, we will review that contention.
8 Unless that happens, and at this point I'm not aware that
9 that will happen, we feel the existing regulations must be
10 followed, and that requires an objection of the contention.

11 CHAIRMAN BOLLWERK: Are you talking about putting
12 conditions on the license of ISFSI as opposed to --

13 MR. TURK: That's one possibility. There's also the
14 possibility that the staff could determine there's a need
15 for further bill making. There's a number of options that
16 are possible. We have not determined anything more is
17 necessary at this time, because there is no -- beyond the
18 regulations to control the outcome here.

19 MR. KENNEDY: The appropriate rule is what is the
20 thrust of the legal question -- substantive potential
21 trouble. The question is: Are these potential troubles
22 going to -- in the existing application? Does the staff
23 have to come to us before they can consider their potential
24 troubles?

25 MR. TURK: The staff -- the application was mentions

1 the Rally Junction transfer point. It mentions the type of
2 equipment that will be present there. In the course of
3 asking questions to the applicant, I am sure that there will
4 be questions concerning those issues.

5 MR. KENNEDY: The staff -- considering Rally Junction
6 as a matter of law. Isn't it in the application? I'm
7 concerned --

8 MR. TURK: You're correct.

9 MR. KENNEDY: Am I correct?

10 MR. TURK: Yes.

11 DR. LAM: He's also saying the applicant's application
12 does not necessarily --

13 MR. TURK: I'm saying more than that, Your Honor. I'm
14 saying there is no violation. The failure for this
15 applicant to come in and say we want that interim modal
16 transfer point to be part of the Part 72 license facility,
17 that is not an error on their part, because it's a transfer
18 point that's not an on-site element, and therefore it's not
19 subject to the Part 72 requirements.

20 DR. LAM: So you disagree with the State's
21 interpretation of that.

22 MR. TURK: Yes.

23 CHAIRMAN BOLLWERK: I thought I heard you say as long
24 as they don't unload the casks; right?

25 MR. TURK: I'm sorry?

1 CHAIRMAN BOLLWERK: I said I thought you said as long
2 as they don't unload the casks.

3 MR. TURK: I'm not ruling out the possibility that they
4 might be the ones to unload the casks. What I said is I'd
5 like to understand what the legal framework for that is.
6 How do they set up a simple company, transportation company?
7 Are they contracting with the transportation company? Is
8 there something going on in the receipt of that casks which
9 would give you reason to think that that is in fact the time
10 at which they are taking possession as opposed to simply
11 perhaps letting an entity which contracts with them to do
12 the transportation to their door.

13 CHAIRMAN BOLLWERK: So in other words, when they say
14 are they a common carrier contract, they gave the stuff to
15 them.

16 MR. TURK: That's something I'm not saying yet. I
17 don't know what their arrangement would be for
18 transportation.

19 CHAIRMAN BOLLWERK: Well, if they're setting it up --
20 the question is did they set up something that looks like a
21 separate common carrier or contractor, then in fact isn't it
22 their entity? They -- separate them out or keep them --

23 MR. TURK: At this point I couldn't say --

24 CHAIRMAN BOLLWERK: All right. Ms. Chancellor.

25 MS. CHANCELLOR: Well, what we know is we don't know

1 very much. It's all -- the application to make a complete
2 analysis of what's -- facts for the contention. And for
3 example, not just one truck to move these casks. We would
4 be delighted to know how many trucks they would have, and
5 we'd be delighted to know some sort of shipping program,
6 some sort of factual basis for developing our contention.

7 So I think it is disingenuous of him to use the falsity
8 of information in the application and use that against us
9 for failing to support our contentions. We have tried to
10 give him the information that is available. And I don't
11 believe when the Commission amended its regulations in '89
12 it intended the applicant to be allowed to not provide the
13 information that's necessary.

14 I think we have here something that walks like a duck,
15 looks like a duck and that the activities that occur at
16 Rally Junction certainly are unique. The transportation
17 regulations, if we have to rely on those, what they say, 49
18 C.F.R. 17414 says that Department of Transportation
19 regulations require all shipments of hazardous material to
20 be forwarded promptly, and highway shipments are to be
21 transported without unnecessary delay.

22 These really do not provide any sort of safeguards for
23 what's going on at Rally Junction. Whether PAS can get
24 casks out of there within 48 hours or not, there are always
25 going to be casks at Rally Junction.

1 The staff I believe begs the question by saying, "This
2 is not the site." The applicant says, "We're going to
3 receive the casks at the reservation."

4 We believe that either the Rally Junction facility
5 should either be licensed as a separate entity or else as
6 part of the general Part 72 license. It cannot go simply
7 relying on DOT's transportation regulations and Part 71
8 regulations.

9 Whether PFS is going to employ a common carrier or not
10 to do the work, from the application PFS says that it will
11 build a building, own the building and own the crane. So
12 they are -- so we believe that whether they contract out the
13 work or not, the actual facility, it's a -- facility. The
14 facility will be owned and under control of PFS.

15 And again I want to stress that this is integral to the
16 operation of ISFSI. And how the casks move into and out of
17 Rally Junction will be a function of how the operation at
18 the ISFSI in terms of checking the casks when they come in,
19 or off loading them, or storing them at the time when the
20 trucks around would be a function of the operation of the
21 ISFSI.

22 DR. LAM: Ms. Chancellor, I see a twist in your
23 argument. Your contention originally said that on the
24 applicant's application -- and I hear you saying perhaps if
25 the regulation is silent all of the -- are you saying that?

1 MS. CHANCELLOR: Our contention is that here this
2 violates 722C if it intends to just use the transportation
3 of -- regulations for Rally Junction. If their license
4 solely addresses what occurs on the reservation, then the
5 possession of fuel at Rally Junction is not covered by that
6 Part 72 license, and it should be. If it is not covered by
7 that 72 license, a different license should be issued.

8 This is a problem of trying to squeeze this facility
9 into regulations that -- you're trying to squeeze an
10 elephant into a mouse hole, and it just won't fit.

11 CHAIRMAN BOLLWERK: All right. It's 3:15. Why don't
12 we go ahead and take a break till 3:30, and then we'll
13 reconvene.

14 (Recess from 3:15 p.m. to 3:30 p.m.)

15 CHAIRMAN BOLLWERK: I understand I was told at the
16 break that Mr. Silberg and Mr. Turk have something to say
17 briefly on this. I think it's delayed on the subject we
18 were just discussing, and obviously, Ms. Chancellor, if you
19 have something in response, we'll take that and then we'll
20 move on.

21 MR. SILBERG: Yes. I just wanted to clarify, I didn't
22 hear it but other people did that there was some discussion
23 about transfer of ownership. Ownership of the spent fuel
24 does not transfer at all. In terms of possession, the
25 application states that possession will not transfer until

1 after the cask is at the ISFSI, it is opened and determined
2 not to be contaminated. Only at that time does possession
3 transfer. If it's determined to be contaminated, the
4 application and the service agreement will state that the
5 shipping cask is closed up and it's sent back home.

6 But possession is really irrelevant to the issue. Even
7 if possession of the fuel transferred at the reactor sites,
8 the issue of the licensing of the ISFSI is a totally
9 different question unrelated to possession.

10 CHAIRMAN BOLLWERK: All right, is that it? Mr. Turk.

11 MR. TURK: Your Honor, this is a brief reply to
12 something which I'm told was in Ms. Chancellor's reply. I
13 didn't hear it, but I'm told that she had argued that there
14 was no licensing authority in effect over the spent fuel at
15 Rally Junction. I just wanted to clarify that. In fact, as
16 we've stated in our written response, the common carrier and
17 the shipper are subject to Part 73 requirements. So that
18 physical protection will be required at Rally Junction of
19 the common carrier and shipper.

20 CHAIRMAN BOLLWERK: All right. Ms. Chancellor,
21 anything you want to say about any of those two comments?

22 MS. CHANCELLOR: We stick by our comments that this is
23 a staging area and it should be regulated other than under
24 the regulations for Part 71 or DOT.

25 CHAIRMAN BOLLWERK: All right. Let me just make one

1 brief comment about scheduling. We're having -- you know,
2 in terms of absolute numbers we didn't get a lot of progress
3 in the last couple of hours. We only got through three
4 contentions, although we talked about some very important
5 issues so it concerns me a little less. Let me make it
6 clear I don't want to set absolute time limits on these
7 discussions, but I fully intend to do that if we begin to
8 run in to problems.

9 So recognize again that we've read the briefs. If
10 you've already said it in the brief it's not necessary to
11 keep reiterating. We understand what you said. Let's keep
12 to the main points here and move along. Because if we
13 don't, we could be here till past the snow and into next
14 summer. So we really need to keep our focus here and move
15 along. Because we want to hear from everybody, but we also
16 have time constraints.

17 All right. Yes, sir.

18 MR. KENNEDY: It's at 25 C.F.R. 162.8. And as usual
19 Mr. Silberg is correct. It's 25 years with a 25-year
20 renewal.

21 CHAIRMAN BOLLWERK: All right. You saved me from
22 reading the regulation. Appreciate, sir.

23 All right. I wanted to say something to Mr. Quintana
24 about his contention, but he's not here right now.

25 MR. YORK: He had to run Professor Wilson to the

1 airport, but his vehicle is back. So I don't know.

2 CHAIRMAN BOLLWERK: Well, we'll come back to that when
3 he returns. Not a big problem.

4 All right. That concludes the discussion we have of
5 the other issues. Let's go on and move in to safety issues
6 now. And the first one of those is Utah contention C which
7 deals with a failure to demonstrate compliance with NRC dose
8 calculations.

9 MS. CURRAN: I'm going to be addressing contention C.
10 Bear in mind what the chairman just said. I'm not going to
11 repeat things that were said in our written pleadings except
12 perhaps for emphasis and clarification.

13 I would like to correct a typographical error on the
14 bottom of page 21 of our reply pleading. In the middle line
15 of that bottom paragraph it should say, "And therefore the
16 Board need not address the question of whether the accident
17 is credible," rather than it says "needs to address."

18 This contention is somewhat technical, and I've asked
19 Dr. Resnikof to sit with me as he is the expert that is
20 helping us with this contention, and on whose expert opinion
21 the contention is based, and on his testimony we intend to
22 rely on these allegations of fact and opinion.

23 I think it warrants a bit of perhaps more clarification
24 of the issue with respect to the mixing of data that we are
25 concerned about with respect to the accident dose

1 calculations.

2 New reg. 1536 apparently provides data on the release
3 from the fuel pellets into the space between the pellets and
4 the cladding which is also known as the plana. And the
5 applicant used that particular data out of a new reg., but
6 then went to a separate report for what in our reply we
7 referred to as steps two and three of their calculation of
8 the doses, which was to take data from a Sandia accident
9 analysis, a transportation accident analysis, which assumes
10 that only 10 percent of the release actually escapes into
11 the cask, and then further go on to assume a respirable
12 fraction of that of five percent.

13 And my concern here is that they're mixing applies and
14 oranges, that the new reg. 1356 accident is a different
15 animal, a different type of an accident that may not have
16 the characteristics that are similar and applicable for the
17 Sandia type accident. And that the consequences -- if the
18 data for either type of accident were uniformly applied,
19 that the consequences are likely to be more severe.

20 And also that if a sabotage accident were examined,
21 which we believe would be of greater consequences than the
22 accident that's looked at, the consequences would be even
23 more severe. So that is the essential thrust of that
24 contention, that particular basis for that contention.

25 Then the contention goes on to question the failure to

1 calculate doses to children, to calculate ingestion doses
2 and ground-shine doses, and also the failure to use the most
3 up-to-date guidance for making the calculation which is
4 ICRP(60).

5 The applicants claims that, and I believe the staff
6 also that the applicant is not required to consider doses to
7 children, but as we point out in our pleading, the
8 regulations speak of doses to an individual and don't limit
9 the consideration to an adult or an adult male. And we have
10 provided factual basis for asserting that children should be
11 taken in to consideration, because the actual doses for them
12 are higher given their body characteristics.

13 And in fact ICRP(60) provides a methodology for doing
14 that, as well as an improved methodology for considering
15 lung doses. And although the applicant says that we don't
16 provide any expert opinion for that assertion, we do make
17 that factual assertion in our pleading, and it is supported
18 by an expert affidavit. So we have met the pleading
19 requirements under 10 C.F.R. 2.714.

20 Another argument that the applicant makes is that it is
21 not required to consider ground-shine doses and ingested
22 doses, because the regulatory guidance calls for the
23 evaluation of instantaneous impacts.

24 Now, whatever the regulatory guidance is that the
25 applicant is relying on, it's clear that the regulation

1 itself talks about doses resulting from the exposure, which
2 would include doses incurred after the exposure. And
3 because there's no plan in this design for the evacuation of
4 people from the area, it would seem particularly important
5 in this case to look at what the doses are going to be in
6 the aftermath of such an accident.

7 That's it for now.

8 CHAIRMAN BOLLWERK: All right. Thank you very much.
9 Mr. Silberg.

10 MR. SILBERG: Mr. Blake.

11 CHAIRMAN BOLLWERK: Mr. Blake.

12 MR. SILBERG: We like the staff. We're splitting up
13 some of the contentions

14 CHAIRMAN BOLLWERK: Whatever is comfortable for you
15 all.

16 MR. BLAKE: My response will be a little bit longer,
17 because not only do I have to respond to the oral
18 observations by the State, but as well the written reply.
19 This is really our first opportunity to respond. So I will
20 be taking some additional topics.

21 The first point I want to address is that the State
22 contends that the ISFSI can't be licensed until the casks
23 are approved by the agency in their separate generic
24 licensing proceeding.

25 I want the Court to understand that our position is

1 that that's a separate proceeding. It's going forward.
2 That generic licensing may well occur. But there are a
3 couple points about whether or not that plays a role in the
4 timing of our approval here.

5 One is that that regulation generic licensing really
6 doesn't apply here. It applies to the authorization to
7 allow ISFSIs at individual reactor sites, and we don't
8 believe it will necessarily apply to us.

9 But beyond that, the reason that we've included all of
10 the information on these casks and will continue to, and
11 there may well be contentions and a lot of discussion about
12 them, is because we're authorized -- we're allowed here
13 under the NRC regulations to get a specific license for the
14 use of these casks at this facility. And therefore, it's
15 really just a parallel. We don't think we're linked.

16 The second point I want to address by the State is that
17 the State complains that the applicant's and staff's
18 argument that the Halstad report is inapplicable because it
19 relates to the transportation accident that we're now taking
20 that position.

21 The storage cask is likely to be even more vulnerable
22 to sabotage than a transportation cask.

23 First, the State has substantially augmented its
24 argument and basis. I would refer the Board to the sole
25 sentence that the State had on this topic in its original

1 petition at 18. It's one sentence. It didn't make any
2 argument along these lines. It only said, "The applicant's
3 assertion of loss of -- is not credible, is contradicted by
4 studies showing the credibility of sabotage induced
5 accidents that meets the loss of" -- citing Halstad.

6 The State's original petition didn't provide any basis
7 to connect the transportation analysis in Halstad's report
8 to spent fuel storage casks that we're talking about here.
9 It's a new attempt to connect them is a new basis in our
10 view.

11 Second, the State's new basis that the applicant must
12 consider the use of anti-tank missiles in sabotage is a
13 clear challenge to the Commission's regulations. As we
14 discussed in our earlier answer, anti-tank missiles have a
15 place here, and they're beyond the scope of the design basis
16 threat that we have to cope with and protect against at the
17 ISFSI.

18 I was going to react, but I appreciate the
19 clarification on the language. In fact, I just couldn't
20 understand their contention before, but now I do. I don't
21 have a comment.

22 The question of the use of noreg 1536 and sand 802124
23 came up both in their written reply and just now in their
24 oral comments. Our explanation is a fairly simple one which
25 we laid out in our response. We used 1536 to the extent

1 possible, because it was recommended by the staff
2 specifically for the evaluation of releases from dry cask
3 storage. And where it didn't provide data then we used the
4 sand 802124 as a secondary source, because it was in fact
5 relied on and cited in your reg. 1536.

6 While I think she's right, Ms. Curran is right that
7 1536 may not have data from a Sandia type accident, the
8 Sandia accident was a transportation -- high velocity
9 transportation accident, not a dry-cask storage accident
10 that we're talking about here. We simply think it's the
11 preferred, the more applicable, that which is recommended by
12 the staff and therefore a better choice.

13 The State has asserted that the releases could be much
14 larger if a sabotage event took place, because not just
15 radio nuclides within the gap but a percentage of the fuel
16 itself might be released. Our reaction to that is first
17 that the State's proposal that the Commission should base
18 its design basis accident radio nuclide releases from the
19 ISFSI on a sabotage event is a new basis to us and therefore
20 not proper at this point.

21 Second, State's recommendation what it believed should
22 be the design basis accident for spent fuel storage we think
23 is a collateral attack on the ISFSI's regulations, the
24 sabotage thing.

25 Third, we don't think the State has shown any

1 deficiency in the staff's guidance on radio nuclide releases
2 which should be used in dry cask storage system settings
3 such as this one. We don't think that the State's undefined
4 sabotage event belief that it could yield higher radio
5 nuclide releases is a sufficient basis.

6 With regard to the topic of whether or not non-
7 respirable nuclides, radio nuclides can be deposited in the
8 ground and lead to direct gamma or food ingestion dose
9 pathways, we think we responded to this before, but let me
10 hit a couple of points.

11 First, direct gamma is considered in our dose studies
12 by dose from the radio nuclides in the cloud around the dose
13 recipient. We don't see why the same radio nuclides on the
14 ground would increase the dose.

15 Second, the staff has recommended bounding dose
16 analysis in 1536, and it assumes an instantaneous dose where
17 the hypothetical individual is conservatively assumed to be
18 right at the closest point of the CAB, the controlled area
19 boundary, and remains stationary the entire time the radio
20 nuclide plume passes by. That entire dose is assumed to be
21 imparted instantaneously.

22 The staff has recommended this kind of hypothetical, a
23 very conservative and bounding approach to evaluating the
24 dose. And we believe it does bound any real-world doses.
25 We don't believe that the State has provided a basis for

1 thinking otherwise or to allow a contention to consider
2 other one.

3 The State's argument that we need to include in the
4 calculation of doses for individuals the ingestion pathway,
5 we believe is similarly coped with by the approach that
6 we've taken. Again we've taken the conservative bounding
7 approach assuming a hypothetical individual in the worst
8 possible location totally consumed by the cloud, and that
9 that pathway more than adequately copes with what a real
10 individual off site through the ingestion pathway of
11 vegetation or livestock which could conceivably provide by
12 way of pathway particularly in this situation.

13 We don't think that the State has provided a basis for
14 challenging the NRC's typical approach and particular
15 approach in the case of this instance.

16 With regard to children it's really the same answer.
17 We agree that children are individuals, and there's no legal
18 argument about it. But the fact is with the conservative
19 assumptions and bounding analysis that the staff has
20 recommended that's accepted throughout the industry and is
21 aptly applied here, we think we have more than coped with
22 any realistic doses for children who might receive doses
23 through a variety of pathways off site.

24 Finally, I think with respect to ICRP(30) and (60)
25 which I think was the last topic addressed, the State, while

1 it relies on Dr. Resnikof's opinion that 60 would be
2 preferable to 30, we don't believe has provided a sufficient
3 basis for an admissible contention. It's provided no
4 indication why the applicant is required to use the dose and
5 methodology in 60 or why 30 is insufficient to meet the
6 Commission's regulations.

7 We don't think that going with 60 is a regulatory
8 requirement. We think we've met the staff's guidance. We
9 think that 30 continues to be applicable and recommended by
10 the NRC staff, and that it ought to be appropriate and
11 sufficient here.

12 We don't think, even though there may be a difference
13 in opinion by Dr. Resnikof, that given the fact that there's
14 no regulatory requirement to go with 60 versus 30, that
15 there is a material dispute or an issue here to be allowed
16 in the proceeding.

17 I hope I've covered the various things that Ms. Curran
18 hit this afternoon, and I tried to reduce what I otherwise
19 planned to say.

20 CHAIRMAN BOLLWERK: Okay, thank you, sir.

21 Mr. Turk.

22 MR. MARCO: That's me. I'd like to address two
23 clarifications it looks like the State makes with respect to
24 their contention. This may actually streamline my argument.

25 So first, in its reply the State clarifies its

1 assertion concerning cask certification. The State asserts
2 in its reply that it contends that because the design of the
3 ISFSI proposed by PFS depends on the use of those particular
4 casks, it cannot be licensed until casks are approved by the
5 agency.

6 This is consistent with the staff's approach in which
7 its review schedule depends upon completion of certification
8 of casks. Therefore, as far as the staff is concerned, it
9 really does not have any dispute with this issue with the
10 State.

11 The other matter concerns the credibility of the
12 hypothetical loss of confinement barrier accident. And as I
13 just heard now from Ms. Curran, the sentence would now read:

14 "In any event, as the applicant recognizes, the
15 loss of confinement accident is analyzed and the
16 application, and therefore the Board needs not to
17 address the question of whether the accident is
18 credible."

19 Therefore, it looks like this is not really an issue
20 anymore from what I understand from the State.

21 So then just to move on to what the staff opposes. Is
22 that correct?

23 MS. CURRAN: Yes.

24 MR. TURK: For clarification, if I might ask which page
25 was the correction made to?

1 MS. CURRAN: It was page 21.

2 MR. TURK: Twenty-one?

3 MS. CURRAN: Page 21 of the reply.

4 MS. MARCO: Yeah, that's right.

5 In the State's reply the State asserts that the
6 applicant should have considered doses to children. The
7 State claims that the standards in Part 72 and Part 20 place
8 no limitations on the calculations.

9 The State asserts that the standards prescribe dose
10 limits for individuals outside the controlled area, and in
11 Part 20 individual members of the public. It should be
12 noted though in the statements of consideration for Part 20
13 the Commission responded to a commenter who requested to
14 delete a table from Appendix B which applied to the
15 assessment and doses to the public. And the Commission in
16 its response to that commenter -- well, let me just read
17 briefly from the comment that was posed.

18 "NRC should consider deleting table two from
19 Appendix B. The concentrated limits in Appendix B
20 do not provide adequate protection of children and
21 infants because they do not take into account age
22 dependency."

23 The Commission responded to this by saying:

24 "The use of effective dose equivalent concept
25 reduces the importance of age dependent intake to

1 dose factors."

2 And that basically it had considered age dependent factors
3 in its table itself. It was built in. So this is one
4 instance where the Commission does not mean that any
5 individual necessarily includes children.

6 MR. CURRAN: Can you give the citation for that?

7 MS. MARCO: Sure. It's the statement of consideration
8 for Part 20, and it's -- one second. Mine does not have a
9 citation. 20 statement of consideration 34, but
10 September 29th, 1995 I believe. I'm trying to get a Federal
11 Register cite for you.

12 MR. TURK: That's in reference to the NRC's loose-leaf
13 regulations.

14 MS. MARCO: Well, anyway, while you're looking for
15 that, the State also asserts that ICRP(30) is outdated for
16 dose calculations, and that ICRP(60) is more accurate for
17 human dose, radiation doses. The expert does not explain
18 where ICRP(30) is deficient other than the fact that it does
19 not calculate doses to children. And in fact the statements
20 of consideration in Part 20 do talk about ICRP(30). And on
21 that same page which we're getting the cite for, the
22 Commission recognizes that ICRP 26/30 system evaluates the
23 doses to the major organs, and the six remaining organs that
24 received the next highest doses. This is also in response
25 to one of the comments.

1 And it goes on to say:

2 "The concentration limits for members of the
3 public were based on a reference dose,
4 incorporated an additional factor of two reduction
5 for age dependency and combined and water intakes.
6 Thus, the concentration limits for the public
7 reflect a reduction in their basis from whole body
8 annual dose. These changes are reflected in ICRP
9 publication 30. However, these changes are a
10 result of changes in the scientific techniques."

11 I'm just skimming.

12 Well, anyway, there are several places where ICRP(30)
13 is recommended or at least relied upon by the Commission.

14 MR. TURK: The Federal Register citation is 56 F.R.
15 23360. This appears in the May 21, 1991 volume. I can't
16 give you an exact page reference. It's approximately 25
17 pages into that Federal Register.

18 MS. CURRAN: Can you do any better than that?

19 MR. TURK: Well, you'll find it when you look at the --
20 the comments are numbered, so --

21 MS. MARCO: No, they're not.

22 MR. TURK: They're not?

23 MS. MARCO: I don't think so, not in this case.

24 MR. TURK: They're not numbered, but you should be able
25 to find it with the quotation given.

1 MS. CURRAN: I just wonder if we could build in some
2 opportunity for the staff to show me if we can compare our
3 documents that I could actually --

4 MR. TURK: We'll hand you the page; all right?

5 MS. CURRAN: Okay.

6 CHAIRMAN BOLLWERK: I'll tell you what. Why don't we
7 take -- why you're looking at that let me talk to
8 Mr. Quintana about his contention, and we'll try to work it
9 that way.

10 The contention you have is -- and we're talking about
11 this is the only contention you had, was it was a broad one,
12 basically saying that you support the application. Am I
13 correct in that? I don't think I misstated that in any way.

14 MR. QUINTANA: That's correct.

15 CHAIRMAN BOLLWERK: One thing I should make you aware
16 of, I have to say that the Commission's I want to say
17 practice dealing with contentions like this, because people
18 who come in to support the application is not very clear.
19 But one thing I would expect is when the time comes and we
20 begin to get a little more focused in terms of the
21 contentions or whatever, we will be asking you to specify
22 fairly clearly what contentions you want to talk about. We
23 have that requirement certainly for anybody that comes in as
24 an interested state or interested governmental entity. And
25 simply being there we're going to want a little more

1 information from you about what you plan to do, how you plan
2 to participate other than simply to kind of be there. All
3 right? I just want to put you on notice.

4 MR. QUINTANA: That's fine, Your Honor.

5 CHAIRMAN BOLLWERK: You know, that contention doesn't
6 really tell us anything about what your problems are other
7 than you support the application. So it may come to the
8 point where we're going to ask you to be a little more
9 specific about where you are on each issue, any problems you
10 have and witnesses, those sorts of things. Just want to
11 make you aware of that.

12 MR. QUINTANA: Thank you, Your Honor.

13 CHAIRMAN BOLLWERK: All right. Any luck, Ms. Curran?

14 MS. CURRAN: It's going to take just a minute more.

15 CHAIRMAN BOLLWERK: Okay. Just so you know, the next
16 one we have is number D, which is facilitation of
17 commissioning.

18 MS. CURRAN: That's mine too.

19 CHAIRMAN BOLLWERK: I'm sorry?

20 MS. CURRAN: So if you begin --

21 CHAIRMAN BOLLWERK: I know that. I recognize that.
22 I'm just moving along to let people know where we're going.
23 I'm not putting you off.

24 And I just wanted to say that it looked to me like on
25 this contention one of the things it dealt with is a need

1 for a hot cell, and also OGDAs may have had some relationship
2 with this contention. So to put you on notice about that.
3 And actually this question about a need for a hot cell was
4 also brought up in Utah J. So that may be something we need
5 to talk about at the same time.

6 MR. TURK: Your Honor, may I make a procedural inquiry?

7 CHAIRMAN BOLLWERK: Sure.

8 MR. TURK: Given the fact that there are so many
9 contentions to address in these next few days, I wondered if
10 the parties might be able to come to an agreement and
11 perhaps jointly propose to you that the only real argument
12 we'll have today is along the applicant and staff to address
13 the written replies, and then to respond to any Board
14 questions on additional contentions. And to the extent that
15 there's an oral statement to allow other parties to respond
16 to an oral statement. But it seems there really shouldn't
17 be any reason to restate positions that we took in our
18 pleadings already.

19 CHAIRMAN BOLLWERK: So let me understand what you're
20 proposing.

21 MR. TURK: I wanted the other parties to agree to this,
22 but I suggest that we just limit oral argument to addressing
23 written replies on the assumption that everything else is
24 already before you, everything you need.

25 CHAIRMAN BOLLWERK: Right.

1 MR. TURK: And also addressing any Board questions that
2 you have.

3 CHAIRMAN BOLLWERK: I certainly don't have a problem
4 with that obviously. If that's something that you think you
5 can get agreement on that's fine. As I say again we read
6 the pleadings, and I'm beginning to hear a lot of the same
7 statements as we said in this or we said in that. And when
8 you say that, that indicates to me you're basically telling
9 me what you've already written down.

10 MR. TURK: Yeah. There are only two written replies by
11 Castle Rock and by the State of Utah. OGD made a written
12 reply but it didn't address specific contentions.

13 CHAIRMAN BOLLWERK: Right.

14 MR. TURK: So I would think that the only thing that
15 needs to be heard today are all responses to those written
16 replies and allowing those parties also to respond to those
17 oral comments.

18 CHAIRMAN BOLLWERK: Again I don't have a problem with
19 that.

20 MS. CHANCELLOR: We'd have a problem with that, because
21 we couldn't address the whole scope, especially with
22 Mr. Silberg's witty answer. We couldn't address all issues
23 in our reply, and we feel like we would be limited. But we
24 will make a concerted effort not to address things that are
25 already addressed in our brief.

1 CHAIRMAN BOLLWERK: Okay. Again the thing that
2 concerns me when I hear references back to pleadings that
3 have already been filed, then that tells me you're telling
4 me something that's in the document, and I can go back and
5 read the document. If nothing else just tell me what page
6 it's on, and I'll go back and read it again. But no need to
7 explain if you've said it once. That's the point.

8 MR. TURK: I'm sure that I recall that the State did on
9 several occasions say that they'll address something further
10 in the oral argument.

11 CHAIRMAN BOLLWERK: All right.

12 MS. CURRAN: Okay.

13 CHAIRMAN BOLLWERK: All right, go ahead.

14 MS. CURRAN: It seems like we're in agreement with the
15 staff that the basic issue about the licensing of the
16 Holpeck and transfer cask is just that the license shouldn't
17 be granted for this facility until the NRC has done its
18 review of whatever data the license the applicant is relying
19 on in Holpeck and transfer application. We don't want to
20 fall between the cracks is what we're concerned about. If
21 the NRC isn't reviewing that data in this particular
22 proceeding, and is reviewing -- but it stated it relied on
23 for this specific design, then we want to make sure that no
24 license is issued until such time that review is done.
25 That's the concern of that part of the contention.

1 CHAIRMAN BOLLWERK: Anything you all want to say about
2 that point?

3 MS. MARCO: I think that's consistent. I believe
4 that's consistent with our position.

5 CHAIRMAN BOLLWERK: All right.

6 MR. TURK: We can't guarantee, however, that in the
7 rule making every one of the State's concerns will be
8 addressed explicitly, but that would be a separate
9 proceeding.

10 CHAIRMAN BOLLWERK: All right.

11 MS. CURRAN: I'm not going to address the credibility
12 issue because we've addressed it in our pleadings, and I
13 really think that the parties agree at this point it's a
14 non-issue.

15 I'd like to address PFS's argument about the Sandia
16 report being something that was reasonable for PFS to rely
17 on because it's referenced in the new reg. What we needed
18 to do to gain admissibility of this contention was raise a
19 factual basis for a concern about whether the Sandia data is
20 appropriate to be used in the same scenario as the data used
21 in new reg. 1536, and this we did. There are two different
22 kinds of accidents that are being analyzed, and the African
23 hasn't demonstrated why it's appropriate to leap from one
24 accident scenario and its associated data to another and
25 combine those two.

1 We think that if one were to try to develop the data
2 for an accident where the lid was taken off the canister,
3 which is this loss-of-confinement accident, that it would be
4 very unreasonable to assume that 90 percent of the inventory
5 is contained in a cask and doesn't escape.

6 And although it might be reasonable to assume a five-
7 percent respirable fraction, that you can't just arbitrarily
8 impose those various formulas on different accident
9 scenarios.

10 MR. KLINE: While you're on that subject, we haven't
11 had an opportunity to review, or at least I haven't, Sandia
12 2124. But it's been asserted that that accident analyzed
13 was a high-energy or high-impact argument or accident.

14 What I haven't heard you address is why this doesn't
15 set an upper bound on disbursal. I mean even if it's wrong,
16 why is it that disbursal from a static situation could
17 exceed that from a high energy situation.

18 MS. CURRAN: All right. I'm going to venture into some
19 technical territory.

20 DR. KLINE: You have your expert.

21 MS. CURRAN: I've instructed my expert to pinch me if I
22 make a mistake. But my understanding is that in a high-
23 velocity impact accident that one of the factors is a great
24 deal of energy and heat which may affect -- create
25 circumstances in which the radio nuclides would plate, and

1 that also the fuel would break into large chunks which would
2 not necessarily be rubble.

3 And the scenario that's evaluated by PFS or by new reg.
4 1536 involves -- it doesn't say how it happens, but the
5 opening of the canister. That circumstance isn't present.
6 So there's a difference there.

7 DR. KLINE: But it doesn't -- I'm just looking for a
8 basis now. And the question: On what basis is there to
9 think that that static situation would have a higher energy
10 of disbursement? I mean assuming you remove a lid. What
11 disburses it from there?

12 MS. CURRAN: Well, I think there's two different
13 factors that you have to look at. One is the amount of
14 radio nuclides that are released, and the other is the
15 amount that's respirable. In the case that's evaluated by
16 PFS, the amount that's in the plenum is all gas, and it
17 would be reasonable to assume that it's all respirable.

18 DR. KLINE: Okay.

19 DR. LAM: In addition to Judge Kline's question, why
20 would this issue be material?

21 MS. CURRAN: Because the dose -- the point of this
22 exercise that PSF did is to calculate the dose to the public
23 at the boundary of the facility. And the dose could be
24 significantly higher than is estimated by PFS.

25 And the consequence of that would be possibly to

1 require off-site emergency planning or possibly to deny the
2 license.

3 DR. LAM: So you are saying the difference could lead
4 to a significantly higher dose.

5 MS. CURRAN: Yes, a dose in excess of the regulatory
6 standard.

7 CHAIRMAN BOLLWERK: Anything else?

8 MS. CURRAN: I'd just also like to make sure that the
9 issue of -- we did assert that we think sabotage is a
10 credible accident, but it is also important to note that our
11 contention deals with the accident that was -- it also deals
12 with the accident that was evaluated in the SAR. And that
13 one of the things we want to focus on here is assuming that
14 one uses the maximum credible accident chosen by PFS, that
15 even that analysis is inadequate.

16 I'd like to address the argument that the dose
17 calculation was conservative because it considered direct
18 gamma radiation from the plume during the instantaneous
19 release. That is not the same factually as the ground shine
20 from radio nuclides that are deposited on the ground during
21 an accident in which may affect people after, any aftermath
22 of the accident.

23 Same principle for the ingestion pathway. The
24 ingestion pathway concept includes doses that one receives
25 after the accident from deposition of radio nuclides on

1 food, on food sources.

2 PFS has said here that they have coped with doses to
3 children, attempted to cope with them in whatever way they
4 could. In our view, that represents the factual issue here.
5 Well, did they or did they not address the issue of doses to
6 children? The regulation, the statement of considerations
7 for Part 20 in our view does not preclude the consideration
8 of doses to children. In the statement that was read by NRC
9 counsel, the Commission says -- responds to an argument that
10 the concentration limits in Appendix B do not provide
11 adequate protection of children and infants, because they do
12 not take into account age dependency in a proper manner.

13 Compliance with dose limits rather than with these
14 concentration limits should be required. The Commission
15 responds that -- one of their responses is there is a lack
16 of detailed age dependent metabolic data for all but the
17 most common radio nuclides that will inhibit such attempts
18 to increase the precision of the dose estimates.

19 Well, to us what the Commission is saying here is that
20 ICRP(30) is all we've got right now and that it doesn't
21 contain enough information to allow us to calculate doses to
22 children. But ICRP(60) has updated that. In 1989 the ICRP
23 issued a report annuls of the ICRP publication 56 in which
24 it set out its goals for ICRP(60) which was to -- included
25 modeling doses for adults of both sexes, infants, children

1 and different racial groups, as well as workers. And this
2 is something that, as we have stated in our contention,
3 ICRP(60) does.

4 So it is our position that at this point the Commission
5 has what it needs in order to look at doses to children.
6 The language of the regulation certainly contemplates
7 looking at doses to individuals, and that is not just the
8 adult male.

9 CHAIRMAN BOLLWERK: That it?

10 MS. CURRAN: Furthermore, the Commission in their
11 regulations has made a dose -- an exception with respect to
12 doses to embryos and women workers, which I think is stated
13 in our reply. That's all.

14 CHAIRMAN BOLLWERK: Okay, thank you.

15 All right. Let's move on to State D. As I mentioned,
16 it looked to me like there was also some question about the
17 hot cell question and also GDA. We'll move on from there.
18 But promise to deal with State D first.

19 MS. CURRAN: Okay. I'll again try not to go over
20 ground that's already been plowed.

21 CHAIRMAN BOLLWERK: All right.

22 MS. CURRAN: But I do want to point that the regulation
23 that's being cited in this contention governs the
24 facilitation of decommissioning, not decommissioning itself.
25 So it's important to keep that in mind. In our view,

1 facilitation of decommissioning encompasses removing the
2 fuel so that the remainder of the activities can be
3 completed in a timely way.

4 PFS argues that the State has no grounds for seeking
5 more -- a better description of the compatibility of these
6 casks with DOE specifications. But in one of the documents
7 that PFS itself cites, DOE imposes some requirements that
8 are not addressed by PFS. And I'm referring to the standard
9 contract for disposal of spent nuclear fuel and/or high
10 level radioactive waste which is included in the Code of
11 Federal Regulations.

12 PFS is correct that DOE has agreed to accept spent fuel
13 in whatever condition it's in, but there are some
14 limitations on that particular agreement.

15 For instance, that if there is failed fuel then it
16 needs to be either previously encapsulated, and it also has
17 to be visually inspected for evidence of structural
18 deformity or damage to cladding or spacers which may require
19 special handling.

20 So one of our concerns here is that PFS has no means
21 for inspecting the fuel before it goes to the ultimate
22 destination. If it appears that if the purchaser, which is
23 the main -- in the contract gives to whoever is sending the
24 fuel to the repository. If the purchaser is unable to
25 verify the condition of the fuel, that this could result in

1 a delay in DOE accepting the fuel, and that these
2 arrangements have to be worked out in advance.

3 So in our view, if PFS isn't able to verify the
4 condition of this fuel before it goes off to the repository,
5 that could cause a substantial delay in DOE being able to
6 accept the fuel.

7 An argument was raised by PFS about shipping back to
8 the utility. Regarding the safety of shipping damaged fuel
9 back to the utility, as we pointed out, it's not clear at
10 all that the original licensees are going to be around when
11 this fuel needs to be shipped back to them.

12 And also we'd like to point out a regulation at 10
13 C.F.R. 71.63(b) which requires that plutonium in excess of
14 20 curies per package must be packaged in a separate inner
15 container placed within outer packaging that meets the
16 requirement of subparts E and F of this part for packaging
17 material in normal form, i.e. a canister. And it's my
18 understanding that the fuel that would be shipped from the
19 PFS facility would meet this threshold requirement. In
20 other words, if a canister were damaged and found to need to
21 be replaced, the fuel would have to be put in a new canister
22 before it could be shipped out having that much plutonium in
23 it.

24 There's also a requirement in 10 C.F.R. 72.122(1) that
25 licensees must have the capability to retrieve radioactive

1 wastes for further processing or disposal, and that
2 capability is not present at this facility.

3 DR. LAM: Ms. Curran, do you mean retrievable? In this
4 instance do you mean open up the canister, reach inside and
5 retrieve the material inside? Is that what you meant?

6 MS. CURRAN: Right. To be able to retrieve the fuel
7 from the canister.

8 DR. LAM: Right.

9 MS. CURRAN: Breathe the fumes, right.

10 DR. LAM: Right. You mean opening up the cans and
11 reach inside and retrieve the material inside. That's what
12 you meant.

13 MS. CURRAN: Right, right.

14 CHAIRMAN BOLLWERK: Anything else? That's it?

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

16 CHAIRMAN BOLLWERK: All right. Mr. Blake or
17 Mr. Silberg.

18 MR. SILBERG: The State says that we haven't addressed
19 issues of compatibility, such as thermal design, size,
20 capacity of the casks on page 30. They also say that some
21 criteria are already available. Those criteria that they
22 cite however are not available, and they don't cite anywhere
23 where it says that they are.

24 Indeed, the standard contract does provide certain
25 limitations, and it says that if there's spent fuel it does

1 have to be encapsulated, that in fact the fuel that comes to
2 private fuel storage is encapsulated. It's encapsulated at
3 the reactors. It's visually inspected at the reactors. The
4 purchaser is not PFS as defined in the standard contract.
5 Rather the purchaser is the utility, and it's the utility's
6 obligation to perform those visual inspections and
7 encapsulations. So it's a --

8 In terms of two new regulations which the State has
9 cited, one of them was cited in their response, 72.122(1) on
10 retrievability. They did not cite it in their original
11 filing, and therefore it's a late basis and improper.

12 And in any event, we do deal with retrievability. Fuel
13 is in a canister. It is retrieved in the canister at
14 private fuel storage, and transferred from the storage cask
15 to a shipping cask from whence it will be sent to the DOE
16 for disposal.

17 In terms of the other reference to the 71.63(b), the
18 plutonium regulation, that too is a late basis. That one
19 wasn't even cited in their response let alone in their
20 initial contention. So we would argue that that is a late
21 basis and not something which ought to be considered at this
22 point, even if it applies. And right now I'm not in a
23 position to say whether it does or doesn't, not having had
24 any previous notice that they were going to be raising that
25 issue.

1 The quotations that they provide in the bottom of 30
2 and the top of 31 with respect to inspections, those
3 quotations are not applicable because those are given in the
4 context of the VSC(24) cask which is not a dual-purpose
5 cask. We are dealing with dual-purpose casks in this
6 proceeding in which the fuel will be in a canister, sent to
7 a facility in a shipping cask, transferred to a storage
8 cask. So it's simply not relevant.

9 The State also stated on page 32 that we haven't
10 explained how fuel fermented and failed will be encapsulated
11 in the absence of a hot cell. The answer is it comes to
12 this facility encapsulated. And as I mentioned before and
13 state in the application, if when that canister arrives in
14 the facility, if the canister is contaminated it does not
15 get accepted and sent back. And to the extent that they're
16 saying the reactor won't be there anymore, that would
17 indicate that the reactor has disappeared within a week or
18 two, and that's not likely to happen.

19 The State also says that fuel should be inspected and
20 repackaged, that DOE repository may not have that
21 capability. No basis for that statement, because they
22 know -- they should well know every document that DOE has
23 put out with respect to the repository says that the DOE
24 facility will in fact have that capability.

25 And to the extent that they say that shipping of failed

1 fuel creates safety hazards, this is again on page 32, that
2 is a direct challenge to Part 72.

3 They then contradict that statement two lines later by
4 saying the issue concerns preparation for transportation,
5 not transportation itself, and is thus inadmissible. I
6 don't know how you square that with a statement that talks
7 about the safety -- the significant alleged safety hazards
8 shipping of failed fuel.

9 With respect to 10 C.F.R. 72112(h) which they also
10 cite, that provision is met in our case because we are
11 not -- we are dealing with the canning of unconsolidated
12 assemblies which is one of the confinement barriers that's
13 specified in that regulation.

14 CHAIRMAN BOLLWERK: All right. Mr. Turk or Ms. Marco?
15 I'm sorry.

16 MS. MARCO: That's okay. The State in its reply
17 asserts that the decommissioning plan regulations in 7230
18 govern decommissioning itself, and that therefore at 72130
19 governs the facilitation of decommissioning. However,
20 decommissioning is understood to exclude the disposal of
21 spent fuel, and further the decommissioning plan
22 requirements of 7230 which the State claims are opposite,
23 restate that requirement that the applicant discuss those
24 design features and facilitate its decontamination and
25 decommissioning at the end of its useful life. So it's all

1 to be read together.

2 Compatibility with DOE criteria is going to be
3 addressed in the rule making proceeding for the storage
4 casks. The regulations for the cask certification state
5 that to the extent practical in the design of storage casks
6 consideration should be given to compatibility with ultimate
7 disposition by DOE. The Commission recognized that specific
8 design criteria may not be available until a repository
9 design is approved.

10 In addition, statements reply asserts that the
11 retrievability of fuel is required at ISFSIs, and the
12 regulations do state that storage systems must be designed
13 to allow ready retrievable spent fuel or high level
14 radioactive waste for further processing and for disposal.

15 The statements of consideration for approval of the
16 VSC(24) casks which are found at 58 F.R. 17948, (1993)
17 address this issue of retrievability. The Commission
18 recognized that many licensees would be able to return the
19 fuel to the reactor pool in an accident. Again this deals
20 with a generic license.

21 But the Commission did go on to also recognize that
22 licensees will have other options to deal with the accident,
23 such as temporary storage and spare storage casks or use of
24 an existing certified transportation cask. The State does
25 not show why the applicant's system fails to accomplish

1 this.

2 In addition, the State points to regulations at 7163.
3 However, the casks are exempt from 7163 because as it says:

4 "Solid plutonium in the following forms is exempt
5 from the requirements of this paragraph. Number
6 one, reactive fuel elements."

7 And so therefore these portions of this contention
8 should be denied.

9 CHAIRMAN BOLLWERK: Anything else?

10 All right. I'll let you all have a brief reply to
11 that. Then I'm going to want to know how this contention is
12 different from your J, I believe it was which also talks
13 about hot cells.

14 MS. CURRAN: I just wondered. I notice it's 25 of
15 5:00. This would be an ideal time for me to take that break
16 you promised.

17 CHAIRMAN BOLLWERK: I'll tell you what. Why don't you
18 finish your reply, and then I'll give you a break. We'll
19 put off J until after the break.

20 MS. CURRAN: PFS argues that we make a phony argument
21 with respect to the DOE contract for acceptance of fuel.
22 There's a provision in that contract that requires failed
23 fuel to be encapsulated.

24 I think this argument gets to the heart of what we see
25 as one of the major problems with this application, which is

1 that it assumes that nothing is going to go wrong at the PFS
2 facility. No problems are going to be discovered. They're
3 going to be discovered, if at all, by the previous licensee,
4 the licensee who's shipping the fuel to PFS. So that if the
5 fuel has failed, then it will already be encapsulated.

6 Well, our concern is what if that is not discovered
7 until the fuel arrived at PFS, until the fuel has been in
8 storage at PFS for some years? The original licensee no
9 longer has a facility to which to return the fuel, and it
10 has to be encapsulated somehow and sent to the DOE. Those
11 are the kind of questions that aren't answered at all in
12 this application.

13 CHAIRMAN BOLLWERK: All right.

14 MR. SILBERG: Could I make a brief response to that?

15 CHAIRMAN BOLLWERK: If you're willing to -- go ahead,
16 yes.

17 MR. SILBERG: The fuel is encapsulated. It is already
18 encapsulated. And as we set forth in our application, if it
19 needs to be shipped off site, even if the canister were to
20 be damaged, you can ship it off site in compliance with NRC
21 and DOC regs, by sending it off in a transportation cask.
22 It's not an issue.

23 CHAIRMAN BOLLWERK: That will be the last word.

24 MS. CURRAN: And I think as we have demonstrated in our
25 pleadings that the cladding is considered one of the

1 barriers to release of radio nuclides from a spent fuel
2 cask.

3 And if the fuel has failed, that means the cladding has
4 failed. And I think the rule making documents that we have
5 cited speak for themselves, that it is not considered
6 sufficient to use the cask as the sole barrier to releases
7 to the environment in that event.

8 The Commission does not contemplate fuel being shipped
9 all over the place, failed fuel with solely a cask for
10 protection.

11 CHAIRMAN BOLLWERK: All right. Then why don't we go
12 and take a 10-minute break. We'll come back at five till
13 5:00. And I'll ask you --

14 MS. CURRAN: Did you think I was finished?

15 CHAIRMAN BOLLWERK: Were you finished?

16 MS. CURRAN: No.

17 CHAIRMAN BOLLWERK: You weren't. All right. Go ahead.
18 You said you wanted a break. I figured that you were done.

19 MS. CURRAN: Well, I do, but I'd like to be able to
20 finish.

21 CHAIRMAN BOLLWERK: All right, go ahead.

22 MS. CURRAN: As far as we know, there is no basis for
23 an argument that the only kind of a cask that would need to
24 have the capability of retrievability is a single-purpose
25 cask. There's no -- there's nothing in any of the NRC's

1 regulatory statements that indicate that if one has a dual-
2 purpose cask one can do away with the need to retrieve the
3 fuel, as appears to have been suggested by the NRC staff.
4 None of the other options, besides putting it in a spent
5 fuel pool or a hot cell that were suggested by the staff are
6 to our knowledge licensable means of actually retrieving
7 fuel safely.

8 I'd also like to note in a letter that was mentioned
9 earlier, March 24th, 1997 memorandum from William Cane of
10 the NRC to Mark Deligadi of a meeting summary of a
11 March 19th, '97 meeting, that the NRC staff summarize in
12 their summary of this meeting, they say:

13 "The staff indicated that PFS's plan to place a
14 damaged cask into a transportation cask could only
15 be considered a temporary solution."

16 There was an argument made here that decommissioning
17 has nothing to do with removal of spent fuel. But in the
18 regulations it talks about decommissioning following the
19 removal of spent fuel. If you want to facilitate
20 decommissioning you have to facilitate the removal of spent
21 fuel or you never get to decommissioning.

22 So this is an element of facilitating it, which is to
23 make sure that the process for removing this material from
24 the site can go about in an expeditious and efficient way,
25 which hasn't been done here.

1 DR. LAM: Could the applicant remove the cask with the
2 spent fuel in it elsewhere for decommissioning? Would you
3 accept that possibility?

4 MS. CURRAN: I'm not sure I understand your question.

5 DR. LAM: Well, the applicant ships the cask away from
6 the site elsewhere, and then therefore removing everything.

7 MS. CURRAN: Oh, well --

8 DR. LAM: Then you proceed with decommissioning on
9 site. Would that be a possibility?

10 MS. CURRAN: Well, theoretically, but from what we've
11 seen here it's very difficult to find any place to ship it
12 other than back to the original site which may no longer
13 exist, or to the ultimate repository. And if the fuel or
14 the canister is damaged in an accident or found to be
15 damaged, then it cannot be shipped in that condition.

16 DR. LAM: So your scenario of decommissioning is for
17 the applicant to either open up all the casks and initiate
18 decommissioning in the hot cell, quote, unquote, or they are
19 compelled to open up the cans because of prior damage spent
20 fuel inside. So that's the scenario that you are thinking.
21 Am I correct?

22 MS. CURRAN: If the fuel is damaged, and the canister's
23 damaged, then the NRC requires double containment before it
24 can be shipped.

25 DR. LAM: Okay. So it possible they damage to the cask

1 as well as the spent fuel inside? That's one of the
2 scenarios.

3 MS. CURRAN: Damage to the canister. That is a
4 scenario. Or if it is discovered through other inspections
5 or through some information that PFS gets that the fuel
6 inside a given cask is damaged, and this needs to be
7 addressed. We're not arguing that every cask has to be
8 opened up before it can leave the site for decommissioning,
9 but if a problem is discovered --

10 DR. LAM: Oh, I --

11 MS. CURRAN: -- or found, then there has to be a way to
12 address it before the fuel is shipped off-site.

13 DR. LAM: Right. I'm not addressing the merits of your
14 argument. I'm just trying to understand what scenario you
15 are proposing.

16 MS. CURRAN: Okay.

17 Just one more. Can't find that one.

18 I'd like to just address the question of the
19 applicability of 10 C.F.R. 71.63(b). It is true that we did
20 not cite this previously in our contention or our reply. We
21 discovered this -- we've been in the process of reviewing
22 mountains of information and regulations, and trying to
23 bring it to the Board's attention as quickly as possible.
24 And it often feels like, in an NRC proceeding, that you're
25 late when you get up in the morning.

1 And we did find a letter that was written September 15,
2 1997 from Mark Delagatti of the NRC staff to Gary Tjersland,
3 T-J-E-R-S-L-A-N-D, who is a director of licensing and
4 product development at Holtech International. And
5 Mr. Delagatti's letter has a number of requests for
6 additional information of Holtech.

7 And one of its requests are -- is "Explain how the
8 double containment requirements are, of 10 C.F.R. 71.63(b),
9 are being implemented for transport of damaged spent fuel."
10 That's on page two of the attachment to the letter.

11 The staff believes that the exemption from this
12 regulation is only applicable to spent fuel rods with intact
13 cladding, i.e., with no defects greater than hairline cracks
14 or pinhole leaks. So it appears to us that as -- that where
15 the fuel is damaged, that this 71.63(b) does apply, and that
16 this is a matter of concern to the staff.

17 CHAIRMAN BOLLWERK: Is that it?

18 MS. CURRAN: That's it.

19 CHAIRMAN BOLLWERK: All right.

20 Ten minutes. We'll be back at 5.

21 MR. LATER: Your Honor, one small housekeeping
22 question.

23 CHAIRMAN BOLLWERK: All right.

24 MR. LATER: This morning we had raised the question of
25 our ability to leave materials here overnight.

1 CHAIRMAN BOLLWERK: Right.

2 MR. LATER: Do we have an answer?

3 CHAIRMAN BOLLWERK: I need to talk to Mr. Wettstein
4 about that. He's --

5 MR. WETTSTEIN: Yes. Yes, you can leave them
6 overnight. The room will be locked.

7 CHAIRMAN BOLLWERK: All right.

8 MR. LATER: Thankyou.

9 CHAIRMAN BOLLWERK: All right. Why don't we go off.
10 Let's take a 10 minute break. Be back at 5:00.

11 (Break from 4:50 to 5:00 p.m.)

12 CHAIRMAN BOLLWERK: The question I posed, I guess,
13 although the relationship is not correct necessarily, but
14 there's discussion in both this contention and contention J,
15 Utah J, about hot cells. Is it close enough that we can
16 talk about this one as well at this point?

17 MS. CURRAN: Yeah.

18 CHAIRMAN BOLLWERK: All right. Let's do it then.

19 MS. CURRAN: Okay. Once again, I'm not going to repeat
20 what was said in our pleadings, but there was an argument
21 made by PFS that, in the effort to respond to the great
22 volume of material that we were unable to get to. And that
23 is the issue of the ability to inspect for smearable
24 contamination.

25 As we stated in --

1 CHAIRMAN BOLLWERK: Excuse me one second. I'm having a
2 little trouble hearing over that. Okay?

3 Appreciate it. Thank you.

4 Go ahead.

5 MS. CURRAN: As we stated in the contention, it was our
6 concern that when, at the facility, at the nuclear plant,
7 when the fuel is loaded into the cask, that, or the
8 canister, that the canister itself, the outside of the
9 canister will become contaminated in the spent fuel pool.
10 This is something that commonly happens.

11 And that then a canister is taken out of the pool, put
12 in a cask, shipped to the storage facility, and poses a risk
13 of contaminating the facility and the workers who work at
14 the facility. Not just through inhalation, but through
15 getting it on their clothing, their bodies, ingesting it.

16 The applicant's proposed method of detecting smearable
17 contamination is to take samples from the lid of the
18 canister. But it isn't the lid of the canister that goes
19 into the spent fuel pool at the power plant when the
20 canister's loaded, it's the canister itself. So that that
21 is not going to provide a representative sample of the
22 contamination on the canister. And that is why there needs
23 to be some method of detecting whether the canister itself
24 has been contaminated.

25 Also, PFS claims to have analyzed the effects of

1 contamination and found that they really would not be
2 significant at all, and it's a no, never mind. But there's
3 two aspects of that analysis that really undermine that
4 assurance.

5 One is that they, according to the SAR, and this is at
6 page 8.1-17, they're looking at inhalation doses, not, for
7 instance, doses that one might get on one's skin or ingest.
8 And they're also looking at doses at the fence post. And
9 we're talking about contamination that workers could
10 actually get on themselves or ingest, which would be
11 significantly more serious doses.

12 That really -- that is also related to the hot cell
13 issue, because in our view, what you need is either a spent
14 fuel pool or a hot cell, or some kind of facility where you
15 can actually get at the canister and inspect it and see what
16 kind of contamination is on the canister.

17 With respect to the requirement for, the general
18 requirement for being able to inspect the condition of the
19 fuel and the cladding and the canister, our contention
20 relies principally on the NRC regulations that relate to
21 inspection and maintenance of safety components of nuclear
22 power -- of spent fuel storage facilities, which we argue
23 include the canister and the cladding, which are there to
24 protect the safety and integrity of the storage facility.

25 In addition, we also wish to add to that basis the

1 requirement in 10 C.F.R. 72.122(1), which is the requirement
2 for retrievability of spent fuel, which we mentioned in our
3 reply. PFS has made an argument in its application that it
4 is able to retrieve the spent fuel by various means, none of
5 which it has actually committed to. But we have addressed
6 those means and demonstrated that none of them satisfy the
7 kind of safety standards that the NRC has for performing
8 this kind of an exercise.

9 Oh, okay. I think both parties have referred to new
10 reg 1092, which is the Commission's 1984 environmental
11 assessment for licensing requirements for the independent
12 storage of spent fuel and high level radioactive waste. And
13 we have cited that for the proposition that the Commission
14 bases its determination regarding the low impacts of spent
15 fuel storage on the assumption that licensees have the
16 ability to retrieve spent fuel, and repair it and inspect
17 it.

18 But I'd also like to mention that in Table 2.2.4-1, the
19 Commission sets forth postulated accidents for surface cask
20 storage of canistered fuel. And in the sequence of events
21 for a moderate accident, the Commission describes an
22 accident in which the canister fails in storage.

23 The canister containing a PWR assembly fails in storage
24 due to corrosion and one PWR rod has a pinhole leak. That's
25 the scenario.

1 The second step in the sequence of events is that gases
2 are released.

3 The third step is that the leaking canister is detected
4 and removed to a canning facility, which apparently is some
5 kind of a hot cell or spent fuel pool.

6 And then four, the overpacked canister is returned to
7 the surface cask.

8 So this is just the type of thing that the Commission
9 envisioned in new reg 1092 when a problem is discovered when
10 a canister fails during storage, that the licensee has the
11 means to inspect that, to retrieve it, and to repair it.

12 MR. SILBERG: Excuse me. What was the document you
13 were just referring to?

14 MS. CURRAN: New reg 1092.

15 MR. SILBERG: That's 1092? Okay.

16 MS. CURRAN: Table 2.2.4-1. That's all I have for the
17 moment.

18 CHAIRMAN BOLLWERK: All right.

19 Mr. Silberg.

20 MR. SILBERG: First, a lot of what we've heard is new.
21 In fact, they just admitted it was new information, new
22 bases. Not particularly new in terms of its existence, but
23 new in terms of being put forward as the basis for this
24 contention. And therefore, we believe it's inappropriate.

25 That same discussion appears in their response on page

1 50 and 51, where there's a lengthy discussion of 72.122(1).
2 Again, new basis not in their initial contention; no
3 showing.

4 With respect to the ability to inspect, there simply is
5 no basis that's put forward for how this contamination is
6 going to occur. As we state in our application, these will
7 be inspected at the reactor before they're put in the
8 shipping container.

9 There is no physical way that a canister could be
10 preferentially contaminated at its bottom by spent fuel pool
11 water since water in the spent fuel pool is reasonably
12 uniform water. And if it's going to be contaminated at the
13 bottom, it's going to be contaminated at the top. And
14 therefore, it will show up when one inspects it at PFS
15 facility. So they have shown no basis for why the
16 inspection process that we have proposed is inadequate.

17 And we're also not talking about, you know, failing
18 fuels, because the failed fuel, as we show in our
19 application at SR page 10.2-2, any failed fuel is going to
20 be put in a container before it's put in the canister, which
21 is before it's put in the transportation cask. So at all
22 times we have multiple barriers.

23 That's about all.

24 CHAIRMAN BOLLWERK: All right.

25 Staff? Mr. Quintana, I see you reading something.

1 Have anything you want to say on this one?

2 MR. QUINTANA: No, I'll pass, Your Honor.

3 CHAIRMAN BOLLWERK: All right. Thank you.

4 Mr. Turk or Ms. Marco, who's ever --

5 MR. TURK: I think I'll take this one, Your Honor, if I
6 may.

7 The State did not allege, in its basis or in the
8 contention itself, that the applicant fails to satisfy 10
9 C.F.R. 72.122(1). That appears for the first time in its
10 reply to the staff's response to the contention. And the
11 State admits this on several place -- in several places in
12 their written reply, as well as today. The State asserts
13 they want to add this as a new basis.

14 There has been no showing as to why that could not have
15 been raised earlier. It is a late assertion. No good cause
16 has been shown. And the contention should not be allowed to
17 be amended late at this time.

18 With respect to what that reuglation requires, as the
19 staff stated, and this, I apologize. The staff will be
20 examining retrievability of systems. There is -- I'm sorry,
21 retrievability of fuel. There is nothing in the regulations
22 that requires a hot cell specifically.

23 The applicant, in it safety analysis report at page
24 8.2-42, indicates that dry cask handling systems could be
25 brought to the site if necessary. That has not been

1 addressed by the State in its contention.

2 As I understand what the -- what that refers to, is
3 that refers to the mechanical systems for handling a fuel
4 canister. It would equate, when placed in an appropriate
5 building, would equate to a hot cell. That -- those
6 statements have not been addressed by the State in the
7 contention.

8 (Pause)

9 CHAIRMAN BOLLWERK: Anything else, sir?

10 MR. TURK: No. I'm sorry, I was -- thought you were --
11 I was waiting for you and you were waiting for me.

12 CHAIRMAN BOLLWERK: Okay.

13 Ms. Curran.

14 MS. CURRAN: Okay. With respect to 72.122(1), frankly,
15 we weren't aware of that requirement when we wrote the
16 contention, although we tried to review all the
17 requirements. And it was pointed out to us by the NRC staff
18 in their response on this contention. So we looked at what
19 the NRC had cited and we saw that this is a relevant
20 regulation. And so we have cited it.

21 We think that it's important to, at this stage of the
22 proceeding, which is very early in the proceeding. This is
23 the prehearing conference. And it was before the prehearing
24 conference that we had sought to amend this to add this
25 additional citation, which is a very basic citation to what

1 is required here.

2 It is not prejudicing any other party, especially not
3 the staff, who is -- staff has decided that it needs to look
4 at this issue and hasn't even reviewed it yet. This is not
5 a case where some review has already taken place and now
6 we're claiming that a new analysis has to be done. This is
7 an initial issue that is being raised very early.

8 We did, in our reply to PFS, address the various
9 arguments that PFS makes in Section 8 of the SAR as to how
10 it might achieve retrievability of casks. There are a
11 number of strategies set forth in Section 8.

12 The only one that is actually committed to is the
13 strategy of returning the fuel to the originating facility
14 if a problem is found. And as we lay out in our contention,
15 that is not a viable solution years down the road after the
16 initial facility has closed.

17 It's also not a viable solution to take fuel that a
18 licensee knows is damaged and put it back on the railroad
19 tracks and send it hundreds or thousands of miles back to
20 where it started. It's required by the NRC, and assumed
21 here in new reg 1092, that the problem is addressed before
22 the fuel is shipped off-site.

23 With respect to whether smearable contamination is
24 properly detected by the applicant's method, we have
25 provided a basis in our contention for asserting that the

1 entire canister needs to be examined for contamination, and
2 we stand on that basis.

3 CHAIRMAN BOLLWERK: All right.

4 DR. KLINE: Mr. Turk, I guess we haven't reviewed
5 72.122 either. But in your comments, you appeared to
6 concede that there was some form of retrievability might be
7 required.

8 MR. TURK: Yes.

9 DR. KLINE: Is that right?

10 MR. TURK: Yes.

11 DR. KLINE: Okay.

12 MR. TURK: But our report --

13 DR. KLINE: Without regard to the question of lateness,
14 but just intrinsically --

15 MR. TURK: Yes. But that doesn't necessarily mean that
16 they have to have a hot cell.

17 DR. KLINE: Yeah.

18 MR. TURK: For instance, just now, in a reply to me,
19 Ms. Curran argued that the applicant would not be allowed to
20 ship --

21 DR. KLINE: Yeah.

22 MR. TURK: -- damaged fuel off-site. That's not
23 correct.

24 DR. KLINE: Well, in the --

25 MR. TURK: In fact, there are means for overpacks,

1 there are transportation overpacks in which if there is a
2 damaged canister or fuel, that could be loaded into some
3 other cask and shipped off-site.

4 DR. KLINE: Yeah.

5 MR. TURK: There are exemptions to Part 71 that could
6 be obtained when necessary under emergency conditions in
7 order to ship --

8 DR. KLINE: Right.

9 MR. TURK: -- damaged fuel back to the reactor or to
10 some other facility.

11 DR. KLINE: Now --

12 MR. TURK: So those are options as well.

13 DR. KLINE: On page 53, the State responds to the
14 applicant's proposed rephrasing of contention J, and there
15 clarifies that the contention is not limited to the
16 assertion that a hot cell is needed. That what they're
17 really seeking is a reasonable and safe means for
18 inspecting, maintaining and retrieving fuel. Does that
19 alter your view at all? I mean I think they're not narrowly
20 pressing for a hot cell alone, but just as --

21 MR. TURK: It doesn't alter my view of the contention,
22 because what the State had to do in the contention was point
23 to something in the application or the safety analysis
24 report that was deficient.

25 DR. KLINE: Uh-huh.

1 MR. TURK: And they haven't done that. instead, what
2 they've said is well, you haven't shown us that you'll have
3 a hot cell or something comparable. And that is not --

4 DR. KLINE: Well, here's --

5 MR. TURK: That is not a requirement.

6 DR. KLINE: Yeah.

7 MS. CURRAN: I don't --

8 DR. KLINE: As I understood, that the basic assertion
9 that some form of retrievability is needed is actually
10 consistent with your own view, isn't it?

11 MR. TURK: Yes. That there'll be some means of
12 retrievability, yes.

13 DR. KLINE: Some means. And they themselves are saying
14 yeah, all we're really pressing for is some means, not
15 narrowly focused on a hot cell alone.

16 MR. TURK: But if you look at the contention, you'll
17 see that while it cites many articles extraneous to the
18 application, it may cite new regs, it may cite other
19 opinions by other persons. They don't point to the -- to a
20 deficiency in the application.

21 DR. KLINE: I see.

22 MR. TURK: And that they had to do in order to present
23 a supportable contention.

24 DR. KLINE: Okay. All right.

25 MS. CURRAN: May I respond to that?

1 MR. TURK: The only reference that I can see is on page
2 63, which was a very terse statement quoting a statement in
3 the SAR which says that "All casks are expected to be
4 properly packed, and any defective or contaminated cask will
5 be returned to the originating shipper." And they go on
6 from there to say well, you need more than that, but they
7 don't apply -- they don't address other aspects of the
8 application in which handling -- not handling, but the
9 ability to deal with damaged fuel casks, canisters or casks
10 is addressed.

11 DR. KLINE: All right.

12 MS. CURRAN: Well --

13 CHAIRMAN BOLLWERK: Go ahead.

14 MS. CURRAN: Can I respond? As far as we're concerned,
15 by identifying a portion of the, a section or two of the
16 regulations which the applicant has not complied with, and
17 has not demonstrated that it meets that requirement, that is
18 the expression of a valid contention and material dispute
19 with the applicant.

20 It is also incorrect to state that we have not
21 addressed the proposed measures that PFS sets out. They are
22 addressed one by one in our reply, in response to the
23 argument that was made by, I think it was the NRC staff that
24 this retrievability issue is addressed in the SAR. So we
25 looked at the SAR and we addressed it.

1 And, you know, we had not seen that particular section.
2 But when it was pointed out to us, we looked at it and it
3 did not resolve our concerns. Our concerns remain valid.

4 And as a matter of fact, what PFS, the only thing that
5 is added to in Section 8 of the SAR is to propose some
6 possible ways of dealing with the issue. The only really
7 concrete proposal that PFS has is to put it back in the cask
8 and ship it back to the originating facility, which in our
9 contention we demonstrate is adequate.

10 And so all the other things that PFS suggests it might
11 consider are really in a sense irrelevant to this license
12 application. There's no commitment to implement those
13 things. Why should we need to have a conversation about
14 what PFS speculates it might do? We're here to address what
15 PFS proposes to do.

16 CHAIRMAN BOLLWERK: All right. Anything else on the
17 contention?

18 Sir, you're jumping into the void here. Go ahead.

19 MR. KENNEDY: First of all, the retrievability
20 contention does not require that fuel be removed from the
21 canister. If it's retrieved from the storage cask, it is
22 retrieved from the facility, it can be shipped off-site in a
23 transportation cap, transportation cask, which is perfectly
24 acceptable under NRC regulations.

25 In terms of the new reg, the new reg is not a

1 regulation. The Commission, subsequent to the new reg,
2 certified spent fuel storage cask systems with double seal
3 welded canisters, and it did not require that the canisters
4 be inspected or that the casks be inspected. Commission has
5 thereby, I think, set to rest the argument that somehow new
6 reg 1092 is a requirement that must be followed in this
7 case. We have met the regulations.

8 CHAIRMAN BOLLWERK: Okay. That it?

9 I think he's -- I'm hearing the same thing that I think
10 I heard before. Do you have a reply to whatever --

11 MS. CURRAN: We're not saying that new reg 1092
12 establishes a requirement. It establishes the assumption on
13 which the NRC bases its conclusion that spent fuel storage
14 is safe. And there's nothing in the regulations that
15 somehow exempts this facility from that particular
16 assumption.

17 Just have one other point that I want to make.

18 CHAIRMAN BOLLWERK: Make it quick. I will give you one
19 minute.

20 MS. CURRAN: And that is that the regulations that deal
21 with inspection of safety components don't say -- they're
22 not restricted to inspection of the cask. They deal with
23 inspection of safety components. And the cladding is
24 defined as a safety component in the regulations.

25 CHAIRMAN BOLLWERK: All right.

1 Okay. Ms. Belille, we haven't heard anything from you
2 today. Do you want to say something, or --

3 MS. BELILLE: Yes. Yes, I just have a few comments
4 that I would like to make.

5 CHAIRMAN BOLLWERK: Okay.

6 MS. BELILLE: First of all, I'd like --

7 CHAIRMAN BOLLWERK: This relates to your contention A?

8 MS. BELILLE: Yes, it does. It's one section of our
9 contention A.

10 First of all, I would like to say that I have
11 Mr. Robert Halstead here. He is an expert that has helped
12 with the drafting of our contentions.

13 I have just a few comments to make. There are two
14 kinds of actions which could require a hot cell. There's
15 transportation accidents and there's storage accidents.
16 Each type of accident identifies subsets which identify
17 visible damage to the exterior of the cask or whether the
18 containment may not be sufficient to determine whether the
19 spent fuel has been damaged.

20 Regarding incoming damaged cask in transport, which the
21 regulations appear to prohibit receipt of such casks at the
22 facility, we are not convinced that receipt of a damaged
23 cask would be precluded in all cases. An example of that
24 would be severe accidents or terroristic incidents causing
25 breach of the cask in transit between Rolley Junction and

1 the storage site.

2 Secondly, we are not convinced about the applicant's
3 assertions in SAR that a low drop accident during
4 canister -- during a canister drop accident is not a
5 credible event. With our without a loss of electrical
6 power, we believe that such an event could occur as a result
7 of operator error or insider sabotage.

8 The lack of detail in SAR 5.1.4.2 and SAR 8.1.1
9 prevents us from determining whether the lift height
10 involved would be sufficient to breach a canister or damage
11 the fuel inside absent a compounding human error or insider
12 sabotage. Therefore, we reject the assurances offered in
13 8.2.7.4 of the recovery plan.

14 However, a low drop accident is sufficiently credible
15 in conjunction with insider sabotage or human error that we
16 conclude that a prudent facility design must include a fully
17 equipped hot cell, both for diagnostic purposes and any
18 necessary repairs or repackaging.

19 CHAIRMAN BOLLWERK: All right. Is there anything else
20 you want to say about that contention?

21 MS. BELILLE: No, that would be all.

22 CHAIRMAN BOLLWERK: All right.

23 MR. SILBERG: I guess my only comment would be is that
24 sounds like all new information that wasn't in the initial
25 contention and isn't responding to anything in our response.

1 To me, this is new basis and is inappropriate.

2 With respect to the discussion between transportation
3 accidents and storage accidents, we dealt with that in our
4 application by saying that the casks, incoming canisters,
5 incoming don't meet our specifications, they're not accepted
6 and they're sent back. It's not a question of needing a hot
7 cell at the facility to process it. They return to the
8 reactor from which they originated.

9 The low drop accident, as far as I knew, new stuff.
10 And I'm not prepared to discuss that now because I don't
11 even know what it's relating to.

12 CHAIRMAN BOLLWERK: All right, sir.

13 Mr. Turk, anything?

14 MS. MARCO: We had the same comment, that this was all
15 new information for us. And to the extent it's not, we're
16 just going to stand on our pleading.

17 CHAIRMAN BOLLWERK: All right. You want to say
18 something, Mr. Quintana?

19 MR. QUINTANA: In one paragraph or less. These
20 scenarios that are being developed, we would object to these
21 contentions, because these scenarios that are being
22 developed are so far removed and so speculative, and there
23 is in terms of the literature that's out there in terms of
24 actual events that have occurred at nuclear power plants
25 worldwide, it's stretching the limits of reality to find the

1 scenarios that have been developed in these contentions
2 here, and we would object.

3 CHAIRMAN BOLLWERK: All right. Ms. Belille.

4 MS. BELILLE: Your Honor, we would want to respond to
5 that. We are aware of a document that exists which we have
6 not been able to get at this point regarding an insider
7 sabotage incident that would be relevant to this analysis.
8 We would ask that we be allowed to get this at a later date.

9 We also would like to reiterate that our contention
10 talks broadly about risk assessment and those kinds of
11 accidents that might happen in our basis regarding the
12 comprehensive risk assessment.

13 The SAR would be deficient because it did not broadly
14 address the range of accidents, and it only gave a few
15 specific examples.

16 CHAIRMAN BOLLWERK: All right. Anything else you want
17 to say?

18 MR. SILBERG: We've covered it.

19 CHAIRMAN BOLLWERK: All right. We have about a half an
20 hour here. I'm going to set us -- this may be a daunting
21 task. The next one is Utah E which is financial
22 qualification. You also have Castle Rock 7 and Confederated
23 Tribes F. We'll leave when we finish those. So let's move
24 forward.

25 MS. CHANCELLOR: Shall I go?

1 CHAIRMAN BOLLWERK: Yes, please.

2 MS. CHANCELLOR: We won't reiterate what is in our
3 contentions about this limited liability company without any
4 track record or assets. However, what we would like to
5 mention is that PSF takes vague and generalized information
6 in its application for cost estimates and other deficiencies
7 that we point out and ties these deficiencies in to a
8 defense against this contention.

9 PFS does not counter our challenge the citations to the
10 license application. Over and over again in its 15-page
11 response it says that we have provided no factual basis for
12 our claim, that the information provided does not allow a
13 reasonable evaluation of financial qualifications.

14 There's only two references to the license application
15 in PFS' answer to our contention.

16 In discussing service agreements and debt financing,
17 PFS refers to the application. On page 80, 81 appears its
18 answer. It says:

19 "No construction will proceed until service
20 agreement committing for a significant quantity of
21 spent fuel have been signed."

22 And on 82 PFS says that it retains the option to fund
23 certain construction costs or debt financing, and if
24 necessary it will be required to provide additional
25 financial assurances.

1 We believe that the LES case that was recently decided
2 on appeal which we agree is guidance, that that is something
3 that this Board may wish to follow, and that these
4 commitments that PFS has made should be made as license
5 conditions.

6 In the LES case the license conditions stated that:
7 "There must be an unequivocal commitment not to
8 proceed with construction until funding is fully
9 committed. The project is not to proceed unless
10 it has long-term contracts sufficient to cover
11 both construction and operating costs."

12 Slip opinion at 2526.

13 In the PFS application LA page 1-5 it says:
14 "No construction will proceed unless service
15 agreements committing for a significant quantity
16 of spent fuel have been signed."

17 We may disagree what that significant quantity is, but we
18 believe that this should be a license condition.

19 Also, on LA page 1-6:

20 "As with direct financing from customers, no
21 construction will take place without the
22 commitment from service agreements where
23 significant quantity of spent fuel."

24 Unless PFS L.L.C. members and non-members have committed to
25 significant quantities of storage, construction of the PFSS

1 will not begin. Again we believe that these should be made
2 license conditions.

3 The staff does not oppose this contention, and we
4 believe it should be admitted.

5 CHAIRMAN BOLLWERK: All right. Let me also say I
6 believe that also OGDF has to do with financial statements
7 as well. You might take a look at that and we'll talk about
8 it in a second.

9 CHAIRMAN BOLLWERK: All right. Mr. Silberg.

10 MR. SILBERG: First of all, LES is guidance. She lost
11 the case below, so she stuck us with the law the Commission
12 made. But the commitments that were imposed in that case
13 were imposed after there was a contention. You can't
14 bootstrap your way in to a contention by asking for a
15 license fee. So in that case commitments were imposed on
16 LES, were in fact volunteered by LES. That's certainly
17 premature at the very least in this case.

18 The rule I think is fairly clear in LES for Part 70
19 licensing and Part 70 financing qualifications. Part 72
20 which is the provision that we're dealing with here is even
21 more remote from Part 50 and Appendix C to Part 50. And
22 therefore, any guidance that the State seeks to divine from
23 Part 50, Appendix C for a Part 72 license is clearly
24 inapplicable.

25 The State also says that it must have a reasonably

1 detailed cost estimate. There is no requirement. This is
2 not an NBA case study. One is to provide the information
3 that is necessary to show how much money need be raised.
4 And then the question is: Does the State have some basis
5 for challenging that overall number? And does the State
6 have some basis for challenging our ability to raise that
7 number? If we provided one level of breakdown they would
8 undoubtedly ask for three more levels of breakdown. There's
9 simply no requirement to provide the detailed kind of cost
10 estimate that they've asked for.

11 They also say that we should be penalized because we
12 failed to supply such basic information as the
13 identification of the participants in the project. I think
14 the State knows well who they are. If they don't, for the
15 record, it's within the State's power to know Fuel Tech,
16 American Electric Power, Con Edison, Illinois Power, GPU and
17 Southern Nuclear. So that basis to your contention I think
18 disappears.

19 With respect to your citation on the Wisconsin Electric
20 case on the top of 36, where the reasonable specificity was
21 required an addition contention was adopted, was admitted on
22 those grounds. It's interesting to note as that decision
23 states at page 856, that the applicant's total filings on
24 which contentions had to be based were six pages as opposed
25 to the thousands of pages which you have in this case.

1 And to the extent that you say it's self-evidence that
2 reasonable cost estimates, allocation of financial
3 responsibility are indispensable, that is nothing more than
4 a circuit argument. There is no regulatory basis to be
5 cited for that.

6 With respect to the challenge, the claim that PFS is
7 applying to build a facility that is unique, and the only
8 other contemplated centralized spent fuel storage facility
9 is DOE's unsuccessful MRS that clearly ignores the existing
10 license for the MRS facility.

11 I'll rest on what we've laid out in our response for
12 the rest of our arguments.

13 CHAIRMAN BOLLWERK: All right. Mr. Quintana, anything?

14 MR. QUINTANA: Very briefly our objection to this
15 contention as well. This industry grew only 50-billion
16 dollars in combined gross revenues, and certainly you have
17 the combined wherewithal to adequately fund a limited
18 liability company to engage in this venture. Once this
19 project gets through the licensing procedure, it's obvious
20 that they could bond the project or use the whole host of
21 mechanisms to properly fund it.

22 If the Skull Valley Goshutes believed that they didn't
23 have the adequate financial resources to pursue this
24 project, we wouldn't have entered into this leave agreement
25 with them. A due diligence check was made on these

1 companies, and it would obviously be fraud if these
2 companies were trying to put together a deal and didn't have
3 adequate financing to do it.

4 CHAIRMAN BOLLWERK: All right. Ms. Marco and Mr. Turk.

5 MS. MARCO: We didn't oppose this.

6 CHAIRMAN BOLLWERK: You did not oppose any part of this
7 I take it.

8 All right. Just one question to the LES. I'm sort
9 of -- the Commission there said that they were not going to
10 apply Part 50 except as they wished to. Does that tell us
11 what we need to do here?

12 MR. SILBERG: I think that says that the Commission, if
13 it chooses to.

14 CHAIRMAN BOLLWERK: That's correct, but where does that
15 leave us? Are we supposed to ask the Commission what they
16 want to do in this case?

17 MR. SILBERG: I think the Commission has the obligation
18 to speak if it believes that in the circumstances additional
19 requirements are necessary. I think if you compare the
20 situation in LES where you have limited liability company
21 that was relying on project financing, a very similar
22 situation to the one we have here, that the Commission in
23 that case deemed that the requirements of Appendix C to
24 Part 50 were not required. And I think any comparison
25 between those two sets of circumstances would be enough to

1 demonstrate that reliance on Appendix C was not appropriate
2 in this case.

3 CHAIRMAN BOLLWERK: Well, you have to say that the
4 Part 72 financial qualifications regulations are somewhat
5 more specific than the Part 70 are. It only talks about
6 reasonable assurance, and that's obviously a somewhat broad
7 standing. Here we have something more to look at.

8 MR. SILBERG: Correct.

9 CHAIRMAN BOLLWERK: All right.

10 DR. LAM: I'd also like to hear from the staff of the
11 staff's rationale of not opposing this contention.

12 Ms. Marco? Mr. Tuck?

13 MR. TURK: It really comes down to a question of
14 whether we feel the contention satisfies the 2.714
15 requirements for stating the contention in a clear and
16 concise manner providing a basis that satisfied 2.714(b)(2).

17 DR. LAM: So we're addressing merits without the burden
18 of the rule.

19 MR. TURK: Yes.

20 CHAIRMAN BOLLWERK: All right. Anything that State of
21 Utah wishes to say about what you've heard?

22 MS. CHANCELLOR: Yes, Your Honor. In the LES case it
23 says:

24 "We by no means suggest that the Commission is
25 precluded from apply Part 50 standards to a

1 Part 70 applicant if particular circumstances
2 warrant this approach."

3 And what we suggested was that circumstances in this
4 case warrant this approach.

5 We're still confused as to who the participants are in
6 this venture. I don't believe Mr. Silberg mentioned
7 Southern California Edison. But in any event, the name of a
8 company is insufficient to establish what the relationship
9 is between the members of the company, how the service
10 agreements will work, whether there will be adequate
11 financing.

12 And in terms of the thousands of pages of information
13 that was submitted, there is very, very little on actual
14 construction costs. There are a few pages scattered here or
15 there. And I don't think it is unreasonable to require a
16 breakdown.

17 This is an example: total construction costs of \$100
18 million including site preparation, construction and access
19 road, administration buildings, visitor center, security and
20 physics building, operations and maintenance building,
21 canister transfer building and storage, procurement of
22 transport and -- transfer and transport equipment, the
23 transportation corridor construction. All these things are
24 lumped under the heading of "\$100 million." There is
25 absolutely no rational basis for that \$100 million estimate.

1 There's no way we can adequately evaluate these construction
2 activities based on these \$100 million costs, and nowhere
3 else is this broken down that we have been able to find in
4 the license application.

5 And PFS has not responded to any citations to the
6 application to show where these construction costs are
7 further broken down into some sort of reasonable numbers
8 that we can evaluate.

9 MR. SILBERG: If I could just -- I did omit Southern
10 Cal. Edison, but obviously the fact that Ms. Chancellor knew
11 the name of it indicates that this was not a real issue.

12 With respect to --

13 CHAIRMAN BOLLWERK: Anybody else you need to mention at
14 this point? Sounds like everybody -- well, you're set at
15 least at this point.

16 MR. SILBERG: I just wanted to confirm that they were a
17 party.

18 CHAIRMAN BOLLWERK: All right. Anything else?

19 MR. SILBERG: That's all.

20 CHAIRMAN BOLLWERK: All right. Why don't we look --

21 MS. CHANCELLOR: I just have one --

22 CHAIRMAN BOLLWERK: I'm sorry.

23 MS. CHANCELLOR: I just want to emphasize that this is
24 a newly established entity with no track record. It is very
25 similar to the LES case. And that we do need adequate

1 information, and it's demonstrative of the shortcomings in
2 the application Mr. Silberg's omission of Southern
3 California Edison.

4 CHAIRMAN BOLLWERK: Castle Rock, do you want to say
5 anything in terms of differences in your case? You have a
6 financial qualifications contention as well.

7 MR. LATER: We do. And there are some differences. I
8 will not repeat areas where I think there are similarities.
9 I will deal very quickly with those areas where I think we
10 are somewhat different.

11 We have focused in part upon the corporate
12 organization, Private Fuel Storage, as a source of concern
13 and a source particularly of financial responsibility. This
14 organization has limited liability company, emphasis on
15 limited liability.

16 The response we have received to that from Private
17 Fuels is essentially, "People who live in glass houses
18 shouldn't throw rocks. Castle Rock is a limited liability
19 company. How can you complain? We're just like you guys."
20 I think the comparison is useful. I think it highlights
21 some of the sources of our concerns. The capacity --

22 CHAIRMAN BOLLWERK: I bet I know where this is going,
23 but go ahead.

24 MR. LATER: Well, it was my hope where it might be
25 going.

1 Castle Rock's capacity to cause mischief is severely
2 limited. There's necessity for licensing and providing
3 public assurances is likewise similarly limited. It facts
4 no such requirements as the NRC regulations for financial
5 responsibility place upon it.

6 And finally, for whatever mischief it causes, it has a
7 number of assets, as this body has seen yesterday, that are
8 available to satisfy in answer for whatever mischief it
9 causes, none of which can be said about Private Fuel
10 Storage, which is a brand new entity. It does not place its
11 member assets at risk. The \$50 billion Mr. Quintana
12 references is specifically shielded by the quorum of
13 organization of the entity that these utilities have chosen
14 to conduct this activity through.

15 We have very little information, as the State has
16 noted, on the financial sources and guarantees that are
17 there to assure funding. And the fact of the matter is, if
18 Private Fuel Storage fails, Private Fuel Storage causes
19 mischief or injury to others. There are no assets available
20 to satisfy the injury or mischief that it causes. All of
21 that, unlike my client.

22 And those are questions properly raised which we
23 deserve answers.

24 The second basis, one that's been touched on in part by
25 the State, is the potential for shortfalls. We believe that

1 that is emphasized and accentuated by the extreme degree of
2 uncertainty of the life span of this facility. As we
3 understand it, the cost of decommissioning, the potential
4 for shortfall and the potential for unexpected expenses are
5 all things that grow in magnitude and likelihood as the life
6 span of the facility increases.

7 And we've had very little that's been presented to us
8 by Private Fuels as to what is the realistic life span of
9 this facility. We're entitled to answers as to the
10 financial stream that can guarantee the viability of this
11 facility through its life span, whatever that may be.

12 The same with the non-routine expenses and the
13 potential liabilities. We've presented we believe
14 sufficient evidence as to the range of potentials that are
15 there, potentials for accidents that we are entitled to know
16 whether the financial arrangements that assure that non-
17 routine expenses can be met by this entity.

18 Now, as to all of those contentions, the NRC staff, as
19 we understand it, have not objected. As to one portion of
20 our contention, the NRC staff has objected, and that is that
21 we have requested that we be provided financial information
22 regarding the relationship between the Goshute Tribe and
23 PFS, and the position of the Goshute Tribe to stand as a
24 responsible party in this instance. And we believe that's
25 appropriate information and warranted under these

1 circumstances, because of the limited liability nature of
2 Private Fuel Storage and if Private Fuel Storage ceases to
3 be viable, ceases to be in existence.

4 And we are left with simply the landlord of that
5 facility as the party responsible, what is its willingness
6 and ability to stand responsible for that facility in the
7 absence of its limited liability lessee. And that's why we
8 believe that information is appropriate in these proceedings
9 as well.

10 CHAIRMAN BOLLWERK: Anything you want to say about
11 that, Mr. Silberg?

12 MR. SILBERG: Yes. First of all, the question is not
13 whether we are or not a limited liability corporation or
14 some other form. The question is whether we meet the
15 regulatory standards, and we believe we have. The LES
16 decision clearly says that project finance is appropriate.
17 While there may not be the kind of assets that Castle Rock
18 today has, if this facility goes forward, the mechanisms
19 which we've laid out in our application, those assets will
20 be there. We have specifically laid out how much in the way
21 of decommissioning costs we will set up and the mechanism
22 for collecting those.

23 The extreme degree of uncertainty, and the life span,
24 and the requirement for a showing of a stream of revenues is
25 all information that the Commission has not required. It

1 was not required in the LES case for a similar project.

2 In terms of the position of the tribe as a responsible
3 party, there's no mechanism for the tribe to be left, as
4 Castle Rock suggests, holding the bag. The NRC, as we
5 mentioned before, does not allow licensees to walk away from
6 their facilities.

7 And the dollar amounts that we have laid out in our
8 application and the mechanism for collecting that money in
9 advance and setting aside decommissioning funds in advance
10 provides reasonable assurance that PFS will be the
11 responsible operator of that facility.

12 And I would remind that we are not asking for absolute
13 financial assurance. The statute and the regulations
14 require reasonable financial assurance.

15 CHAIRMAN BOLLWERK: Anything else? Mr. Quintana,
16 anything you want to add?

17 MR. QUINTANA: The research that my office did indicate
18 costs about \$6 million a year to operate a wet fuel spent
19 fuel pool, and about \$2 million a year to operate an off-
20 site dry-cask storage facility. The industry's own
21 estimates are that they'll save about \$8 billion by having
22 one centralized storage facility nationally. If they didn't
23 have the money to do the deal, it probably wouldn't be in
24 anyone's best interest to go forward. I'm here to make sure
25 that everybody remains honest in this whole venture so that

1 I can watch all of the players.

2 Our utility company is going to walk away from the
3 spent fuel at the end of the day over my dead body.

4 CHAIRMAN BOLLWERK: Ms. Marco.

5 MS. MARCO: We don't oppose this except for the
6 reservation, the Skull Valley lease agreement, and that
7 information is set forth in our brief.

8 CHAIRMAN BOLLWERK: All right. Any reply on anything
9 you've heard?

10 MR. LATER: A single small one. As Mr. Silberg
11 indicated, the NRC obviously does not take likely to its
12 licensees walking away from facilities. In the case of
13 utilities, it has a great deal of leverage to prevent them
14 from walking away from facilities. Private Fuel Storage is
15 manifestly non-utility. It is not its members. It is a
16 separate entity, and it has very little stake to continue
17 its existence when times get tough, and very little to keep
18 it from vanishing whatever the NRC thinks about.

19 I think those points make it particularly important we
20 receive appropriate financial information, and that this
21 panel receive appropriate financial assurances, which we
22 don't have yet.

23 CHAIRMAN BOLLWERK: Mr. Kennedy, do you have a similar
24 contention? Address it in terms of the similarities,
25 differences? Anything else you'd like to say?

1 MR. SILBERG: Will you identify --

2 CHAIRMAN BOLLWERK: I'm sorry. It's Confederated
3 Tribes F I believe; is that correct?

4 MR. KENNEDY: That's right.

5 MR. TURK: Your Honor, may we make reference to one
6 brief matter in response to that latest comment by Castle
7 Rock?

8 CHAIRMAN BOLLWERK: All right.

9 MR. TURK: And that is how I refer you to 10 C.F.R.
10 72.54 which deals with the expiration and termination of
11 licenses. And in there you will see that under Subsection B
12 that the Commission has the authority to order a licensee to
13 take some action regardless of the fact that there's an
14 expiration date. And the same with respect to Subsection C,
15 that indicates that the license continues in effect even
16 beyond the expiration date if necessary to permit certain
17 actions to be taken.

18 CHAIRMAN BOLLWERK: Going to read the regulation?

19 MR. LATER: No. Well, it's nice that NRC can order all
20 of those things, but if the licensee ceased to exist, gone
21 into bankruptcy or otherwise fled town, I'm not sure it
22 makes a lot of difference. And that's the concern of the
23 nature of the entity.

24 MR. SILBERG: Criminal violations and civil penalties
25 still exist.

1 CHAIRMAN BOLLWERK: Mr. Kennedy.

2 MR. KENNEDY: Thank you. We would just submit what
3 we've already filed in writing. I would just add a couple
4 of comments.

5 First of all, I think what's been said by the State and
6 Castle Rock also applies to what we've contended here. I'm
7 a little concerned with Mr. Quintana's personal
8 representations on at least two occasions relating to these
9 matters, especially in light of what was said yesterday
10 during our field visit; namely that they -- the Skull Valley
11 Band has experienced serious financial problems on other
12 projects, despite Mr. Quintana's quote due diligence,
13 et cetera.

14 It seems to me that maybe Skull Valley has been given
15 information to satisfy what they think is necessary for due
16 diligence, but that information has been refused in large
17 part to the intervenors or the petitioners for intervention
18 here. And that's what we're seeking to get. We're trying
19 to do our due diligence through this process, and so far
20 we've been refused the information that we sought.

21 That's all I have to say.

22 CHAIRMAN BOLLWERK: All right. Any comments you have
23 about that?

24 MR. SILBERG: Just one comment, that the contention is
25 not an appropriate opportunity for discovery. One has to

1 meet the standards for admissibility before one gets a
2 chance to do discovery and due diligence. We don't think
3 this contention meets the standard, regardless of whether
4 the other contentions do. This contention should be looked
5 at on its own, as should all contentions, and it should be
6 rejected.

7 CHAIRMAN BOLLWERK: Anything else, Mr. Quintana? No?

8 MR. QUINTANA: No.

9 CHAIRMAN BOLLWERK: Mr. Turk or Ms. Marco?

10 MS. MARCO: We didn't oppose.

11 CHAIRMAN BOLLWERK: Yes, that's the last one I'm going
12 to come to, OGD number --

13 MR. KENNEDY: May I respond to that?

14 CHAIRMAN BOLLWERK: Oh, absolutely. I'm sorry, sir.
15 Go ahead.

16 MR. KENNEDY: I'm just saying in answer to Mr. Silberg
17 that we would have expected not to have to deal with this
18 through discovery had it been included in the application,
19 basic information as we identified.

20 CHAIRMAN BOLLWERK: OGD M.

21 MS. BELILLE: We just have one short statement. First
22 of all, we made the argument that the license poses an undue
23 recent public health and safety because it fails to make
24 clear provisions for a finding of estimated construction
25 costs, operating costs and decommissioning costs.

1 The one thing that we are concerned about, and
2 representing members of the tribe, they are very concerned
3 about the lack of information as far as the financial
4 information goes. And that will be all that we will say at
5 this time.

6 CHAIRMAN BOLLWERK: All right.

7 MR. SILBERG: It doesn't meet the standard. Should be
8 rejected.

9 CHAIRMAN BOLLWERK: Anything to say?

10 MR. QUINTANA: I think enough has been said.

11 MS. MARCO: The staff agrees.

12 CHAIRMAN BOLLWERK: Anything further you want to say?
13 All right. I think we'll adjourn for the day. We'll start
14 tomorrow -- hold on one second.

15 MR. SILBERG: Could you give us a run down of the order
16 that you would like to take specifically tomorrow so we can
17 prepare?

18 CHAIRMAN BOLLWERK: Well, again I'm not trying to force
19 anybody to do anything, but I haven't heard any objections
20 at this point. I'm still trying to move down the State's
21 intentions and order more or less. I see at least as we
22 start, dealing with, let's see, the next issue would be
23 State's number or State letter F, which is inadequate
24 training and certification. And it looks to me like there's
25 also GDL which relates to that. We have a quality assurance

1 contention. Just one second here. I don't think there's
2 any that's quite like that one, but don't hold me to that.
3 I discovered something. Inadequate thermal design, again I
4 don't see anything on that one as well.

5 I guess there is all part I that looks to me like
6 that's one that's by itself.

7 I think we'll go down this far. In terms of inadequate
8 consideration and incredible accidents, which is K, it looks
9 to me like Castle Rock 6, OGDM and Confederated Tribe B all
10 to do. They have some relationship to each other and talk
11 about the same sort of issues.

12 MR. SILBERG: I'm sorry. Castle Rock 6?

13 CHAIRMAN BOLLWERK: Castle Rock 6, OGDM and
14 Confederated Tribe B.

15 DR. LAM: For planning purposes, I'd like to remind the
16 parties with my estimation. I was looking at the scheduling
17 with Judge Bollwerk and Judge Kline. I see that we have
18 some 60 contentions remaining. And with the scheduled time
19 that means that this proceeding we'll probably need to see a
20 resolution of contention at the rate of four per hour, 15
21 minutes per contention. It means about two minutes per
22 party.

23 CHAIRMAN BOLLWERK: Hopefully there is some economy to
24 scale we can give you as we go along. I don't think we did
25 badly today. I hope we can do better tomorrow.

1 MR. TURK: Can we discuss the schedule for the evening
2 session.

3 CHAIRMAN BOLLWERK: Yes. Why don't we go off the
4 record and do that. I'll just talk with each counsel. Is
5 there anything anyone wants to bring up before we adjourn?

6 MR. SILBERG: Do you have any other pairs?

7 CHAIRMAN BOLLWERK: Well, I have some here, but I
8 haven't gone down that far. Let me do this. Let me tonight
9 look at and actually mark them a little bit better in terms
10 of the actual ones. I'll have them by subject matter rather
11 than actual contention. I'll give you a little bit better
12 idea.

13 I hope you all are looking at these as well. If you
14 see something I miss I did the best I can, but there are a
15 lot of contentions here. So at this point why don't we
16 adjourn. We'll go back in session tomorrow morning at 9:00.

17

18 [Whereupon, at 6:00 p.m., the prehearing
19 conference was recessed to reconvene at 9:00 a.m.,
20 Wednesday, January 28, 1998.]

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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.



Official Reporter

Ann Riley & Associates, Ltd.