

ORIGINAL

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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In the Matter of:	)	
	)	
ALL CHEMICAL ISOTOPE	)	
ENRICHMENT, INC. (ALCHEMIE	)	Docket Nos.
FACILITY-1 CPDF); ALL CHEMICAL	)	50-603-CP/OL
ISOTOPE ENRICHMENT, INC.	)	50-604-CP
(ALCHEMIE FACILITY-2, OLIVER	)	
SPRINGS)	)	

(Pre-hearing Conference)

LOCATION: Knoxville, Tennessee

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION  
 2 ATOMIC SAFETY AND LICENSING BOARD

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3 In the Matter of: )  
 4 ALL CHEMICAL ISOTOPE ENRICHMENT, ) Docket Nos. 50-603-CP/OL  
 5 INC. (ALCHEMIE FACILITY-1 CPDF): ) 50-604-CP  
 6 ALL CHEMICAL ISOTOPE ENRICHMENT, )  
 7 INC. (ALCHEMIE FACILITY-2, )  
 8 OLIVER SPRINGS) )

9 (Pre-hearing Conference)

10 Thursday,  
 11 July 21, 1988

12 Moot Courtroom  
 13 College of Law  
 14 University of Tennessee  
 15 Knoxville, Tennessee

16 The pre-hearing conference convened, pursuant to  
 17 notice, at 9:28 a.m.

18 BEFORE: HON. MORTON MARQUIES, CHAIRMAN  
 19 HON. OSCAR PARIS, MEMBER  
 20 HON. EMMETH LUEBKE, MEMBER  
 21 Atomic Safety and Licensing Board  
 22 U.S. Nuclear Regulatory Commission  
 23 Washington, D.C. 20555

24 APPEARANCES:

25 For the Applicants:

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 Irving & Sams  
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 Oak Ridge, Tennessee 37830

For the Nuclear Regulatory Commission Staff:

BERNARD BORDENICK, ESQUIRE  
 United States Nuclear Regulatory Commission  
 White Flint North  
 Rockville, Maryland 20855

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

JUDGE MARGULIES: Please come to order.

Good morning, ladies and gentlemen. At this time I would like to introduce the Atomic Safety and Licensing Board that are hearing these proceedings. They are on my left Judge Oscar Paris, and on my right Judge Emmeth Luebke, and I am Judge Morton Margulies.

This Board was appointed on May 3rd, 1988 to preside in two docketed proceedings involving three applications. The proceedings docketed All Chemical Isotope Enrichment, Inc., AlChemIE Facility-1 CPDF, docket number 50-603-CP/OL involves an application for a construction permit for a facility, and the facility operating license employing centrifugal machines to enrich nonradioactive isotopes at the centrifugal plant demonstration facility located in Oak Ridge, Tennessee.

The application proceeding docketed All Chemical Isotope Enrichment, Inc., AlChemIE Facility-2, Oliver Springs, docket number 50-604-CP is for a construction permit for a facility to use centrifugal machines to enrich nonradioactive isotopes at AlChemIE Facility-2 at Oliver Springs, Tennessee.

These facilities are subject to NRC regulation as production facilities because of their capability of enriching uranium.

1           The Board ordered the holding of this special  
2 pre-hearing conference on June 16th, 1988 for the purpose of  
3 discussing the matter set forth in 10 CFR 2.751(a) and in  
4 2.904.

5           A verbatim transcript is being prepared of the  
6 conference, and this will be on a consolidated record  
7 including all proceedings.

8           Appearances will now be taken in all of the  
9 proceedings.

10           Who appears for the applicant?

11           MR. IRVING: If Your Honors please, Steve Irving  
12 attorney for the applicant AlChemIE and representing all  
13 matters.

14           JUDGE MARGULIES: Could you give us your address  
15 and whether you're admitted to practice?

16           MR. IRVING: If Your Honors please, I have been  
17 admitted to practice to the State Bar of Tennessee and the  
18 Federal Bar. My address is 702 South Illinois Avenue, Suite  
19 202B, Oak Ridge, Tennessee, 37830.

20           JUDGE MARGULIES: Thank you.

21           Who appears for the NRC staff?

22           MR. BORDENICK: If it please the Board my name is  
23 Bernard N. Bordenick, I'm from the Office of the General  
24 Counsel of the United States Nuclear Regulatory Commission,  
25 Washington, D.C., 20555. I'm a member of the Bar of the

1 District of Columbia.

2 JUDGE MARGULIES: Are there any other appearances?

3 (No response)

4 JUDGE MARGULIES: Is there anyone to appear for  
5 the State of Tennessee? We received a petition to intervene  
6 as an interested State under the provisions of 10 CFR  
7 2.715(c).

8 MR. BORDENICK: Judge Margulies, I would like to  
9 speak to that question. I'm not per se authorized to speak  
10 for the State of Tennessee, however I can state certain  
11 facts that are within my knowledge regarding the State's  
12 participation.

13 As the Board is aware the State has filed a  
14 request to participate as an interested State under  
15 10 CFR 2.715(c) and the NRC staff welcomes that  
16 participation.

17 The State in its request to participate indicated  
18 two concerns. I won't get into the substance of the  
19 concerns at this point. At my suggestion the -- what I will  
20 call the technical people for the applicant, the State and  
21 the staff have been talking as recently as about a week or  
22 10 days ago, there were some conversations. And based on  
23 those conversations it's my understanding that with respect  
24 to one of the State's concerns they are satisfied that  
25 concern is resolved.

1           As to the other concern I think they are satisfied  
2 that the concern is being addressed and probably will be  
3 satisfied.

4           I spoke to the attorney for the State Deputy  
5 Attorney General, Michael Pearigen, last week and confirmed  
6 what I just indicated to the Board. He told me at that time  
7 that he probably would not attend the conference this  
8 morning, but that he would get back to me on that particular  
9 point.

10           He called me on Monday, unfortunately, I was at my  
11 lunch break at the time and the message he left was that he  
12 was not going to appear at the pre-hearing conference at  
13 Knoxville on July 21st. He will write letters to that  
14 effect.

15           Last week when he told me probably would not  
16 appear I suggested to him that he might want to notify the  
17 Board of that fact in advance. Apparently he has not done  
18 that.

19           I don't know what their intentions are with  
20 respect to the future, but I may be a little ahead of the  
21 question, but the staff certainly has no objection to the  
22 Board granting their request to participate. He told me, in  
23 effect, he would want to continue to monitor the hearings or  
24 the proceedings and the staff certainly has no objection to  
25 the State doing that.

1 JUDGE MARGULIES: Well, I think you're a little  
2 premature, Mr. Bordenick, the Board in instituting this  
3 special pre-hearing conference specifically stated that the  
4 parties in the State of Tennessee or their counsel are  
5 directed to appear at this special pre-hearing conference.

6 It appears that the State of Tennessee is in  
7 default of the Board's order.

8 The order also points out that the matters to be  
9 discussed are those enumerated in 10 CFR 2.751(a),  
10 subparagraph (a)(3), is to consider all intervention  
11 petitions to allow the presiding officer to make such  
12 preliminary or final determination as to the parties to the  
13 proceeding as may be appropriate.

14 That was one of the things that we were to  
15 consider here today, the State of Tennessee's petition to  
16 intervene, and we are not in a position to do so.

17 We will move on. In enumerating the matters to be  
18 discussed at a special pre-hearing conference under section  
19 2.751(a), the first matter to discuss is to permit  
20 identification of the key issues in the proceeding.

21 The Commission's orders in these proceedings set  
22 forth the issues that the Commission wants considered. In  
23 both construction permit applications they are: one,  
24 whether in accordance with the provisions of 10 CFR 50.34  
25 the applicant has described the proposed design of the

1 facility including, but not limited to, the principal  
2 architectural and engineering criteria for the design, and  
3 has identified the major features for components  
4 incorporated therein to assure adequate protection of the  
5 common defense and security.

6 Two, whether the applicant is technically and  
7 financially qualified to modify the existing facility in  
8 such a way as to assure adequate protection of the common  
9 defense and security.

10 Three, whether the issuance of a construction  
11 permit authorizing the modification of the facility will be  
12 inimical to the common defense and security.

13 Four, whether in accordance with the requirement  
14 of 10 CFR part 51 the construction permit and operating  
15 license should be issued as proposed.

16 The language involving Facility-2 Oliver Springs  
17 is slightly different. Rather than speaking in terms of  
18 altering the existing facility, the language speaks in terms  
19 of constructing the new facility. But basically the issues  
20 are exactly the same other than the status of the facility.

21 It is clear on its face that these are the issues  
22 in the proceedings. Do the parties recognize any other  
23 issues that are involved?

24 MR. IRVING: No, Your Honor.

25 MR. BORDENICK: No, we do not, Judge Margulies.

1           If I might digress a moment, I was just a few  
2 minutes ago advised that there is a representative of the  
3 State of Tennessee present in the hearing room. However, he  
4 is not an attorney, he's a representative of the Tennessee  
5 Department of Health and Environment who was the client  
6 department for the Attorney General. I don't know whether  
7 he wants to address the Board or not; I'm just relaying the  
8 fact that he is present.

9           JUDGE MARGULIES: Does the individual wish to  
10 address the Board?

11           MR. WEST: No, we didn't come prepared to make a  
12 presentation at this time.

13           JUDGE MARGULIES: Would you please identify  
14 yourself for the record?

15           MR. WEST: I'm Charles West with the Tennessee  
16 Department of Health and Environment, Division of  
17 Radiological Health.

18           JUDGE MARGULIES: Where are you located, Mr. West?

19           MR. WEST: Offices in Nashville, Tennessee.

20           JUDGE MARGULIES: Thank you.

21           (Pause)

22           JUDGE MARGULIES: The notification of the  
23 Commission in the construction permit for the construction  
24 permit application also advises that there's a different  
25 issue to be decided, whether or not the proceedings are

1 contested.

2 The notice specifies, if this proceeding is not a  
3 contested proceeding as defined by 10 CFR 2.4(n), the Board  
4 will determine the following without conducting a de novo  
5 evaluation of the application.

6 One, whether the application and the record of the  
7 proceeding contains sufficient information, and whether the  
8 Commission's staff review of the application has been  
9 adequate to support the proposed findings to be made by the  
10 Director of the Division of Industrial and Medical Nuclear  
11 Safety on items one to three above; and to support insofar  
12 as the Commission licensing requirements under the Act are  
13 concerned, the issuance of the construction permit proposed  
14 by the Director of the Division of Industrial and Medical  
15 Nuclear Safety.

16 And two, whether the NEPA review the Commission's  
17 staff conducted has been adequate.

18 As far as the Board can determine this is not a  
19 contested proceeding as defined in 2.4(n). Do the parties  
20 wish to be heard on that?

21 Mr. Irving?

22 MR. IRVING: Judge Margulies, we concur with your  
23 findings on that; we do not believe it to be a contested  
24 proceeding within that definition.

25 JUDGE MARGULIES: Mr. Bordenick?

1 MR. BORDENICK: Likewise, the staff agrees with  
2 the Board's characterization of the proceeding.

3 JUDGE MARGULIES: Staying with the construction  
4 permit applications, the applicant is looking for certain  
5 exemptions from the Commission's regulations.

6 They are spelled out in detail in the appendix to  
7 AlChemIE letter of November 17th, 1987, and they cover some  
8 five or six pages.

9 How do the parties expect this request to affect  
10 the contentions or the issues?

11 MR. BORDENICK: I guess that question is  
12 principally addressed to the staff. That matter will be  
13 addressed in the staff's safety evaluation, at the time of  
14 the staff's safety evaluation.

15 I can tell you informally that we've looked at  
16 those five or six pages as you mentioned and I think for the  
17 most part we probably will be in agreement with the request,  
18 and the basis for the agreement will be set forth at the  
19 time our evaluation is issued.

20 As the Board has recognized, this is somewhat of a  
21 unique case. Principally the matters before the Nuclear  
22 Regulatory Commission on the basis of the fact that, of the  
23 way I like to put it, this is a production facility that's  
24 not going to be used as a production facility, but it could  
25 be used as a production facility.

1           So a lot of what one finds in part 50 with respect  
2 to the general type of application that the Commission deals  
3 with is just simply not applicable to this application.

4           JUDGE MARGULIES: But there are other items that  
5 we're concerned with, Mr. Bordenick. For example, one of  
6 the issues is specified by the Commission that we are  
7 supposed to consider is the financial qualification of the  
8 applicant. And here, from the way I read their application,  
9 they are asking for an exemption.

10           MR. BORDENICK: Well, I can tell you that's one  
11 exemption that will not be granted. The financial  
12 qualifications is under review. So on that particular one  
13 there won't be an exemption on that one. The matter is  
14 being reviewed.

15           JUDGE MARGULIES: Mr. Irving, what is the  
16 procedure you expect to follow in obtaining these  
17 exemptions? The regulations are, as the Board reads them,  
18 quite specific in terms of how to proceed to obtain an  
19 exemption. Exemptions are not readily granted by the  
20 Commission. The Board itself does not grant exemptions.

21           What procedure do you expect to follow?

22           MR. IRVING: If Your Honor please, the exemptions  
23 in this particular case, by and large, primarily address  
24 radiological issues: the handling processing acquisition  
25 such of special nuclear materials.

1           AlChemIE's license does not seek to enable us to  
2 get special nuclear materials. In our process to date what  
3 we've done is list our exemptions with the staff. And  
4 again, they do go to this issue of primarily special nuclear  
5 materials, list them, present to the staff our justification  
6 for their nonapplicability.

7           And in terms of your earlier question as to what  
8 affect it has; basically it has the affect to simplify the  
9 proceedings and to take from the proceedings those issues  
10 which clearly on their face have no relationship to the  
11 AlChemIE application.

12           In terms of the procedure that we intend to  
13 follow, Your Honor, we would take that as part of our formal  
14 record which we have submitted to the staff and submit that  
15 in our formal submission to Your Honors; that explains our  
16 justification for the exemptions, a brief statement on the  
17 purpose behind it and such.

18           JUDGE MARGULIES: Is that how you plan to proceed,  
19 Mr. Bordenick?

20           MR. BORDENICK: We intend to follow the normal  
21 procedures that would be followed with any applicant in  
22 seeking an exemption request.

23           I think in this particular case, to a large  
24 extent, not a total extent, the basis of the exemption is  
25 simply going to be, as Mr. Irving explained, the fact that

1 the particular requirement in question is just not  
2 applicable to their application.

3 This is a unique application. It is filed under  
4 part 50. There's some things we're not in total agreement  
5 with the list that they've set forth as specifically was the  
6 case with the financial qualifications. There are probably  
7 several.

8 I haven't looked at this matter recently, so my  
9 recollection is somewhat hazy.

10 But I think the basis for their request and the  
11 basis for our granting the exemption, and certainly a good  
12 number of these cases is going to be that it's just totally  
13 not applicable to the -- well, the application. On other  
14 ones where that's not the case the usual procedures on  
15 seeking and granting exemption will be followed.

16 JUDGE MARGULIES: When you say the usual  
17 procedures you are indicating a petition filed by the  
18 applicant; a finding by the Board as to whether the  
19 applicant has made a prima facie case, and if they have made  
20 a prima facie case to certify the question to the  
21 Commission. Is that your understanding?

22 MR. BORDENICK: Well, that's certainly one route  
23 we could go. I have not discussed it with the applicant or  
24 with the staff in that context. But that's certainly a  
25 route we could go; yes.

1 JUDGE MARGULIES: I know of no other procedure.

2 MR. BORDENICK: Well, the staff in the case, say,  
3 of power reactors the staff routinely grants exemption  
4 requests.

5 You're speaking in terms of a waiver of the rules.  
6 We're talking in terms of if the staff has been delegated  
7 the authority by the Commission to grant an exemption on  
8 compliance with the given regulation; that's the vehicle  
9 that I was referring to.

10 JUDGE MARGULIES: I would expect that the parties  
11 will document their proposal as to how they intend to  
12 proceed at the appropriate time.

13 MR. BORDENICK: Well, that certainly will be the  
14 case; yes.

15 JUDGE MARGULIES: As to the application for an  
16 operating license, to date we don't have anyone  
17 participating that is going to file any contentions. So at  
18 this point there are no issues before the Board in the  
19 operating license proceeding.

20 Do you wish to be heard, Mr. Bordenick?

21 MR. BORDENICK: Well, I don't know whether you  
22 were finished.

23 JUDGE MARGULIES: Yes.

24 MR. BORDENICK: Your thought.

25 Well, I'm certainly in agreement with what you've

1 said. I think I would probably go one step beyond that. We  
2 did notice with respect to the CPDF application, we did  
3 notice, as you've pointed out, both the construction permit  
4 application and the operating license application, because  
5 that's a facility that's presently in existence. It  
6 requires modification in it, as you pointed out, the CP  
7 aspect is really in the context of modifying an existing  
8 facility.

9 I think it's the staff's position that we've  
10 noticed the operating license aspect. There having been no  
11 petitions to intervene that there's nothing pending at all  
12 before this Board on the operating license aspect.

13 It's obviously conceivable that there could be a  
14 late petition to intervene, and at that time I would assume  
15 that this Board would, since it's familiar with the matters  
16 at hand, would be designated to rule on such petitions. But  
17 in the absence of such petitions the staff submits, in  
18 actuality, nothing before the Board on the operating license  
19 aspect.

20 JUDGE MARGULIES: What would be the appropriate  
21 timing of that, Mr. Bordenick, taking into consideration the  
22 provisions of section 189 of the Atomic Energy Act?

23 MR. BORDENICK: Well, I think what we contemplate  
24 is, assuming that the staff is authorized to issue the  
25 construction permit. And again, I'm speaking only with

1 respect to the CPDF application. Once the staff has been  
2 authorized by the Board to issue the construction permit and  
3 the modification as made, I think there's a 30 day waiting  
4 period for issuance of the operating license.

5 But essentially, our review on the CPDF  
6 application for a construction permit in an operating  
7 license runs in tandem. We -- other than the 30 day waiting  
8 period we would issue the -- after the 30 days, assuming all  
9 things are as they should be at that time, we would issue  
10 the operating license absent any approval from the Board to  
11 do so.

12 That's what I meant by, there's nothing before the  
13 Board on the operating license aspect, absent any timely or  
14 untimely petitions to intervene which presently is the case.

15 JUDGE MARGULIES: Are you suggesting that it would  
16 be timely for the Board to take that matter up at the  
17 present time and to rule on that aspect of the application?

18 MR. BORDENICK: I'm not quite sure I understand  
19 the question. Maybe it's because in my mind I don't know  
20 what the Board is suppose to be ruling on with respect to  
21 the --

22 JUDGE MARGULIES: Well, the Board would have to  
23 formalize their position.

24 MR. BORDENICK: Oh, I see.

25 I think it would be appropriate to do that at the

1 conclusion of the CP aspect of the case; yes.

2 JUDGE MARGULIES: At the conclusion of the CP  
3 aspect.

4 MR. BORDENICK: Yes, because we don't know, again,  
5 it's conceivable. I am not anticipating any, but it's  
6 certainly conceivable that someone will file a late petition  
7 to intervene on the operating license aspect. And it's  
8 logical that if that happens that this would be the logical  
9 Board to rule at such a petition.

10 JUDGE MARGULIES: Thank you.

11 One of the matters that we should discuss here is  
12 whether any of the matters under consideration involve  
13 classified information. And if there are matters that are  
14 classified and safeguards have to be taken, what procedures  
15 we should follow.

16 Is there anything classified about the equipment  
17 or the buildings themselves? I don't want to know details.

18 MR. IRVING: Yes.

19 JUDGE MARGULIES: But in terms of whether we are  
20 dealing with classified material or not.

21 MR. IRVING: We're dealing with both classified  
22 materials and information, Your Honor, yes, sir.

23 If I might just add briefly, Your Honor, the  
24 AlChemIE facility will be a completely Q-cleared facility,  
25 complete Q-cleared personnel working out of.

1 MR. BORDENICK: Sorry, I didn't hear your comment?

2 MR. IRVING: Q-cleared facility.

3 MR. BORDENICK: That was the last part, I didn't  
4 hear the first part.

5 MR. IRVING: Q-cleared personnel.

6 MR. BORDENICK: Which facility were you referring?

7 MR. IRVING: Well, any facility.

8 MR. BORDENICK: Okay, thank you.

9 JUDGE MARGULIES: How will that affect the hearing  
10 process?

11 MR. IRVING: Your Honor, to my knowledge, it  
12 wouldn't affect it whatsoever. Nothing that's classified or  
13 none of the classification issues with respect to our  
14 facility or operations really should come up on the issues  
15 as they've been defined. I don't see that would affect the  
16 hearing at all, sir.

17 JUDGE MARGULIES: Mr. Bordenick?

18 MR. BORDENICK: Well, I sort of agree with that in  
19 part and disagree in part. Perhaps I can set a few things  
20 in context. As I said earlier, both of these facilities  
21 ultimately will be facilities that are production facilities  
22 within the meaning of the Atomic Energy Act, but they won't  
23 be used -- the application is not an application to use them  
24 as production facilities, but they could be used as  
25 production facilities; and that's the heart of the staff or

1 the Commission's concerns and jurisdiction regarding this  
2 application.

3 Some of the equipment, talking about the  
4 centrifuges, some of them -- it's my understanding that some  
5 parts are classified and some parts are not.

6 MR. IRVING: That's correct.

7 MR. BORDENICK: But unfortunately you're dealing  
8 with the total package, so if part of it is classified, then  
9 I suspect it's going to be pretty difficult to separate out  
10 what is and what isn't, so you might as well treat the whole  
11 thing as classified.

12 Now, as I understand it there's going to be one  
13 document, if and when these applications are approved, that  
14 will contain both the physical security plan for this  
15 facility. In other words, how do you keep unauthorized  
16 people out of the facility.

17 The other part of the document will be the  
18 safeguards portion, which is to say, how do you prevent  
19 either authorized people or unauthorized people from using  
20 the facility for what it shouldn't be used for?

21 It's my further understanding that the document  
22 we're dealing with is going to be marked proprietary, and  
23 that's at the applicant's request.

24 Now, there are -- so in terms of classification,  
25 we're not talking in terms of these documents being secret

1 or top secret types of documents that you would talk about  
2 in terms of security and clearances and that sort of thing,  
3 you're talking -- I guess the analogous -- for me at least,  
4 the analogous situation is if you were -- if an application  
5 for a power reactor were in front of this Board and an  
6 intervenor had raised contentions regarding the physical  
7 security plan, and that's been done in several cases as I'm  
8 sure the Board is aware, there have been several Licensing  
9 Boards.

10           There are procedures to be followed in how, for  
11 example, I know the Board is compelled to review these  
12 documents because there's an Appeal Board decision that says  
13 they can't -- you can't write off, in effect, on the plan  
14 without reading it.

15           So I think your concern is, how do you get a hold  
16 of the document, and once you get it what are you supposed  
17 to do with it to make sure that unauthorized persons don't  
18 get access to it. If that's your question, I think there's  
19 some very simple answers to that, which I can provide now or  
20 later.

21           Also, if you're focusing specifically on 10 CFR  
22 2.904 which was specified in your order as a matter for  
23 discussion this morning, if you're looking for assistance,  
24 staff certainly can offer it. We have present -- actually,  
25 we have present today the gentleman from our Office of

1 Security who happens to be the staff reviewer for this  
2 particular application. If the Board and the applicant have  
3 no objection he can also generally advise the parties on  
4 these procedures or if anyone deems it appropriate to have  
5 someone who is not -- who's in effect not in the position of  
6 having to approve or disapprove the plan, as this gentleman  
7 would be, we do have other people available from the Office  
8 of Security who can assist us.

9 I don't know if that, what I've said, clarifies  
10 the matter or if you want me to indicate some of these  
11 procedures which I personally have been following and have  
12 followed, rather, in other cases.

13 JUDGE MARGULIES: Well, would you be good enough  
14 to.

15 MR. BORDENICK: Sure. In this case, at some point  
16 in time the Board -- well, the Board is currently, I think,  
17 in possession of -- as to each application. And I think the  
18 plan, the two books, so to speak, are going to be different  
19 for the two facilities.

20 And just by way of a piece of information, the  
21 CPDF facility, although it's on the Oak Ridge Reservation,  
22 which is a federal reservation operated under contract for  
23 the United States Department of Energy. My understanding is  
24 that the CPDF facility will be, in effect, a little carved-  
25 out enclave which will be treated as leased property, leased

1 private property.

2 For example, we talked about the State of  
3 Tennessee this morning, one would think that the State of  
4 Tennessee would not have authority to conduct whatever  
5 matters within their jurisdiction on federal property, but  
6 in the case of CPDF it's my understanding that's not the  
7 case, since in effect you've got a private enclave on a  
8 federal reservation.

9 But putting that aside, we don't have an  
10 intervenor in this proceeding. The parties and the Board  
11 are all clear to, without more, to look at these documents.

12 You have an application in front of you on the  
13 security plan. I have been given to understand this morning  
14 that that's not the current plan. I think the applicant  
15 needs to get you, assuming the Board is interested in  
16 starting reading, its reading right now, needs to get you  
17 the current version, although that version is still under  
18 review by the staff. So it's the current applicant's  
19 version as opposed to the current -- Rev. 2, okay. Rev. 2.

20 So I don't know if the Board is interested in  
21 getting those documents now. They can get them. Those  
22 documents along with any other document, all the Board needs  
23 to do is to keep them in a -- I keep my, I'll call them  
24 sensitive documents so to speak, any document I'm involved  
25 -- this Board Chairman happens to be the Administrative Law

1 Judge, I'm involved in an enforcement proceeding or  
2 sensitive documents that aren't classified in any sense of  
3 the word, but you just don't want people that don't need to  
4 see it, to see it, so I keep it in a locked file cabinet in  
5 my office. I think that's all you need to do. Just take  
6 steps to assure yourself that people that don't have, I  
7 think the security people talk in terms of need to know,  
8 don't have ready access to it. But you don't need a special  
9 safe.

10 In the case of Dr. Luebke who I know is now  
11 receiving mail at his residence, all we need to do in a case  
12 like that is to take whatever document you're sending, put  
13 it in an envelope addressed to him, mark addressee only, and  
14 then put it in another regular envelope with nothing on it  
15 except his name and address. That's all that needs to be  
16 done.

17 So I don't see any of the staff people tugging on  
18 me, so I guess I haven't said anything out of line.

19 If the Board please, I have with me the staff  
20 project manager for this proceeding, Dr. A. Thomas Clark, he  
21 says that he might be able to add a few things that will  
22 help the Board, also, if the Board would like to hear from  
23 him.

24 JUDGE MARGULIES: Is there any objection?

25 MR. IRVING: No, Your Honor.

1 DR. CLARK: The only thing I want to add, Judge  
2 Margulies, is that the staff is not relying on the  
3 classified information per se in its review. And I don't  
4 presume to say what the Board will do; I don't know what the  
5 Board will do. If you rely on classified information for  
6 whatever you do it may be that some protection of that is  
7 needed. But so far we have not relied upon classified  
8 information in our review.

9 And so we treat this security plan as proprietary  
10 information. Well, no, it's both on the part of the request  
11 of the applicant and the staff. The safeguards portions of  
12 that plan are always treated by the staff as proprietary  
13 information.

14 JUDGE MARGULIES: Mr. Bordenick, do you see the  
15 possibility where there would be an oral hearing when we  
16 would go into safeguards information?

17 MR. BORDENICK: That's certainly a potential. I  
18 think that would be the Board's option. Once you've  
19 reviewed these documents, obviously, if you have questions  
20 we're going to have to go into a public hearing. I don't  
21 know what the precise term is, but there would be a hearing  
22 closed to the public, and in that regard in anticipation of  
23 that possible eventuality the staff has had some discussions  
24 with representatives of the Department of Energy down in or  
25 over in Oak Ridge and they have offered the use of, what

1 they call secured facilities for such a purpose, in the  
2 event that becomes necessary.

3           And there's a conference room, since such a  
4 hearing would be closed to the public, just in round  
5 numbers, I believe the NRC's contract for reporting services  
6 provides that they have someone who would be cleared to,  
7 even though the hearing is closed to the public it's still  
8 stenographically reported and goes into the Commission's  
9 records, but albeit not in the document room where it would  
10 be -- in other words, it would not be available to the  
11 public.

12           So taking into account the Board, the stenographic  
13 reporter, parties and so forth, I came up with a round  
14 number of 15 people probably being involved in a hearing of  
15 that sort. And there's a conference room, a secured  
16 conference room, actually, in the CPDF facility; and there's  
17 also a secured conference room in the federal building.  
18 There's a federal building in the city of Oak Ridge, which  
19 is: (a) in general not open to the public. You need -- I  
20 mean, it's not difficult to get in there if you have  
21 business with a government agency, but the particular room  
22 that we could use would not, of course, be available to the  
23 general public and it would be a secured room otherwise --  
24 in other words, it has been checked for bugs or whatever  
25 term, you know, people in that business use, along those

1 lines.

2           So I've already ascertained that in the event it's  
3 necessary for the Board to hold a private hearing, so to  
4 speak, there are facilities in Oak Ridge which is only about  
5 a 30, 40 minute drive from Knoxville.

6           JUDGE MARGULIES: Mr. Bordenick, you mentioned  
7 that the parties' representatives are cleared.

8           MR. BORDENICK: The people that have a need to be  
9 involved in it such as myself, the project manager, the  
10 staff witnesses, the Board, I assume all have Q-clearance  
11 from the Commission.

12           The applicant's people certainly -- well, I guess  
13 not all of them are cleared, but certainly the ones that  
14 would need to participate. We would know whether they're  
15 cleared or not.

16           JUDGE MARGULIES: As yet the State of Tennessee is  
17 not a party, but do you have any knowledge as to whether  
18 they have people that are cleared?

19           MR. BORDENICK: Well, I have not specifically  
20 raised this topic with the State of Tennessee. I've  
21 discussed, generally discussed this application with the  
22 Deputy Attorney General that originally filed the petition  
23 who has since withdrawn his appearance and his successor.  
24 And my understanding is they're not concerned with the  
25 subject matters.

1 Well, as I say, I've not asked them the question.  
2 I'm implying from the discussions I've had that they're not  
3 interested in the subject matters that we've been discussing  
4 for the last few moments, they're interested in other  
5 matters.

6 But if they are -- if it turns out for some reason  
7 or other that they are interested, I'm sure there are  
8 procedures that we could follow. And the staff would  
9 certainly be glad to take the lead in making sure that, for  
10 example, if the State did want to participate in that sort  
11 of a hearing that only people who are qualified to do so  
12 would in fact do so or it could, for example, include, as is  
13 the case, say, you have an intervener in a power reactor  
14 proceeding contentions on safeguards materials, they execute  
15 an affidavit of nondisclosure. And they follow the same  
16 sorts of procedures that the Board would follow, that I  
17 would follow in making sure that the material they're  
18 dealing with does not become generally available to people  
19 who don't have a need to know about it.

20 JUDGE MARGULIES: Thank you.

21 MR. BORDENICK: Judge Margulies, one additional  
22 administrative point that Dr. Clark pointed out to me, in  
23 the event it does become necessary to use a DOE facility,  
24 DOE has certain -- there's a form that everyone would have  
25 to fill out. I've done it. It's a one-page form. And DOE,

1 as I've indicated, or they indicated to me that they would  
2 fully participate -- not participate but cooperate with the  
3 NRC in implementing any of these procedures to use their  
4 facilities, if necessary.

5 (Board conferring)

6 JUDGE MARGULIES: Is it your position, Mr.  
7 Bordenick, that at this point that it really is premature to  
8 look to anyone providing classification assistance under  
9 2.904?

10 MR. BORDENICK: Well, I guess you can imply from  
11 what I said that that's correct. I'm not -- you know, if  
12 the Board wants us to designate either the reviewer or some  
13 other person in the Division of Security, we have no problem  
14 doing that. But I think until the Board reads -- I think  
15 the Board is going to want to read the current version of  
16 the applicant's plan and the staff's review thereof. And at  
17 that point you may decide you're satisfied with it and you  
18 have no further questions, then the conversation we've had  
19 over the last few minutes was an academic conversation.

20 So the staff is flexible. I mean, we can -- if  
21 you think you want to designate someone this morning, it can  
22 either be the current reviewer, if the Board and the  
23 applicant have no problem with that, I think he can, even  
24 though he's the staff reviewer he can still give you  
25 unbiased independent advice, generally speaking, or if

1 anyone has concerns that he's the staff reviewer there are  
2 one or two people back at the NRC headquarters, the Division  
3 of Security, who are available. I have ascertained that  
4 before I came down here.

5 JUDGE MARGULIES: I think at the very least that  
6 if we are going to have a reviewer, and it may not be  
7 necessary, I think we ought to wait and see. But I think we  
8 should have an independent reviewer, someone other than the  
9 one who has input.

10 MR. BORDENICK: Frankly, that was my initial  
11 reaction, too. But in order to try to attempt to save staff  
12 resources if, you know, I've made the suggestion that if the  
13 Board and the parties didn't have a problem we could use the  
14 reviewer. But if anyone feels they'd rather use the -- get  
15 someone independent of the review, that's fine.

16 JUDGE MARGULIES: Mr. Irving, do you have any  
17 objection to using an independent reviewer from staff or  
18 would you prefer to have someone appointed by the Commission  
19 independent of staff?

20 MR. IRVING: Your Honor, we have no problem using  
21 an independent reviewer from staff.

22 JUDGE MARGULIES: Thank you.

23 (Board conferring)

24 JUDGE MARGULIES: It's appropriate now to discuss  
25 further scheduling in the proceeding. When can we expect to

1 receive the safety evaluation report and the environmental  
2 review from staff?

3 MR. BORDENICK: We discussed this matter with the  
4 applicant prior to today. And, of course, the staff is not  
5 going to be in a position to issue its final documents until  
6 it has received all the information it needs to receive from  
7 the applicant. There's still some pending matters that they  
8 have to submit.

9 I guess if you want to be overly optimistic, we  
10 might be finished the review as early as four weeks from  
11 now. I think if you want to be -- in my own mind, if you  
12 want to be more realistic, I think you can expect to see the  
13 staff review, assuming that the applicant gives us timely  
14 submittal on what he owes us and assuming those submittals  
15 are what we're looking for, I'd say around six weeks or that  
16 puts it probably in the time frame of Labor Day.

17 I don't know whether the applicant wants to follow  
18 up on that aspect of scheduling or not.

19 MR. IRVING: Judge Margulies, as Mr. Bordenick  
20 knows, we do have a little bit different feeling about that  
21 particular issue.

22 Again, there has been or we anticipate there will  
23 be a large amount of exemptions granted on some of the  
24 requirements of the Act, we don't have a powerplant and a  
25 number of other reasons.

1           And the application form that we have devised and  
2 the issues have been fairly well narrowed, simpler and  
3 generally the easier forms are dealt with in these type of  
4 proceedings.

5           We have given, there were three requests by NRC  
6 for documents they had not received, and we gave them, I  
7 guess, two of them yesterday, we still have one to come to  
8 them. So we'll have our part of it complete by today or  
9 tomorrow at the latest and they will then have all that  
10 information.

11           The hearing for us is a culmination of three years  
12 of trying to put into effect the Technology Transfer Act to  
13 enable AlChemIE to do our business. The granting of a  
14 license is one of our last steps, and then being able to be  
15 in a position where we can effectuate Department of Energy  
16 the lease on the CPDF facility and begin our operations out  
17 there.

18           I just say it just briefly, one, of course, the  
19 reasons of the Technology Transfer Act are not to benefit us  
20 or just the benefit of DOE or NRC, because it benefits of  
21 the folks of the transfer of technology on benefits. Our  
22 products -- we've got a lot of uses for our products and a  
23 lot of other industries we have orders that are out there  
24 waiting for us. It's a very important thing to AlChemIE.  
25 We've been spending three years of putting effort and

1 expense out, and now it's time we're going to be able to get  
2 some recompense for our efforts.

3           So I urged Mr. Bordenick and Mr. Clark and the NRC  
4 staff, if they, on this application, have means available to  
5 cut their review time or carve out an enclave from their  
6 normal review schedule and make it smaller and get their  
7 review completed and to this Board as quickly as possible.

8           And we spoke about this yesterday, it is not  
9 impossible, we don't feel, that the staff -- that our  
10 information can be to staff and that their staff review can  
11 be completed within this four week period, not just the six  
12 week, the outside, but actually within a four week period.

13           And so we -- I would urge on this Board to  
14 consistent, of course, with all your concerns and  
15 requirements to take every step possible to expeditiously  
16 schedule this matter. And I know that the NRC staff and Mr.  
17 Bordenick are going to be putting every effort for  
18 themselves to get the review completed as quickly as  
19 possible.

20           I certainly don't want to err in trying to seek a  
21 date we might not be able to meet and then cause problems of  
22 having that said and not being able to meet it. But I do  
23 feel like that we can get this done, this last step done  
24 quicker than the six weeks, hopefully within the four week  
25 period.

1           And, Your Honor, we're seeking to be in CPDF and  
2 ready to begin our operations, our goal for a program we've  
3 had ongoing, is for September 15th. And that's what we've  
4 been trying for. That's the dates we've been having to work  
5 with on our commercial accounts. And, of course, you know,  
6 a lot of things have delayed this. This, of course, is a  
7 little later than we had hoped it would be and such.

8           But again, I just ask this Board if any steps  
9 available to the Board consistent with your concerns that  
10 you could expedite review on this matter or look at it as  
11 quickly as possible. I know you all are busy on other  
12 matters as well, but I would like just to make the  
13 applicant's position and concern on the clear.

14           JUDGE PARIS: Mr. Irving, on June 21, 1988 the  
15 staff sent to AlChemIE Isotope Enrichment, Inc. a request  
16 for some additional information and which, to my knowledge,  
17 you have not sent to the staff yet.

18           MR. IRVING: If Your Honor pleases, we received a  
19 couple from the NRC, request for additional information. I  
20 personally participated in drafting responses to them, and I  
21 don't have that particular document in front of me. If Your  
22 Honor -- Judge Paris, tell me which.

23           JUDGE PARIS: It was a cover letter addressed to  
24 the attention of Mr. Pfeifer from Mr. Clark, and  
25 accompanying it was a request for additional information

1 to get the revised application to the Board?

2 MR. IRVING: Again, Your Honor, those matters will  
3 be prepared, as far -- to my knowledge, Mr. Pfeifer is  
4 present with me, that should be available today.

5 We anticipate this Board having it in their  
6 possession by tomorrow.

7 (Board conferring)

8 JUDGE MARGULIES: Do the parties have anything  
9 else they wish to discuss at this time?

10 MR. IRVING: On behalf of AlChemIE, the  
11 applicants, Your Honor, no.

12 MR. BORDENICK: On behalf of the staff, and again  
13 this is a matter that I discussed with AlChemIE, I wanted to  
14 make a suggestion on how we could proceed once the staff's  
15 review was complete.

16 And by the way, the staff -- this is not a case  
17 where the staff's review documents will be -- have to go to  
18 a printer and be bound and that sort of thing. We will --  
19 as soon as the staff's review is finished we will have the  
20 results of that review in the Board's hands the same day  
21 it's finished, assuming it doesn't come at the very end of  
22 the day.

23 So we're not going to lose any time with printers.  
24 And since the Board and the staff are both in the  
metropolitan Washington area we can make arrangements to get

1 you those documents probably within hours of our having them  
2 available. So we won't lose any time in that regard.

3 But since this is an uncontested proceeding there  
4 are some time saving, for example, there's no discovery in  
5 this case. There's not going to be any motions for summary  
6 disposition, that sort of thing.

7 I think once the staff's review is finished, where  
8 we go and how we get there is, in large part, going to be  
9 determined by the Board's reading of the document.

10 So I would suggest that when the Board -- the  
11 Board has read the documents that they institute a  
12 conference call with the applicant and the staff, and may or  
13 may not want to have it stenographically reported and we can  
14 determine such things as, do we need another pre-hearing  
15 conference. If not, can we start, you know, move the  
16 scheduling process along at that point.

17 I think that staff's suggestion was really in  
18 response to the applicant's concern that their application  
19 move along as speedily as possible. And it seems to me that  
20 to sit here today and try to plan a schedule would be  
21 counterproductive. But the way to proceed is when the Board  
22 gets the documents, these documents -- this is -- again,  
23 this is not your normal power reactor case with humongous  
24 documents. You're talking about documents that are  
25 manageable. The reading time on them should not be that

1 significant as would be the case with a power reactor.

2           So that when the Board has read and digested, the  
3 application, obviously, I'm sure the reason asked when they  
4 would have the current version in their hand is that the  
5 Board can start reading that now. And then the staff  
6 documents, once you have read and digested those, then I  
7 think we can see where we go.

8           And I think the way to proceed expeditiously is to  
9 have the Board institute a conference call, and then we can  
10 see where we are and where we go from there.

11           JUDGE MARGULIES: Well, when your safety  
12 evaluation reports and environmental reviews are completed,  
13 you're going to go back to the applicant with those, aren't  
14 you, in terms of trying to get things rectified before  
15 coming to the or using the term rectified, before coming to  
16 the Board.

17           MR. BORDENICK: Dr. Clark is saying, yes. I'm not  
18 -- I think things will already be rectified.

19           JUDGE MARGULIES: Well, we discussed the possible  
20 problem of financial fitness.

21           MR. BORDENICK: That will be -- the determination  
22 of whether they are qualified or not will be set forth in  
23 the evaluation. Now, I guess your question is predicated on  
24 a finding by the staff that one aspect or another the  
25 applicant -- well, in the case of financial qualifications,

1 for example, you're suggesting what happens if the staff  
2 makes a finding that they're not financially qualified?

3 JUDGE MARGULIES: I'm preceding the thought that  
4 applicant is looking for an exemption, so you're not going  
5 to have anything in terms of --

6 MR. BORDENICK: Well, he's not going to get an  
7 exemption from all of part 50.

8 JUDGE MARGULIES: So how is that going to work  
9 into this schedule in terms of when the Board will step in?  
10 Are you going to go back to the applicant?

11 MR. BORDENICK: That will all be taken care of in  
12 this time frame we've been talking about.

13 JUDGE MARGULIES: Go ahead.

14 MR. IRVING: Judge Margulies, if I could make one  
15 clarification. The applicant has requested an exemption  
16 from those scrutinies of financial qualifications that set  
17 out certain criteria relating to powerplants; the costs  
18 involved there, the various expenditures that we had to show  
19 that we have the ability to put forth, but were related to  
20 powerplants.

21 Now, we've never requested an exemption at anytime  
22 or had at any time tried to request an exemption from  
23 providing NRC in terms of our own -- for our own personal  
24 business plan with our financial qualifications.

25 Indeed, the staff, I'm certain, will quickly be

1 impressed by the financial qualifications of AlChemIE. I  
2 think if there's been any kind of a misimpression before  
3 this Board that AlChemIE has sought to do that, for any  
4 reason other than that relates to powerplants, and it's not  
5 applicable to the AlChemIE situation itself. But certainly  
6 it's a valid and legitimate concern of NRC that AlChemIE has  
7 the financial ability to perform. We've already been  
8 through that review five or six times before we've gotten  
9 here with various government industries or entities. That  
10 occurred in fact before we were even awarded the contract by  
11 the Department of Energy.

12 So that work from AlChemIE standpoint is  
13 essentially completed. It's ready to give to the staff  
14 members. And I have concern whatsoever that that's going  
15 to take anything longer than a standard review, Your Honor.

16 JUDGE MARGULIES: Do you wish to say something,  
17 Mr. Bordenick?

18 MR. BORDENICK: I do. On the exemption question,  
19 I think using the term "exemption" has created some  
20 confusion.

21 For example, we're not talking in terms of  
22 granting them an exemption from the requirements for the  
23 emergency core cooling system. This facility doesn't have  
24 an emergency core cooling system.

25 What we're suggesting is, those provisions of part

1 50, for example, relate to an emergency core cooling system  
2 are simply not applicable.

3 I think the list should have been called a  
4 nonapplicability list as opposed to an exemption. Now there  
5 admittedly are some areas, for example, financial  
6 qualification, they originally said they should be exempted  
7 from that requirement totally. And I will be candid with  
8 the Board and say that the staff felt that was not the case,  
9 but the staff really didn't know what the financial  
10 qualifications review in this case should consist of.

11 So there was a lot of groping around as to what it  
12 should consist of; and that was finally determined. It is  
13 my understanding that the applicant is providing what it is  
14 that we have asked for.

15 Now in that situation the Board may feel that the  
16 staff's review wasn't -- it has been a very narrow financial  
17 qualifications review because of the nature of the  
18 application. It's conceivable; of course, the Board may  
19 disagree with that, that it should have been a wider focus.

20 But in an area, again, such as an emergency core  
21 cooling system, obviously, we're not going to do a review of  
22 that because there's nothing to review.

23 And so we're really talking, not about exemptions  
24 per se, as nonapplicability. In the case where -- it's not  
25 a question of, if the regulation requires three warning

1 lights with bulbs of 60 watts, do they want to use 40 watts.  
2 It's a question that they don't need the warning lights  
3 period because it's totally inapplicable to this  
4 application.

5 So that's what you're dealing with here, is  
6 nonapplicability as opposed to exemptions.

7 JUDGE MARGULIES: But there are other areas in  
8 regard to safeguards.

9 MR. BORDENICK: There are. Yes, there are. And,  
10 of course, the Board is free as it would be in any situation  
11 where the regulation is applicable. And in some instances,  
12 again, because of the type of application you're dealing  
13 with, the staff has narrowed its focus.

14 The Board is certainly free to disagree with the  
15 way the staff focused. But I don't think the Board is in a  
16 position to say we should have looked at, for example, the  
17 emergency core cooling system regulations for this  
18 application. Because clearly, that's not applicable.

19 (Board conferring)

20 JUDGE MARGULIES: I assume in your submissions,  
21 Mr. Bordenick, you will make clear the distinction of what  
22 are exemptions and what are --

23 MR. BORDENICK: We will certainly attempt to do  
24 that. Hopefully, that will be the case.

25 JUDGE MARGULIES: Is there anything further?

1 (No response)

2 JUDGE MARGULIES: The pre-hearing conference is  
3 concluded. Thank you.

4 (Whereupon, at 10:40 a.m. the conference was  
5 concluded.)

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1 CERTIFICATE

2  
3 This is to certify that the attached proceedings before the  
4 United States Nuclear Regulatory Commission in the matter  
5 of:

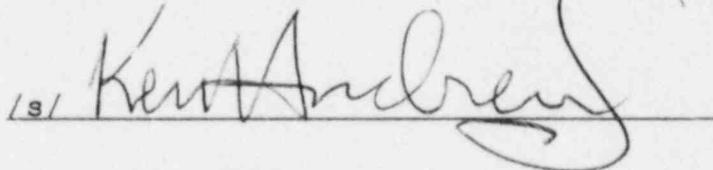
6 Name: ALL CHEMICAL ISOTOPE ENRICHMENT, INC. (ALCHEMIE  
7 FACILITY-1 CPDF); ALL CHEMICAL ISOTOPE ENRICHMENT,  
8 INC. (ALCHEMIE FACILITY-2, OLIVER SPRINGS)  
(PRE-HEARING CONFERENCE)

9 Docket Number: 50-603-CP/OL, 50-604-CP

10 Place: KNOXVILLE, TENNESSEE

11 Date: JULY 21, 1988

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

19  /s/ Kent Andrews

20 (Signature typed):

KENT ANDREWS

Official Reporter

Heritage Reporting Corporation