

21101

OFFICIAL TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

**Title: CONFERENCE CALL TO DISCUSS
THE MATTER OF PRIVATE FUEL
STORAGE, LLC**

**Case No.: 72-22-ISFSI
ASLBP No. 97-732-02-ISFSI**

Work Order No.: ASB-300-1071

LOCATION: Rockville, MD

DATE: Tuesday, December 21, 1999

PAGES: 1216 - 1252

**ANN RILEY & ASSOCIATES, LTD.
1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034**

PDR ADOLK

TRO1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - - -x

In the Matter of: :

CONFERENCE CALL :

PRIVATE FUEL STORAGE, L.L.C. : Docket No. 72-22-ISFSI

(Independent Spent Fuel : ASLBP No. 97-732-02-ISFSI

Storage Installation) :

- - - - -x

U.S. Nuclear Regulatory Commission
Two White Flint
Room 3-B-51
Rockville, Maryland

Tuesday, December 21, 1999

The above-entitled matter came on for conference
call, pursuant to notice, at 3:35 p.m.

BEFORE:

THE HONORABLE G. PAUL BOLLWERK, III,
Administrative Judge

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

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034

1 APPEARANCES:

2 On Behalf of the State of Utah, Attorney General's Office:

3 DENISE CHANCELLOR, Esquire

4 FRED NELSON, Esquire

5 CONNIE NAKAHARA, Esquire

6 Utah Attorney General's Office

7 160 East 300 South, Fifth Floor

8 P.O. Box 140873

9 Salt Lake City, Utah 84114

10

11 On Behalf of the State of Utah:

12 DIANE CURRAN, Esquire

13 Harmon, Curran, Spielberg & Eisenberg

14 2001 S Street, N.W., Suite 430

15 Washington, D.C. 20009

16

17 On Behalf of the Private Fuel Storage, L.L.C.:

18 ERNEST BAKER, Esquire

19 JAY E. SILBERG, Esquire

20 Shaw, Pittman, Potts and Trowbridge

21 2300 N Street, N.W.

22 Washington, D.C. 20037

23

24 On Behalf of the Confederated Tribes:

25 JOHN KENNEDY, Esquire

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034

1 APPEARANCES [continued]

2 On Behalf of the Skull Valley Band of Goshute Indians:

3 DANNY QUINTANA, Esquire

4 Danny Quintana & Associates, P.C.

5 50 West Broadway, Fourth Floor

6 Salt Lake City, Utah 84101

7
8 On Behalf of the U.S. Nuclear Regulatory Commission:

9 SHERWIN E. TURK, Esquire

10 CATHERINE MARCO, Esquire

11 Office of the General Counsel

12 Mail Stop - 0-15 B18

13 U.S. Nuclear Regulatory Commission

14 Washington, D.C. 20555

15
16
17
18
19
20
21
22
23
24
25
ANN RILEY & ASSOCIATES, LTD.

Court Reporters

1025 Connecticut Avenue, NW, Suite 1014

Washington, D.C. 20036

(202) 842-0034

P R O C E E D I N G S

[3:35 p.m.]

JUDGE BOLLWERK: This is Judge Bollwerk with the Private Fuel Storage proceeding, having a prehearing conference this afternoon. With me is Judge Kline. Judge Lam is unavailable. He is on travel out of the country. Judge Kline and I are here in our hearing room.

Let's go ahead and have the other parties identify themselves for the record. Why don't we start with counsel for Private Fuel Storage.

MR. BLAKE: Ernie Blake and Jay Silberg for Private Fuel Storage, Judge.

JUDGE BOLLWERK: What about the Confederated Tribes, the Goshute Reservation?

MR. KENNEDY: This is John Kennedy.

JUDGE BOLLWERK: The State of Utah.

MS. CHANCELLOR: Denise Chancellor, Fred Nelson, Connie Nakahara, State of Utah.

MS. CURRAN: This is Diane Curran too.

JUDGE BOLLWERK: We haven't heard from Mr. Quintana for the Skull Valley Band of Goshute Indians. So we will move on. Maybe he will be back with us at some point.

Counsel for OGD and the Southern Utah Wilderness Alliance also has not rung in at this point.

1 NRC staff.

2 MR. TURK: Your Honor, this is Sherwin Turk, and
3 Cathy Marco is with me.

4 JUDGE BOLLWERK: I take that Mr. Quintana or
5 Ms. Walker didn't talk with any of the parties about
6 representing their interests at that point. Did they?
7 Anyone? For instance, the State of Utah?

8 MS. CHANCELLOR: No, Your Honor.

9 JUDGE BOLLWERK: What about PFS?

10 MR. BLAKE: No, sir.

11 JUDGE BOLLWERK: At this point we are going to go
12 forward, and if they want to be part of this, they will beep
13 in.

14 I called the prehearing conference this afternoon
15 in response to a December 15, 1999, filing by the NRC staff
16 of their statement of position concerning the Groups 1 and 2
17 contentions. In that statement of position they indicated
18 that there were certain issues in both Groups 1 and 2 that
19 were on the schedule to go to hearing beginning in June that
20 apparently the staff needs additional information with
21 regard to, and as a consequence raised concerns about the
22 status of the June hearing relative to those particular
23 issues and obviously raised a concern with the Board as
24 well.

25 We thought it would be useful to get together with

1 everyone and talk a little bit about scheduling in light of
2 this pleading and any other developments that the parties
3 want to make us aware of.

4 I indicated in the order that I sent out setting
5 up this telephone conference that I would ask the staff to
6 give us dates with respect to the SER and the SER
7 supplement, and also the environmental impact statement
8 documents, the draft environmental impact statement and the
9 final environmental impact statement in terms of the current
10 schedule. Then we can talk about where we are in terms of
11 scheduling with the other issues.

12 Can you go ahead and do that, Mr. Turk?

13 MR. TURK: Yes, Your Honor.

14 Let me start first with safety issues. On
15 December 15, the same date that the staff filed its position
16 statement closing out five of the remaining safety
17 contentions, the staff also sent to the printer the SER.
18 That was on the 15th. Today is the 21st. I imagine we will
19 all be seeing it in the next couple of days.

20 The next part of the SER process would normally
21 involve the cask-specific issues. We had hoped to be in a
22 position right now with the SER where all site issues were
23 wrapped up and the only thing left to do in a second SER
24 issuance would be issues pertaining to whichever cask PFS
25 ultimately chooses to put on its site.

1 There are, however, a few remaining issues
2 pertaining to the site that still need to be closed. The
3 staff has been considering whether they should issue a
4 separate supplement closing out those site-related issues,
5 which, by the way, would include the aircraft and seismic
6 issues that are part of the Group 1 contentions. As an
7 alternative, the staff is considering that maybe they will
8 issue a cask-related SER supplement, which would then
9 include any other remaining issues that had to be resolved.
10 At this point I don't think they have made a final decision
11 on which way to go with that.

12 Looking at the issues in the proceeding, the
13 aircraft hazard and the seismic issue, the staff is
14 currently expecting to meet with PFS on January 10 at which
15 time additional questions will be discussed. The staff is
16 hoping that by the end of April we will be closing those
17 issues out.

18 The difficulty is that it seems every time we ask
19 questions and answers come back, further questions have to
20 be addressed because either the question initially wasn't
21 specific enough as to what we were looking for or PFS'
22 response wasn't as complete as it should have been.

23 So we are going to be meeting with PFS again in
24 January and we are looking at a mid-spring closeout of those
25 issues.

1 With respect to the environmental impact
2 statement, the staff has in progress a several hundred page
3 document. We are still projecting publication of a draft
4 EIS in March 2000. That is approximately three months from
5 now.

6 Your Honor, I want to make sure that you are aware
7 -- I think the parties are aware -- that we do have several
8 other cooperating agencies involved in the publication of
9 the EIS. As you may be aware, we have the Bureau of Indian
10 Affairs and the Bureau of Land Management. In addition, the
11 Surface Transportation Board of the Department of
12 Transportation has recently signed on or is in the process
13 of signing on as a cooperating agency. I don't know if that
14 agreement has been signed yet, but it is in progress and
15 they will be a participant in the EIS as well.

16 Again, the date for the draft EIS is still
17 projected to be March 2000.

18 JUDGE BOLLWERK: Let me interject a question. The
19 March 2000 date is not going to be affected, at least as far
20 as you know at this point, by the fact there are other
21 cooperating agencies, I take it.

22 MR. TURK: At this point we don't think it will be
23 affected. We have met with the Surface Transportation Board
24 on at least one occasion. In fact, I think there were two
25 occasions already. We have given them a description of what

1 we are doing so far. I believe we have also given them some
2 written material to review. I believe they are trying to
3 work with us on our schedule and hopefully we will be able
4 to meet that March date.

5 In January we are going to be meeting with other
6 participating agencies, including the STB. After that set
7 of meetings takes place, I will have a much better view on
8 whether there will be any holdup. Currently the projection
9 is that March 2000 looks like a realistic date. If that
10 changes in January, I will certainly let you know, Your
11 Honor, and all the other parties as well.

12 JUDGE BOLLWERK: When is that meeting set for in
13 January, approximately?

14 MR. TURK: The week of January 10.

15 JUDGE BOLLWERK: So both dates are the 10th of
16 January, in terms of your meeting with PFS and also with the
17 cooperating agencies?

18 MR. TURK: I believe the schedule is for the PFS
19 meeting to be on Monday, January 10. People then fly over
20 to one of our participating consultants and we will all be
21 meeting for the balance of the week on the EIS matters.

22 JUDGE BOLLWERK: So it's all within that time
23 frame then.

24 MR. TURK: Yes.

25 JUDGE BOLLWERK: Let me interrupt you one second,

1 Mr. Turk. Can the person that just buzzed in identify,
2 themselves, please?

3 MR. QUINTANA: This is Danny Quintana. I
4 apologize for buzzing in late.

5 JUDGE BOLLWERK: Just so you know, Mr. Quintana,
6 everyone is here except Ms. Walker who I spoke with
7 yesterday and was supposedly going to attend but hasn't
8 buzzed in at this point. We have probably been talking for
9 about five minutes going over the schedule.

10 This prehearing conference is being transcribed,
11 so in theory you can pick up from there whatever information
12 you missed. We have just basically been talking about
13 scheduling in terms of the meeting coming up in January for
14 further supplementation of the SER and also the March 2000
15 date for the draft EIS, which will also be part of a meeting
16 around that time frame in January.

17 All right?

18 MR. QUINTANA: All right.

19 JUDGE BOLLWERK: Go ahead, Mr. Turk, if you have
20 anything further on the scheduling.

21 MR. TURK: The only other thing that I wanted to
22 have a chance to address, Your Honor, is my view of what
23 impact the delay on aircraft and seismic issues might have
24 on the hearing that you have scheduled for this coming June.
25 In that regard, I would propose simply that we go forward

1 with the other issues, leaving aside these remaining issues
2 until we can get to closure on those, and then seeing what
3 is the best time to hold hearings on those issues. I think
4 we have enough to address as we go forward to just continue
5 with this current schedule for a June hearing on other
6 matters.

7 JUDGE BOLLWERK: We are talking about a four month
8 delay. Is it possible now to go ahead and schedule an
9 additional hearing session four months back?

10 MR. TURK: It is always possible. Given the fact
11 that we have already had this issue preserved open up to
12 this point, I am a little hesitant to say that I can give
13 you a date by which I will know for sure it is going to be
14 closed. We certainly could address that.

15 JUDGE BOLLWERK: I am kind of reluctant to leave
16 this open when you are talking about the end of April when
17 this actually gets closed out. I would prefer to have a
18 schedule to work against, and if we need to change it, we
19 need to change it. Sort of leaving all these open, I'm
20 afraid we are going to begin to lose sight of where we are
21 headed.

22 Let me ask one other question. You didn't say
23 anything about the final environmental impact statement. At
24 least I didn't make a note. That originally was scheduled
25 for February 2001. Is that still on track, or has that

1 changed?

2 MR. TURK: That is still on track. I believe it
3 is roughly an 11-month period after publication of the DEIS
4 before the FEIS gets published. The DEIS date will trigger
5 the FEIS date.

6 JUDGE BOLLWERK: Anything else you wanted to say
7 about scheduling at this point in terms of the schedule that
8 the staff has for its documentation?

9 MR. TURK: No, Your Honor.

10 JUDGE BOLLWERK: At this point let me go around
11 and see, given that schedule, what the other parties have to
12 say about the hearing schedule. Let's hear from Private
13 Fuel Storage first.

14 MR. BLAKE: Judge Bollwerk, I am disappointed, but
15 I agree with the staff that we ought to maintain the hearing
16 dates that everybody has marked on their calendars for the
17 June-July period of this year and get as many of the safety
18 contentions as we can under our belts during that period,
19 for sure the ones that the staff has already taken a
20 position on, and we can see whether we are able to add any
21 of these others as the staff feels more comfortable with any
22 of the other contentions that are still open.

23 With regard to the draft and final environmental
24 impact statements and what they say about the Phase 3 or
25 Group 3 hearing schedule, I am hopeful and remain hopeful,

1 as does Private Fuel Storage, that the gap between the draft
2 and the final may be capable of being shortened. At one
3 time it was a 6-month interval. I know it's 11 now and
4 listed that way.

5 We have not reset that hearing schedule, and I
6 wouldn't urge us to reset it today until we get closer to it
7 and really know what the final issuance date will be of the
8 draft and final environmental impact statements.

9 JUDGE BOLLWERK: Anything else at this point?

10 MR. BLAKE: No, sir.

11 JUDGE BOLLWERK: Let's hear from the State of
12 Utah.

13 MS. CHANCELLOR: Your Honor, we weren't aware of
14 some of these dates that Mr. Turk advised you of. For
15 example, that they may close out K and L in April of 2000.

16 Our preference is to go forward with the
17 contentions that the staff has taken a position on with the
18 caveat that we would like an additional two weeks discovery
19 against the staff on Contention E because there are some
20 gaps in the staff's final position paper. For example, they
21 talk about license conditions in the SER and we haven't seen
22 those, nor have we seen proprietary information that the
23 staff in general says they are relying on.

24 With respect to the Group 1 and Group 2, we would
25 urge that we just go forward with that additional two weeks

1 discovery, and that should not affect the schedule at all.

2 I agree with Mr. Blake that it is premature at
3 this stage to set a schedule for the K & L, the aircraft
4 hazards and the geotechnical. We are really being
5 constrained with respect to geotechnical. We have tried to
6 utilize the discovery window, but as PFS is still submitting
7 additional information to the staff, we are basically
8 looking at a moving target. Until the staff makes a
9 decision on the seismic exemption request there is really no
10 sense in us sending discovery to PFS about a deterministic
11 analysis when what we may be looking at in the end is a
12 probability analysis.

13 We would want additional discovery against PFS
14 with respect to the geotechnical contention once the staff
15 decides how they are going to proceed with the seismic
16 issues.

17 I also agree with Mr. Blake that until we know for
18 certain or have a little more certainty in when the draft
19 EIS is coming out that we should leave the Group 3 schedule
20 as is and set firm dates later on down the road.

21 That's all I have.

22 Diane, did you have anything else?

23 JUDGE BOLLWERK: Ms. Curran.

24 MS. CURRAN: No, I don't.

25 JUDGE BOLLWERK: Mr. Kennedy.

1 MR. KENNEDY: I don't have any comments to make
2 about the schedule. The only comment I would make is just
3 to mention that there is a federal court case pending
4 involving some of the fundamental issues here and that could
5 change a lot of this, but as of this point we don't have any
6 rulings from the court.

7 JUDGE BOLLWERK: Ms. Walker, you are not there, I
8 take it.

9 [No response.]

10 JUDGE BOLLWERK: Mr. Quintana.

11 MR. QUINTANA: No. I'm in good shape. Happy
12 holidays to all of you.

13 JUDGE BOLLWERK: We are not quite done yet, so
14 don't leave.

15 MR. QUINTANA: I won't leave.

16 JUDGE BOLLWERK: Let me ask a couple question. In
17 terms of the January 10 meeting that is set, will you have a
18 better sense after that January 10 meeting as to whether you
19 are going to meet the end of April closeout that you are now
20 looking for?

21 MR. TURK: I would hope to, Your Honor. In fact,
22 depending on how that meeting goes, we may see that we can
23 finish before the end of April. It really will depend upon
24 the next round of submissions from PFS. We can report to
25 you after that meeting to let you know how that affects the

1 dates that I projected here today.

2 JUDGE BOLLWERK: I am concerned about the setting
3 of a schedule for the hearing to when the thing actually
4 closes out. I think we need to all be working to schedules
5 and be aware of what the dates are and what is expected. If
6 not, I think we are going to run into trouble.

7 When would you want to file that report? When do
8 you think you would be in a position to do that?

9 MR. TURK: Following the January meeting?

10 JUDGE BOLLWERK: That's right.

11 MR. TURK: If it is all right with you, Your
12 Honor, I would say by the middle of the following week just
13 because I'm not going to be in a position to talk to people
14 entirely right after that meeting.

15 JUDGE BOLLWERK: Could that report be sort of a
16 joint report in terms of having talked with all the other
17 parties and making them aware of what is going on or perhaps
18 proposing a schedule to the Board for setting the hearing
19 for those particular issues that are left?

20 MR. TURK: I'm certainly willing to do that, Your
21 Honor.

22 JUDGE BOLLWERK: By the 20th of January then?

23 MR. TURK: If that is all right with the state and
24 the applicant, we will do that.

25 JUDGE BOLLWERK: Does anybody have an objection

1 with respect to that proposal? Mr. Blake.

2 MR. BLAKE: No, I don't have an objection to that,
3 Judge Bollwerk. I would hope that if the staff is unable to
4 reach a position by that date that we will still be able to
5 go forward with the contentions that we now have a staff
6 position on, given the agreement of the state and NRC and
7 PFS to do that.

8 Even if we are able to have some good news in
9 January, it seems to me we will still be able to maintain
10 the same hearing schedule in June. We have worked out a
11 schedule here. We haven't shared this with the other
12 parties because it didn't make sense to do it for today.
13 Maintaining the same intervals that we were all prepared to
14 maintain for Group 1, that is, between the various steps in
15 the process, we would still hold to that hearing date in
16 June and July if the staff were able to add some final
17 positions in the January time frame.

18 I am prepared to lay that out. Assuming that
19 there is good news in January from the staff, I will talk
20 with Mr. Turk and Ms. Chancellor and others to see if we all
21 have an agreement on it, and we may have something more for
22 you at that time.

23 JUDGE BOLLWERK: You are talking with respect to
24 the geotechnical and also the aircraft issue, correct?

25 MR. BLAKE: Yes, sir. Whatever the staff feels

1 comfortable reaching a position on and going forward. We
2 don't have much to say about that. We can give them all the
3 information we can, but they are the ones that need to reach
4 something.

5 JUDGE BOLLWERK: I should mention, if there is any
6 confusion about this or uncertainty, I think the Board is
7 prepared to go forward on the contentions. I think it's
8 Utah E, Confederated Tribes F, Utah H, Utah R, and Utah S
9 that the staff has indicated they have reached their
10 position on. I would anticipate going forward on those in
11 the June-July time frame. In fact, I guess one of the
12 question I have is, if we go forward on those, what kind of
13 hearing time are we looking at? I will explore that with
14 the parties in a second as well.

15 Let me ask Ms. Chancellor. I don't want to lose
16 focus here. What do you think of the idea about January
17 20th getting back some kind of report to the Board?

18 MS. CHANCELLOR: We would love to be involved in
19 knowing what the staff's position is and what their timing
20 is.

21 With respect to K, I assume that all of K has been
22 deferred because the staff has been able to take a position
23 on some issues on K but not all.

24 The second question I have is the the seismicity
25 issues. Does that include GG, the TranStor casks that also

1 relates to seismicity?

2 I will be more than happy to be involved in a
3 joint report.

4 JUDGE BOLLWERK: With K, we can certainly divide
5 it up into smaller parts. I think there may be more
6 efficiency in keeping it together and dealing with it in one
7 piece. On the other hand, if the parties think it is
8 severable, we are certainly willing to take it forward. I
9 want to go to hearing on anything that you are ready to try.
10 I will put it that way.

11 MS. CHANCELLOR: It wasn't my suggestion that we
12 sever it. That would not be our preference.

13 MR. TURK: Speaking for the staff, Your Honor, I
14 would prefer to keep it together. I think we have pretty
15 much addressed all of K that the staff has taken a position
16 on. That was done through summary disposition. The only
17 outstanding issues in K deal with the aircraft hazard and
18 that one remaining munitions hazard.

19 I suppose we could do the munitions one
20 separately, but since we have to bring witnesses with us and
21 go through the expense and effort of bringing them a second
22 time, I would prefer just to leave the remaining parts of K
23 as a single item for hearing.

24 Another example is the aircraft hazard issue
25 consists of both civilian aircraft and military aircraft

1 plus a cumulative issue. If we have to bring our aircraft
2 experts to Utah twice, then we are going to unnecessary
3 expense without any real savings in outcome for the
4 proceeding or for the hearing. I don't see that there is
5 any benefit to splitting it up.

6 JUDGE BOLLWERK: Mr. Blake, do you want to say
7 anything about that?

8 MR. BLAKE: No. I'm willing to talk with the
9 other parties between now and the January 20 time frame to
10 see if we can't come to you with an agreement.

11 JUDGE BOLLWERK: Mr. Kennedy, anything you want to
12 say about that? Or Mr. Quintana?

13 MR. QUINTANA: No.

14 JUDGE BOLLWERK: Mr. Kennedy.

15 MR. KENNEDY: No.

16 JUDGE BOLLWERK: In terms of the hearing on the
17 issues that the staff has listed as being ready to go
18 forward on, putting aside Security C, because we have
19 already set a hearing date for that in March, and I don't
20 think there is any question about that one, do you have a
21 sense, Mr. Blake, how much hearing time we are talking
22 about? Do you want to make an estimate?

23 MR. BLAKE: Two to three weeks at most.

24 JUDGE BOLLWERK: Ms. Chancellor, do you want to
25 say anything about that?

1 MS. CHANCELLOR: Very conservatively, a maximum of
2 two weeks.

3 JUDGE BOLLWERK: Mr. Turk?

4 MR. TURK: One to two, with two at the far
5 outside.

6 JUDGE BOLLWERK: Mr. Kennedy or Mr. Quintana,
7 anything you want to say on that?

8 MR. QUINTANA: I'm sorry, Your Honor. I was
9 interrupted. Can you repeat the question?

10 JUDGE BOLLWERK: We are talking about a hearing
11 time for the four issues that the staff has indicated it is
12 ready to go forward on in the June-July time frame, how much
13 hearing time. I've heard at the outside three weeks,
14 probably closer to one or two. Do you have any reason to
15 believe that wouldn't be adequate?

16 MR. QUINTANA: I think that would be fine.

17 JUDGE BOLLWERK: Mr. Kennedy?

18 MR. KENNEDY: That sounds correct to me as well.

19 JUDGE BOLLWERK: If I understood you correctly,
20 Mr. Blake, you are saying at the outside three weeks.

21 MR. BLAKE: Absolutely. Which means it could
22 either be before or after the Fourth break.

23 JUDGE BOLLWERK: I guess maybe it is premature to
24 ask if anybody has a sense of what we are talking about with
25 the residuary of Groups 1 and 2. Do you want to say

1 anything about that, Mr. Blake?

2 MR. BLAKE: I would suggest that we set the
3 schedule for the three weeks to begin, for example, on July
4 10 and leave that to July 28, which was the end of the
5 window that the Board had set previously. That leaves us as
6 much flexibility as possible in the intervening period to
7 accommodate as late a staff finalization of a position as
8 possible and maybe we pick up a couple of others. I don't
9 think that cramps us at all on schedule even if we can pick
10 up one or two others?

11 JUDGE BOLLWERK: That is leaving it three full
12 weeks, and you are hoping that is enough time to add
13 anything else that might come along?

14 MR. BLAKE: Right. It puts it as late in that
15 hearing window as possible and gives us as great a chance as
16 we have of trying to pick up another staff position and
17 therefore another contention.

18 JUDGE BOLLWERK: If the Board were to decide not
19 to hold any hearings the last two weeks in June, you are not
20 recommending that we set that now as hearing time.

21 MR. BLAKE: That's correct. I would be willing to
22 forego any hearing time in June at this point.

23 JUDGE BOLLWERK: Anybody else want to comment on
24 that? Ms. Chancellor.

25 MS. CHANCELLOR: For purposes of going forward

1 with the hearing, provided we get our two extra weeks ,
2 discovery against the staff, we are willing to have a
3 hearing either in June or in July. Whether we pick up an
4 additional contention or not would depend on whether we need
5 additional discovery against PFS and the staff. I am
6 willing to consider it, but we can't make a commitment at
7 this stage.

8 JUDGE BOLLWERK: Mr. Turk, anything you want to
9 say about that?

10 MR. TURK: Two things, Your Honor. First, if we
11 do pick up an additional contention, it will be the aircraft
12 or the seismic. I see each of those as being
13 time-consuming. Seismic, I cannot conceive of us doing that
14 hearing in less than a week just on that contention.

15 Aircraft hazards also. I foresee a number of
16 witnesses and lengthier cross-examination than I foresee on
17 the contentions that have already been resolved by the
18 staff.

19 If you do pick up additional contentions, I think
20 you are looking at two weeks beyond what we have projected
21 already. I don't think two weeks would be enough to cover
22 the whole thing at that point. So my recommendation would
23 be not to defer hearings until July 10 but rather to set it
24 for an earlier period. If Mr. Blake wants to delay a little
25 bit, I would say, okay, do that, but don't leave yourself

1 only the last two to three weeks of that hearing period to
2 wrap up everything. It won't cover the new contentions.

3 At some point, Your Honor, I would like to address
4 Ms. Chancellor's comment about the need for additional
5 discovery against the staff. I don't think it is time to do
6 that yet, but I would like to note that I would like to
7 address that at some point.

8 JUDGE BOLLWERK: I am going to come back to that.
9 I have noted that, and we will talk about that in a second.

10 Mr. Quintana, do you want to say anything about
11 that?

12 MR. QUINTANA: I think some of these issues are
13 going to be resolved by summary disposition. I don't know
14 whether you would want further briefing by all parties on
15 it, but I would like to see the schedule made as expeditious
16 as possible.

17 JUDGE BOLLWERK: Mr. Kennedy?

18 MR. KENNEDY: Nothing except to note that here in
19 Utah the 24th of July is a state holiday and things pretty
20 much shut down. So that full three-week period is not
21 really a full three-week period.

22 JUDGE BOLLWERK: I appreciate that information.

23 What I am hearing is it may be premature at this
24 point, at least until we have heard from you on January 20,
25 to cancel any of the hearing time. I think at this point we

1 ought to keep it on the calendar as it is with the
2 possibility that it may decrease, depending on what happens
3 at the meeting on January 10 and thereafter in terms of
4 discussion among the parties.

5 I should mention again that one of the reasons I
6 am questioning you about this is we are dealing with the
7 hotel out there, trying to set up hearing space again, and
8 they are questioning us about how much time we are going to
9 need. I am trying to bear that in mind as I am talking with
10 you and get some sense of where we are, because they want to
11 know what they can expect.

12 I should also mention that I suspect, given the
13 amount of time we have here, at some point the Board is
14 going to do some limited appearance sessions and they are
15 more than likely going to be part of this set of hearings,
16 at least to get them off the ground and do as much time as
17 we can with interested individuals. I don't know how many
18 people want to speak with the Board, but we certainly want
19 to make ourselves available for a period of time to get
20 limited appearance statements. That has to be factored in
21 here as well.

22 Let me jump briefly to the question that has been
23 raised about the extension of discovery for the staff on
24 Contention E, noting again that that contention is subject
25 to a summary disposition motion at this point. One of the

1 things I would contemplate is some kind of a motion. If we
2 are going to extend discovery, I would want to do that on a
3 formal basis, unless you all have something you want to say.
4 Let's hear from Mr. Turk. I guess you wanted to say
5 something about that.

6 MR. TURK: I certainly can wait until I see a
7 formal motion. I would note that Ms. Chancellor and I have
8 had a brief conversation about her belief that she needs
9 more discovery from the staff. I have asked her what is the
10 question that she needs answered. She told me that it has
11 to do with the proprietary information upon which we are
12 relying in drawing up license conditions and what the
13 language of those license conditions would be. I have
14 pointed out to her where that proprietary information may be
15 found.

16 So I don't know that there would be any need for
17 additional discovery other than just to put in writing from
18 a witness the matters that I have told her already on the
19 telephone. I am willing to wait to see any formal motion
20 before I state our position in full.

21 JUDGE BOLLWERK: Let me make one suggestion. I am
22 reluctant to extend a date that we have set on that schedule
23 without some kind of a motion, but is it possible,
24 Ms. Chancellor, for you talk to Mr. Turk and find out if
25 this can be resolved without a motion?

1 MS. CHANCELLOR: I don't believe so, Your Honor.
2 Mr. Turk has refused to budge on the schedule and has told
3 me not where to find the proprietary information but that
4 when NRC submits its summary disposition response on the
5 27th of December we may know at that time what proprietary
6 information the staff is relying upon. We won't see the
7 actual license conditions that NRC says will be in the SER
8 until we see a copy of the SER.

9 Under the current schedule the state has been
10 allocated two months discovery starting from the time that
11 NRC takes a position. Our contention is that period should
12 not start until we actually know NRC's position.

13 If it is going to be on the 27th when Mr. Turk
14 files the response to summary disposition on E, that would
15 be fine. Or we could send out some discovery now. But our
16 two months discovery window should not be eaten into by us
17 having to try and figure out what the staff's position
18 actually is.

19 JUDGE BOLLWERK: Under the schedule, in theory
20 your limited discovery window is already open. Am I right
21 about that?

22 MS. CHANCELLOR: That's correct. It started on
23 December 15 against the staff. It ends on February 15. If
24 that were to be extended to March 1, that would not affect
25 any other part of the schedule.

1 JUDGE BOLLWERK: If you all can't reach some kind
2 of agreement, you need to go ahead and file a motion of some
3 kind then. I would want to do that formally if we were
4 going to extend that schedule.

5 MR. TURK: We will certainly wait to see that,
6 Your Honor. I think Your Honor was right, though. The
7 discovery period is open. She can also file off a quick
8 interrogatory if she wants. I've told her to look at the
9 applicant's REI response and the Parkin affidavit that came
10 in with the motion for summary disposition. She will see
11 our response to the summary disposition motion that lays out
12 what our reliance is and what the proprietary information is
13 that we are relying on, what the conditions are.

14 I really don't understand the need for additional
15 discovery time, especially since we haven't even started the
16 discovery questioning yet. So I really don't see a need for
17 it.

18 JUDGE BOLLWERK: I will leave that to the parties
19 to sort out. Ms. Chancellor, if you feel you need more
20 time, then you have the option of filing a motion with the
21 Board, and we will certainly consider it.

22 MS. CHANCELLOR: Thank you, Your Honor.

23 JUDGE BOLLWERK: Let me make mention of one other
24 thing. At this point we have a telephone conference set for
25 the 22nd of February relating to Security C. There is a

1 possibility I may have to reschedule that because of some
2 work we are doing with the Licensing Support Network, which
3 is one of the things we are responsible for here now. But I
4 will let you know about that. In any event, I do want to
5 hold at least a brief telephone conference with the parties
6 on Security C at some point before we get close to the date
7 for filing the pre-filed testimony.

8 I will go ahead and issue an order that
9 memorializes this. We are expecting a report drafted by the
10 staff or at least initiated by the staff, to the degree it
11 can be a joint report, on January 20 advising the Board
12 about the status of the issues that the staff has not been
13 able to take a position on, the Group 1 or Group 2 issues,
14 which are basically Utah L, Utah K with respect to aircraft,
15 and then I guess Utah GG, which is the third one that was
16 listed.

17 At this point I think we are also going just leave
18 the schedule in terms of the hearing dates from June 19
19 through the end of July open. We will revisit that if we
20 need to after we have seen the January 20 report.

21 I guess at this point we will also continue to
22 leave the DEIS schedule as it stands, although there may
23 come a point in the near future when we are going to want to
24 revisit that again, especially after the DEIS is issued. So
25 be aware of that.

1 Anything else at this point that you need to bring
2 to the attention of the Board? Let's start with Private
3 Fuel Storage.

4 MR. BLAKE: No, sir.

5 JUDGE BOLLWERK: The State of Utah,
6 Ms. Chancellor.

7 MS. CHANCELLOR: Your Honor, I have one procedural
8 question. In one of your latest orders there seemed to be a
9 suggestion that for proprietary information that we should
10 serve that the same as we do for safeguards information. In
11 the past we have been doing that electronically by e-mail,
12 serving a copy to Mr. Julian, to the three judges, to
13 Private Fuel Storage, and to the staff.

14 If we have to file proprietary information the
15 same way as safeguards information, it is going to be
16 extremely burdensome for the state because we tend to file
17 many of our pleadings as proprietary because we take a
18 conservative view of information we have received from PFS
19 and don't want to run afoul of a confidentiality agreement.

20 My question is, is there any objection to us
21 continuing to file proprietary pleadings via e-mail provided
22 that we only serve the people on the proprietary list?

23 JUDGE BOLLWERK: I guess I will turn in part to
24 Private Fuel Storage. My concern when we sent that order
25 out was that the Internet is not necessarily the most secure

1 medium. My concern was that if somebody were really
2 interested in getting to that information, they could.

3 Do you want say anything about that, Mr. Blake?

4 MR. BLAKE: I don't know what to say. I wasn't
5 sure what had led to the Board's order and whether or not
6 you all knew something more than what we did. I have been
7 filing by e-mail and have had sufficient comfort in doing
8 that. I didn't know whether you were aware of something
9 more or something that had occurred with the NRC or
10 something that the judges were exposed to that we weren't
11 aware of, Judge.

12 JUDGE BOLLWERK: It was just my general concern
13 about the Internet not being necessarily a secure medium.
14 Do you want to say anything about that, Mr. Turk?

15 MR. TURK: My general impression is similar to
16 yours, Your Honor. I don't think there is security in
17 Internet transmission. So if something is truly proprietary
18 and someone has requested it be treated as such, I would not
19 want to be transmitting it over the Internet.

20 MS. CHANCELLOR: One further point, Your Honor.
21 If the information can be faxed to a general fax number, I
22 don't know that that is as secure as sending it directly to
23 somebody's computer via the Internet. We would like to have
24 further discussions with PFS if we have to go to the expense
25 and burden of filing everything that may be considered

1 proprietary by Federal Express or whatever other means, are
2 applicable.

3 MR. BLAKE: Why don't I take on responsibility of
4 talking with Ms. Chancellor some more and see if we can't
5 work our way through this and get back to you, Judge.

6 JUDGE BOLLWERK: I would appreciate that. Again,
7 I can live with whatever the parties can come up with.
8 Mr. Turk, you may need to be part of this only to the degree
9 it has implications with the way NRC deals with its
10 information generally. That was simply my concern. I don't
11 want to be responsible for allowing people to put
12 proprietary information on the Internet when it could become
13 subject to disclosure by anyone who happened to hack into a
14 particular server or Web site.

15 If the parties want to explore that further, I
16 would certainly urge you to do so. Try to get back to us
17 and let us know what you come up with.

18 MR. BLAKE: We will do that. Thank you, Your
19 Honor.

20 MR. TURK: I can give you an example, Your Honor,
21 for safeguards information. We do not talk about safeguards
22 information on the telephone. Internet is, at best, as
23 secure as the telephone, and probably not that secure. I
24 cannot imagine that if something is truly requested to be
25 kept confidential as proprietary that we would say go ahead

1 and transmit it on the Internet.

2 JUDGE BOLLWERK: Can you talk with Mr. Blake about
3 this, however?

4 MR. TURK: Sure.

5 JUDGE BOLLWERK: Let's leave it at that at this
6 point with the understanding that the reason we imposed that
7 is because of our concern about the Internet, but if the
8 parties can reach some other accommodation, come back to us
9 and let us know that and we will certainly take it into
10 account.

11 Anything else, Ms. Chancellor?

12 MS. CHANCELLOR: I guess just one thing. We have
13 a pleading that is due on the 27th for our response to
14 Contention E. I imagine that will be a proprietary
15 pleading. If I can work something out with Mr. Blake and he
16 agrees to say e-mail transmission, would I need your
17 permission first to file that electronically?

18 MR. BLAKE: If we reach agreement, we ought to be
19 able to get back to the Board fairly quickly.

20 MS. CHANCELLOR: Thank you.

21 JUDGE BOLLWERK: I think that is all right.
22 Again, I just hope you will talk with Mr. Turk because this
23 has implications for the agency as well, and I don't want to
24 run into a problem with the Division of Security coming back
25 and telling me that the Board has violated some NRC

1 requirement.

2 MR. BLAKE: We'll stand up for you, Judge.

3 JUDGE BOLLWERK: That may be good, but the
4 Division of Security may or may not buy that as sufficient.
5 In any event, you will be part of those conversations, I
6 take it, Mr. Turk.

7 MR. TURK: Yes, Your Honor.

8 JUDGE BOLLWERK: Ms. Chancellor, we will do
9 whatever we can to accommodate. I just want to make sure
10 that we are not causing any problems in terms of disclosure
11 of information.

12 MS. CHANCELLOR: Your Honor, it is really
13 frustrating to file something as a proprietary pleading and
14 then have PFS turn around and say, well, this isn't really
15 proprietary. We will be glad to do that, but if it is going to
16 be very tedious, we will have to reconsider. I will work
17 that out with Mr. Blake.

18 JUDGE BOLLWERK: Maybe in the discussions with him
19 beforehand you can kind of give him some sense of what you
20 are going to file and maybe you can avoid even calling it
21 proprietary. I don't know if that would help or not.

22 MS. CHANCELLOR: You mean give him a preview of
23 what we are going to file?

24 JUDGE BOLLWERK: Not in terms of chapter and
25 verse, but at least in terms of maybe the information you

1 are going to rely on. I don't know. I'm just trying to
2 provide a way to work through this. Talk among yourselves
3 and see what you can do.

4 Anything else, Ms. Chancellor?

5 MS. CHANCELLOR: No, Your Honor.

6 JUDGE BOLLWERK: Ms. Curran, anything you want to
7 say?

8 MS. CURRAN: No.

9 JUDGE BOLLWERK: Mr. Kennedy?

10 MR. KENNEDY: Your Honor, I just wanted to report
11 that after spending a significant amount of time in getting
12 able help from Tim Sullivan, I still am not able to file
13 anything with a digital signature. He is working on that.
14 I don't know if anyone else is having the same kinds of
15 problems, but for some strange reason we are not able to do
16 that. I just want to report that.

17 JUDGE BOLLWERK: I appreciate that. Do you use
18 Microsoft Explorer?

19 MR. KENNEDY: I'm using Netscape now. That
20 problem was not the source of our troubles. I've got a DSL
21 connection and a local area network, and it might be one of
22 those two things, but they are looking into it. I don't
23 know when we will hear back. We have really spent I don't
24 know how many hours trying to work this out, but we are
25 still not successful.

1 JUDGE BOLLWERK: All right. Let me just say, on
2 behalf of the Board I appreciate the time you are putting
3 into this. This is an experiment for all of us. I know we
4 have had the states raise some concerns; there have been
5 some problems with Private Fuel Storage or Shaw Pittman
6 trying to get in. This project is one that we recognized
7 there were going to be some bugs in. That is what we are
8 trying to work out.

9 This is aiding the Board as well as the parties in
10 this proceeding, because what we are learning through this
11 is something we are going to hopefully be able to apply
12 across the board to everybody that is doing electronic
13 filing. I recognize that many of you have put a lot of time
14 on this and may put in some additional time in the future,
15 but you really are performing a service to the agency and I
16 think to all the other parties that are going to be
17 appearing in our proceedings and want to do electronic
18 filing. I just want to express my appreciation to you.

19 MR. KENNEDY: I just would say that from our
20 perspective here we see this as the way of the future, too.
21 So I am happy to do it. I wanted to compliment the folks
22 there at the NRC who have been working on it. They are
23 bright, they are capable, and they are spending a lot of
24 personal time trying to make it work as well. We appreciate
25 what they are doing and hope that somehow we will get it on

1 track.

2 JUDGE BOLLWERK: Thank you, Mr. Kennedy. I should
3 mention I am putting documents in there. I think I am the
4 only one at this point, but we are continuing to try to get
5 this worked through. I hope everybody will continue to work
6 with the staff. Again, I appreciate it.

7 Anything you want to say, Mr. Quintana?

8 MR. QUINTANA: No. I think we are in good shape.
9 I don't think that we should let Utah's state holiday July
10 24th interfere with these proceedings. I think we should
11 just go forward as expeditiously as possible.

12 JUDGE BOLLWERK: If nobody has anything else to
13 say to the Board, at this point we will stand adjourned.
14 Before we go off, just let me mention that if what we see on
15 January 20th causes us to require a prehearing conference,
16 we will get in touch with you at that point.

17 I wish you all a happy holiday. At this point, if
18 nobody has anything further, we will stand adjourned. Thank
19 you very much.

20 [Whereupon at 4:20 p.m. the conference call was
21 concluded.]

22

23

24

25

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: CONFERENCE CALL TO DISCUSS
THE MATTER OF PRIVATE FUEL
STORAGE, LLC

CASE NO: 72-22-ISFSI
ASLBP No. 97-732-02-ISFSI

PLACE OF PROCEEDING: Rockville, MD

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.



Mike Paulus

Official Reporter

Ann Riley & Associates, Ltd.