

RAS 4331

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USNRC

NUCLEAR REGULATORY COMMISSION

2002 APR 17 AM 8:55
OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: Private Fuel Storage, LLC

Docket Number: 72-22-ISFSI; ASLBP No. 97-732-02-ISFSI

Location: Salt Lake City, Utah

Date: Monday, April 8, 2002

Work Order No.: NRC-281

Pages 2921-3045

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Template = SECY-032

SECY-02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

U. S. Nuclear Regulatory Commission
Sheraton Hotel
150 West 500 South, Wasatch Room
Salt Lake City, Utah 84101

April 8, 2002

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m. before:

MICHAEL C. FARRAR, CHAIRMAN
Administrative Judge
U. S. Nuclear Regulatory Commission

THE HONORABLE G. PAUL BOLLWERK, III
Administrative Judge
U. S. Nuclear Regulatory Commission

DR. JERRY R. KLINE
Administrative Judge
U. S. Nuclear Regulatory Commission

DR. PETER S. LAM
Administrative Judge
U. S. Nuclear Regulatory Commission

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A P P E A R A N C E S

FOR THE STATE OF UTAH:

Denise Chancellor, Esq.
Connie Nakahara, Esq.
ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
160 East 300 South, 5th Floor
P. O. Box 140873
Salt Lake City, Utah 84114

FOR PRIVATE FUEL STORAGE, LLC:

Jay Silberg, Esq.
Sean Barnett, Esq.
Paul Gaukler, Esq.
SHAW PITTMAN
Attorneys at Law
2300 N Street, N.W.
Washington, D.C. 20037

FOR THE SKULL VALLEY BAND OF GOSHUTE INDIANS:

Timothy Vollmann, Esq.
Attorney at Law

FOR THE U.S. NUCLEAR REGULATORY COMMISSION:

Sherwin E. Turk, Esq.
Catherine Marco, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

FOR THE SOUTHERN UTAH WILDERNESS ALLIANCE:

Joro Walker
Director, Utah Office
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, Utah 84105

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1 April 8, 2002

9:00 a.m.

2
3 P R O C E E D I N G S

4
5 JUDGE FARRAR: We're here to begin an
6 evidentiary hearing that is a full scale trial in
7 the merits of several safety and environmental
8 issues related to a request from an organization
9 called Private Fuel Storage for Nuclear Regulatory
10 Commission approval of a proposal to build on the
11 reservation of the Skull Valley Band of Goshute
12 Indians, a facility for the temporary storage of
13 spent fuel rods from commercial nuclear powered
14 electrical generator stations.

15 We up here are administrative judges
16 appointed by the five commissioners of the NRC,
17 designated to sit on this case. Recognizing that
18 these are complex proceedings, the Atomic Energy
19 Act has long provided three-person boards,
20 consisting of two technical members. In this
21 case, my colleagues, Dr. Jerry Kline, an
22 environmental scientist and Dr. Peter Lam, a
23 nuclear engineer, and a lawyer chairman, that's
24 me, Mike Farrar.

25 You will say, well you just said a

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1 three-person board, why are there four of you up
2 here? Many of will remember Judge Paul Bollwerk,
3 who presided over this case for a good many years
4 and a term with Drs. Kline and Lam. He, a few
5 months ago, turned part of the proceeding over to
6 me. His board retains jurisdiction over some of
7 the issues, and he's here with us to discuss some
8 of those issues with the parties later on, and to
9 sit at the limited appearance statements.

10 Before we talk about the agenda for
11 today and for the weeks ahead, I'd like to have
12 the parties identify themselves starting with the
13 people supporting the application.

14 MR. SILBERG: Good morning, Judge
15 Farrar, good morning Judges Bollwerk, Kline and
16 Lam. I'm Jay Silberg from the law firm of Shaw
17 Pittman in Washington D.C. With me today here is
18 Sean Barnett of the same law firm. Also
19 representing the Applicant this week will be Paul
20 Gaukler, who is not in the room right now. We
21 also have with us today John Parkyn, who's
22 chairman of the board managers of Private Fuel
23 Storage, Scott Northard, who is project manager
24 and John Donnell, who's project director of
25 Private Fuel Storage.

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1 JUDGE FARRAR: Thank you, Mr. Silberg.
2 For the Staff?

3 MR. TURK: Good morning, Your Honors.
4 My name is Sherwin Turk. I'm an attorney with the
5 NRC Staff in Washington. Seated to my right is
6 Mr. Robert Wiseman, who is one of my co-counsel.
7 He'll be attending this week and also you'll see
8 him during the litigation of environmental
9 contentions. And to his right is Catherine Marco,
10 also counsel with the NRC Staff. Ms. Marco will
11 be the lead attorney on the aircraft crash
12 litigation this week.

13 Also, I'd like to mention that in the
14 audience behind me and I would ask them to stand
15 as I say their names to identify themselves, is
16 Mr. Mark Delligatti, who is the project manager
17 for the NRC Staff on this application. And we
18 have two experts with us this week on the aircraft
19 crash issues. From Washington, we have
20 Dr. Kazimieras Campe, who is one of the principal
21 contributors who greatfully has helped us on the
22 aircraft crash guidance team. He is one of our
23 witnesses this week on the aircraft crash. And
24 also I'd like to ask Dr. Amitava Ghosh to stand.
25 He is also one of our experts. He is particularly

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1 skilled in risk analysis, and he is one of our
2 consultants from the center for nuclear waste
3 predatory analyses in San Antonio, Texas.

4 JUDGE FARRAR: Thank you, Mr. Turk.
5 Mr. Vollmann.

6 MR. VOLLMANN: My name is Tim Vollmann,
7 and I'm the attorney for the Skull Valley Band of
8 Goshute Indians in this licensing proceeding. On
9 my far right is Leon Bear, the chairman of the
10 Skull Valley Band, and on my immediate right is
11 Lori Skibbey, the vice chair of the Band.

12 JUDGE FARRAR: Thanks Mr. Vollmann.
13 For the State.

14 MS. CHANCELLOR: Good morning, Your
15 Honor, my name is Denise Chancellor for the State
16 of Utah. On my far left is Ms. Connie Nakahara.
17 She and I will be co-counsel in the seismic
18 contention and Ms. Nakahara will be assisting
19 Mr. Soper, to my immediate left, who will be the
20 lead counsel in the aircraft crash contention. In
21 the audience is Dr. Diane Nielsen, the director of
22 the Department of Environmental Quality, and I'd
23 also like to recognize our paralegal, Jeanne
24 Braxton, who has kept us in order for the last
25 four and a half years.

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1 JUDGE FARRAR: Which is she? Thank you
2 again for the many mails that come through at 3:15
3 our time, in the morning. I open them up first
4 thing when I get to work.

5 I see that no one is here from the
6 Southern Utah Wilderness Alliance, which has one
7 of the contentions, environmental contentions, and
8 the Confederated Tribes and Ohngo Gaudadeh Devia,
9 who we'll refer to as OGD. And if they show up,
10 we'll have them introduce themselves.

11 The agenda today -- oh, before that,
12 for those in the audience who may just be citizens
13 of Salt Lake rather than affiliated with the case,
14 this has been an extraordinarily complex
15 proceeding over the last several weeks, maybe two
16 months in terms of completing and overriding
17 deadlines for the lawyers filing papers on
18 different contentions, different motions
19 affiliated with the contentions, and I have never
20 seen such diligent, high quality performance under
21 extraordinarily demanding circumstances.
22 Particularly talking to the three parties who are
23 principal participants here, and the board
24 certainly appreciates the work that you've done
25 and I hope that your clients appreciate the work

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1 you're doing for them.

2 Just a note about security. If you
3 go -- the security, things being what they are,
4 was a step we thought we needed to employ for
5 everyone's protection. When you go out, if it's
6 crowded and if you go out the two side back doors,
7 the doors on the back wall on the side and then
8 you'll have to come back in through security.

9 A word about the agenda. In a few
10 minutes, we'll have the opening statements by the
11 parties. Then we're going to have a discussion of
12 some motions the parties have filed to reject
13 portions of testimony or exhibits that have been
14 pre filed with us. Then Judge Bollwerk has some
15 things -- some procedural things he'd like to
16 discuss with you after we adjourn, and so we'll
17 have a little session up here off the record
18 before the noon recess.

19 This afternoon we'll have the limited
20 appearance statements, and I only say a word about
21 those now. Those, of course, are not part of --
22 they'll be transcribed but they are not part of
23 the evidentiary record. But the parties and the
24 board will be there to hear what people have to
25 say. It's not a public hearing or dialogue, but

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1 if you have something that bears significantly on
2 the issues, the parties and the Board will base
3 questions on that and make inquiries to follow up
4 and in some instances -- I think it was this case.
5 Mr. Silberg, wasn't there something about
6 illumination? Some astronomers were worried about
7 illumination, the lights affecting -- maybe it's a
8 different case. This case. There was some people
9 making limited appearances were concerned about
10 illumination from the facility affecting their
11 ability to make astronomical observations, and I
12 think the company worked with them to correct that
13 problem. So these limited appearances have their
14 function.

15 We will then move into the trial of the
16 four issues. This week, we'll be doing what's
17 called credible accidents, the concern about
18 military operations, possible accidents from those
19 to west of the facility. Take next week off. We
20 thought we'd have other issues to deal with, but
21 we didn't. The third week, we'll do environmental
22 issues, two of those, and an oral argument on a
23 third one, and then weeks four and five, will be
24 spent on seismic issues, and a possible sixth week
25 if we don't finish up in that time. We will begin

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1 that trial tomorrow.

2 Ms. Walker, you haven't missed
3 anything, so if you'll introduce yourself.

4 MS. WALKER: Hi, sorry I'm late.

5 JUDGE FARRAR: If you'll introduce
6 yourself.

7 MS. WALKER: Joro Walker, on behalf of
8 Southern Utah Wilderness Alliance.

9 JUDGE FARRAR: Thank you. Do you have
10 any colleagues you may want to add? Thank you.
11 Then if there's nothing from counsel, we can begin
12 with the opening statements. What we asked
13 counsel to do was make brief openings statements.
14 These are not evidence. But this is to say, in
15 effect, why they're here, what they hope to
16 accomplish through this hearing, particularly to
17 focus on the issue that we're hearing this week.
18 If I recall correctly, we were going to have the
19 Applicant go first, followed by the Staff and then
20 the State and I think we cut you down to 15
21 minutes in order to make time for the argument --
22 for the discussion. Is that all right?

23 MS. CHANCELLOR: We will take seven
24 minutes from the Confederated Band, Your Honor.
25 We will try for 15 minutes.

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1 JUDGE FARRAR: Okay. Then let's get
2 started. Mr. Silberg.

3 MR. SILBERG: Thank you, Your Honor.
4 If the State is taking seven minutes from the
5 Confederated Tribes, we'll take seven from OGD.

6 JUDGE FARRAR: Hearing no objection --

7 MR. SILBERG: And I'll try to keep it
8 within 15 minutes. First of all, thank you --

9 JUDGE FARRAR: And let me interrupt you
10 because you just got started. The reason for
11 cutting the times back is those motions you all
12 filed objecting to pieces of testimony are very
13 interesting, particularly the question about
14 consequences. I don't want to short-circuit the
15 time we're going to need to spend on those. And
16 so recognizing our time frame requires we be back
17 here at two, we are going to wrap up by noon those
18 arguments, or that discussion may take a little
19 longer than we had first thought.

20 MR. SILBERG: Thank you Judge Farrar.
21 We're here to take-- talk about the interim
22 storage of spent nuclear fuel from commercial
23 reactors. Now, why are we concerned about that?
24 Nuclear power generates about 20 percent of this
25 nation's electricity, and while it produces

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1 electricity without any of the greenhouse gases
2 which many people were concerned about, a
3 necessary by-product of that generation is the
4 production of spent fuel. Utah has no nuclear
5 power plants, but it does benefit from nuclear
6 power. It's tied into the national electric grid.
7 Utah gets products and services from around the
8 country, which are produced with the aid of
9 electricity from nuclear power. Spent nuclear
10 fuel is something which everyone has recognized
11 since the beginning of nuclear power and needs to
12 be handled very carefully and responsibly. And
13 since the beginning of commercial power, nuclear
14 power in the 1950s, it was recognized that spent
15 nuclear fuel disposal would be a Federal
16 responsibility. Right now, that program for
17 permanent disposal is focused on Yucca Mountain.
18 To date, the Federal Government has invested
19 billions of dollars in studying Yucca Mountain as
20 a site for the permanent disposal of spent nuclear
21 fuel. That site has been recommended by the
22 president of the United States. Today, consistent
23 with the legislative scheme that was adopted by
24 Congress in 1982, the State of Nevada is expected
25 to veto that site. That will be followed by

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1 Congress considering whether or not to override
2 that veto. There will then follow an NRC
3 licensing process for Yucca Mountain which will
4 probably make the private fuel licensing process
5 look like child's play. And it will 2010
6 according to DUE's estimate at the earliest,
7 utilities think 2015 more likely that Yucca
8 Mountain would be expected to begin operation.

9 Why are we interested in interim spent
10 fuel storage. Well, Yucca Mountain is not going
11 to be available if it passes all the tests before
12 we think 2015. Spent fuel was initially to be
13 stored at nuclear power reactors, and their spent
14 fuel pools, but those pools were designed for
15 temporary storage of a relatively short duration
16 and limited amounts, because the initial
17 assumption would be that spent fuel would be
18 reprocessed. After reprocessing was taken off the
19 table in the 1970's, the spent fuel pools have
20 been extended many -- have been expanded to their
21 limits. And so utilities looked for other
22 alternatives. Dry storage, storage of spent fuel
23 and dry spent fuel storage casks and storage at
24 additional away from reactor sites have been used
25 by utilities since the 1970's. But at some sites,

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1 there are either physical or legal limits which
2 limit the amount of storage for spent fuel. And
3 one cannot decommission a nuclear power plant site
4 unless you remove the spent fuel from that site.
5 Keeping spent fuel at a decommission site, of
6 course, adds substantially to rate payers costs.

7 There are also security benefits from
8 centralizing spent fuel at a remote secure
9 location. And there are also economies of scale
10 for doing it at one place rather than at 72 sites
11 scattered around the country.

12 The utilities have been interested in
13 away from reactor spent fuel storage for quite
14 some time. Beginning in 1993, when DUE's
15 statutory date of 1998 or beginning to dispose of
16 spent fuel began to look out of reach, a number of
17 utilities got together to look for places where
18 they could store spent fuel on an interim basis.
19 Ultimately, eight utilities from the west, the
20 midwest, the south and the east formed the Private
21 Fuel Storage. And they focused on storage of
22 spent fuel and dry storage casks. Why did they
23 choose that technology? First, if they pass the
24 technology that have been reviewed and approved by
25 NRC and by regulators around the world, these are

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1 very robust structures in which spent fuel is
2 stored in welded steel canisters. They're closed
3 at the reactor, not opened again. And its
4 international use around the world as well as some
5 15 sites in the U.S..

6 Private Fuel Storage was very fortunate
7 to find in the Skull Valley Band, a partner to
8 pursue this, and Mr. Vollmann, I'm sure will
9 describe that in his opening statement.

10 Private Fuel Storage spent many months,
11 starting in May of 1996 negotiating with the Skull
12 Valley Band and with the Bureau of Indian Affairs
13 for the lease. An initial agreement was signed in
14 December of 1996. There were further discussions
15 and negotiations between the Band, Bureau of
16 Indian Affairs and Private Fuel Storage. The
17 lease was approved by the Band's general counsel
18 in December of 1996, and in May of 1997, the
19 Bureau of Indian Affairs gave conditional approval
20 to the lease conditioned on the completion of this
21 licensing proceeding as well as the Environmental
22 Impact Statement.

23 In June of 1997, Private Fuel Storage
24 filed with the Nuclear Regulatory Commission, its
25 application to build an interim spent fuel storage

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1 facility on the Skull Valley Band's reservation.
2 That application was accompanied by an extensive
3 environmental analysis and extensive safety
4 application. We had some 15 public meetings with
5 the NRC, many attended by public by the State of
6 Utah. We responded to numerous requests for
7 additional information from NRC, 151
8 safety-related questions covering over 250 issues,
9 and almost 120 environmental questions covering
10 about 180 issues. We filed in response to that,
11 38 commitment resolution letters on safety issues,
12 13 commitment resolution letters on environmental
13 issues, and amended our application 22 times to
14 include this additional information. We held six
15 public scoping meetings on the Environmental
16 Impact Statement, and as a result of that, the NRC
17 Staff issued a safety evaluation report initially
18 in December of 1999, supplemented in November and
19 December of 2001 and drafted an Environmental
20 Impact Statement issued in June of 2000, and a
21 final EIS in January of this year.

22 One of the issues that's been of
23 concern to the public, that we have certainly been
24 sensitive to, is the idea that once spent fuel
25 comes to Skull Valley, it would stay there

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1 permanently. We believe that that -- while we
2 understand the concern, we don't believe that that
3 concern is well-founded.

4 First of all, all scientists both in
5 the U.S. and abroad agree that geological disposal
6 is the permanent solution. There is no dispute
7 that permanent disposal should be left to some
8 future generation. And there are many reasons why
9 we have confidence that spent fuel at Skull Valley
10 will not be abandoned as some people have said by
11 PFS.

12 First, the individual utilities who
13 ship spent fuel there will continue to -- they'll
14 continue to have responsibility for it. They'll
15 continue to pay for it, and the sooner it leaves,
16 the sooner they will stop having to pay for it.
17 Utilities will be prepaying the cost of
18 decommissioning that site. And ultimately, it is
19 the Federal Government's responsibility as
20 Congress has legislated in the Nuclear Waste
21 Policy Act. The utilities have been actively
22 encouraging the Federal Government to comply with
23 that responsibility, and we've taken them to court
24 numerous times and are in court today to make sure
25 that that responsibility is carried out.

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1 And finally, the NRC license and BIA
2 lease are both time limited. We simply don't have
3 the authority to leave spent fuel permanently, and
4 we would not want to do that. And Yucca Mountain
5 looks promising. There is continued DUE progress
6 on the science and engineering. We understand
7 that there's a lot of work remaining, but the
8 people who have looked at it, both within the
9 government and outside the government, from an
10 unbiased standpoint, have concluded that there are
11 no show stoppers.

12 The political process is in motion, as
13 Congress declared that it should be. Nevada's
14 veto, which we expect today, and the congressional
15 override process, look like they will carry out
16 Congress's intent, and the concession by Senator
17 Nashley that doesn't look like he will be able to
18 stop the senate from overriding the veto, it gives
19 us confidence that the Yucca Mountain process will
20 move onto its next stage, which is the NRC
21 licensing and the NRC licensing process.

22 Transportation is another issue that
23 has been widely discussed. Fortunately, what we
24 believe to be significant amounts of
25 misinformation. Spent fuel has been safely

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1 shipped in this country for decades of 3,000
2 shipments, and abroad, tens of thousands of
3 shipments. And there have been shipments of spent
4 fuel through the State of Utah with the approval
5 of the State Government. We're talking about
6 shipping in a transportation cask that is
7 extraordinarily robust but is designed and tested
8 and analyzed to survive accidents beyond those
9 which we think can reasonably be thought to occur,
10 even in worst case situations.

11 Getting back to why we're here today,
12 the NRC public hearing process. This process,
13 which has received a lot of criticism from some of
14 the parties and some of the members of the public,
15 we must remember is independent of the Staff and
16 the Staff review. It's a well-established process
17 that has been in place for decades. It is a
18 process that is designed to resolve challenges to
19 applications. There's an established body of
20 regulations and case law, and there is a judicial
21 review process at the end of the NRC process.

22 We have had interventions by the State,
23 by Confederated Tribes, OGD, SUWA, the Band, local
24 landowners. We have had many safety and
25 environmental safety issues raised and many have

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1 been resolved. Some because they were not
2 admitted for not meeting NRC standards, others
3 because summary disposition, they were found not
4 to be genuine issues of material fact. Some were
5 settled, some were withdrawn. We've had an
6 extraordinarily extensive discovery process with
7 basically the Staff and the State and ourselves
8 opening our files to each other. And what we are
9 here for today is to start the process of the last
10 four admitted issues. The issue tomorrow on
11 aircraft crashes, two environmental issues the
12 week of the 22nd, on non radiological
13 contamination of the hydrology and wilderness
14 issues, and finally starting on April 29th,
15 seismic and geotechnical design issues.

16 The issues that we'll be focusing on
17 this week are whether there is a hazard from
18 military aviation flying in Skull Valley. That is
19 only a portion of the issue which we call
20 Contention Utah K. Some parts of that issue have
21 already been resolved through four years of
22 litigation on wildfires, on operations at Dugway
23 Proving Grounds, crews missiles. The remaining
24 issues that deal with F16 aircraft transiting
25 Skull Valley and related issues, we will be

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1 presenting testimony by three extraordinarily
2 well-qualified witnesses, former chief of safety
3 of the United States Air Force, a former B52 pilot
4 and statistician and a former commander of the
5 Hill Air Force Base F16 wing. They have extensive
6 experience on aircraft accidents. They have
7 studied in detail the F16 safety history and
8 accidents that could be of concern in the Skull
9 Valley area. And based on their extensive
10 analysis that extends back over some three years,
11 their testimony will show that the risk of a crash
12 in Skull Valley affecting the private fuel storage
13 facility is extraordinarily small, well below the
14 standard that NRC has established for requiring
15 that a facility be designed to withstand such a
16 crash. Notwithstanding that, it is our belief
17 that the robust nature of the facility and its
18 casks would, in fact, withstand any such accident
19 should it occur in the extraordinarily remote
20 probability that they have calculated.

21 We encourage the public to attend, we
22 encourage the public to listen, we encourage the
23 public to participate through the limited
24 appearance statements. Private Fuel Storage has
25 taken significant steps since the beginning of

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1 their interest in Skull Valley to respond to
2 public concerns. We have a web site, we have
3 extensive outreach. We have a lot of publicly
4 that we put out to the citizens of the area. We
5 are interested in responding to their questions,
6 we are interested in providing information to
7 them. We will be good neighbors. We will operate
8 a safe and environmentally sensitive facility that
9 will meet a very important need for this nation's
10 nuclear power program and supply of electricity as
11 a result of the nation's economy.

12 My thanks to the licensing board for
13 holding this hearing, and we look forward to
14 participating in the remainder of this licensing
15 process.

16 JUDGE FARRAR: Thank you Mr. Silberg.
17 Mr. Turk.

18 MR. TURK: Thank you, Your Honor. I'll
19 try to be fairly brief.

20 I'd like to begin first of all for the
21 benefit of the public to explain what is the role
22 of the NRC Staff in this process. Sometimes
23 there's confusion as to why the Staff takes
24 positions in a proceeding if, in fact, we're part
25 of the Nuclear Regulatory Commission. So just as

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1 a general introductory remark, I'd like to point
2 out that normally if a hearing has not been
3 requested by either a member of the public or a
4 state government or some other interested party,
5 when an application is received at the Nuclear
6 Regulatory Commission, it would be reviewed in the
7 first instance by the Staff, the Staff through its
8 evaluation of the application would require either
9 changes in the analyses that have been made by an
10 applicant or we would require changes in the
11 design or we could veto the application all
12 together if we felt it was inappropriate or wasn't
13 well supported.

14 Normally, if there's no hearing
15 requested, an Atomic Safety and Licensing Board
16 would not be convened to address the merits of the
17 application. But rather the Staff would reach a
18 conclusion and would present that conclusion to
19 the commission for its ultimate approval. Here,
20 of course, we've had hearing requests by many
21 interested parties, including the State of Utah
22 and SUWA, who are here. The Skull Valley Band
23 also filed a request to intervene in support of
24 the application, and we have several other
25 intervenors. In that setting, the decision passes

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1 to the Atomic Safety and Licensing Board on all
2 contested issues. So that here in this
3 proceeding, the Staff will present our views on
4 whether the application is sufficient. But it
5 will up to the Licensing Board itself to decide
6 rather than for the Staff to decide whether to
7 make that recommendation to the commission.

8 The commission has established through
9 its regulatory process, a set of regulations that
10 govern what is to be looked at when an application
11 is received and how the application is to be
12 treated. That is standards are established for
13 applications to meet, with respect to an ISFSI
14 such as has been proposed here by Private Fuel
15 Storage. The regulations are contained in 10 CFR
16 part 72. There are two sets of regulations within
17 that part of Title 10 of the Code of Federal
18 Regulations. One set of regulations has to do
19 with approval of casks. Another set of
20 regulations has to do with approval of the ISFSI.
21 In this particular case, PFS proposes to use a
22 cask manufactured by Holtec International. That
23 cask itself has received an independent review
24 process and has been certified as a sup pool by
25 the NRC. The certification of that cask is not in

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1 question in this proceeding. In fact, that is a
2 decided matter which has been published in the
3 Fellow Register and it's already been decided and
4 approved by the commission. What's before the
5 Board today and what's at issue in this proceeding
6 is whether PFS should be allowed to use those
7 casks at its facility located within Skull Valley
8 in Utah.

9 The review process that the Staff is
10 involved in and which you'll see referred to in
11 our testimony both on aircraft crash and on
12 geotechnical issues as well as on EIS matters is
13 to hold the application up in the light of the
14 regulations established by the commission, to
15 determine whether or not the application is
16 sufficient. As I mentioned, the Staff can require
17 changes in the analyses or changes in the design.
18 We typically request additional information and,
19 in fact, in this case, it has happened on numerous
20 occasions. There was a very extensive process
21 that went on for approximately two to three years,
22 in which we continually went back to the Applicant
23 and said we're not satisfied with what you've
24 given us. Either we need more information or we
25 think there are laws in leader in analyzing

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1 something, and the Applicant then was required to
2 go back and look at what they submitted and make
3 changes. Up to the point that we are sitting here
4 today, where the Staff is now satisfied that what
5 the Applicant has presented to the commission is
6 acceptable, and for that reason, the Staff has
7 determined that we would approve the application
8 if the application was in our bailiwick, if we had
9 jurisdiction to make that decision.

10 The Staff publishes two major review
11 documents that summarize the outcome of our
12 evaluations. Both of these have been referred to
13 briefly by Mr. Silberg. In the environmental
14 field, we follow the requirements of the National
15 Environmental Policy Act of 1969. We have a NEPA
16 process whereby the Applicant submits an
17 environmental report, the Staff evaluates it,
18 again will ask for additional information or
19 further analyses, and ultimately will issue a
20 draft Environmental Impact Statement that is then
21 published for comment. And finally, will issue
22 the final Environmental Impact Statement.

23 In this proceeding, we issued a draft
24 Environmental Impact Statement in the year 2000.
25 We received thousands of pages of comments in

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1 response. Many of them from the State of Utah,
2 others from members of the public. The State of
3 Nevada participated. We've had an extensive
4 comment process. Those comments were evaluated by
5 the Staff, they are summarized and responded to in
6 a separate volume of the final Environmental
7 Impact Statement, which we will be presenting in
8 evidence during the week on hearings of
9 environmental issues. That is a fairly thick,
10 approximately four-inch thick document containing
11 two volumes, and you'll see that both the Staff's
12 evaluation of the environmental issues as well as
13 the response and comments which were submitted to
14 the draft EIS.

15 With respect to the particular issue
16 before you this week, aircraft crash, the standard
17 that has been established by the commission in
18 CLI01-22 issued November of 2001, is that in order
19 to avoid having to look at the consequences of an
20 aircraft crash, the probability of occurrence of
21 that crash must be within a certain criteria
22 established in that decision as one times 10 to
23 the minus six, or one in a million per year. The
24 Staff has found that the applicant's analysis
25 shows that that criterion is satisfied and, in

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1 fact, the Staff's separate evaluation which
2 includes sensitivity analyses and its own look at
3 the issues, found again that the standard is
4 satisfied, that the probability of aircraft crash
5 at this facility is less than one times ten to the
6 minus six. The Staff has issued guidance.
7 Currently, it resides in NUREG 0800 which includes
8 two sections applicable to aircraft crash
9 analysis. One of the principal contributors to
10 that discussion in the guidance document is with
11 us today. He is Dr. Kazimieras Campe. He was
12 involved many years ago in establishing that
13 standard and his testimony addresses whether or
14 not the Applicant has satisfied the methodology
15 specified in the NUREG 0800. And I should point
16 out that the methodology in the NUREG 0800 is not
17 an exclusive methodology. It's one manner in
18 which the regulations can be shown to be
19 satisfied. Dr. Campe's testimony will indicate
20 that the Applicant here has filed NUREG 0800
21 methodology with a refinement, which will be
22 discussed during the aircraft crash testimony.
23 And the Staff has found that the applicant's
24 methodology is acceptable and again that the
25 results of the evaluation -- of the applicant's

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1 analysis show that the criterion one times ten
2 minus six has been met.

3 The other issues that will come before
4 you in the next month involve two EIS issues,
5 environmental issues. With respect to both of
6 those, the Staff's analysis -- excuse me, the
7 Staff's evaluation of the applicant's analysis is
8 set forth in the FEIS, and again in the Staff's
9 testimony. And the testimony will show that in
10 the Staff's view, the environmental issues raised
11 by the State of Utah and by SUWA have been
12 properly addressed.

13 And finally, with respect to
14 geotechnical and seismic issues, we will be
15 presenting testimony during the final two weeks of
16 hearing in which you will see the Staff's
17 witnesses' conclusions that geotechnical aspects
18 have been adequately assessed and the facility may
19 be licensed. I thank you very much for your time.

20 JUDGE FARRAR: Thank you, Mr. Turk.
21 Ms. Chancellor.

22 MS. CHANCELLOR: Good morning, Your
23 Honor. The State is involved in this proceeding
24 to make sure that a range of substantive issues
25 are fully considered. This has been a four and a

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1 half year process in which procedure often wins
2 out over substance. There are many substantive
3 issues that are not given consideration by the
4 NRC.

5 If PFS obtains a license, 4,000 casks
6 of spent nuclear fuel will travel by rail,
7 primarily from the east to Utah. NRC has given no
8 consideration to whether a private limited
9 liability company has the capacity of conducting
10 and financing such an operation. Instead, NRC is
11 relying on existing NRC and Department of
12 Transportation regulations.

13 The question we ask is, can the
14 nation's rail system safely handle two to three
15 shipments of spent nuclear fuel per week, 250
16 shipments per year for approximately 16 years.
17 When DOE ship military waste cross country,
18 special track alignment was run over the entire
19 1,000 miles of railroad track just prior to
20 shipping. Here, PFS will have to rely on the
21 nation's aging rail system for the next 16 plus
22 years.

23 NRC does not require PFS to have
24 emergency response personnel travel with the
25 shipments. Is there sufficient local capacity to

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1 handle rail accidents involving spent nuclear
2 fuel?

3 PFS says the transportation and
4 shipping costs will be borne by its customers, but
5 will PFS have sufficient operating capital to
6 safely conduct this national shipping campaign.
7 PFS has no financial backing. It must rely on PFS
8 member companies to contribute funds on an
9 as-needed basis. In fact, PFS could not even
10 timely pay the annual fee of approximately
11 \$750,000 that it owed NRC in 2001. NRC has not
12 evaluated the assets and liabilities of PFS, a
13 limited liability company. Instead, NRC will
14 allow PFS to commence constructing at some future
15 date after PFS has obtained a license, on a
16 showing to the NRC that PMS has sufficient funds
17 to construct a small portion of the facility.
18 Likewise, with operations, PFS will show NRC that
19 it has sufficient funds to operate. This
20 show-me-later approach takes the issue of PFS's
21 financial capability out of this proceeding to one
22 where the State is no longer involved and where
23 the NRC Staff alone reviews PFS's financial
24 showing.

25 NRC also has a legal fiction that all

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1 of the spent nuclear fuel will be removed from the
2 Skull Valley site at the time PFS decides to close
3 down its operation. Because of this legal
4 fiction, NRC has not evaluated the fate of 40,000
5 metric tons of spent nuclear fuel at the end of
6 PFS's operation. There is merely a hope that
7 there will be some place else that will accept
8 this enormous volume of high level nuclear waste.

9 Another consequence of this legal
10 fiction, is that the only tangible funding behind
11 the PFS project is a 1.63 million dollar letter of
12 credit for PFS to close down the site; again on
13 the assumption that fuel has left the site. There
14 are contractual relationships where PFS members
15 and customers are supposed to pay into a fund, but
16 this is merely a contract relationship. This
17 gives the State and its citizens no comfort that
18 the Skull Valley site will not become a permanent
19 site for the storage of high level nuclear waste.

20 Commencing in 1997, the State raised
21 many substantive issues which had been resisted by
22 PFS and the NRC Staff often on procedural grounds.
23 We expected PFS to raise any and all obstacles to
24 keep the a State at bay. What the State did not
25 expect was that the NRC Staff would take such an

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1 aggressive and adversarial position in support of
2 PFS when the State raised important safety issues.

3 The NRC Staff's opposition to the State
4 has been particularly acute at what is called the
5 late file contention stage. That is, any issue or
6 contention the State raised after the State filed
7 its original set of 30 contentions in November of
8 1997. The NRC Staff argued, for example, that the
9 State was too late, when in December of 1997, the
10 State raised concerns about the seismic stability
11 of the Holtec storage casks. When in response to
12 PFS's changed plan to put a rail spur down the
13 middle of Skull Valley instead of beside Skull
14 Valley Road, the NRC Staff argued that the State
15 was too late in raising the new concerns about the
16 train route being a source of wildfires.
17 According to the Staff, the State could have
18 raised wildfire concerns under PFS's initial
19 proposal. And the NRC Staff even argued that the
20 State was too early in filing contentions
21 challenging PFS's request to have certain seismic
22 regulations relaxed. Only after the State filed
23 contentions in April of 1999, January of 2000,
24 November of 2000, opposed summary disposition in
25 December of 2000, appealed to the commission in

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1 February of 2001, is the issue of the relaxed
2 seismic standard that PFS will need to design its
3 facility being heard in this proceeding.

4 The perception of the agency's non
5 neutral stance is reinforced when you read
6 statements from an NRC spokesperson such as, and I
7 quote, "The Utah governor is standing on his head
8 and doing whatever he can to prevent this, the PFS
9 facility, from happening in his state. But this
10 is Indian land and states don't have the ability
11 to regulate what goes on there."

12 After being involved in these
13 proceedings for four and a half years, it's
14 apparent to the State that the NRC Staff is
15 focused on technicalities in an effort to avoid
16 litigating obvious safety concerns. We are saying
17 these things to the Board in the hope that we are
18 at a point of addressing the critical question.
19 Is the PFS facility safe? The State is relying on
20 the Board to look at the substance of the safety
21 concerns the State has raised, and not leave those
22 obvious safety concerns unaddressed because the
23 NRC Staff or PFS may complain that the State was
24 too late, the issue was not within the scope of
25 contention, or a show-me-later approach to

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1 resolving safety questions.

2 Of the 55 contentions that the State
3 has raised in this proceeding, three will be
4 subject -- will be the subject of the upcoming
5 hearings. Mr. Soper will address the aircraft
6 crash issue and I will address hydrology and
7 earthquakes.

8 The hydrology issue is set for the week
9 of April 22nd. PFS bills itself as a
10 state-of-the-art facility, but this is not the
11 reality. The lack of environmental controls at
12 PFS are what one would expect to find in the
13 1950's and 1960's. The 500 storage casks will be
14 placed directly on soil. There are no liners
15 beneath the pads, nor are there any liners in the
16 pond that will collect runoff from the storage
17 pads. PFS has no monitoring in place to determine
18 whether there is surface or ground water
19 contamination. PFS has used region-wide soils
20 data to come up with the permeability of the
21 soils. A permeability that on the one hand when
22 it comes to pollution says PFS, will provide a
23 barrier, but on the other hand, will do permeable
24 enough to allow drainage of PFS's two septic tanks
25 and wastewater drainfields. PFS is relying on the

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1 good will of its employees not to mess up rather
2 than installing environmental controls for the
3 protection of surface and ground water.

4 Earthquakes and PFS seismic design will
5 be heard April 29th through May 10th. There are
6 two capable faults within a mile of the PFS site.
7 Another fault, the Stansbury fault located six
8 miles to the east of the site, is capable of a
9 magnitude seven or greater earthquake. The
10 seismic investigation PFS submitted with its 1997
11 application was rudimentary. Under the 1997
12 investigation, ground motions were estimated to be
13 about 0.68g. In April 1999, PFS asked NRC to
14 relax the seismic standards. In 1999, PFS
15 conducted a second, more extensive geotechnical
16 investigation. The State challenged the second
17 investigation, and in Spring 2001, PFS conducted a
18 follow-up seismic investigation. Ground motion
19 under the relaxed standards are about 0.7g. That
20 is greater than those PFS estimated when it first
21 filed its application and when PFS requested the
22 relaxed standard. Ground motions computed
23 according to the regulation are estimated to be
24 over 1 g. The important point is that through all
25 this, PFS's seismic design with one modification

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1 has remained the same. One of the gravest
2 concerns the State has with the PFS facility is
3 that PFS's seismic design is very unsafe,
4 unconventional and untested.

5 During an earthquake, PFS maintains
6 that the 4,000 storage casks, with nuclear waste
7 inside them, will slide in a uniform and
8 controlled manner, and the cask will not collide
9 or tip over. Another novel feature of PFS's
10 design is that a row of storage pads will also
11 slide in unison during an earthquake. The only
12 change in PFS's design to account for the
13 significant increase in ground motions is to mix
14 Portland cement with site soil, place the soil
15 cement mixture under and around the storage pads
16 and around the canister transfer building. This
17 use of soil cement is untried, untested and
18 unprecedented.

19 The NRC Staff has approved PFS's
20 show-me-law approach to testing soil cement to
21 determine whether it works as intended. That is
22 after PFS obtains a license and the State is no
23 longer involved in the proceeding.

24 The bottom line is that there are no
25 backup systems in PFS's design. PFS is a

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1 one-of-a-kind novel design concept -- PFS's
2 one-of-a-kind design concept must work exactly as
3 intended. The lack of safety -- excuse me, the
4 lack of safety elements in PFS's design means that
5 any deviation or misstep in PFS's estimation of
6 the material properties and dynamic response of
7 the casks, foundations and soil cement or soil
8 strength may result in design failure. The answer
9 to the question, is the PFS facility safe, is an
10 assured no.

11 MR. SOPER: Good morning, Your Honors.
12 Before I address my part of this, I'd just like to
13 state that the State of Utah appreciates the
14 efforts of the board in holding these hearings
15 here in Salt Lake City. And I understand that
16 there's a considerable effort to make those
17 arrangements, and as you know, the prospect of
18 storing this country's nuclear waste from spent
19 nuclear fuel in the State of Utah is of great
20 concern to the citizens here.

21 The matter on which the Board will soon
22 here testimony is Contention Utah K. At issue in
23 this hearing is whether the proposed nuclear
24 storage waste facility will be designed to
25 withstand crashes from military aircraft and the

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1 bombs that they carry. The issue of military
2 aircraft and bombs arises from the fact that PFS
3 has chosen to store the 40,000 tons of high level
4 nuclear waste directly under two military
5 operating areas. 6,000 or more F16 fighters from
6 Hill Air Force Base fly through these military
7 operating areas annually, over or near the
8 proposed site. There is a known crash rate for
9 F16s. Of course, some of these F16s are carrying
10 bombs en route to the Utah test and training range
11 only a few miles away.

12 The standard for addressing this issue
13 is whether the probability from an aircraft crash
14 is greater than one in a million as has been
15 mentioned. The State's evidence will show that
16 the probability of a crash is multiple times
17 greater than one in a million. PFS claims the
18 probability of a crash, of course, is less than
19 one in a million and thus takes the position that
20 it does not need to design the facility to
21 withstand crashes from F16s loaded with bombs.
22 The Board is, of course, familiar with the formula
23 published by the NRC itself, for calculating the
24 probability of an aircraft crash at a nuclear
25 facility. That standard, of course, in the

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1 formula is set forth in the NRC publication known
2 as NUREG 800. Applying that formula, even with
3 the values which PFS itself proposes, shows that
4 the probability of a crash far exceeds one in a
5 million. Therefore, the one issue that rises
6 above all else for Contention K is the fact that
7 PFS has modified the published NRC formula by
8 multiplying its result by 14 and a half percent.
9 In other words, PFS simply acknowledges only 14
10 and a half percent of the probability calculated
11 by the NRC's formula. By disregarding most of the
12 probability, PFS thus claims it has met the one in
13 a million standard. The reasoning advanced by PFS
14 for this remarkable result is that the pilot of an
15 F16 upon becoming aware that his F16 is about to
16 crash, will not eject until the pilot first
17 locates the position of the PFS facility on the
18 ground and next directs the F16 away from the
19 site, and only then will the pilot eject and save
20 his own life.

21 The evidence will show that the
22 following -- with respect to this modification and
23 with respect to this reasoning, is apparent. No.
24 1, this concept results in a new formula and a new
25 method which has never been used to evaluate the

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1 safety of the nuclear facility before. No
2 applicant had before relied on this reasoning.
3 There is no reference to such a formula in the NRC
4 publications, no reference to such a formula in
5 the Department of Energy publications, both of
6 which deal with air crashes at nuclear facilities.
7 There are no published studies or authorities that
8 advocate such a formula. There are no published
9 studies on the ability of a fighter pilot to
10 locate and avoid a particular site in an
11 emergency. The pilot at the time of an emergency
12 ejection is under extreme stress. The pilot is
13 about to undergo a final exit from an aircraft
14 traveling three or four hundred miles per hour,
15 three or 4,000 feet above the ground. There is a
16 known fatality rate associated with ejections.
17 There is also an increased risk of death with
18 serious injury by delaying the ejection. The
19 lowest safe altitude to eject is 2,000 feet, not
20 much below the three to 4,000 feet level at which
21 F16s fly in Skull Valley.

22 The Air Force has noted in a safety
23 bulletin published by the Chief of Safety of the
24 Air Force, that erroneous assumptions and poor
25 airmanship flourished with respect to pilots in

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1 ejection situations. And that when confronted
2 with the stress of in-flight emergencies, pilots
3 take inappropriate actions. Four active United
4 States Air Force pilots who have actually ejected
5 from fighter aircraft when recently interviewed,
6 each stated that before they ejected, they gave
7 absolutely no thought to where their aircraft
8 would impact, and instead they were focused on
9 their own survival.

10 Not only is it unreasonable to rely on
11 pilots to make the PFS facility safe, but PFS has
12 no control over military activities in the future.
13 No matter how you assess the current use of these
14 military operating areas, over the next 20 years,
15 the military activity could easily change. It is
16 simply unknown. The number of aircrafts flying is
17 unknown, the bombs they carry are unknown. The
18 training that will be conducted in the next 20
19 years is unknown. The risks involved are unknown.
20 PFS has no way to define future military needs.
21 The military needs are not related to population
22 growth as if this facility were around the
23 commercial airport, something where you could
24 anticipate future use. It depends on the status
25 of the world and world peace.

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1 Let me say at this point that the State
2 of Utah has the highest regard and the highest
3 respect for those who have served this country in
4 the military, especially for those who have served
5 in times of war, in times of conflict. PFS has
6 hired retired military officers to give testimony
7 in support of its application on issues as to
8 which they have no direct experience. PFS would
9 have the Board accord them weight in agreeing with
10 PFS because of their accomplishments in other
11 unrelated areas. Not one of these retired
12 military officers has ever ejected from an F16
13 themselves. The NRC Staff will also give evidence
14 in this matter. As Mr. Turk noted, the proper
15 testimony of the Staff is to indicate whether the
16 application is acceptable to the Staff, not to
17 support, not to advocate for an application.
18 However, the Staff will offer not one but two
19 witnesses to stress the Staff's agreement with
20 PFS, an agreement with the methods and the results
21 -- the novel methods and results urged by PFS.
22 The two staff witnesses without mention of the
23 fact that no other applicant for an NRC license
24 has been allowed to use a formula which relies on
25 a pilot to avoid a crash, will testify favorably

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1 on the use of such a concept for this applicant
2 and for this particular facility. The Staff's two
3 witnesses without mention of the fact the Staff
4 has previously found it unreasonable to select
5 going to the lowest years of crash history for the
6 basis of probability, will testify favorably on
7 that use in this application for this facility.

8 This proposed facility is large enough
9 to store the entire inventory of this country's
10 spent nuclear fuel that now exists at reactor
11 sites around the country. A facility this huge
12 must be given the greatest scrutiny to safety.
13 The responsibility for the 40,000 tons of nuclear
14 waste cannot be shipped into Air Force pilots, on
15 the hope that during an in-flight emergency, the
16 pilot will assure the safety of the nuclear waste
17 while he's also focused on his own survival. Nor
18 can the safety of this site be shifted to the
19 military, in general, in hopes that activities in
20 the future that are conducted in Skull Valley will
21 be safe. The burden alone should be on PFS, not
22 the military, to ensure that this site is safe.
23 Thank for your time.

24 JUDGE FARRAR: Thank you, sir.

25 Ms. Walker.

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1 MS. WALKER: Thank you, Your Honor. I
2 have a few questions first, if I may. I have my
3 --

4 JUDGE FARRAR: Maybe you may and maybe
5 you may not.

6 MS. WALKER: Oh, I have my Response to
7 a Motion in Limine which I thought I should
8 hand-deliver rather than mail. Do you want it
9 now?

10 JUDGE FARRAR: No, but we'll get at
11 some time during the day.

12 MS. WALKER: Okay.

13 JUDGE FARRAR: Now, I've lost it.
14 This is --

15 MS. WALKER: A response --

16 JUDGE FARRAR: Those were due today?

17 MS. WALKER: Yes. So I thought I was
18 being good.

19 JUDGE FARRAR: I know. I just don't
20 want them right now. No, but no, we will take
21 them during the day. Thank you.

22 MS. WALKER: The other issue that I
23 have is that I tried to sign up for a limited
24 appearance on my own behalf, not behalf of SUWA,
25 and I was told I needed to check with you.

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1 JUDGE FARRAR: Let's talk about that --
2 I think I did mention -- before you did come in, I
3 mentioned we had a number of procedural things to
4 take up.

5 MS. WALKER: Okay.

6 JUDGE FARRAR: And our office told me
7 about that, and I don't want to say that lawyers
8 are less than other people, but we take on a role
9 as an officer or board or a court, we may give up
10 other rights, or maybe you'll find someone from
11 your organization who can deliver the same topic.
12 But we'll find a way to get this done right.

13 MS. WALKER: Is that the end of the
14 discussion?

15 JUDGE FARRAR: No.

16 MS. WALKER: Okay.

17 JUDGE FARRAR: We'll discuss more of
18 that later.

19 MS. WALKER: Okay, thank you. All
20 right. So, sorry to disrupt the nice pattern
21 going here.

22 So after many motions and oppositions,
23 requests for reconsideration and opposition and
24 memorandums and orders, SUWA's contention remains
25 alive before this Board, to be addressed later on

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1 in the hearing, on a still undisclosed date.

2 Contention B, SUWA B, as it's
3 affectionately referred to, is relatively
4 straightforward considering all the fuss it's
5 created. Essentially, it claims that the Staff
6 and the FEIS, has failed to develop and analyze a
7 meaningful range of alternatives to a low rail
8 spur that will preserve the wilderness character
9 and the potential wilderness designation of a
10 roadless area called the North Cedar Mountains.

11 As the NRC Commission has stated in
12 relationship to SUWA B, NEPA requires PFC and NRC
13 to consider alternative rail routes that might
14 prove more environmentally benign than PFS's
15 chosen route. As most of us know, the low rail
16 spur is part of a proposal by PFS to store high
17 level nuclear waste in Skull Valley. The low rail
18 spur is a proposed rail line to take the giant
19 casks of nuclear waste from an existing rail line
20 to the from a nuclear waste to the Skull Valley
21 reservation. What concerns SUWA so deeply about
22 this proposed rail line is that it will cross a
23 roadless area which qualifies as wilderness. Not
24 surprisingly, if it is built over this roadless
25 area, the low rail spur promises to forever change

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1 the nature of the area. It is an area that
2 provides a large acreage of relatively unscathed,
3 unfragmented, wildlife habitat, an increasingly
4 rare resource in our nation. It provides a place
5 where the imprint of people is basically
6 unnoticeable and where one is struck that nature
7 is the dominant force, where there are outstanding
8 opportunities for solitude and primitive
9 recreation. In sum, under the Wilderness Act, it
10 is worthy of designation and should be designated
11 as wilderness. It is part of America's Red Rock
12 Wilderness Act sponsored in the U.S. Senate and
13 House with 159 House cosponsors and 15 senate
14 cosponsors.. In any case, the North Cedar
15 Mountains roadless area is a wild and beautiful
16 place in its own right and should be preserved as
17 such, because it's unfragmented, remote and a
18 haven for wildlife. Essentially, a native of
19 ecosystem.

20 The North Cedar Mountain area is part
21 of America's Red Rock Wilderness because the Utah
22 Wilderness Coalition, of which SUWA is a part, has
23 visited every corner of roadless area, of roadless
24 BLM land in this state, applying the criteria of
25 the Wilderness Act and of BLM's interpretation of

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1 the Wilderness Act, to come up with a citizen's
2 inventory and a proposal for BLM lands in Utah
3 that meet the definition of wilderness and should
4 be designated as such under the Wilderness Act.

5 So, under this highly technical process
6 for defining these areas, the North Cedar
7 Mountains has been checked and rechecked and
8 determined if it has wilderness character, and the
9 Utah Wilderness Coalition, SUWA and countless
10 others, including those in Congress, agree that it
11 does.

12 In this context, the Board must turn to
13 NEPA, the National Environmental Policy Act, a
14 statute which according to the Supreme Court is an
15 action forcing the statute that accomplishes two
16 things. First, it ensures that the agency, in
17 this case, the NRC, is reaching a decision that
18 will have -- oh, in reaching a decision, will have
19 available and will carefully consider detail
20 information concerning significant environmental
21 impacts. But NEPA also guarantees that relevant
22 information will be made available to the larger
23 audience, i.e., the public, so that it can play a
24 role in the decision-making process and the
25 implementation of that process.

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1 The environmental documents prepared
2 pursuant to NEPA, like the FEIS, are meant to
3 inform the decision maker and the public before a
4 decision is made, cannot be underscored enough.
5 NEPA requires agencies to look before they leap.
6 The Supreme Court also says publication of an EIS
7 serves a larger, informational role. It gives the
8 public the assurance that the agency has indeed
9 considered environmental concerns in its
10 decision-making process.

11 Turning to the issue of examination of
12 alternatives. The core of SUWA B, and as it turns
13 out, the heart of an Environmental Impact
14 Statement, to comply with NEPA's alternatives
15 requirement, as an agency must rigorously explore
16 all reasonable alternatives to the proposed
17 project in a comparative form and give each
18 alternative substantial treatment in the EIS. The
19 EIS must contain significant discussion of the
20 relevant issues and opposing viewpoints to enable
21 an agency to take a hard look at the environmental
22 impact and make a reasonable decision. An agency
23 may reject alternatives that are too speculative,
24 remote, impractical or ineffective. But a
25 meaningful consideration and substantial treatment

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1 of a range of alternatives must take place in the
2 context of the agency's duty to inform the public,
3 assure it that it, the agency, has fully
4 considered environmental impacts.

5 With this action -- I mean with this
6 understanding of NEPA, the Board must examine the
7 FEIS and its treatment of alternatives to the low
8 rail spur, and its development and treatment of
9 those alternatives, and ask, did the public get a
10 rigorous exploration of these alternatives? Were
11 they given substantial treatment? Was there a
12 sufficient discussion of relative issues and
13 opposing viewpoints. Was there a detailed
14 information concerning environmental impacts? Was
15 the public informed, and are we assured that the
16 agency did, indeed, consider environmental
17 concerns in the decision-making process.

18 Turning to the FEIS, what the Board
19 will see is that the public got one rail
20 alternative examined in detail, the low rail
21 route, PFS's preferred alternative. All the rest
22 were considered but eliminated from detailed
23 consideration. What the public got was a flat out
24 refusal to consider the rail line that would cross
25 state lands based on a reason that makes no sense.

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1 What the public got was a flat out refusal to
2 consider the wilderness character of the North
3 Cedar Mountains, and examined the basis and
4 expertise behind a determination by the Utah
5 Wilderness Coalition, SUWA, 159 members of the
6 House, 15 members of the Senate and countless
7 others that it does, indeed, have wilderness
8 character.

9 Instead, what the public got was
10 reliance on a 1980 BLM inventory, which the agency
11 itself has since deemed needed to be revamped,
12 augmented and a refusal to take another modern
13 look at the issue. What the public got was a
14 refusal to give substantial treatment to an
15 apparently viable alternative for reasons not
16 adequately explained, based on statements with no
17 apparent foundation. What the public got was not
18 an EIS that allowed it to participate in the
19 decision-making process.

20 The EIS failed to assure that the
21 agency had indeed considered environmental
22 concerns in its decision-making process. What the
23 public got was not a rigorous exploration of all
24 reasonable alternatives to the low rail spur and
25 substantial treatment of those alternatives. What

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1 the public got was the low rail spur. And as a
2 result, the EIS is fatally flawed for the purposes
3 of developing and analyzing the range of
4 alternatives to the low rail spur in light of the
5 wilderness character in the North Cedar Mountains.
6 Thank you.

7 JUDGE FARRAR: Thank you, Ms. Walker.
8 Mr. Vollmann.

9 MR. VOLLMANN: Thank you. The Skull
10 Valley Band of Goshute Indians supports the
11 issuance of a license for Private Fuel Storage for
12 the independent private fuel storage installation.
13 The Band executed a business lease with PFS in
14 December 1996. This proposed lease had already
15 been submitted to the Bureau of Indian Affairs for
16 its review. BIA approval, of course, is required
17 for such leases under Federal law. The BIA then
18 advised the parties that it was proposing a number
19 of revisions and amendments to the lease. A
20 revised lease was then drafted and negotiated to
21 incorporate many of the BIA proposals. An amended
22 lease was executed on May 20th, 1997 and the lease
23 was conditionally approved by the BIA
24 superintendent on May 23rd.

25 Mr. Silberg has described the

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1 conditions which must be met before the project
2 may be undertaken. In 1996 and 1997, a clear
3 majority of the adult members of the Band agreed
4 to authorize the lease. This was the conclusion
5 of the BIA western regional director last August
6 when he issued his decision on an administrative
7 appeal brought by Band members who were opposed to
8 the project.

9 The Skull Valley Band has been waiting
10 for this kind of economic development activity on
11 its remote reservation for a long time. Not just
12 counting the five years since the lease was
13 authorized and executed. The Band has been
14 engaged in the study of spent nuclear fuel storage
15 on its reservation since 1989 when the Band was
16 first approached by this possibility. It received
17 two grants from the Department of Energy in the
18 early 1990's to look into such a project, and it
19 has examined every aspect of such storage.

20 The Skull Valley Band is now on the
21 verge of an important opportunity. Development
22 which will bring substantial revenues, jobs,
23 community benefits, such as health care, training
24 programs, and infrastructure to the reservation.
25 Members of the Band, many of whom are unemployed,

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1 will be able to move back to their homeland in the
2 west desert and raise their families there.

3 Many people in Utah and across the
4 country have been telling the Goshute people what
5 is good for them. The people of the Skull Valley
6 Band have decided for themselves. This is their
7 land, set aside pursuant to a treaty with the
8 United States, and it has been their decision.
9 They are fully aware of the important safety
10 concerns which come with the project for the
11 storage of radioactive materials. They have
12 examined those risks. They view them as
13 exceedingly remote and unlikely, and they are
14 prepared to undertake them. This lengthy NRC
15 licensing process provides the assurance they need
16 that their reservation will continue to be their
17 homeland.

18 Of course, there has been disagreement
19 among the members of the Band on a matter of such
20 great significance. There are many disagreements
21 within the Band on many matters. There are many
22 disagreements in every community in America on
23 issues of economic development. What is
24 intolerable has been the interference of Utah
25 politicians and so-called friends of the Goshutes

1 and the Band's internal affairs. They have spread
2 a campaign of disinformation on the project and on
3 the Skull Valley Band itself. Recently, Governor
4 Leavitt repeated on television a common falsehood
5 regarding the PFS lease. That it had been
6 approved by the BIA after only three days of
7 perfunctory review. In fact, the record of the
8 administrative appeal pursued by the State of Utah
9 within the Department of the Interior in 1997 and
10 1998, reveals otherwise. Utah State officials
11 know this. They filed a lawsuit against the
12 Department of the Interior over this very issue.
13 But the governor I believe doesn't want the public
14 to know that.

15 Self-determination for Indian tribes
16 has been a national policy for over 30 years.
17 Gone are the days when a paternalistic Federal
18 Government, relying on the advice of missionaries
19 and non Indian neighbors of Indian reservations,
20 decided what was best for Indian people living on
21 tribal lands. This policy was an abject failure.
22 Indian people must decide their own futures on
23 their own lands. Those decisions are not going to
24 be easy, but they are decisions which must be made
25 by the Indian tribes themselves. Federal law

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1 requires it. Thank you very much.

2 JUDGE FARRAR: Thank you, Mr. Vollmann.
3 The Confederated Tribe and OGD are not present,
4 and if they were, they would have made their own
5 statements, so we'll move on without them.

6 Each of the parties has said why
7 they're here and what they hope to accomplish.
8 Let me just take a minute and describe the Board's
9 role. We're independent, and we take that role
10 seriously. What does that word mean?

11 We are appointed by the five
12 commissioners of the Nuclear Regulatory Commission
13 and five Presidentially appointed and Senate
14 approved, Senate confirmed people. They appoint
15 us, they designate -- we are designated to sit in
16 this case, but they do not instruct us on what to
17 do. We hear the evidence, we apply the law during
18 the course of the proceeding and will eventually
19 hand down a decision based on the law and the
20 evidence. Individual commissioners may or may not
21 like those decisions. Anyone here who doesn't
22 like them can appeal to the commissioners and they
23 may affirm or they may reverse it, but they do not
24 instruct us on how to do our jobs.

25 I've been back at the agency for eight

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1 months and other than a 10-second conversation
2 with the chairman at a ceremonial function, I've
3 not had a word exchanged with any of them.
4 Believe it or not, we have no performance reviews.
5 No one at the end of the year says you wrote a
6 good decision or you wrote a bad decision. We're
7 here and we do our jobs in an independent fashion.

8 I'd like to echo what Mr. Turk said;
9 we're independent of the Staff. They aren't our
10 staff. I know sometimes we will say, you know, we
11 did something that our own staff didn't agree
12 with. They are not our staff, we don't work for
13 them, they don't work for us. We all work out of
14 the same Washington D.C. area headquarters
15 building in Rockville, Maryland. They report
16 eventually -- the whole army of them that does the
17 work that Mr. Turk describes reports to a deputy
18 director of operations who reports to the
19 commissioners. As I said, we were appointed by
20 the commissioners, but we don't deal with them,
21 they don't deal with us and we both enjoy it that
22 way. That's our role and that's what we're here
23 to exercise.

24 We'll be together for six weeks or so.
25 If you will allow me at the beginning just one

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1 personal note following up with what I just said.
2 I recently had occasion to visit New Orleans, the
3 United States District Court Judge for whom I
4 served as a law clerk in the mid '60's. My first
5 job after law school. No person had more of an
6 influence on my professional life than that judge.
7 The single thing I remember, which he still
8 stresses, is that litigants, when they come to
9 court, that's their last chance. They're entitled
10 to be heard, they're entitled to have reasons for
11 whatever a court does. In our case, for whatever
12 we do. His view was always that those who lost,
13 when they go away, would nonetheless know that
14 they were treated fairly and they will know why
15 they lost. My colleagues have not had that same
16 experience that I had. I know from dealing with
17 them over the past months that they share the same
18 philosophy about our role.

19 During the trial, we'll be judging your
20 presentations. At the end of the case, I invite
21 you to judge us on whether we did what that judge
22 taught me to do.

23 With that note, let's take --

24 JUDGE LAM: If I may add to Judge
25 Farrar's remarks on our being independent. I

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1 assure everybody I take my responsibility very
2 seriously. I have no outside agenda than with the
3 public health and safety. Each and every vote
4 that I am given by serving this Licensing Board,
5 and also while I'm serving the Licensing Board
6 panel, will devote a complete conscience.

7 JUDGE FARRAR: Jerry.

8 JUDGE KLINE: I prefer to remain
9 silent, but don't mistake that for disagreement.

10 JUDGE FARRAR: All right, let's take a
11 short break, give the court reporter and us a
12 rest, and we'll come back and launch right back
13 into the discussion of the motions that have been
14 filed to reject certain parts of evidence. Let's
15 use my watch, which says -- I think it's
16 accurate -- 10:22. Let's be back at 10:35, 12
17 minutes.

18 (A break was taken.)

19 JUDGE FARRAR: We're back on the
20 record. Everyone's here but Ms. Walker. These
21 motions did not affect her. Mr. Gaukler, would
22 you introduce yourself?

23 MR. GAUKLER: Paul Gaukler, Shaw
24 Pittman, attorney for Private Fuel Storage.

25 JUDGE FARRAR: Those of you in the

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1 audience, you've noticed during the opening
2 statements we've just completed, everyone was very
3 polite, each lawyer got to have his or her say,
4 and those statements were not evidence. Although
5 lawyers may have disagreed with them, each party
6 was entitled to say its piece. Everyone was very
7 polite. I hope when you watch what's about to
8 happen you won't think we're terribly rude. The
9 lawyers will be used to it, but there will be a
10 lot of interruptions, a lot of back and forth.
11 It's known as an argument. It doesn't mean we're
12 mad at anybody, but that's how we proceed.

13 Mr. Turk, who's handling this for you?

14 MS. MARCO: Hello. I'm Catherine
15 Marco.

16 MR. TURK: Ms. Marco has graciously
17 accepted this role.

18 JUDGE FARRAR: We've got three
19 different motions pending in front of us. But
20 rather than address the specifics of the motion,
21 let's start with the notion of consequences.

22 As I understand the system, companies
23 design various facilities. And concerns that
24 people have, you have less than a one in a million
25 year chance of happening, then companies don't

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1 have to design facilities against that event
2 happening, and we don't care how bad the
3 consequences of that event will be. Am I correct
4 there?

5 MS. MARCO: Yes.

6 MR. SOPER: If I might, your Honor.

7 JUDGE FARRAR: Let me -- I want to get
8 the Staff's position. What I'm talking about
9 right now is how the system -- not this case but
10 how the system works. So I've got the system
11 right?

12 MS. MARCO: If the probability is less
13 than a specific amount, the consequences of --

14 JUDGE FARRAR: If everyone would pull
15 the microphones close. Say that again.

16 MS. MARCO: If the probability of an
17 event occurring is less than a specified amount
18 which is the threshold standard, and then those
19 consequences result ing from that occurrence do
20 not have to be considered.

21 JUDGE FARRAR: No matter how bad they
22 would be?

23 MS. MARCO: That is correct, because of
24 the remoteness of the event that is reviewed.

25 JUDGE FARRAR: And following that

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1 approach, the Staff's prefiled testimony on the
2 accidents issue doesn't mention consequences?

3 MS. MARCO: We do not mention
4 consequences because we believe that under the
5 probability it does not have to be addressed.

6 JUDGE LAM: What happens if the
7 probability exceeds the threshold?

8 MS. MARCO: If the probability exceeds
9 the threshold, then either the consequences would
10 have to be determined to see if there was no
11 regulation limit, or, on the other hand, if not,
12 then the Applicant would be required to harden its
13 facility to be able to withstand the event.

14 JUDGE FARRAR: The State wanted to say
15 something?

16 MR. SOPER: It's my understanding that
17 the Staff's testimony pretty much approves and
18 acknowledges the appropriateness of the PFS
19 testimony which does address the consequences. So
20 I'm not entirely sure that the question to the
21 Staff, has your testimony dealt with consequences,
22 the answer being no, I'm not sure that's correct.

23 JUDGE FARRAR: Well, their testimony.
24 I'm not talking about the motion yet, but their
25 testimony doesn't deal with it.

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1 MR. SOPER: Well, that's what I'm
2 trying to say, your Honor, is I'm not sure that
3 that's correct. I believe the Staff's testimony
4 -- the issue is, has the Staff offered testimony
5 as to consequences? Is that the issue that you're
6 asking? Is that the question you're asking? It
7 was my understanding that's what the question is.

8 JUDGE FARRAR: All I was talking about
9 was has the regulatory scheme worked. I want to
10 make sure the Board's understanding how the
11 regulatory scheme worked is what the Staff asked.
12 They are the people who spend all their lives
13 implementing this regulatory system.

14 MR. SOPER: I understand. I thought in
15 connection with that discussion the notion came
16 up, therefore, the Staff does not offer testimony
17 on consequences, that that's not the case.

18 JUDGE FARRAR: Do you think they have?

19 MR. SOPER: I think they have, yes.

20 JUDGE FARRAR: Where?

21 MS. MARCO: I'm not aware of it.

22 JUDGE FARRAR: I haven't gotten to what
23 position they've taken on the motions. That's a
24 different matter.

25 MR. SOPER: This is not relevant right

1 now, that's okay, but I just didn't want to have
2 that issue assumed without addressing it.

3 JUDGE FARRAR: Let me keep going. I
4 haven't gotten where I'm going yet.

5 The reason I asked that preliminary
6 question is, that's how we approached the case is,
7 we thought what we're dealing with here is this
8 what we call the design-basis accident or not. I
9 for one was a little surprised to see in both the
10 State's and the company's testimony then some
11 mention of consequences, and then I was not
12 surprised to see the motions with each of you
13 saying the other side shouldn't be talking about
14 this.

15 Mr. Silberg, let me ask you, as I
16 understand the way the case came to us and is in
17 front of us now, the issue the State raised dealt
18 with whether this was a design-basis accident; is
19 that correct?

20 MR. SILBERG: Mr. Barnett is going to
21 address this issue.

22 MR. BARNETT: I'm sorry. I'm still
23 don't understand your question.

24 JUDGE FARRAR: The way the issue came
25 to us framed by the State's contention was merely,

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1 they disagreed with you. You said your
2 applica -- I have not studied this part of your
3 application, but I assume your application said to
4 the Staff, don't worry about the military
5 accidents, they're less than one in a million
6 chance, so we don't have to design against it. Is
7 that right?

8 MR. BARNETT: That's right.

9 JUDGE FARRAR: Then when the State
10 challenged that, the way you're -- challenged the
11 way you're proceeding in the case, you responded
12 by saying, no, you're wrong, it's less than one in
13 a million, they say it's more than one in a
14 million, let's have at it. I'm wondering how
15 consequences got in there.

16 MR. BARNETT: Well, we don't think
17 consequences is part of it -- or, we should be
18 specific, radiological dose consequences. We
19 included some information in our testimony with
20 respect to certain impacts that would not result
21 in a release of radioactive material, and we did
22 that to show that our probability calculations
23 were conservative, to say that even if some of the
24 accidents that we've included in the probability
25 calculation were to occur, it would not cause a

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1 release of radioactive material and therefore
2 would not contribute to the hazard posed by the
3 facility.

4 JUDGE FARRAR: Okay. Is the way you
5 look at it -- and I've kind of looked at this as
6 black and white, either something hits the
7 facility or it doesn't, one in a million or not.
8 When you start talking about the jet engines and
9 the impact, it seems to me you're in a gray area
10 in between. You're conceding that, okay, even if
11 it's more than one in a million, nothing would
12 happen?

13 MR. BARNETT: Well, we're not saying
14 that. We're saying that it's less than one in a
15 million. But even with our probability
16 calculation, what we've done is we've assumed that
17 the impact would cause a release of radioactive
18 material. What we're saying is, that assumption
19 is not always true. There are some impacts that
20 would result in no release of radioactive
21 material.

22 JUDGE FARRAR: Excuse me. This is a
23 good time to announce, and I forgot, and I won't
24 embarrass the gentleman who's already embarrassed.

25 UNIDENTIFIED MAN: I apologize, your

1 Honor. I apologize.

2 JUDGE FARRAR: If everyone will turn
3 off your cell phones. Unless you're in the middle
4 of a medical emergency or a family member really
5 has to reach you, turn off the cell phones.

6 JUDGE LAM: So what you're saying is,
7 the consequence analysis you have provided to this
8 Licensing Board was for information only, since
9 you are confident that the probability threshold
10 has not been exceeded?

11 MR. BARNETT: That's right. That's
12 right. The information we provided was to show
13 that our probability calculation has elements of
14 conservatism in it with respect to certain
15 impacts.

16 JUDGE FARRAR: Okay. Suppose at the
17 end of this week or when we write our decision we
18 disagreed with you, said, it's more than -- the
19 probability is more than one in a million, we
20 couldn't give you credit in this proceeding for
21 that qualitative conservatism you've just
22 described; is that correct?

23 MR. BARNETT: Well, we've tried to
24 quantify it as best we can, and I think that's in
25 our testimony in the -- after we present the list

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1 of individual activities and the cumulative hazard
2 that we talk about the conservative factors that
3 remain in our analysis, and I think we've tried to
4 quantify them as best we can.

5 JUDGE FARRAR: Okay. Now, the problem
6 I have with that answer. And by the way, when I
7 say problems I'm having, for the benefit of
8 everyone, we're thinking aloud here, we're trying
9 to search our way through the case. The fact that
10 I say something today or say something right now,
11 that's me and I'll hope that that's the way we're
12 going to go eventually, that we're just testing
13 some theories here.

14 If I -- if we agree with what you just
15 said, that isn't that the camel's nose under the
16 tent and then the other parties would have --
17 first off, I would think the Staff would say, wait
18 a minute, that wasn't submitted to us in our
19 application -- in your application, and we like
20 in these proceedings, even though the Board has
21 the final decision, they like, as Mr. Turk
22 described, to come forward, to have a chance to
23 shoot at that. Meanwhile the State would say,
24 wait a minute, that's not the issue we raised;
25 now, we need to have an opportunity to counter

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1 what you've said. So there's a question for the
2 State.

3 MR. BARNETT: Well, if I could answer
4 that. We would draw the line between the question
5 of whether there is or whether there is not a
6 release of radioactive material and what the
7 actual radiological dose consequences might be to
8 an individual situated someplace around the
9 facility.

10 JUDGE FARRAR: Okay, you say you would
11 draw a line. Tell me what line you would draw.

12 MR. BARNETT: It's a question of
13 assessment. Do you look at, is there a release or
14 is there not, or do you go to the next step and
15 say, well, if there is a release, what are the
16 radiological dose consequences to individuals.
17 And we would stop at the point of saying, is there
18 or is there not a release.

19 JUDGE FARRAR: So you would have us
20 reach that point. So assume we said, yes, there
21 is release, then the State wouldn't have to prove
22 the consequences; at that point you would have
23 failed, the application would be rejected at least
24 temporarily, and we would have to come back and
25 say, okay, now we've hardened the facility or we

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1 have some calculation so that we now meet this
2 design basis?

3 MR. BARNETT: Yeah, we have assumed for
4 the purpose of all our calculations that the
5 release would be over the limit, but we haven't
6 put in any evidence on that.

7 JUDGE FARRAR: Okay, let me ask the
8 State, having heard this, where -- this is your
9 contention. You came here -- or last time we
10 were in Maryland we thought, or before the
11 testimony came in we thought we were litigating
12 one contention. Having heard this, what do you
13 think the contention is we're litigating here?

14 MR. SOPER: I think our -- it's kind
15 of a chicken-and-egg situation. The design
16 requirement is to design for credible events that
17 might occur in the probability range of one in a
18 million. You first assess what a credible event
19 is, in other words, what kind of -- will it
20 release sufficient radiation, or do you determine
21 the probability of something adverse and next go
22 to consequences. And I think you could probably
23 make an argument either way.

24 The fact is, the Applicant has devoted
25 an entire witness to the testimony of consequences

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1 of whether or not casks would be breached, and
2 they from there argue that no radiation would be
3 released. If they're going to address radiation
4 and if they're going to address penetration of the
5 cask, it would be totally unfair to let them
6 assume that that evidence did not have a response.

7 So I guess my answer is this, your
8 Honor. I guess it doesn't make any difference if
9 the panel would prefer to limit its inquiry into
10 probability, or whether the panel decides to hear
11 probability as well as consequences as long as
12 parties are on an equal footing. In other words,
13 to say that the evidence on penetration is not
14 evidence on the consequences makes no sense.

15 JUDGE FARRAR: Well, in the old days
16 many years ago the Board had the right to look
17 into things on its own motion. These days we look
18 at things only that the parties bring to us. So
19 rather than frame it in terms of what do we want
20 to look at, the question is, what did you bring.
21 In other words, this is your contention.

22 MR. SOPER: It is, your Honor. I don't
23 think this is our motion, though.

24 JUDGE FARRAR: No, no.

25 MR. SOPER: The contention --

1 JUDGE FARRAR: This is -- I haven't
2 gotten to the motion yet.

3 MR. SOPER: Okay.

4 JUDGE FARRAR: This is your contention.
5 I'm giving you a chance to find what you thought
6 you were bringing to the Board. What I'm guarding
7 against here is the notion you brought something
8 that maybe or maybe not was very limited; all of a
9 sudden what was limited has tended to grow, and
10 now we're looking at a hearing, a full-blown
11 hearing of the consequences, which I don't think
12 is the issue -- which may be a nice issue to
13 litigate, and maybe we'll be here some time from
14 now litigating it, but I don't know that you had
15 brought here in the first place.

16 MR. SOPER: Think the answer to that is
17 this, that the Utah Contention K is that we have
18 made the claim the facility is not designed to
19 withstand expected credible events. Now, within
20 that claim is events will happen exceeding a
21 certain probability, and those events will be
22 events that will cause a release of radiation, and
23 that's why they're credible. In fact, the NRC in
24 ruling on this one in a million probability noted
25 that if the proposed facility would not be

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1 designed to withstand credible accidents without
2 releasing excessive radiation, the site is
3 unsuitable and the NRC would deny the application.

4 We submitted testimony on both the
5 likelihood of penetration and the consequences and
6 doses of radiation release, because that's what
7 we're talking about here, a probability that
8 something will happen and that on that happening
9 will cause a release of radiation beyond the
10 standards. At some point within our claim, those
11 matters have to be considered irrelevant.

12 JUDGE FARRAR: Well, my understanding
13 of the system was that if you prevailed on point
14 one, you got the benefit of the assumption on
15 point two. In other words, if you prevailed on
16 the probability, coming with that, at least
17 temporarily, was a presumption that having
18 prevailed in probability, this became an accident
19 the company had to design against, which they
20 hadn't yet demonstrated they had to, and they
21 would litigate the consequences then, would
22 litigate it after they came back in with some sort
23 of application amendment that showed that they had
24 indeed -- you know, it seems to me you're trying
25 to bite off more here than you raised initially

1 and more than you have to bite off.

2 MR. SOPER: If the company, if PFS is
3 willing to admit for the basis of this hearing
4 that an impact will in fact have radiological
5 consequences versus adhering, then it need not go
6 there. Now, I see in their motion for summary
7 disposition that they noted that as an undisputed
8 fact, as I recall, or at least somewhere, they
9 have not noted that generally either in their
10 evidence for this proceeding or in the draft
11 report or otherwise have they said, this is a
12 given, an impact will cause a release. They did
13 not do that. In fact, if they did, it would not
14 be offering evidence on -- as a conservatism,
15 this will not cause a release, this will not cause
16 a penetration. So they can't have it both ways.
17 Either they admit it in this proceeding and forget
18 about talking about penetration and radiation, or
19 we consider it.

20 JUDGE FARRAR: Mr. Barnett, do you
21 admit the consequences for the limited purpose of
22 this proceeding or not?

23 MR. BARNETT: We have not -- we have
24 assumed that any release here that occurs for the
25 purpose of our calculation would be over the

1 limit. We haven't put any information in either
2 to the Staff or to the Board on what the
3 consequences would be if there was a release of
4 radioactivity.

5 MR. SILBERG: Your Honor --

6 JUDGE FARRAR: You'll be next as soon
7 as I consult with my colleagues.

8 MR. BARNETT: But we would say that the
9 question of whether or not the casks are
10 penetrated by impact is an element of conservatism
11 in our probability calculation.

12 JUDGE FARRAR: Let me give the Staff an
13 opportunity to express its opinion here, and maybe
14 by framing the question, suppose we found at the
15 end of this week or when we wrote our decision
16 that, contrary to your position, the probability,
17 one in a million probability was exceeded. What
18 would we do with that finding? What would you do
19 with that finding? What would happen then?

20 MS. MARCO: The Applicant would have to
21 go back and either demonstrate those consequences
22 under the regulatory limit, or it would have to
23 demonstrate that it has or could harden its
24 facility, and then the NRC Staff would have to
25 take a look at that for the application to be

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1 determined.

2 MR. TURK: Your Honor, again, and I do
3 this not with respect to the specific motion
4 that's before you but rather with respect to stay
5 in the regulatory framework. The standard that is
6 set forth, the regulations in 10 CFR part 72
7 establish that an applicant has to define its
8 design bases and design criteria, and also that
9 any accident, I don't think they used the word
10 "credible," but they thrust it as that any
11 accident that's credible to the facility must be
12 designed against.

13 NUREG 0800 indicates that in dealing
14 with aircraft crash hazards the Applicant must
15 show that accidents that have -- I don't want to
16 mess up the words. And maybe the best thing for
17 me to do would be to point to the testimony of the
18 Staff where they go through the NUREG 0800
19 guidance. It's on page 6 of the Staff's
20 testimony. In NUREG 0800 the Staff follows a
21 practice whereby we look to see if the probability
22 of an aircraft accident exceeding part 100 dose
23 guidelines is greater than certain thresholds.

24 Now, it's not the probability of
25 occurrence per se, it's the probability of

1 exceeding dose guidelines of 10 CFR part 100.
2 That standard through the Commission's recent
3 decision in CLI 01-22 has now been set to 10-6 for
4 an ISFSI.

5 Now, why do we always look at
6 probability of occurrence? As the Staff's
7 testimony also points out, we conservatively
8 assume that the impact of that airplane will
9 result in consequences that exceed the part 100
10 dose guidelines. So we don't have to get that.
11 We start by looking to see what is the probability
12 of occurrence.

13 But the regulatory standard is
14 different. The regulatory standard would be, is
15 there a probability of exceeding part 100 dose
16 guidelines. So if in any hypothetical case you
17 found an applicant with a probability of
18 occurrence of exceeding 10-6, that would not
19 injure anybody, because the standard is 10-6 is
20 exceeding part 100 dose guidelines.

21 JUDGE FARRAR: But would it end the
22 inquiry, in the circumstances of this case would
23 end the inquiry we would make at the hearing this
24 week.

25 MR. TURK: You would not have the

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1 testimony before you as to what the consequences
2 are. So hypothetically you could reach a
3 conclusion that the 10-6 probability of occurrence
4 is exceeded and therefore go to the next step.

5 JUDGE FARRAR: Which we would not do
6 this week, we would go to that next step at some
7 future point.

8 JUDGE LAM: But based on the
9 evidentiary record in front of us, there's no
10 evidence proffered by the parties here about,
11 given an aircraft crash, what would be the part
12 100 guidelines consequence, right?

13 MR. TURK: The testimony follows the
14 contention. The contention raises the question of
15 what's the probability of occurrence, not what's
16 the probability of exceedance of part 100. So the
17 testimony follows the issue raised in the case.
18 If you are confined to that testimony, on balance
19 weighs in the states favor, that would not
20 necessarily be the end of the application.

21 JUDGE LAM: Right, but I want -- Ms.
22 Marco's argument was compelling that if 10-6 was
23 exceeded, at this point in time the Applicant must
24 come back to demonstrate either, one, it could
25 harden the facility so the guideline would not be

1 exceeded; or two, it must demonstrate that without
2 hardening the facility the actual consequences
3 would exceed the part 100 guideline. I hear from
4 you a slightly different scenario.

5 MR. TURK: But I don't consider that to
6 be different, because the issue before you is not
7 what are those consequences. You could resolve
8 this contention and yet still never reach that
9 final question, which is, can the facility be
10 licensed in that those consequences don't exceed
11 the -- I'm sorry, the probability of exceeding
12 part 100 dose guidelines has not been exceeded.

13 JUDGE FARRAR: Consistent with what you
14 just said and Judge Lam is saying, we'll get to
15 that later.

16 MR. TURK: If at all. If the State
17 doesn't raise that contention, it will come back
18 to the Staff to resolve it on its own.

19 Now, I should mention one other thing
20 while we're talking about this 10-6. It's
21 typically described in a very rigid manner where
22 if you were 1.000001 times 10-6, you'd fail. The
23 Staff does not find that. I'm informed that the
24 Staff looks at it as an order of magnitude
25 question, so that if you're slightly over, it's

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1 not a difference to the Staff. The Staff is not
2 going to have a problem with saying, that's within
3 the range that we consider.

4 Now, that's not something that we've
5 addressed directly in our testimony, because we've
6 found that they're substantially under 10-6, so we
7 haven't had to come that far.

8 JUDGE FARRAR: Let me ask you the
9 follow-up to that. Suppose the Staff found it was
10 .98 and said, yeah, but we kind of like the
11 State's position, so even though the Applicant is
12 on the right side of the line, we'll apply that
13 order of magnitude discretion against the
14 Applicant in favor of the State. Is that part and
15 parcel of what you just said?

16 MR. TURK: I think that would probably
17 be an improper use of discretion.

18 JUDGE FARRAR: Okay. Now we come back
19 to where I was 20 years ago on the fuel board.
20 You can't have the rules one way for one party and
21 another way for another party. And we had -- I
22 understand what you say about the 1.00. We've had
23 that discussion among ourselves a couple months
24 ago, what if it comes out .99 or it comes out
25 1.01? Aren't those the same numbers? What do you

1 do? Well, the problem I have is, and I spent
2 seven years here a long time ago fighting this,
3 you can't say the Applicant wins, you know, that
4 the rule always benefits the company. The rules
5 are the same for the people opposing, the rules
6 are this for the people supporting the
7 application.

8 MR. TURK: You're dealing in an area of
9 risk determination. There are uncertainties in
10 the analytical modeling. You can't come up with a
11 number that's precisely a rigid rule. If you have
12 an order of magnitude, then you have a good
13 understanding of what the general risk
14 consideration is, what the general hazard is. But
15 to say that a hazard must be precisely 1.0, I
16 think then you're taking the analysis and the
17 mathematics beyond what's capable of being
18 ascertained to 100 percent certainty.

19 JUDGE FARRAR: If I were sitting in
20 your client seats, that's exactly what I would
21 say. But we're sitting here at the end of this
22 week and we have to say, here's the standard, and
23 they meet it or they don't. If we say, well, they
24 don't meet it but we'll give them a break, the
25 State won't like that. On the other hand, if they

1 did meet it, they say, yeah, they did but this
2 mathematics is fuzzy, too bad for the Applicant,
3 they met it, but because of the fuzziness we're
4 going to go with the State, and they don't like
5 that. The Applicant wouldn't like that. They
6 were think they were treated shabbily, and the
7 State is entitled to have the same feeling if it
8 goes against them.

9 So we're sitting here saying, number
10 one, are we dealing with consequences, which is
11 what this argument started out about, but now
12 you've got a perhaps even more important question,
13 at the end of the case, what's the standard? How
14 do we apply what looks like a rigid standard but
15 which is made up of some very flexible
16 determinations, or some flexible calculations, or
17 do you want to save that question for your briefs
18 at the end? Maybe it's not something we need to
19 resolve today, that's something we'd resolve by
20 use of fact and so forth at the end of the case.

21 MR. TURK: We can state our position to
22 you now, but without having researched it for this
23 purpose, I can't give you the arguments in
24 definite. I'll give it to you in brief. But our
25 position would be that it's an order of magnitude

1 determination; and if you're generally in the
2 range of one times 10^{-6} then you've satisfied for
3 our purposes, for Staff's purposes --

4 JUDGE FARRAR: An order of magnitude
5 means 1×10^{-5} .

6 MR. TURK: No, that's a different order
7 of magnitude.

8 JUDGE FARRAR: If you're within -- if
9 you're going to let them be within an order of
10 magnitude, because that's how fuzzy your formulas
11 are, then that means it could be 1×10^{-5} ; and you
12 would say, well, it's in an order of magnitude
13 1×10^{-6} .

14 MR. SILBERG: Your Honor, that's a
15 wholly different order of magnitude. I think
16 mostly you can stretch it down to whether you're
17 1.5 or --

18 JUDGE LAM: I think what you meant was
19 five times two.

20 MR. SILBERG: No, not five times two.
21 10^{-6} would probably be, in my mind --

22 JUDGE FARRAR: It's an order of
23 magnitude.

24 JUDGE LAM: I could be anywhere between
25 10^{-5} to 10^{-7} and still claim --

1 MR. TURK: No, no.

2 MR. SILBERG: Judge Lam, I think that
3 would give you two orders of magnitude instead of
4 one.

5 MR. TURK: The order of magnitude would
6 be I think 5×10^{-6} or 5×10^{-5} . That would be the
7 one order of magnitude. But, I mean, I'd have to
8 go back and brief a few and research, which we
9 don't see as being an issue in the case right now.

10 JUDGE FARRAR: And I think our
11 inclination is, let's drop this now and hold it
12 for much later in the case, unless the State wants
13 -- and we'll get back to this consequences issue
14 unless the State wants to say something different.

15 MR. SOPER: Well, I'm not sure what I'm
16 being asked right now, your Honor.

17 JUDGE FARRAR: Whatever it is, you
18 don't want to answer it.

19 MR. TURK: At some point I'd like to
20 address the consequence issue for a moment.

21 JUDGE FARRAR: Okay, go ahead.

22 MR. TURK: In looking at -- maybe it's
23 in the applicant's testing where I saw this. Or
24 maybe it's backward. Probably backward, a
25 discussion of general aviation aircraft which was

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1 subject to a ruling by the Board previously.
2 Events that could not possibly result in exceeding
3 the part 100 dose guidelines, for instance,
4 decisions on somebody shooting a rifle or a BB
5 gun, you don't have to consider it because it's
6 not something that could exceed the part 100 dose
7 guidelines. The same tack is taken with general
8 aviation aircraft that are below a certain weight
9 and certain speed. The force of impact could not
10 possibly result in consequences that exceed part
11 100, such as one to damage a cask. So you
12 wouldn't get a release and therefore you don't
13 have to consider it as an event. You don't have
14 to look at the probabilities of that occurrence.

15 So what you have to do is look at the
16 probability of occurrence of those events that
17 couldn't result in exceedance of part 100 dose
18 guidelines. And for purposes of what's in the
19 testimony before you, the Staff has applied the
20 conservative assumption that the F-16's or other
21 types of aircraft that are in this discussion
22 could result in consequences that resulted in
23 exceeding part 100. So for those we say, okay,
24 stop, we look at -- we assume conservatively that
25 there's probably an exceedance of those

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1 guidelines; therefore, we stop and look at the
2 probability of occurrence, assuming that
3 exceedance is equal to one.

4 JUDGE FARRAR: But if I read the
5 Applicant's testimony correctly, they're saying
6 the engine of an F-16 is like the BB gun, it's not
7 going to penetrate the casks.

8 MR. BARNETT: Under certain
9 circumstances, yes, that's right.

10 JUDGE FARRAR: You have an opportunity.

11 MR. SOPER: Well, I'm just confused as
12 to where the argument is going. Mr. Turk I guess
13 is suggesting that if the strictly mathematical
14 determination of probability is at issue here, if
15 it exceeds the limit, then we have to file a new
16 contention and then we have another contention
17 before the Board, and will that be timely? I
18 mean, I had no idea that --

19 JUDGE LAM: It will be timely.

20 JUDGE FARRAR: Let me consult with my
21 colleagues.

22 (Off the record briefly.)

23 JUDGE FARRAR: Back on the record.
24 You've noticed that we've consulted also with
25 Judge Bollwerk, who was chairman of the board when

1 this contention was admitted.

2 We're of the view that the way the
3 contention was framed it just dealt with
4 probability, and therefore we are going to grant
5 motions to the extent that they want to exclude
6 the testimony dealing with consequences. The
7 consequences, that's for a later issue at a later
8 time.

9 MR. SOPER: Can I ask for
10 clarification, your Honor, on that?

11 JUDGE FARRAR: Now, if you ask it fast
12 and don't say what I just said just to confuse me.

13 MR. SOPER: Does that mean that the
14 Applicant's testimony on penetration then will not
15 be admitted?

16 JUDGE FARRAR: Right.

17 We have a relatively few minutes to get
18 through the other issues. On the hearsay
19 questions, each accuse the other that the symmetry
20 was astounding. You each accuse the other of
21 talking before people unidentified and having your
22 experts relying on. Do we have that? Mr.
23 Silberg, you came up with the case of Richardson
24 vs. Perales, a 1971 Supreme Court case?

25 MR. BARNETT: Well, we did not object

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1 to the --

2 JUDGE FARRAR: You came up with that
3 case?

4 MR. BARNETT: That's right.

5 JUDGE FARRAR: Did you happen to notice
6 who drafted the government's brief?

7 MR. BARNETT: No.

8 JUDGE FARRAR: Go back and look at it.
9 My favorite case. I raise it because I think
10 you've resolved the hearsay issue, but my lesson
11 in that case was, there's hearsay and there's
12 hearsay, and that the whole test at the trial is
13 what kind of hearsay is, hearsay in that case was
14 written medical reports by identified doctors who
15 did it in the ordinary course of their work and
16 who had no inclination and no motivation in the
17 system to tilt their testimony with their written
18 reports one way or the other. And we argued
19 strenuously that that's the kind of hearsay you
20 have.

21 I take it during the trial here, even
22 though you've -- if I'm right, you've all agreed
23 that the testimony, that we are going to talk
24 about the pilots, you're going to allow your
25 experts to talk about the pilots on the one hand

1 and the controllers on the other, but we're going
2 to see how good that hearsay is.

3 MS. MARCO: Your Honor, I believe that
4 objection came from the Staff, and your
5 understanding is correct, we are not going to be
6 arguing that that's improper hearsay.

7 JUDGE FARRAR: Am I right on that?

8 MR. SOPER: With respect to the State's
9 motion, our motion is based on not the fact it's
10 hearsay, but the declarant is unidentified and so
11 was what the declarant said. It's just that,
12 here's our answer and it's based on something
13 unknown. That's the basis of our objection. And
14 we have withdrawn that. It seems to be totally
15 distinct from all other hearsay that's been
16 offered.

17 JUDGE FARRAR: Ms. Marco, you all
18 didn't take a position on their motion?

19 MS. MARCO: Well, we realized that the
20 question, the answer to the question regarded air
21 traffic controllers, and a few questions later you
22 got to the local aircraft traffic control, and we
23 feel that there is sufficient, there's only a few
24 of them around this area, and that therefore we
25 don't believe that that testimony should be

1 excluded on that basis. You're right, though,
2 that we did not take a specific position, but we
3 generally agreed with that part.

4 JUDGE FARRAR: On this one, then, we
5 will not strike any of that testimony. It will be
6 up to you on cross-examination to get into that
7 with the pilots, with the controllers, what's the
8 weight of what they do and what they say. So
9 that's something we'll explore at the trial.

10 The matter about the panel, the
11 Applicant's panel, Mr. Silberg, if I remember
12 correctly, without waiving your rights in future
13 cases, you provided the identification of the --

14 MR. BARNETT: The principal witnesses
15 for each question, yes, we did.

16 JUDGE FARRAR: And that's satisfactory
17 to you all?

18 MR. SOPER: Yes. I'd like to note that
19 in connection with that they say, however, they're
20 sticking to their testimony as written, and we
21 offer that as additional illumination on the
22 subject. If that's what the testimony is, then
23 that's what it is.

24 JUDGE FARRAR: I assume when you
25 introduce that you'll introduce the testimony and

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1 then you'll introduce the little addendum that
2 goes with it?

3 MR. BARNETT: Yes.

4 JUDGE FARRAR: That was just
5 housekeeping that you didn't choose to retype the
6 whole thing?

7 MR. BARNETT: That's right.

8 JUDGE FARRAR: Ms. Marco, it would
9 have helped when I picked up your brief if you had
10 described or made mention of the fact that the
11 Staff follows panel practice and the Staff
12 provides the initials about who does the
13 testimony. This was one where I said, uh-huh, the
14 Staff does this all the time, I will find from
15 their brief; and it wasn't in there, and I would
16 expect in that circumstance you will help us with
17 that. Now, you may say that that was practice you
18 follow but you don't have to follow. That's fine,
19 but I would prefer that that be in there.

20 MS. MARCO: Okay, noted.

21 JUDGE FARRAR: Let me check back on
22 motions here, see what else we need to cover.

23 Given the time frame we're operating
24 against, let me just run through the motions and
25 indicate what we think you all had agreed on or

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1 what our ruling is. And I have consulted with my
2 colleagues on some of these. If I say something
3 they don't like, they will interject their
4 thoughts.

5 On the State's motion directed to the
6 Applicant, Roman Numeral I dealt with the panel.
7 That's now resolved. The panel, on the
8 identification of the panel, that's been resolved.

9 The hearsay question, Roman II, we've
10 resolved. That's going to come in and we'll test
11 that with cross-examination.

12 The business, Roman III, about the
13 changing of the equation, the NUREG 800 equation,
14 it strikes us that that's something that's
15 perfectly fit for cross-examination. In other
16 words, NUREG is out, the Applicant says we've
17 taken that and we've done something else, you can
18 see if you -- contest them and see if they can
19 justify that. So to that extent, we would deny
20 that part of the State's motion.

21 The Applicant had a motion directed at
22 the State. Part B had to deal with the Resnikoff
23 testimony on consequences, which I think we ruled
24 on that that's going to be out.

25 Part D dealt with the general aviation

1 crash hazards, which strikes us that's the law of
2 the case, and that's out.

3 Interrupt me if I'm going too fast or
4 somebody wants to have a last -- what we've done
5 is study your papers, come to this conclusion;
6 whoever loses can say, we didn't understand the
7 decision, or if you want to say something on that.

8 MR. SOPER: Your Honor, I'm sorry. I
9 missed not your very recent, the last ruling, but
10 the one before that.

11 JUDGE FARRAR: On the Resnikoff
12 consequences testimony, that that's out based on
13 reasons we had a 45-minute conversation.

14 MR. SOPER: Will not be admitted?

15 JUDGE FARRAR: Will not be admitted,
16 because we're not litigating consequences.
17 Consequences might have been something that could
18 have been litigated here, it might ultimately
19 prove very important in the case, but that was not
20 a contention brought to us and we don't want to
21 sneak it in the back door in a manner where the
22 parties have not really prepared testimony.
23 Because that's too -- if I can say the word --
24 too consequential a decision to be gotten at
25 through the back door.

1 MR. SOPER: And you've already
2 indicated that testimony on penetration will not
3 be admitted as well?

4 JUDGE FARRAR: Right. Staff had a
5 motion directed to the State's testimony. The
6 first dealt with the value of the Utah Test and
7 Training Range as being not relevant. We would
8 deny that, deny the Staff's motion to strike that.

9 Let me do the easy ones. No. 3,
10 hearsay with the pilots, you've withdrawn that.
11 No. 4, dealing with the consequences of the
12 impact, we will grant that because that's out of
13 the case.

14 No. 7 the State withdrew. That's moot
15 because the State withdrew Exhibit 58. No. 8 is
16 moot because the State withdrew Exhibit 65. No.
17 9, the State Exhibit 73, we would deny the motion.
18 It strikes us that's something the State -- I'm
19 sorry, that the Staff should -- the issue the
20 State has framed is the inconsistency between the
21 Staff position taken a long time ago by a person
22 of some repute who was a lowly staff lawyer just
23 like yourselves at that point. And the
24 inconsistency, that that's something for the
25 hearing is the resolution of inconsistency between

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1 what's in that brief and what the position may be
2 now.

3 MS. MARCO: Your Honor, I think my
4 co-counsel would like to have a few words on that
5 subject.

6 MR. TURK: Your Honor, recognizing that
7 you've allowed parties to indicate where they
8 disagree, we don't have any problem if they want
9 to cross-examine using that document, but they've
10 gone further. They've asked to put the whole
11 document into evidence. It's a 50-page legal
12 brief. They have one point in the whole brief
13 they want to cross on. We don't oppose that, but
14 the brief itself should not come in as an
15 evidentiary exhibit.

16 MR. SILBERG: Judge Farrar, if I might
17 also make a point on that. It seems to me
18 admitting an exhibit like that for the truth of
19 the matter as stated therein, the truth of the
20 matter being legal argument, is problematic. I
21 certainly have no problem using it, identifying it
22 as an exhibit; and the Staff -- the State can
23 obviously use it to cross-examine the Staff's
24 witnesses on it. But putting it in for the truth
25 of the matter seems to me not the appropriate

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1 thing to do.

2 JUDGE FARRAR: It sounds like a good
3 compromise with attorneys.

4 MR. SOPER: Your Honor, our witness has
5 relied on that as an expert in calculating risks
6 of a nuclear facility, and he notes that the
7 Staff, there's probably not a better source of
8 guidance available, the Staff has used a certain
9 methodology which he refers to. Now, we're only
10 talking about that, not the document as a
11 pleading. We want to limit it to that page.

12 JUDGE FARRAR: Well, why can't your
13 witness -- if a witness relies on some treatise
14 that he or she read and you don't introduce the
15 treatise, the witness says, I read the treatise
16 and I agree with it, why aren't we same in the
17 position there and the witness can say that and
18 cross-examine based on that?

19 MR. SOPER: Well, I won't be
20 cross-examining my own witness.

21 JUDGE FARRAR: No, you'll be
22 cross-examining the Staff's, and you're saying
23 it's now what Larry Chandler said. This a long
24 time ago.

25 MR. SOPER: I expect to do that as

1 well. It's offered as direct testimony because
2 our witness is saying, here is where I'm
3 supporting what I've done. I suppose we could
4 have instead just quoted that part and noted as
5 you might to some other reference, but we chose to
6 just simply submit the document.

7 JUDGE FARRAR: Why don't we, instead of
8 what I suggested we do, why don't we grant the
9 State's motion, even though usually when you
10 present your witness, you just say, is this your
11 testimony, here it is, have at 'em, we'll allow
12 you there as part of your witness's direct
13 testimony to have a little discussion about
14 whatever he wants to say about the Chandler
15 document. He was the author.

16 MS. MARCO: Joint author.

17 MR. TURK: Your Honor, I think your
18 approach is a good one. The testimony that refers
19 to this for the State is Resnikoff answer 14, and
20 he quotes directly. He has an indented block
21 statement where he quotes. We haven't opposed his
22 stating that in his testimony.

23 JUDGE FARRAR: Then let's do that, and
24 just, when you put him on the stand, he can
25 elaborate on that.

1 That leaves us Staff motions No. 2, 5,
2 and 6. Our law clerk reminds me I might have said
3 State motion where I meant Staff motion somewhere.

4 Point 2 of the Staff motion, the
5 40-year-life question, which comes up in another
6 context, I think Utah SS that we haven't yet
7 argued.

8 Let me tell you what I think here. I
9 understand when you license a reactor it's for 40
10 years, and it may get a license extension and it
11 may not, it may later use Knox fuel and it may
12 not, and you don't look at those questions on the
13 original license application. I think Ms.
14 Chancellor referred to this one with this facility
15 as the legal fiction about the 20 years. Whether
16 I describe it that way or not, here's my problem.
17 Unlike the reactor which may or may not use Knox
18 fuel, at the end of year 20 you're going to have
19 4,000 casks on the reservation.

20 The Applicant decides not to ask for a
21 license amendment. In year 21 you're going to
22 have 3,998 casks on the reservation because they
23 can't get them off. If they apply for a license
24 and you turn them down, those casks are still
25 going to be on that reservation in year 21 and in

1 year 20, because I don't think they -- I haven't
2 seen anything in any of the documents that says
3 they can get them off any faster than they would
4 be able get them on.

5 So how can we sit here and say, don't
6 consider what happens after 20 years because they
7 may never, you know, it's only going to be a
8 20-year license. Physically -- whatever you say
9 legally, but physically whatever casks are there,
10 they may not take any new casks on, but those
11 casks are going to be on that site. Help me with
12 that, or respond to Ms. Chancellor's legal
13 fiction. Or, I'm sorry. Maybe I should be asking
14 this of Mr. Silberg.

15 MR. SILBERG: One of the issues is
16 really whether this is A, a fiction, or B, if it's
17 a fiction, any different fiction than it is with
18 reactor licensing. Reactor licensing you have
19 exactly the same issue. You get a 40-year
20 license; at the end of that license you may have,
21 depending on where we are with Yucca Mountain a
22 lot of spent fuel that is in the reactor pool or
23 in its on-site ISFSI. There's no more or less
24 guarantee that that fuel can be removed at the end
25 of that reactor license or that included ISFSI

1 license than there is in this case.

2 We had extensive testimony two years
3 ago on how this project would be run as a 20-year
4 project versus a 40-year project, and you wouldn't
5 obviously load up and have deliveries coming in in
6 year 19 if there were no license renewal
7 application. And we've talked about wrapping up
8 and wrapping down, what that would be in a 20-year
9 scenario versus a 40-year scenario.

10 I think we're getting a little bit
11 astray if we assume that you would necessarily get
12 up to 3,999 tons in year 19, and then also the end
13 of the world occurs. But we did have a lot of
14 testimony on that issue. And I think we can move
15 ahead without worrying about whether it's a
16 fiction or not, because I think this has been
17 dealt with here already, and to the extent that
18 NRC has licensing authority and licensing and
19 enforcement jurisdiction over what happens at the
20 end of any license, whether this license or a
21 reactor license, I think those issues have to be
22 dealt with in that context and not in the context
23 of this hearing.

24 JUDGE FARRAR: Well, I understand why
25 you would say that from your client's business

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1 judgment point of view, but we're -- there's some
2 testimony here about Utah Test and Training Range
3 and Hill Air Force Base, whether things will get
4 bigger or smaller over the years; and my concern
5 is, if the testimony shows facilities expanding in
6 year 21 is going to be some explosive growth in
7 military operations, or in year 25, it seems to me
8 it's not a sufficient answer for you to say, yeah,
9 but you can't look at that because this is only 20
10 years. If those -- if the casks are on the
11 reservation in year 25 and Hill Air Force Base
12 grows or whatever happens and they have to do more
13 training out there, it's -- I hate to thrust you
14 in a position of saying, well, this is not
15 relevant because it's only a 20-year license. I'm
16 right, you can't -- if at the end of the 20-year
17 license the Commission said, sorry, that -- your
18 deal is over, we don't like you, get rid of this
19 stuff, you can't get it out of there in a short
20 period. Am I right about that?

21 MR. SILBERG: That you couldn't get it
22 out in a short period? No, I mean, we talked
23 about what the sequence would be to get that out I
24 think two years ago. But in terms of whether we
25 have to worry about what's going to happen to Hill

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1 Air Force Base in 20 years, I think Mr. Soper in
2 his opening statement indicated, we don't know
3 what's going to happen 20 years ago, and I think
4 that situation is going to be true whether it's on
5 his side of the aisle or our side of the aisle.
6 So I think we're really getting into a speculative
7 area. And it's no different than you have in the
8 reactor licensing context where you may have
9 military air force bases or industrial facilities
10 or gas pipelines or LNG facilities. And what's
11 going to happen over time? The NRC has a process
12 for dealing with that. We've done that in many
13 cases. In the Calvert Cliffs case when the LNG
14 terminal several miles away decided after being
15 shut down for ten years that it was going to be
16 reopened, the NRC asked information about that,
17 and we dealt with that on the record in the
18 licensing.

19 JUDGE FARRAR: But if -- suppose you
20 get this license, and 15 years from now the
21 military decides to do something more dramatic
22 than what they're doing now out there. Does the
23 State get a chance when you go back -- or the
24 Staff -- let me ask the Staff this question. If
25 they get a license now, in year 15 something

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1 dramatic happens out there, do you look at that or
2 are you on to other cases?

3 MR. TURK: If we become aware of it and
4 the State has the opportunity to make it known to
5 us and we become known ourselves also in the NRC
6 resident inspector program.

7 The NRC is able to take action during
8 the operation under this existing license as well
9 as an application for renewal is submitted
10 subsequently.

11 JUDGE FARRAR: But suppose in year 15
12 you find out this new information from whatever
13 source. You say, oh, wait a minute, it was close
14 to 1×10^{-6} , you forget the margin of error. And
15 now it's way over, what's happened is way over.
16 You then go back to the Applicant and say, wait a
17 minute, you now have to guard against this.
18 Applicant comes back and says, here's how we guard
19 against it. You then notice up a factual hearing
20 so the State has a chance to come back in and they
21 say, wait a minute, this is a new game here.

22 MR. TURK: The State would always have
23 an opportunity to file a request for enforcement
24 action, even independently of whether we take a
25 license away. But there are various different

1 functions. They can include the NRC issuing a
2 suspension order to them, or if we take some
3 action or protect public health and safety,
4 whatever that may be. That could be done
5 independently without the State first requesting
6 that type of action, or they can come in
7 themselves and ask that type of action be taken.

8 JUDGE FARRAR: My reading of the yellow
9 books tells me that people, intervenors are always
10 better off when the Staff notices something for a
11 hearing and they come in, then when they go on
12 their own and say, we think the Commission ought
13 to take the following enforcement or show cause
14 action or so forth.

15 You know, this -- the procedural way
16 this comes up I think is important to the State in
17 terms of their being -- if the State were to
18 agree today with Mr. Silberg and say, we agree,
19 what's going to happen in the year 15 and year 25
20 is really speculative; we don't want to litigate
21 that now, but we want to know if it does happen
22 we're going to have a chance to litigate it now.
23 We don't want to be coming and begging you for a
24 chance to litigate it, we will want to know we
25 will have a shot at litigating if we choose it.

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1 Mr. Silberg, isn't that the flip side of what you
2 said?

3 MR. SILBERG: Yeah. There are really
4 several issues here. First of all, we are under
5 an obligation under 72.11 to make sure we bring to
6 the Commission's attention any information that
7 has a significant implication for public health
8 and security and -- and safety, and we have that
9 obligation regardless of what the license says --
10 anything that reasonably would be a change in
11 circumstances that would implicate public health
12 and safety we have to notify the Commission on.

13 The State obviously would be aware of
14 what's going on, and they have the opportunity,
15 not the obligation, to notify the Commission to
16 file a 2.206 petition to ask for immediate
17 enforcement action. Any number of opportunities.
18 And the NRC Staff to the extent that it becomes
19 aware of significant information, whether from us
20 or from other sources, has the right to ask us for
21 additional information, to issue any levels of
22 enforcement action ranging from request for
23 additional information to a confirmatory action
24 letter to an order to a suspension of a license,
25 anything you can imagine the Commission has

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1 jurisdiction to do.

2 And in fact, those kinds of steps, as
3 you know, have been taken as needed in the NRC
4 licensing world where things have happened that
5 require further NRC review and further review by
6 licensees. I think for us to try to guess today
7 as to what might happen 20, 40, 50 years from now,
8 when I think the State has indicated they don't
9 know what's going to happen, and we certainly
10 can't predict with any certainty what might
11 happen, I think it be getting us into an area
12 which would be very speculative. And there are
13 numerous opportunities for this issue to raise
14 itself and be raised by any of the parties that
15 haven't dealt with the appropriate way under the
16 existing regulatory system.

17 JUDGE FARRAR: I'll point out, I'll
18 give the State a chance after Mr. Turk gives me a
19 dramatic reading from the volume he's holding up
20 his hand.

21 MR. TURK: Your Honor, this is probably
22 the least dramatic and interesting reading I could
23 possibly hold up. I'm looking at 10 CFR part 2.
24 But the Commission has established long ago a
25 framework whereby any interested citizen or the

1 State could come to the Commission and say, we're
2 aware of a problem that you have to address in
3 order to protect public health and safety. The
4 Commission invites that.

5 JUDGE FARRAR: And what percentage of
6 those are granted?

7 MR. TURK: They're granted on the basis
8 of their merits. I can't give you a percentage.
9 But if they had merits, they would be reviewed
10 carefully. And the Commission has taken
11 enforcement actions under 10 CFR part 2,
12 particularly 10 CFR 2.206, which is are requests
13 for actions.

14 JUDGE FARRAR: When I say what percent
15 are granted, I'm not meaning to minimize the work
16 the Staff does on those; but in looking at the
17 State, do you have a right to a hearing or do you
18 have -- is it in someone's discretions. I'm not
19 minimizing your work you do when those come in.

20 The State has not had much chance to
21 say much during the last few minutes, so let me
22 give them a chance.

23 MS. CHANCELLOR: Your Honor, I'd like
24 to make just a few points. Utah K deals with a
25 design-basis external event. The SER states that

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1 the design life of a facility is 40 years.

2 JUDGE FARRAR: Is 40?

3 MS. CHANCELLOR: Forty. That's at SER
4 Table 4-3 on page 4-8. During the hearings on
5 financial assurance Mr. Parkyn testified that PFS
6 would not go forward with this facility if it were
7 only the 20 years. He would need something more
8 like 40 years. If the fuel were to leave the site
9 under a 20-year license, it would need to start
10 being shipped off site in about the year ten, ten
11 years after they got their license.

12 The legal fiction that I talked about
13 included any discussion of what would happen to
14 the fuel, what the Commission's position would be.
15 That was totally excluded from the hearings on
16 decommissioning and on the financial assurance.

17 Final point, the State in the past has
18 used 2.206 petitions. There's been mill tailings
19 that's in the Colorado River. We filed a 2.206
20 petition. It was and still is a serious concern.
21 We got no relief under that 2.206 petition, and we
22 feel that that is just basically a letter
23 informing the Commission and praying that they
24 will do something, and it is no substitute to
25 having a full trial title here.

1 MR. TURK: Your Honor, we have a point
2 also to make in response. I'm sorry. I see that
3 you're convening.

4 JUDGE FARRAR: Go ahead.

5 MS. MARCO: Just a follow-up on Ms.
6 Chancellor's argument there. Our Safety
7 Evaluation Report in the introductory section does
8 speak to a license firm for 20 years and the
9 possibility of renewal, and she speaks about
10 design life of 40 years. That isn't something
11 that the Applicant proposes. That is something
12 that they say their facility can last for 40
13 years. That is not the same thing as the license
14 term.

15 MR. TURK: The point of that, your
16 Honor, is that these are --

17 JUDGE FARRAR: There's an old rule in
18 the law which I have not been enforcing, it's
19 contrary to the old rule that there's no tag
20 teams.

21 MS. MARCO: All right.

22 JUDGE FARRAR: Mr. Turk, suppose at the
23 end of 20 years the Applicant didn't move to renew
24 its license and he had the 4,000 casks there.
25 What happens then? Because if they renew the

1 license, they move to renew the license, then I
2 assume that gets to hearing -- or notice of
3 hearing, the State has a chance to be heard. My
4 colleagues remind me of the old Sheffield case
5 where an applicant tried to, as they remembered,
6 walk away from --

7 MR. SILBERG: NFS.

8 JUDGE FARRAR: Where they tried to walk
9 -- where an applicant and said, the license is up,
10 we're gone.

11 MR. SILBERG: And the Commission said,
12 can't do that.

13 JUDGE FARRAR: You can't do that, that
14 that triggers a review process. So if that's
15 true, that then whatever you do at the end of 20
16 years would give the State an opportunity to be
17 heard at that point.

18 MR. SILBERG: Even decommissioning
19 would give the State an opportunity to be heard.

20 MR. TURK: Your Honor, Mr. Wiseman has
21 some familiarity with those cases, and he informs
22 me that perhaps there are two cases. One was
23 Nuclear Fuel Services, the other was the Nuclear
24 Engineering Corp, I believe NEC, which is the one
25 that your Honor has mentioned. In that case the

1 Commission required the licensing to go back and
2 take responsible actions. I can give you a
3 variety of things that could happen at the end of
4 20 years if they did not come in for renewal.

5 JUDGE FARRAR: But what we're focusing
6 on is, what are the things where the State has
7 what I call automatic right and what are the
8 things where their right is less automatic as, for
9 example, I've seen intervenors not like the notion
10 of 2.206 because even though it worked, it's a
11 process, they don't have an absolute right under
12 that. And their objection would be not
13 necessarily be the merits of it, but the fact that
14 they're not guaranteed opportunities.

15 MR. TURK: First and foremost, they had
16 the right to have public health and safety
17 protected. Whether they're in a hearing or not in
18 a hearing, they have the right to have the
19 Commission take action to protect our citizens and
20 the environment. They can do that with or without
21 a hearing. They can do it to the 2.206 mechanism,
22 they can do it in their communications with the
23 Commission as a sovereign state within the United
24 States, they have the ability to go to congress.
25 They have a lot of opportunity to be sure that

1 public health and safety is protected.

2 With respect to hearings, your Honor is
3 correct that if there was an application to renew
4 a license, NRC would notice that application in
5 the federal register and they would have an
6 opportunity for a hearing. Now, I don't know
7 whether in 20 years the hearing rights might
8 change. I don't know that the Commission would
9 offer a subpart G hearing for renewal of
10 applications like this. Currently they have that
11 right.

12 If there was an enforcement action
13 taken, they would have the right to request an
14 opportunity to participate in that enforcement
15 proceeding. At this point it would be a
16 discretionary decision by the Commission whether
17 to allow them to participate in the hearing
18 itself.

19 If the Applicant does not come in for a
20 renewal of its application, they would be required
21 to decommission the facility within the time
22 provision specified in 10 CFR part 72.

23 Now, in terms of whether they can get
24 the casks off quickly, their current plan of
25 operation would suggest that 20 years from now

1 they would not be able to get the casks off within
2 a matter of one or two years. But that's not to
3 say they couldn't be required to do that. If it
4 became apparent that there was a need to take the
5 casks off the site quickly, the Commission could
6 issue an order requiring them to devote the
7 resources and the personnel to do that in a more
8 timely manner than they're currently anticipating
9 doing. But those are hypothetical situations that
10 would have to be addressed based on the needs at
11 the time.

12 JUDGE FARRAR: Ms. Chancellor, any
13 response to this?

14 MS. CHANCELLOR: Another fiction, this
15 time not legal. It's physically not possible to
16 get the casks off the site in a couple of years no
17 matter how many resources they have, because
18 there's only so much traffic that the rails can
19 take, there's only so much transfer equipment,
20 there are only so many transportation casks. And
21 to say that we have to resort to the 2.206
22 petition, we have done that in the past and it was
23 not satisfactory.

24 JUDGE FARRAR: This is a difficult
25 issue, and we're cognizant of the State's

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1 arguments about the legal and physical fictions,
2 but yet we are more convinced by Mr. Silberg's
3 argument that we get too speculative when we go
4 beyond the 20th year.

5 So I think we will grant the
6 State's -- the Staff's motion on the 40-year-life
7 issue even though the State has some good points
8 on the issues of concern to us.

9 That leads to the points 5 and 6 in the
10 newspaper -- the limited appearance, hearsay
11 limited appearance of the congressman and the
12 newspaper articles where we're trying to project
13 what's going to happen. Tell me why those should
14 stay in.

15 MR. SOPER: I notice that the Applicant
16 has no objection. The Staff only objects to this.
17 Newspaper articles are used commonly in this
18 proceeding, and the objective, as I understand it,
19 is no identification as to the newspaper. We have
20 since supplied that in fact it's a U.S. Defense,
21 Department of Defense publication we get
22 introduced, and the congressman's exact statements
23 are embodied in a letter that is filed in the PDR
24 of the NRC.

25 JUDGE FARRAR: I guess the question I

1 would have, and maybe the question only goes to on
2 waiting on the congressman's statement. Obviously
3 it would be better if you had one of the
4 congressional committee reports saying, we believe
5 in this facility; in fact, we're going to give it
6 more money and so forth. For the congressman to
7 make, to have someone else deliver for him a
8 limited appearance statement is something less
9 than a formal congressional committee, budget
10 committee report that says where we're going. So
11 maybe my question there only goes to weight, not
12 to admissibility.

13 MS. MARCO: First of all, I did receive
14 the information that Mr. Soper provided to us, and
15 we withdraw our objection to the newspaper
16 articles because we have considered that the
17 information from the military is adequate.

18 JUDGE FARRAR: Then limited appearance
19 on that one, we'll deny your motion and let it in.

20 MR. SILBERG: If I might, we did not
21 include that in our motion to strike, but I do
22 think that by definition limited appearance
23 statements are not evidence, and I think,
24 notwithstanding the New York Times column defining
25 what the slippery slope is, I think admitting

1 limited appearance statements as evidence is
2 sending the Commission down on a very slippery
3 slope. There are state agencies that treat
4 limited appearance statements as evidence subject
5 to cross-examination. I think it would be
6 inappropriate and a very bad precedent to set that
7 someone could take a limited appearance statement
8 after the fact and now bless it as evidence and
9 put it into the record. I just think that's not
10 what the Commission had in mind when it
11 established a limited appearance process at the
12 very beginning of this.

13 JUDGE FARRAR: That's a good point.
14 How do you respond to that?

15 MR. SOPER: What's offered is not the
16 statements of the person making a limited
17 appearance. The fact that it's embodied in a
18 limited appearance has nothing to do -- it's
19 become a red herring there. A limited appearance
20 statement includes the recital of a letter from
21 Congressman Hansen. It is Congressman Hansen's
22 statement which is word for word from the letter
23 sent to the NRC.

24 JUDGE FARRAR: But it's sent as a
25 limited appearance statement, not sent as an

1 official communication from a member of a
2 congressional committee to the chairman of the
3 Commission dealing with official business.

4 MR. SOPER: Actually, I'm not sure that
5 the letter was sent as a limited appearance
6 statement. It was -- maybe that's how you would
7 generally characterize it. It was sent to the
8 NRC, but it was the congressman's thoughts on this
9 matter as a ranking member.

10 JUDGE FARRAR: But Mr. Silberg has,
11 while perhaps a technical and important point, the
12 limited appearance statements are not evidence,
13 that if we have an official communication -- if
14 it's set as a limited appearance, that's almost a
15 disqualifier, as I think his argument. Whereas if
16 we had some other letter from a congressman
17 saying, I'm a chairman of such-and-such a
18 committee, and just in the ordinary course of our
19 business I want to let the chairman of the Nuclear
20 Regulatory Commission know the following facts,
21 that would remove the basis of Mr. Silberg's
22 objection.

23 MR. SOPER: I see that it's a very
24 technical objection. We'd be happy to substitute
25 the letter itself that we've referred to. We'd

1 get the PDR number of the letter. It seems to me
2 that --

3 JUDGE FARRAR: But it still depends, if
4 he sent it in as this is my limited appearance on
5 the hearing that was held several years ago, that
6 Mr. Silberg is arguing that's a disqualifier.

7 MR. SOPER: I don't think he sent it in
8 as a limited appearance.

9 JUDGE FARRAR: Then let's grant the
10 Staff's motion, strike it as it was submitted, and
11 leave it open to you this week to come in with
12 that in some other fashion.

13 MR. SOPER: Very good.

14 MR. SILBERG: If the State wishes to
15 try to introduce a letter from the congressman as
16 an exhibit, I think the best thing to do is, when
17 you see it we'll argue whether it's relevant and
18 whether it's admissible.

19 JUDGE FARRAR: I think that takes care
20 of all of the motions, or all the parts of the
21 motion.

22 MR. SILBERG: Judge Farrar, before you
23 close, we did notice that the Staff's exhibit to
24 the newspaper articles included an objection,
25 portions of those as being outside the scope of

1 the issue. I think in the Staff's motion they
2 mentioned that they dealt with issues such as
3 personnel assignments, rotations and other matters
4 that would be irrelevant to the contention. And I
5 assume by admitting these newspaper articles that
6 we're not saying that all this other stuff is
7 relevant.

8 JUDGE FARRAR: Let's sort that out when
9 we -- I mean, let's, when the exhibit is
10 introduced, let's bring that up and we'll make
11 that clear.

12 MR. SILBERG: Thank you.

13 JUDGE FARRAR: Speaking of that, Judge
14 Bollwerk reminds me we've stricken some testimony.
15 Most of you are off site. You have a choice, you
16 can reformat the testimony to leave out the
17 stricken portions, or when you introduce it you
18 can say, in light of the board's rulings, the
19 following questions and answers are not being
20 offered. How do you want to do that?

21 MR. SILBERG: Can we let you know
22 later?

23 JUDGE FARRAR: Yes, you may.

24 MR. SILBERG: Like tomorrow at 3:15?

25 JUDGE FARRAR: You may. The cleaner

1 way would be to recast all the testimony, because
2 you're not on site and there's a limit to what
3 home printers can do, so I'll leave it up to you
4 all if you want to X it out with lines or if you
5 just want to have the witness say or have the
6 lawyers say, we're not offering certain portions
7 because they've been excluded. However you want
8 to do that, just so the record is clean.

9 MR. SILBERG: There is one item, that
10 the State and we have had some very brief
11 discussions, not trying to be rude during in the
12 hearing, that go to the consequence ruling and
13 whether some testimony is either within or without
14 that. If we could take perhaps a five-minute
15 break, stay in our positions, talk amongst
16 ourselves, and perhaps we can resolve that now.
17 If we can't, probably the best thing to do is come
18 back to it tomorrow.

19 JUDGE FARRAR: You and the State have a
20 good track record of these kind of discussions
21 leading to good results, so go ahead and we'll all
22 stay here.

23 (Recess from 12:04 to 12:08 p.m.)

24 MR. SILBERG: We've had some
25 discussions. We're going to continue to noodle

1 this issue for a while. We don't need a ruling
2 from the Board at this point.

3 JUDGE FARRAR: Okay, good.

4 MR. GAUKLER: I've got just a couple of
5 procedural questions. One, I was wondering if the
6 Board had brought the aircraft report and the
7 revised addendum that's been identified as
8 exhibits previously so that we could reduce what
9 we needed to present.

10 JUDGE FARRAR: I have those.

11 MR. GAUKLER: Okay. And the second
12 thing we have is our cross-examination plan for
13 the State's witnesses.

14 JUDGE FARRAR: Okay. I got yours,
15 you've handed yours to somebody, and you e-mailed
16 yours.

17 MR. SOPER: Yes, for the first witness.

18 JUDGE FARRAR: Can you sometime today
19 get us another copy of that? It's on our e-mail,
20 but we don't have a printer that's running.

21 MR. SOPER: We would be happy to do
22 that. And also we'll submit our outline for the
23 other two witnesses as well.

24 JUDGE LAM: That would be helpful,
25 because both Judge Farrar and I were not in our

1 offices last week. So whatever you sent us
2 through, e-mail, I don't have it.

3 MR. SOPER: Okay. Thank you, your
4 Honor. We'll make sure we get those in today.

5 JUDGE FARRAR: Why don't you give those
6 to Michelle at some point. And Ms. Walker, your
7 documents that you offered this morning.

8 MS. WALKER: I'm sorry. I put it in
9 front of you.

10 JUDGE FARRAR: Okay, thank you. And
11 that I think concludes this board's formal things.
12 Judge Bollwerk had a question.

13 JUDGE BOLLWERK: One question. Good
14 afternoon. I'm sort of the fifth wheel or the
15 fourth wheel here, but let me just direct one
16 question to Mr. Gaukler, if I could.

17 The parties have provided the Board
18 with a status report on the security J contention
19 approximately a week ago, and in that last
20 paragraph you indicated that at some point you
21 wished to address the Board during the evidentiary
22 process about basically what was going on in terms
23 of the court proceeding. I take it that was after
24 the Thursday hearing that that's when you wanted
25 to do that? Do I understand that correctly?

1 MR. GAUKLER: Yes.

2 JUDGE BOLLWERK: Then I'll make Judge
3 Farrar my agent for that purpose. Whenever you
4 want to bring that to his attention, just let me
5 know or we'll put it on the record and I'll get
6 notice of it that way. And I understand the
7 hearing is 2:30 on Thursday. Is that correct?

8 MR. GAUKLER: That's my understanding.

9 JUDGE BOLLWERK: Okay, that's all I
10 have.

11 One other thing, if you can indulge me
12 for ten minutes after we're done here, we'll do it
13 quickly. I have some information on the
14 adjudicatory EIE, Electronic Information Exchange
15 project that we're kind of reinstituting under
16 some new provisions or new processes that I'd like
17 to talk to the parties about, and sort of
18 hopefully you can help us out. Last time and you
19 all did a great job, you basically broke it, and
20 now we'll try to fix it. And now we need to see
21 if we can fix it or if you can break it again. So
22 if you can give me maybe five or ten minutes of
23 your time after this.

24 JUDGE FARRAR: If you agree five
25 minutes is -- I'll take five minutes with you on

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1 something else and we'll do that.

2 I'm told we'll have security in the
3 room during noon hour, so you can leave documents
4 here, although obviously we're not responsible for
5 them, but there will be security so you can leave
6 things at your desks. And let's go off the
7 record.

8 (The proceeding was concluded
9 for the day at 12:11 p.m.)

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CERTIFICATE

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

Name of Proceeding: Private Fuel Storage, LLC

Docket Number: Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

Location: Salt Lake City, Utah

were held as herein appears, and that this is the
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/s/ Diana Kent
Diana Kent
Official Reporter
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